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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 17, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MAY 15, 1989

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **August 2, 1989.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

BANKING

(a)

CONSUMER CREDIT BUREAU

Check Cashers; Applications

Proposed Readoption with Amendments: N.J.A.C. 3:24

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

Authority: N.J.S.A. 17:15A-16.

Proposal Number: PRN 1989-344.

Submit comments by August 2, 1989 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 3:24 expires on August 20, 1989. The Department of Banking has reviewed the rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

Subchapter 1 contains the application requirements for a person wishing to be licensed as a check casher. As indicated below, the proposed amendments make substantial changes to facilitate the application process.

Subchapters 2 and 3 prescribe the books and records that a licensee must maintain and the reports that must be filed with the Department. These rules are necessary to monitor compliance with the Check Cashing Law, N.J.S.A. 17:15A-1 et seq.

Subchapter 4 sets forth the procedures a licensee shall follow when depositing cashed checks and other instruments, while subchapter 5 establishes standards for the conduct of the check cashing business. The rules set forth in these subchapters have proven necessary to protect the check cashing public and to maintain the integrity of the industry.

Subchapter 6 provides that when the Commissioner denies, revokes or suspends a license and the proceeding is designated a contested case, the matter shall be heard in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Subchapter 7 authorizes the Department to impose penalties on applicants or licenses for violations of the Act.

The proposed amendments involve the application process set forth in subchapter 1. The existing rules require the submission of (1) a "certificate of merit" indicating the reasons why the applicant believes that the issuance of a check cashing license is economically feasible in the area in which the applicant proposes to locate and (2) a "pro forma statement" indicating anticipated income and expense projections for 36 months from the date the application is submitted. These submissions, however, no longer serve a useful purpose (see P.L. 1979, c. 498, sec. 3 (effective February 29, 1980), which removed from the Check Cashing Law any requirement that issuance of a license must "promote the convenience and advantage of the area in which such business is to be conducted.") The only statutory requirements for issuance of a check cashing license are that the applicant have a capital or net worth of at least $50,000 and have available liquid assets of at least $50,000 for each location at which it intends to operate and that the "financial responsibility, experience, character and general fitness of the applicant . . . are such as to command the confidence of the community and to warrant the belief that such business will be operated honestly, fairly and efficiently within the purposes of this act." N.J.S.A. 17:15A-7.

Whether a new check cashing operation is or is not economically viable at a particular location is therefore not relevant to the findings the Commissioner is obligated by statute to make, which only concern the net worth, liquid assets and character and fitness of the applicant to engage in the check cashing business. Recognizing this, and desiring to make the application process simpler and more efficient, the Department herein proposes to delete these filing requirements.

Social Impact

These rules are designed to curtail abuses in the check cashing industry. This is done by licensing persons engaging in the check cashing business and setting standards for the conduct of business. The proposed amendments to this chaper simplify the application process.

The removal of the "economic feasibility" standard from the Department's rules will bring the rules in line with the statute. It may also serve to encourage applicants to enter this field and increase the number of check cashing facilities available to the public. An October 1988 General Accounting Office report entitled "Government Check-Cashing Issues" highlighted this need for check cashing facilities.

Rather than require that the Department determine at time of application which sites will support a check cashing facility, the Legislature has chosen to permit that the market make this determination. The requirements for licensure under the proposed amendments are those set forth in N.J.S.A. 17:15A-7. That is, the applicant must have a net worth of at least $50,000 and have available liquid assets of at least $50,000 for each location at which it intends to operate, and must possess sufficient financial responsibility, experience, character and general fitness.

Economic Impact

Since the rules proposed for readoption are primarily procedural, any costs invovled are administrative in nature, such as filing fees, copying costs and the business costs inherent in the production of the necessary documentation. The readoption has the beneficial impact of enforcing the Check Cashing Law, which limits the costs incurred by the public.

The proposed amendments will speed and simplify the license application process. As a result, it should encourage applicants to enter this field, thereby increasing competition in the check cashing profession, to the benefit of the check cashing public.

While increased competition amongst check cashing establishments has the potential to adversely affect certain of these establishments, this is consistent with the legislative intent embodied within the Check Cashing Law, which is to protect and serve the public by promoting the availability of check cashing services to the public at a reasonable cost.

Regulatory Flexibility Analysis

Most check cashers are small businesses. The proposed readoption of these rules imposes reporting, recording and compliance requirements on all applicants and licensees. These requirements are necessary to monitor compliance with the Act, so no differentiation is made for small businesses.

The amendments are intended to simplify the application process, and to reduce the costs to the applicant. This savings of time and expense should be particularly beneficial to small businesses wishing to enter the industry.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:24

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

3:24-1.2 Corporate applications

(a) Corporate applicants shall submit a copy of certificate of incorporation showing the field or recording stamp of the Secretary of State**, and shall indicate the registered agent for service of process.** Foreign corporations shall submit a Certificate of Authority in addition to corporate certificate.

(b) Individual or partnership applicants using a trade name shall submit a copy of [its] **the** trade name as filed with the County Clerk showing date of recording.

(c) Corporations using fictitious names shall file a copy of such names, as recorded, as part of [its] **their** applications.

[3:24-1.3 Certificate of merit

(a) A certificate of merit on a form designated by the commissioner of Banking shall be filed with the application indicating the reasons why the applicant believes that the issuance of a check cashing license is economically feasible in the area in which the applicant proposes to locate.

(b) The certificate of merit shall indicate such information as the commissioner may require.]

3:24-1.3 Net worth

An applicant shall submit evidence that it has a capital or net worth of at least $50,000 and has available for the operation of such business liquid assets of at least $50,000, for each specified location or for each mobile unit. An applicant shall also submit evidence regarding its financial responsibility, experience, character and general fitness, in addition to that material required on the Departmental application form.

3:24-1.4 Demonstration of financial responsibility

An applicant for check cashing license shall demonstrate that it has commitments or agreements with a financial institution [which has agreed to provide the applicant with funds sufficient] to enable the applicant to conduct the check cashing business.

[3:24-1.5 Pro forma income and expense statement

A pro forma statement shall be submitted with the application indicating anticipated income and expense projections for 36 months from the date the application is submitted. The statement should include the basis of the anticipated income and expenses.]

3:24-[1.6]**1.5** Physical facilities

An applicant must include [in his] **with the** application a description of the physical facilities [which shall include diagrams showing the proposed address, the protective devices to be installed and the anticipated costs associated with such facilities and devices].

[3.24-1.7 Public notice

Every applicant for a license shall within 10 days from the filing of the application cause to be published a notice of the application in a newspaper, designated by the commissioner, which has general circulation in the county in which the applicant proposes to do business. The form of notice shall be provided by the Commissioner of Banking.]

PERSONNEL

(a)

MERIT SYSTEM BOARD

Separations and Demotions; Public Records, Delegation; Interim Relief; Major Discipline; Minor Discipline and Grievances; Examinations; Working Test Periods; Examination and Selection Disqualification and Appeals; Relocation Assistance; Failure to Appoint from Complete Certification

Proposed Repeals: N.J.A.C. 4:1-16.6, 4:1-16.15, 4:1-25.1, 4:2-16.6, 4:2-16.8, and 4A:4-6.5

Proposed Amendments: N.J.A.C. 4A:1-4.1, 4A:2-1.2, 4A:2-1.4, 4A:2-2.5, 4A:2-2.7, 4A:2-3.1, 4A:2-3.7, 4A:4-2.3, 4A:4-2.9, 4A:4-2.15, 4A:4-5.2, 4A:4-6.3, 4A:4-6.4, 4A:4-6.6, 4A:4-7.3, and 4A:10-2.2

Proposed New Rule: N.J.A.C. 4A:4-6.5

Authority: N.J.S.A. 11A:2-6(c) and (d), 11A:2-11(e), 11A:2-12, 11A:2-13, 11A:2-20, 11A:2-21, 11A:4-1, 11A:4-5, 11A:4-15, 11A:4-16, 11A:10-3, 40A:14-45, and 40A:14-127.1.

Authorized By: Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.

Proposal Number: PRN 1989-340.

A **public hearing** concerning the proposed repeals and amendments will be held on:

Thursday, July 20, 1989 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

Please contact Ms. Dionisia Simona at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by August 2, 1989 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, N.J. 08625

The agency proposal follows:

Summary

While developing the new Title 4A of the Administrative Code and replacing Title 4, comments from interested parties as well as Departmental review have revealed the need for a number of additional changes to improve the rules. Following are a series of repeals and amendments reflecting these suggestions.

In preparing N.J.A.C. 4A:1, General Rules and Department Organization, effective October 5, 1987 (see 19 N.J.R. 1827(a)), the existing rule on public records, N.J.A.C. 4:1-25.1, was inadvertently left out of the list of repealed rules. Since a new rule on public records has been adopted, N.J.A.C. 4A:1-2.2, the Board proposes that N.J.A.C. 4:1-25.1 be repealed.

Similarly, in the process of proposing and adopting new rules on Selection and Appointment, N.J.A.C. 4A:4, all of which became effective on June 6, 1988 (See 20 N.J.R. 1183(b)), the existing rule on voluntary demotions, N.J.A.C. 4:1-16.6, was inadvertently excluded from the list of repealed rules. In light of the fact that a new replacement rule on voluntary demotions, N.J.A.C. 4A:4-7.8, already has taken effect, the Board proposes that N.J.A.C. 4:1-16.6 be repealed.

On June 4, 1989, N.J.A.C. 4:3-8.4 expired pursuant to Executive Order No. 66 (1978). The Board proposes that N.J.AC. 4A:4-2.15, which concerns rating of examinations, be amended to incorporate the substance of that rule. The proposed amendment, which provides for service credits for volunteer municipal firefighters who have served as volunteers for a minimum of two years, is authorized by N.J.S.A. 40A:14-45.

The Board also proposes repeal of three other unnecessary or outdated rules: N.J.A.C. 4:1-16.15, Information to next of kin; N.J.A.C. 4:2-16.6, Report of separation or transfer ; and N.J.A.C. 4:2-16.8, Retirement planning.

The Board further proposes that N.J.A.C. 4A:1-4.1 be amended to define "substantial costs" as required by N.J.S.A. 11A:2-12 to clarify the situation in which a local appointing authority must approve a delegation. Thus, costs would be "substantial" when they result in a significant increase in agency expenses for staff, materials and facilities after offset by savings to be effected by the delegation.

A proposed amendment to N.J.A.C. 4A:2-1.2, concerning interim relief, was found to be necessary in light of a New Jersey Court rule which requires an appellant to seek a stay of an agency decision from the agency, rather than from a court, when an appeal of the decision is pending in the Appellate Division of Superior Court. The proposed amendment would provide that the procedures and standards applicable to requests for interim relief would also apply to such requests for stays.

An amendment to N.J.A.C. 4A:2-2.5, concerning hearings before the appointing authority in major disciplinary actions, has been proposed to address questions raised on the availability of appeal mechanisms. In particular, when an employee claims that he or she has not been provided with the opportunity for a hearing prior to major discipline, there has been confusion as to whether the employee must wait until issuance of the Notice of Final Disciplinary Action before challenging the failure to provide a hearing at the appointing authority level. To address this question, the proposed amendment clarifies that a petition for interim relief may be presented in such situations.

A proposed amendment to N.J.A.C. 4A:2-2.7 would clarify the standard to be used, when a criminal complaint or indictment is pending against an employee, to determine whether the employee should be suspended until disposition of the complaint or indictment. The standard would be the same as that used for an immediate suspension prior to a hearing in major disciplinary proceedings as provided in N.J.A.C. 4A:2-2.5(a)1.

Three amendments have been proposed to the rules governing minor disciplinary actions to clarify the causes and burden of proof for such actions. The first proposed amendment would amend N.J.A.C. 4A:2-1.4 to include a cross-reference to N.J.A.C. 4A:2-3.7(f) on the burden of proof in minor disciplinary actions. The second proposed amendment would change N.J.A.C. 4A:2-3.1 to provide that the causes for a minor disciplinary action shall be the same as for a major disciplinary action. Finally, N.J.A.C. 4A:2-3.7(f) would be amended to require that an em-

ployee have the initial burden of presenting an issue of general applicability and, if this standard is satisfied, the burden of proof would shift to the appointing authority. The current provision, which places the burden of proof on the employee, would be retained for grievance matters.

A proposed amendment to N.J.A.C. 4A:4-2.3 would amend the rule on eligibility for open competitive examinations to conform with N.J.S.A. 40A:14-127.1. The statute sets certain exceptions to the 35 year maximum hiring age for police officers. The amendment would clarify that former Municipal Police Officers who are 45 years of age or younger may subtract previous years of police service from their actual age on the examination closing date if they resigned in good standing, and that former Municipal Police Officers of any age who were involuntarily separated from service due to a layoff may subtract previous years of police service from their actual age on the examination closing date.

The proposed amendment to N.J.A.C. 4A:4-2.9 would permit make-up examinations for police and fire promotional examinations only in cases of documented job-related emergency or job-related disability as verified by the appointing authority. These amendments are necessary to enhance the security of the examination process for public safety titles in light of changes in the Department's make-up examination methods.

In addition to the previously described amendment concerning service credit for volunteer firefighters, another proposed amendment to N.J.A.C. 4A:4-2.15 would change the rule to require that, in an education and experience evaluation of an examinee's application, all education and experience listed would be scored, rather than just the credentials which exceed the minimum requirements. This proposed amendment would conform the language of the rule to current practice.

The proposed amendments to N.J.A.C. 4A:4-52(d)1 would clarify: (1) That the regular appointment date would be considered the date of appointment from an eligible list following successful completion by a law enforcement officer of the working test period; and (2) that newly appointed local officers who have not commenced their working test periods due to police training requirements will nevertheless be treated as if they are in their working test periods for disciplinary purposes.

Proposed amendments to N.J.A.C. 4A:4-6.3, 6.4 and 6.6 would clarify that appeals concerning the manner in which an examination was administered must be made in writing within a period of five business days after the examination has been held. The amendments would conform the rules to current practice.

The proposed repeal and new rule for N.J.A.C. 4A:4-6.5 would address several elements of the appeals process on removal of an eligible's name from a list due to medical or psychological reasons. These amendments are intended to accomplish the following: ensure that professional reports and recommendations accompanying such a removal request contain specific findings on the eligible's qualifications for the title; clarify that the eligible is not charged for any costs associated with examinations requested by the appointing authority; ensure that, after an appeal is initiated, the appellant and the appointing authority are provided with copies of all submissions made by the other party to the Merit System Board; allow for written record review of some appeals; clarify that the Merit System Board may refer an appellant for an independent professional evaluation; and authorize the assessment of costs in certain circumstances.

The proposed amendment to N.J.A.C. 4A:4-7.3 would delete the word "permanent" from subsection (a), thus clarifying that relocation assistance may be made available, subject to available appropriations, to any State employees who are permanently transferred or reassigned on a permanent basis to a new work location because of a closing or phasedown of a State operation. This amendment would make the rule section consistent with N.J.S.A. 11A:4-16, which provides relocation assistance for all State employees in the aforementioned situation subject to available appropriations.

Current N.J.A.C. 4A:10-2.2 provides that an appointing authority must make an appointment from a complete certification when the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request. However, by giving timely notification to the Department of Personnel that the position has been vacated, an appointing authority would not be forced to make a permanent appointment. Questions have arisen regarding the time period within which such notice must be given to the Department of Personnel. Therefore, the proposed amendment is intended to clarify that such notice must be given the earlier of two dates: (1) the date of the examination; or (2) within 30 days after the initial date of the examination announcement. Thus, if an examination is announced in the March Job Opportunities Bulletin (issued March 1) and the test administered on May 25, notice must be given by March 31 (30 days after the initial date of announcement). However, if a special announcement is issued March 6 and the test administered March 30, notice must be given by March 30.

Social Impact

The proposed repeals, the proposed recodification of N.J.A.C. 4:3-8.4 at N.J.A.C. 4A:4-2.15(d), and the proposed amendments to N.J.A.C. 4A:4-2.3 and 4A:10-2.2 are essentially technical and would have no social impact.

The proposed amendment to N.J.A.C. 4A:1-4.1 should enhance understanding between local jurisdictions and the Department of Pesonnel of local needs and resources and how these jurisdictions may play an effective role in the merit system.

The proposed amendment to N.J.A.C. 4A:2-1.2 would have a positive impact upon parties to appeals of Merit System Board decisions in the appellate courts, in that the standards and procedures for requests for stays would be clarified and applied uniformly. Similarly, the proposed amendment to N.J.A.C. 4A:2-2.5 would help to clarify the procedures in major disciplinary appeals.

The proposed amendments to the rules on minor disciplinary appeals would affect State employees and appointing authorities who are parties to such matters. For the relatively few cases which meet the Board's standard of review, the amendments would codify the current practice followed by the Merit System Board with respect to burden of proof and would reflect the same standard applicable to hearings on major disciplinary actions. Further, these amendments would clarify for both appointing authorities and employees the enumerated causes for assessing minor disciplinary actions, and would also correct any ambiguities in determining the appropriate causes for minor disciplinary actions.

The language proposed to be added to N.J.A.C. 4A:2-2.7 would have a positive social impact because it would ensure that only one objective standard would be used to determine the necessity of a suspension prior to a hearing.

The proposed amendments to N.J.A.C. 4A:4-2.9 would promote the security of the examination process for police and fire promotional examinations by permitting such make-ups only in limited, urgent instances. Such make-ups would then be administered much more quickly than under the former procedures, in which make-ups were held with the next regularly scheduled examination, generally six months later.

The proposed amendment to N.J.A.C. 4A:4-2.15, concerning scoring of unassembled examinations, would not change current practice, although the amendments would clarify existing procedures for prospective and current employees.

The proposed amendments to N.J.A.C. 4A:4-5.2 address the situation where entry-level law enforcement officers in local services begin their working test period only after completing police training. For these individuals, the added language provides a uniform meaning of the term "regular appointment date" for purposes of determining seniority, and clarifies the applicable procedures for major disciplinary actions.

Proposed amendments to N.J.A.C. 4A:4-6.3, 6.4 and 6.6 would have a positive impact on the ability of employees and examination candidates to utilize the appeals process as it relates to examination matters. The amendments would help to further define the types of appeals available to employees and the procedures that employees must follow to file a particular appeal.

The proposed repeal and new rule for N.J.A.C. 4A:4-6.5 would have an impact upon all State and local appointing authorities as well as individuals who are seeking employment with these agencies, particularly in public safety positions. By ensuring that materials submitted to the Department of Personnel in connection with medical or psychological disqualification appeals are also provided to the other party, these amendments would improve the fairness of these appeals, for the benefit of all parties.

The proposed amendment to N.J.A.C. 4A:4-7.3, which is actually technical in nature, would clarify that all State employees would be eligible for relocation assistance under the circumstances specified in the rule section. The proposed amendment thus would have a positive, albeit minimal, impact on all State employees and other users of the rules who would need to know whether they would be entitled to such assistance.

Economic Impact

Many of these proposed amendments, repeals and new rules would not have any economic impact since they are technical in nature or merely seek to clarify existing rules.

However, the definition of "substantial costs" proposed for N.J.A.C. 4A:1-4.1 would hlep local jurisdictions to save money by clarifying when a local jurisdiction must approve a delegation before it becomes effective.

The proposed amendment to N.J.A.C. 4A:4-2.3 would ensure that the examination applications of former Municipal Police Officers who are eligible for reappointment are processed accurately. Thus, the cost effectiveness of examination administration would be enhanced.

The proposed amendment to N.J.A.C. 4A:4-6.5 would enable the Department of Personnel to process medical and psychological unfitness appeals more quickly and efficiently, without sacrificing due process for appellants. The proposed amendment would also ensure that individual eligibles are not charged for any costs associated with medical or psychological evaluations performed at the request of the appointing authority and would enable the Merit System Board to assess costs against a party when specified conduct interferes with the proceedings.

The economic impact on State agencies of the proposed amendment to N.J.A.C. 4A:4-7.3 would be minimal because, whether relocation assistance is available to permanent employees or all State employees, it would be awarded according to available appropriations. As noted above, the proposed amendment merely would conform the language of the rule to N.J.S.A. 11A:4-16.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required because these proposed repeals, amendments, and new rule will have no effect upon small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules govern employment in the public sector.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-16.6, 4:1-16.15, 4:1-25.1, 4:2-16.6, 4:2-16.8, and 4A:4-6.5.

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

4A:1-4.1 Delegation to appointing authorities

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

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial **and identifiable** costs. **Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials and facilities after offset by savings effected by the delegation.**

(g) (No change.)

4A:2-1.2 [Interim] **Stay and interim** relief **requests**

(a) (No change.)

(b) A request for **a stay or** interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) (No change.)

(d) The filing of a petition for interim relief will not stay [the processing of the case] **administrative proceedings or processes**.

(e) (No change.)

(f) Following a final administrative decision by the Commissioner or the Board, and upon the filing of an appeal from that decision to the Appellate Division of Superior Court, a party to the appeal may petition the Commissioner for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above. See N.J. Court Rules 2:9-7.

[(f)]**(g)** See N.J.A.C. 1:1-12.6 for **interim relief rules on matters pending before the** Office of Administrative Law [interim relief rules].

4A:2-1.4 Burden of proof

(a) (No change.)

(b) In appeals concerning minor disciplinary actions, see N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

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

4A:2-2.5 Opportunity for hearing before the appointing authority

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

(e) Appeals concerning violations of this section may be presented to the Commissioner through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. **The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.**

2.-3. (No change.)

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

4A:2-3.1 General provisions

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

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

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

4A:2-3.7 Appeals from appointing authority decisions: State service

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

(f) [The employee shall have the burden of proof in] **In** Commissioner or Board reviews, **the employee shall present issues of general applicability in the interpretation of law, rule or policy (see (a)1 and (b)2 above). If that standard is met:**

1. In grievance matters, the employee shall have the burden of proof.

2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

4A:4-2.3 Open competitive examinations

(a) (No change.)

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. (No change.)

2. Meet all requirements specified in the examination announcement:

i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former Municipal Police Officers [under] 45 years of age **or under** [and] who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. **Former Municipal Police Officers who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.**

ii. (No change.)

3. (No change.)

(c) (No change.)

4A:4-2.9 Make-up examinations

(a) Make-up examinations, **except for police and fire promotional examinations under (b) below,** may be authorized for the following reasons:

1.-6. (No change.)

(b) For police and fire promotional examinations, make-up examinations may be authorized only in cases of documented job-related emergency or job-related medical disability, verified by the appointing authority.

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

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, [that which exceeds the minimum] **they** shall be graded through the use of scales prepared by the Department **of Personnel**.

2. Ties in final earned ratings shall not be broken.

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

(d) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 90 percent to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10 point maximum.

4A:4-5.2 Duration

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

(d) Persons appointed to entry level law enforcement, correction officer, **juvenile detention officer** and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers.

1. In local service, law enforcement officers who are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training course. **However, major disciplinary procedures applicable to employees serving in a working test period (see N.J.A.C. 4A:2-2) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.**

i. (No change.)

2. (No change.)

(e) An approved leave of absence shall extend the completion of the working test period for a period of time equal to that leave.

1. A paid leave of absence for a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1 shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one year period.

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items [and], scoring **and administration** (see N.J.A.C. 4A:4-6.4);

2.-3. (No change.)

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

4A:4-6.4 Review of examination items, [and] scoring **and administration**

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

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing for a period of five business days beginning on the second business day after the examination has been held.

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

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish a copy of the certification and a report and recommendation, prepared and signed by a New Jersey licensed physician, psychologist or psychiatrist, to the Department of Personnel to support the removal request. The submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (e) below for report requirements.

2. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. He or she has been disqualified for appointment;

2. He or she may file an appeal with the Merit System Board within 20 days of such notification;

3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and

4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(c) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Merit System Board, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request.

1. The appointing authority shall also furnish the appellant with all of the information supplied to the Merit System Board.

2. In those limited circumstances when the examining physician, psychologist or psychiatrist certifies that such disclosure would be injurious to the appellant's health, and provides a basis specific to the diagnosis of that appellant, the information shall not be provided to the appellant but shall be provided by the appointing authority to the appellant's attorney or doctor.

3. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

(d) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See (e) below for report requirements.

(e) The Merit System Board may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1. The professional's signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;

2. The length of the examination or interview;

3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;

4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and

5. All tests that have been administered (for example, EKG, EEK, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

(f) The Merit System Board shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations or other materials.

1. When submitted to the Review Panel or Examiners Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to a Panel.

2. If no appearance is requested, the appeal will be reviewed by the Panel upon the written record.

3. The Panel shall prepare a written report and recommendation for the Merit System Board.

i. The appellant and appointing authority shall be provided with copies of the report and recommendation.

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(g) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, [and] item **and administration** appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological [unfitness] **disqualification** appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1.-3. (No change.)

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

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocation assistance for [permanent] employees who are transferred or reassigned on a permanent basis to a new work location due to either a closing or phasedown in anticipation of closing of a State operation.

1.-2. (No change.)

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

4A:10-2.2 Failure to appoint from complete certification

(a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

1. When an appointing authority has notified the Department of Personnel **either by the date of the examination or** within 30 days after the **initial date of** the examination announcement [or the date of examination], whichever **date** is earlier, that it has vacated the position and terminated the provisional appointee, the Commissioner may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action.

2. Following the period set forth in (a)1 above, an appointing authority may, for valid reasons such as fiscal constraints, petition the Commissioner for permission not to make a permanent appointment. The Commissioner may grant such petition, but may order the appointing authority to reimburse the Department for the costs of the selection process. The Commissioner shall notify the appointing authority of the amount of the reimbursement and an opportunity to respond to the assessment within 20 days of such notice.

(b) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Peer Review

Proposed New Rule: N.J.A.C. 5:23-4.24A

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

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

Proposal Number: PRN 1989-337.

Submit comments by August 2, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to provide an alternative method of obtaining plan review for large projects in municipalities not equipped to perform such reviews.

An alternative method is desirable because between Fiscal Year (FY) 1983 and FY 1986 the number of projects submitted to the State for plan review increased by 387 percent. During this same time, staffing for plan review increased only 27 percent and the average time required for plan review rose from six to 12 months.

Proposed new rule N.J.A.C. 5:23-4.24A outlines a method whereby the practicing architects and engineers, especially during times of greatly increased activity, can be given the authority and responsibility to review the projects of their peers. The rule is largely modeled on a system which is currently in operation in Vancouver, British Columbia, Canada. The system, while designed to be rapid and efficient, may be costly. The net result will be to allow developers the option of paying for review by an authorized architectural or engineering firm in order to speed the plan review process. It must be emphasized that peer review is just an option and that "traditional" State plan review will still be available to those who do not choose to avail themselves of it.

Because plan review, as a code enforcement activity, provides the most critical check upon the ability of the planned building to afford a minimum degree of life safety for occupants, the proposed peer review system represents a radical departure from State policy for this vital service. Several safeguards have been built into the rule.

The most important of these is a requirement that peer review firms be practicing architectural or engineering firms specially qualified by their possession of code enforcement licenses. These firms should devote only a small part of their practice to the activity of peer review. The incentive for such a firm to do a thorough and complete review, and to make unbiased decisions, is appreciably greater than that for a firm which devotes a large proportion of its time to peer review. The potential harm to the remainder of the firm's practice and to its reputation should it be disqualified from future performance of this function is great compared to the economic gain likely from performing peer review. It is assumed that this "disincentive" will function in the public interest by assuring that only firms which themselves have sufficient public interest and a goal of maintaining a positive reputation will undertake peer review work.

Similarly, firms which practice code consulting as their main business are excluded from peer review work. While such firms possess expertise in code compliance, the thrust of their expertise is devoted towards describing options and alternatives, and looking to providing their clients with expeditious or least expensive methods to achieve compliance. While there is no implication that this activity is wrong, it involves a degree of advocacy inconsistent with the need to ensure the public of the safety of a particular building. If the public is to have the assurance the law now provides that an unbiased party has endeavored to provide for their safety, any private firm undertaking peer review must be suitably distanced from such considerations on all projects, not just those under review at the moment. A requirement that 75 percent of a peer review firm's practice be devoted to the ordinary practice of architecture or engineering will ensure that a firm is not unduly devoted to code consulting pursuits.

The proposed new rule requires that each peer review firm obtain sufficient errors and omissions liability insurance. The Department will monitor this aspect of the program to ensure sufficient coverage is maintained.

A performance bond in the amount of 10 percent of the project cost is required to make funds available to correct any deficiencies which may be found as a result of either random monitoring carried out by the State or of complaints received.

Projects involving renovations, rehabilitation, or substantial additions are excluded from peer review to reduce the possibility of errors resulting from the unusual complexity of such projects. They will be best handled by State plan reviewers who have a depth of experience in these areas. Since these projects frequently require variations and/or interpretations, it is assumed that most of this work would be reviewed by the State in any case. Similarly, projects of either unusual size or complexity, or those currently reserved by law to the State, are retained to reduce the possibility of error resulting from inexperience in unusual building types.

Variations and interpretations are to be handled by the Department. The State is more insulated from pressures that an owner might apply to a peer review firm. Also, State plan reviewers are more likely to be familiar with troublesome code problems occurring throughout the State and may be in a better position to make informed decisions. This process will also reduce the potential liability of private firms in questionable areas on which the Department has yet to offer advice.

A requirement that the plan review fees be paid in full and then refunded upon successful completion of the project is intended to ensure that record drawings of the project are completed, as well as that the Department's expenditures with regard to monitoring are covered. It is of critical importance to the successful operation of this system that the Department be able to employ a monitoring staff of sufficient size to perform adequate monitoring.

Social Impact

This proposed new rule is intended to provide developers requiring State review of their projects with the option to speed the projects along by paying to have plan review conducted by an approved architectural or engineering firm. Insurance and monitoring requirements are intended to ensure that this review will be accurate and will continue to protect the public's interest in life safety.

Economic Impact

The option provided by the proposed new rule should provide rapid and efficient plan review for those applicants whose projects, especially large projects, have at times been delayed under the procedures currently in the rules. Speed and efficiency should positively benefit applicants—owners and developers—for whom plan review delays have meant added expense and lost profits.

It is anticipated by the Department that the cost of hiring a peer review firm will be in excess of the cost of "traditional" Departmental plan review. However, this cost may be more than offset by avoiding the costs that might otherwise be incurred as a result of any delay.

Since the expected additional cost would only be assumed voluntarily, there would be no adverse economic effect created by the proposed program. Applicants not electing to use a peer review firm will benefit because, in the event that backlog would otherwise become a problem at some time in the future, it would be reduced to the extent that applicants elect to use peer review firms.

Regulatory Flexibility Statement

The Department anticipates that while this proposed elective program would initially be more costly for applicants than the current system, there would be savings from any reduction in delay. The alternative system, while not limited to small businesses, is equally available to owners and builders of all types and sizes and, by creating a new compliance option, furthers the goal of regulatory flexibility.

Full text of the proposed new rule follows:

5:23-4.24A Peer review program

(a) Peer review is an alternate method of plan review conducted by architectural and engineering firms qualified under this section. Peer review is performed under Department supervision in lieu of plan review by the Department in accordance with the process set forth in N.J.S.A. 5:23-4.24.

(b) Project eligibility for peer review is as follows:

1. An applicant may choose to have a project reviewed under the peer review system if the project is a Class 1, 2 or 3 project eligible for Departmental plan review, not excluded by (b)2 below.

2. The following projects are not eligible for peer review:

i. A renovation or alteration to an existing building; provided, however, that an independent structure that incidentally connects to an existing building shall be eligible for peer review if it is not otherwise excluded;

ii. Any structure or addition reserved to the Department pursuant to N.J.A.C. 5:23-3.11 or 5:23-3.11A;

iii. Any structure or addition which would be categorized as a Special Use and Occupancy in Article 6 of the current BOCA National Building Code; and

iv. Any structure or addition subject to local plan review which has not been referred to the Department for plan review by the local enforcing agency.

(c) If an applicant chooses to have the plans for an eligible project reviewed pursuant to this section, the applicant shall retain a peer review firm that is qualified under this section to perform plan review and to furnish releases. The peer review firm shall be retained in addition to the design firm and any consultants otherwise employed on the project.

(d) An architectural or engineering firm seeking to qualify as a peer review firm for a project shall provide the Department with written evidence of its compliance with the requirements of (e) and (f) below and shall submit to the Department, either on its letterhead or on such form as the Department may provide, a statement setting forth its name and business address, the lot and block numbers of the project, and the principal partner responsible and licensed professionals assigned to the project. Information provided to the Department shall be updated within 10 business days if address, personnel or other relevant changes occur.

(e) In order to qualify to perform peer review, an architectural or engineering firm serving in a peer review capacity shall:

1. Employ degreed or licensed architects or engineers licensed by the Department as H.H.S. building, electrical, plumbing and fire protection inspectors. A minimum of one inspector for each of the four listed areas is required. Several firms may work cooperatively to pool required licensed personnel if each firm otherwise meets the requirements of this section;

2. Certify that its annual receipts from code consulting and peer review are no more than 25 percent of its total annual receipts;

3. Not be the designer of the project to be reviewed and have no current connection, either financial or otherwise, with the designer or with any consulting firm that has been retained by the owner or developer or by the municipality in which the project is located; and

4. Disclose in writing to the Department any relationship between the design and peer review firm, including but not limited to those listed in (e)3 above, which existed within the preceding two years or which has been agreed upon for the future. In circumstances in which the relationship creates the potential for impropriety, the Department may extensively monitor the plan review activities of the peer review firm.

(f) The following are the requirements for peer review firm insurance:

1. The peer review firm shall demonstrate to the Department that it has error and omission insurance in effect that will cover plan review work described in this section to be undertaken by the firm. This insurance shall cover errors and omissions occurring during the plan review conducted according to this section, regardless of the date of discovery.

2. If a peer review firm's insurance policy does not expressly cover the peer review work described in this section to be undertaken by the firm, the peer review firm shall supply the Department with additional documentation which does guarantee coverage.

3. If a peer review firm is denied renewal of its error and omission insurance or in any way changes its coverage, it shall notify the Department within 10 business days of the denial or change, as the case may be.

4. If the Department finds that a peer review firm has decreased its coverage below an acceptable level, it shall notify the peer review firm, demand corrective action and may prohibit the firm from engaging in further peer review work unless and until sufficient coverage is obtained.

(g) To ensure that sufficient funds are set aside to meet code requirements in the event of deficiencies, an applicant shall post a bond or obtain an irrevocable letter of credit for an amount equal to 10 percent of the estimated project cost, excluding the sum of architect and engineering fees, legal fees, and costs for improvements or approvals outside the scope of the State Uniform Construction Code.

(h) The following are peer review release requirements:

1. The peer review firm, after obtaining and reviewing the plans for an applicant's project, shall submit to the Department a written, sealed and dated statement, signed by a principal in the firm, stating: "I (We) the undersigned, licensed by the Department as indicated, have reviewed this project and certify that, to the best of my (our) knowledge, it meets every current applicable provision of the New Jersey Uniform Construction Code". Each of the four licensees specified in (e) shall sign for his or her portion of the review.

2. A peer review firm may perform a partial plan review, as permitted by this section, and shall submit to the Department a written, sealed and dated statement signed by a principal of the firm, stating: "I (We) the undersigned, licensed by the Department as indicated, have conducted a partial plan review of this project consisting of review of the following: (list) and to the best of my (our) knowledge, it meets every current applicable provision of the New Jersey Uniform Construction Code." Each of the licensees specified in (e) who has performed review work shall sign for his or her portion of the review.

(i) The following relate to variations from the Uniform Construction Code:

1. If the design firm has reason to request a variation pursuant to this chapter, the peer review firm shall submit a variation application completed by the design firm to the Department.

2. If the peer review firm has a recommendation regarding the variation request, it shall attach it to the application submitted to the Department.

3. The peer review firm shall ensure that the design firm has submitted a complete and accurate application.

4. Any decision made by the Department shall be based solely upon the information submitted and shall be subject to reconsideration if later discovered to have been based on an applicant's or a peer review firm's misstatement of material fact.

5. Within 20 business days following the peer review firm's completed submission, the Department shall grant or deny the variation.

6. The Department shall maintain a log of professionals' time devoted to the consideration of variation requests under this section.

7. The peer review firm shall incorporate the Department's decision in its plan review notification.

(j) Informal peer review interpretation requirements are as follows:

1. If a peer review firm has reason to request an informal peer review interpretation from the Department, it shall do so in writing.

2. It shall be the responsibility of the peer review firm to accurately present the reason for the inquiry, and to accurately cite the code sections that it believes to be relevant.

3. Any decision of the Department shall be based solely upon the statement of facts presented in writing by the peer review firm. It shall be subject to reconsideration if it is later discovered to have been based on an applicant's or a peer review firm's misstatement of material fact.

4. The Department shall respond, in writing, within 10 business days of its receipt of any written inquiry.

5. The Department shall maintain a log of professionals' time devoted to the consideration of informal peer review interpretation requests pursuant to this section.

6. The peer review firm shall incorporate the Department's informal peer review interpretation in its plan review notification.

(k) Appeals of variation and informal peer review interpretation requests shall be as follows:

1. An applicant or his representative aggrieved by the Department's decision, in whole or in part, of a variation may appeal the decision at an administrative hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. Any decision of the peer review firm may be appealed by the applicant or his representative by requesting a determination from the Department. An applicant or his representative aggrieved by the Department's determination may appeal the determination at an administrative hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(l) The following govern the issuance of a Departmental release:

1. The Department shall issue a release, either full or partial as appropriate, to the applicant, with a copy to the municipality in which the project is sited, after it receives:

i. The total fee for full or partial plan review as required by this chapter; and

ii. Notification by the peer review firm that review is completed, along with a set of drawings for full or partial plan review as required by this chapter.

2. The Department's release shall be accompanied by a copy of the peer review firm's notification.

(m) The following relate to the conduct of site inspections:

1. The applicant shall retain the design firm to administer the construction contract, specifying in writing the responsibilities of the design firm which shall include, but not be limited to:

i. Providing instructions to contractors where this function is not delegated solely to a construction manager or to the applicant;

ii. Visiting the site on a formal or an informal schedule as agreed with the applicant, to provide oversight as necessary to determine whether construction is proceeding according to the contract documents, it being understood that such site visits are in addition to, and not in lieu of, visits by the enforcing agency having jurisdiction; and

iii. Notifying the applicant of any material deficiencies observed in (m)1ii.

2. The applicant may satisfy the requirements of (m)1 above by contracting according to AIA Document B141, "Owner/Architect Agreement" and by observing the copyright requirements of that document, or it may operate under other contract documents according to this chapter; however, firms operating under the peer review program must agree to contract according to the laws of the State of New Jersey and to settle any disputes arising from their peer review activities under New Jersey State law.

3. The Department may perform random monitoring of plans for which the peer review firm has sent notification, and may conduct site inspections to ensure that the plans and the construction are in conformance with the State Uniform Construction Code and this section. The Department shall maintain a log of inspector time devoted to site inspections under this section.

4. Municipal code officials shall perform all site inspections routinely required by the State Uniform Construction Code and the construction official shall have the authority to issue correction notices, notices of violation and stop work orders as provided for in these regulations. Release of plans by the Department and the peer review firm shall not prevent the municipal officials from thereafter requiring corrections of any errors. The Department shall be notified if errors are discovered.

(n) The following relate to as-built drawings:

1. At the completion of a project, the applicant shall cause to be prepared a set of as-built drawings and shall certify that the drawings are a true and accurate representation of the completed construction and provide these drawings to the peer review firm.

2. The peer review firm shall review the as-built drawings to ensure that they conform to all applicable provisions of the State Uniform Construction Code.

3. After completing its review, the peer review firm shall send the final as-built drawings to the Department and to the municipality in which the project is located.

(o) The following relate to certificates of occupancy:

1. The municipality shall issue a certificate of occupancy or a temporary certificate of occupancy as required by this chapter.

2. The peer review firm shall send a copy to the Department of any final certificate of occupancy issued.

(p) The following govern the refund of fees:

1. After the Department has determined that a final and complete certificate of occupancy has been issued, and has received the as-built drawings pursuant to (n) above, it shall compute a refund equal to 60 percent of the total plan review fee assessed, minus any hourly charges accrued for monitoring and for the review of variation or interpretation requests.

2. The Department shall maintain a log of charges for each project for which deductions have been made and this log shall be available for inspection upon request.

3. The Department shall request the State Treasurer to issue a rebate check to the applicant for the amount computed in accordance with (p)1 above.

(q) The following relate to administration, penalties, and other provisions of the code:

1. The Department may suspend or revoke any firm's or individual's authority to perform peer review work under this section for failure to comply with the State Uniform Construction Code and this section.

2. It shall be a violation of the State Uniform Construction Code Act to misrepresent the grounds for variation or informal interpretation requests under the provisions of this section. Every day that incorrect, fraudulently submitted information remains in the Department's files, uncorrected by the submitter, shall be deemed a separate offense for the purpose of assessing penalties under this section.

3. Penalties provided for under the State Uniform Construction Code shall be assessable against those operating under this section and violating any provision of the State Uniform Construction Code Act and this section.

4. Nothing in this section shall be read in derogation of other provisions of the code.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules
Mediation

Proposed Amendments: N.J.A.C. 5:91-1.2, 4.5, 6.2, 7.1, 7.2 and 7.3
Proposed New Rules: N.J.A.C. 5:91-7.4, 7.5 and 7.6

Authorized By: New Jersey Council on Affordable Housing, James L. Logue, III, Chairman.

Authority: N.J.S.A. 52:72D-301 et seq.

Proposal Number: PRN 1989-347.

Submit comments by August 2, 1989 to:
Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, New Jersey 08625-0813

The agency proposal follows:

Summary

The New Jersey Register published a proposed new rule, N.J.A.C. 5:91-5.2, and proposed amendments to 5:91-6.2, 5:91-7.1 and 5:91-7.3 on December 19, 1988 at 20 N.J.R. 3050(a). The Council has reviewed that propsoed rulemaking and comments thereto and has determined to make further changes to those rules in order to clarify and refine the procedures. Accordingly, the Council proposes to amend N.J.A.C. 5:91-1.2, 7.2 and 7.3 and promulgate new rules N.J.A.C. 5:91-4.5, 7.4, 7.5 and 7.6. The general purpose of these amendments and new rules is to provide for a more orderly mediation process and to allow additional public input which may enable the Council to better evaluate a municipality's housing element and fair share plan. The prior proposed new rule and amendments are superseded and replaced by these proposed amendments and new rules.

The proposed amendment to N.J.A.C. 5:91-1.2 provides for a definition of "participant to mediation" which makes it clear that a "participant to mediation" is not to be considered an objector to a municipality's petition for substantive certification. This term has been defined in light of the proposed amendment to N.J.A.C. 5:91-7.2 which allows owners of record of sites designated for low and moderate income in a housing element and fair share plan to participate in mediation and which allows the mediator to include in mediation any other party deemed necessary to conduct a meaningful mediation.

N.J.A.C. 5:91-4.5 is a new rule that requires the municipality to provide the Council with the names and addresses of all owners of records of sites designated for low and moderate income housing in the municipality's housing element and fair share plan. The new rule is proposed in light of the Council's proposed amendment to N.J.A.C. 5:91-7.2 which permits the owners of record of such sites to participate in mediation. The information required will allow the Council to promptly contact all owners so that mediation can proceed expeditiously. This proposed rule was published in 20 N.J.R. 3050(a) as proposed new N.J.A.C. 5:91-5.2(a); however, a review of the proposed rule convinced the Council that it properly belongs in N.J.A.C. 5:91-4, Petitions for Substantive Certification, rather than N.J.A.C. 5:91-5, Objections to a Proposed Housing Element and Fair Share Plan.

Prior to action on a petition for substantive certification, the Council receives a report which details the municipality's housing element and fair share plan and recommends the grant, denial or conditioning of substantive certification. The amendment to N.J.A.C. 5:91-6.2 provides that this Council report be forwarded to the municipality and all participants to mediation as well as interested parties prior to the Council's action on a petition for substantive certification. All recipients are to be given 14 days from date of receipt of the report to file any comments to the report with the Council. The report and the comments thereto will aid the Council in its evaluation of a municipality's petition for substantive certification. In addition, by forwarding the report to all those parties and allowing comment, the Council insures that everyone involved in the process has a complete opportunity to provide input to the Council.

The amendment to N.J.A.C. 5:91-7.2 states who may participate in mediation in addition to the municipality and those parties who file objection pursuant to the Fair Housing Act. The Council proposes to change the title of N.J.A.C. 5:91-7.2 from "Scope of mediation" to ""Conduct of mediation". N.J.A.C. 5:91-7.2(f) as proposed provides that owners of record of sites designated for low and moderate income housing shall be permitted to participate in mediation to the extent the mediator feels appropriate. Such sites are part of the municipality and those persons who own the sites may be able to add insight to and aid in the mediation process. N.J.A.C. 5:91-7.2(g) further provides that the mediator may allow any person to participate in mediation who the mediator feels in any way may facilitate the mediation process. Additionally, N.J.A.C. 5:91-7.2(i) as proposed makes it clear that the mediator has the discretion to determine the manner in which to conduct mediation. These proposed amendments will help facilitate the mediation process by including parties who may aid in resolution of objections and by giving the mediator the discretion to determine how to approach each individual mediation.

The Council also proposes N.J.A.C. 5:91-7.2(h) which states that any party participating in mediation may have no more than three representatives representing its interests during the mediation process. This proposed amendment insures that mediation is an orderly process. This proposed amendment was published in 20 N.J.R. 3050(a) as a proposed amendment to N.J.A.C. 5:91-7.1. A review of the rules as a whole convinces the Council that it properly belongs with N.J.A.C. 5:9-7.2, Conduct of mediation, rather than N.J.A.C. 5:9-7.1, General.

The amendment to N.J.A.C. 5:91-7.3 proposes to change the title of that section from "Review of mediation" to "Mediation report" and provides that, at the end of mediation, the mediator shall prepare a written report which sets forth the results of mediation. The mediator also is required to include any unresolved issues and any stipulations or arguments reached by the municipality and the objectors in the report as well. The proposed amendment also requires the mediator to serve copies of the mediation report upon the municipality, all objectors and all participants to mediation who are allowed to file comments to the report with the Council within 14 days of receipt of the report. This amendment insures that all parties who participated in mediation have an opportuinity to comment on the results of the process. This concept appeared in 20 N.J.R. 3050(a) under amendments to N.J.A.C. 5:91-7.3.

N.J.A.C. 5:91-7.4 is a proposed new rule which requires a municipality to publish notice of its amended housing element and fair share plan if the housing element and fair share plan have changed substantially as a result of mediation and allows public comment on the amendments within 14 days of the date of publication. If the Council receives objections to the mediated housing element and fair share plan, the Council will determine whether the objections warrant another mediation. This amendment will allow further public input that may alert the Council to any possible problems with the mediated housing element and fair share plan. This will assist the Council in its ultimate determination of whether the municipality's petition for substantive certification provides a realistic opportunity for the provision of its fair share of low and moderate income housing. This concept appeared in the proposed amendment to N.J.A.C. 5:91-7.3 at 20 N.J.R. 3050(a).

Proposed new rule N.J.A.C. 5:91-7.5 establishes a procedure whereby a municipality or an objector can file a petition for hearing if either party feels mediation did not satisfactorily resovle all of the disputes. Participants to medation may not file such a petition but may file a response to the petition. Any petition for hearing must be filed within 14 days of receipt of the mediation report. After receipt of all papers, the Council then will determine whether the issues should be transferred to the Office of Administrative Law for an evidentiary hearing. This procedure will enable the Council to fully evaluate the resuts of mediation.

Proposed new rule N.J.A.C. 5:91-7.6 provides for the reopening of mediation if the Council receives valid objections to the municipality's housing element and fair share plan which is to be amended as a result of mediation. This new rule makes it clear that the Council only will consider objections to the amended portion of the housing element and fair share plan. All participants in the initial mediation may participate in the reopened mediation if they so desire. This rule also provides that in lieu of reopening mediation, the Council may refer the new objections to the Office of Administrative law for resolution if unresolved objections from the original mediation have been transferred for a hearing. This provision will enable the Council to deal expeditiously with new objections. This concept appeared in 20 N.J.R. 3050(a) under proposed amendments to N.J.A.C. 5:91-7.3.

Social Impact

The proposed new rules and amendments will have a positive impact in that they provide for a more orderly mediation and post mediation process. They also create additional opportunities for the public to comment on the municipal plan as it proceeds through the Council process.

Economic Impact

The proposed new rules and amendments require the municipality to bear the cost of providing public notice. The amendments also create the possibility of the Council reopening mediation, which may mean that the parties in mediation will have to bear additional expenses to compensate experts necessary to participate in the Council's process.

Regulatory Flexibility Statement

As the proposed new rule and amendments relate to future proceedings, the Council is unable to ascertain what number of small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will be parties to mediation. While mediation may necessitate a party to employ legal, planning and engineering professionals, such employment is necessary for the proper functioning of the process. No differentiation in requirements based upon business size can, therefore, be provided.

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

5:91-1.2 Definitions

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

...

"Participant to mediation" means the owner of a site designated for low and modern income housing in a municipality's housing element and fair share plan who is permitted to participate in mediation pursuant to N.J.A.C. 5:91-7.2 or any other party the mediator deems necessary to conduct mediation and resolve any objections to a municipality's petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent of participation of each participant to mediation. A participant to mediation is not to be considered an objector to the municipality's petition for substantive certification.

5:91-4.5 Owners of sites designated for low and moderate income housing

A municipality shall provide the Council with the names and addresses of the owners of record of the sites designated in its housing element and fair share plan for low and moderate income housing at the time it files its petition for substantive certification.

5:91-6.2 Conference and Council report

(a) In conducting [its] **the** review of the petition for substantive certification, the Council may meet with the municipality.

(b) There shall be a Council report forwarded to the municipality and all participants to mediation and interested parties prior to the Council's action regarding substantive certification.

(c) All objectors, participants to mediation and the municipality shall have a 14 day comment period commencing on the date of receipt of the Council report.

5:91-7.2 [Scope] **Conduct of mediation**

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

(f) Owners of record of any sites that have been designated for low and moderate income housing in a municipality's housing element and fair share plan shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the Council or its designee determines is appropriate.

(g) The Council or its designee may in its discretion permit any person to participate in mediation when the Council or its designee determines that such participation may facilitate mediation and/or help resolve any objection to a municipality's petition for substantive certification. A person invited to participate pursuant to this subsection shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the Council or its designee determines is appropriate.

(h) A municipality, any objector and any participant to mediation shall have no more than three representatives.

(i) The Council or its designee shall have the discretion to determine the manner in which to conduct each mediation.

5:91-7.3 [Review of mediation] **Mediation report**

[(a) Before the conclusion of the 60-day mediation period, if such mediation was conducted by a mediator designated by the Council, the mediator shall prepare a report and recommendation to the Council detailing the following factors:

1. The progress of the mediation proceedings; and
2. The issues in dispute between the parties; and
3. The stipulations or other agreements between the parties; and
4. A recommendation that the Council either grant, deny, or conditionally deny substantive certification, and the reasons therefor, or a recommendation that the matter be referred to the Office of Administrative Law for adjudication as a contested case.

(b) The Council shall determine whether to grant, deny or conditionally deny substantive certification, or to refer the matter to the Office of Administrative Law for adjudication as a contested case.]

(a) At the end of mediation, the mediator shall prepare a written report to the Council advising the Council of the results of mediation. The report shall include the issues that remain in dispute between the municipality and the objectors and the stipulations or other agreements reached by the municipality and the objectors.

(b) The mediator shall also serve the municipality, the objector and participants to mediation with a copy of the written mediation report.

(c) The municipality, any objector or any participant to mediation may file comments to the mediation report with the Council within 14 days of receipt of the mediation report.

[(c)]**(d)** If the matter is referred to the Office of Administrative Law pursuant to N.J.A.C. 5:91-7.5(c) or 8.1, the parties shall be bound by any agreements entered into during mediation.

5:91-7.4 Publication of notice of housing element and fair share plan altered as a result of mediation and objections to a mediated plan

(a) If, as a result of mediation, there will be substantial amendments to the adopted housing element as originally filed, the municipality shall publish notice to that effect within five days after receiving the mediation report in a newspaper of general circulation within the municipality and the county or, in the case of a municipality that intends to publish in a weekly newspaper, in the next possible edition of the weekly paper following receipt of the mediation report.

(b) A municipality shall make available for public inspection within the municipality, during business hours, copies of the mediation report, and shall include in its notice pursuant to (a) above, the times and places within the municipality at which the mediation report will be made available for public inspection. The notice also shall specify that any objection or comment must be filed with the Council within 14 days of the date of the publication of the notice.

(c) There shall be a 14 day comment period from the date of publication for the submittal of comments or objections to the mediated housing element and fair share plan to the Council. All objections shall conform to the requirements of N.J.A.C. 5:91-5.1.

5:91-7.5 Petition for hearing following mediation

(a) Following mediation, the municipality or objector may petition the Council for a hearing on any objections that remain unresolved. The petition for a hearing shall set forth, at a minimum:

1. The unresolved issues, including a detailed description of the same and any and all information and/or documentation the party relies upon; and

2. Any other arguments or information the party feels is necessary for the Council to make a determination.

(b) Any petition for hearing shall be served upon all parties that participated in mediation and filed with the Council not later than 14 days after receipt of the mediation report. Any response shall be served and filed not later than 10 days after receipt of the petition for hearing. A reply to the responses shall be served and filed not later than five days after receipt of the response. If any petition for hearing, response or reply is supported by an affidavit or brief, the affidavit or brief shall be filed with the petition for hearing, response or reply. All papers filed shall be accompanied by a proof of service.

(c) After consideration of all papers filed and the mediation report, the Council shall determine whether to refer any unresolved issues to the Office of Administrative Law for adjudication as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

5:91-7.6 Reopened mediation

(a) If during the 14 day comment period provided in N.J.A.C. 5:91-7.4, an objection is filed to the amended adopted housing element and fair share plan, the Council may, in its discretion, reopen mediation for a period not to exceed 30 days. This period may be extended by the Council for good cause shown.

(b) The Council shall consider only those objections to the portions of the housing element and fair share plan that have been amended as a result of mediation.

(c) All original mediation representatives, in addition to the new objector, shall be given the opportunity to participate in the reopened mediation.

(d) If the Council receives objections to the amended plan while an administrative hearing on issues that were not resolved during the initial mediation is pending or about to commence, the Council may have the objections to the amended plan resolved at such administrative hearing in lieu of reopening mediation.

(e) At the end of the reopened mediation, all procedures set forth in N.J.A.C. 5:71-7.3, 7.4 and 7.5 shall be followed.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Public Testimony Session

Public Notice

Take notice that the following agenda items are scheduled for publication of Notices of Proposal in the July 17, 1989 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, July 19, 1989 from 4 P.M. to 6 P.M. at:

The State Board Conference Room
Department of Education
225 West State Street
Trenton, New Jersey

To reserve time to speak, call Joan Boggs at (609) 292-0739 by 12:00 noon Friday, July 14, 1989.

Rule proposals to be considered are as follows:

N.J.A.C. 6:70—Library Network Services

N.J.A.C. 6:24-5.4—Filing and Certification of Charges against Tenured Employees of the Departments of Human Services and Corrections.

Please note: Publication of the above items in the New Jersey Register is subject to change depending upon the actions taken by the State Board of Education at the July 6, 1989 monthly public meeting.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1990-91 Fish Code

Proposed Amendments: N.J.A.C. 7:25-6

Authorized By: Fish and Game Council, George McCloskey, Chairman.

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.

DEP Docket Number: 027-89-06.

Proposal Number: PRN 1989-354.

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

August 8, 1989 at 7:30 P.M.
Assunpink Wildlife Conservation Center
Eldridge Road
Assunpink Wildlife Management Area
Robbinsville, New Jersey 08691

Submit written comments by August 15, 1989 to:

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

The agency proposal follows:

Summary

The Fish Code (Code), N.J.A.C. 7:25-6, states when, by what means, at which location, in what numbers, and what sizes of fish may be pursued, caught, killed or possessed.

The proposed amendments to N.J.A.C. 7:25-6 for the 1990-91 fishing season are as follows:

1. Opening day of the 1990-91 trout season has been set for April 7, 1990. All of the dates throughout the Code which are dependent on this date have been adjusted accordingly.

2. New terminology has been incorporated in the Code describing stretches of streams and lakes to which angling restrictions apply that are more limiting than those applied to the majority of the State's waters. The fly-fishing only areas, no kill area and the Pequest Trout Conservation Area (now Seasonal Trout Conservation Area) have been retained. The Round Valley Reservoir trout fishing rules are now listed under the heading of "Trophy Trout Lakes" and the Natural Trout Fishing Areas are now designated as Wild Trout Streams. Two new categories, Year-Round Trout Conservation Areas and Major Trout Stocked Lakes, have been added.

3. The Department of Environmental Protection (Department) has recently implemented a standardized procedure for determining the allocation of hatchery trout among the State's trout stocked waters. As a result, numerous adjustments in the number of in-season stockings which specific waters are scheduled to receive are proposed.

4. Dennisville Lake (Cape May County) has been replaced on the stocking list by West Pond (Cape May County). Parking and access had become major problems at Dennisville Lake.

5. Raccoon Creek (Gloucester County) has been deleted from the stocking list because of a landowner closure.

6. Prescott Brook (Hunterdon County) has been deleted from the stocking list because of a lack of angler utilization and limited parking.

7. Little York Brook, Rockaway Creek North Branch, and 10 other streams or portions thereof have been deleted from the stocking list and designated as Wild Trout Streams based on their proven ability to support self reproducing populations of "native" trout. These waters and a number of other non-stocked streams, or stream segments having similar capabilities, will be subject to special rules (that is, size limit, reduced creel limit, gear restriction and closed season) designed to reduce the take of trout and to limit hooking mortality. The objective of the Wild Trout Stream designation is to perpetuate the wild trout population and its associated environmental benefits for water quality and the aquatic ecosystem. Inclusion of streams in this category does not convey the right of the general public to fish or trespass on private lands.

8. Portions of the Toms River and the West Branch of the Paulinskill River have been designated as Year-Round Trout Conservation Areas and will be subject to rules designed to maintain high standing crops of trout throughout the year by reducing the immediate take of stocked trout.

9. The minimum size limit for brown trout and rainbow trout in Round Valley Reservoir has been increased from 13 to 15 inches in an attempt to improve the quality of the trophy trout fishery.

10. Canistear Reservoir, Clinton Reservoir, Lake Hopatcong, Merrill Creek Reservoir, Monksville Reservoir, Swartswood Lake and Wawayanda Lake have been designated as Major Trout Stocked Lakes. These waters will be open to angling year-round, unless specified to the contrary by the lake's administering agency. The creel limit for trout in these lakes will be the same as the general rules prescribe; however, at no time may more than two trout in excess of 15 inches be had in possession.

11. The restricted harvest season for largemouth bass that limited the angler to one bass in possession during the period from April 1 to June 15 has been abolished. The Department believes that the 12 inch minimum size limit will be sufficient to maintain the bass fishery.

12. The stocking of walleye in Monksville Reservoir has necessitated the imposition of rules designed to allow for the development of a fishable population of this species.

13. The minimum size limit for striped bass has been increased to 36 inches to remain consistent with the minimum size limit for this species in marine waters.

14. As a result of a meeting with fisheries biologists from the New York State Department of Environmental Conservation, fishing rules for Greenwood Lake, which lies in both New York and New Jersey, have been standardized.

15. New Jersey residents are now allowed to fish the Delaware River from the Pennsylvania shore with only a New Jersey fishing license.

Social Impact

Any change in the trout stocked waters list or in the rules governing the taking of trout, particularly if gear restrictions are involved, invariably creates controversy. The proposed amendments will be no exception. Prior to its formulation into the proposed 1990-91 Fish Code, the tentatively proposed trout program was widely circulated among sportsmen and discussed at fisheries forums sponsored by the Division of Fish, Game and Wildlife (Division), in presentations given by Division personnel to sportsmen groups, and in the press. The resulting compromise, these amendments, is sure to draw criticism from those who view it as either too restrictive or not restrictive enough. However, many of the controversial aspects of these amendments have been settled prior to publication.

The proposed elimination of the restricted harvest season on largemouth bass was defeated when it was proposed as part of the 1989-1990 Fish Code. However, there appears to have been a shift in public opinion; the leading opponents of this change now support it.

The remaining proposed amendments, as compared to those adopted for 1989-1990, are of a minor nature and are expected to engender little controversy.

Economic Impact

No specific, significant economic impact or detriment is expected to arise from the proposed amendments since they are primarily a continuation, after annual review, of the existing freshwater fisheries program.

Environmental Impact

The Fish Code has been established to promote the greatest recreational use of the State's freshwater fisheries without endangering the future of the resource. The "Wild Trout Stream" designation introduced by this proposal is designed to preserve the State's limited number of naturally reproducing populations of trout. This program and other annual revisions to the Fish Code help preserve and maintain the resource and maximize its recreational potential, as changes in the resource and its user population occur.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose reporting, recordkeeping, or other compliance requirements on small businesses, because small businesses are not regulated by N.J.A.C. 7:25-6.

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

SUBCHAPTER 6. [1989-90] **1990-91** FISH CODE

7:25-6.2 Trout season and angling in trout-stocked waters

(a) The trout season for [1989] **1990** shall commence 12:01 A.M. January 1, [1989] **1990** and extend to midnight March [19, 1989] **18, 1990**. The trout season shall reopen at 8:00 A.M. Saturday, April [8, 1989] **7, 1990** and extend to include March [18, 1990] **17, 1991**. (See separate rules for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania [, Round Valley Reservoir, Musconetcong River "No Kill" Area, Pequest River Trout Conservation Area, and the Van Campens Brook Natural Trout Fishing Area] **and Special Regulation Trout Fishing Areas.**)

(b) It shall be unlawful to fish for any species of fish from midnight of the [19th] **18th** of March to 8:00 A.M. on April [8, 1989] **7, 1990** in ponds, lakes or those portions of streams that are listed herein for stocking during [1989] **1990**. (See separate rules for [Lake Hopatcong,] Spruce Run Reservoir [, Swartswood Lake and Wawayanda Lake] **and Special Regulation Trout Fishing Areas.**)

(c) (No change.)

(d) Trout stocked waters for which in-season closures will be in force are as follows (waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated):

1. Big Flat Brook—100 [ft.] **feet** above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [14, 21, 28; May 5, 12, 19, 26] **13, 20, 27; May 4, 11, 18, 25**;

2. Black River—Route 206, Chester at [Dam] **dam** [to] **at** lower end of Hacklebarney State Park—April [13, 20, 27; May 4, 11, 18, 25,] **12, 19, 26; May 3, 10, 17, 24**;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21**;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21**;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard on South Lake Drive, Lakewood—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21**;

6. Musconetcong River—Lake Hopatcong [Dam] **dam** to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [14, 21, 28; May 5, 12, 19, 26] **13, 20, 27; May 4, 11, 18, 25**;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Delaware River—April [13, 20, 27; May 4, 11, 18, 25] **12, 19, 26; May 3, 10, 17, 24**;

8. Pequest River—Source to Delaware River—April [14, 21, 28; May 5, 12, 19, 26] **13, 20, 27; May 4, 11, 18, 25**;

9. Pohatcong Creek—Route 31 to Delaware River—April [11, 18, 25; May 2, 9, 16, 23] **10, 17, 24; May 1, 8, 15, 22**;

10. Ramapo River—State line to Pompton Lake—April [13, 20, 27; May 4, 11, 18] **12, 19, 26; May 3, 10, 17**;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [12, 19, 26; May 3, 10, 17, 24] **11, 18, 25; May 2, 9, 16, 23**;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [11, 18, 25; May 2, 9, 16, 23] **10, 17, 24; May 1, 8, 15, 22**;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21**;

14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21;**

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21**; and

16. Wanaque River—Greenwood Lake [Dam] **dam** to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April [14, 21, 28; May 5, 12, 19, 26] **13, 20, 27; May 4, 11, 18, 25**.

(NOTE: The Division reserves the right not to stock on the above dates when emergency situations prevail.)

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force are as follows (figure[s] in parentheses indicates the anticipated number of stockings to be carried out from April [11] **10** through May 31);

(NOTE: The Division reserves the right to suspend stocking when emergency conditions prevail.)

1. Atlantic County
   Birch Grove Park Pond—Northfield—[(3)] **(4)**
   Hammonton Lake—Hammonton—[(3)] **(4)**
2. Bergen County
   Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)
   Hohokus Brook—Forest Road to Whites Pond—[(1)] **(4)**
   Indian Lake—Little Ferry—(4)
   Mill Pond—Park Ridge—(2)
   Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)

Saddle River—State Line to Grove Street, Ridgewood—[(6)] **(5)**
Tienekill Creek—Closter, entire length—[(1)] **(2)**
Whites Pond—Waldwick—[(2)] **(3)**

3. Burlington County
Crystal Lake—Willingboro—[(3)] **(4)**
Rancocas Creek, Southwest Branch—Medford, Mill Street Park to Branch St. Bridge—[(3)] **(4)**
Sylvan Lake—Burlington—[(2)] **(3)**

4. Camden County
Big Lebanon Run—Neely's Pond dam to [Grenlock] **Grenloch** Lake—[(2)] **(4)**
[Grenlock Lake—Turnersville—(2)]
Hopkins Pond—Haddonfield—(3)

5. Cape May County
[Dennisville Lake—Dennisville—(2)]
West Pond—Cape May Courthouse—(4)

6. Cumberland County
Cohansey River—Dam at Seeley's Pond to [Powerline] **powerline** above Sunset Lake, Bridgeton—[(3)] **(4)**
Giampietro Park Lake—Vineland—(3)
Mary Elmer Lake—Bridgeton—(3)
Maurice River—Willow Grove Lake dam to Sherman Avenue, Vineland—[(3)] **(4)**
Shaw's Mill Pond—Newport—(3)

7. Essex County
Branch Brook Park Lake—Newark—(4)
Diamond Mill Pond—Millburn—[(4)] **(3)**
Verona Park Lake—Verona—(4)

8. Gloucester County
Greenwich Lake—Gibbstown—[(4)] **(3)**
Grenloch Lake—Turnersville—(3)
Harrisonville Lake—Harrisonville—(3)
Iona Lake—Iona—(3)
Mullica Hill Pond—Mullica Hill—[(2)] **(3)**
[Raccoon Creek—Ewan Lake dam to Mullica Hill Pond—(2)]
Swedesboro Lake—Swedesboro—(3)

9. (No change.)

10. Hunterdon County
Amwell Lake—Linvale—[(4)] **(3)**
Beaver Brook—Clinton Township, entire length—(2)
Capoolong Creek—Pittstown, entire length—[(6)] **(5)**
Delaware[—]-Raritan Feeder Canal—Bulls Island to Hunterdon[—]-Mercer County line—(6)
Everittstown Brook—Everittstown, entire length—[(2)] **(1)**
Frenchtown Brook—Frenchtown, entire length—[(1)] **(2)**
Hakihohake Creek—Milford, entire length—(2)
[Little York Brook—Little York, entire length—(2)]
Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—[(2)] **(3)**
Milford Brook—Milford, entire length—[(1)] **(3)**
Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—[(2)] **(4)**
Neshanic River—Kuhl Road to Hunterdon County Route 514—[(1)] **(2)**
[Prescott Brook—Clinton Township, entire length—(1)]
Rockaway Creek—Readington Township, entire length—(4)
[Rockaway Creek, N/B—Tewksbury and Readington Township, entire length—(4)]
Rockaway Creek, [S/B] **S.Br.**—Lebanon to Whitehouse, entire length—(3)
Round Valley Reservoir—Lebanon—[(1)] **(3)**
Spring Mills Brook—Spring Mills, entire length—[(0)] **(2)**
Spruce Run—Glen Gardner and Lebanon Township, entire length—[(3)] **(4)**
Spruce Run Reservoir—Clinton—[(6)] **(3)**
Sydney Brook—Sydney, entire length—[(0)] **(1)**
[Tetertown Brook—Tetertown, entire length—(0)]
Wickecheoke Creek—Covered Bridge, Sergeantsville to Delaware River—[(1)] **(2)**

11. Mercer County
Assunpink Creek—Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township—[(4)] **(5)**
Colonia Lake—Lawrence Township—[(2)] **(3)**
Delaware [—]-Raritan Canal—U.S. 1 to Alexander St., Princeton—(4)
Delaware [—]-Raritan Feeder Canal—Hunterdon-Mercer County [Line] **line** to Upper Ferry Road Bridge—(6)
Rosedale Lake—Rosedale—[(4)] **(3)**
Stony Brook—Woodsville to Port Mercer—(4)

12. Middlesex County
Farrington Lake—North Brunswick—[(4)] **(3)**
Hook's Creek Lake—Cheesequake State Park—[(1)] **(4)**
Ireland Brook—Farrington Lake to point 500 [ft.] **feet** upstream of Riva Avenue—[(0)] **(2)**
Lawrence Brook—Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St., Milltown—[(5)] **(4)**
Roosevelt Park Pond—Edison Township—[(4)] **(3)**

13. Monmouth County
Big Brook—Clover Hill, Route 34 to Swimming River Reservoir—(2)
Englishtown Mill Pond—Englishtown—[(2)] **(3)**
Garvey's Pond—Navesink—[(2)] **(3)**
Hockhocksen Brook—Hockhocksen Road to Garden State Parkway bridge (northbound)—(3)
Holmdel Park Pond—Holmdel—[(2)] **(3)**
Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—[(1)] **(4)**
Mohawk Pond—Red Bank—[(1)] **(4)**
Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocksen Brook—(2)
Shark River—Hamilton, Route 33 to Remsen Mill Road—[(3)] **(4)**
Spring Lake—Spring Lake—[(2)] **(3)**
Takanassee Lake—Long Branch—[(2)] **(4)**
Topenemus Lake—Freehold—[(2)] **(4)**
Yellow Brook—Heyers Mill Road to Muhlenbrink Road, Atlantic Township—[(3)] **(2)**

14. Morris County
Beaver Brook—Rockaway, entire length—(3)
Burnham Park Pond—Morristown—[(1)] **(3)**
Drakes Brook—Flanders, entire length—[(2)] **(3)**
[Flanders Brook—Mt. Olive, entire length—(2)]
Hibernia Brook—Hibernia, entire length—(4)
India Brook—[Mt. Freedom] **Mountainside Ave.** to Rt. 24, Ralston [, entire length]—[(2)] **(5)**
Lake Hopatcong—Lake Hopatcong—[(2)] **(3)**
Lake Musconetcong—Netcong—(2)
[Ledgewood Brook—Ledgewood—(2)]
Mill Brook—Center Grove, entire length—(2)
Mt. Hope Pond—Mt. Hope—(2)
Passaic River—White Bridge to Dead River—(6)
Pompton River—Pequannock Township (see Passaic Co.)—[(6)] **(4)**
[Rhinehart's Brook—Hacklebarney State Park, entire length—(1)]
Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—[(3)] **(2)**
Speedwell Lake—Morristown—[(2)] **(3)**
[Trout Brook—Hacklebarney State Park, entire length—(1)]
Whippany River—Tingley Road, Morris Township to Rt. 202, Morristown—[(3)] **(2)**

15. Ocean County
Lake Shenandoah—Lakewood, Ocean County Park—[(2)] **(3)**
Prospertown Lake—Prospertown—[(2)] **(3)**

16. Passaic County
Barbour's Pond—West Paterson—(2)
Clinton Reservoir—Newark Watershed—[(2)] **(3)**
Greenwood Lake—West Milford—[(3)] **(2)**
Monksville Reservoir—Hewitt—(3)
Oldham Pond—North Haledon—(2)

Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—[(3)] **(6)**
Pompton Lake—Pompton Lakes—(2)
Pompton River—Pompton Lake to Newark [—]-Paterson Turnpike—[(6)] **(4)**
Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)
Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)

17. Salem County
[Schadler's Sand Wash Pond—Pennsgrove—(3)]
Harrisonville Lake—Harrisonville—(3)
Maurice River—Willow Grove Lake [Dam] **dam** to Sherman Avenue, Vineland—[(3)] **(4)**
Schadler's Sand Wash Pond—Pennsgrove—(3)

18. Somerset County
Harrison Brook—Liberty Corner, entire length—[(0)] **(1)**
Lamington River—Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River—[(6)] **(4)**
Middle Brook, E.Br.—Martinsville, entire length—(2)
Passaic River—White Bridge to Dead River—(6)
Peapack Brook—Peapack, entire length—[(5)] **(4)**
Raritan River—Jct. of Raritan River N[/].Br. and S[/]. Br. to dam at Edgewater Road—(4)
Rock Brook—Zion, entire length—[(2)] **(1)**
[Middle Brook; E/Br.—Martinsville, entire length—(0)]

19. Sussex County
Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
Andover Junction Brook—Andover, entire length—[(3)] **(2)**
Bier's Kill—Shaytown, entire length—(2)
Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 [ft.] **feet** above Steam Mill Bridge on Crigger Road—[(1)] **(4)**
Canistear Reservoir—Newark Watershed—[(2)] **(3)**
Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)
Cranberry Lake—Byram Township—[(2)] **(3)**
Culver's Lake Brook—Frankford Township, entire length—(2)
Dry Brook—Branchville, entire length—[(0)] **(2)**
Franklin Pond Creek—Hamburg Mt. [W.M.A.] **Wildlife Management Area**, entire length—[(3)] **(4)**
Glenwood Brook—Lake Glenwood to [stateline] **State line**—[(1)] **(2)**
Iliff Lake—Andover Township—(3)
Kymer's Brook—Andover, entire length—(2)
Lake Musconetcong—Netcong—(2)
Lake Hopatcong—Lake Hopatcong—[(2)] **(3)**
Lake Ocquittunk—Stokes State Forest—[(6)] **(3)**
Little Flat Brook—Sandyston Township, entire length—[(3)] **(5)**
Little Swartswood Lake—Swartswood—(2)
Lubbers Run—Byram Township, entire length—[(3)] **(5)**
Neldon Brook—Swartswood, entire length—(2)
Papakating Creek—Plains Road bridge to Route 565, Lewisburg—(2)
Papakating Creek, W. Br.—Libertyville, entire length—(2)
[Parker Brook—Stokes State Forest, entire length—(1)]
Pond Brook—Middleville, entire length—[(2)] **(3)**
Roy Spring Brook—Stillwater, entire length—[(2)] **(1)**
Saw Mill Lake—High Point State Park—[(6)] **(3)**
Shimers Brook—Montague Township, entire length—[(1)] **(2)**
[Stony Brook—Stokes State Forest, entire length—(2)]
Stony Lake—Stokes State Forest—(3)
Swartswood Lake—Swartswood—[(4)] **(3)**
Trout Brook—Middleville, entire length—(2)
Tuttles Corner Brook—Tuttles Corner, entire length—(2)
Wawayanda Lake—Vernon—[(4)] **(3)**

20. Union County
Green Brook—Route 527, Berkely Heights to Route 22, Scotch Plains—(2)
Lower Echo Park Pond—Mountainside—[(2)] **(3)**
Milton Lake—Madison Hill Road Bridge to Milton Lake [Dam] **dam**, Rahway—[(2)] **(4)**
Rahway River—Morris Ave. (Route 524)**, Union** to St. George Avenue [)] (Route 27), Rahway—(4)
Seeleys Pond—Berkely Heights—[(2)] **(3)**

21. Warren County
Barker's Mill Brook—Vienna, entire length—[(2)] **(1)**
[Bear Creek—Southtown, entire length—(2)]
Beaver Brook—Silver Lake Dam to Pequest River—[(2)] **(5)**
Blair Creek—Hardwick Center to Blair Lake—(2)
Blair Lake—Blairstown—[(0)] **(2)**
Buckhorn Creek—Roxburg, entire length—(2)
[Dark Moon Brook—Johnsonburg, entire length—(1)]
Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—[(3)] **(2)**
Furnace Brook—Oxford, entire length—(2)
Furnace Lake—Oxford—[(5)] **(3)**
Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)
Jacksonburg Creek—Jacksonburg, entire length—[(3)] **(2)**
Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—[(3)] **(4)**
Merrill Creek—Stewartsville, [entire length] **below reservoir**—(2)
Merrill Creek Reservoir—Stewartsville—(3)
Mountain Lake—Buttzville—[(5)] **(3)**
Pohatcong Creek—Mt. Bethel to Route 31—(2)
Pophandusing Creek—Oxford Road, Hazen to Delaware River—[(1)] **(2)**
Roaring Rock Brook—Brass Castle, entire length—(2)
Trout Brook—Hackettstown, entire length—[(3)] **(2)**
Trout Brook—Hope, entire length—(2)

(g) (No change.)

(h) [No]**A** person shall **not** take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April [8, 1989] **7, 1990** until midnight May 31, [1989] **1990**, or more than four of these species during the periods of January 1, [1989] **1990** to midnight March [19, 1989] **18, 1990** and June 1, [1989] **1990** through midnight March [18, 1990] **17, 1991 from trout-stocked streams and rivers** except as designated for [specially regulated trout fishing areas] **Special Regulation Trout Fishing Areas.**

(i) A person shall not take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the periods extending from January 1, 1990 to midnight March 18, 1990 and from 8:00 A.M. April 7, 1990 to midnight March 17, 1991 from trout-stocked lakes, ponds, and canals, except as designated for Special Regulation Trout Fishing Areas.

[(i)]**(j)** [Lake Hopatcong in Morris County,] Spruce Run Reservoir in Hunterdon County [, Swartswood Lake and Wawayanda Lake in Sussex County] will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March [19, 1989] **18, 1990,** and extending to 8:00 A.M. April [8, 1989] **7, 1990,** must be returned to the water immediately and unharmed.

7:25-6.3 **Special Regulation Trout Fishing Areas**—Fly-Fishing Waters

(a) From 5:00 A.M. on Monday, April [17, 1989] **16, 1990** to and including November 30, [1989] **1990** the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, [1989] **1990** to midnight March [19, 1989] **18, 1990** and from 8:00 A.M. on April [8, 1989] **7, 1990** to midnight, March [18, 1990] **17, 1991**, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

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

[7:25-6.4 Natural Trout Fishing Areas

Authority: N.J.S.A. 23:5-10, 23:5-11, 23:5-17, 13:1B-31

(a) The following unstocked stretch of water is hereby designated as a Natural Trout Fishing Area.

1. Van Campens Brook, Warren County—entire length.

(b) The following regulations apply to the above-designated Natural Trout Fishing Area:

1. Van Campen Brook is open to fishing year-round. Authority: N.J.S.A. 23:5-1.

2. No bait or lures of any kind may be used except artificial lures and flies. Authority: N.J.S.A. 23:5-11, 23:5-15.1.

3. No person may have in possession while fishing, any natural bait, live or preserved.

4. No person may kill or have in possession while fishing any trout less than ten inches in total length.

5. No person may have in possession while fishing, any more than one dead, creeled or otherwise appropriated trout, except that additional trout may be caught providing they are returned to the water immediately and unharmed.

7:25-6.5 Pequest Trout Conservation Area]

7:25-6.4 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stretch of the Pequest River is designated as [the Pequest River] **a Seasonal** Trout Conservation Area: An approximately one-half mile portion of the Pequest River, within the Pequest Wildlife Management Area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to a point, clearly defined by markers, adjacent to Foot Hill Lane.

(b) During the period of May [29] **28** through [October 1] **September 30, 1990**, the following rules shall apply to the [above designated Pequest River] **Seasonal Trout** Conservation Area **designated at (a) above**:

1.-5. (No change.)

7:25-6.5 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) The following streams, or portions thereof, are designated as Wild Trout Streams. Listing of streams in this category does not convey the right to trespass or fish on private lands without the landowner's permission. These waters will not be stocked with trout. Unless otherwise noted, the entire length of the stream is included in the designation.

1. Bear Creek (Southtown);

2. Bear Swamp Brook (Mahwah);

3. Black Brook (Clinton Wildlife Management Area);

4. Burnett Brook (Ralston);

5. Cold Brook (Oldwick);

6. Dark Moon Brook (Johnsonburg);

7. Flanders Brook (Flanders);

8. Hance's Brook (Penwell);

9. Hickory Run (Califon);

10. India Brook (Source to Mountainside Ave., Mendham);

11. Ledgewood Brook (Ledgewood);

12. Little York Brook (Little York);

13. Lomerson Brook (Pottersville);

14. Merrill Creek (Stewartsville, upstream of reservoir);

15. Mill Brook (Montague);

16. North Branch of Rockaway Creek (Mountainside);

17. Parker Brook (Montague);

18. Pequannock River (Newark Watershed, Oak Ridge; Road bridge downstream to railroad bridge; immediately upstream of Charlottesburg Reservoir);

19. Rhineharts Brook (Hacklebarney State Park);

20. Rocky Run (Clinton Twp.);

21. Stephensburg Creek (Stephensburg);

22. Stony Brook (Stokes State Forest);

23. Stony Brook (Washington Twp., Morris County);

24. Tetertown Brook (Tetertown);

25. Trout Brook (Hacklebarney State Park);

26. Turkey Brook (Mount Olive);

27. Van Campens Brook (Delaware Water Gap National Recreation Area);

28. West Brook (Source downstream to Windbeam Club Property); and

29. Willoughby Brook (Clinton Twp.)

(b) The following shall apply to the Wild Trout Streams designated at (a) above:

1. Fishing in Wild Trout Streams is permitted year-round;

2. Only artificial lures and flies may be used. While fishing, the use or possession of any natural bait, live or preserved, is prohibited.

3. A person shall not kill or have in possession, while fishing the portions of the Pequannock River and Van Campens Brook designated as Wild Trout Streams, trout less than 12 inches in total length. For all other designated Wild Trout Streams, the minimum length for trout shall be seven inches in total length;

4. During the period extending from 8:00 A.M. April 7, 1990 to September 15, 1990, a person shall not have in possession any more than two legally sized dead, creeled or otherwise appropriated trout. Additional trout may be caught during this period, and during the remainder of the year, provided they are immediately returned to the water unharmed; and

5. Size limits and creel limits on species other than trout are in accordance with Statewide rules.

7:25-6.6 Special Regulation Trout Fishing Areas—Year-Round Trout Conservation Areas

(a) The following stream segments are designated as Year-Round Trout Conservation Areas and are subject to the rules at (b) below governing these areas on a year-round basis:

1. Toms River, Ocean County—a one-half mile stretch of river at the downstream end of Riverwood Park in Dover Township defined by markers; and

2. West Branch of Paulinskill River, Sussex County—from the County Route 648 Bridge, downstream to its confluence with the East Branch of the Paulinskill at Warbasse Junction, a distance of approximately 2.25 miles.

(b) The following shall apply to the Year-Round Trout Conservation Areas designated at (a) above:

1. Fishing in Year-Round Trout Conservation Areas is permitted year-round;

2. Only artificial lures and flies may be used. While fishing, the use or possession of any natural bait, live or preserved, is prohibited;

3. A person shall not kill or have in possession, while fishing, any trout less than 15 inches in total length;

4. A person shall not have in possession, while fishing, any more than one dead, creeled or otherwise appropriated trout, except that trout may not be retained during pre-season and in-season stocking closures which apply to the remainder of the respective rivers where these areas exist. Additional trout may be caught provided they are returned to the water immediately and unharmed; and

5. Size limits and creel limits on species other than trout are in accordance with Statewide rules.

7:25-6.7 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) The following lake is designated as a Trophy Trout Lake:

1. Round Valley Reservoir.

(b) The following rules apply to the Trophy Trout Lake designated at (a) above:

1. The minimum size of brown trout and rainbow trout shall be 15 inches. The daily bag and possession limit for brown trout and rainbow trout shall be two in total;

2. There shall be no closed season for brown trout and rainbow trout;

3. The minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one;

4. The season for lake trout shall extend from 12:01 A.M. January 1, 1990 to midnight, September 15, 1990 and from December 1, 1990 to midnight, September 15, 1991; and

5. A person shall not have in possession, while on the waters designated as Trophy Trout Lakes, any fish, or any part thereof, which has been mutilated so that its size at capture cannot be determined beyond a reasonable doubt to be above the minimum size allowed by this subchapter, or so that it is unidentifiable as to species.

7:25-6.8 Special Regulation Trout Fishing Areas-Major Trout Stocked Lakes

(a) The following lakes are designated as Major Trout Stocked Lakes:

1. Canistear Reservoir;

2. Clinton Reservoir;

3. Lake Hopatcong;
4. Merrill Creek Reservoir;
5. Monksville Reservoir;
6. Swartswood Lake; and
7. Wawayanda Lake.

(b) The following apply to the Major Trout Stocked Lakes designated at (a) above:

1. Fishing is permitted year-round unless otherwise specified by an administering agency of the water body other than the Division;

2. There shall be no size limit for any species of brook trout, brown or rainbow trout, or any hybrids thereof, except that no more than two trout over 15 inches in length may be in possession;

3. A person shall not take, kill or have in possession, in one day, more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April 7, 1990 until May 31, 1990, or more than four of these species during the periods of January 1, 1990 to midnight March 18, 1990 and June 1, 1990 through midnight March 17, 1991. Trout, if taken during the period commencing at midnight, March 18, 1990 and extending to 8:00 A.M., April 7, 1990, must be returned to the water immediately and unharmed;

4. In Merrill Creek Reservoir, the minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one; and

5. In Merrill Creek Reservoir, the season for lake trout shall extend from 12:01 A.M. January 1, 1990 to midnight, September 15, 1990 and from December 1, 1990 to midnight September 15, 1991.

[7:25-6.6 Round Valley Reservoir

(a) The minimum size of smallmouth bass shall be 13 inches. There shall be no size limit on largemouth bass. Daily bag and possession limit for largemouth bass and smallmouth bass shall be five in total. Authority: N.J.S.A. 23:5-7, 23:5-10.

(b) The minimum size of brown trout and rainbow trout shall be 13 inches. Daily bag and possession limit for brown trout and rainbow trout shall be two in total. Authority: N.J.S.A. 23:5-7, 23:5-10.

(c) There shall be no closed season for brown trout and rainbow trout. Authority: N.J.S.A. 23:5-1.

(d) The season for lake trout shall extend from 12:01 A.M. January 1 to midnight September 30, 1989.

(e) The minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one.

(f) No person shall have in possession, while on the state-owned lands and waters at Round Valley Reservoir, any fish, or any part thereof, which has been mutilated so that its size at capture cannot be determined, or so that it is unidentifiable as to species, except that this restriction shall not apply to fish which are being prepared for immediate on-site consumption. Authority: N.J.S.A. 23:5-7.]

7:25-[6.7] **6.9** Baitfish

(a) (No change.)

(b) In waters listed in this code to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March [20] **18** to June 15 except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than three and one-half feet square.

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

7:25-[6.8 and 6.9] **6.10 and 6.11** (No change in text.)

7:25-[6.10] **6.12** Warmwater fish

(a) Except [for largemouth bass and] as noted for waters stocked with trout, closed seasons are hereby eliminated [in open (unfrozen) waters] on all freshwater fish and on striped bass or any hybrid thereof. (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate rules.)

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

(d) The minimum size of smallmouth bass shall be nine inches [-], except for Monksville Reservoir (Passaic County), **Merrill Creek Reservoir (Warren County), and Round Valley Reservoir (Hunterdon County,** where the minimum size shall be 13 inches. (See separate [regulations] **rules** for Greenwood Lake [,] and the Delaware River between New Jersey and Pennsylvania[, and Round Valley Reservoir].)

(e) The minimum size of largemouth bass in lakes, ponds and reservoirs shall be 12 inches and in rivers, streams and other waters it shall be nine inches[, except that during the period of April 1 through June 15, an 18 inch minimum size limit shall be in effect]. **There shall be no size limit on largemouth bass in Round Valley Reservoir.** (See separate [regulations] **rules** for Greenwood Lake[,] **and** the Delaware River [and Round Valley Reservoir].)[.]

(f) Daily bag and possession limit for largemouth bass and smallmouth bass shall be not more than five in total [except during the period of April 1 through June 15 only one largemouth bass may be possessed]. ([see] **See** separate [regulations] **rules** for Greenwood Lake [,] **and** the Delaware River [and Round Valley Reservoir].)[.]

(g)-(k) (No change.)

(l) [Daily] **The daily** bag and possession limit for chain pickerel [and walleye] shall be [not more than] five [of each].

(m) The minimum length on walleye shall be 15 inches**, except for Monksville Reservoir and Greenwood Lake, where it shall be 18 inches.**

(n) The daily bag and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir, and the Wanaque River between Greenwood Lake and Monksville Reservoir, where it shall be two.

[(n)] **(o)** The minimum length for striped bass shall be [33] **36** inches, and the minimum length for [their] **striped bass** hybrids shall be 16 inches. The daily bag and possession limit for either shall be two.

7:25-[6.11] **6.13** Ice fishing

[Authority: N.J.S.A. 23:5-3; 23:5-11]

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

7:25-[6.12 to 6.14] **6.14 to 6.16** (No change in text.)

7:25-[6.15] **6.17** Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following rules for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

1.	Season	Size	Bag Limit
Trout	No closed season	No minimum	3
Largemouth bass & smallmouth bass	No closed season	[9"] **12 inch** minimum	5 singly or in aggregate
Chain pickerel	No closed season	[No] **15 inch** minimum	[10] **5**
Muskellunge [&] **and** any hybrid thereof	[June 20-Nov. 30] **No closed season**	30["] **inch** minimum	1
All other species	No closed season	No minimum	No limit

2.-5. (No change.)

7:25-[6.16] **6.18** Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following rules for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Bag Limit
Trout	April [8] **7**-Sept. 30	No minimum	5
Largemouth bass and smallmouth bass	No closed season	9 inch minimum	5 in total
Walleye	No closed season	15 inch minimum	5
Chain pickerel	No closed season	12 inch minimum	5
Muskellunge, and any hybrid thereof	No closed season	30 inch minimum	2
Northern pike	No closed season	24 inch minimum	2
Striped bass	No closed season	[33] **36** inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other fresh-water species	No closed season	No minimum	No limit

2. Fishing licenses of either State will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken[,]; however, any person fishing from the shore must obtain a license in that State on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank[, and residents of New Jersey must have a Pennsylvania license if they fish from the Pennsylvania bank].

3.-7. (No change.)

7:25-[6.17] **6.19** (No change in text.)

7:25-[6.18] **6.20** Definitions

Unless the context clearly implies a differing usage, the following definitions shall apply in this Code:

...

"Trout" shall include the following species and all hybrids and strains thereof:

1.-3. (No change.)

4. Rainbow trout [Salmo gairdneri] **Oncorhynchus mykiss**

...

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Catastrophic Illness in Children Relief Fund Program

Proposed New Rules: N.J.A.C. 8:18

Authorized By: Catastrophic Illness in Children Relief Fund Commission through Molly Joel Coye, M.D., M.P.H., Commissioner of Health.

Authority: N.J.S.A. 26:2-148 et seq.

Proposal Number: PRN 1989-345.

A **public hearing** on the proposed rules will be held at the following time and location:

Tuesday, July 18, 1989 at 10:00 A.M.
State House Annex, Room 424
Trenton, N.J. 08625

Please contact Mary Ann Whiteman at (609) 292-5676 if you wish to be included on the list of speakers.

Submit written comments by August 2, 1989 to:

Mary Ann Whiteman, Executive Director
Catastrophic Illness in Children Relief Fund Program
New Jersey Department of Health
363 West State Street, CN 364
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 26:2-148 et seq. establishes a Catastrophic Illness in Children Relief Fund. The Fund is designed to provide financial assistance to families whose child suffers from an illness which is not otherwise covered by any State or Federal program or insurance contract, the incurred expenses of which exceed 30 percent of the income of a family whose income is $100,000 or less per year, or 40 percent of the income of a family whose income is over $100,000 per year.

The Fund shall be administered by a nine member Commission and shall be funded with monies received from an annual surcharge of $1.00 per employee, levied upon all employers who are subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1. The money shall be collected by the Controller for the New Jersey Unemployment Compensation Fund and paid to the State Treasurer for deposit in the Fund.

The proposed new rules establish a system by which eligibility of families shall be determined and applications processed. The proposed new rules also outline a standard methodology for determining the amount of financial assistance to pay for services of child's health providers and vendors. An appeals process is described.

Social Impact

The proposed new rules establish procedures for the determination of eligibility of families to benefit from the Catastrophic Illness in Children Relief Fund. This financial aid is intended to reduce the economic and psychological burden on families with a child who has a catastrophic illness. These children afflicted with a catastrophic illness are defined by N.J.S.A. 26:2-148 et seq. as having medical expenses in excess of thirty percent or forty percent of a family's income. The Fund is intended to preserve the integrity of the family and the family's ability to cope with the myriad of services, they must deal with the responsibilities incumbent upon them.

Economic Impact

The proposed new rules benefit some medical care providers and vendors who provide services to children who are eligible for assistance from the Fund. The payment may, in some cases, not constitute full reimbursement for the cost of the child's care, though it will serve to partially, at least, pay for services provided and encourage continuity of the child's care. In some cases, reimbursement may be made for services that are not typically reimbursed by third party payors. The amount of the Fund's disbursement on behalf of a child shall be capped. The existence of and/or the amount of the cap shall be reassessed on an annual basis by the Commission based on availability of funds and other considerations, as determined by the Commission. Financial aid to the providers and vendors may prevent a family from declaring bankruptcy or needing to make decisions which would jeopardize the family's integrity and be deleterious to the child suffering from catastrophic illness.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules do not impose reporting, recordkeeping or other requirements on small businesses. The proposed rules apply only to families which have a child with a catastrophic illness.

Full text of the proposal follows.

CHAPTER 18
CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

SUBCHAPTER 1. CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

8:18-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish criteria for eligibility and establish a standard methodology for determining the amount of financial assistance to be allocated for services of a child's health providers and vendors for families in the State of New Jersey whose child suffers from a catastrophic illness.

(b) The procedures established shall be followed by the Catastrophic Illness in Children Relief Fund Commission.

8:18-1.2 Definitions

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

"Act" means P.L. 1987, Chapter 370, N.J.S.A. 26:2-148 et seq. which establishes the Catastrophic Illness in Children Relief Fund.

"Batch" means a grouping of applications for the purpose of applying the provisions of N.J.A.C. 8:18-1.6, 1.7 and 1.8.

"Catastrophic Fund" or "Fund" means the Catastrophic Illness in Children Relief Fund.

"Catastrophic Illness" means any illness or condition for which the incurred medical expenses not covered by any other State or Federal program or any other insurance contract exceed 30 percent of the income of a family whose income is $100,000 or less per year or 40 percent of the income of a family whose income is over $100,000 per year.

"Child" means a person under 18 years of age.

"Commission" means to the nine member Catastrophic Illness in Children Relief Fund Commission created by the Act and appointed by the Governor to administer the Fund. The Commission, chaired by the Commissioner of Health, is "in but not of" the Department of Health.

"County case manager" means to the Special Child Health Case Manager, located in each county in New Jersey, who has responsibility for conducting the initial screen (that is, determining if child's medical expenses exceed thirty percent of income of families with incomes of $100,000 or less or 40 percent of incomes over $100,000).

"Days" means calendar days.

"Deductible" means that dollar amount represented by 30 percent or 40 percent of family income. The standard practice of the Fund shall be to consider disbursements for a child's out-of-pocket medical expenses only after the deductible, which will vary by each family based on family income, is met.

"Executive director" means the professional employed by the Commission, in accordance with NJ Department of Personnel's procedures, to administer the Fund on a day-to-day basis on behalf of the Commission.

"Family" means a child and the child's parent, parents, or legal guardian, as the case may be, who is legally responsible for the child's medical expenses.

"Income" means the following:

1. Wages before deductions;
2. Public Assistance;
3. Social Security Benefits;
4. Supplemental Security Income;
5. Unemployment and Workman's Compensation;
6. Strike Benefits from Union Funds;
7. Veteran's Benefits;
8. Training Stipends;
9. Alimony;
10. Child Support;
11. Military Family Allotment;
12. Regular Support from Absent Family Member;
13. Pension Payments;
14. Insurance or Annuity Payments;
15. Income from Estates and Trusts;
16. Dividends;
17. Interest Income;
18. Rental Income;
19. Royalties; and
20. Other sources of income not mentioned above; however,
21. Income does not include the following money receipts: withdrawals from a bank; sale of property, house or car; tax refunds; gifts; one-time insurance payments; or compensation from injury, unless the injury directly relates to a child's condition which is the basis for an application being made to the Fund. Also disregarded is non-cash income.

"State Office of Catastrophic Illness in Children Relief Fund (State Office)" means the Office of the Executive Director of the Fund, which has responsibility for administering the Fund on a day-to-day basis on behalf of the Commission.

"Threshold" means the point at which a child's out-of-pocket medical expenses exceed the 30 percent of income for a family whose income is $100,000 or less or 40 percent of income for a family whose income is more than $100,000. After a child's medical expenses reach this threshold, the child has passed the initial screen for eligibility for assistance from the Fund.

8:18-1.3 General requirements

(a) Pursuant to the Act, the Fund will provide assistance to families having a child with a catastrophic illness. A child shall have passed the initial screen for eligibility for the Fund's assistance when a child's incurred medical expenses (not covered by private insurance or other public programs) for a year exceed the amount represented by either 30 percent or 40 percent of family's income.

1. Thirty percent shall be the screen used for families whose income is $100,000 or less.

2. Forty percent shall be the screen used for families whose income is more than $100,000.

(b) Though the child shall be referred to as being enrolled or eligible at the point in the application process when child has passed the initial screen, actual Fund disbursements on behalf of a child shall be limited by the monies available in the Fund and shall be guided by the policies and procedures outlined in this subchapter.

(c) To be eligible for assistance, a child must be a resident of the State of New Jersey. Resident means a person legally domiciled in New Jersey for a period of six months immediately preceding the initial date of application for assistance to the Fund.

1. A child's state of residence is that of the parent(s) or legal guardian.

2. Establishing proof of legal domicile within New Jersey is a responsibility of the parent or legal guardian of a child.

3. Absence from New Jersey for a period of 12 months or more is prima facie evidence of abandonment of domicile.

4. Seasonal residents in New Jersey are excluded from eligibility. Migrant workers who can document a previous history of work in New Jersey are eligible for consideration.

8:18-1.4 Initial application process

(a) Applications may be submitted on a year-round basis to the county case managers. The name, address, and phone number for county case managers shall be available from the State Office. The county case managers shall conduct the initial screen and forward completed written applications on forms provided by the State Office for those children who qualify to the State Office, along with the relevant documentation of expenses and income.

8:18-1.5 State Office and Commission review process

(a) Upon receipt of the completed applications from the county case managers, the State Office shall consider the reasonableness of providers' and vendors' charges. Out-of-State providers shall not be reimbursed at a rate greater than that of in-State providers.

(b) Providers shall be able to demonstrate licensure or certification by appropriate State or Federal agencies, if requested by State Office.

(c) Prior to the Commission's batched review of applications, the State Office shall prepare a disbursement schedule for each application in accordance with N.J.A.C. 8:18-1.6, 1.7 and 1.8.

(d) In a cycle of batch reviews, the Commission shall review the applications and the State Office's disbursement schedule for each application based on the deductible, annual cap, and the sliding payment schedule and make a decision on the Fund's level of assistance for each case. The calendar for the batch reviews shall be made available to the public by the State Office in advance of each year.

8:18-1.6 Deductible

Incurred, out-of-pocket medical expenses below the 30 percent or 40 percent threshold shall be considered the family's deductible and shall not be reimbursed by the Fund. Expenses in excess of the deductible shall be considered for payment by the Fund (see examples in Appendix I.).

8:18-1.7 Annual cap

(a) The amount of Fund's disbursements on behalf of a child shall be capped at $25,000 per year.

8:18-1.8 Sliding payment schedule

If adequate funds do not exist in the Fund at the point in time when a particular batch is being considered by the Commission to pay all applicants the amount of their expenses above their deductible and below the annual cap, a sliding payment schedule shall be used in an effort to distribute the available monies to applicants in an equitable way that considers a family's income, assets and other factors which impact the ability to pay for care.

8:18-1.9 Allocation distribution plan

Because the Fund's actual level of assistance to families, as determined by the Commission, shall in most, if not all, cases be less than the child's medical expenses, the Commission shall determine how the Fund's available monies shall be distributed among eligible providers and vendors. Input from the family shall be sought in the analysis preceding this determination, with guidance from the State Office. A parent or legal guardian of child shall be required to sign a payment distribution plan, prior to release of monies on behalf of the child.

8:18-1.10 County case manager responsibilities

(a) The county case manager shall:

1. Conduct the initial screen to determine whether a child's medical expenses exceed 30 percent of income of families with incomes of less than $100,000 or 40 percent of income over $100,000; and

2. Make referrals and assist in the application process for other programs and benefits (for example, Medicaid, Hospital Charity Care, and other programs), where applicable.

8:18-1.11 State Office responsibilities

(a) The State Office shall:

1. Administer the Fund on a day-to-day basis on behalf of the Commission;

2. Monitor providers eligibility (that is, certification or other credentials);

3. Consider the reasonableness of providers and vendor charges;

4. Prepare applications for review and consideration of the Commission; and

5. Oversee payments to providers, vendors and, in some cases, to families.

8:18-1.12 Commission responsibilities

(a) The Catastrophic Illness in Children Relief Fund Commission shall be responsible to:

1. Develop policies and procedures for operation of the Fund; and

2. Meet to review and make decisions on applications of families for financial assistance in regularly scheduled cycles.

8:18-1.13 Time period for measuring expenses and income

In screening a child/family for eligibility for the Fund, expenses and income shall be measured by any 12 (consecutive) month period which ends the last day of the month preceding a family's initial application to the Fund. However, for the Fund's first year of operation the time period shall be expanded to include any 12 (consecutive) month period which begins on or after January 1988, the month in which the Act became law. Applications shall be accepted any time throughout the year.

8:18-1.14 Eligible health services

(a) Categories of incurred health and health-related expenses eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold include, but are not limited, to the following:

1. Primary care (preventive care), including immunizations, physician-authorized ancillaries (labs, x-rays);

2. Specialized pediatric ambulatory care, including physician-authorized rehabilitative therapies (for example, speech, occupational, and physical), physician-authorized mental health care, dental care, physician-authorized eye care, chiropractic care);

3. Care in an acute hospital in New Jersey (treatment for acute and chronic conditions);

4. Care in acute hospitals in other states (treatment for acute and chronic conditions as well as highly specialized care such as organ transplants);

5. Physicians in all settings (for example, office, hospital);

6. Care in specialty hospitals (for example, rehabilitative psychiatric);

7. Long term care facilities (respite care, hospice care, residential care, or other care);

8. Home health care (physician-authorized home health aide, physician-authorized public health nurse, physician-authorized private duty nurse or other care);

9. Pharmaceuticals (physician-authorized over-the-counter and prescription drugs);

10. Disposable medical supplies (phyisican-authorized over-the-counter and prescribed supplies);

11. Durable medical equipment (for example, physician-authorized ventilators, prostheses);

12. Family transportation related to medical condition; and

13. The portion of the health insurance premium for the child's coverage paid by family. This includes supplemental and dependent coverage.

8:18-1.15 Ineligible health services

(a) Categories of health and health-related expenses which are not eligible for considertion in assessing whether a family has reached its 30 percent/40 percent eligibility threshold shall include, but are not limited to, the following:

1. Special education required as result of medical condition;

2. Elective cosmetic surgery;

3. Experimental medical treatment/experimental drugs which are not recognized by Federal and State agencies (for example, the Food and Drug Administration). Applications involving experimental treatment may be forwarded by the Commission to an expert for review for possible coverage under N.J.A.C. 8:18-1.14, Eligible health services.

8:18-1.16 Administration of payments

(a) The State Office shall oversee processing of payments from the Fund. Though in general payments shall be made directly to providers and vendors, consideration shall be given to making payments directly to families in special cases (that is, in the instance in which a family has already paid out-of-pocket for medical expenses in an amount which exceeds its 30 or 40 percent of income threshold).

(b) Items in N.J.A.C. 8:18-1.4, Eligible health services, shall be considered for payments.

(c) Insurance premiums shall be considered for payment.

8:18-1.17 Appeals process

(a) The following applies to first level appeals:

1. An applicant who disputes a determination made by the county case manager may appeal to the State Officee by filing a written appeal addressed to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Program
363 West State Street
Trenton, New Jersey 08625
CN 364
Attn: Executive Director

2. The appeal shall comply with the following requirements:

i. The appeal shall be in writing:

ii. The written appeal must include all reasons for the appeal and any documentation or proof in support thereof; and

iii. Appeals must be received by the State Office no later than 21 days from the date of notice of the determination made by the county case manager.

3. Upon receipt of the appeal, the State Office shall:

i. Acknowledge receipt of the appeal in writing to the applicant within 14 days;

ii. Conduct such review and analysis as is necessary to determine if there is a basis for the claim; and

iii. Issue a written determination to the applicant within 90 days of original receipt of the appeal.

(b) The following applies to second level appeals:

1. Upon receipt of a determination by the State Office, an applicant who disputes that determination may appeal to the Catastrophic Illness in Children Relief Fund Commission by filing a written appeal to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Commission
John Fitch Plaza
CN 360
Trenton, New Jersey 08626-0360
Attn: State Commissioner of Health

2. Appeals must be received at the above address no later than 21 days from the date of notice of the determination made by the State Office.

3. The written appeal shall include all reasons and grounds for disputing the determination made by the State Office and all proof and documentation in support of the appeal.

4. The Commission shall conduct such review and analysis as is necessary to reach a decision on the appeal. At its discretion, the Commission may direct a conference to be convened with the applicant, or may refer the matter to the Office of Administrative law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

5. Except for appeals referred to the Office of Administrative Law, the Commission shall render a decision on the appeal within 90 days from the date of original receipt of the appeal. Appeals referred to the Office of Administrative Law shall be decided by the Commission within 45 days from the date of filing of the Initial Decision of the Administrative Law Judge, or at such later date as permitted by law.

6. A decision made by the Commission shall be final. It may be appealed to the Superior Court of New Jersey as permitted by court rules.

(c) Unless otherwise specifically ordered by the Commission, an applicant may not receive benefits from the Catastrophic Illness in Children Relief Fund while an appeal is pending at any level.

8:18-1.18 Special cases

(a) Special cases shall be referred to the Commission for its review and consideration. Special cases shall include, but are not limited to, the following:

1. In special cases in which a family has more than one child, with a catastrophic illness (as defined by expenses in excess of the 30 or 40 percent threshold for each child), consideration shall be given to waiving the standard deductible as outlined in N.J.A.C. 8:18-1.3 for the other child/children given that the family would have already met the deductible for the first child.

2. The Commission shall consider writing a nonbinding letter of conditional acceptance for assistance in the next year, with the intent that such a letter would offer some measure of assurance to the child's health provider/vendor, and thus facilitate the child's access to needed services, in special hardship cases in which:

i. A child is eligible for the Fund in one year; and

ii. Is projected to be eligible for the Fund in the next year; and

iii. The family's ability to pay for the child's medical care in the next year is questionable; and

iv. This inability to pay will jeopardize the child's access to needed care.

3. For special hardship cases that come before the Commission during a batch cycle, after the standard disbursement guidelines have been applied to each case in the batch and sufficient monies remain in the Fund, consideration shall be given to waiving the standard disbursement guidelines (that is, the deductible and the cap as outlined in N.J.A.C. 8:18-1.6 and 1.7).

8:18-1.19 Confidentiality of information

Information received pursuant to the duties required by the Act shall not be disclosed publicly in such a manner as to identify individuals unless special circumstances require such disclosure and the proper notice is served and parent or legal guardian's consent is given, as may be necessary for pending legal proceedings.

APPENDIX I
EXAMPLES OF CATASTROPHIC ILLNESS IN
CHILDREN RELIEF FUND PROGRAM

The examples below illustrate the extent which Fund would assist two families with different income levels (that is, $30,000 and $80,000) under three graduated levels of eligible medical expenses (that is, $15,000, $30,000 and $60,000).*

ELIGIBLE MEDICAL EXPENSES: $15,000

FAMILY #1 (with income of $30,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$15,000
Family Income:	$30,000
Front-end Deductible (30% of Family Income):	$ 9,000
Amount of Fund's Financial Assistance to Family:†	$ 6,000
Total Amount for which Family remains responsible:	$ 9,000
FAMILY #2 (with income of $80,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$15,000
Family Income:	$80,000
Front-end Deductible (30% of Family Income):	$24,000
Amount of Fund's Financial Assistance to Family:†	$ 0
Total Amount for which Family remains responsible:	$15,000

ELIGIBLE MEDICAL EXPENSES: $30,000

FAMILY #1 (with income of $30,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$30,000
Family Income:	$30,000
Front-end Deductible (30% of Family Income):	$ 9,000
Amount of Fund's Financial Assistance to Family:†	$21,000
Total Amount for which Family remains responsible:	$ 9,000
FAMILY #2 (with income of $80,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$30,000
Family Income:	$80,000
Front-end Deductible (30% of Family Income):	$24,000
Amount of Fund's Financial Assistance to Family:†	$ 6,000
Total Amount for which Family remains responsible:	$24,000

ELIGIBLE MEDICAL EXPENSES: $60,000

FAMILY #1 (with income of $30,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$60,000
Family Income:	$30,000
Front-end Deductible (30% of Family Income):	$ 9,000
Amount of Fund's Financial Assistance to Family:†	$25,000
Total Amount for which Family remains responsible:	$35,000
FAMILY #2 (with income of $80,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$60,000
Family Income:	$80,000
Front-end Deductible (30% of Family Income):	$24,000
Amount of Fund's Financial Assistance to Family:†	$25,000
Total Amount for which Family remains responsible:	$35,000

† Assuming: an annual $25,000 cap; adequate monies available in fund obviating need for additional restrictions and cost-sharing; all expenses are reasonable and customary; and none of the cases are in the "special" category.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need

Psychiatric Inpatient Beds: Adult Closed Acute Psychiatric Beds

Proposed Repeal and New Rules: N.J.A.C. 8:43E-3

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 30:4-27.1 et seq., specifically 30:4-27.5.

Proposal Number: PRN 1989-303.

Submit comments by August 2, 1989 to:
Henry F. Gerding, Health Systems Specialist
Health Systems Review Program
New Jersey Department of Health, Room 604
CN 360
Trenton, New Jersey, 08625-0360

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing the planning and certification of the need for hospital and related health care facility services. In developing the proposed rules, the State Commissioner of Health obtained the recommendations of the Statewide Health Coordinating Council, a special technical advisory committee, and jointly developed the rules with the Department of Human Services, Division of Mental Health and Hospitals.

The Mental Health Screening Law, N.J.S.A. 30:40-27.1 et seq., establishes the need for short term care facilities which will be developed and consist of adult acute closed psychiatric beds, in order to serve specific geographic areas throughout the State. This affirms public policy that individuals who are mentally ill should receive both screening and treatment as close to their own homes as possible and in the most clinically appropriate and least restrictive setting possible. This proposed rulemaking serves the dual purpose of both repealing the existing rules on Inpatient Screening Psychiatric Bed Standards and simultaneously presenting new standards and criteria for the certificate of need (CN) review of adult closed acute psychiatric beds. The services that are presently governed by inpatient screening psychiatric bed rules will be addressed within the adult closed acute psychiatric beds rules. As a result, there is no need to continue to implement the former rules.

The proposed rules are intended to enhance the development of a community-based system of care for individuals who meet the involuntary psychiatric commitment standard, through the creation of short term care facilities (STCFs) in community hospitals. It should be emphasized that these rules do not mandate community hospitals to establish adult closed acute psychiatric beds; they govern the certificate of need review of hospitals that voluntarily choose to develop these programs. The SCTFs will provide inpatient care for all patients who are determined by the designated screening center to meet the standards for dangerousness to self or others at the time of admission. Such patients need not be admitted involuntarily. The adult closed acute psychiatric beds must be linked with a continuum of mental health services through affiliation agreements and utilization of liaison services in order to form a unified system of care.

Social Impact

Public policy, as established in the Mental Health Screening Law, N.J.S.A. 30:40-27.1 et seq., holds that most people who experience acute psychiatric problems should receive treatment in their own communities. Community care is a goal of the mental health system and currently individuals rarely spend extended periods of time confined within a psychiatric hospital.

Involuntary treatment of psychiatric patients in New Jersey has historically taken place in large, centralized State and county facilities. Although centralization of services provides certain advantages for the long-term patient, removal from the community is both stigmatizing and disruptive to individuals who can be stabilized rapidly. In State Fiscal Year 1986 over 50 percent of the involuntarily admitted patients in State and county hospitals were treated, stabilized, and discharged within 30 days. Experience has shown that these patients can be treated in adult closed acute psychiatric beds in community hospitals within their own geographic area and can be more effectively linked with local resources upon discharge. Psychiatric inpatient units which provide both screening and treatment during an average length of stay of 12 to 14 days have proven more effective than those which only provide 72 hour involuntary care. Involuntary hospitalization is viewed as one treatment option within a mental health care system. Local service provision promotes flexibility and eliminates the dichotomy between involuntary and voluntary mental health care. When established to serve persons who meet the commitment standard upon admission, the patient's commitment status can be changed as improvement occurs without disruption of treatment. This provides both protection of civil liberties and better continuity of care.

When STCFs are linked to the screening center and community-based mental health services through affiliation agreements and mutual quality assurance/systems review monitoring, a true community-based system can be established. The proposed new rules serve to integrate and strengthen the development of a continuum of psychiatric care, through provision of both screening and treatment in community-based psychiatric units (STCFs) and the promotion of affiliations between service providers.

Economic Impact

The mandate to establish short term care facilities throughout New Jersey has been given to the Department of Health and the Department of Human Services by the Mental Health Screening Law, N.J.S.A. 30:40-27.1 et seq. The implementation of this law will necessarily result in the shift of acute involuntary psychiatric patients from State psychiatric hospitals to general acute or special hospitals. The intent of these rules is to define the need for STCF beds and to constrain the impact on the cost of these new services to the health care system.

The implementation of these rules is expected to limit the addition of new adult closed acute psychiatric beds Statewide to 201 beds through 1992. A shift of approximately 3,700 admissions is estimated to result over a five year period as hospitals establish new adult closed psychiatric bed capacity. In an acute care hospital system with nearly one million admissions and a $4.5 billion revenue base, the fiscal impact is not expected to be significant.

These new adult closed psychiatric inpatient resources will form a crucial part of the overall health care system. Adult closed acute psychiatric beds provide the most effective linkage between the screening of psychiatric patients and their treatment at the community level. Hospital applicants that add such new beds to their total inventory may incur additional capital, staffing, and administrative costs. The proposed new rules require competitive review of competing applicants and give priority to the less costly alternatives. Costs to the health care system are also not expected to significantly increase, because these should be offset by savings resulting from reduced lengths of stay, more appropriate admissions, the use of ambulatory alternatives, and a reduction in readmissions to the system due to improved treatment outcomes.

The rules are expected to contain the rise in health care costs in New Jersey by prohibiting the establishment of unnecessary inpatient resources and by promoting the conversion of underutilized acute hospital beds. The proposed rules are not expected to have any negative impact on existing providers of adult closed acute psychiatric beds. Implementation of the Mental Health Screening Law without these rules would result in the unplanned proliferation of costly inpatient resources.

Regulatory Flexibility Statement

Facilities affected by these rules consist of hospitals with more than 100 beds. These hospitals typically employ well over 100 full-time employees. Therefore, these facilities do not fall into the category of small businesses as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:43E-3.

Full text of the proposed new rules follows:

SUBCHAPTER 3. ADULT CLOSED ACUTE PSYCHIATRIC BEDS

8:43E-3.1 Scope

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds provided in general acute care and special hospitals throughout the State. This subchapter sets forth the criteria by which the Department of Health will review certificate of need applications for the establishment of new adult closed acute psychiatric beds in an existing or proposed licensed hospital in New Jersey.

(b) Treatment of individuals who meet the commitment standard, in adult closed acute psychiatric beds organized into a short term care facility, is viewed as one component in a continuum of treatment options for mentally ill adults. This service is designed to provide short term care for patients deemed dangerous to self or others and is one critical element of a comprehensive network of mental health services in the community. This approach encourages and supports the delivery of services in the most appropriate and least restrictive setting. This subchapter does not apply to facilities proposing to establish other psychiatric inpatient services for which planning rules are in effect. The rules in this subchapter specifically address the development of adult closed acute psychiatric beds.

8:43E-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Adult closed acute psychiatric beds" means licensed psychiatric beds in a separate unit or subunit of a New Jersey hospital, specifically designated as a mental hospital by the Commissioner of Human Services, which provides treatment services for persons experiencing an acute episode of a psychiatric disorder. All such persons are referred by a screening center and may be admitted involuntarily or may be determined to be dangerous to self or others and willing to receive treatment voluntarily.

"Adult open acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a New Jersey Hospital for the provision of intensive evaluation, stabilization, and treatment of persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have a length of stay which averages 30 days or less.

"Affiliation agreement" means a written agreement between two service providers specifying referral and discharge criteria, admission procedures, responsibilities, timeframes. and services to be performed.

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

"Inpatient screening beds" means licensed psychiatric beds within, or contiguous to, a licensed psychiatric unit of a licensed New Jersey hospital, for the provision of intensive treatment, evaluation and stabilization of adults who are experiencing an acute episode of a psychiatric disorder. All persons admitted are under involuntary commitment order. Maximum stay under involuntary commitment order in an inpatient screening bed is 72 hours.

"Liaison" means a mental health worker who is an employee of a Division of Mental Health and Hospitals contracted community mental health agency and whose function is to assist the STCF's treatment team with discharge planning and linkage to services in the community.

"Mental health service area" means a service area as defined by the New Jersey Division of Mental Health and Hospitals, in accordance with N.J.S.A. 30:9A-1 et seq.

"Mental hospital" means a facility, or portion thereof, designated by the Commissioner of Human Services for the care and treatment of individuals with mental illness on an inpatient basis who are admitted under the provisions of N.J.S.A. 30:4-27.1.

"Screening center" means a public or private ambulatory care service designated by the Commissioner of Human Services which provides mental health services including assessment, emergency, and referral services to mentally ill persons in specific geographic areas. A designated screening center is the facility in the public mental health care treatment system wherein a person believed to be in need of commitment to a short term care facility (STCF) undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be most appropriately provided.

"Short term care facility (STCF)" means a psychiatric unit within a general hospital or special hospital which is designated to provide intensive, acute treatment to individuals who meet the commitment standard of dangerous to self or others. They consist of closed adult acute psychiatric beds. The average length of stay is 30 days or less.

8:43E-3.3 Submission of certificate of need applications

(a) Applications for establishment of new psychiatric adult closed acute psychiatric beds will be under batching procedures as determined by the Department and other policies and procedures set forth in N.J.A.C. 8:33-1.5. The following schedule shall be initiated upon adoption of these rules:

Deadline for Actual Submission:	Cycle Begins
January 1	February 15
July 1	August 15

8:43E-3.4 Designation and service area

(a) Applicants shall demonstrate their ability to receive formal designation as a short term care facility in accordance with N.J.A.C. 10:31, developed by the Department of Human Services. All STCFs shall also be deemed eligible for designation by the Commissioner of the Department of Human Services as a Mental Hospital under N.J.S.A. 30:4-27.1 et seq. Preference will be given to units which provide a combination of adult open acute and adult closed acute psychiatric beds.

(b) The entire county in which the applicant is located shall be the preferred service area. Applicants are encouraged to meet the entire available bed need of their county. If unable to do so, they shall, at a minimum, provide for the estimated bed need of the mental health service area in which they are located. Information on the delineation of mental health service areas is available from the New Jersey Division of Mental Health and Hospitals.

8:43E-3.5 Unit size

(a) The minimum size of any psychiatric unit consisting exclusively of adult closed acute psychiatric beds shall be 12 beds.

(b) The minimum size of any psychiatric unit consisting of adult closed acute psychiatric beds and of adult open acute psychiatric beds shall be 20 beds.

(c) The Department may consider exceptions to (b) above when the applicant demonstrates that the proposed unit is farther than 40 miles from any existing unit and the need as contained in N.J.A.C. 8:43E-2.4 and 4.6 indicates a need for fewer than 20 beds.

(d) The maximum size of any unit containing adult closed acute psychiatric beds shall be 40 beds.

8:43E-3.6 Bed need

(a) Each applicant for adult closed acute psychiatric beds shall demonstrate the need for the proposed bed capacity in its proposed service area through application of the bed need methodology in (d) below. Justification of the bed need shall take into account the percentage of this population which would actually be treated on the unit, based on the applicant's statement of both exclusionary and inclusionary admission criteria. Populations to be excluded from admission should not be counted in application of the methodology.

(b) Each applicant shall also justify the need for adult closed acute psychiatric beds through provision of the following documentation:

1. Projected average length of stay shall reflect an acute course of treatment. Such a projected length of stay shall not be greater than 120 percent of the State average length of stay for existing adult closed acute psychiatric beds.

2. Projected numbers of admissions to the proposed adult closed acute psychiatric beds shall be justified by documentation through letters of support from the local screening center(s), local inpatient units and from the State hospitals indicating the number of involuntary commitments which are currently admitted.

(c) When the application is for the purpose of increasing the total number of adult psychiatric beds (rather than conversion of existing psychiatric beds to STCF status), the applicant shall additionally demonstrate the following:

1. Occupancy rates for all existing adult psychiatric beds in the hospital shall have exceeded 90 percent in the previous 12 months;

2. Occupancy rate at the proposed new capacity will exceed 80 percent within two years of operation; and

3. Compliance with the Hospital Policy Manual sections on occupancy rates (N.J.A.C. 8:43I-1.11) and on the addition or replacement of beds (N.J.A.C. 8:43I-1.12).

(d) The general formula for the determination of adult closed acute psychiatric bed need is as follows:

1. New Beds Needed = Total Beds Needed minus Available Beds

2. Total Beds Needed =

$$\frac{\text{Adjusted Beds per 100,000} \times \text{county population}}{100{,}000}$$

3. County population shall be defined by New Jersey Department or Labor projections, economic/demographic model, for one year beyond the date the need calculation occurs.

4. Adjusted Beds per 100,000 = Statewide Mean—(Standard Deviation x Average z Score

5. Average z Score =

$$\frac{\text{Actual Use z Score} + \text{Public Hospital z Score}}{2}$$

6. Actual Use z Score =

$$\frac{\text{Statewide Mean Need per 100,000 minus County Need per 100,000}}{\text{Standard deviation}}$$

7. County Need per 100,000 =

$$\frac{\text{Unadjusted Beds Needed}}{\text{County population x 100,000}}$$

8. Unadjusted Beds Needed =

$$\frac{\text{Adjusted Bed Days}}{365} \times \frac{\text{Admissions}}{\text{Terminations}} \times \frac{.90}{.85}$$

9. Adjusted Bed Days is derived from the actual patient days at State and county mental hospitals in the following manner:

Actual Days at Public Hospital	Adjusted Bed Days for Formula
1-16	Actual
17-21	16
22-40	Actual × .75
41-80	30
80 +	3

10. The "Public Hospital z Score" is derived from the most recently available version of the Division of Mental Health and Hospitals' need-based plan. This plan is available from the New Jersey Division of Mental Health and Hospitals, CN 700, Trenton, NJ 08625.

11. "Available beds" are the sum of all existing and certificate of need approved adult closed psychiatric beds as determined by the New Jersey Department of Health.

8:43E-3.7 Admission criteria

(a) Written admission criteria and policies shall be developed by the facility and included as part of the certificate of need application. The criteria shall include care for patients who are found to meet the standards for dangerous to self or other at the time of admission, thus requiring an intensive level of care. Such patients need not be admitted involuntarily.

(b) Admission criteria shall reflect that only patients who have been screened through the designated screening center shall be accepted for admission.

(c) When a patient is in a voluntary psychiatric unit in another hospital and transfer to a STCF is requested, the screening center, in consultation with the STCF, shall determine if all other alternatives have been explored and if the patient meets the admission criteria of the STCF.

(d) Written admission criteria shall reflect the following:

1. Diagnostic and other patient characteristics or factors which render a patient acceptable and unacceptable for admission;

2. Policy on acceptance of individuals with limited ability to pay for treatment; and

3. Policy on acceptance of individuals with Medicaid insurance coverage.

8:43E-3.8 Accessibility of care

(a) The applicant shall provide assurance that patients who are referred by the designated screening center shall be admitted immediately, if a bed is available and the patient meets the admission criteria.

(b) The applicant shall assure that it has a treatment policy whereby no patient will be discharged prior to the completion of treatment, as a result of the inability to pay.

(c) The applicant shall assure that individuals previously hospitalized in any psychiatric facility shall not be denied admission to the unit solely because of such previous hospitalization, or as an administrative response to the individual's behavior during such previous hospitalization.

(d) The applicant shall assure that individuals with a single diagnosis of alcohol or drug abuse shall not be accepted for treatment in adult closed acute psychiatric beds.

(e) The applicant shall assure that patients with a dual diagnosis of substance abuse and psychiatric disorder are accepted, if they meet the admission criteria. Clinical services for this population shall be assured.

(f) The applicant shall provide assurance of compliance with all applicable civil rights and non-discrimination requirements of Federal and New Jersey law.

8:43E-3.9 Continuity of care

(a) Applicants seeking to establish adult closed acute psychiatric beds (STCF) shall provide the following:

1. A description of how the proposed program would fit into a comprehensive system of care. Applicants shall show affiliation with the screening center and other community-based programs within the geographic area through formal affiliation agreements;

2. A description of intensive inpatient care which focuses on crisis intervention and is directed toward resolution of a psychiatric emergency and attempts to restore the individual to his or her previous level of functioning; and

3. A description of the comprehensive diagnostic evaluation to assess all the factors contributing to the crisis.

(b) The applicant shall document its intent to enter into affiliation agreements which provide for immediate access and continuity of psychiatric care including medication. Draft affiliation agreements and names of provider agencies shall also be submitted which link the adult closed acute psychiatric beds with specialized facilities providing care to the developmentally disabled and substance abusers as well as State, county, and other hospitals providing intermediate and special psychiatric beds.

1. Draft affiliation agreements shall clarify admission, referral, joint treatment/discharge planning, transfer, discharge and service relationships between agencies. At a minimum, the affiliation agreements shall address the following areas:

i. Referral guidelines for admission to the STCF's adult closed acute psychiatric beds, reflecting access through the screening center;

ii. Guidelines for referring consenting STCF patients to the community provider, which include provision for immediate access and continuity of medication provisions; and

iii. Guidelines for linkage responsibility through the liaison staff of local mental health agency.

8:43E-3.10 Liaison services

(a) The proposed affiliation agreement between the STCF and the local mental health liaison agency required as part of a certificate of need application shall provide for the following:

1. Liaison privileges to ensure that the liaison worker has access to the patient record, information sharing, and patient assessment;

2. Assurances that liaison information in the form of a community assessment form is part of the treatment team process;

3. One professional staff from the STCF to serve as the liaison contact person;

4. Guidelines for liaison participation in the STCF treatment team meetings including liaison input regarding discharge to the appropriate combination of private and public community services; and

5. A written discharge plan provided to the liaison worker for patients entering the public mental health system prior to hospital discharge.

(b) The proposed affiliation agreement with the liaison agency that is submitted as part of the application shall also specify hospital and liaison responsibilities for patients who are discharged within 72 hours.

8:43E-3.11 Transfer to State or county facility

(a) Written criteria for the transfer of patients from the STCF to a county or State hospital shall be submitted as part of the application.

(b) The applicant shall submit a draft transfer agreement with the State or county hospital, specifying roles and responsibilities. The applicant shall assure that such an agreement will be in place prior to licensure or designation.

(c) Written transfer criteria shall reflect the following:

1. Diagnostic and other patient characteristics and factors used as indicators for transfer at or beyond the units' established average length of stay;

2. Diagnostic and other patient characteristics and factors such as length of past treatment history used as indicators for transfer earlier than the units established average length of stay;

3. Assurances that all patients shall be assessed by the liaison staff prior to transfer to ensure that all community alternatives have been explored; and

4. The applicant shall assure its participation in the System Review Committee pursuant to N.J.S.A. 30:40-27.1 et seq. and N.J.A.C. 10:31-5. This Committee will review transfers into the STCF from the adult open acute psychiatric beds, as well as transfers to State and county hospitals.

8:43E-3.12 Proposed treatment program, staffing pattern, and discharge planning

The proposed treatment program, staffing pattern, and discharge planning process shall be identified within the certificate of need application. All applicants for adult closed acute psychiatric beds shall demonstrate the ability to comply with licensure standards promulgated by the New Jersey Department of Health as they apply to hospital psychiatric units and with Title XIX (Medicaid) staffing standards, upon project completion. The treatment program and staffing pattern shall be fully described and shall be adequate and appropriate to implement the program.

8:43E-3.13 Treatment program

(a) The applicant shall describe a treatment program which includes a full range of psychiatric, diagnostic, and therapeutic interventions, including, but not limited to, individual, group psychopharmacological, family, milieu, adjunctive, and recreational therapy.

(b) The description of the treatment shall, at a minimum, focus on the following:

1. Protecting the individual from harming himself or herself or others;

2. Conducting a comprehensive assessment of the individual, with appropriate input from liaison in order to understand his or her psychiatric, medical, social sevice, and other needs;

3. Stabilizing and treating the acute disorder and return of the individual to his/her pre-crisis level of functioning; and

4. Development of an individualized treatment plan, in conjunction with the patient, and incorporating the appropriate liaison input for the coordination of service needs upon discharge.

(c) The applicant shall discuss the provisions which will be made for the patient's non-psychiatric care, including medical and dental services.

(d) The applicant shall describe how the following will be accomplished:

1. Extended evaluations;
2. Lab studies;
3. Evening and weekend therapeutic and recreational activities;
4. Staffing and procedures to provide close medication monitoring and education;
5. Staffing and safety precautions to provide for unscheduled one to one monitoring;
6. Restricted privileges and precautions;
7. Use of seclusion and restraints;
8. Hospital formulary, to include appropriate stock medications;
9. Provision for evening and weekend consultation with the patient's family;
10. Provision for handicapped patients;
11. Provision for HIV positive individuals and AIDS patients; and
12. Quality assurance.

8:43E-3.14 Staffing pattern

(a) The applicant shall describe how SCTFs shall be staffed to assure quality of care and the availability of an appropriate variety of staff. The applicant shall describe the management, organization, and staffing of the unit. The applicant should address the guidelines which will be used in staffing the unit and the process by which the unit will provide for an enhanced staff-to-patient ratio when necessary for compliance with patient rights requirements. The applicant shall submit a plan for the provision of adequate psychiatric care for indigent patients.

(b) The applicant shall describe how the STCF shall be staffed by a multidisciplinary team which should, at a minimum, include the following: a full time unit coordinator, board eligible psychiatrist(s), registered nurse(s), social worker(s), adjunctive therapists and availability of consultants, such as certified alcoholism and drug abuse counselors, psychologists, and others as required to meet the special needs of the patients served. A description and listing of an appropriate staff in order to have an active seven day a week treatment program shall be provided.

8:43E-3.15 Discharge and transfer planning

(a) The applicant shall describe the discharge planning process in writing. The description shall include provisions for discharge planning to be conducted as an ongoing process, beginning at admission and involving liaison staff. The discharge planning process shall also apply to patients being transferred to another facility. The applicant shall assure that:

1. A mechanism to assure that patient consent is solicited whenever possible and is obtained prior to transfer or other disclosure of patient information where required by law;

2. A treatment team, made up of representatives from the various disciplines (listed in N.J.A.C. 8:43E-3.12(b)2), the liaison, and a member of the patient's natural support system, when appropriate, shall meet as often as necessary to develop an appropriate plan;

3. A comprehensive psycho-social history and summary of all assessments made by the various disciplines shall be made available for the treatment team in order to facilitate discharge planning; and

4. The liaison staff shall assist the treatment team in coordinating referrals and take whatever steps are necessary to ensure a smooth transition from hospital to community care. The patient's written discharge plan shall be provided to the liaison, prior to hospital discharge.

8:43E-3.16 Appropriateness of cost

(a) Reimbursement for adult closed acute psychiatric beds provided in general acute care hospitals will be in accordance with the methodology required by N.J.S.A. 26:2H-18, Chapter 83 of the Public Laws of 1978, and all rules promulgated pursuant to Chapter 83.

(b) Reimbursement for adult closed acute psychiatric beds provided in special hospitals shall be pursuant to SHARE reimbursement rules at N.J.A.C. 8:31A and the following:

1. The reasonableness of the projected rates shall be determined by the Department, in comparison to average rates of existing New Jersey facilities providing adult closed acute units within two years of operation.

2. The method of physician billing to patients shall be detailed. Any physician costs included in the per diem rates shall be itemized and the projected charges identified.

3. All ancillary and clinical support services which may be routinely provided to and charged to patients shall be detailed. A list of standard laboratory and diagnostic tests required for admission shall be provided. No certificate of need application shall be approved unless all mandatory laboratory and diagnostic tests as required are justified as medically necessary by the applicant.

4. The policies and procedures for informing the patient or family of the charges for care prior to or upon admission shall be detailed.

5. The applicant shall submit its policy regarding third party reimbursement and provision of care to indigent patients. As a minimum, the applicant shall provide an estimate of the level of indigent patients in the service area and shall provide assurance that these patients will be served.

8:43E-3.17 Capital financing

Financing of hospital construction, modernization/renovation, or major moveable equipment projects require a minimum equity contribution pursuant to N.J.A.C. 8:33-2.15(a)2.

8:43E-3.18 Physical environment

(a) The application shall provide schematics of the proposed floor plan and shall assure, at a minimum, compliance with the following design elements:

1. The design of adult closed acute psychiatric beds functioning as a STCF should afford a non-institutionalized atmosphere, yet provide a safe environment for patients and staff. The design should avoid giving the arriving patient the impression of control, entrapment or congregate care. The environment shoud be normalized, to include an appropriate combination of private, semi-private/semi-public, and public space. The following considerations shall be addressed:

i. Balance between privacy needs of patients and surveillance responsibilities of staff, especially with reference to seclusion rooms and unit exits;

ii. Seclusion rooms should be properly ventilated and appropriately furnished for patient safety and comfort;

iii. Reduction of stimulation in specified areas or rooms utilizing such measures as: the segregation of noisy and quiet activities and the use of muted color schemes;

iv. Separation of the unit from other units of the hospital and prohibition of its use as a thoroughfare to other units;

v. Location with view of landscaped or park-like setting and with access to outdoors (whenever possible); and

vi. Elimination of physical conditions which could facilitate suicide attempts, including, but not limited to, exposed popping conduits or other weight supporting lines or objects;

2. Units having adult closed acute and adult open acute psychiatric bed sections should be designed with a lockable door between sections, or the entire unit must be lockable. Doors may remain open, whenever patient condition, ward climate, and staffing limits permit, to test the ability of acute disturbed patients to tolerate group activities, recreation, and free access to service areas in the voluntary section of the unit.

3. The STCF unit shall be in compliance with current physical plant construction guidelines for acute care psychiatric beds in general hospitals contained in the "Guidelines for Construction and Equipment of Hospital and Medical Facilities," published by the U.S. Department of Health and Human Services, Health Resources and Services Administration, and incorporated herein by reference.

8:43E-3.19 County mental health board review

(a) The county mental health board(s) of the service area proposed to be served by the applicant shall receive a copy of the certificate of need application, for their formal action, at the time of submission to the Department. A letter of endorsement from the board(s) or its administrator reflecting board action shall be considered a significant factor in assessing local need for the project. County mental health board comments should be forwarded to the Department of Health, Health System Agencies, and to the Division of Mental Health and Hospitals in a timely manner, consistent with the certificate of need requirements of N.J.A.C. 8:33. Applicants are encouraged to consult with their county mental health board during the planning stages and prior to submission of the application to ensure that local needs are being met.

8:43E-3.20 New Jersey State Department of Human Services endorsement

(a) The New Jersey State Department of Human Services will review every application for adult closed acute psychiatric beds. A statement of non-endorsement by the Department of Human Services, due to the applicant's inability to meet the criteria for designation as a STCF or as a mental hospital shall be considered a reason for denial by the Department of Health.

(b) Applicants are encouraged to consult with the Division of Mental Health and Hospitals staff during the planning stage. Technical assistance is available from the Division of Mental Health and

Hospitals regarding program, architectural standards, affiliation agreements and designation process.

8:43E-3.21 Data

Each applicant shall agree to report utilization data for adult closed acute and adult open acute psychiatric beds, as required by the Departments of Health and Human Services.

8:43-3.22 Competitive review

(a) In geographic areas where more than one applicant has filed a certificate of need to establish additional adult closed acute psychiatric beds, the Department may elect to approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all standards and guidelines in this subchapter and all other laws and rules.

2. The highest level of access to services by the indigent and by persons under cost-based insurance;

3. Units which can be implemented in the most cost effective and efficient manner, measured by capital costs, operating costs, and reduction of excess acute care bed capacity in the area;

4. Hospitals which provide screening services or are closely affiliated with a screening service;

5. Units which are converting screening psychiatric beds to adult closed acute psychiatric beds and which will meet the needs of their geographic area or county;

6. Units which provide for the bed need of their designated STCF geographic area or county;

7. Units which meet the standard for geographic accessibilty, that is, units which can be reached from any point in the applicant's primary service area within one hour of travel time;

8. Projects which are determined to provide the highest level of quality of care in the proposed unit, as documented on the basis of staffing pattern, site review reports, and track record for serving persons who are seriously mentally ill;

9. Projects which have the endorsement of the county mental health board(s) of the proposed service area. (See N.J.A.C. 8:14-3.19); and

10. Units which demonstrate affiliation with the area screening center, with residential and other ambulatory services, including partial care, outpatient services, and other crisis stabilization services for the purpose of linking the patient to the appropriate after-care services.

8:43E-3.23 Enforcement and sanctions

The Department, in conjunction with the Department of Human Services, shall monitor compliance with terms and conditions of this application. The Department will determine if the recipient of certificate of need, or its successor, is operating a service which materially differs from the representation made in its application for the certificate of need. Failure to demonstrate compliance shall constitute an adequate basis for licensure suspension or revocation. Such suspension or revocation shall be conducted in accordance with N.J.S.A. 52:14B-1 et seq., the Adminstrative Procedure Act, and N.J.A.C. 1:1, the Uniform Administrative Procedure Rules.

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Amendment: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1989-341.

A **public hearing** concerning the proposed amendments will be held on July 25, 1989 at 2:00 P.M. at the following address:

Board Room, Room 103
First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

Submit written comments by August 2, 1989 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 108, CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed albuterol tablets could then be used as a less expensive substitute for Proventil, a branded prescription medicine. Similarly, the proposed vincristine injection could be substituted for the more costly branded product, Oncovin.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of this proposed amendment would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this amendment because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendment will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by this amendment accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $6.81. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposal follows:

The Drug Utilization Review Council proposed to **add** to the list of Interchangeable Drug Products the following products:

Albuterol tabs 2, 4 mg	Purepac
Albuterol tabs 2, 4 mg	Biocraft
Albuterol tabs 2, 4 mg	Danbury
Amantadine caps 100 mg	Invamed
Amiloride/HCTZ tabs 5/50	Danbury
Amiloride/HCTZ tabs 5/50	PharmBasics
Amoxapine tabs 25, 50, 100, 150 mg	Chelsea
Amoxapine tabs 25, 50, 100, 150 mg	Watson
APAP/codeine tabs 15, 30, 60 mg	Charlotte
Aspirin ER tabs 975 mg	Invamed, Sidmak
Aspirin SR tabs 800 mg (zero order)	Invamed
Atenolol/chlorthalidone tabs 50/25, 100/25	Par
Atropine sulfate ophth soln 1%	Paco
Benztropine mesylate tabs 0.5, 1, 2 mg	Invamed
Betamethasone diprop. crm, oint, lot 0.05%	Clay-Park
Butalbital, codeine, ASA, caffeine caps	Anabolic
Butalbital/APAP 50/325 mg tabs	Halsey
Carisoprodol/aspirin tabs 200/325	Par
Cefadroxil caps 500 mg	IBSA
Cefadroxil caps 500 mg and tabs 1 g	Zenith
Cefadroxil for susp 125/5, 250/5, 500/5 ml	Biocraft
Cefazolin inj. 250 mg, 500 mg; 1, 5, 10 g	TEVA
Cephalexin tabs 250, 500 mg	Biocraft
Chlorzoxazone tabs 500 mg	Ferndale
Choline mag. salicylate tabs 500, 750 mg	Invamed
Clindamycin HCl caps 75, 150 mg	Danbury
Clindamycin PO4 inj. 150 mg/ml	Lemmon
Clonazepam tabs 0.5, 1, 2 mg	PharmBasics
CPM/PE/Pyrilamine tannates susp	Luchem
CPM/PE/Pyrilamine tannates tabs	Invamed
Cyanocobalamin inj. 100, 1000 mcg/ml	Steris
Cyclacillin tabs 250, 500 mg	Biocraft
Cyclopentolate ophth soln 1%	Paco
Dexamethasone ophth susp 0.1%	Steris
Dexamethasone/neomycin/polymyxin B ophth	Paco
Diazepam inj. 5 mg/ml	Lemmon
Digoxin elixir 0.05 mg/ml	Roxane
Doxepin caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Doxycycline tabs 100 mg	Pharbita
Erythromycin ER caps 250 mg	AmerTher
Fluocinonide cream 0.01, 0.025%	G&W
Fluocinonide oint 0.025%	G&W
Fluocinonide solution 0.05%	Barre
Folic acid tabs 1 mg	Charlotte
Gentamicin ophth soln 3 mg/ml	Paco
Haloperidol lactate inj. 5 mg/ml	Lemmon
Homatropine HBr ophth soln 5%	Paco
Hydrocodone/APAP tabs 5/500	Charlotte
Hydrochlorothiazide oral soln 50 mg/5 ml	PharmBasics
Hydrocodone/APAP caps 5/500	Luchem
Hydroxocobalamin inj. 1000 mcg/ml	Steris
Ibuprofen tabs 400 mg	Pharbita
Ibuprofen tabs 400, 600, 800 mg	Invamed
Indomethacin caps 25, 50 mg	Danbury
Indomethacin ER caps 75 mg	Inwood
Iodinated glycerol liquid 60 mg/5 ml	Duramed
Iodinated glycerol tab 30 mg	Anabolic
Loperamide caps 2 mg	Mylan
Lorazepam tabs 0.5 mg	PharmBasics
Methadone solution, 10 mg/ml	Roxane
Methyldopa/HCTZ tabs 250/15, 250/25	Invamed
Metoclopramide inj. 5 mg/ml	Lemmon
Metoclopramide tabs 10 mg	Invamed
Metoclopramide tabs 10 mg	Sidmak
Minocycline caps 100 mg	Danbury
Naphazoline 0.025%/pheniramine 0.3% ophth	Steris
Nifedipine caps 20 mg	Purepac
Oxazepam caps 10, 15, 30 mg	Danbury
Pancrelipase caps	Anabolic
Pancrelipase tabs	Anabolic
PE, PPA Guaifenesin caps 5/45/200	Duramed
Phenylephrine HCl ophth soln 2.5%	Paco
Phenylephrine/PPA/Guaifenesin liquid	Luchem
Pilocarpine HCl ophth soln 1, 2, 4, 6%	Ocumed, Paco
Potassium bicarb. efferv. tabs 25 mEq	CFH
PPA/PE/CPM/phenyltoloxamine ER tabs	PharmBasics
Prazepam caps 20 mg	PharmBasics
Prazosin caps 1, 2, 5 mg	AmerTher
Prazosin caps 1, 2, 5 mg	Chelsea
Prazosin caps 1, 2, 5 mg	Mylan
Prednisolone acetate ophth soln 1%	Paco
Procainamide ER tabs 500 mg	Invamed
Propranolol ER caps 60, 80, 120, 160 mg	Inwood
Propranolol soln 20 mg/5 ml, 40 mg/5 ml	PharmBasics
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Invamed
Pyridoxine inj. 100 mg/ml	Steris
Ritodrine inj. 10 mg/ml, 15 mg/ml	TEVA
Salsalate tabs 500, 750 mg	Invamed
SMZ/TMP for inj. 80/16/ml	Lemmon
Sulfacetamide sodium ophth soln 10%	Paco
Temazepam caps 15, 30 mg	Duramed
Tetracaine ophth soln 0.5%	Paco
Thiamine inj. 100, 200 mg/ml	Steris
Thiothixene caps 20 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Mylan
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Timolol tabs 5, 10, 20 mg	Chelsea
Tobramycin ophth soln 0.3%	Paco
Trazodone tabs 150 mg	Chelsea
Tropicamide ophth soln 1%	Paco
Verapamil tabs 40 mg	Purepac
Vincristine inj. 1 mg/ml	TEVA

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administrative Manual

New Jersey Care . . . Special Medicaid Programs Manual

Presumptive Eligibility

Proposed Amendments: N.J.A.C. 10:49-1.1 and 1.2; 10:72-6.1 and 6.3

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b, and c, 30:4D-12, and Section 1920 of the Social Security Act.

Proposal Number: PRN 1989-353.

Submit comments by August 2, 1989 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 1920(a) of the Social Security Act, established by the Omnibus Budget Reconciliation Act of 1986, provides that states may implement an expedited process of enrolling eligible pregnant women in the Medicaid program. This process is known as presumptive eligibility. Presumptive eligibility for pregnant women was implemented in New Jersey as a result of the enactment of P.L.1987, c.115. Services for presumptively eligible women are limited under the Federal statute to ambulatory prenatal services until such time as the woman's Medicaid eligibility is confirmed by the county welfare agency or board of social services.

As originally enacted, the Federal law further restricted services for presumptively eligible women to those provided by a "qualified provider", that is one who is certified by the Division of Medical Assistance and Health Services as meeting certain criteria and as capable of making the eligibility determinations. Therefore, the implementing State rules restricted the provision of services to presumptively eligible women to those available from the provider which determined her to be eligible. This had the effect, in some cases, of limiting access to necessary ambulatory services. For instance, should the woman's qualified provider not be licensed to dispense pharmaceuticals, Medicaid would not reimburse for drugs deemed necessary for the woman's prenatal care.

The Medicare Catastrophic Coverage Act of 1988 amended Section 1920(d) of the Social Security Act to provide that presumptively eligible women could receive ambulatory prenatal care at any provider approved under the State's Medicaid State Plan. This amendment requires that the Department modify its rules so as to allow for reimbursement for qualifying services provided by any Medicaid approved provider.

The Department's existing policy of limiting services during the presumptive eligibility period required little in the way of administrative control. Because the services were limited to one provider, the county welfare agency was able to advise the provider that the case had been accepted for eligibility. This also facilitated the prompt notification to the provider that the woman was no longer eligible for presumptive eligibility services in the event that the county agency determined the woman to be ineligible for regular Medicaid benefits. In order to assure access to all providers during their presumptive eligibility period, the Division has deemed it necessary to issue special annotated Medicaid eligibility cards to identify the presumptively eligible woman.

Should a presumptively eligible woman be determined ineligible for ongoing Medicaid benefits by the county welfare agency, her eligibility for services ends on the day of that determination. This contrasts with regular Medicaid eligibility which provides that eligibility for services ends the last day of the month of such a finding of ineligibility. For this reason, the Department has decided, in order to protect the providers of services to presumptively eligible women, to provide a presumptive eligibility hot-line. Under these proposed amendments, providers will be required to validate current presumptive eligibility to ascertain if Medicaid will reimburse for those services.

Social Impact

The proposed amendments will provide greater access to prenatal medical care for pregnant women determined presumptively eligible. Because the medical care and service providers will have assurance that Medicaid eligibility exists and, therefore, reimbursement will not be an issue, they will be more likely to provide that care or service. The greater availability of prenatal care may contribute to more favorable birth-outcome including high birth-weight deliveries and healthier babies.

Economic Impact

It is estimated that any increased expenditure for prenatal services during the presumptive eligibility period will be minimal. Many of the qualified providers currently participating in the program already provide a broad array of medical services. Only to the extent that a pregnant woman requires Medicaid-covered services not available from her qualified provider would expenditures increase. It is anticipated that any increase in the overall expenditure under presumptive eligibility will ultimately result in a decrease in long-term Medicaid expenditures as a consequence of savings realized by the reduced medical needs of healthier babies.

There is no cost to the patient for any services provided during the presumptive eligibility period which are reimbursed by Medicaid.

Regulatory Flexibility Analysis

No medical provider is required to participate in the presumptive eligibility process nor accept presumptively eligible pregnant women as patients. Participation is wholly at the option of the provider.

Some of the providers which elect to participate in this process may be categorized as small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the amendments would require that a provider of services, in order to ensure Medicaid reimbursement, contact a special hot-line to verify current presumptive eligibility, that additional effort will preclude rejection of claims for rendered services because of an expiration of eligibility which would otherwise be unknown to the provider.

The Department has made every attempt to minimize paperwork and other administrative processes associated with this expansion of providers that may be reimbursed during the presumptive eligibility period. The requirements of these amendments are the minimum necessary for the Division of Medical Assistance and Health Services, as well as the county welfare agencies, to properly ensure the integrity of the Medicaid billing system and to meet the Federal requirements for matching funds.

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

10:49-1.1 Who is eligible for Medicaid

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

(d) Exception to eligibility: The following are exceptions to the eligibility process:

1. (No change.)

2. HealthStart—Comprehensive Maternity Care Services: Approved HealthStart Maternity Care Providers (independent clinics and hospital outpatient departments) may determine presumptive eligibility for pregnant women who require **ambulatory prenatal** services **from Medicaid participating providers**. (See N.J.A.C. 10:49-1.3 and 3.1).

(e) To apply for benefits: If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient, or his[/]**or** her representative, to apply for benefits through the county welfare agency/board of social services for programs such as Aid to Families with Dependent Children, Medicaid Only, Optional Categorically Needy (New Jersey Care[-] ... Special Medicaid Programs) for pregnant women and children up to the age of two, or for Medically Needy; to the Social Security Administration for Supplementary Income benefits for the aged and disabled; or, in certain cases, to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination. If it is not known which agency is responsible for determining eligibility or which program might be applicable, the Medicaid District Office can be of assistance. (See Appendix A).

1. (No change.)

2. Presumptive Eligibility—Health Start Comprehensive Maternity Care providers: Independent clinics and hospital outpatient departments, if so designated, may determine "presumptive eligibility" for pregnant women who require **ambulatory prenatal** services from [such a] **Medicaid participating** providers. (See N.J.A.C. 10:49-1.3 and 3.1)

10:49-1.2 How to identify a [covered person] **Medicaid recipient (an eligible person).**

Note: (No change in text.)

(a) An HSP (Medicaid) Case Number [, as currently assigned,] consists of 12 digits**, which includes a two digit individual Person Number**.

1.-2. (No change.)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designated the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—Aged (65 years of age or older)—SSI related and Optional Categorically Needy (OCN) [eligible individuals] (**New Jersey Care ... Special Medicaid Programs**).

15—Aged—Medically Needy [related] (**65 years of age or older**).

20—Disabled (under 65 years of age)—SSI related and Optional Categorically Needy (OCN) [eligible individuals] (**New Jersey Care ... Special Medicaid Programs**).

25—Disabled—Medically Needy [related] (**under 65 years of age**).

30—Aid to Families with Dependent Children (AFDC and Optional Categorically Needy (**OCN**) (New Jersey Care[-] ... Special Medicaid Programs **for** pregnant women and **their** children[)]; **and presumptively eligible pregnant women are included in this category**).

35—[AFDC] Medically Needy [related] **Families with Dependent Children**.

50—Blind—SSI [related] and Optional Categorically Needy (**New Jersey Care ... Special Medicaid Programs**).

55—Blind—Medically Needy [related].

60—Children [in Foster Care] **(under supervision of the Division of Youth and Family Services (DYFS)**.

70—Medical Assistance for Aged—A New Jersey State Program.

80—Refugee Program.

4.-6. (No change.)

(b) There are four forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of **the following:** The Department of Human Services "Medicaid-ID (FD-152)[,]; "Medicaid Eligibility Identification Card" (FD-73/178)[,]; **"Validation for HSP"** ["](DYFS 16-36["]); or "Validation of Eligibility" (FD-34).

1. (No change.)

2. "Medicaid Eligibility Identification Card" (MEI Card) (FD-73/178) (See Exhibit II for the regular Medicaid Program MEI Card and Exhibit V for the Medically Needy Program MEI Card at the end of this section.)[: This card]

i. The MEI Card is issued monthly, [or] quarterly, **or for a 45 day period** depending on the basis of the recipient's eligibility[.] **as follows:**

(1) The MEI Card is issued monthly to individuals (aged, blind, and disabled) determined by the Social Security Administration to be eligible for Supplemental **Social** Security Income (SSI)[,];

(2) [monthly] **Monthly** to individuals determined by the county welfare agency or board of social services to be eligible in the Optional Categorically Needy Program (New Jersey Care[-] . . . Special Medicaid Programs);

(3) [monthly] **Monthly** to individuals in the Special Status Program [see (b)2v below and];

(4) [monthly] **Monthly** to individuals determined by the county welfare agency or board of social services to be eligible in the Medically Needy Program [see (b)2vi below).];

(5) [It is issued quarterly] **Quarterly** for Medicaid eligible children under the supervision of the Division of Youth and Family Services (DYFS)[.]; **and**

(6) For a 45 day period for presumptively eligible pregnant women.

Renumber i. through vi. as **ii. through vii.** (No change in text.)

viii. When the MEI Card is issued to a presumptively eligible pregnant woman, the following message will be printed on the top of the card: "Presumptively eligible pregnant woman, call 1-800-xxx-xxxx to verify eligibility." The provider must call this number to verify the presumptive eligibility status prior to the delivery of ambulatory prenatal service. (See Exhibit VI at the end of this section.)

3.-4. (No change.)

EXHIBIT I THROUGH V (No change.)

CHAPTER 72
NEW JERSEY CARE[-] . . . SPECIAL MEDICAID PROGRAMS MANUAL

SUBCHAPTER 6. PRESUMPTIVE ELIGIBILITY

10:72-6.1 Scope

(a) [Presumptive] **The presumptive** eligibility [provides] **determination makes it possible for a pregnant woman to receive** ambulatory prenatal care [to pregnant woman] from [a qualified] **a Medicaid participating** provider for a period not to exceed 45 calendar days. Presumptive eligibility continues until the county welfare agency reaches its formal eligibility determination as follows:

1. and 2. (No change.)

(b) (No change.)

10:72-6.3 Responsibility of the county welfare agency

(a) Upon the receipt of a Certificate of Presumptive Eligibility together with the Medicaid application from a qualified provider, the county welfare agency shall:

1.-2. (No change.)

3. Within five working days of the receipt of a completed Certification of Presumptive Eligibility, notify the qualified provider of the pregnant woman's Medicaid identification number **and issue to the presumptively eligible pregnant woman a Medicaid eligibility card which identifies the woman's presumptive eligibility status;**

4.-7. (No change.)

(b) (No change.)

Exhibit VI

STATE OF NEW JERSEY
DEPARTMENT OF
HUMAN SERVICES
DIVISION OF
MEDICAL ASSISTANCE
AND
HEALTH SERVICES

MEDICAID ELIGIBILITY IDENTIFICATION CARD 0955407

**Presumptively Eligible
Pregnant Woman, Call
1-800-XXX-XXXX to
Verify Eligibility**

ADDITIONAL HEALTH INSURANCE *

HSP (MEDICAID) CASE NO. PERSON NO.

VALID FROM TO

SOC. SEC. ACCT. NO. DATE OF BIRTH

FD-73/178 (REV. 10/83)

VOID

USE THIS CARD WHEN YOU NEED MEDICAL SERVICES

RECIPIENT'S SIGNATURE

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual

Proposed Readoption: N.J.A.C. 10:65

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(12) (17), 7, 7a, b, c.

Proposal Number: PRN 1989-331.

Submit comments by August 2, 1989 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Medical Day Care Services Manual (N.J.A.C. 10:65) expires on November 5, 1989. The Division of Medical Assistance and Health Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable, and responsive to the purpose for which they were originally promulgated. The readoption of both subchapters is necessary because they describe the conditions of provider participation, scope of reimbursement, and billing procedures.

A "Medical Day Care Center" is defined "as an identifiable part of a long term care facility, or a hospital affiliated facility, or a free standing ambulatory care facility, or such other facility which is licensed by the New Jersey State Department of Health to provide non-residential medical day care services, which possesses a valid and current provider agreement from the New Jersey Division of Medical Assistance and Health Services and which provides service as described in this Manual . . ."

The Medical Day Care Program is designed to provide an alternative to total institutionalization. It provides medically supervised, health related services in an ambulatory care setting to persons who do not require 24 hour inpatient institutional care, yet, due to their physical and/or mental impairment, need health maintenance and restorative services to support their living in the community. In order for an individual to qualify for medical day care services, he or she must be financially eligible for Medicaid and, in addition, obtain prior authorization from the Division of Medical Assistance and Health Services.

The chapter has been amended since the last readoption. The time frame for making appropriate findings by medical and social service staff was standardized to require an entry at least every 90 days. Entries can be made more often depending on the patient's condition. The patient's individual plan of care must also be updated every 90 days (see R.1987 d.363 at 19 N.J.R. 1645(a)).

The reference to timely claim submittal was amended to refer medical day care providers to standardized references in the Administration Manual. This was accomplished by amending N.J.A.C. 10:65-2.2 to refer the reader to N.J.A.C. 10:49-1.12. The current standard for non-institutional providers is that a claim must be submitted one year from date of service. If there are several dates of service on the claim form, the claim must be submitted within one year from the earliest date of service. The one year time frame for claim submittal by Medicaid providers is a Federal requirement (42 CFR 447.45(d)) (see R.1987 d.408 at 19 N.J.R. 1800(a)).

The definition of "Medicaid Eligibility" in N.J.A.C. 10:65-1.2 was amended to include Medically Needy as a category of eligible persons who could receive medical day care services (see R.1986 d.236 at 18 N.J.R. 1287(a)).

This chapter is not being amended on readoption. The Division believes the current text of the chapter is sufficient for the purposes of administering the medical day care program.

Social Impact

The chapter has enabled persons to receive health maintenance and restorative services while residing in the community. Since the same social conditions exist, the rules should be continued.

The chapter impacts on Medicaid patients who require these services. The providers that are primarily affected by the rules are medical day care centers, which may be free standing, part of a long term care facility, or hospital affiliated.

Economic Impact

The Division of Medical Assistance and Health Services spent approximately $6,017,000 (Federal-State share combined) in State Fiscal Year 1989.

Providers of medical day care centers are reimbursed on a per diem basis.

There is no cost to the Medicaid patients.

Regulatory Flexibility Analysis

Medical day care providers, hereinafter referred to as "providers," might be considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, because some may employ less than 100 full-time employees. However, the requirements contained in the Medical Day Care Manual apply equally to all providers participating in the New Jersey Medicaid Program. Providers are required to keep certain records regarding patient care and patient activities, including, but not limited to, an individualized plan of care, medical history, and nursing assessment which must be completed at least every 90 days following admission. Providers are also required to maintain sufficient records to enable correct and accurate billing within the prescribed time frames. This proposed readoption does not impose any additional reporting, record keeping, or other compliance requirements.

No differentiation in requirements based on business size is necessary or required because the records which providers are required to maintain are necessary for the health, safety and general welfare of the Medicaid patients receiving services in medical day care centers. In addition, providers are required by law to maintain sufficient records to fully document the name of the patient being treated, dates and nature of services, etc. (see N.J.S.A. 30:4D-12).

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:65.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual
Prior Authorization

Proposed Amendment: N.J.A.C. 10:66-1.5

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(3); 30:4D-7,7a, b, and c; 30:4D-12.

Proposal Number: PRN 1989-346.

Submit comments by August 2, 1989 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposed amendment concerns prior authorization for mental health services provided by independent clinics.

The Division of Medical Assistance and Health Services' (the Division) current policy is to require independent clinic providers to request and obtain prior authorization for partial hospitalization and partial care services when the provider has rendered $600.00 in services to a Medicaid patient.

The $600.00 figure is being increased to $800.00. Clinic providers will be able to render $800.00 in services (to a Medicaid patient) before obtaining prior authorization.

The Division is making this change as the result of a fee increase that was adopted as R.1988 d.481. The notice of adoption appeared in the October 17, 1988 issue of the New Jersey Register at 20 N.J.R. 2576(a).

The increase in the maximum fee allowance resulted in the prior authorization threshold occurring sooner than was anticipated under the existing rule. Therefore, this proposed amendment is designed to restore the rule to its original intent. Independent clinic providers would be able to render the same limited amount of partial care services prior to obtaining Division approval.

The term "partial hospitalization" is being deleted because the term is no longer appropriate for an independent clinic setting. Those clinics that provide mental health services are rendering partial care services, not partial hospitalization.

Social Impact

The proposed amendment impacts on Medicaid patients who require mental health services in a community setting.

The increase in the prior authorization amount should enable these patients to receive medically necessary services. There is no change in the service package.

This amendment impacts on independent clinic providers who are already required to obtain prior authorization. This increase in the threshold figure should facilitate the delivery of initial treatment and services. Clinic providers will be required to obtain prior authorization once the $800.00 figure has been reached.

Economic Impact

There should be no economic impact associated with this proposed amendment. There is no change in the fee for partial care services.

There is no cost to the Medicaid patient for independent clinic services. There should be virtually no economic impact on clinic providers who will be reimbursed according to existing Medicaid policies, procedures, and fee schedules.

Providers will be reimbursed for correctly and timely submitted claims. One element of correct claim submittal is including the notice of prior authorization with the claim once the dollar threshold has been reached.

Regulatory Flexibility Analysis

The rule basically requires independent clinic providers to obtain prior authorization from the Division when the threshold amount is reached, and to submit a copy with the claim in order to obtain reimbursement. The prior authorization requirement is already in existence. Therefore, this amendment does not impose any additional reporting, recordkeeping, or other compliance requirements.

In addition, Medicaid providers are required by law to maintain sufficient records to fully disclose the name of the recipient to whom the service was rendered, the date and nature of the service, etc. (N.J.S.A. 30:4D-12).

There are no capital costs associated with this amendment. This amendment is designed to minimize any adverse economic impact on small businesses by possibly reducing the number of requests for prior authorization.

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

10:66-1.5 Prior authorization

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

(c) Prior authorization for services rendered by independent clinics is required as follows:

1.-2. (No change.)

3. Mental health services [including partial hospitalization and partial care], exceeding [$600.00] **$800.00** in payments to an independent clinic in any 12-month period, commencing with the patient's initial visit. The maximum period of authorization is six months for [partial hospitalization and] partial care and one year for other mental health services. Additional authorizations may be requested.

4.-5. (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Proposed Readoption with Amendments: N.J.A.C. 10:81

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3, 45 CFR 206.10(a)9iii and 45 CFR Parts 400 and 401.

Proposal Number: PRN 1989-294.

Submit comments by August 2, 1989 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 10:81 will expire on October 15, 1989. The readoption of the rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption, if such notice is filed on or before the expiration date. The concurrent amendments to the existing rules become effective upon publication in the Register of a notice of adoption.

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66 (1978), the Department of Human Services proposes to readopt N.J.A.C. 10:81. The proposed readoption includes amendments to N.J.A.C. 10:81-1 through 5, 7, 8, 10 through 12, and a new subchapter 13.

The Family Support Act of 1988 (Public Law 100-485) will necessitate a complete review of this chapter upon publication of final Federal regulations implementing the provisions of that Act. Those changes will be proposed separately in order to avoid expiration of the current rule as amended pursuant to Executive Order No. 66.

A summary of the text of current subchapters of N.J.A.C. 10:81 as well as an explanation of important amendments to those subchapters which have been proposed since the last readoption are presented as follows:

N.J.A.C. 10:81-1 includes a general overview of the various public assistance programs available to residents of New Jersey. It outlines the basic principles upon which the administration of public assistance is based. The unimpeded right to apply for assistance is affirmed, as is the applicant's eligibility for immediate assistance if need is apparent and eligibility otherwise exists. The principles of ensuring confidentiality of information and nondiscrimination in the administration of public assistance are outlined at N.J.A.C. 10:81-1.6 and 1.7. Rules pertaining to the right of the client to appeal welfare agency actions, adherence to Federal and State law in the administration of public welfare and nonduplication of financial assistance are detailed at N.J.A.C. 10:81-1.8, 1.9, 1.10 and 1.11.

N.J.A.C. 10:81-2 describes the steps to be followed by the income maintenance worker in determining an applicant's eligibility to receive public assistance. The application process begins with an individual's initial contact with the agency and ends with a decision by the county welfare agency (CWA) as to eligibility for Aid to Families with Dependent Children (AFDC). Both the applicant and the income maintenance worker have an affirmative responsibility to verify and document eligibility.

Verification of facts essential to eligibility is required in all segments (-C, -F, and -N) of the AFDC program. Eligibility for AFDC is based upon criteria relevant to each segment. During the initial contact, it is explained to the client what forms must be signed, what programs (services and assistance) the family may be eligible for, and what other pertinent requirements have to be met in order to qualify for AFDC. If immediate need is apparent and the applicant appears to be eligible, the initial assistance payment is issued based upon presumptive eligibility. If immediate need is not apparent, the assistance payment is issued as soon as eligibility is verified. Subchapter 2 also provides a general explanation as to which applicants/recipients are required to register with the State Employment Service.

The CWA is responsible for referring appropriate AFDC-C and -F segment recipients for registration and possible placement in employment or training. That procedure is detailed at N.J.A.C. 10:81-3, however, N.J.A.C. 10:81-2.8 provides an explanation as to how an applicant or recipient in the AFDC-C and -F segments is registerd (that is, forms used, referral procedures, appointments, and so forth).

N.J.A.C. 10:8-3 details AFDC program eligibility requirements which must be considered. Such factors include, but are not limited to, the age of children, status of parents, determination of eligibility under one of the three segments, work/training requirements and penalties for failure to comply, residence, deprivation of parental support or care (AFDC-C), determination of incapacity and legally responsible relatives.

Additionally, procedures to be followed concerning individuals who are pending release from an institutional facility (medical, mental, or correctional) are addressed. Those procedures have been established to govern relationships between CWAs and the several State institutions. N.J.A.C.

10:81-3.38 through 3.46, includes a definition of potential resources; addresses assignment and transfer of resources, provides guidelines concerning their liquidation and establishes repayment requirements.

N.J.A.C. 10:81-4 deals with the various ways assistance grants may be issued. It identifies those persons authorized to receive assistance payments as payees on behalf of an eligible family and the conditions under which such persons are selected. Payment classifications include benefits issued to a designated payee, temporary payee, protective payee, and representative payee. Rules pertaining to voluntary restrictive payments are presented at N.J.A.C. 10:81-4.5(b). That subchapter also includes delineation of the condition and length of time for which assistance grants may be suspended, and establishes policy pertaining to situations for which overpayments may be recovered.

N.J.A.C. 10:81-5 provides CWAs with procedures for periodic evaluation of ongoing assistance eligibility. Eligibility factors evaluated during a personal interview include financial eligibility, county residency, and the age and school atttendance of the eligible children. Procedures for evaluating whether deprivation of parental support and care by at least one parent continues to exist in the AFDC-C segment of the program, by virtue of absence or incapacity, are also presented. Requirements for reevaluation of legally responsible relatives' capacity to support are also outlined.

N.J.A.C. 10:81-6 encompasses rules and procedures concerning fair hearing requests. The recipient's right to a fair hearing and administrative review is defined, as well as the responsibilities of the CWA, the Division of Public Welfare and the Office of Administrative Law, when there is a request for a fair hearing. Rules pertaining to time limitations on hearing rights, continued assistance, evidence discovery, representation, disposition of appeals and emergency fair hearings are also set forth.

N.J.A.C. 10:81-7 describes vital CWA administrative responsibilities which indirectly relate to the determination of program eligibility or assistance entitlement. Responsibilities include the following significant areas: timely and adequate notification requirements concerning agency actions; retention, transfer and disposal of case records; issuance of photo-identification cards; replacement of lost or stolen assistance checks; CWA participation in burial and funeral expenses; requirements for safeguarding of information concerning applicants for and recipients of assistance; rules ensuring that nondiscrimination prevails in the administration of public assistance benefits, and procedures to be followed when the CWA suspects fraudulent receipt of assistance.

N.J.A.C. 10:81-8 is a compilation of procedures concerning referral to and verification of benefits issued through other programs for which recipients of AFDC may be entitled. Futher, that subchapter addresses services available through the Medicaid program administered by the Division of Medical Assistance and Health Services. The process by which CWAs are to determine Medicaid entitlement for certain persons who do not automatically receive Medicaid because of their ineligibility for cash assistance under AFDC is described. The subchapter also provides for continued Medicaid eligibility extension periods beyond the point where families become ineligible for AFDC cash assistance.

N.J.A.C. 10:81-9 provides definitions of terms and acronyms, in alphabetical order.

N.J.A.C. 10:81-10 provides rules for the administration of the Refugee Resettlement Program. That program, which is federally funded, is designed to meet the special needs of refugees.

N.J.A.C. 10:81-11 is a compilation of rules and procedures pertaining to establishing paternity and enforcing child support obligations in accordance with P.L. 93-647 which established Title IV-D of the Federal Social Security Act. The same services are made available to non-public assistance cases.

N.J.A.C. 10:81-12 sets forth rules and procedures under which New Jersey participates in a four-year, Federally-sponsored demonstration project in the cities of Newark and Camden to address the problems of teenage pregnancy and welfare dependency. The program, in which participation is mandatory, provides for educational or job training, job search, child care, transportation and establishment of paternity and child support obligations.

N.J.A.C. 10:81-14 contains the rules and procedures for the administration of the Realizing Economic Achievement (REACH) program. The REACH program was developed to interdict the cycle of welfare dependency by providing, in the initial stages of the program, many types of educational and job training options to new AFDC recipients. Other program services include child care, transportation, vocational assessment, job placement and continued medical benefits after employment has been achieved. After the program's start-up period, all parents in households where the eligible children are over two years of age will be mandatory REACH participants unless exempt because of specific physical, situational or mental limitations.

N.J.A.C. 10:81 Appendix A contains the "REACH Family Day Care Home Approval Checklist" used in the approval process for family day care providers registered pursuant to the Family Day Care Provider Registration Act.

N.J.A.C. 10:81 Appendix B contains the text of an Agreement of Cooperation between the Division of Vocational Rehabilitative Services, the Division of Youth and Family Services and the Division of Public Welfare. The agreement identifies the specific responsibilities of each agency with respect to the provision of various services to eligible persons.

N.J.A.C. 10:81 Appendix C is a compendium of forms which are used in conjunction with the administration of the AFDC program.

The following is a summary of rulemaking since October 15, 1984:

N.J.A.C. 10:81-2.7(d) was amended to provide specific procedures to establish the absence of a parent from the home for purposes of satisfying the AFDC-C eligibility requirement of deprivation of parental suppport or care.

N.J.A.C. 10:81-3.12(a) was amended to provide instructions for the inclusion of a parent-minor and his or her child in a single filing unit when the parent-minor and child live with one or both of the parent-minor's natural parents who are themselves AFDC recipients.

N.J.A.C. 10:81-3.18(b)2ii(6) and 3.18(b)4 were amended to provide criteria for a WIN program exemption for the caretaker relative.

N.J.A.C. 10:81-3.18(k) was amended to provide expanded employment record criteria to qualify for AFDC-F eligibility.

N.J.A.C. 10:81-3.34(a) was amended to provide procedures for review of situations where a child is temporarily absent from the home for non-institutional reasons.

N.J.A.C. 10:81-3.38(c)6 was amended to preclude an applicant for AFDC from waiving child support rights to qualify for assistance, without good cause.

N.J.A.C. 10:81-5.2 was amended to provide expanded criteria for periodic redetermination requirements.

N.J.A.C. 10:81-7.1 was extensively modified to provide more exacting criteria for the content of the notice to the client concerning CWA decisions and actions.

N.J.A.C. 10:81-7.21 through 7.29 was extensively revised to provide new criteria for CWA participation in the payment of funeral and burial expenses.

N.J.A.C. 10:81-8.22 was extensively revised to provide expanded criteria of extension of Medicaid benefits beyond the point where the family becomes ineligibile for cash benefits.

N.J.A.C. 10:81-11.2 was amended to provide child support enforcement services to non-AFDC recipients.

N.J.A.C. 10:81-11.3(e) was added to require that applicants and recipients of Medicaid benefits obtain a Social Security number.

N.J.A.C. 10:81-11.7(a) was expanded to provide procedures in cases when child support payments are seriously in arrears.

N.J.A.C. 10:81-11.9(i)10 was revised to provide procedures for the garnishment of various income tax refunds and rebates for cases in which child support is in arrears.

N.J.A.C. 10:81-11.12 was expanded to provide continued child support service to families that lose AFDC eligibility.

N.J.A.C. 10:81-18 provides new child support guidelines as established by the New Jersey Supreme Court Rule 5:6A.

As a result of the continuous review process, the following changes are being addressed as part of the proposed readoption of N.J.A.C. 10:81.

Amendments at N.J.A.C. 10:81-1.1 include changing the title from "Principles" to "Purpose and Scope" and recodifying subsection (e) as subsection (a) to clarify the purpose and scope of the chapter.

Amendments at N.J.A.C. 10:81-1.11(a)1i clarify the description of the AFDC-C segment.

Cuban/Haitian Program information is being deleted at N.J.A.C. 10:81-1.11(a)2 as that program is no longer in existence.

A new paragraph was added at N.J.A.C. 10:81-1.11(a)2 which contains information concerning the Realizing Economic Achievement (REACH) program which is the AFDC education, training and employment program.

New language was also added at N.J.A.C. 10:81-1.11(b) to reflect that the Division will routinely prepare informational material for non-English speaking applicants.

Language concerning REACH participation of the individual has been added as part of AFDC eligibility requirements at N.J A.C. 10:81-2.1(a).

The amended rule at N.J.A.C. 10:81-2.2(a)8 establishes that CWAs are required to provide an overview of REACH to each applicant; determine potential eligibility for and exemptions from participation in that program; refer applicants/recipients for REACH orientation; and perform other related functions concerning the REACH program.

N.J.A.C. 10:81-2.3(a) was updated to reflect current title of Form PA-1J, Application and Affidavit for Public Assistance. In addition the rule is being amended with new language at N.J.A.C. 10:81-2.3(c) to reflect that a written declaration or citizenship/legal alien status must be obtained as a condition of eligibility for AFDC-C or -F, AFDC-related Medicaid and food stamp benefits.

The amendment at N.J.A.C. 10:81-2.5 deletes a reference to the obsolete "CODES" system and replaces it with the current Family Assistance Management Information System (FAMIS). References to "CODES" are being replaced with "FAMIS' in various sections of the chapter.

N.J.A.C. 10:81-2.6 is being amended to delete reference to the obsolete Aid to Families of Working Poor (AFWP) program. The eligibility criteria table at N.J.A.C. 10:81-3.1 is being deleted as the table is general and informational and not a rule.

The amendment at N.J.A.C. 10:81-3.5(b)2 establishes that verification of Social Security benefits may be accomplished through use of the Automated Benefit Information Exchange (ABIE)/Beneficiary and Earnings Data Exchange (BENDEX) and/or through use of the Third Party Query (TPQY) system.

N.J.A.C. 10:81-3.6 is being updated to reflect current title of Form PA-1J, Application and Affidavit for Public Assistance.

The amendment at N.J.A.C. 10:81-3.9(c) clarifies that individuals applying for "AFDC-related Medicaid" must be citizens or legally admitted aliens in order to be eligible for those benefits.

The amended rule at N.J.A.C. 10:81-3.9(c)1 establishes that proof of citizenship or legal alien status is a condition of eligibility and must be provided by the applicant for verification with the United States Immigration and Naturalization Service. As a condition of eligibility a signature attesting to citizenship/legal alien status must be provided for each eligible member before benefits can be issued.

Only those members for whom there is a signature attesting to citizenship/legal alien status are eligible to receive benefits. The needs of ineligible members are not considered when determining eligibility and benefits for the remaining family members. Income and resources of those ineligible individual(s) who are parents of otherwise eligible children is considered available to the eligible family and is calculated in accordance with the stepparent deeming rules at N.J.A.C. 10:81-2.9.

The amended rule at N.J.A.C. 10:81-3.9(c)2 clarifies that individuals not meeting the criteria for legal alien status are not subject to the alien verification requirements and may be eligible for benefits under the AFDC-N segment.

In addition, the proposed amendment at N.J.A.C. 10:81-3.9(c)3 adds language to provide that individuals granted lawful temporary resident status as a result of the Immigration Reform and Control Act of 1986, section 245A, be disqualified from AFDC-C and -F segment programs for a period of five years from the effective date of that status.

The expanded rule at N.J.A.C. 10:81-3.9(c)4 also provides that Cuban and Haitian entrants, who have resided in the United States since January 1, 1982, may qualify for immediate permanent resident status and not be subject to the disqualification provision for AFDC-C and -F benefits.

The amended rule at N.J.A.C. 10:81-3.10(a)1 requires that United States citizens or legal aliens applying for food stamps or AFDC-related emergency assistance be subject to the alien verification requirements.

The amendment at N.J.A.C. 10:81-3.12(a) provides that the special deeming rules apply to parents under the age of 18 rather than under the age of 19.

N.J.A.C. 10:81-3.27(a) is being amended to identify specific public assistance programs in which case management and payment must be transferred from one county to the other when a recipient family moves to another county.

In addition, the proposed amendment at N.J.A.C. 10:81-3.27(c) specifies that cases in Medicaid extension are subject to the transfer process in the same manner as active AFDC cases.

The amendment at N.J.A.C. 10:81-3.41(a)1 clarifies rules concerning the recovery of cash assistance granted to an eligible family, including assistance provided to or on behalf of minor children upon liquidation of a claim, interest or settlement when a valid agreement to repay exists.

N.J.A.C. 10:81-4.22(a) is being amended to reflect that the CWA shall provide additional financial assistance during periods of time when the eligible family experiences emergency situations, and adds a cross-reference to N.J.A.C. 10:82-5.10 for policy and procedures concerning emergency assistance. In addition, rules at N.J.A.C. 10:81-4.22(b) and (c) are being deleted because those rules are included more appropriately in N.J.A.C. 10:82.

The amendment at N.J.A.C. 10:81-5.2(b)1 identifies those AFDC cases subject to monthly reporting.

The change at N.J.A.C. 10:81-5.3(b) deletes the obsolete reference to "CODES" and replaces it with the revised reference to "FAMIS".

The rule at N.J.A.C. 10:81-7.29 is being repealed because the provisions for retroactive adjustment payments for funeral expenses are now obsolete, due to time limitation specified in the existing rule.

The amended rule at N.J.A.C. 10:81-7.31(a)4 requires CWAs to cooperate with educational authorities when confirming AFDC eligibility for the purpose of determining the student's eligibility to participate in programs authorized under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966.

The rules at N.J.A.C. 10:81-8.2 have been rewritten in their entirety and establish revised and new procedures for verifying Social Security benefit information and for obtaining additional information from the Social Security Administration through the Third Party Query System.

N.J.A.C. 10:81-8.9 is amended to delete reference to the "Veterans Administration" and replace it with the revised reference to the "Department of Veteran Affairs". In addition N.J.A.C. 10:81-8.9(b)3 is amended to provide that certain persons who were receiving pensions prior to December 1978 and who elected to continue receiving "lower" Veteran's Administration pension amounts to retain AFDC and Medicaid eligibility shall not be required to apply for "improved" or higher pension amounts to which they may be entitled.

The language at N.J.A.C. 10:81-8.9(c)2 is revised to delete the reference to "Human Services" and replace it with "Military and Veteran Affairs".

Language which established CWAs as a source of veterans affairs (benefits and services) information was deleted at N.J.A.C. 10:81-8.9(c)3.

N.J.A.C. 10:81-8.16(d) is being revised to eliminate the listing of Medicaid district offices and refers users to the Division of Medical Assistance and Health Services to obtain the addresses of local Medicaid district offices.

An amendment at N.J.A.C. 10:81-8.22(a) provides that when a family becomes ineligible for AFDC due to receipt of deemed income from siblings, stepparents or aliens sponsor deeming, the Medicaid eligibility of the other eligible family members is to be determined without consideration of the deemed income or resources. In addition, the rule specifies that Medicaid eligibility does not exist for a caretaker relative in cases where, after excluding the child whose income caused the ineligibility, there is no eligible child in the family.

An amendment at N.J.A.C. 10:81-8.22(b)5 requires the exclusion of certain children between the ages 18 and 19 from Medicaid extension, specifically, children between age 18 (not scheduled to graduate by the 19th birth date) and 19 at the beginning of the Medicaid extension and children who become 18 or 19 (who are not scheduled to graduate by the 19th birth date) and "age-out" during the Medicaid extension.

The amendment at N.J.A.C. 10:81-8.22(f) includes Medicaid extension cases in the inter-county transfer process, when the family moves from the county of origin, in the same manner as active AFDC cases.

N.J.A.C. 10:81-10 has been revised in accordance with the Refugee Assistance Extension Act of 1986 (P.L. 99-605). References to the Cuban/Haitian Entrant Program (CHEP) and CODES are being deleted throughout the subchapter, as that information is now obsolete.

The introduction to N.J.A.C. 10:81-10 is being recodified. The purpose of the Refugee Resettlement Program (RRP) and the funding source is reflected at N.J.A.C. 10:81-10.1(a) and (b) respectively as a new N.J.A.C. 10:81-10.1.

N.J.A.C. 10:81-10.1, recodified at N.J.A.C. 10:81-10.2, is amended to delete the definition for a CHEP entrant.

N.J.A.C. 10:81-10.2, recodified at N.J.A.C. 10:81-10.3, is amended to provide that certain Amerasians from Vietnam may be eligible for RRP.

The existing N.J.A.C. 10:81-10.3, concerning immigration statuses for CHEP, is being deleted in its entirety.

Amendments at N.J.A.C. 10:81-10.4 reflect deletion of references to CHEP entrants and revises a cross-reference citation.

N.J.A.C. 10:81-10.5 is being amended to delete specific identification of CHEP case numbering and corresponding program codes. The race coding for the Family Assistance Management Information System (FAMIS) is being updated to reflect current automated procedures. Reference to the obsolete CODES system is being deleted.

Registration and program number indicator procedures at N.J.A.C. 10:81-10.6 are being amended to delete reference to CHEP and CODES, as those procedures and instructions are no longer used in RRP.

N.J.A.C. 10:81-10.7 is being amended to reflect that eligibility for cash assistance under RRP is being reduced from three to two years, at which point, should continued assistance be required, individual(s) may apply for AFDC-N or be referred to municipal welfare departments for benefits under the General Assistance (GA) program. Eligibility during the first 12 month period is determined in accordance with AFDC-C or -F standards and criteria. During the second 12 month period, GA and AFDC-N type cases will have eligibility and assistance payments determined in accordance with GA or AFDC-N criteria, as applicable.

Amendments at N.J.A.C. 10:81-10.7(e) clarify work registration requirements for all refugees and specify that work registration is accomplished through completion of Form PA-54, "Refugee Program Interagency Referral".

The amendment at N.J.A.C. 10:81-10.7(f)2 corrects a typographical error.

The sanctions rule at N.J.A.C. 10:81-10.7(h) is being amended to provide a 10 day conciliation, period prior to the imposition of a sanction, when an eligible adult recipient refuses to accept or continue employment or training. Additionally the welfare agency or refugee may voluntarily terminate that period when either one believes that the dispute cannot be resolved. The applicable sanction period for refusal to continue employment or training is being increased from 30 days to three months for the first refusal and six months for the second and each subsequent refusal.

N.J.A.C. 10:81-10.7(i) is being amended to provide additional exemptions from employment or training requirements when the individual is working 30 hours per week in unsubsidized employment that is expected to last 30 or more days, and an exemption for an individual who is pregnant, if the pregnancy is medically verified and the child is expected to be born in the month of work registration or within the next three months.

N.J.A.C. 10:81-10.8(b) is amended to reflect that a refugee may be eligible for New Jersey's Medically Needy Program and should be referred to that program. In addition, the medical spend-down procedures are being deleted as those procedures are no longer in effect.

N.J.A.C. 10:81-11.3(b) is being amended to delete reference to the term "CODES" and replace it with "FAMIS" and to update reference to the PA-1J to reflect the current title of that form as Application and Affidavit for Public Assistance.

Language at N.J.A.C. 10:81-11.3(c) updates information concerning where CWAs should send completed SS-5 forms.

N.J.A.C. 10:81-11.3(c)3 provides amended procedures for enumeration of alien individuals.

Amendments at N.J.A.C. 10:81-11.3(d) provide updated procedures for verifying Social Security numbers, provided by the eligible family, with the Social Security Administration.

At N.J.A.C. 10:81-12 the term "Teen" as used in the TEEN PROGRESS Program is revised throughout subchapter 12.

The amendment at N.J.A.C. 10:81-12.1(d) allows for the provision of allowances for training-related expenses including transportation, job-related expenses, such as meals, uniforms and similar expenses and client-related expenses determined necessary for participation in the "TEEN PROGRESS" program.

An amendment at N.J.A.C. 10:81-12.3 clarifies existing requirements for participating in "TEEN PROGRESS". In addition, the rule is being amended to specify that TEEN PROGRESS sample participants are not eligible for REACH participation for a period of two years.

Procedures at N.J.A.C. 10:81-12.4 are being amended to include monitoring time frames for individuals identified as exempt or deferred from TEEN PROGRESS.

The rule at N.J.A.C. 10:81-12.5(b) is being revised to reflect that case management functions include follow through on the sanction procedure.

N.J.A.C. 10:81-12.7(b) is amended to clarify that violations of program requirements may result in sanctioning.

An amendment at N.J.A.C. 10:81-12.11 clarifies procedures and policies concerning the sanctioning process. The amended rule clarifies that failure or refusal by the participant to report to ongoing mandatory activities after two notices have been mailed to the recipient will result in a sanction. The amended rule also provides that a sanctioned individual is not entitled to receive training-related expenses, childcare payments or client-related expenses.

N.J.A.C. 10:81-12.12 is being amended to establish that TEEN PROGRESS fathers who are AFDC or GA recipients are required to participate in the demonstration project.

A new subchapter 13 was added to include the Systematic Alien Verification for Entitlements (SAVE) Program requirements.

N.J.A.C. 10:81-13.1 establishes the purpose and scope of the SAVE Program. Specifically, the Department is required to implement SAVE for the purpose of verifying the immigration status of aliens applying for AFDC, AFDC-related Medicaid and food stamps.

N.J.A.C. 10:81-13.2 specifies that each applicant shall, as a condition of eligibility, provide a signed statement of citizenship or legal alien status.

N.J.A.C. 10:81-13.3 establishes the general requirements for citizenship/alien status and specifies the policies and procedures required to comply with the provisions of this subchapter.

N.J.A.C. 10:81-13.4 establishes and sets forth procedures for SAVE documentation requirements.

N.J.A.C. 10:81-13.5 establishes and sets forth procedures for verification of alien status.

N.J.A.C. 10:81-13.6 establishes the general requirements for confidentiality and the fair hearing process, as it relates to verification of immigration status.

Social Impact

The major thrust of any public assistance system is the maintenance of income for those who are unable to provide for themselves. The Public Assistance Manual (N.J.A.C. 10:81), in conjunction with the Assistance Standards Handbook (N.J.A.C. 10:82), provides the rules governing the AFDC program through which assistance is provided to needy families.

Rules concerning the non-financial eligibility requirements for applicants/recipients of AFDC are set forth at N.J.A.C. 10:81. Readoption of the manual will result in the continued equitable determination of eligibility concerning non-financial eligibility factors for all AFDC applicants/recipients. Additionally, the absence of the rules contained herein would cause undue hardship to needy families eligible for AFDC. Taking December 1988 as an average month in which assistance has been granted, records indicate that over 102,800 families received assistance. This includes over 302,000 individuals, 204,000 of which are children. The readoption of these provisions will provide those indivdiuals and families with the availability of public assistance and the knowledge that they will be treated with respect and dignity. The readoption is essential for efficient and effective administration of the AFDC program by the CWAs.

The amended rule which provides that program material will be provided in Spanish, and when necesary in languages other than Spanish, serves to ensure that minority populations will be properly informed about and assisted in applying for benefits to which they may be entitled.

Amendments which reference the REACH Program at N.J.A.C. 10:81-14 are being integrated into other appropriate parts of the chapter to ensure that applicants and recipients are made aware of REACH requirements, as well as that program's services, such as the availability of training, child care benefits and other services provided to enable AFDC families to achieve self-sufficiency.

Amendments concerning the verification of Social Security benefit information updates verification procedures. Use of the revised procedures will expedite the verification process as well as the resolution of conflicting benefit information.

Verification of legal alien status has been a long standing AFDC program requirement. As a result of passage of the Immigration Reform and Control Act (IRCA) of 1986, which requires immigration status verification of alien applicants for Federally funded entitlement programs, the Systematic Alien Verification for Entitlements (SAVE) Program is being implemented by amendments contained in this proposed readoption. Through a centralized data base specifically designed to capture information in Immigration and Naturalization Service records, eligibility workers can verify both alien documentation and status, thus expediting the verification process as well as serving as a strong deterrent to those aliens attempting to gain benefits illegally. As a condition of eligibility for AFDC, AFDC-related Medicaid and food stamps, an applicant is required to sign a statement attesting to the citizenship/legal alien status for each eligible family member before benefits can be issued. Individuals not meeting criteria for legal alien status are not subject to the alien verification requirements and may still be eligible for benefits under the State funded AFDC-N program. These amendments serve to improve the integrity of the Federally funded AFDC, Medicaid and food stamp programs.

Amendments concerning transfer of case management and payment when a family moves to another county clarify the CWA's responsibility to transfer AFDC, AFDC-related Medicaid and Medicaid extension cases in accordance with existing procedures and thereby ensure uninterrupted benefits for eligible families.

The amended rule delineating those AFDC cases subject to monthly reporting clarifies the rule and eliminates the need to refer to N.J.A.C.

10:90 to determine the categories of households subject to monthly reporting requirements. The amendment serves to clarify the existing rule and does not represent a change in policy.

Amendments implementing the decision in *Rosado v. Bowen*, Dkt. No. 86-1766, U.S. District Court, New Jersey, provide for the equitable and legally correct treatment of households as it relates to eligibilty for AFDC and Medicaid. Specifically, that court decision upheld "income deeming" aspects of the filing unit concept for AFDC. That policy requires that, when a child with income is included in the family unit, the grant to the family may be terminated or reduced, depending on the amount of income. However, the court ruled that concept not applicable in the determination of Medicaid eligibility. Medicaid coverage cannot be denied or terminated for other members of the eligible family because of inclusion of the child. Medicaid eligibility for other family members must be determined without consideration of the income of the child causing the ineligibility. In accordance with the rational for the *Rosado v. Bowen* Federal court decision, the Federal Health Care Financing Administration advised that stepparent income and alien sponsor's deeming of income and resources are not to be used in the determination of AFDC-related Medicaid eligibility. Those procedures apply in AFDC cash assistance determinations only. Consequently, families affected by these specific income provisions will remain eligible for Medicaid even if such families lose eligibility for cash assistance. Medicaid eligibility will not, however, exist for a caretaker relative(s) whose only otherwise eligible child has been excluded as a result of the *Rosado* decision.

The current rule concerning eligibility for Medicaid extension specifies that eligibilty for the extension is not available for any individual who, except for income, resources or hours of employment, is not otherwise eligible to receive AFDC. The rule is amended to clarify "otherwise eligible" with respect to AFDC age requirements. The clarification will ensure proper application of policy statewide, with respect to all recipients.

Pursuant to the Tax Reform Act of 1986 (P.L. 99-514), the deeming of income of parents and guardians of adolescent parents is now limited to children under the age of 18 rather than 19, effectively limiting the deeming provisions. Individuals age 18 and older may become eligible for AFDC in the absence of deemed income from their parents.

The rule pertaining to eligibility for emergency assistance (EA) revises the rule to ensure equitable treatment of all families applying for EA and directs the reader to N.J.A.C. 10:82 for current policy and procedures concerning authorization and issuance of EA.

The Refugee Resettlement Program (RRP) is a 100 percent Federally funded program designed to meet the needs of refugees. The Refugee Act of 1980 established procedures for the provision of assistance and services to refugees in the United States. Because of Federally mandated changes in RRP over the past five years, it is necessary to amend subchapter 10 to reflect current Federal policy governing the RRP program. Obsolete material throughout the subchapter, both policies and procedures, are being deleted. The updating of policy and procedures governing RRP will facilitate administration of that program as well as clarify current policy and procedure for potentially eligible refugees.

Amendments to subchapter 12 clarify existing requirements for the Federally approved TEEN PROGRESS Demonstration Project. TEEN PROGRESS, like REACH, provides educational and work related activities but to a target population. The amendment that specifies that TEEN PROGRESS sample participants are not eligible for REACH participation for a period of two years is necessary, in order to accurately evaluate the results of the demonstration. TEEN PROGRESS participants are eligible for all other traditional AFDC services and will be outreached for REACH participation and services at the end of each individual's two-year follow-up period and as REACH becomes available in Camden and Essex counties. It should be noted that the TEEN PROGRESS demonstration is only operative in the cities of Newark and Camden and affects only a very small percentage of the AFDC population. Additionally, failure to adhere to the Federal requirements for the research project could result in the loss of Federal funding for the project.

Other amendments include technical updates, such as cross references and other technical corrections, which clarify rules and improve administration of the AFDC program.

Economic Impact

The proposed amendments to N.J.A.C. 10:81 are expected to have no significant economic impact on the Department, county welfare agencies or recipient families. Readoption is essential for the efficient and effective administration of the AFDC program by the CWAs. Failure to readopt N.J.A.C. 10:81 could, however, result in the loss of Federal financial participation since the regulations are essential for the proper determination of AFDC eligibility requirements. For December 1988, the total of AFDC expenditures was $35.5 million ($17.5 million—Federal, $13.5 million—State and $4.5 million—county).

Regulatory Flexibility Statement

This rule has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, record keeping or other compliance requirements on small businesses. A regulatory flexibility analysis is not required, inasmuch as the rules govern a public assistance program designed to certify eligibility for Aid to Families with Dependent Children program to a low-income population by a governmental agency, rather than a private business establishment.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:81, as amended and supplemented by the New Jersey Register.

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

10:81-1.1 [Principles] **Purpose and scope**

(a) The purpose of this manual is to set forth the policies and procedures necessary for the orderly and equitable provision of public assistance on a Statewide basis. It is binding on the county welfare agencies (CWAs) and enforceable by the Division of Public Welfare. Questions of interpretation will be resolved by the Division of Public Welfare.

Renumber (a)-(d) as **(b)-(e)** (No change in text.)

[(e) This manual sets forth the policies and procedures necessary to the orderly and equitable provision of public assistance on a Statewide basis. It is binding on the county welfare boards and enforceable by the Division of Public Welfare. Questions of interpretation will be resolved by the Division of Public Welfare.]

10:81-1.11 Income maintenance programs

(a) This manual describes policy for the income maintenance programs which are:

1. Aid to Families with Dependent Children, which is composed of three segments:

i. AFDC-C, through which financial assistance is provided for children and their natural or adoptive parents or certain designated relatives with whom they are living, when they are financially eligible and [there is] **deprived of parental support or care by reason of** death, **continued** absence, or incapacity of one or both parents.

ii.-iii. (No change.)

[2. Cuban/Haitian Entrant Program (CHEP), through which financial assistance is provided to individuals who meet the following criteria:

i. Cubans: A citizen of Cuba who either entered or was paroled into the United States after April 20, 1980 and who meets specified eligibility criteria (see N.J.A.C. 10:81-10.3(a)1).

ii. Haitians: A citizen of Haiti who has been either "Paroled" or granted voluntary departure and who meets specified eligibility criteria (see N.J.A.C. 10:81-10.3(a)2.]

2. The Realizing Economic Achievement (REACH) program is the AFDC education, training and employment program whose purpose is to assure that needy families with children participate in employment directed activities which lead to economic independence. Participation in REACH is required of AFDC individuals who meet the criteria established at N.J.A.C. 10:81-14. REACH makes available a variety of employment, training and educational opportunities as well as supportive services to ensure participation in REACH activities.

3. Refugee Resettlement Program (RRP), through which financial assistance is provided to a citizen of any country who meets [any of] the Immigration and Naturalization Service (INS) statuses outlined in N.J.A.C. 10:81-10[.2].

(b) Information, applications and staff agency personnel shall be available to assist non-English speaking applicants for income maintenance programs listed in N.J.A.C. 10:81-1.11 and 1.12. Spanish language program material is routinely prepared by the Division and distributed to county and municipal assistance agencies. Minority program materials in languages other than Spanish may be prepared, based

on knowledge of the population served by programs under the auspices of the Division.

10:81-2.1 General provisions

(a) This subchapter describes briefly the steps followed by the income maintenance (IM) worker in determining an applicant's eligibility to receive public assistance. [The method of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.] **The objective of eligibility determination is to assist all eligible persons in qualifying for AFDC and participating in the Realizing Economic Achievement (REACH) program.** [(]Detailed information regarding eligibility factors is in [subchapter 3 and the Assistance Standards Handbook.] **N.J.A.C. 10:81-3, 10:81-14 and N.J.A.C. 10:82.**[)]

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

10:81-2.2 Purpose and scope of first contact

(a) Responsibility of the agency during the initial contact shall include, but not be limited to:

1.-7. (No change.)

8. Providing an overview of the REACH program to each applicant for assistance in accordance with N.J.A.C. 10:81-14.4(g). The IM worker will determine the need for each individual to participate in REACH as a condition of eligibility for AFDC (see N.J.A.C. 10:81-14.3). Further, the IM worker shall:

i. Determine if AFDC applicants or recipients are exempt from REACH participation in accordance with N.J.A.C. 10:81-14.3(b);

ii. Refer AFDC applicants and recipients who do not meet the exemption criteria at N.J.A.C. 10:81-14.3(b) for REACH orientation; and

iii. Perform other related functions concerning the REACH program as described in N.J.A.C. 10:81-14.1.

10:81-2.3 Completion of forms

(a) The applicant will be fully assisted by the IM worker or by any person of his[/]**or** her choice in completing the Application and Affidavit for [AFDC, MA, CRA, IRP and Food Stamps] **Public Assistance** (PA-1J). **Form PA-1J is used to apply for AFDC, AFDC-related emergency assistance, refugee resettlement, categorically related Medicaid and food stamp benefits.** The applicant will also be given the pamphlets "Your Rights and Responsibilities **in the AFDC Program"** (Form PA-197) and "Fair Hearing in the Aid to Families with Dependent Children Program **(AFDC)"** (**Form** PA-196). The client's obligation to report changes, as stated in ["Your Rights and Responsibilities"] **Form PA-197,** will be carefully explained by the IM worker.

(b) Signature(s) and date of application are required. The application (Form PA-1J) requires three signatures of the applicant(s). In addition to the first page and the affidavit, the applicant(s), with the exception of non-needy parent-persons who do not request assistance for themselves, [must] **shall** sign a release which authorizes the [county welfare agency] **CWA** to obtain State income tax information.

1.-2. (No change.)

(c) As a further condition of eligibility for AFDC-C or -F, AFDC-related Medicaid and food stamp benefits, a written declaration of citizenship/legal alien status shall be obtained for each member of the eligible family. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

Renumber (c)-(d) as **(d)-(e)** (No change in text.)

10:81-2.5 Financial need

The IM worker shall determine financial eligibility (need) of the eligible family members by preparing Form PA-3A (Worksheet and Authorization for Public Assistance) or Form 105, if appropriate, in accordance with [Chapter 200 of the Assistance Standards Handbook (ASH)] **N.J.A.C. 10:82-2 and the Family Assistance Management Information System (FAMIS).**

10:81-2.6 Eligibility factors other than need

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

(c) The relationship between adoptive parent and child(ren) in AFDC [and AFWP] is:

1. AFDC: The IM worker will explain to the applicant that in order to apply for AFDC, [he/she] **he or she** [must] **shall** be either the natural or adoptive parent or eligible to serve as a parent-person of the eligible child(ren). An applicant who is a parent-person has the option of applying either for the child(ren) or [him/herself] **him or herself** as a needy parent-person, or for the child(ren) only. The advantages and disadvantages of each option shall be thoroughly discussed.

2. [AFWP:] The IM worker will explain that **for AFDC-F and -N segments** the child(ren) [must] **shall** be natural or adoptive to the two parents who are applying.

3. If not eligible for [either a] AFDC, [or AFWP,] eligibility for SSI will be explored.

10:81-3.1 Program eligibility factors related to AFDC

[(a)] This subchapter presents in detail the program eligibility factors which [must] **shall** be considered in making determinations related to the AFDC-C, -F and -N segments. [The following table outlines the differences between these segments. (See below.)]

[TABLE I
Eligibility Criteria
for
AFDC-C, -F, and -N Segments

	AFDC-C	AFDC-F	AFDC-N
Financial Eligibility	See Assistance Standards Handbook	See Assistance Standards Handbook	See Assistance Standards Handbook
Eligible Persons	Children, natural or adoptive parent(s), Spouse of natural or adoptive parent (stepparent), or Parent-person and spouse (unless any of these persons receive SSI).	Children, natural or adoptive parents, (unless any of these persons receive SSI). Father must meet Federal criteria for unemployment.	Children, natural or adoptive parents, (unless any of these persons receive SSI).
Age	Children Birth to 18, or age 18 if a full-time student in a secondary school, or equivalent level of vocational or technical training, and expected to complete educational program before age 19. Parents of any age.	Children Birth to 18, or age 18 if a full-time student in a secondary school, or equivalent level of vocational or technical training, and expected to complete educational program before age 19. Parents of any age.	Children Birth to 18, or age 18 if a full-time student in a secondary school, or equivalent level of vocational or technical training, and expected to complete educational program before age 19. Parents of any age.

Status of Parents	Absence, death or incapacity of one (or both) parent(s).	Both natural or adoptive parents present and not incapacitated.	Both natural or adoptive parents present and not incapacitated.
Work/Training	WIN/work registration unless exempt.	WIN/work registration unless exempt.	Participation of father and child 16 and over if not in school required unless good cause for refusal is established.
Residence	Living in New Jersey	Living in New Jersey	Living in New Jersey
Redetermination	Every 6 months	Every 3 months	Every 3 months
Child Support and Paternity	Must comply	Not applicable	Not applicable
Agreement to Repay	Sign when member of eligible unit is party to suit or claim or potential resources are indicated.	Sign when member of eligible unit is party to suit or claim or potential resources are indicated.	Sign when member of eligible unit is party to suit or claim or potential resources are indicated.]

10:81-3.5 Verification of income and resources

(a) (No change.)

(b) Earned and unearned income **verification is as follows:**

1. (No change.)

2. All unearned income [must] **shall** be verified by examination of benefit check or by contact with the company or agency granting such benefit. [(If it is necessary to contact Social Security, use Form SSA-1610.)] **Social Security benefit information verification may be accomplished through the Automated Benefit Information Exchange (ABIE)/Beneficiary and Earnings Data Exchange (BENDEX) and/or Third Party Query (TPQY) (see N.J.A.C. 10:81-8.2 concerning TPQY).**

3. (No change.)

4. All resources [must] **shall** be evaluated and, where appropriate, a plan for their liquidation [must] **shall** be developed and carried out (see N.J.A.C. 10:82-3).

i. Legally responsible relatives [must] **shall** be contacted for evaluation of their capacity to support [(see sections 35 and 36 of this subchapter)] **see N.J.A.C. 10:81-3.35 and 3.36).**

10:81-3.6 Recording of documentation

All information, [whether] written or oral, including sources [from which obtained] and methods of documentation, shall be recorded on Form PA-1J, Application and Affidavit for [AFDC, MA, RRP, CRA, IRP and Food Stamps] **Public Assistance** and included in the case record. See N.J.A.C. 10:81-7.9 for **Provisions concerning** documentation procedures.

10:81-3.9 Applicant in AFDC-C and -F

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

(c) To be eligible for AFDC-C or -F, **or AFDC-related Medicaid** an individual [must] **shall** be either a citizen of the United States or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of Section 207(c), Section 203(a)(7) (prior to April 1, 1980)[.], Section 208, and Section [2128(d)(5)] **212(d)(5)** of the Immigration and Nationality Act.

1. Each AFDC-C and -F **and AFDC-related Medicaid** applicant shall, [be asked if he/she is a United States citizen or has been legally admitted.] **as a condition of eligibility, provide a written statement of citizenship or legal alien status. If the applicant(s) is not a United States citizen, he or she shall provide documentation, subject to verification, of satisfactory immigration status.** When the applicant or other person for whom the application is being made is an alien, his[/]**or** her legal status [must] **shall** be verified [either] through evidence provided by the applicant [or] with the United States Immigration **and Naturalization** Service.

i. A statement of citizenship/legal alien status and signature attesting to citizenship/legal alien status shall be provided before benefits can be issued to that individual. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

ii. If a signature is not provided for all eligible family members by either the end of the 30-day processing standard or the last day of the last month of the redetermination period, then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements.

iii. The needs of ineligible members shall not be considered when determining eligibility and benefits for the remaining family members.

iv. Income and resources of those ineligible individuals who are parents of otherwise eligible children shall be considered available to the eligible family and shall be calculated in accordance with the step-parent deeming formula at N.J.A.C. 10:82-2.9.

2. Assistance through the AFDC-C and -F segments **and AFDC-related Medicaid** shall not be granted to an **illegal** alien [who is illegally residing in the United States] **or to aliens admitted as students or visitors. Individuals who are not United States citizens and who do not meet the criteria for legal alien status (and therefore ineligible for federally funded AFDC and Medicaid benefits) are not subject to the alien verification requirements in (c)1 above. Such individuals may be eligible for benefits under the AFDC-N segment (see N.J.A.C. 10:81-3.10(a)1). CWAs shall advise those individuals of their right to apply for those benefits.**

3. Individuals who have been granted lawful temporary resident status by Immigration and Naturalization Services (INS) as a result of the Immigration Reform and Control Act (IRCA) of 1986, amended section 245A, shall be disqualified for AFDC-C and -F segment assistance payments for a period of five years from the effective date of that status. That period of ineligibility for AFDC payments shall remain in effect even though the temporary status may change to that of lawful permanent resident status during that interval.

4. Cuban and Haitian entrants, who have resided in the United States since January 1, 1982, may qualify for immediate permanent resident status and shall not be subject to the disqualification provision for AFDC-C and -F benefits.

10:81-3.10 Applicant in AFDC-N

(a) The term applicant in ADFC-N refers to natural or adoptive parents, not incapacitated, both of whom shall be required to execute the formal written application unless one such parent is not available to sign the application for reasons beyond the family's control. This parent shall be required to sign as promptly as he[/]**or** she is available for such purpose. (See [sections 123 and 230 of the ASH] **N.J.A.C. 10:82-1.5 and 2.13** relevant to companion cases.)

1. Citizenship and alienage: Applicants for AFDC-N need not be citizens or lawfully admitted aliens **and are not subject to the alien verification requirements unless they are United States citizens or legal aliens applying for food stamps or AFDC-related emergency assistance.**

10:81-3.12 Parent-minor in AFDC-C, -F and -N

(a) For purposes of this section the term parent-minor refers to a parent under age 18. (Special income deeming rules apply to a parent under the age [19] **18** residing in the same home as his or her parent(s) or guardian(s); see N.J.A.C. 10:82-3.14.) When application is made for AFDC-C by a parent who is under age 18 or for

-F or -N where both parents are under age 18, the following action shall be taken in specific situations:

1.-3. (No change.)

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

10:81-3.14 Noneligible persons in the household

When a noneligible individual is living in the household of an eligible unit, a monthly amount shall be recognized as the cost standard for that individual's share of household expenses [(See section 204 of the ASH for budgeting procedures.)] **(see N.J.A.C. 10:82-2.3).**

10:81-3.27 Change of county residence

(a) Responsibility for **AFDC, AFDC-related Medicaid and Medicaid extension** case management and payment shall be transferred from one county to the other when a recipient family moves to another county.

(b) A temporary visit by either the recipient family or any member thereof shall not be considered to be a change of county residence until that visit has continued for more than a three-month period **(see N.J.A.C. 10:81-3.32 and 3.34).** [(See N.J.A.C. 10:81-3.32 and 3.34.)]

1. Whenever it is determined that a recipient family whose application has not been validated has changed or is planning to change its residence from one county to another, the [county welfare board] **CWA** of origin shall continue assistance while completing the validation, subject to the time limits set forth in the application process, then transfer the case without delay to the receiving county [in accordance with (a)2 and 3 below].

2. Whenever it is determined that a recipient family whose application has been validated is planning to change its residence from one county to another, it shall be the responsibility of the [county welfare board] **CWA** directors of the two counties concerned to effect the transfer without interruption of assistance.

3. The county of origin shall initiate and the receiving county shall, on request, immediately cooperate in accomplishing a full investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with this paragraph.

i. The county of origin has the responsibility to:

(1) Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and the most recent PA-1J form; the most recent [CODES] 105A and B forms; Social Security numbers or copies of SS-5 forms; a copy of Form CSP-158, Case Preparation Information Sheet (see N.J.A.C. 10:81-11.9(e)); all birth verifications; and, where ongoing recovery of overpayments is involved, the amounts and net balances;

(2)-(3) (No change.)

ii.-iv. (No change.)

(c) Those cases which are in Medicaid extension only shall also be transferred to the new county of residence when the family moves from the county of origin in the same manner as active AFDC cases. The procedures established at N.J.A.C. 10:81-3.27(b) and the current (FAMIS) procedural manual are to be followed when transferring a case in Medicaid extension (see also N.J.A.C. 10:81-8.22).

10:81-3.41 Action by CWA upon liquidation (except nonexempt real property)

(a) Valid agreement to repay exists: Upon liquidation of a claim or interest (other than liquidation of nonexempt real property) for which a valid Agreement to Repay exists (see N.J.A.C. 10:81-3.40(c)), regardless of whether or not the persons involved are receiving assistance at the time, the CWA will evaluate the situation. Upon a showing that, by release of the funds and only by release of the funds, the household can reasonably be expected to remain off the assistance rolls indefinitely, the CWA may, with approval of the State office, release the funds to the household. In all other instances the CWA will, subject to the special provisions below, pursue recovery of the lesser of the following amounts:

1. The amount of cash assistance granted to the eligible family in the AFDC program [or for the person(s) for whom the pending matter was applicable]**, including any assistance provided to or on behalf of the minor children of the family**, except as provided at N.J.A.C. 10:81-3.40(d)2, from the date of the accident or occurrence which gave rise to the settlement to the date of payment, regardless of the date of execution of the Agreement to Repay;

2. (No change.)

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

10:81-4.22 Emergency assistance

(a) The basic monthly assistance payment is intended for use in meeting the routine expenses of daily living. It is recognized, however, that there will be occasions when it becomes necessary for the [county welfare agency] **CWA** to provide additional financial assistance [for a brief period of time because of unusual circumstances as defined below which could neither be foreseen nor controlled by the recipient.] **during periods of time when the eligible family experiences emergency situations (see N.J.A.C. 10:82-5.10 for policy and procedures relative to authorization and issuance of emergency assistance payments).**

[(b) Emergency assistance is defined as:

1. A substantial loss of shelter, food, clothing or household furnishings by fire, flood or other natural disaster; or

2. An emergent situation over which the recipient had no control or opportunity to plan in advance and as a result a state of homelessness exists or is manifestly imminent.

(c) See N.J.A.C. 10:82-5.10 for policy and procedures relative to authorization and issuance of emergency assistance payments.]

10:81-5.2 Requirements for periodic redetermination

(a) (No change.)

(b) Frequency of redetermination: For recipients of AFDC, all factors of eligibility shall be redetermined at least every six months except for cases in monthly reporting or cases covered by an approved error-prone profiling system.

1. Monthly reporting: In cases subject to monthly reporting, a redetermination shall be done at least once every 12 months (see N.J.A.C. 10:90). **Cases subject to monthly reporting include:**

i. Cases with earned income;

ii. Cases with recent work history (within the last six months); and

iii. Cases which have deemed income from individuals living with the eligible family who have earned income or recent work history (including stepparents and cases having alien sponsor's deemed income and resources);

2. (No change.)

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

10:81-5.3 Process of redetermination

(a) (No change.)

(b) Redetermination of financial eligibility: In each redetermination, it is the responsibility of the IM worker to complete a new Form PA-3A or Form 105, as appropriate, in accordance with instructions provided in [the Assistance Standards Handbook] **N.J.A.C. 10:82** and [CODES] **FAMIS** [Manual] **manual,** respectively.

1. (No change.)

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

10:81-7.29 [Retroactive adjustment payments] **(Reserved)**

[(a) This section on retroactive adjustment payments expires on September 30, 1987. No payments are to be approved for any funeral for which a petition for retroactive payment has not been received by the agency by September 30, 1987.

(b) The agency will make retroactive adjustment payments to funeral directors under the following conditions:

1. The decedent died on or after September 8, 1985.

2. The decedent died before November 1, 1986.

3. The funeral director provided embalming and preparation services.

4. The funeral director submitted, and the agency received, a properly completed and notarized petition on Form PA-11C or substantially similar document on or before the expiration date hereof.

5. The decedent was programmatically eligible for funeral payment, and

i. The agency made or is authorized to make a funeral contribution under prior regulation, or

ii. The agency was not authorized to make a funeral contribution under prior regulation because the decedent's resources in combination with the contributions of others exceeded agency payment limits.

(c) The amounts to be paid are as follows:

1. For funerals for which the agency contributed—$600.00.

2. For funerals for which the agency did not contribute—the amount by which $1500 exceeds the total amount paid for funeral and burial, but not more than $600.00.

(d) Time of payment: The agency will make the retroactive payments as promptly as possible but, in the absence of irregularity, not later than 30 days after the date of receipt of the petition. The agency will reconcile irregularities as promptly as possible and make payment within 30 days after the last irregularity in any petition is reconciled.

(e) Other agency action shall be as follows:

1. The agency will communicate with all funeral directors to whom the agency made funeral payments for decedents who died on or after September 8, 1985, identifying the decedents, and advising of these provisions for retroactive payments.

2. Unless it is known that a retroactive payment cannot be made, the agency will communicate with the funeral director who conducted the funeral of any other person known or believed to have died on or after September 8, 1985 while programmatically eligible, identifying the decedent and advising of these provisions for retroactive payments. If the identity of the funeral director is not known, communication shall be made with others, such as next-of-kin or hospital administrators as indicated, for the information.

3. The agency will supply blank copies of Form PA-11C in reasonable quantity to any funeral director requesting them. The agency will establish procedures for prompt responses to inquiries and processing of petitions.]

10:81-7.31 Basic principles for safeguarding information

(a) No matter, officer or employee of the [county welfare board] **CWA** shall produce or disclose any confidential information to any person, except as authorized below.

1.-3. (No change.)

4. CWAs shall cooperate with educational authorities for the purpose of confirming AFDC eligibility of students when such vertification is for the purpose of determining the student's eligibility to participate in programs authorized under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966.

10:81-8.2 Procedures for [filing claims and] securing information **from the Social Security Administration**

[(a) The following procedures are to be observed by the county welfare agency in respect to clients if the information is not available from the BENDEX or other reliable sources.

(b) Form SSA-1610: Form SSA-1610, Social Security-public assistance agency information request and report, printed and distributed by the Social Security Administration, is available from the State division.

1. As a general rule, the Social Security Administration will not honor oral requests for information or other material. All requests must be made by using Form SSA-1610. Prepare the SSA-1610 only after all other sources of information have been explored and it has been determined that the required information is not available from any other source. Instructions for completion of Form SSA-1610 by welfare personnel are contained on the reverse of the second page of the snap-out form. They should be followed carefully.

2. Instructions regarding the use of the Form SSA-1610 must be followed strictly. Injudicious use will result in processing delays and in inadequate information being supplied.

3. Form SSA-1610 will be completed and the original mailed to the appropriate district office of the Social Security Administration, the copy being retained on file until the district office responds with the status report.

4. Form SSA-1610 is not to be given to the individual to carry to a district office except in instances when it appears that immediate filing of application is necessary because of a possible loss of retroactive benefits. Full retroactive benefits on a disability claim can be paid only if the application is filed not later than 18 months after the onset of disability. In an RSDI claim, a person may be entitled to benefits retroactivity for as many as 12 months before the month in which his/her application was filed. He/she is entitled to benefits beginning with the first month in the retroactive period in which he/she met all the requirements for entitlement to benefits except for the filing of an application.

(c) Selection for referral for benefits:

1. Form SSA-1610 will be used:

i. As a referral for application for benefits by a widowed and/or a disabled individual under appropriate sections of the Social Security Act;

ii. As an inquiry to secure information as to RSDI benefit status where such information is not available from the recipient;

iii. As an inquiry form to secure or verify SSA account or claim numbers;

iv. As a correction form, to clarify information in SSA files about a recipient.

(d) District office procedures:

1. Pending claims: When the Form SSA-1610 referral is in respect to an application for benefits or benefit status information, the district office will, if the claim is pending, acknowledge receipt of the referral by returning one copy, retaining the second copy for completion when the claim is adjudicated.

2. New applications: If the district office has no record of a prior claim or recent inquiry, the referral will initiate processing a claim. If the client is obviously ineligible for benefits, the district office will fill in the necessary information on the SSA-1610 and return both copies to the county welfare board. If the client appears to be entitled to RSDI benefits, the district office will develop the claim, and send a copy of the request form to the county welfare board that a claim is being developed. When the case is adjudicated by the district office, the original request form will be completed and returned to the county welfare board.

3. Client failing to file: If the client is apparently entitled and does not file a claim, the district office will return both copies of SSA-1610 to the county welfare board with a full statement of why a claim has not been filed. In such cases the worker shall interview the client to ascertain why he/she failed to keep the appointment, interpret the provisions and possible benefits, and assist him/her if necessary, in filing his application. Continued refusal to apply for benefits renders an individual ineligible for assistance.

4. Follow-ups re-referrals: In cases where the district office has not sent a "status report" to the county welfare board within 60 days for regular retirement or survivors cases or within 120 days for disability benefit cases, a follow-up referral may be sent by resubmitting one copy of the form with sufficient information to identify the original request. It is also possible that cases previously adjudicated as not eligible may subsequently be determined as insured.]

(a) County welfare agencies (CWAs) are required to use the Automated Benefit Information Exchange (ABIE)/Beneficiary Earnings and Data Exchange (BENDEX) and the State Data Exchange (SDX) as the primary source of verification of Social Security (RSDI) and Supplemental Security Income (SSI) benefit information.

(b) The Third Party Query System (TPQY) is to be used to obtain RSDI and SSI data for AFDC applicants and recipients when ABIE/BENDEX and SDX information is not available.

1. Specific procedures for obtaining TPQY information through use of mark sense cards are to be developed by CWAs in conjunction with the local Social Security Administration District Office (SSA/DO).

2. TPQY mark sense cards are to be prepared in accordance with the Social Security Administration (SSA) Program Operations Manual System (POMS) Part 8 Chapter 108.

3. Requests for information through TPQY will generally be processed by SSA within 10 working days. Non-receipt of any information may necessitate resubmission of the TPQY mark sense card or follow-up action using Form 1610-U2.

(c) The TPQY may be supplemented through use of Form SSA-1610-U2 (Social Security-Public Assistance Agency Request for Information) for the following reasons:

1. To resolve conflicts between other evidence and data shown in the ABIE/BENDEX, SDX and TPQY files, for example, an identification problem; or

2. To secure retroactive historical data not provided by the TPQY.

3. Additional written or telephone requests for previously submitted SSA 1610-U2 information will not be accepted by SSA unless they fall within the categories described in (d)1 or 2 above or involve emergency situations.

10:81-8.9 Functions of [Veterans Administration] **the Department of Veteran Affairs**

(a) The [Veterans Administration] **Department of Veteran Affairs** operates the Federal program of benefit payments and health and welfare services to veterans and to certain of their dependents or survivors. To be eligible for these benefits and services the veteran, serving in either war or peacetime service, [must] **shall** have been released with other than a dishonorable discharge.

(b) Exploration of veterans benefits condition of eligibility for public assistance **provisions are as follows**:

1. (No change.)

2. In the case of a person who is a veteran (or a dependent or survivor of a veteran) and presumptively eligible for any form of veterans benefits, it shall be required as a condition of eligibility for public assistance that application for such benefits be made and fully processed.

i. The exceptions to this requirement are certain persons who had been receiving Veterans Administration (VA) pensions prior to December 1978 and elected to continue receiving "lower" pension amounts in order to retain AFDC and Medicaid eligibility. Those individuals shall not, as a condition of eligibility for AFDC, be required to apply for "improved" or higher pension amounts to which they may be entitled.

(c) Information concerning eligibility for benefits and services **may be obtained from the following sources:**

1. The details of all benefits and services are [clearly] outlined in [a] fact sheets [entitled "Federal Benefits for Veterans and Dependents"] issued by the [Veterans Administration] **Department of Veteran Affairs**.

2. The New Jersey Bureau of Veterans Services, Department of [Human Services] **Military and Veterans Affairs**, maintains service offices to which persons seeking information or wishing to file for veterans benefits or services may be referred. **The Department of Military and Veterans Affairs can be reached by calling 1-800-624-0508. That agency can provide the addresses of the local Veterans Service Office.**

[3. The county welfare board also receives a publication of the Bureau of Veterans Services which provides information about changes in the law, interpretation and advice to veterans on various aspects of the Veterans Administration operations, and activities of interest to New Jersey's veterans.]

10:81-8.16 Administrative organization

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

(d) Any questions with respect to the policy, regulations or procedures of the Medicaid program should be directed to [the appropriate MDO as listed below:] **the Division of Medical Assistance and Health Services. That Division can provide the address of the local Medicaid District Office (MDO).**

[Atlantic	1 S. New York Avenue Atlantic City (609) 441-3620
Bergen	50 Main Street, 1st Fl. Hackensack (201) 488-5667
Burlington	50 Rancocas Road Mt. Holly (609) 261-0488
Camden	Parkade Building, Room 207 519 Federal Street Camden (609) 757-2870
Cape May	501 Landis Avenue (basement) Vineland (609) 696-6560
Cumberland	501 Landis Ave. Vineland (609) 696-6560
Essex	155 Washington Street Newark (201) 648-2470
Gloucester	Woodbury Plaza 251 N. Delsea Drive Woodbury (609) 845-7185
Hudson	880 Bergen Ave. Jersey City (201) 792-6390
Hunterdon	84 Park Avenue Flemington (201) 782-1130
Mercer	28 West State Street Trenton (609) 292-7315
Middlesex	75 Paterson Street New Brunswick (201) 246-0653
Monmouth	1200 Memorial Drive Asbury Park (201) 775-5700
Morris	10 Park Place Morristown (201) 267-1700
Ocean	1861 Hooper Ave. Toms River (201) 255-6226
Passaic	100 Hamilton Plaza Paterson (201) 523-2800
Salem	Woodbury Plaza 251 N. Delsea Drive Woodbury (609) 845-7185
Somerset	84 Park Avenue Flemington (201) 782-1130
Sussex	10 Park Place Morristown (201) 267-1700
Union	125 Broad Street Elizabeth (201) 648-4630
Warren	84 Park Avenue Flemington (201) 782-1130]

10:81-8.22 Persons eligible for medical assistance

(a) All children and their parents or needy parent-persons who are eligible for AFDC money payments (-C, -F and -N segments) are eligible for Medicaid benefits. If an eligible unit chooses not to receive a money payment, members are eligible for Medicaid [only] **Only.** Medicaid coverage commences with the date that eligibility is established.

1. When a family becomes ineligible for AFDC cash assistance due to the deeming of income from a sibling(s) or stepparent, or the deeming of an alien's sponsor's income and resources, the Medicaid eligibility of the other eligible family members shall be determined without consideration of the deemed income or resources.

2. Medicaid eligibility does not exist for a caretaker relative in cases where, after excluding the child(ren) whose income caused the ineligibility for AFDC, there is no eligible child in the family.

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1.-4. (No change.)

5. Eligibility for the 12-month Medicaid extension is not available for any month to any individual who, except for income, resources or hours of employment, is not otherwise eligible to receive AFDC. **The following individuals shall not be included in the eligible family for Medicaid extension.**

i. Children who are between the ages of 18 (not scheduled to graduate by the 19th birth date) and 19 at the beginning of Medicaid extension; and

ii. Children who reach 18 or 19 (who are not scheduled to graduate by the 19th birth date) and therefore "age out" during the Medicaid extension.

6. (No change.)

(c)-(e) (No change.)

(f) Those cases which are in Medicaid extension only shall also be transferred to the new county of residence when the family moves from the county of origin in the same manner as active AFDC cases. The procedures established at N.J.A.C. 10:81-3.27(b) and the current FAMIS procedural manual are to be followed when transferring a case in Medicaid extension.

SUBCHAPTER 10. REFUGEE RESETTLEMENT PROGRAM [-CUBAN/HAITIAN ENTRANT PROGRAM]

[FOREWORD]

10:81-10.1 Purpose and funding

(a) The Refugee Resettlement Program (RRP) [and Cuban/Haitian Entrant Program (CHEP) are] **is a** federally funded program[s] designed to help meet the needs of refugees [and entrants].

(b) Federal financial participation for refugees under RRP [and entrants under CHEP] is 100 percent. For refugees [and entrants] who meet AFDC-C or -F segment criteria, 50 percent of the Federal reimbursement is from Title IV-A funds and 50 percent from refugee [or entrant] funds. For those refugees [and entrants] meeting AFDC-N or GA criteria, 100 percent Federal financial reimbursement is from refugee [or entrant] funds.

10:81-[10.1]**10.2** Identifying refugees[/entrants]

[(a) Definition of a refugee:] An individual is considered a refugee for purposes of RRP if he or she fled from and cannot return to his or her place of national origin because of fear of persecution on account of race, religion or political opinion. Such an individual may be eligible under RRP if he or she is included in one of the statuses granted by the Immigration and Naturalization Service (INS) as delineated in this subchapter (see N.J.A.C. 10:81-[10.2]**10.3**).

[(b) Definition of an entrant: An individual may be eligible for assistance under CHEP if he or she is included in one of the statuses granted by INS as delineated in N.J.A.C. 10:81-10.3. By definition, an entrant is a person meeting one of these statuses.]

10:81-[10.2]**10.3** INS Statuses for RRP

(a) Applicants may be eligible for assistance under the RRP if they have been classified in one of the following INS statuses:

1.-3. (No change.)

4. A person from any country who has been granted asylum under section 208 of the IN and so indicated on Form I-94; [or]

5. A person from any country who previously held one of the statuses identified in (a)1 through 4 above whose status has subsequently been changed to that of permanent resident alien. In addition to the required Form I-151 or I-551 (resident alien forms) showing the status of resident alien, the individual must also provide sufficient documentation to substantiate that one of the eligible statuses indicated in (a)1 through 4 above was held prior to that of resident alien[.]; **or**

6. A person identified as an Amerasian from Vietnam with their close family members admitted in immigrant status under Section 584 of the Foreign Operations Appropriations Act, to be admitted during the two year period authorized by that law, beginning March 20, 1988 and so indicated on Form I-94 or I-551.

[(b) Individuals with either the INS status of applicant for asylum (as differentiated from an individual who has been granted asylum) or the INS status of Cuban/Haitian Entrant are not eligible under RRP.]

10:81-10.3 [INS statuses for CHEP] **(Reserved)**

[(a) Applicants may qualify for CHEP provided they possess an INS Form I-94 stamped as indicated in (a)1 and 2 below.

1. Cubans: A person who either entered or was paroled into the United States after April 20, 1980 and possesses an INS Form I-94 which indicates one of the following:

i. "Cuban/Haitian Entrant (Status Pending)";

ii. "Outstanding Order of Exclusion/Paroled Pursuant to 8 CFR 212.5(b) Employment Authorization" or "Paroled Pursuant to 8 CFR 212.5(b) Employment Authorized"; or

iii. He or she is a citizen of Cuba and contains the initials "OOE".

(1) CWAs shall keep a file identifying any Cuban determined eligible for CHEP whose I-94 contains the initials "OOE" so that assistance to such cases may be terminated in the future if the Federal government changes CHEP eligibility criteria. This special procedure is necessary because some Cubans released from the Federal Correctional Institution in Atlanta, Georgia, have Exclusion Orders against them. They did not receive a "Cuban/Haitian Entrant (Status Pending)" stamp but they did receive a parole from INS. Their I-94 contains the initials "OOE". They are eligible to apply for CHEP because the Federal District Judge has issued a Temporary Restraining Order (TRO) making the Exclusion Orders legally unenforceable. However, if the TRO is removed in the future, it will be necessary to determine these persons ineligible for CHEP and therefore they must be readily identifiable.

(2) Distinction between the initials "OOE" and the words "Outstanding Orders of Exclusion" must be made for there are a small number of Cubans whose I-94 contains the words "Outstanding Order of Exclusion". These Cubans have Exclusion Orders against them but they are not covered by the TRO mentioned above and thus are not eligible for CHEP.

2. Haitians: A person who possesses an INS Form I-94 which states that the person is a citizen of Haiti who has been either "Paroled" or granted "Voluntary Departure". The I-94 may be stamped as one of the following:

i. "Cubans/Haitians Entrant (Status Pending)";

ii. "Outstanding Order of Exclusion/Paroled Pursuant to 8 CFR 212.5(b) Employment Authorization" or "Paroled Pursuant to 8 CFR 212.5(b) Employment Authorized".

3. Expired status: Persons in (a)1 and (a)2 above are eligible even if the expiration date on their parole or voluntary departure status has passed.

4. Rules on Cuban/Haitians not addressed in (a)1 through 3 above are as follows:

i. Persons who do not qualify under (a)1 through 3 above categories are generally ineligible for CHEP. Ineligible persons, for example, include any Cubans or Haitians who have never been encountered by the INS and those Cubans and Haitians who possess regular immigrant and nonimmigrant visas.

(1) CWAs may receive applications for assistance from Cubans and Haitians who do not fall into any of the above categories but who appear to have immigrant visas. In those instances, the CWA shall contact the State Refugee Coordinator who will consult the Regional Office of Refugee Resettlement in order to determine whether or not eligibility exists and advise the agency accordingly.]

10:81-10.4 Resettlement

(a) Most refugees [and entrants] are resettled by a voluntary agency and will have a sponsor. This sponsor, which may be an individual, church or organization, shares certain responsibilities as a moral commitment with the resettling agency. Such responsibilities include: receiving the refugee [or entrant], helping him or her find food, shelter, clothing, furniture, and employment; and assisting the refugee to adjust to a new environment. (see N.J.A.C. 10:81-10.7(c)).

(b) Verification with sponsors: When a sponsor no longer provides adequate financial aid for the refugee [or entrant], the refugee [or entrant] may turn to a CWA for assistance. As part of its regular verification process, the CWA shall contact the sponsor and inquire as to what, if any, assistance the sponsor may still be providing to the refugee [or entrant]; and whether the refugee [or entrant] has refused an offer of employment or has voluntarily quit a job without good cause. The CWA shall also request that such sponsor notify the resettlement agency of these changes in circumstance. The CWA shall also promptly notify the resettlement agency that the refugee [or entrant] has applied for assistance. In addition, the refugee's sponsor or resettlement agency shall be contacted to verify the possible existence of any matching grant assistance being provided to the refugee (see N.J.A.C. 10:81-10.7[(c)1](**d**)). Meanwhile the CWA shall grant assistance to eligible refugees. Any cash assistance to the client from the sponsor or resettlement agency shall be treated as unearned income (see N.J.A.C. 10:82-4.13(c)). All contacts with the sponsor and/or resettlement agency shall be recorded in the case record (see N.J.A.C. 10:81-10.7(c)).

10:81-10.5 Termination of RRP[/CHEP eligibility]: Continued eligibility for assistance

(a) Case numbers: For [C, F, L (C and F) and Medicaid Only (MO) type] **refugee** cases no longer eligible for RRP [or CHEP] benefits, the suffix "R" [or "T"] is to be deleted from the case numbers [; N and K (C and N) type cases are to have case numbers assigned from the AFDC numbering sequence and case information entered into the CODES system].

[(b) Program codes: While program codes (PCs) for C, F, and L type cases shall remain unchanged, i.e., PC30, the PC for N and K type cases must be changed from 80 to 30. Similarly, the program status code (PSC) for this latter group must also be changed as appropriate. Thus, all CWAs must submit MAP-1 forms for all N and K type cases to make such changes on the Medicaid Status File (MSF).]

[(c)](**b**) Race codes: Race codes (RCs) [must] **shall** be changed for all cases (C, F, N, L and K). For [CODES] **FAMIS** purposes, change the RC in blocks **531/BE**, 519/[BM] **BN** and/or 13/[QE] **QF** of [CODES] **FAMIS** Form 105 for C, F and L type cases from "R"[or

"H"] to the appropriate racial/ethnic code. [For MSF purposes, the race code (field 17 on Form MAP-1) must be changed from "7" or "9" to that which is appropriate for all C, F, N, K and L type cases. Note, for those CWAs "live" on the CODES Medicaid Interface, submission of a MAP-1 form will not be necessary to make such change on the MSF for C, F, and L type cases on the CODES system, as this will be done automatically.]

[1. Note: When AFDC-N and K type RRP and CHEP cases must be entered into the CODES system for public assistance purposes and are currently on the CODES system for food stamp (FS) purposes only, attention must be given to the FS portion of the case to assure that all information, e.g., RCs, is properly updated.]

10:81-10.6 Registration of RRP [and CHEP] cases

(a) The application for all AFDC-N segment and GA type cases shall be registered in accordance with N.J.A.C. 10:81-2.3[(d)](**e**). [The program designation letter (case number prefix) for all RRP and CHEP case numbers is "V".]

(b) Program [and code] number[s]: In the segment indicator of [CODES] **FAMIS** Form 105, the suffix "R" is to be used to designate all refugees eligible under RRP [and "T" for all CHEP] cases. [All RRP cases must have the digit 7 in the race code field (17) on the MAP-1 or if subject to CHEP, the digit 9 in the race code field.]

[(c) Cases which do not meet the AFDC-C or F criteria retain the program status code of 80 under RRP and CHEP. Race codes as indicated in (b) above are also applicable to AFDC-N segment and GA type cases. All RRP and CHEP cases are to be assigned a case number within the "V" program designation letter numbering sequence.]

[(d)](**c**) For [CODES] **FAMIS** purposes, the race code of "R" shall be entered in blocks 519/[BG]**BN**, 531/[BM]**BE** or 13/[QE]**QF** of the 105 document for RRP cases [and a race code of "H" in the appropriate block for CHEP cases].

10:81-10.7 Eligibility

(a) No U.S. citizen is eligible for RRP [or CHEP] (exception: see (a)2 and 3 below) and a refugee [or entrant] may be eligible only if he or she meets the appropriate definition and INS status in N.J.A.C. 10:81-[10.1 through] **10.2 and** 10.3. In addition, all refugees [and entrants] who have either been in the U.S. for [three] **two** years or were released into the community and received parole status [three] **two** years prior will cease to be eligible for cash and medical assistance under RRP [and CHEP] (see (b) below). Such ineligible refugees [and entrants] who are still in need shall, as appropriate, be assisted under AFDC-N or referred to the municipal welfare department via Form PA-14, "Referral for Services", giving the reason for referral.

1. (No change.)

2. Two parent families: When both parents are refugees [or entrants], the case is treated as a single RRP [or CHEP] case even if one or more children are U.S. citizens. When only one parent is a refugee [or entrant], RRP[/CHEP] assistance is granted only to family members who are refugees [or entrants].

3. One parent families: When the parent is a refugee [or entrant], the entire family is treated as a single RRP[/CHEP] case, even if one or more of the children are U.S. citizens. If the parent is a U.S. citizen but one or more of the children are refugees [or entrants], RRP [or CHEP] assistance is granted only to family members who are refugees [or entrants].

(b) Eligibility limitations: Eligibility for assistance under [either] RRP [or CHEP] is limited to a total of [36] **24** months.

1. (No change.)

2. Rules concerning GA (AFDC-N or GA) type cases are as follows:

i. First [18] **12** month period: For all GA and AFDC-N type applicants/recipients residing in the U.S. for [less than 18] **12** months **or less** from their initial entry date or when parole status was first granted as identified on INS Form I-94, income and resources shall be treated in accordance with the standards and criteria applicable to AFDC-C or -F, except, that CWAs shall not apply the $30.00 and one-third earned income disregard. The assistance standard for applicants/recipients shall be the appropriate amount for eligible [unit] **family** size using Schedule I found in N.J.A.C. 10:82-1.2.

ii. Second [18] **12** month period: During the second [18] **12** month period, GA and AFDC-N type cases shall have eligibility/[grant] **assistance payment** entitlement determined in accordance with AFDC-N or GA criteria, as applicable.

(1) AFDC-N type RRP [and CHEP] applicants/recipients (intact families not meeting employment criteria for AFDC-F segment) shall have eligibility and [grant] **assistance payment** entitlement determined by using Schedule II found in N.J.A.C. 10:82-1.2 and N.J.A.C. 10:82-2.11 and 12. CWAs shall apply the same standards and criteria relevant to income and resources as for any other AFDC-N applicant/recipient including applicable disregards.

(2) All other GA type cases (single adults and childless couples) shall have need determined using the same standards and criteria as [applied to all] other GA applicants/recipients, including applicable disregards, in accordance with N.J.A.C. 10:85 [except that AFDC-N work registration criteria shall apply]. In determining eligibility and [grant] **assistance payment** entitlement, CWAs shall use the appropriate standard for the eligible [unit] **family** size, using Schedule I or II in N.J.A.C. 10:85, as appropriate.

iii. During both [18] **12** month periods, all eligible GA type cases will retain Medicaid eligibility [using the existing program code assigned to such cases].

(c) Treatment of income and resources: The CWA shall consult with sponsors and/or the resettling agency about the possibility of contributions. Cash assistance to the client [must] **shall** be considered as unearned income (see N.J.A.C. 10:81-10.4(b)); however, the income and resources of the sponsors themselves shall not be considered. No resources which are in fact not available to the refugee [or entrant] shall be considered in determining eligibility. This includes resources in the refugee's [/entrant's] native land owned by the refugee[/entrant] or a responsible relative.

(d) (No change.)

(e) Work and training requirements: Refugees [and entrants] who are under the -C or -F segment of the AFDC program are subject to the work and training requirements governing that program.

1. (No change.)

2. Refugee [and entrant] cases that are under the -N segment of the AFDC program and those considered GA type cases are subject to the work and training requirements detailed in (e)2i through iii below:

i. Work registration: All refugees [and entrants] who are not exempt from the work requirements (see (i)**1** below [must register with the Job Service Office of the New Jersey Employment Service (NJES) using Form NJES-511F, "N.J. Division of Employment Services Self-Registration Application", and identifying RRP and CHEP on that form] **shall be registered with an Employment Service Provider (ESP). Registration is accomplished through completion and transmittal of Form PA-54, Refugee Program Interagency Referral, (provided by DPW) to the appropriate ESP. In some instances, however, a refugee may have been referred by a resettlement agency to an ESP which in turn referred the individual to the CWA to apply for assistance. In that instance the ESP will complete Parts A and C of Form PA-54 and provide the individual with a copy to present to the CWA for its files; the CWA need not complete another Form PA-54 for registration purposes.**

ii. Appropriate work and training criteria: All employable refugees [and entrants must] **shall** accept appropriate work or training opportunities. [In the case of offers of employment or training made through the local job service (JS) office, the application of appropriate work criteria and initial determination whether there is good cause to refuse will be made by the JS office subject to review and final determination by the CWA.] The job or training assignment [must] **shall** be related to the physical and mental capability of the individual to perform the task on a regular basis. Any claim of adverse effect to physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health. Cost of obtaining such medical evidence is an allowable 100 percent reimbursable cost to the agency.

(1) (No change.)

iii. Training requirements for employed refugee [and entrant] recipients: In the instance of a refugee [or entrant] who is employed and receiving public assistance, the welfare agency shall require part-time training such as English language instruction or skill training, if available and determined appropriate, if the refugee [or entrant] is employed part-time (less than 100 hours per month), as a condition for continued receipt of assistance. Additionally, the CWA shall encourage, but not require part-time English language instruction or skill training if the refugee [or entrant] is employed full-time (100 or more hours per month).

(f) [Rules on] **Provisions relating to** refugees [and entrants] attending school are as follows:

1. (No change.)

2. A refugee [or entrant] of any age who is otherwise eligible shall not be denied [case] **cash** assistance while enrolled and participating in a full-time training program which is approved by the welfare agency and intended to have a definite short-term (less than one year) employment objective.

(g) [Rules] **Provisions** concerning voluntary termination of employment are as follows:

1. New applicants: For the 30 consecutive calendar days immediately prior to receiving aid, an employable refugee [or entrant must] **shall** not have voluntarily terminated employment in order to receive assistance nor have refused to apply for or accept an appropriate job offer. However, the dependent family of such an ineligible applicant may apply for and receive cash assistance.

2. Current recipients: Employable refugees [or entrants] currently receiving aid [must] **shall** not have voluntarily terminated employment in order to continue to receive assistance nor refuse to apply for or accept offers of appropriate work or training.

(h) Sanctions: Refusal of an employable adult recipient [to register with the Employment Service or] to accept or continue an employment or training opportunity without good cause will result in the following actions:

1. [The welfare agency will provide (either directly or through arrangements with the Employment Service or an appropriate voluntary resettlement agency or sponsor) counseling within seven days intended to provide the refugee or entrant with an understanding of the implications of his refusal to accept employment or training and to encourage the refugee's or entrant's acceptance of such opportunity. Only one such counseling session is required but additional counseling may be provided at the discretion of the welfare agency.] **A conciliation period prior to the imposition of sanctions shall be provided for in accordance with the following time limitations:**

i. The conciliation effort shall begin as soon as possible, but not later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days.

2. If the employable refugee [or entrant] recipient continues to refuse an offer of employment or training, assistance will be terminated 30 days after the date of his or her original refusal. **Either the welfare agency or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.** The refugee [or entrant] shall be given at least 10 days written notice of the termination of assistance and the reason therefore (see N.J.A.C. 10:81-6 and 7.1). This sanction shall be applied in the following manner:

i. If the [assistance unit] **eligible family** includes other individuals, then the [grant] **assistance payment** shall be reduced by the amount included on behalf of that refugee [or entrant]. If the employable refugee [or entrant] is a caretaker relative, assistance in the form of protective or vendor payment will be provided to the remaining members of the [assistance unit] **eligible family.**

ii. If such individual is the only individual in the [assistance unit] **eligible family,** assistance shall be terminated.

(1) The refugee's [or entrant's] sponsor, or the voluntary resettlement agency where there is not a sponsor, will be notified of the action taken in (h)2i or ii above.

iii. A decision by the refugee [or entrant] to accept employment or training, made at any time within the 30-day period after the date of the original refusal, shall result in the continuation of assistance without interruption if the refugee [or entrant] continues to meet the income eligibility requirements for continued assistance.

iv. [An employable refugee or entrant may reapply for assistance 30 days after the termination of assistance because of refusal to accept or continue employment or training.] **Refugees who refuse without good cause to accept or continue in an employment or training opportunity shall be subject to the following penalties of ineligibility:**

(1) Three payment-months for the first such refusal; and

(2) Six payment-months for the second and each subsequent occurrence.

(i) Exemptions from employment or training requirements: The inability to communicate in English does not make the refugee [or entrant] "unemployable".

1. The following refugees [and entrants] are exempt from the employment or training requirements given in (e) above.

i.-iv. (No change.)

v. The parent or other caretaker of the child who is deprived of parental support or care by reasons of death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home is registered and has not refused to participate in the program or accept employment without good cause; [or]

vi. An individual working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 days.

vii. An individual who is pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the next three months.

[vi.] **viii.** (No change in text.)

(j) Initial [grants] **assistance payments** and immediate need: When there is an urgent need for assistance, the initial [grant] **assistance payment** shall be based on presumptive eligibility (see N.J.A.C. 10:81-3.3).

10:81-10.8 Medical assistance and medical expense spend-down

(a) Medical assistance: State eligibility standards for Title XIX shall apply to a refugee's [or entrant's] eligibility for medical assistance except:

1. (No change.)

2. The AFDC allowance standard for the appropriate family size shall constitute the medical assistance financial standard. However, the Medicaid "Cap" shall apply to eligible refugees [/entrants] in Title XIX approved facilities;

3. No financial resources which are in fact not available to the refugee [or entrant], including resources remaining in the place of national origin owned by a refugee [or entrant] or a responsible relative, shall be considered in determining eligibility for medical assistance;

4. The income and resources of sponsors, and in-kind services and shelter provided to refugees [or entrants] by their sponsors, shall not be considered in determining eligibility for medical assistance; and

5. All refugees [and entrants] who have been in the U.S. for [three] **two** years will no longer be eligible for medical or cash assistance under RRP [or CHEP].

[(b) Medical expense spend-down: Refugees or entrants whose countable income exceeds the standards of Schedule I of N.J.A.C. 10:82-1.2 may apply to the CWA for assistance in paying excessive medical expenses. Such expenses include all reasonable costs related to illness, medical diagnosis and treatment, and hospitalization. Also included in the definition of medical expenses are the following:

1. Medical insurance premiums including any enrollment fees, capitation fees for enrollment in prepaid health care programs and premiums for any other health insurance program which is primarily established for payment of medical costs. Co-payment or deductibles imposed by any health insurance programs described in (b) above in which the individual is enrolled. Costs related to necessary medical or remedial care which are covered by Medicaid; and

2. The sponsor's income and resources shall not be considered in determining eligibility, nor shall in-kind services and/or shelter provided to the refugees/entrants by the sponsor.]

(b) Those refugees who may be eligible for New Jersey's Medically Needy Program shall be referred to that Program.

[(c) With respect to medical assistance and medical expense spend-down for non-institutionalized aged, blind, and disabled refugees/entrants who are not receiving SSI benefits, the following shall apply:

1. The Medicaid Only income eligibility standard for the appropriate living arrangement constitutes the medical assistance financial standard (see Table B of N.J.A.C. 10:94-5.6(c)5).

2. Income and resources shall be treated in the same manner as for aged, blind, and disabled individuals in the Medicaid Only program.

(d) Rules concerning eligibility criteria are as follows:

1. Income: The CWA shall determine the refugee's or entrant's income according to the procedure for establishing initial eligibility (see N.J.A.C. 10:81-10.7(c) and (c)1 above and N.J.A.C. 10:82-4). However, the $30.00 and one-third disregard of earned income does not apply.

i. When the countable income is greater than the schedule allowance, the client must pay for medical expenses equal to his or her excess income. Medical expenses greater than the excess income make the client eligible for medical assistance (spend-down).

2. Resources: Resources, other than income, shall be considered in accordance with N.J.A.C. 10:82-3.2 and 3.8 through 3.12. For persons applying for medical assistance only, legally responsible relatives include spouse for spouse and parent(s) for a child under age 21.

i. Medical resources, in the form of insurance or other entitlement, must be applied to costs incurred for any items of medical care prior to the use of Medicaid funds. Incurred medical expenses which have been or will be paid within a reasonable period of time by a third party are not considered a liability of the individual and such expenses shall not be deducted from his or her excess income.

(e) Procedures: Medical expenses shall be reported on a monthly basis for expenses incurred during the preceding calendar month and balanced against income received during the same period.

1. Rules concerning applicant's responsibility are as follows:

i. At the initial request for medical payment applicants must:

(1) Complete Form PA-1J, Application and Affidavit for AFDC, MA, CPP, RRP, CHEP and Food Stamps; and

(2) Present evidence of status as a refugee or entrant (see N.J.A.C. 10:81-10.2 and 3).

ii. At the time of each monthly request for medical payment, applicants must:

(1) Present documentation of all income received by the family during the preceding month; and

(2) Present all bills, paid and unpaid, for medical expenses incurred during the preceding month.

2. Rules concerning IM worker's responsibility are as follows:

i. At the initial request for medical payment, the IM worker shall:

(1) Assist the applicant to complete Form PA-1J;

(2) Explain that bills paid by the client cannot be reimbursed; and

(3) Question applicants eligible for the RRP or CHEP spend-down about unpaid medical bills for the three months immediately preceding the date of application. When the applicant has incurred such medical obligations, the worker shall assist in completing Form FD-74, "Application for Payment of Unpaid Medical Bills New Jersey Health Services Program (Medicaid)", to obtain retroactive Medicaid coverage.

ii. At each subsequent request, the IM worker shall prepare Form PA-52, "IRP Medical Payment Worksheet and Authorization" (crossing out IRP and inserting RRP or CHEP in its place) as follows:

(1) Part I:

(A) Complete items A through J as indicated;

(B) Enter the appropriate allowance standard in Item K;

(C) Subtract J from K to determine amount of income in excess of standard in Item L.

(2) Part II:

(A) List paid and unpaid medical bills (use back of page if necessary);

(B) Enter total cost of all bills.

(3) Part III:

(A) Subtract income in excess of Standard (K) from total cost of medical bills. The remaining amount if any, is the deficit.

3. CWA's responsibility; The CWA shall pay unpaid medical bills up to the amount of the deficit. Payment for medical expenses will be by vendor payment made directly to the provider and recorded under Vendor Payments on fiscal reporting Form PA-644.]

10:81-10.9 Social services

Referral and information about other services available in the community should be offered to refugees [and entrants] regardless of their eligibility for financial assistance (see N.J.A.C. 10:81-7.20).

10:81-10.10 Fair hearings

The procedures and provisions for fair hearings in N.J.A.C. 10:81-6 and 7 shall apply in RRP [and CHEP].

10:81-10.11 Case records

(a) A separate record shall be established for each individual or family receiving assistance. For continuing cases, all changes in the status of each case and the dates on which changes occurred shall be recorded. For inactive cases, since RRP [and CHEP are federally] **is federally** financed, the case records are considered Federal records. Therefore, they cannot be disposed of in the same manner that CWAs dispose of case records for other inactive public assistance cases. Accordingly, the records for closed refugee [and entrant] cases [must] **shall** be retained until a Federal audit is completed.

(b) Each case record [must] **shall** contain:

1. (No change.)

2. The name and address of the refugee's [or entrant's] sponsor (if known);

3.-4. (No change.)

SUBCHAPTER 11. CHILD SUPPORT AND PATERNITY

10:81-11.1 Introduction

The [regulations] **rules** contained in this subchapter are applicable, as appropriate to the AFDC and non-AFDC program in New Jersey. P.L. 93-647 establishes Title IV-D of the Social Security Act, which mandates procedures for enforcing support obligations owed by absent parents to their children, locating absent parents and establishing paternity for children born out-of-wedlock. [If any regulations herein contradict or conflict with any previously published portions of this manual, such material shall be superseded by this subchapter, except as stated in N.J.A.C. 10:81-11.16(a)2.]

10:81-11.3 Social Security numbers

(a) (No change.)

(b) Recording the Social Security number: The IM worker shall record, in the appropriate spaces on Form CSP-158 (Case Preparation Information Sheet) [or], [CODES] **FAMIS** Form 105[, as appropriate,] and Form PA-1J (Application and Affidavit for [AFDC, MA, CPP, RRP, CHEP and Food Stamps] **Public Assistance)**, the Social Security number of each person who is included in the AFDC [grant] **assistance payment.**

(c) Obtaining a Social Security number: The CWA shall obtain a supply of Social Security Form SS-5, sufficient to accommodate all AFDC applicants and eligible individuals who do not already have Social Security numbers. Upon application the applicant shall be required to sign as many SS-5 forms as needed for the eligible [unit] **family.** The IM worker shall complete Form SS-5 on the basis of information provided by the applicant. Completed forms shall be forwarded to the [Social Security Administration; Enumeration Branch; 38 Courtwright Street; Wilkes-Barre, Pennsylvania, 18705] **county's respective Social Security Administration District Office (SSA/DO).** A copy of the SS-5 form shall be retained in the case record, and a copy given to the client if so requested.

1.-2. (No change.)

3. Public assistance applicants who are not United States citizens shall have Form SS-5, Application for Social Security Number Card, processed at the SSA/DO in order to be enumerated.

i. Form PA-55, County Welfare Agency Alien Referral to Social Security (SSA) District Office for Social Security Number Application, is to be used to refer alien individuals to the SSA/DO. Liaisons in the SSA/DO have been instructed to return the bottom portion of that form to the specified CWA. For quality control purposes, the bottom portion of Form PA-55 is to be filed in the case record and will serve as

acceptable documentation that the individual has applied for a Social Security number.

ii. Each CWA is to create a tickler file to monitor the flow of referral forms (PA-55s) and receipts of acknowledgement (bottom portions of Form PA-55). Immediately upon receipt of such acknowledgement, CWAs shall input the filing date of the SS-5 form on the 105 form, thereby providing tracking for the issuance of Social Security numbers, and file the acknowledgement in the case record.

(d) [Verification of Social Security number: If the IM worker has reason to believe that the Social Security number supplied by the AFDC applicant/recipient is erroneous, such Social Security number shall be verified by means of Form SS-5.] **Procedures for verifying Social Security numbers are as follows:**

1. [Documentation of request for verification of Social Security number: The IM worker shall record in the case record the date upon which Form SS-5 was prepared.] **The CWA shall verify the Social Security numbers (SSNs) provided by the eligible family with the Social Security Administration (SSA) by submitting them through the FAMIS. Benefits shall not be denied, delayed or terminated for an otherwise eligible family pending SSN verification. Once the SSNs have been verified, the CWA shall make a permanent annotation to the case file to prevent unnecessary reverification of the SSN in the future. Social Security numbers previously verified by another program participating in the Income Eligibility Verification System shall be acceptable to the CWA for AFDC/AFDC-related Medicaid participation.**

(e)-(f) (No change.)

10:81-12.1 General provisions and purpose

(a) This subchapter is for use by county welfare agencies (CWAs) participating in the "[Teen] **TEEN PROGRESS**" Demonstration in the cities of Newark and Camden. This subchapter shall at all times be used and interpreted in conjunction with N.J.A.C. 10:81, N.J.A.C. 10:82, N.J.A.C. 10:87, and N.J.A.C. 10:90, as appropriate.

(b) The purpose of this subchapter is to:

1. Identify individuals included in the [Teen] **TEEN PROGRESS** Demonstration;

2.-3. (No change.)

(c) The purpose of this demonstration is to provide educational and work-related activities to 1,800 applicants for AFDC who are age 19 and under, and who [are either pregnant with a first child or] have one child.

(d) The following existing program practices will be targeted to this population:

1.-3. (No change.)

4. [Transportation; and] **Training-related expenses which will include transportation to and from the training or education site, cost of meals, uniforms, materials and similar expenses;**

5. Establishment of paternity and child support obligations[.]**; and**

6. Client-related expenses other than transportation and child care that the case manager determines are necessary and directly related to TEEN PROGRESS participation.

(e) The following new program practices will be implemented:

1. (No change.)

2. Required participation of absent fathers in WIN Demo, Food Stamp Job Search, or General Assistance Employability Program (GAEP), if they are receiving AFDC[, food stamps,] or General Assistance (GA);

3.-7. (No change.)

8. [Enhanced] [transportation] **Transportation.**

10:81-12.2 Definitions

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

"Baseline data" means information about the enrollee's demographic and personal characteristics obtained through interviews, literacy testing, and so forth, **at the time of entry into the program.**

. . .

10:81-12.3 Eligibility

(a) [The following categories of individuals age 19 or under are eligible for participation] **AFDC recipients meeting the following conditions are required to participate** in the demonstration:

1. [Applicants for AFDC who are either pregnant or have at most one child; and] **Residing in Camden or Newark; and**

2. [Recipients of AFDC who are pregnant with a first child or who have a dependent child added to the assistance unit, resulting from the first birth.] **Age 19 years or under; and**

3. Living with one child; or

4. Living with more than one child if all children were the products of the same pregnancy; and

5. The recipient and her child(ren) are receiving AFDC benefits together for the first time.

(b) Fathers of the children will be mandatory participants in the demonstration and eligible for services under the demonstration, if:

1. (No change.)

2. The [absent] father is either a recipient of AFDC as a dependent child, **or** a recipient of General Assistance **of any age,** or an unemployed [non-recipient] **nonrecipient** of public assistance who is a member of a household receiving food stamps.

(c) TEEN PROGRESS sample members of the control and experimental groups are not eligible for REACH until the completion of data collection follow-up (approximately two years after each individual's intake date for AFDC).

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

10:81-12.4 Exemptions and deferrals

(a) Individuals who are exempt from work and training under N.J.A.C. 10:81-3.18(b)2, except for the exemption for care of the youngest child under age six, shall not be eligible for [Teen] **TEEN PROGRESS** for the duration of their exemption. Individual's exempt status [must] **shall** be determined prior to random assignment to experimental or control groups.

1. At a minimum, all exemptions shall be reviewed semiannually.

2. Participants temporarily deferred because of illness or other good cause which could change monthly shall be monitored by the case manager.

(b) Temporary deferrals from participation may be granted in the following situation:

1. [A deferral of up to one month for medical reasons.] **Medical deferrals will require a statement from a physician on his or her letterhead and approval by the unit supervisor. Temporary deferrals apply to participants and are thus granted after random assignment.**

[(c) Medical deferrals will require a physician's statement and approval by the unit supervisor. Temporary deferrals apply to participants and are thus granted after random assignment.

(d) At a minimum, all exemptions shall be reviewed semiannually. Participants temporarily deferred because of illness or other good cause which could change monthly shall be monitored by the case manager.]

10:81-12.5 Case management

(a) Case management encompasses a significantly expanded set of worker responsibilities. The case manager is the critical link among the different service subsystems, such as income maintenance; employment; training; child support enforcement; and support services, and between these subsystems and the recipient. It is this structured approach to the delivery of multiple and interrelated services that will assure the goals and objectives of [the Teen] **TEEN PROGRESS.**

(b) The case management function includes the following:

1.-8. (No change.)

9. Determining whether sanctions shall be applied **and following through on the sanction procedure (see N.J.A.C. 10:81-12.11).**

10:81-12.7 Overview of the process

(a) The operation of this demostration will include the following steps:

1.-2. (No change.)

3. Registration requirements; **and**

4. Program activities monitoring and plan updating based on a client's participation[; and].

[5. Sanctioning process.]

(b) Client violations of program requirements may result in sanctioning as specified at N.J.A.C. 10:81-12.11.

10:81-12.11 Sanctions

(a) Participants who fail to comply with program requirements set forth in this demonstration, without good cause, will be subject to the sanctioning process. Good cause includes the reasons set forth at N.J.A.C. 10:81-3.18. The following actions by a participant constitute failure to comply with program requirements:

1. Failure and/or refusal to [attend orientation] **report to the TEEN PROGRESS office and provide information for purposes of baseline data collection** after three notices have been mailed to the potential recipient and have not been responded to;

2. (No change.)

3. [Refusal to carry-out a plan leading to self-sufficiency;] **Failure and/or refusal to report to ongoing mandatory activities after two notices have been mailed to the recipient;**

4.-5. (No change.)

(b) Sanctions shall be imposed for the following time periods:

1. [Up to one] **One** payment month for the first instance of noncompliance;

2.-3. (No change.)

(c) (No change.)

(d) During the sanction period, the sanctioned individual will not be entitled to receive training-related expenses, child care payments, or client-related expenses.

[(d)]**(e)** Upon the determination by the case manager that a participant has refused to participate or drops out of an educational/employment program without good cause, the case manager shall begin a series of steps that will lead to imposition of the sanction.

1. (No change.)

2. Prior to the first sanction, the case manager will conduct a conference with the [non-complying] **noncomplying** recipient and the head of household. During this conference, the recipient will be given a final opportunity to comply. If as a result of this conference the recipient complies [within a week] **with program requirements**, the sanction may be suspended.

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

[(f)]**(g)** Fathers participating in **the** Food Stamp [Job Search] **Employment and Training Program** (see N.J.A.C. 10:87-[3.19 through 3.21]**10**) or General Assistance Employability Program (see N.J.A.C. 10:85-10.1 through 10.7) are subject to the sanctioning policies and procedures of those programs.

10:81-12.12 [Absent] **TEEN PROGRESS** fathers

(a) (No change.)

(b) When [absent] fathers of children of participants in the experimental group are identified, the case manager will determine whether the father is a recipient of AFDC (as a dependent child), [food stamps] or General Assistance. If the father is a recipient in [any] **either** of these programs, he will be [contacted and referred to] **required to participate in** the demonstration project. Case managers will interview the father and initiate participation in this project and other educational, training or employment programs.

[(c)]**1.** The following services may be provided to putative fathers participating in the demonstration or recognized parenting programs:

[1. Establishment of paternity;]

i. Referral to child support enforcement unit within the CWA;

[2.]**ii.** Case management with referral to employment, education, and/or work programs;

[3.]**iii.** Child [Care] **care**;

[4. Transportation; and]

iv. Training-related expenses which will include transportation to and from the training or education site, cost of meals, uniforms, materials and similar expenses; and

[5.]**v.** Parenting education and family life education.

SUBCHAPTER 13. [(RESERVED)] **AUTOMATED VERIFICATION**

10:81-13.1 Systematic Alien Verification for Entitlements (SAVE) Program

(a) Section 121 of the Immigration Reform and Control Act (IRCA) of 1986 (Public Law 99-603) requires the Immigration and Naturalization Service (INS) to implement a system for the verification of immigration status of aliens applying for certain types of benefits including AFDC, AFDC-related Medicaid and food stamps. That system, known as SAVE, is an inter-agency Federal/State information-sharing program designed to prevent the issuance of benefits to illegal aliens or aliens otherwise not entitled to benefits due to immigration status.

(b) CWA staff shall be responsible for explaining SAVE requirements, procedures and forms to clients at time of application and redetermination.

10:81-13.2 Eligibility

(a) The SAVE program requires that each applicant for AFDC, AFDC-related Medicaid and/or food stamp benefits shall, as a condition of eligibility, provide a written statement of citizenship or legal alien status and, if he or she is not a United States citizen, documentation, subject to verification, of satisfactory immigration status.

(b) For AFDC and AFDC-related Medicaid cases a statement and signature for each eligible family member shall be provided to the CWA before benefits can be issued to that individual. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

1. If a signature is not provided for all eligible family members by either the end of the 30-day application processing standard or the last day of the last month of the redetermination period, then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements. Income and resources of ineligible individuals shall be considered in the determination of benefits for the eligible family.

2. If a noncomplying member subsequently provides his or her signature, the agency shall process that addition to the AFDC eligible family as a client-reported change and shall issue an additional payment in accordance with N.J.A.C. 10:90-4.4(a).

10:81-13.3 Citizenship/alien status

(a) When an individual applies for AFDC benefits or is scheduled for redetermination of eligibility for continuing benefits, the declaration form shall be completed as a condition of eligibility, within the required time frame for the appropriate program (see N.J.A.C. 10:81-13.2).

(b) Each adult member of the eligible family shall provide a signed statement concerning his or her citizenship/legal alien status. Adult members shall sign a statement for members under 18 years of age and, in the absence of an eligible adult in the family/household (for example, in the case of a non-needy parent-person in AFDC), the applicant shall sign for non-adults. In all cases, information shall be provided on the form for each eligible family member.

(c) If an individual signs with an "X", the signature of a witness is required, other than the income maintenance case worker assigned to the client.

(d) Unless an individual is a United States citizen, documentation shall be submitted to the CWA as proof of his or her legal alien status. That documentation shall be submitted within two months following the month in which assistance is granted and is subject to verification by the INS. Failure or refusal to submit that documentation timely may result in ineligibility of that individual.

(e) AFDC-N segment cases are not subject to the requirements of the SAVE Program unless they are United States citizens or legal aliens eligible for food stamps or AFDC-related Emergency Assistance. Individuals who are not United States citizens and do not meet the criteria for legal alien status are ineligible for Federally funded AFDC benefits, however, they may be eligible for benefits as AFDC-N segment cases (N.J.A.C. 10:81-3.10(a)1). CWAs shall advise such individuals of their right to apply for those benefits.

10:81-13.4 Documentation requirements

(a) Aliens in the United States requesting assistance shall present original alien registration documents or other material sources that the CWA determines constitutes reasonable evidence of the alien immigration status. The documentation should contain an alien registration or admission number. The alien registration number, commonly referred to as the "A" number may consist of a seven or eight digit number that has been assigned to an alien at the time his or her alien file was created. The alien file refers to the history file which contains data

pertaining to each individual alien. All applicants for assistance shall present acceptable documentation or furnish a receipt from the Immigration and Naturalization Service indicating that an application for replacement documentation has been made.

(b) Immigration documentation includes, but is not limited to, the following:

1. Form I-151: Alien Registration Receipt card with photograph for permanent resident aliens. That card was in use prior to 1979 and is still valid.

2. Form I-551: Resident Alien Card for Permanent Resident Aliens. That card may also be issued conditionally to permanent resident aliens and will contain an expiration date.

3. Form AR-3a: Alien Registration Receipt card for permanent resident aliens issued from 1941 through 1949.

4. Form I-94: Arrival-Departure Record containing any of the following annotations:

i. Section 207 or refugee;

ii. Section 208 or asylum;

iii. Section 212(d)(5) or conditional entry;

iv. Section 203(a)(7);

v. Section 243(h); or

vi. Cuban-Haitian Entrant.

5. Form I-688: Temporary Resident Card, Department of Justice, INS; issued pursuant to IRCA; contains an expiration date;

6. Form I-688A: Employment Authorization Card, Department of Justice, INS; issued pursuant to IRCA; contains an expiration date;

7. Form I-689: Fee Receipt Form issued to applicants under the amnesty and special agricultural worker programs (SAW) which contains an expiration date;

8. Form I-181: A Temporary Identification document issued by an INS field office when an alien has been granted permanent resident status. That document contains an annotation of work authorization but no photograph.

9. Form I-327: Re-entry Permit issued to lawful permanent resident aliens before they leave the United States for up to two years. The document contains an expiration date;

10. Form I-571: Refugee Travel Document, which contains an expiration date.

11. Any documentation issued by the Immigration and Naturalization Service supported by other forms of identification describing the individual (for example, height, weight, age) accompanied by a photograph or other information sufficient to identify that individual. A driver's license, marriage certificate or other similar forms of documentation may be useful for processing of secondary verification.

10:81-13.5 Verification

(a) Primary verification of alien status will be accomplished through the "Alien Status Verification Index" (ASVI). The ASVI verifies biographical data pertaining to the alien applicant. Access to the ASVI is gained through a toll free telephone number system and requires the use of an authorization code and the alien registration number.

(b) Secondary verification is normally initiated by the CWA when the ASVI cannot locate a compatible record using the provided Alien Registration number. ASVI is a subset of the larger Central Index System (CIS) which contains extensive Immigration and Naturalization service data. The automated system instructs the user to institute secondary verification when the biographical data submitted to the CWA does not correspond to that maintained in the ASVI. The CWA may, at its discretion, institute secondary verification regardless of the ASVI response if it feels that the documentation submitted has been altered in some fashion. Only photocopies of documents are to be provided to INS by the CWA. The original shall be returned to the alien and one additional photocopy should be retained in the case file of the applicant pending INS reply. Alien documentation provided to the INS that indicates criminal misuse of government documents will not be returned to the CWA.

(c) INS Form G-845, Document Verification Request is used to forward information to the INS for secondary verification of alien status. Instructions for completion of the form are provided in the SAVE Procedural Manual. Requests for verification are to be mailed to:

United States INS District Office
970 Broad Street
Newark, New Jersey 07102
Attention: Verification Unit

(d) A response will be received from the INS within 10 to 21 working days of receipt of Form G-845. If, however, there is a time lag, benefits may not be delayed, denied, reduced or terminated solely because of the delayed response. CWAs shall process the application or redetermination in a timely manner.

10:81-13.6 Confidentiality and fair hearings

(a) In accordance with IRCA and SAVE program requirements, use or disclosure of client information in connection with the SAVE program is restricted to individuals and organizations directly connected with verification of legal alien status and the administration or enforcement of the provisions of the AFDC, AFDC-related Medicaid and Food Stamp Programs.

(b) Information supplied by the INS shall not be used to deny, reduce, suspend, or terminate benefits unless the CWA has provided the client adequate and timely notice and the opportunity for a fair hearing, pursuant to N.J.A.C. 10:81-6 and the Uniform Administrative Rules of Practice at N.J.A.C. 1:1.

(c) If an alien applicant is not in satisfactory immigration status, IRCA and SAVE program requirements dictate that the individual's eligibility be denied or terminated and that the applicable fair hearing process be followed. On a prearranged and pre-approved basis the INS will provide appropriate immigration technical consultation and witness support necessary in providing individuals denied program benefits with a fair hearing or with judicial review or agency action.

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook

Aid to Families with Dependent Children (AFDC) Program

Proposed Readoption with Amendments: N.J.A.C. 10:82

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1989-293.

Submit comments by August 2, 1989 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:82 will expire on October 29, 1989. The readoption of the chapter becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption, if such notice is filed on or before the expiration date. The concurrent amendments to the chapter become effective upon publication in the New Jersey Register of a notice of adoption.

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:82.

N.J.A.C. 10:82 contains Federal requirements pertaining to an applicant's/recipient's and resources income in the Aid to Families with Dependent Children (AFDC) program. The purpose of the chapter is to provide county welfare agencies (CWAs) guidelines for treatment of income and resources for the purpose of determining initial or continued eligibility for AFDC. N.J.A.C. 10:82 must be used and interpreted in conjunction with the Public Assistance Manual, N.J.A.C. 10:81, and the Monthly Reporting Policy Handbook, N.J.A.C. 10:90.

N.J.A.C. 10:82-1 contains the AFDC assistance allowances, which are the standard amounts established for each eligible family. The allowances are determined according to the number of persons in the eligible family. Allowance standards for persons eligible under the AFDC-C and AFDC-

F segments appear in Schedule I. Allowance standards for persons eligible under the AFDC-N segment appear in Schedule II. The eligible family shall be comprised of those family members who apply for and are found eligible to receive public assistance. The eligible family must include one or more children unless such child is a recipient of Supplemental Security Income (SSI) benefits. N.J.A.C. 10:82-1 also includes detailed descriptions of the components of the three AFDC segments (-C, -F and -N), who is eligible under each segment, eligibility of a person in an institution, a parent or child attending school, and determination of calculated earned income. Also presented are the concepts of retrospective budgeting and monthly reporting.

N.J.A.C. 10:82-2 covers procedures for determining the amount of the monthly assistance payment. For all new applications or reapplications, initial financial eligibility must be established before a determination of the amount of the monthly assistance payment can be made. When eligibility has been determined, the initial assistance payment shall be computed as follows: all income available from the date of application to the end of the month shall be considered, and the countable income shall be subtracted from the appropriate monthly assistance standard and the result shall be prorated by multiplying that amount by the factor appropriate to the date of application found in the table at N.J.A.C. 10:82-2.2(a)1. If the result is not a whole dollar, the amount shall be rounded to the next lower whole dollar. In determining the amount of the initial assistance payment, the appropriate disregards as described in N.J.A.C. 10:82-4 shall be applied to earned income. Additionally, procedures to recover overpayments or to correct underpayments are established in this subchapter.

N.J.A.C. 10:82-3 deals with resources. All available income and liquid resources of the eligible family must be considered in determining the amount of assistance to be granted. Available resources include cash and other forms of income immediately available to meet the needs of the eligible family. Other resources are considered either exempt or potential. Exempt resources are not subject to any requirement for liquidation and are not considered in the determination of the assistance grant. Potential resources are those which are neither exempt nor currently available but are to be liquidated within a reasonable time to meet future needs. Certain relatives are legally responsible to provide support, if financially able and may be a source of income for a public assistance applicant or recipient. The CWA is to determine the capacity of legally responsible relatives to contribute to the support of public assistance clients. Deeming of income is also covered in this subchapter with respect to the program requirements of both AFDC and Medicaid.

N.J.A.C. 10:82-4 provides the CWAs with guidelines, based on Federal requirements for the treatment of all income, for the purpose of determining initial or continued eligibility for AFDC. Included are provisions which define earned and unearned income and the income disregards, based on the AFDC-C, -F or -N segment which are allowable for that income (including the disregard of earned income of children who are either full or part-time students). The subchapter also establishes rules regarding alimony, child support, income received at regular intervals, and irregular or nonrecurring income.

N.J.A.C. 10:82-5 contains rules which pertain to the provision of assistance payments for unusual and specific purposes not included in the regular monthly assistance payment. Special payment rules for child care, training expenses, emergency assistance and supplemental payments to offset substantial income loss due to retrospective budgeting rules are also provided.

The Department's Division of Public Welfare (DPW) has recently conducted a review of N.J.A.C. 10:82 prior to this proposed readoption. After the review, it was determined that the rules, along with the addition of concurrent amendments, are adequate, reasonable and responsive to the purposes for which they were promulgated. The following are significant changes which have been adopted previously, as a result of an ongoing review, since October 29, 1984.

N.J.A.C. 10:82-1.2 provides the schedules of AFDC standards. Those standards have been periodically updated to reflect increases in the cost of living.

N.J.A.C. 10:82-1.3(a) was modified to stipulate that blood-related or adoptive brothers and sisters are to be included in the same eligible family.

N.J.A.C. 10:82-1.7(a) was revised to provide an income disregard of educational grants, scholarships, student loans or other educational financial aid received by eligible children, so long as the child continues to attend school.

N.J.A.C. 10:82-1.8(a) was modified to stipulate that eligibility for child care when the parent of an eligible child is attending school, is based on the absence of child care funding from other sources.

N.J.A.C. 10:82-1.10 and 11 were added to introduce concepts of retrospective budgeting and monthly reporting for AFDC applicants and recipients, in accordance with N.J.A.C. 10:90.

N.J.A.C. 10:82-2.2(a) was amended to stipulate that all income received by an assistance applicant in the month of application be used when determining the initial assistance payment.

N.J.A.C. 10:82-2.3 was amended to provide new rules for recognition of income of both eligible and ineligible household members. The "deeming" of a noneligible stepparent's income was established by this amendment.

N.J.A.C. 10:82-2.4 was amended to stipulate that when an eligible household member is sanctioned with a penalty of ineligibility, his or her income is "deemed" available to the remaining eligible family members.

N.J.A.C. 10:82-2.6 was modified to provide for the use of earned income disregards during initial eligibility determinations.

N.J.A.C. 10:82-2.8(a)4 was modified to limit eligibility for earnings disregards by stipulating that a current recipient must have been a nonrecipient for 12 months to again be eligible for a full earnings disregard.

Tables at N.J.A.C. 10:82-2.13 were revised to allow for an increase in the AFDC allowance standard, as well as the Maximum Income levels.

N.J.A.C. 10:82-2.19(a)1 through 9 and 14 were amended to provide that overpayments received by recipients are recoverable, whether the recipient or the agency was responsible for the overpayment. Rules were provided for recovery of overpayments for various specific overpayment situations.

N.J.A.C. 10:82-2.20(a) through (d) were amended to provide rules for payment adjustments to be undertaken when the eligible family experiences a change in need due to an increase or decrease in the size of the eligible family, loss of income, administrative error or due to an emergency situation.

N.J.A.C. 10:82-3.1(a) through (e) were amended to provide a redefinition of resources and their relationship to AFDC eligibility. It provides for a maximum countable resource eligibility limit of $1,000 (including savings).

N.J.A.C. 10:82-3.2(b)6vii was amended to provide a more explicit definition of occasional nonrecurring gifts as an exempt resource.

N.J.A.C. 10:82-3.10(b)4 and 5 were modified to provide more specific rules for situations where legally responsible relatives (LRRs) have roomer-boarders in their home and when LRRs are roomer-boarders in the house of the eligible family.

N.J.A.C. 10:82-3.11(d)—Schedule IV, Monthly Income Standards for LRRs, was revised to reflect cost of living increases.

N.J.A.C. 10:82-3.13(a)1i to vi was added to enumerate the categories of aliens which are not subject to alien sponsor income deeming provisions.

N.J.A.C. 10:82-3.13(e), (f), and (g) were added to provide rules for reporting income and resources of a sponsored alien and limitations of deeming income and recovery of overpayments to aliens.

N.J.A.C. 10:82-4.2(c) was added to provide rules for the calculation of income from gratuities.

N.J.A.C. 10:82-4.3(c) was added to provide that when a noneligible individual resides with and receives personal services from an eligible individual, that individual is considered self-employed. Income in excess of $125.00 from this arrangement shall be considered earned income.

N.J.A.C. 10:82-4.4(c)2 was added to clarify the use of the $30.00 and one-third disregard.

N.J.A.C. 10:82-4.6(b) was amended to provide a six month income disregard of a dependent child's earnings through the Job Training Partnership Act.

N.J.A.C. 10:82-4.15(a) was modified to provide more complete instructions for the recognition of lump sum income.

N.J.A.C. 10:82-5.10(a), (c), and (d) were extensively amended to provide new criteria for the provisions of emergency assistance.

As a result of a continuous review process, the following significant changes are being addressed as part of the proposed readoption of N.J.A.C. 10:82.

Included are technical modifications to reflect a change in terminology such as changing "grant" to "assistance payment" and "eligible unit" to "eligible family".

N.J.A.C. 10:82-1.11(a)1, concerning bimonthly reporting has been deleted as it is now obsolete. N.J.A.C. 10:82-1.11(a)2 has been recodified and is now N.J.A.C. 10:82-1.11(a)1.

At N.J.A.C. 10:82-2.1(a) and 2.14(b), any reference to the Central Operation for Data Exchange Services (CODES) has been deleted and replaced with references to the Family Assistance Management Information System (FAMIS) and, due to the full implementation of FAMIS.

Language at N.J.A.C. 10:82-2.3(a) has been amended to reflect that the income of a parent is considered available for children under 18, rather than under 21.

Reference to REACH participants in the work supplementation program (WSP) has been added at N.J.A.C. 10:82-2.8(a)3.

The amendment N.J.A.C. 10:82-2.9(d)1 establishes that the earned income disregard for a stepparent's gross earned income is $75.00, whether employed full or part-time. The $50.00 disregard for part-time employment has been deleted.

Text has been added at N.J.A.C. 10:82-2.10(d) to specifically identify that in cases where, after excluding the child whose income caused ineligibility for AFDC, no child remains in the eligible family, Medicaid eligibility does not exist for the family. The amendments comply with the decision made by the U.S. District Court, District of New Jersey, *Rosado v. Bowen*, Civil Action Number 86-1766.

Language has been added at N.J.A.C. 10:82-2.10(e) to state that any AFDC family whose cash assistance has been denied or terminated as a result of deeming of sibling, stepparent, or alien sponsor's income or resources, shall have its Medicaid eligibility evaluated without regard to that individual's needs or income (The amendments comply with the decision made by the U.S. District Court, District of New Jersey, *in Rosado v. Bowen*, Civil Action Number 86-1766).

At N.J.A.C. 10:82-3.2(b)6vii clarification was provided in the citation for resources considered exempt.

N.J.A.C. 10:82-3.13(a)1vii expands the categories of aliens to whom deeming provisions do not apply.

N.J.A.C. 10:82-3.13(b)5 was also amended to clarify that the Medicaid eligibility of aliens is to be evaluated without consideration of deemed income or resources.

N.J.A.C. 10:82-3.14(a) was revised to indicate that an adolescent parent is an individual under the age of 18 rather than 19, and who is himself or herself a parent of a dependent child, as identified in the Deficit Reduction Act of 1984.

At N.J.A.C. 10:82-4.8 the income from family day care is identified as earned income from self-employment and is referenced to N.J.A.C. 10:82-4.3 where it is more fully discussed. The method to determine the net income available to the eligible family is also explained. Obsolete day care rates were also deleted.

Language concerning treatment of nonrecurring earned or unearned lump sum income, at N.J.A.C. 10:82-4.15(a) was reworded to be more easily understood.

N.J.A.C. 10:82-4.15(a)6 was added to advise of the need for an adverse action notice and the information that must be included in that notice when a family's eligibility is terminated due to receipt of a lump sum income.

At N.J.A.C. 10:82-5.3(c)3, a provision was added to allow that child care payments may also be made in the form of a vendor payment rather than only as a direct payment to the client.

Language at N.J.A.C. 10:82-5.10 has been added to emphasize that once immediate need is apparent, emergency assistance shall be provided to eligible families.

At N.J.A.C. 10:82-5.10(e)1ii, the time period during which victims of domestic violence may apply for emergency assistance is being corrected to 30 calendar days to conform with the period specified at N.J.A.C. 10:82-5.10(a)1 for other emergency assistance applicants.

N.J.A.C. 10:82-5.12 is expanded to explain that the date of the child support payment is the date a payment is actually received.

Social Impact

The major thrust of any public assistance system is the maintenance of income for those who are unable to provide for themselves. The Assistance Standard Handbook (N.J.A.C. 10:82) in conjunction with the Public Assistance Manual (N.J.A.C. 10:81), provides the rules governing the AFDC program through which assistance is provided to needy families.

Guidelines for CWAs concerning the income and resources of applicants/recipients of AFDC are set forth at N.J.A.C. 10:82. Readoption of the handbook will result in the continued equitable determination of eligibility when considering the resources, income and appropriate disregards of all AFDC applicants/recipients.

Additionally, the absence of the provisions provided herein would cause undue hardship to needy families eligible for AFDC. Taking December 1988 as an average month in which assistance has been granted, records indicate that over 102,800 families received assistance. This included well over 302,000 individuals, 204,000 of which are children. The readoption of these provisions will provide those individuals and families with the availability of public assistance and the knowledge that they will be treated with respect and dignity. The readoption is essential for the efficient and effective administration of the AFDC program by the CWAs.

Deletion of the bi-monthly reporting requirement for certain AFDC households, specifically those with children ages 16 and 17 and not attending school, eliminates the requirement that those families complete and submit monthly status reports. Elimination of that requirement reduces the burden of completion of additional paperwork both for affected AFDC families and CWAs.

The amendment reflecting that the income of a parent is considered available for children under age 18 rather than under age 21 effectively provides that a family's financial responsibility for a child stops when the child reaches the legal age for an adult, that is, age 18.

The earned income disregard for purposes of stepparent deeming is increased to $75.00 in all situations, thereby, providing a uniform income disregard in all such cases. In addition, it provides for the retention of increased income for the stepparent.

Amendments implementing the decision in *Rosado v. Bowen* provide for the equitable and legally correct treatment of households as it relates to eligibility for AFDC and Medicaid. Specifically, that court decision upheld "income deeming" aspects of the filing unit concept for AFDC. That policy requires that when a child with income is included in the family unit the grant to the family may be terminated or reduced depending on the amount of income. However, the court ruled that concept is not applicable in the determination of Medicaid eligibility. Medicaid coverage cannot be denied or terminated for other members of the eligible family because of inclusion of the child. Medicaid eligibility for other family members must be determined without income of the child causing the ineligibility. In accordance with the rationale for the *Rosado v. Bowen* Federal court decision, the Federal Health Care Financing Administration advised that stepparent income and alien sponsor's deeming of income and resources are not to be used in the determination of AFDC-related Medicaid eligibility. Those procedures apply in AFDC cash assistance determinations only. Consequently, families affected by these specific income provisions will remain eligible for Medicaid even if such families lose eligibility for cash assistance. In addition, Medicaid eligibility will not exist for a caretaker relative(s) whose only otherwise eligible child has been excluded as a result of the *Rosado* decision.

Expansion of the categories of aliens to whom deeming provisions do not apply expand the alien population potentially eligible for AFDC and Medicaid.

Pursuant to the Tax Reform Act of 1986 (P.L. 99-514), the deeming of income of parents and guardians of adolescent parents is now limited to children under the age of 18 rather than 19, effectively limiting the deeming provisions. Individuals age 18 and older may become eligible for AFDC in the absence of deemed income from their parents.

For families being terminated from AFDC due to receipt of lump sum income, the amendment specifies the information that must be contained in the notice of adverse action. By providing the family with a clear statement as to the reason for the termination, the duration of ineligibility, the earliest date the family may apply for AFDC to have its case reopened and an explanation of circumstances under which the family may have its period of ineligibility reduced, the Department is ensuring that the eligible family understands the action being taken on its case, the reasons for the action and the families rights to reapply for AFDC at a specific point in time.

The amended rule pertaining to eligibility for emergency assistance (EA) revises the rule to ensure that EA is provided to both AFDC families in receipt of continuing assistance as well as to non-AFDC families satisfying AFDC eligibility requirements. This clarification will ensure equitable treatment of all families applying for EA.

Other amendments include technical updates, such as cross references, and other technical corrections which clarify rules and improve administration of the AFDC program.

Economic Impact

The amendments to N.J.A.C. 10:82 are expected to have little or no impact, inasmuch as they reflect policies which are already in effect. Readoption is essential for the efficient and effective administration of the AFDC program by the CWAs. Failure to readopt N.J.A.C. 10:82 could, however, result in the loss of Federal financial participation, since the rules are essential for the proper determination of AFDC benefits.

For December 1988, the total of AFDC expenditures was $35.5 million ($17.5 million—Federal, $13.5 million—State and $4.5 million—county).

Regulatory Flexibility Statement

This chapter has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The readoption with amendments imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children (AFDC) program to a low-income population by a governmental agency, rather than a private business establishment.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:82, as amended and supplemented by the New Jersey Register.

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

10:82-1.11 Monthly reporting

(a) Under the monthly reporting system, certain AFDC eligible [units] **families** are required to report their income and circumstances and any expected changes in income and circumstances to the CWA every month by submitting a complete Monthly Status Report (MSR) form. The information reported on the MSR for a budget month is used by the CWA in the processing month to determine eligibility and compute the assistance payment for the corresponding month (see N.J.A.C. 10:90).

[1. Certain AFDC eligible units are required to report income and circumstances and any expected changes in income and circumstances bimonthly by completing and submitting an MSR form to the CWA every other month.]

[2.] **1.** Eligible [units] **families** receiving Medicaid Only and Medicaid Special are not subject to monthly reporting under the AFDC program. However, AFDC eligible [units] **families** who do not receive an assistance payment due to the $10.00 limitation are subject to monthly reporting.

10:82-2.1 Form PA-3A or Form 105

(a) To determine the monthly assistance [grant] **payment,** Form PA-3A, Worksheet and Authorization for Public Assistance, or Form 105, the computer [(CODES)] **(FAMIS)** input form, as appropriate, shall be prepared for each eligible [unit] **family.** (See [CODES] **Family Assistance Management Information System (FAMIS)** Manual for preparation of Form 105.) All information supporting the data on Form PA-3A or Form 105 [must] **shall** be included in the agency's case record.

(b) (No change.)

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) Family groups living together: For purposes of AFDC, in family groups living together, income of the spouse is considered available for the other spouse and income of a parent (natural or adoptive) is considered available for children under [21] **18.** If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned. However, if a spouse or parent is receiving SSI benefits, including mandatory or optional State supplementary payments, then for the period for which such benefits are received, his or her income and resources shall not be counted as income and resources available to the eligible [unit] **family.**

1.-2. (No change.)

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

10:82-2.8 Determination of calculated earned income; AFDC-C and -F procedures

(a) From the total gross earnings of each person in the AFDC-C and -F segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3) and proceed as follows:

1.-2. (No change.)

3. For a period of not longer than four consecutive months, deduct the first $30.00 of the remaining earned income plus one-third of the remainder for each employed individual in the eligible [unit] **family. For REACH participants in the work supplementation program (WSP) see N.J.A.C. 10:81-14.11 and 14.21.**

i. (No change.)

4.-5. (No change.)

10:82-2.9 Stepparents; AFDC-C procedures

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

(d) When a stepparent of eligible AFDC-C children live in the same home as the children and is not included as a member of the eligible [unit] **family,** his or her income shall be considered available to the eligible [unit] **family** in accordance with the following procedures:

1. Reduce the stepparents' gross earned income (and net income from self-employment) by $75.00 [($50.00 for part-time employment)].

2.-6. (No change.)

10:82-2.10 Medicaid eligibility; AFDC-C and -F procedures

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

(d) Medicaid eligibility does not exist in cases where, after excluding the child(ren) whose income caused ineligibility for AFDC, there is no child remaining in the eligible family.

(e) Any AFDC family whose eligibility for cash assistance is denied or terminated as a result of deeming of a sibling's or stepparent's income or alien sponsor's deeming of income and resources, shall have its Medicaid eligibility evaluated without regard to that individual's needs or income.

10:82-2.14 Establishing monthly earnings

(a) (No change.)

(b) Earnings projection: When due to new or changed earnings, the client is unable to provide the four consecutive weeks verification required in [(d)] **(c)** below, seven calendar days prior to the [CODES] **FAMIS** cutoff date, the CWA shall compute the following month's CEI on an earnings projection. In developing the earnings projection the CWA shall use all actual wage information available seven calendar days prior to the [CODES] **FAMIS** cutoff date together with the client's estimate of ongoing wages and/or hours. The earnings projection and the information used to determine it shall be fully documented in the case record. The earnings projection shall be used to determine the AFDC [grant] **assistance payment** only until sufficient earnings verification is available to base the earnings on actual verification of four consecutive weeks as required in [(d)] **(c)** below.

Example: The client receives his[/]**or** her first pay check on the 11th of the month for 20 hours of employment. The client states that he[/]**or** she will be working 40 hours a week at the same hourly wage rate. The earnings projection will be based on 40 hours a week.

1.-2. (No change.)

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

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-vi. (No change.)

vii. Certain other Federal programs: Funds received by applicants and recipients through certain Federal programs (see **(b)6vii(1) through (9)** below) shall be regarded as exempt resources in determining eligibility for assistance.

(1)-(9) (No change.)

7.-11. (No change.)

10:82-3.13 Eligibility of sponsored aliens and deeming of sponsor's income and resources to a sponsored alien

(a) The income and resources of an alien's sponsor shall be deemed to be unearned income and resources of an alien applying for AFDC for the first time after September 30, 1981 for a period of three years following the alien's entry into the United States. For purposes of this section, a sponsor is an individual, a public or private agency or organization who executed an affidavit of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. No income or resources shall be deemed from a sponsor who is (or whose spouse is) receiving AFDC or SSI.

1. These deeming provisions do not apply to any alien who is:

i.-iv. (No change.)

v. A Cuban or Haitian entrant as defined under section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422); [or]

vi. The dependent child of the sponsor or sponsor's spouse; **or**

vii. An Amerasion admitted under Section 584 of the Foreign Operations Appropriations Act (P.L. 100-202) beginning March 20, 1988.

2. (No change.)

(b) The amount of income of a sponsor which shall be deemed to be the unearned income of an alien shall be determined as follows:

1.-4. (No change.)

5. Medicaid eligibility shall be evaluated without consideration of the deemed income or resources (see N.J.A.C. 10:81-8.22(a)).

(c)-(g) (No change.)

10:82-3.14 Deeming income of parents and guardians of adolescent parents

(a) **Pursuant to the Tax Reform Act of 1986 (P.L. 99-514), which clarifies certain amendments of the Deficit Reduction Act of 1984 (P.L. 98-369),** [An] **an** adolescent parent is an individual under the age of [19] **18** and who is himself or herself a parent of a dependent child.

(b) When an adolescent parent lives in the same home as his or her own parent(s) or legal guardian(s), the income of such parent(s) or legal guardian(s) shall be considered available to the eligible [unit] **family** in accordance with the following procedures. These rules do not apply if the parent(s) or guardian(s) receive(s) SSI or AFDC or if the adolescent parent is categorically eligible for the -N segment only. For the purposes of this section, the term parent shall include legal guardian.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by $75.00 [($50.00 for part-time employment)].

2.-6. (No change.)

(c) (No change.)

10:82-4.8 Income from family day care

(a) Payments by individuals or agencies for children placed in an eligible [unit] **family**'s home for Family Day Care shall be considered as gross earned income from self-employment. [The following figures shall be used in determining the cost of producing the income:] **Earned income procedures for self-employment are discussed at N.J.A.C. 10:82-4.3.**

[1. Multiply the appropriate monthly cost figure below by the number of children receiving Family Day Care (cost figures include the provision of snacks):

i. One meal is served, $25.00;

ii. Two meals are served, $33.00;

iii. Three meals are served, $40.00]

[2.]**1.** The net income (adjusted gross earnings) to the eligible [unit] **family** is the difference between the cost [as determined in (a)1 above] **of providing family day care** and the total monthly amount paid for such care. Appropriate disregards apply in determining the calculated earned income (**see N.J.A.C. 10:82-4.4**).

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) When a recipient receives nonrecurring earned or unearned lump sum income, including [for AFDC,] retroactive R.S.D.I. payments and other monthly benefits, and payments in the nature of a windfall, such as inheritances and lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it was paid (for example, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, and so forth), that income will be added together with all other income received that month by the eligible family, after application of the disregards in N.J.A.C. 10:82-2.8 and 2.12 and the exemption of income in N.J.A.C. 10:82-2.7. The AFDC [grant] **assistance payment** shall not be considered income. No portion of lump sum or other income may be applied toward the resource limit in the month of its receipt. When this total exceeds the AFDC allowance standards in Tables I or II as appropriate, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the allowance standard applicable to the eligible family. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time. SSI payments shall not be subject to lump sum treatment.

1.-5. (No change.)

6. In all instances, where the previously eligible family has been terminated due to receipt of lump sum income, the notice of adverse action shall include:

i. The reason for the family's termination from AFDC;

ii. The duration of the period of ineligibility;

iii. The earliest date the ineligible family may apply to reopen their AFDC case; and

iv. A statement concerning possible reduction of the ineligibility period (see (a)5ii or 5iii above).

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

10:82-5.3 Child care

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

(c) Further [rules on] **provisions related to** child care expenses are:

1.-2. (No change.)

3. Child care as an expense incident to training for employment or incident to a program of vocational rehabilitation may be provided as an additional payment if not available through a special training program or agency. Such payment [will] **can** be made directly to the client **or as a vendor payment** from the assistance account.

4.-6. (No change.)

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

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" is hereby established as any extra or additional payment(s), authorized in accordance with (b), (c) and (d) below during the period of 30 consecutive days immediately following the occurrence of an emergency as defined in (c) below[, issued to or for an eligible family otherwise receiving continuing assistance]. **Emergency assistance can be issued to AFDC families in receipt of continuing assistance or to non-AFDC families satisfying AFDC eligibility with the exception of those requirements at (a)1 below. The PA-1J form shall be used to determine eligibility for emergency assistance. Once immediate need is apparent, assistance shall be provided.**

1.-3. (No change.)

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

(e) [Rules] **Provisions** concerning victims of domestic violence are:

1. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence because of domestic violence, payment of emergency assistance may be authorized under the following conditions:

i. (No change.)

ii. For new applicants, this state of homelessness occurred within the [10] **30** calendar days immediately prior to the request for emergency assistance. Temporary arrangements during that period do not negate the existence of a state of homelessness.

2.-4. (No change.)

(f) Return of child from foster care **provisions are as follows**:

1.-6. (No change.)

10:82-5.12 Disregarded child support (DCS) payments

For any month in which an eligible [unit] **family** receives AFDC and a current child support collection which represents a support obligation for that month has been received through the CSP process, the eligible [unit] **family** is entitled to a disregarded child support (DCS) payment. The amount of DCS payment shall be the total amount of current child support collection received on behalf of the entire eligible [unit] **family**, not to exceed $50.00 (**see N.J.A.C. 10:82-1.2(d)**). **Under the final rules which implement section 2640 of the Deficit Reduction Act of 1984, the date of the child support payment collection is the date a payment is received by the IV-D agency or other legal entity authorized to make the collection. This rule applies solely to collections of current child support and not to collections to be**

applied against any arrearage balances. Current AFDC eligibility is not a prerequisite for DCS payments based on a previous month's collection.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

New Jersey Insurance Development Fund FAIR Plan Surcharge

Proposed Amendment: N.J.A.C. 11:1-5.1

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and 17:37A-18 through 21.

Proposal Number: PRN 1989-348.

Submit comments by August 2, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Legislature created the New Jersey Insurance Development Fund (Fund) for the purpose of providing a financial back-up for the plan of operation of the New Jersey Insurance Underwriting Association (Association), pursuant to N.J.S.A. 17:37A-18. The Fund is used to reimburse any insurer or the Association for losses sustained in excess of the amount of retention of such losses as provided for by the Commissioner, except that in any given calendar year the total amount of all such reimbursement must not exceed five percent of the insurance premiums written on basic property insurance in New Jersey in the most recent full calendar year. For the privilege of doing property insurance business in New Jersey, every insurer authorized to write such insurance in New Jersey is obligated to collect from the insured, under any policy of basic property insurance, a reasonable surcharge upon the premium paid for said policy in an amount which will be annually determined by the Commissioner and collected by the insurer, the aggregate amount of which cannot exceed a sum equal to five percent of the insurance premiums written on basic property insurance in New Jersey in the most recent full calendar year.

Since July 1, 1977 for commercial business and March 1, 1978 for dwelling business, a two percent surcharge upon the premium paid for basic property insurance has existed, such surcharge having previously been determined by the Commissioner to be reasonable pursuant to N.J.S.A. 17:37A-19 and 17:37A-20. However, pursuant to N.J.S.A. 17:37A-21, the Commissioner has now determined that the net value of the Fund in calendar year 1987 reached an amount equal to five percent of the premiums written on basic property insurance in New Jersey. Pursuant to N.J.S.A. 17:37A-21, the Legislature has provided that upon the occurrence of this determination, no further surcharge on said premiums and no further payment to the Fund will be made.

Consistent with the Legislature's mandate, the Commissioner issued an Order, dated August 3, 1988, terminating the current New Jersey Insurance Development Fund Surcharge on all policies issued or renewed after September 1, 1988 and ordering every insurer authorized to write basic property insurance in New Jersey to cease collecting from an insured a surcharge upon the premium paid for a policy issued or renewed on or after September 1, 1988.

The rule proposed for amendment codifies the amount of the surcharge established by Order and provides the procedures for the collection and implementation of the surcharge which has now, by administrative order, been repealed.

This rule was originally proposed for repeal in the October 17, 1988 New Jersey Register at 21 N.J.R. 2507(a). The Department received a comment from the Professional Insurance Agents of New Jersey (PIANJ) which prompted this new proposal. The comment noted that rather than repeal the entire rule, including both the imposition of the surcharge and the funding mechanism therefor, only the surcharge itself needs to be repealed to comply with the Commissioner's August 3, 1988 Order. The Department believes that leaving the funding mechanism intact will facilitate the imposition of any future surcharges which may be required by law.

Social Impact

The amendment will have no social impact since it merely deletes reference to a surcharge which has previously been repealed by administrative order.

Economic Impact

The repeal of this rule will have no economic impact for the reason noted in the Social Impact statement above.

Regulatory Flexibility Statement

The proposed repeal will not impose any recordkeeping, reporting or other compliance requirements on small businesses as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the proposed amendment merely deletes reference to a surcharge which has previously been repealed by administrative order.

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

11:1-5.1 FAIR Plan Surcharge

(a) On [May 16, 1984] **August 3, 1988,** the Commissioner of Insurance ascertained and determined that the net value of the New Jersey Insurance Development Fund, as of December 31, [1983] **1987,** was [less] **more** than five percent of the premiums written on basic property insurance in New Jersey in calendar year [1983] **1987. Accordingly, no further surcharge on said premiums and no further payments to said Fund shall be made.**

(b) Application of surcharge **when imposed by the Commissioner of Insurance shall be as follows:**

1. A [two person] surcharge shall be imposed **in an amount prescribed in an order of the Commissioner of Insurance** on premiums of the following policies and endorsements effective on or after [March 1, 1978] **the date fixed by the Commissioner in his or her order.**

i.-iv. (No change.)

2. The surcharge, **if deemed necessary by the Commissioner of Insurance,** shall apply to all new and renewal policies effective on or after [March 1, 1978] **the date fixed by the Commissioner in his or her order** and to the additional premiums on all endorsements effective on or after [March 1, 1978] **that date.**

3. Policies written for a term longer than one year with an effective date on or after [March 1, 1978] **the date fixed by the Commissioner in his or her order** shall be charged, **if deemed necessary by the Commissioner of Insurance,** in accordance with [the above] **this** section[s].

4. Return of **the** surcharge, **if any is charged by order of the Commissioner of Insurance,** is permitted on policy activity such as endorsement decreasing premium and cancellations effective [March 1, 1978 and thereafter] **the date fixed by the Commissioner in his or her order.**

5. For policies with an effective date on or after [March 1, 1978] **the date fixed by the Commissioner in his or her order,** which are subject to audit, the surcharge, **if any is charged by order of the Commissioner of Insurance,** shall be based on the audited premium.

6. The surcharge, **if deemed necessary by the Commissioner of Insurance,** shall be charged in full. Rounding to the nearest whole dollar is not permitted.

7. **If a surcharge is deemed necessary by the Commissioner of Insurance,** [Commissions] **commissions** and premium taxes shall not be payable thereon, and the insurer is prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(c) **If a surcharge is deemed necessary by the Commissioner of Insurance,** [The] **the** surcharge shall be collected by each insurer and paid over to the State Treasurer of New Jersey, not later than March 1 and September 1 of each year.

(d) The method of billing **shall be as follows:**

1. **If a surcharge is deemed necessary by the Commissioner of Insurance,** [The] **the** surcharge shall be a separate charge to the insured in addition to the premium to be paid and shall be shown separately or combined with the Guaranty Association charge[;].

2. **If a surcharge is deemed necessary by the Commissioner of Insurance,** [When] **when** the surcharge is combined with the Guaranty

Association charge, it shall be identified as "Surcharges," and when it is shown separately, it shall be identified as "Surcharge."

(a)

DIVISION OF ADMINISTRATION

Hospital Workers' Compensation Group Self-Insurance

Proposed Readoption: N.J.A.C. 11:15

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 34:15-77 et seq., and 40A:10-36 et seq.

Proposal Number: PRN 1989-349.

Submit comments by August 2, 1989 to:
Verice M. Mason
Assistant Commissioner
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 11:15 expires on December 3, 1989. As required by the Executive Order, the Department of Insurance (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

N.J.S.A. 34:15-77 et seq. authorizes hospitals licensed in this State to pool their workers' compensation liabilities through the formation of self-insurance groups. N.J.A.C. 11:15-1 implements those provisions by establishing criteria for: (1) the organization and administration of such groups; (2) obligations of the group and its members; (3) ways in which rates are established and profits and losses distributed; and (4) methods to guard against insolvency or financial deterioration. The rules provide that each group must consist of at least 10 hospitals and must obtain a certificate of approval from the Commissioner of Insurance.

The readoption of N.J.A.C. 11:15-2 will continue to implement N.J.S.A. 40A:10-36 et seq. This statute, which became effective in 1983, authorizes two or more local units of government to form a joint insurance fund for the purpose of insuring against claims for liability, property damage and workers' compensation. The readoption of subchapter 2 will continue standards whereby the Department regulates the creation and operation of joint insurance funds.

Changes to subchapter 2 were recently proposed in the June 5, 1989 New Jersey Register at 21 N.J.R. 1494(b) regarding time limit and surplus requirements for refunds and interyear fund transfers, and allowing inter-trust fund transfers upon 30 days prior notification. Also, additional amendments may be necessary to clarify aspects of the rules. These changes will be effected at a later date.

Social Impact

It is anticipated that subchapter 1 will have little actual impact upon the workers' compensation system. Hospital employees are assured of payment of workers' compensation benefits since group members are jointly and severally liable for any workers' compensation claims against members. However, by forming self-insurance groups, hospitals may collectively attain savings and services not possible individually.

The readoption of subchapter 2 will continue to provide adequate regulatory oversight over joint insurance funds established by local units of government to ensure their solvency and compliance with the statute and thereby protect the interests of claimants and taxpayers. Furthermore, the procedures and the requirements of the rules are sufficiently flexible to permit the funds to operate in a cost effective manner.

Economic Impact

Utilization of self-insurance pursuant to subchapter 1 may produce greater savings and cost efficiencies for hospital groups. Retention of investment income could benefit group members. Any substantial savings could be expected to help in containing hospital operating costs.

The readoption of subchapter 2 will continue to provide a mechanism for the creation and operation of joint insurance funds for local units of government to insure against claims for liability, property damage and workers' compensation. Local units of government, therefore, can better stabilize insurance costs and may experience premium savings. The rules will also continue to provide regulatory oversight over joint insurance funds to ensure their solvency, adequacy of reserving and compliance with the statute. This will benefit both claimants and taxpayers.

Additional costs are expected to be associated with implementation and enforcement of these rules. However, they are expected to be absorbed by the Department.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed readoption does not impose reporting, recordkeeping or other compliance requirements on small businesses.

Subchapter 1 applies only to groups made up of 10 or more hospitals licensed by the New Jersey Department of Health pursuant to N.J.S.A. 26:2H-1 et seq. All of these hospitals employ more than 100 full-time employees and therefore do not fall into the category of small businesses as defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Subchapter 2 applies only to public entities composed of member municipalities and counties—and county colleges or county vocational schools if the county is a member of the joint insurance fund. These public entities do not meet the definition of "small business" as defined in N.J.A.C. 1:30-3.1(4)ii.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:15.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Department of Insurance

Driver Control Service

Motor Vehicle Insurance Surcharge; Supplemental Surcharges

Proposed Readoption with Amendments: N.J.A.C. 13:19

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles as to N.J.A.C. 13:19-1 to 12; Kenneth D. Merin, Commissioner, Department of Insurance, in consultation with Glenn R. Paulsen, Director, Division of Motor Vehicles, as to N.J.A.C. 13:19-13.

Authority: N.J.S.A. 17:29A-35, 39:2-3, 39:3-10, 39:3-10.4 et seq., 39:3-11, 39:3-15, 39:3-15.1, 39:3-16, 39:5-30, 39:5-30.1, 39:5-30.5, 39:5-30.5a, 39:5D-4, 39:5F-1 et seq., 52:14B-1 et seq. and Pub. L. 99-570.

Proposal Number: PRN 1989-352.

Submit comments as to N.J.A.C. 13:19-1 to 12 by August 2, 1989 to:
Glenn R. Paulsen, Director
Division of Motor Vehicles
25 South Montgomery St.
7th Floor
Trenton, New Jersey 08666

Submit comments as to N.J.A.C. 13:19-13 by August 2, 1989 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State St.
12th Floor
CN 325
Trenton, New Jersey 08625

The agencies' proposal follows:

Summary

The Division of Motor Vehicles (Division) proposes to readopt the provisions of N.J.A.C. 13:19-1 to N.J.A.C. 13:19-12, inclusive, concerning driver control service in accordance with the "sunset" and other provisions of Executive Order 66 (1978). These rules expire on August 23, 1989.

The Department of Insurance, after consultation with the Division of Motor Vehicles pursuant to N.J.S.A. 17:29A-35, proposes to readopt with amendment the provisions of N.J.A.C. 13:19-13 concerning supplemental motor vehicle insurance surcharges in accordance with the "sunset" and other provisions of Executive Order 66 (1978). These rules expire on August 23, 1989. The most recent amendments to these rules were filed and became effective on September 16, 1985.

The rules contained in N.J.A.C. 13:19 implement various provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:1-1 et seq.) pertaining to driver qualification, administrative hearing procedures, and driver license denial and suspension, as well as the relevant insurance surcharge provision, N.J.S.A. 17:29A-35. The Division of Motor Vehicles has reviewed N.J.A.C. 13:19-1 to N.J.A.C. 13:19-12 in accordance with Executive Order 66 and has determined that said rules, with the exception of N.J.A.C. 13:19-3 which is proposed for repeal, are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated." Many of these rules implement the public policy of this State as set forth in the Motor Vehicle and Traffic Law; namely, to foster highway safety by limiting licensure to those who can demonstrate an ability to operate motor vehicles safely.

A summary of each subchapter and important sections in N.J.A.C. 13:19 follows:

Subchapter 1, Administrative Hearings, sets forth the Division's prehearing conference procedure in license suspension matters. Matters not subject to the prehearing conference procedure are transmitted directly to the Office of Administrative Law for formal hearing. The prehearing conference is a means for case settlement. If the case in controversy is settled at the prehearing conference, the matter is concluded and the licensee is deemed to have waived his right to a formal hearing. If the case cannot be settled at the prehearing conference, the matter is transmitted to the Office of Administrative Law for formal hearing.

Subchapter 2 was repealed effective June 20, 1983. This subchapter contained rules concerning probationary driver licenses.

Subchapter 3, Accident Claims, specifies the claim information and form (Notice of Intention to Make Claim) that is required to be filed with the Unsatisfied Claim and Judgment Fund Board pursuant to N.J.S.A. 39:6-65.

The Division is proposing the repeal of N.J.A.C. 13:19-3 because the Unsatisfied Claim and Judgment Fund and its board have been statutorily transferred from the Division of Motor Vehicles to the Department of Insurance pursuant to P.L. 1985, c.148. The Department of Insurance has promulgated new rules, effective May 15, 1989, pertaining to the interdepartmental transfer of regulatory authority with regard to the Unsatisfied Claim and Judgment Fund and its board (see 21 N.J.R. 688(a); 21 N.J.R. 1363(a)). The new rules promulgated by the Department of Insurance and codified at N.J.A.C. 11:3-26 are nearly identical to those presently codified at N.J.A.C. 13:19-3. In view of the foregoing, the rules contained in N.J.A.C. 13:19-3 are unnecessary and the Division therefore proposes the repeal of N.J.A.C. 13:19-3.

Subchapter 4, Cardiovascular Disorders, provides for the appointment of a Cardiovascular Committee (Committee) to advise the Division concerning the physical qualifications of drivers. The Director, in determining the driver qualification of a person affected by a cardiovascular disorder, may require the person to provide a statement of his or her medical history and a statement from his or her physician pertaining to diagnosis, treatment and prognosis. The Director may refer cases to the Committee for review and recommendation relating to driver qualification. The Director's determination to deny or suspend a driver's license is based on the medical statements and the Committee's recommendation. Cases may also be referred to the Committee upon application for restoration of driving privileges. Restoration of driving privileges may be conditioned upon the driver's agreement to submit interval medical reports. The Director may require a driver to be reexamined as to his or her ability to safely operate motor vehicles prior to the restoration of driving privileges.

Subchapter 5, Convulsive Seizures, requires a person who has been subject to recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination to establish that he or she has been free of such condition for one year as a prerequisite to the issuance of a learner's permit, driver's license, driver's license renewal or the retention of the driver's license which has been issued to said person. The Director, after notice and hearing, may suspend the driving privilege of, or deny the issuance of a learner's permit or driver's license to a person who is affected by a seizure disorder. When the Director determines it to be in the public interest, a suspension may be imposed pending administrative hearing.

The Director, in determining the driver qualification of a person affected by a seizure disorder, may require the person to provide a statement of his or her medical history, a statement from the treating physician pertaining to diagnosis, treatment and prognosis, and any other information deemed necessary.

The Director may refer individual cases to the division's Neurological Disorder Committee for review and recommendation relating to driver qualification. The Committee members are authorized to recommend that the one year seizure-free requirement be waived by the Director if, in their opinion, the person's medical history so warrants.

A determination to issue or restore driving privileges is predicated on the submission of a current statement of medical history, a current physician's statement, and evidence that the seizure-free requirement has been satisfied or that waiver thereof has been recommended by the members of the Neurological Disorder Committee.

A determination to issue or restore driving privileges is conditioned upon the person's agreement to submit interval reports containing the medical history and physician's statement. Interval reports must be submitted every six months for a period of two years from the date of license issuance or restoration. Thereafter, yearly reports must be submitted. The Director, in his discretion, may waive or alter the interval report requirement. A driver reexamination may be required as a condition of restoration.

Subchapter 6 was repealed effective April 5, 1982. This subchapter contained rules concerning reciprocity between Delaware and New Jersey.

Subchapter 7, Reciprocity Agreement Between Connecticut and New Jersey, contains the reciprocity agreement between the two states concerning motor vehicle violations, bail forefeitures and failures to appear by drivers licensed in the respective states.

Subchapter 8, Reciprocity Agreement Between Province of Alberta and State of New Jersey, contains the reciprocity agreement concerning motor vehicles registered in the respective jurisdictions.

Subchapter 9, Designation of State Official to Be Notified by Drivers of Commercial Motor Vehicles Concerning Out-of-State Motor Vehicle Convictions, designates the Chief of the Division of Motor Vehicles' Bureau of Violation Records as the State official to be notified by commercial motor vehicle drivers of out-of-State motor vehicle convictions pursuant to the Federal Commercial Motor Vehicle Safety Act of 1986.

Subchapter 10, Point System and Driving During Suspension, provides a framework for administrative action against repetitive violators of the Motor Vehicle and Traffic Law.

N.J.A.C. 13:19-10.1 sets forth a schedule of points to be assessed for convictions of enumerated motor vehicle offenses. N.J.A.C. 13:19-10.2 sets forth the periods of suspension for point system violators. N.J.A.C. 13:19-10.3 provides for attendance at a driver improvement or probationary driver program for point system violators and probationary drivers. N.J.A.C. 13:19-10.4 provides for advisory notices to drivers accumulating six or more points and probationary drivers upon their first conviction resulting in the assessment of points. N.J.A.C. 13:19-10.5 provides for point reduction in accordance with the statutory provisions contained in N.J.S.A. 39:5-30.9. N.J.A.C. 13:19-10.6 sets forth the periods of suspension for point system violators who incur motor vehicle convictions within one year from the date of restoration for a point system suspension, one year from completion of a driver improvement or probationary driver program or one year from official warning issued for point accumulation. N.J.A.C. 13:19-10.7 provides that the point system provisions are not affected by suspensions or revocations imposed by a court. N.J.A.C. 13:19-10.8 provides for the suspension of driving and registration privileges when a person has operated a motor vehicle during a period of driver license suspension.

Subchapter 11, Suspension for Out-of-State Convictions; Administrative Determinations and Bail Forefeitures for Driving While Under the Influence of Intoxicating Liquor or Drugs; Refusal to Submit to Chemical Test, provides for the uniform application of New Jersey law in matters relating to out-of-State convictions for alcohol-related violations. New Jersey licensed drivers are subject to the terms of suspension and alcohol education or rehabilitation program requirements specified at N.J.S.A. 39:4-50 and 39A-50.4a.

Subchapter 12, Motor Vehicle Insurance Surcharge, contains the Division's prehearing conference procedure in motor vehicle insurance surcharge cases. The subchapter establishes hearing and suspension procedures to implement the New Jersey Merit Rating Plan as provided for in N.J.S.A. 17:29A-35, as well as procedures for the payment of surcharges in installments.

The Division of Motor Vehicles levies surcharges on any driver who accumulates six or more motor vehicle points within a three year period.

Surcharges in the amount of $100.00 for six points and $25.00 for each additional point are levied for each year in which the driver possesses six or more points accumulated in the immediately preceding three year period.

Also, the Division of Motor Vehicles levies surcharges for convictions under N.J.S.A. 39:4-50 (operating under the influence of liquor or drugs) for violations occurring on or after February 10, 1983, and for convictions under N.J.S.A. 39:4-50a (refusal to submit to chemical test) or for offenses committeed in other jurisdictions of a substantially similar nature to those under N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a, for violations occurring on or after January 26, 1984. Surcharges in the amount of $1,000 per year for three years for each of the first two convictions, and $1,500 per year for three years for the third conviction occurring within a three year period, are levied.

Also, the Division of Motor Vehicles levies surcharges pursuant to N.J.A.C. 13:19-13 for certain motor vehicle convictions and administrative suspensions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes.

Subchapter 12 provides for the suspension of operating privileges of any driver who fails to pay a surcharge. A driver has the right to a prehearing prior to the suspension. The rule provides a hearing conference procedure which is administered by the Division in order to attempt to resolve matters so that a formal hearing before the Office of Administrative Law may not be required. A driver, or his or her attorney, is provided a 15 day period in which to request a hearing to contest the matters specified in the surcharge notice. The driver must comply with the conference procedures administered by the Division of Motor Vehicles in trying to resolve the matter without the need for formal hearing before the Office of Administrative Law. If the matter cannot be resolved at the prehearing conference, it is transmitted to the Office of Administrative Law as a contested case in accordance with N.J.A.C. 1:1. If a driver fails to attend a prehearing conference, the proposed action against the licensee is effectuated without further opportunity for a prehearing conference or formal hearing; the driver is deemed to have abandoned his request for a hearing. The prehearing conference is conducted for the purpose of establishing the accuracy of the surcharge bill and the driver abstract upon which it is predicated, and to define the issues and prepare evidence for the formal hearing if required.

Indigents as defined by the rule, and licensees surcharged for convictions for driving while intoxicated or for refusing to submit to a chemical test, are allowed to pay the surcharge in installments.

Subchapter 13, Motor Vehicle Insurance Surcharge; Supplemental Surcharges, implements the New Jersey Merit Rating Plan of the New Jersey Automobile Insurance Reform Act of 1982 (N.J.S.A. 17:29A-35) which provides for the imposition of motor vehicle insurance surcharges. The rules establish, in accordance with N.J.S.A. 17:29A-35, surcharges for certain motor vehicle convictions and administrative suspensions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes. The supplemental surcharges are levied for series motor vehicle violations such as driving while suspended and driving without liability insurance. The Department of Insurance, after consultation with the Division of Motor Vehicles pursuant to N.J.S.A. 17:29A-35, has reviewed N.J.A.C. 13:19-13 in accordance with Executive Order No. 66 and has determined that said rules are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated", but has also determined to propose to amend N.J.A.C. 13:19-13.2.

The Department of Insurance, after consultation with the Division of Motor vehicles, proposes to amend N.J.A.C. 13:19-13.2 by deleting subsection (c) of that provision. N.J.A.C. 13:19-13.2(c) makes reference to N.J.A.C. 13:19-13.2(b)3, a provision which was repealed effective September 16, 1985 (see 17 N.J.R. 893(a); 17 N.J.R. 2281(a)). Since the provision which N.J.A.C. 13:19-13.2(c) makes reference to was repealed more than three years ago, N.J.A.C. 13:19-13.2(c) is unnecessary and is therefore proposed for deletion.

Social Impact

The readoption of N.J.A.C. 13:19 will have a beneficial social impact. Drivers subject to proposed suspension or surcharge action will be cognizant of the Division's prehearing conference procedures. Drivers may avail themselves of the opportunity to either settle their case or partake in reciprocal discovery at the prehearing conference.

The rules proposed for readoption enhance highway safety. Persons may be disqualified from driving because their medical condition creates an unreasonable risk to the safety of other motorists. Drivers who have demonstrated their disqualification by repeated violation of the Motor Vehicle and Traffic Law may also be removed from the highways because they too pose a disproportionate risk to other motorists. Driver improvement programs for motor vehicle violators and alcohol education or rehabilitation requirements for persons committing alcohol-related violations also foster highway safety in that said programs are designed and intended to modify driver behavior.

The supplemental surcharge rules proposed for readoption have a beneficial social impact in that they implement the New Jersey Automobile Insurance Reform Act of 1982 by assessing surcharges for certain motor vehicle convictions and administrative suspension for which motor vehicle points are not assessed under Title 39 of the Revised Statutes. The proposed amendment of the supplemental surcharge rules will serve to eliminate possible confusion with regard to those rules by deleting N.J.A.C. 13:19-13.2(c), which makes reference to a provision which was repealed more than three years ago.

Economic Impact

There is an economic impact on the State in funding the Division of Motor Vehicles, which is charged with the administration of these rules. The economic impact on the State is partially defrayed by statutory restoration, driver improvement program and alcohol program fees that must be paid by drivers. There is an adverse economic impact on drivers who incur motor vehicle violations. They are subject to driver license suspension and/or imposition of an insurance surcharge.

There is an economic impact on the State in funding the Division's Automobile Insurance Surcharge and Collection Section which is charged with the administration of the supplemental surcharge rules. Administrative costs incurred in collecting insurance surcharges are partially offset in that the Division of Motor Vehicles is permitted by N.J.S.A. 17:29A-35 to retain 10 percent of the monies collected, or the actual cost of administering the collection of the surcharge, whichever is less. The remainder of the surcharge monies collected must be remitted to the New Jersey Automobile Full Insurance Underwriting Association pursuant to N.J.S.A. 17:29A-35. There is an adverse economic impact on drivers who incur serious motor vehicle violations. They are subject to the imposition of insurance surcharges. The supplemental surcharges collected pursuant to the rules are part of the existing funding provisions for the New Jersey Automobile Full Insurance Underwriting Association.

The proposed deletion of N.J.A.C. 13:19-13.2(c) will have no economic impact on the State, the New Jersey Automobile Full Insurance Underwriting Association, or the public, since the provision which N.J.A.C. 13:19-13.2(c) makes reference to (N.J.A.C. 13:19-13.2(b)3) was repealed more than three years ago.

Regulatory Flexibility Statement

The rules proposed for readoption have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption imposes no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules regulate individual driver licensees.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:19, as amended in the New Jersey Register.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:19-3.

Full text of the proposed amendment follows (deletions indicated in brackets [thus]):

13:19-13.2 Surcharges for three year period; administrative violations; amounts

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

[(c) Plan surcharges levied pursuant to (b)3 above shall be in addition to any other plan surcharge to which a driver is subject under the Merit Rating Plan.]

(a)

STATE BOARD OF MORTUARY SCIENCE

Passing Grades; Examination Review; Practical Examination

Proposed Repeal and New Rule: N.J.A.C. 13:36-3.5
Proposed Amendments: N.J.A.C. 13:36-3.6 and 3.7

Authorized By: New Jersey State Board of Mortuary Science, David M. Danaher, Acting President.
Authority: N.J.S.A. 45:7-38.
Proposal Number: PRN 1989-342.

Submit comments by August 2, 1989 to:
Maurice W. McQuade, Executive Director
State Board of Mortuary Science
1100 Raymond Boulevard, Room 513
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Mortuary Science proposes to amend rules concerning passing grades, examination review procedures, and practical examination requirements. While the grade required for passing the examination given by the Board will remain at 70, the Board, with proposed new rule N.J.A.C. 13:36-3.5, is establishing the score of 75 as the passing grade required for those applicants who sit for the National Board Examination rather than the Board's exam. Proposed new rule N.J.A.C. 13:36-3.5 also includes a requirement that applicants who sit for the National Board Examination file their scores with the Board before they will be permitted to take the Mortuary Jurisprudence examination. This requirement codifies current Board policy.

An amendment to N.J.A.C. 13:36-3.6 is proposed to establish clear parameters for the review of failed exams. Under the proposed amendment, unsuccessful candidates must submit a written request for review within 10 calendar days following notification of the examination results. The review procedure is changed to accommodate a change in the exam itself to one using a mechanical grading system.

The amendment to N.J.A.C. 13:36-3.7, which deals with the requirements for taking the Board's practical examination, clarifies and coordinates that section with the amendments to the previous two sections.

Social Impact

The proposed new rule and amendments are needed to codify Board policy, as well as to establish passing scores and better defined procedures for the review of failed examinations.

Economic Impact

The proposed new rule and amendments have no economic impact on any segment of the State's population. The amendments only affect candidates, in setting forth the scores required for passing the examination, the score required to review failed examinations, and the prerequisites to taking the Board's practical exam.

Regulatory Flexibility Analysis

It is unclear whether the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., was intended to cover individual practicing professionals, but on the assumption that it is applicable, the following statement is relevant:

Of the 806 funeral homes and the 1,986 practitioners licensed by the Board, most, if not all, qualify as "small businesses" for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17 through 52:14B-21. Nonetheless, a regulatory flexibility analysis is not required because the new rule and amendments do not impose any new reporting, recordkeeping or other compliance requirements on small businesses.

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

13:36-3.5 Passing grades [; reexamination]

[(a) An applicant must achieve an average grade of not less than 70 in order to pass the written examination.]

(a) To successfully fulfill the examination requirement of N.J.S.A. 45:7-49, a candidate shall:

1. Achieve an average score of not less than 75 on each of the two parts of the National Board Examination and shall not score less than 70 on more than one section in each part; and the candidate shall achieve an average score of not less than 70 on the Mortuary Jurisprudence examination given by the State Board; or

2. When the Board gives a written examination, including a section on mortuary jurisprudence, the candidate shall achieve a score of not less than 70.

(b) The State Board will not admit any candidate who has taken the National Board Examination to the Mortuary Jurisprudence examination until the results of the candidate's National Board Examination are on file with the Board.

13:36-3.6 Examination review procedure

(a) An unsuccessful candidate may apply to the Board for a review of his or her examination papers. Such application [must] **shall** be submitted to the Board secretary in writing within [one month] **10 calendar days** following notification of examination results. [, and the] **The Board** secretary shall [subsequently]**, upon receipt of the candidate's application within the allotted time,** arrange a [convenient] date for the candidate to [review] **compare** his or her examination [papers and grades in the Board office with an examiner] **sheet with the key answer sheet to ascertain mechanical grading errors, if any.**

(b) Such review will take place in the Board office with an observer. The candidate will receive a copy of his or her answer sheet, a copy of the key answer sheet and one blank paper on which to take notes. These documents cannot be removed from the Board office.

13:36-3.7 Practical examination requirements

(a) No [applicant] **candidate** will be given the practical examination until after [the candidate] **he or she** has[:] **successfully completed both the written examinations prescribed under N.J.S.A. 45:7-49 and the prescribed period of internship.**

[1. Completed the prescribed period of practical training except that an intern may be examined two months prior to the completion of the required practical training provided the intern has assisted with 75 embalmments and 75 funerals.

2. Attained an average of 70 percent or higher on the written examination.]

(b) Such practical examination shall be **held** at [the establishment of the preceptor or such other] **a** place [as] determined by the Board and the examination shall be conducted by one or more Board members. [In the event a candidate does not have a preceptor at the time of scheduling of his practical examination, the examination will be held at a place designated by the Board.] A candidate who has failed [his] **the** practical examination must wait three months before being rescheduled for **re-**examination.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Public Employees' Retirement System Purchases and Eligible Service

Proposed New Rule: N.J.A.C. 17:2-5.13

Authorized By: Public Employees' Retirement System, Janice Nelson, Secretary.
Authority: N.J.S.A. 43:15A-17.
Proposal Number: PRN 1989-338.

Submit comments by August 2, 1989 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to provide for immediate crediting of service purchased by a lump-sum payment. The statutes relative to various types of purchases provide that a member will receive full credit for purchased service upon the completion of one year of membership after the election to make the purchase and the payment of at least one-half of the amount of the purchase cost. These provisions have been interpreted in the past as requiring one year of membership after the election to make the purchase even if the purchase is paid in a lump sum. This interpretation can work a hardship on members who would qualify through a purchase of service credit for benefits requiring a specific amount of service credit, such as ordinary disability retirement or early retirement, but can not satisfy the one-year membership requirement after the election to purchase because of illness or disability.

The statutory provisions relative to the one-year membership requirement can reasonably be interpreted as applying to installment purchases. For a disability retiree who is making an installment purchase, these provisions relieve the retiree from paying the full cost for the purchase. The retiree receives full credit after a year of additional membership and payment of one-half the cost. For other types of retirement, the retiree receives only a prorated amount of service credit for the amount actually paid if the person retires without completing the installment purchase. This proposed rule would provide full pension credit for lump-sum purchases immediately. A member electing this option would not be able to benefit from the provision for payment of only half of the purchase cost in the case of disability retirement. This would only be applicable to members making installment purchases and the one-year additional membership requirement would apply.

Social Impact

This proposed new rule will benefit the members of the retirement system by permitting immediate crediting of service purchased by a lump-sum payment. Members unable to satisfy the one-year additional membership requirement would be able to make purchases and receive benefits based on the purchases.

Economic Impact

No significant economic impact on the retirement system is anticipated from the adoption of this proposed new rule. The number of persons actually making lump-sum purchases is expected to be small.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules of the Public Employees' Retirement System affect only public employers and employees.

Full text of the proposal follows.

17:2-5.13 Lump-sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the Public Employees' Retirement System Act (N.J.S.A. 43:15A-1 et seq.) and the rules of the retirement system.

(a)

DIVISION OF PENSIONS

Police and Firemen's Retirement System Purchases and Eligible Service

Proposed New Rule: N.J.A.C. 17:4-5.7

Authorized By: Police and Firemen's Retirement System, Anthony P. Ferrazza, Secretary.
Authority: N.J.S.A. 43:16A-13(7).
Proposal Number: PRN 1989-336.

Submit comments by August 2, 1989 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to provide for immediate crediting of service purchased by a lump-sum payment. The statutes relative to various types of purchases provide that a member will receive full credit for purchased service upon the completion of one year of membership after the election to make the purchase and the payment of at least one-half of the amount of the purchase cost. These provisions have been interpreted in the past as requiring one year of membership after the election to make the purchase even if the purchase is paid in a lump sum. This interpretation can work a hardship on members who would qualify through a purchase of service credit for benefits requiring a specific amount of service credit, such as ordinary disability retirement or early retirement, but can not satisfy the one-year membership requirement after the election to purchase because of illness or disability.

The statutory provisions relative to the one-year membership requirement can reasonably be interpreted as applying to installment purchases. For a disability retiree who is making an installment purchase, these provisions relieve the retiree from paying the full cost for the purchase. The retiree receives full credit after a year of additional membership and payment of one-half the cost. For other types of retirement, the retiree receives only a prorated amount of service credit for the amount actually paid if the person retires without completing the installment purchase. This proposed rule would provide full pension credit for lump-sum purchases immediately. A member electing this option would not be able to benefit from the provision for payment of only half of the purchase cost in the case of disability retirement. This would only be applicable to members making installment purchases and the one-year additional membership requirement would apply.

Social Impact

The proposed new rule will benefit the members of the retirement system by permitting immediate crediting of service purchased by a lump-sum payment. Members unable to satisfy the one-year additional membership requirement would be able to make purchases and receive benefits based on the purchases.

Economic Impact

No significant economic impact on the retirement system is anticipated from the adoption of this rule. The number of persons actually making lump-sum purchases is expected to be small.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules of the Police and Firemen's Retirement System affect only public employers and employees.

Full text of the proposal follows.

17:4-5.7 Lump-sum purchases

If a purchase is paid in a lump-sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the law governing the Police and Firemen's Retirement System (N.J.S.A. 43:16A-1 et seq.) and the rules of the retirement system.

(b)

STATE INVESTMENT COUNCIL

Common and Preferred Stocks and Issues Convertible into Common Stock

Proposed Amendment: N.J.A.C. 17:16-17.3

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1989-350.

Submit comments by August 2, 1989 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In the Division's Fiscal Year 1988 audit, the auditors, Ernst and Whinney, recommended that the proposed amendment be effected to clarify the current rule. The book value of total investments in common and preferred stock for any one fund is currently limited to 40 percent of the book value of that fund. Common Pension Fund A was established to provide a vehicle for each pension fund to invest in equities, and close to 100 percent of its assets consist of equities. The common fund itself should not be subject to this limitation, since it is composed of funds from the pension funds listed in N.J.A.C. 17:16-17.2, but is not itself a pension fund.

Social Impact

While the proposed amendment changes the investment limitations on Common Pension Fund A according to this rule, no actual social impact will occur, due to the nature of the Fund as a vehicle for investment in equities.

Economic Impact

The proposed amendment has no economic impact, as it serves only to clarify the exception of Common Pension Fund A from the limitations imposed by N.J.A.C. 17:16-17.3, an exception created by the nature of the Fund.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment has no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment.

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

17:16-17.3 Limitations

(a) The book value of total investments in common and preferred stock for any one [fund] **of the funds listed in N.J.A.C. 17:16-17.2** shall not exceed 40 percent of the book value of such fund**, with the exception of Common Pension Fund A**.

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Transfer Inheritance and Estate Tax Renunciation or Disclaimer

Proposed Amendment: N.J.A.C. 18:26-2.12

Authorized By: John R. Baldwin, Director, Division of Tâxation.
Authority: N.J.S.A. 54:50-1.
Proposal Number: PRN 1989-343.

Submit comments by August 2, 1989 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment makes several changes to N.J.A.C. 18:26-2.12 as suggested by the case of *Herman v. Director, Division of Taxation*, 10 N.J. Tax ____ (1989). Existing N.J.A.C. 18:26-2.12 applies only to transfers under a will. N.J.A.C. 18:26-2.12 as amended would apply to both testate and intestate cases. The existing rule refers only to "renunciations." As amended, the rule would refer to renunciations and disclaimers. The present rule requires the filing of a copy of the instrument of renunciation within nine months of death in the office of the Clerk of the Court where the will is probated. The rule as amended would require that the disclaimer or renunciation be filed in the office of the surrogate or Superior Court in which proceedings have been commenced or will be commenced for the administration of the estate of the decedent or deceased donee of the power. Finally, the rule is amended to make the filing of a copy of the disclaimer with the Transfer Inheritance Tax Bureau an option rather than a requirement for a disclaimer to be given effect in computing the tax against the estate.

Social Impact

The proposed amendment would benefit the public by making N.J.A.C. 18:26-2.12 more consistent with the statutory provisions to which it relates, thereby giving taxpayers and tax practitioners a better understanding of the correct application of the rule.

For example, disclaimers may be made by those inheriting by devise or by intestate succession, but the rule refers only to "a transferee under a will." The rule as amended would apply to both testate and intestate cases. The rule would also be made applicable to disclaimers and renunciations in recognition of the frequent interchangeable use of the two terms; the statutory provisions in N.J.S.A. 3B:9-1 et seq. refer to "disclaimers" but much of the case law arising under those provisions speaks of "renunciations." The revision requiring that a copy of the disclaimer be filed in the office of the surrogate or Superior Court in which estate administration proceedings have been commenced or will be commenced is simply designed to make the wording of the rule more consistent with the wording of N.J.S.A. 3B:9-6.

The final change is intended to indicate that the filing of a copy of the disclaimer with the Transfer Inheritance Tax Bureau is for information purposes and is not required for a disclaimer to be given effect in computing the tax against the estate. Following advice from the Tax Court in *Herman*, the revision would make it impossible for a taxpayer receiving an interest in an estate by way of a properly filed disclaimer to argue that transfer inheritance taxes cannot be imposed on the grounds that a copy of the disclaimer was never filed with the Transfer Inheritance Tax Bureau.

Economic Impact

The proposed amendment would clarify the proper application of the rule, thereby reducing expenses for tax preparation and administration fees for taxpayers and tax practitioners. In particular, the change concerning the filing of a copy of a disclaimer arises from a case in which a taxpayer inheriting the estate of his brother through disclaimers properly filed by his parents, sought to have the tax imposed at the lower rate applicable to the renouncing parents after they purposely withheld copies of the disclaimers from the Transfer Inheritance Tax Bureau. The Tax Court in *Herman* imposed the tax at the rate applicable to transfers of property to a brother of a decedent, and held that filing a copy of the disclaimer with the Transfer Inheritance Tax Bureau was not a statutory requirement and could not be required by the Division for a disclaimer to be given effect. The amendment will diminish the likelihood of taxpayers attempting this strategy, causing a reduction in litigation costs to both taxpayers and the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment would not impose reporting, recordkeeping or other compliance requirements on small businesses. The transfer inheritance tax is imposed on property transfers made by reason of death and predominantly affects individuals rather than businesses. To the extent any business entity may be involved, the reporting, recordkeeping or other compliance requirements in the Act are applied without regard to whether or not a particular taxpayer is a business employing more than 100 people. Any action explicitly to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act from the application of this amendment would not be in compliance with applicable statutes.

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

18:26-2.12 Renunciation [of devise] **or disclaimer**

(a) If a transferee under a will **or by operation of law disclaims or** renounces his rights thereunder, or any portion thereof, **the disclaimer or** renunciation is given effect in computing the tax against the estate; provided, the instrument **of disclaimer** or renunciation is filed within nine months of death in the office of the [clerk of the court where the will is probated and a copy thereof filed with the Transfer Inheritance Tax Bureau] **surrogate or Superior Court in which proceedings have been commenced or will be commenced for the administration of the estate of the decedent or deceased donee of the power.**

(b) A copy of the disclaimer or renunciation should be filed with the Transfer Inheritance Tax Bureau.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Equal Employment Opportunity
Employment Goals for Minority and Female Workers
Proposed Amendment: N.J.A.C. 19:53-1.5

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-134 and 5:12-135(a) and (b).

Proposal Number: PRN 1989-339.

Submit comments by August 2, 1989 to:
Luis A. Fuentes, Director
Division of Affirmative Action and Planning
Casino Control Commission
1300 Atlantic Avenue
Citicenter Building, 4th Floor
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment revises the minimum minority and female employment goals by county for each applicant for, or holder of, a casino license or casino service industry license which employs or expects to employ 50 or more workers. The Commission is authorized by section 135 of the Act to establish and promulgate minority and female workforce goals to serve as guidelines for determining the adequacy of the affirmative action programs of such entities. The revised goals are based upon data contained in a report compiled by the New Jersey Department of Labor, Division of Planning and Research, The State of New Jersey 1980 U.S. Census Data for Affirmative Action Programs.

Social Impact

The proposed amendment will establish employment goals which more accurately reflect the present workforce composition in each county. This should have a beneficial social impact by creating more equitable employment opportunities for all employees of, and applicants for employment in, the regulated entities.

Economic Impact

Some applicants for or holders of casino licenses and casino service industry licenses will be required to increase their efforts to recruit and promote protected employees to meet the revised employment goals in the proposed amendment. These increased efforts may result in additional expenses being incurred by regulated entities. However, since these entities are already required to have an affirmative action compliance program in place, these additional expenses should not be substantial.

Regulatory Flexibility Analysis

Some of the casino service industry enterprises subject to the requirements of N.J.A.C. 19:53-1.5(e) qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some of these small businesses may be required to increase their affirmative action compliance efforts where the proposed amendment increases employment goals for protected persons. Nevertheless, as noted above, regulated entities are already required to follow an affirmative action compliance program under the existing rule. The changes required by the amendment in the overall compliance programs of small businesses should therefore be minimal. Moreover, the existing rule is responsive to the concerns of the Regulatory Flexibility Act, since casino service industry enterprises with less than 50 employees are already exempted from its compliance requirements.

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

19:53-1.5 Affirmative action requirements for applicants and licensees

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

(e) Where [these regulations] **this chapter** requires an applicant or a licensee to adopt employment goals for minority workers and female workers, those goals shall be the minimum employment goals for the county in which the applicant's or licensee's plant, distribution center, or service area is primarily located; and if the applicant or licensee has plants, distribution centers, and service areas located in more than one county, the goals for each plant, distribution center, and service area workforce shall be the minimum goals of the county in which it is located. In cases in which an applicant or licensee, or affected minority worker or female worker [in writing] submits a request to the commission **in writing** for a determination of what employment goals should apply for an applicant or licensee, the commission shall determine the proper minimum employment goals. Any such minimum employment goal determination by the commission shall be binding. The minimum employment goals for each county, which goals are based on [current] **the most recent** county workforce [characteristics and data and analysis] **statistics** provided by the New Jersey Department of Labor [and Industry], Division of [Research and Planning] **Planning and Research** are [until such time as they may be revised and amended,] as follows:

COUNTY	MINORITY PERCENTAGE		FEMALE PERCENTAGE	
Atlantic	20		[43]	**45**
Bergen	[6]	**9**	[39]	**42**
Burlington	[10]	**14**	[38]	**42**
Camden	[13]	**16**	[38]	**42**
Cape May	[10]	**8**	[40]	**44**
Cumberland	[18]	**21**	[42]	**45**
Essex	[33]	**41**	[42]	**46**
Gloucester	[16]	**10**	[36]	**40**
Hudson	[21]	**38**	[42]	**44**
Hunterdon	[5]	**2**	[37]	**40**
Mercer	[18]	**19**	[42]	**46**
Middlesex	[8]	**12**	[39]	**42**
Monmouth	11		[37]	**42**
Morris	[5]	**7**	[37]	**42**
Ocean	[5]	**6**	[36]	**40**
Passaic	[16]	**24**	[41]	**43**
Salem	15		[37]	**40**
Somerset	[5]	**8**	[38]	**42**
Sussex	[5]	**3**	[36]	**40**
Union	[15]	**24**	[40]	**43**
Warren	[5]	**3**	[38]	**40**

(f) (No change.)

RULE ADOPTIONS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Administrative Correction
Classification, Services and Compensation
N.J.A.C. 4A:3-2.2

Take notice that the Department of Personnel has discovered an error in the text of N.J.A.C. 4A:3-2.2(b) in which a language change substituting "another" for "higher level" was adopted by the Department but not published as part of the rule text in the September 6, 1988 issue of the New Jersey Register at 20 N.J.R. 2255(b). This notice of administrative correction is provided pursuant to N.J.A.C. 1:30-2.7(a)3.

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

4A:3-2.2 Designation of SES positions: State service
(a) (No change.)
(b) An SES position shall only report to a department head, higher level unclassified position, or [higher level] **another** SES position.
(c) (No change.)

EDUCATION

STATE BOARD OF EDUCATION

(b)

Enforcement of Drug Free School Zones
Adopted New Rules: N.J.A.C. 6:3-6

Proposed: April 3, 1989 at 21 N.J.R. 817(a).
Adopted: June 7, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Filed: June 12, 1989 as R.1989 d.354, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 18A:40A-11, 18A:40A-12, 18A:40A-13, 18A:40A-14, 18A:40-15, 18A:40A-18, N.J.S.A. 2C:35-1 et seq., N.J.S.A. 2C:29-1 et seq., and 42 CFR 2.
Effective Date: July 3, 1989.
Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:
Two individuals spoke at the State Board's April 19, 1989 public testimony session and two letters with comments were received. Both the testimony and the comments are summarized below.

COMMENT: Inservice training regarding N.J.A.C. 6:3-6.3 should be specifically mandated.

RESPONSE: Inservice training is already mandated in N.J.A.C. 6:3-6.3(b)11. The Departments of Education and Law and Public Safety have already developed a plan to implement statewide training regarding the Drug Free School Zone Enforcement Guide upon which the rule is based.

COMMENT: Provisions of N.J.A.C. 6:3-6.4 regarding reporting procedures and confidentiality should apply to staff members as well as pupils throughout the section.

RESPONSE: The rule has been changed to consistently reference both staff members and pupils as intended and stated in the section title. The same change was made to N.J.A.C. 6:3-6.6 in that the Federal confidentiality regulations referenced apply to staff members as well as pupils.

COMMENT: The rules should be changed to exclude disclosures in counseling sessions from the reporting requirement of N.J.A.C. 6:3-6.4.

RESPONSE: This is unnecessary as the exception is provided for in 42 C.F.R. 2 of the Federal regulation and in N.J.A.C. 6:3-6.6(c).

COMMENT: The Department should establish uniform policies and procedures and model agreements rather than leave their development in the hands of local boards.

RESPONSE: A sufficiently high degree of uniformity will be achieved through the policy elements required in N.J.A.C. 6:3-6.3(b).

COMMENT: The immunity from civil liability afforded to staff members reporting pupils in N.J.S.A. 18A:40A-14 should be extended for staff reporting other staff members.

RESPONSE: The statute only applies to staff reporting pupils.

COMMENT: Records for school-based drug and alcohol counseling programs should be allowed to be transmitted when necessary.

RESPONSE: The rules accurately reflect the Federal confidentiality regulations, 42 C.F.R. Part II which restrict transmittal of such records.

COMMENT: Local boards should develop their policies and procedures in consultation with the county superintendent of schools, not the county prosecutor.

RESPONSE: The rules specify the involvement of law enforcement officials as per their appropriate role and jurisdiction. The county superintendents will review local board policies for compliance with the new rules.

COMMENT: The rules should be changed to require the presence of a teaching staff member and parent/guardian notification to assure a pupil's protection during law enforcement interrogation.

RESPONSE: No change in the rules is necessary; a memorandum from the Attorney General's Office responding to this issue will be disseminated to local boards.

COMMENT: The rules require reporting of suspected controlled dangerous substance involvement in the past as well as present. This could limit the effectiveness of counseling sessions.

RESPONSE: All information revealed during drug and alcohol counseling sessions remains confidential, per the Federal confidentiality regulations, 42 C.F.R. Part II.

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

6:3-6.1 Purpose
The purpose of this subchapter is to establish uniform Statewide procedures for cooperating with law enforcement drug operations and activities on or near school grounds and to identify the circumstances under which school officials shall refer violations to the police for handling. Such policies shall be consistent with and complementary to the Statewide Action Plan for Narcotics Enforcement and Attorney General Executive Directive 1988-1.

6.3-6.2 Adoption of policies and procedures
District boards of education shall adopt and implement policies and procedures to ensure cooperation between school staff and law enforcement authorities in all matters relating to the use, possession, and distribution of controlled dangerous substances and drug paraphernalia and with respect to the planning and conduct of law enforcement activities and operations occurring on school property, including arrest procedures and undercover school operations.

6:3-6.3 General requirements
(a) District policies and procedures developed pursuant to this section shall:
1. Be developed, implemented, and revised, as necessary, through consultation with the county prosecutor and such other law enforcement officials as may be designated by the county prosecutor;
2. Be reviewed and approved by the county superintendent; and
3. Be made available annually to all school staff, pupils, and parents or guardians.
(b) District policies and procedures shall include, but not be limited to the following components:
1. The designation of liaisons to law enforcement agencies and the prescription of their roles and responsibilities by the district chief school administrator;
2. Specific procedures for and responsibilities of staff in summoning appropriate law enforcement authorities onto school property for

the purpose of conducting law enforcement investigations, searches, seizures, and arrests;

3. Specific procedures for and responsibilities of staff in cooperating with arrests made by law enforcement authorities on school property;

4. Specific procedures for and responsibilities of staff in initiating or conducting searches and seizures of pupils, their property, and personal effects. All searches and seizures conducted by school staff shall comply with the standards prescribed by the United States Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), as set forth in Appendix C of the Attorney General's Statewide Action Plan for Narcotics Enforcement;

i. Any question concerning searches conducted by school officials shall be directed to the appropriate county prosecutor.

ii. School officials may request that law enforcement authorities assume responsibility for conducting any search or seizure.

iii. No school staff member shall impede any law enforcement officer engaged in a lawful search, seizure, or arrest whether pursuant to a warrant or otherwise.

iv. School staff shall permit law enforcement authorities upon their arrival to assume responsibility for conducting any search or seizure.

v. Any questions concerning the legality of any contemplated or ongoing search, seizure, or arrest conducted by a law enforcement officer on school property shall be directed to the county prosecutor or, in the case of a search, seizure or arrest undertaken by a member of the Statewide Narcotics Task Force, to the Assistant Attorney General in charge;

5. The procedures for and responsibilities of staff, with regard to interviews of pupils suspected of possessing, using, or distributing a controlled dangerous substance;

6. Procedures for planning, approving, and conducting undercover school operations;

i. The chief school administrator and school principal shall cooperate with law enforcement authorities in the planning and conduct of undercover school operations. The chief school administrator shall approve such undercover operations without prior notification to the district board of education.

ii. All information concerning requests to undertake any undercover school operation, information supplied by law enforcement authorities to justify or explain the need for and of a proposed undercover school operation, and all other information concerning an ongoing undercover school operation, including the identity of any undercover officer placed in a school, shall be kept strictly confidential by the chief school administrator and school principal. The chief school administrator and principal shall not divulge information concerning any undercover school operation to any person without the prior express approval of the county prosecutor or designee. In the event that the chief school administrator, principal or any other school staff or district board member who may have been informed as to the existence of the undercover school operation subsequently learns of any information which suggests that the true identity of the undercover officer has been revealed, or that any person has questioned the identity or status of the undercover officer as a bona fide member of the school community, or that the integrity of the undercover school operation has been in any other way compromised, such information shall be immediately communicated to the county prosecutor or designee.

7. The procedures for and responsibilities of staff concerning the safe and proper handling of any seized controlled dangerous substances or drug paraphernalia and the prompt delivery of such items to appropriate law enforcement authorities in accordance with the provisions of this subchapter;

8. The procedures for and responsibilities of staff in notifying authorities of any suspected violation of any laws prohibiting the possession, use, sale or other distribution of any controlled dangerous substance or drug paraphernalia;

9. Provisions for requesting uniformed police attendance at extracurricular school events;

10. Provisions for notifying parents or guardians as soon as possible whenever a pupil is arrested for violating any laws prohibiting the possession, use, sale or other distribution of any controlled dangerous substance or drug paraphernalia;

11. Provisions for the inservice training of school staff concerning policies established in this subchapter; and

12. Agreements or memoranda of understanding with appropriate law enforcement authorities. Such agreements or memoranda of understanding shall be consistent with the policies established in this subchapter and in the Statewide Action Plan for Narcotics Enforcement and Attorney General Executive Directive 1988-1. These agreements or memorada of understanding shall define the reciprocal rights and obligations of pupils, parents or guardians, school staff, and law enforcement officials with respect to the use, possession, and distribution of controlled dangerous substances and drug paraphernalia and with respect to the planning and conduct of law enforcement activities and operations, occurring on school property, including arrests and undercover school operations;

i. Copies of all agreements or memoranda of understanding entered into with law enforcement authorities shall be approved by the district board of education and shall be submitted to and approved by the county superintendent of schools.

13. Provisions for resolving disputes concerning law enforcement activities occurring on school property;

14. An annual process to review the effectiveness of policies and procedures implemented pursuant to the provisions of this subchapter. This annual review shall include input from the county superintendent, community and meeting(s) with the county prosecutor and such other law enforcement officials designated by the county prosecutor so as to discuss the implementation and periodic revision of agreements and memoranda of understanding authorized pursuant to the provisions of this subchapter.

6:3-6.4 Reporting procedures for referring pupils or staff members suspected of drug incidents to law enforcement authorities

(a) Subject to the provisions of N.J.A.C. 6:3-6.6 below, any teaching staff member having reason to believe that a pupil or staff member has possessed or in any way been involved in the distribution of a controlled dangerous substance or drug paraphernalia on or near school property, shall report the matter as soon as possible to the principal or, in the absence of the principal, to the staff member responsible at the time of the alleged violation. Either the principal or the responsible staff member shall notify the chief school administrator, who in turn shall notify as soon as possible the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive such information.

(b) The chief school administrator or designee shall provide to the county prosecutor or designee all known information concerning the matter, including the identity of the pupil or staff member involved. The chief school administrator or designee shall not disclose, however, the identity of any pupil ***or staff member*** who has voluntarily sought treatment or counseling for a substance abuse problem provided the pupil ***or staff member*** is not currently involved or implicated in drug distribution activities.

1. For the purposes of this section, an admission by a pupil ***or staff member*** in response to questioning initiated by the principal or teaching staff member, or following the discovery of a controlled dangerous substance or drug paraphernalia by the principal or teaching staff member, shall not constitute a voluntary, self-initiated request for counseling and treatment.

6:3-6.5 Handling of drugs and drug paraphernalia; reporting procedures

(a) Any school employee, including any substance awareness coordinator or counselor, who seizes or discovers any substance or item believed to be controlled dangerous substance or drug paraphernalia shall immediately notify and turn over the substance or paraphernalia to the principal or designee. Either the principal or designee shall then immediately notify the chief school administrator or designee who in turn shall notify the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive such information. The school employee, principal or designee, shall safeguard the substance or paraphernalia against further use or destruction and shall secure the substance or paraphernalia until such time as the substance or paraphernalia can be turned over to the county prosecutor or designee.

(b) The principal or designee shall provide to the county prosecutor or designee all information concerning the manner in which the substance or paraphernalia was discovered or seized, the identity of all persons who had custody of the substance or paraphernalia following its discovery or seizure, and the identity of any pupil or staff member believed to have been in possession of the substance or paraphernalia. However, the principal or designee shall not disclose the identity of any pupil ***or staff member*** who voluntarily and on his or her own initiative turned over the substance or paraphernalia to a school employee, provided that there is reason to believe that the pupil ***or staff member*** was involved with the substance or paraphernalia for the purpose of personal use, not distribution activities, and further provided that the pupil ***or staff member*** agrees to participate in an appropriate treatment or counseling program.

1. For the purposes of this section, an admission by a pupil ***or staff member*** in response to questioning initiated by the principal or teaching staff member, or following the discovery of a controlled dangerous substance or drug paraphernalia by the principal or teaching staff member shall not constitute a voluntary self initiated request for counseling and treatment.

6:3-6.6 Confidentiality of pupil ***or staff member*** involvement in intervention and treatment programs

(a) All information concerning a pupil's ***or staff member's*** involvement in a school intervention or treatment program shall be kept strictly confidential in accordance with applicable Federal regulations (42 C.F.R. 2).

(b) Nothing in this subchapter shall be construed in any way to authorize or require the transmittal of any information or records which are in the possession of a substance abuse counseling or treatment program.

(c) The principal or designee shall not disclose to law enforcement officials or to any person other than a member of the local district's substance abuse program that a pupil ***or staff member*** has received or is receiving evaluation or treatment services from the local district's substance abuse program; nor shall the principal or designee disclose any information, including the pupil's ***or staff member's*** identity or information about illegal activity, where such information was learned in the course of or as a result of evaluation or treatment services provided by the local district's substance abuse program.

(d) Nothing in this section shall be construed to preclude the disclosure of information about illegal activity which was learned by any school employee outside of the local district's substance abuse program, and any such information about illegal activity shall be reported in accordance with N.J.A.C. 6:3-6.4 and 6.5 above.

(a)

Adult Education
Monitoring and Funding
Adopted Amendments: N.J.A.C. 6:30-1.7, 2.3 and 2.6.

Proposed: May 1, 1989 at 21 N.J.R. 1039(b).

Adopted: June 7, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: June 12, 1989 as R.1989 d.355, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7C-1 et seq., 18A:49-1 through 8, 18A:50-12, 13, and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq.

Effective Date: July 3, 1989.

Expiration Date: July 5, 1993.

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

Full text of the adoption follows.

6:30-1.7 Monitoring process

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

1. (No change.)

2. The Director, Division of Adult Education shall establish annually a monitoring schedule. Each program scheduled for monitoring shall be notified in advance by the Director, Division of Adult Education, and dates for such monitoring visits shall be established with the concurrence of the chief school administrator of the district or agency director with notification to the appropriate county office of education. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency."

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

(d) When monitoring a program sponsored by a voluntary agency, the monitoring team shall evaluate the program based on the application approved by the New Jersey State Department of Education.

1. (No change.)

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

6:30-2.3 Application for funding

(a) Eligible agencies entitled to program support shall submit a statement of anticipated funding needs for the succeeding fiscal year. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency." In this section, the phrase "pre-budget year" shall mean the school year prior to the school year to which a statement of anticipated funding needs, a tentative allocation, an application for funds, or a notification of funding makes reference.

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

(b) Eligible agencies shall submit an application for funds in accordance with procedures established by the Division of Adult Education by November 1 of the pre-budget year. All applications will be reviewed and approved or disapproved for funding in accordance with eligibility criteria established in the State Plan for Adult Education pursuant to P.L. 91-230.

(c) Funding entitlements for eligible agencies shall be determined on a formula basis established by the Commissioner.

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

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

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

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

(d) Eligible agencies will receive a notification of funding by January 2 of the pre-budget year.

6:30-2.6 Monitoring elements and indicators

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

1.-3. (No change.)

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

i. (No change.)

ii. The program director shall submit to the State Department of Education annually, on or before July 15, student and staff record forms of each student participant and staff member employed in the program. The student record form will note level of program enrollment, hours of attendance during each month of program operation, demographic information, test information, and other data required to be compiled by Federal regulations. The program shall maintain backup data to verify entries made on student and staff record forms.

Documentation shall be properly maintained record forms and data to verify entries.

5.-9. (No change.)

10. The financial element shall be rated acceptable upon documentation of performance in two indicators as follows:

i. (No change.)

ii. The district or agency shall maintain appropriate fiscal records of all monies provided by the State and shall submit all reports in a timely fashion as specified in the notification of funding. Documentation shall include budgetary accounts and receipt of all reports by scheduled deadline dates.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction
Hospital Rate Setting
Capital Facilities
N.J.A.C. 8:31B-3.27

Take notice that the Office of Administrative Law has discovered an error in the text of the N.J.A.C. 8:31B-3.27(a)1 in that subparagraph viii, proposed at 19 N.J.R. 1145(a) and adopted at 20 N.J.R. 77(a), was not reproduced in the New Jersey Administrative Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a).

Full text of the corrected rule follows (additions indicated in boldface **thus**):

8:31B-3.27 Capital Facilities

(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i.-vii. (No change.)

viii. Reimbursement for capital facilities which does not require Certificate of Need approval, or which requires Certificate of Need approval but does not require Batching, incurred on or after January 1, 1988 shall be in accordance with the following requirements.

(1) The hospital's Capital Facilities Allowance per Adjusted Admission, including the new capital costs, shall be compared to the statewide Capital Facilities Allowance per Adjusted Admission in accordance with (a)1vii above.

(2) Hospitals with costs per Adjusted Admission below the calculated limit will be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)1ii through v above.

(3) Hospitals with costs per Adjusted Admission above the calculated limit may appeal an increase to the Hospital Rate Setting Commission to add the additional capital costs to their Capital Facilities Allowance.

(A) Where the Commission approves such amounts, in whole or in part, they will be reimbursed in accordance with (a)1ii through v above;

(B) Absent Commission approval, no additional Capital Facilities Allowance reimbursement will be permitted.

2. (No change.)

HIGHER EDUCATION

(b)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program
Policy Governing Educational Institution Compliance; Corrective Measures

Adopted Repeal and New Rule: N.J.A.C. 9:9-11.2
Adopted Amendments: N.J.A.C. 9:9-11.1, 11.3 and 11.4

Proposed: April 17, 1989 at 21 N.J.R. 963(a).

Adopted: June 6, 1989 by the New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Filed: June 7, 1989 as R.1989 d.343, **without change.**

Authority: N.J.S.A. 18A:72-10.

Effective Date: July 3, 1989.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Higher Education Assistance Authority received one comment regarding the proposed new rule and amendments from the Passaic County Legal Aid Society. The specific points raised and the agency responses thereto follow:

COMMENT: The proposed rules do not go as far as they should. The NJHEAA should impose additional demands upon schools. The commenter specifically suggested expressly requiring schools to keep attendance records, prescribing the format, and requiring that students sign these records every day. It was also suggested that the NJHEAA require schools to post bonds to cover potential Guaranteed Student Loan (GSL) liability.

RESPONSE: The imposing of these requirements is outside the authority of the NJHEAA. The NJHEAA's legislatively defined purpose is to assure access to, and accountability of, guaranteed student loans to qualified persons for attendance at educational institutions. As such, the NJHEAA is authorized to evaluate those functions and activities conducted by participating schools which are directly related to the proper administration of the Stafford Loan Program. Imposing attendance records requirements, evaluating the sufficiency of any ability-to-benefit test the school might administer to certain prospective students, or determining educational quality, are solely within the authority statutorily granted to other New Jersey agencies, unless those institutions have been licensed by the Board of Higher Education to grant particular collegiate degrees. Proprietary schools offering business, technical, and other vocational training come under the jurisdiction of the New Jersey Department of Education which is responsible for licensing and all regulation of these institutions. Beauty schools are licensed and regulated by the Board of Beauty Culture within the office of the Attorney General.

This situation does make the regulation and oversight of proprietary schools in New Jersey quite complex. In an attempt to familiarize involved New Jersey agencies with the responsibilities and activities of the other involved agencies a task force was formed in late 1988. This task force, The New Jersey Interagency Task Force on Proprietary Schools, is comprised of representatives from the Departments of Education, Higher Education, Law and Public Safety, Labor, Human Services, and the Public Advocate. Hopefully, as the work of this task force progresses, the State of New Jersey will be able to achieve a more coordinated state policy for monitoring these schools, thereby better protecting consumer interests.

COMMENT: The NJHEAA should assure that only technically "eligible institutions" participate in the GSL Program.

RESPONSE: This determination is outside the authority of the NJHEAA. The eligibility of schools to participate in Title IV programs is determined and granted by the U.S. Department of Education (USDE). To participate, a school must apply to the USDE; establish its basic eligibility as an institution of higher education or vocational school; apply for certification as administratively capable and financially responsible; and enter into a written program participation agreement with the USDE. A school becomes eligible for participation when the U.S. Secretary of Education signs the program participation agreement. A school must be certified eligible by the USDE to participate in the New Jersey Program.

Once a New Jersey school is approved for participation by the USDE, the NJHEAA cannot refuse to let them participate in the New Jersey Program.

COMMENT: School default levels, by themselves, should be a basis for imposition of limitation, suspension, and termination (LS & T) action against a school since other areas, such as withdrawals, can be tampered with by the school.

RESPONSE: This is currently prohibited by Federal regulations. Additionally, too many factors affect a school's default rate to use it as the sole determiner of a school's eligibility. Under the proposed rule and amendments, a high institutional default rate is utilized to "trigger" a program audit to examine further a school's loan program administration capabilities. This examination should reveal to what extent institutional policies and procedures actually contribute to the default rate. At this point, the imposition of corrective LS & T action, when indicated, is appropriate.

COMMENT: The NJHEAA should monitor schools to determine that persons who have received GSL loans are capable of benefitting from the courses and that the courses are geared to true job opportunities.

RESPONSE: As previously covered, these activities are outside the authority of the NJHEAA. All of these activities are under the exclusive jurisdiction and control of the school's licensing organization.

COMMENT: The proposed sanctions are not severe enough.

RESPONSE: The NJHEAA disagrees. In applying these rules, the NJHEAA will monitor their effect and, if it determines at some future date that the sanctions need to be strengthened, it will consider revisions at that time. Further, the severity of the sanctions is limited to some degree by Federal policies regarding open access to the Stafford Loan Program.

COMMENT: Regulations should expressly require that any corrective plan pertaining to failure to make refunds shall require full and proper refunds.

RESPONSE: Upon completion of a program audit indicating failure to make refunds, a school is required to make these refunds immediately. Therefore, it is unnecessary to make provision for these payments in a Corrective Plan of Action. A Corrective Plan covering the area of refunds would be expected to contain specific administrative improvements instituted by the school to help ensure that future refunds owed will be paid in a timely manner in accordance with Federal regulations.

COMMENT: All sanctions and the basis for these should be made available to potential students. All sanctioned schools should be required to provide the information in writing to students seeking admission to the school.

RESPONSE: Not all students considering attending a specific school are interested in procuring a Stafford Loan to finance their education nor are all Stafford Loans at a particular school NJHEAA guaranteed. Information with respect to any NJHEAA action is a matter of public record, and the NJHEAA will respond to any inquiry.

COMMENT: The commenter claims that it is unclear how the noncompliance index will be computed. If the audit is extended from two to five years and the compliance was better in earlier years,. will this "water down" the index?

RESPONSE: Extending a sample when problem areas are discovered is a standard auditing procedure. The audit findings for the extended period, whether more or less favorable than the original time period, will accurately reflect the institution's degree of compliance with program requirements. The comment appears to recommend that schools be sanctioned not on the entire audit period but based upon the worst particular year or years. Such selective use of the data would not accurately reflect the institution's history for the time period and would be unfair to the institution.

Full text of the adoption follows.

SUBCHAPTER 11. POLICY GOVERNING EDUCATIONAL INSTITUTION COMPLIANCE WITH THE STAFFORD LOAN PROGRAM: CORRECTIVE MEASURES

9:9-11.1 Standards

(a) Institutions of higher education participating in the Stafford Loan Program shall comply with existing Federal and State statutes, regulations and standards governing the program.

(b) Individual institutions shall be periodically evaluated by an Authority program audit to confirm their program compliance. In the performance of this audit, auditors shall be given access to all records relative to student loans, including but not limited to:

1. Loan applications;
2. Notes/Disclosure Statements evidencing loan obligations outstanding;
3. Individual student loan ledgers;
4. Attendance records where these are required to be maintained;
5. Admissions' applications;
6. Evidence of admission;
7. Needs analysis documents;
8. Financial aid award letters; and
9. Correspondence files pertaining to student loan accounts.

(c) A draft report outlining the findings of the auditors will be provided to the institution for comment. The institution shall respond within two weeks of receipt of the draft report and this response will be included in the auditors' final report.

(d) Institutions determined to be in noncompliance as a result of this audit shall be subject to corrective or disciplinary action initiated by the Authority.

9:9-11.2 Audit procedures

(a) Every school participating in the Stafford Loan Program shall be subject to selection for a program compliance audit. Those institutions with a student loan default rate in excess of 20 percent have a significant probability of selection.

(b) All audits shall cover the prior two fiscal year period, and may be expanded up to the prior five year period if preliminary audit findings indicate significant noncompliance, in the opinion of the auditors, in one or more of the examined areas set forth in (c) below.

(c) Program audit findings utilized to ascertain program noncompliance shall include, but not be limited to, the following areas:

1. Student withdrawals before completion of the first quarter of program instruction or completion of the academic year;
2. Failure to provide documentation of timely notification to the Authority and lenders of student enrollment status changes;
3. Failure to refund loan monies to lenders on behalf of students;
4. Refunds to lenders on behalf of students not made in a timely manner;
5. Failure of student files to include information required pursuant to Federal and State regulations, or inaccurate files; and
6. Student files missing throughout the time period the auditors are on site.

(d) The auditors shall compute the percentage of noncompliance for each of the categories specified in (c) above.

(e) Noncompliance percentages shall be used to calculate violation points which are weighted to reflect the more serious nature of certain audit categories. The violation points shall be calculated as follows:

1. The percentage of withdrawals before completion of the first quarter of program instruction or completion of the academic year shall be multiplied by one;
2. The percentage of failure to provide timely notification of student enrollment status changes shall be multiplied by one;
3. The percentage of failure to refund loan monies to lenders on behalf of students shall be multiplied by four;
4. The percentage of failure to make refunds to lenders on behalf of students in a timely manner shall be multiplied by two;
5. The percentage of student files with incomplete or inaccurate data shall be multiplied by two;
6. The percentage of files missing in their entirety shall be multiplied by four.

(f) The weighted violation points for each of the categories specified in (c) above shall be added together, and this total shall be divided by the number of auditable categories to determine a "Noncompliance Index".

(g) Institutions with a "Noncompliance Index" of 10.0 or greater shall be considered to demonstrate serious deficiencies in loan program administration and these institutions shall be subject to corrective action by the Authority.

(h) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Stafford Loan Program participation where the program audit indicates that the institution is in substantial violation of other Federal or State Stafford Loan Program statutes and/or regulations.

9:9-11.3 Sanctions

(a) The extent of corrective or disciplinary action initiated by the Authority for violations as established in N.J.A.C. 9:9-11.2 shall be determined by the institution's "Noncompliance Index" as determined pursuant to N.J.A.C. 9:9-11.2 (d), (e) and (f).

1. Institutions with a "Noncompliance Index" between 10.0 to 14.9 inclusive shall be allowed continued participation in the Stafford Loan Program but shall be required to provide an acceptable Plan of Corrective Action to the Authority within 90 days of formal notification of violation.

2. Institutions with a "Noncompliance Index" between 15.0 to 24.9 inclusive shall have their participation in the Stafford Loan Program limited to 50 percent of their entering classes for a period of 9 months. Additionally, the institutions shall submit to the Authority an acceptable Plan of Corrective Action within 90 days of formal notification of limitation.

3. Institutions with a "Noncompliance Index" between 25.0 to 34.9 inclusive shall have their participation in the Stafford Loan Program limited to 50 percent of their entering classes for a period of 18 months. Additionally, the institutions shall submit to the Authority an acceptable Plan of Corrective Action within 90 days of formal notification of limitation.

4. Institutions with a "Noncompliance Index" between 35.0 to 69.9 inclusive shall be suspended from participation in the Stafford Loan Program for 18 months. The institutions shall submit an acceptable Plan of Corrective Action before formal reinstatement will be considered.

5. Institutions with a "Noncompliance Index" of 70.0 or more shall be terminated from participation in the Stafford Loan Program.

9:9-11.4 Appeal procedure

(a) The Director of the Authority is authorized to institute any corrective action set forth in N.J.A.C. 9:9-11.3. Any institution which is sanctioned shall have the right to appeal the Director's action within 30 days of the date of the letter notifying the institution of the sanction.

(b) The Authority shall provide an institution with an informal pre-hearing conference which may subsequently be followed by a formal appeal process if the institution chooses to exercise this right.

(c) To initiate the informal pre-hearing conference, the following procedure shall be utilized:

1. The petitioner shall file with the Director a letter providing the essential facts giving rise to the contesting of the Authority imposed sanction and indicating its desire to appeal the determination.

2. Upon receipt of the letter outlined in (c)1 above, the Director shall schedule a conference between representatives of the institution and members of the NJHEAA staff. The purpose of this conference is to allow the parties to mediate or narrow the dispute.

3. If the pre-hearing conference conducted under (c)2 above is unsuccessful in achieving resolution of the dispute, the institution shall have the right to file a formal appeal of the Authority imposed sanction.

(d) To initiate a formal appeal, the following procedure shall be utilized:

1. The petitioner shall file with the Director the original copy of a formal petition, together with proof of mailing.

2. The petition must state the name and address of the petitioner, and a statement of the essential facts and legal grounds giving rise to the contesting of the Director's imposed sanction.

(e) The Director shall bring the petition before the Authority in a timely manner. The petitioner may appear before the Authority but if it chooses not to do so the Director shall notify the petitioner of the Authority's decision in the matter. The institution shall be provided with the opportunity for a hearing pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

LABOR

DIVISION OF WORKPLACE STANDARDS

(a)

Safety and Health Standards for Public Employees Air Contaminant Exposure Limits

Adopted Amendment: N.J.A.C. 12:100-4.2

Proposed: May 1, 1989 at 21 N.J.R. 1089(a).

Adopted: June 12, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: June 13, 1989 as R.1989 d.358, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Effective Date: July 3, 1989.

Expiration Date: November 5, 1989.

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

Full text of the adoption follows.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with all amendments published in the Federal Register through January 19, 1989 with certain exceptions noted in (b) and (c) below, are adopted as occupational safety and health standards and shall include:

1.-19. (No change.)

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

DIVISION OF WORKPLACE STANDARDS

(b)

Safety and Health Standards for Public Employees Standard for Indoor Firing Ranges for Public Employees

Adopted New Rules: N.J.A.C. 12:100-8

Proposed: May 1, 1989 at 21 N.J.R. 1094(a).

Adopted: June 12, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: June 13, 1989 as R.1989 d.357, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Effective Date: July 3, 1989.

Expiration Date: November 5, 1989.

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

Full text of the adoption follows.

SUBCHAPTER 8. STANDARD FOR INDOOR FIRING RANGES FOR PUBLIC EMPLOYEES

12:100-8.1 Scope

(a) This subchapter shall apply to the following:

1. The design considerations, work practices, and ammunition used at existing and new indoor firing ranges operated by public employers;

2. Public employees assigned to work at an indoor firing range; and

3. Public employers who operate indoor firing ranges and who are responsible for complying with the provisions of this standard.

12:100-8.2 Definitions

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

"Bounce back" means the occasion when hard zinc bullets bounce off the surface of the bullet trap.

"Bullet trap" means the area of the firing range furthest from the shooting area which is equipped with plates to capture the expended bullets after firing.

"Indoor firing range" means the room inside a building which contains the shooting booths and is used for the shooting of firearms.

12:100-8.3 Lead standard

The Lead Standard, Section 1910.1025 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12100-4.2(a)18, shall be applicable at indoor firing ranges.

12:100-8.4 Ammunition

(a) The ammunition used in indoor firing ranges during practice sessions shall be zinc bullets or nylon jacketed or copper jacketed bullets. Service ammunition routinely used by the public employer may be used for qualification sessions.

(b) When selecting the type of ammunition to be used to comply with (a) above, consideration shall be given to a potential problem of "bounce back" of the much harder zinc bullet from the bullet trap in some ranges. Consideration shall be given to the potential eye hazard to shooters which may make the use of the zinc bullets unsafe unless changes are made in the bullet trap.

12:100-8.5 Ventilation system

(a) The minimum air velocity shall be 50 feet per minute at the firing line. An optimum air velocity should be 75 feet per minute at the firing line.

(b) Filtered and conditioned air shall be introduced behind the firing line to guarantee an evenly distributed flow of air through the shooting positions. Supplied air inlets should be placed approximately 15 feet behind the shooter's position.

(c) The entire range facility shall be maintained at a slightly negative pressure with respect to adjacent areas to prevent the escape of contaminants. Exhaust air shall exceed supplied air by at least 10 percent. For maximum efficiency, exhaust ducts should be located behind and at the apex of the bullet trap. An alternative location is to place the exhaust ducts on the side walls slightly in front of the apex of the bullet trap.

(d) A minimum down range conveying velocity of 35 feet per minute shall be maintained. When the 75 feet per minute rate is used, a minimum of 25 percent of the air should be exhausted 15 to 20 feet down range of shooting position and the remaining 75 percent at the bullet trap. When the 50 feet per minute rate is used, 100 percent of the air should be exhausted down range at the bullet trap.

(e) Each range shall have its own ventilation system to prevent the circulation of contaminated air to other areas of the building.

(f) The supply and exhaust systems shall be electrically interlocked, thereby eliminating an error in turning one system on and not the other. The system shall operate on one fan speed only.

(g) All air exhausted from the firing range shall be emitted in accordance with applicable Federal, State and local laws.

12:100-8.6 Noise exposure

(a) The Occupational Noise Exposure Standard, Section 1910.95 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a)5, shall be applicable at indoor firing ranges.

(b) To minimize the effect of peak sound pressure levels on individuals in the indoor range, all reflecting walls should be covered with high efficiency sound absorbing material. The coverings should be designed to permit easy cleaning and access to the acoustical material for periodic replacement.

(c) The floors directly behind the shooting booths should be covered with acoustical flooring.

(d) Firing range control rooms should be acoustically treated to reduce noise levels.

(e) The bullet trap should not be anchored or attached to any structural support for the building.

12:100-8.7 Water drains

(a) Each firing range shall be equipped with a floor drain and trap to facilitate cleaning by a wet method. The drain location should be approximately 20 feet down range of the firing line. The floor should slope two to three inches toward the drain.

(b) All water drained from the firing range shall be discharged in accordance with applicable Federal, State and local laws.

12:100-8.8 Work practices

(a) The ventilation system shall be in operation at all times while the range is in use and during clean-up.

(b) The range shall be cleaned by vacuum or a wet method. The use of a hand broom shall be prohibited. Vacuum cleaners shall be equipped with high efficiency particulate filters (HEPA) or the equivalent.

(c) At all times while cleaning, repairing, or reclaiming lead in the bullet trap, a National Institute of Occupational Safety and Health approved half-mask, air purifying respirator equipped with high efficiency filters and disposable coveralls shall be the minimum personal protective equipment worn by all employees performing one of more of these tasks.

(d) Proper ear protection shall be provided for and worn by all individuals inside the firing range. The ear protectors shall be selected on the basis of offering a noise reduction rating of at least 20 decibels. In cases where the noise decibel level is at or above 100 decibels, both plugs and muffs shall be worn simultaneously.

(e) Ear plugs, when worn, shall be properly fitted.

(f) A hearing conservation program shall be instituted and yearly audiometric examinations shall be provided to the firing range officers and instructors.

(g) Eating, drinking, or smoking in the range shall be prohibited.

(h) A specific schedule shall be established to perform maintenance and repair work to keep the range facilities operational and free of hazardous conditions.

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF MORTUARY SCIENCE

Notice of Administrative Correction: N.J.A.C. 13:36

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 13:36 concerning the rules of the State Board of Mortuary Science.

The following text should appear in the New Jersey Administrative Code at N.J.A.C. 13:36 (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:36-2.1 Qualification for intern registration

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

1. "Two years of academic instruction" means the successful completion of 60 degree credits at a community college or one-half the credits required to complete a degree at a four year college or university.

2. "Remedial or basic course" means a non-degree credit course required by a college or university to be completed by a student before being admitted to a specific college level course or degree program course.

[a]**(b) An applicant to be registered as an intern shall have satisfactorily completed two years of academic instruction in a college or university approved by the New Jersey State Department of Higher Education or shall be completing the requirement while registered as an intern.**

[b]**(c)** An intern who is registered while concurrently attending college to complete the two year academic educational licensure requirement shall:

1. Attend college in the Fall and Spring semester of each year until the requirement is met.

2. Achieve a minimum of eight **degree program** credits per semester with a minimum cumulative average of 2.0 or its academic equivalent throughout the concurrent registration program. A person who receives less than **a** 2.0 cumulative average [or] , withdraws from a

course, **or who takes more than one remedial or basic course per semester** shall have his internship terminated unless good cause is established for the continuation of the internship.

3. Have an official transcript of credits forwarded directly to the Board by the institution being attended immediately at the completion of every semester.

4. Notify the Board immediately if the college program is interrupted for any reason.

[c](**d**) An out of state resident may be registered as an intern, provided that the applicant is registered with a New Jersey practitioner of mortuary science.

[d](**e**) CLEP credits may be included in an academic evaluation by the New Jersey State Department of **Higher** Education.

(f) Any credit granted to a student by a college or university for completion of any remedial or basic course shall not be recognized by the Board in any transcript evaluation made by the New Jersey State Department of Higher Education for an academic qualifying certificate.

13:36-2.5 Reporting embalmments and funeral attendance; form

(a) The Board shall furnish monthly report forms to the intern for reporting embalmments and funerals attended, which shall be signed by the intern and preceptor and dated and filed with the Board no later than 15 days after the last day of each month. The intern shall complete such report setting forth all information required therein and file the forms with the Board.

(b) No internship credit shall be granted for the month when a report is received after the prescribed monthly **filing** date except upon presentation of proof acceptable to the Board that good cause exists for failing to timely file the report.

13:36-4.8 Full-time licensed manager

(a) Every firm operating under corporate ownership, authorized to carry on the practice of mortuary science, shall be under the direct supervision of a full-time **licensed** manager.

(b) The manager shall be responsible for the direction, management and control of all work emanating from the establishment.

13:36-5.12 Advertising

(a) Definitions: The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

1. "Advertisement" means any attempt, direct or indirect, by publication, dissemination, circulation or broadcast through the public media to induce any person or entity to purchase or enter into an agreement to accept mortuary or funeral services or merchandise.

2. "Public media" means newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, letters, billboards, aerial displays, signs, television, radio, and any other similar item, document, publication or device used to communicate to the general public or to a specific group.

3. "Licensee" means practitioner of mortuary science as defined by N.J.S.A. 45:7-34(g).

4. "Price reduction statement" means a statement, suggestion or implication, direct or indirect, that a service or merchandise is being offered or made available for sale at a price less than the advertiser's routine price. The following words, terms and phrases or their substantial equivalent shall be deemed to indicate a price reduction statement: sale, discount, savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, at cost, below cost, wholesale.

5. "Testimonial" means a statement by a person referring to his or his family's personal experience with a mortuary or licensee.

(b) All signs, stationery, and advertisements must indicate the true firm name as registered with the [b]**B**oard of Mortuary Science; however, this shall not apply to small novelty items where the space for advertising is limited.

(c) No licensee or owner of a mortuary shall cause to be published, disseminated, circulated or broadcast any advertisement which is false, fraudulent, deceptive or misleading or which misrepresents, suppresses, conceals, obscures or distorts any material fact.

(d) In addition, it shall be deceptive and misleading for any advertisement to contain the following:

1. The name of a person not licensed by the Board in connection with the name of a mortuary in any manner whatsoever, unless the unlicensed person is clearly and obviously identified in the advertisement as such by the use of the phrase "unlicensed and not qualified to make funeral arrangements, embalm or conduct [funeral] **funerals**." The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.

2. A price reduction statement where the [advertised] **advertisement** or current price is in fact no less than the price at which the service or merchandise was offered for sale by the advertiser for a reasonable period of time at least 30 days prior to the advertisement. In the absence of the disclosure of the period during which an advertised price reduction will remain in effect, the period shall be deemed to be 30 days from the date of initial publication.

3. An offer of professional services or merchandise where such services or merchandise are in fact not available from the mortuary or are beyond the ability of the licensee to perform or supply.

4. A license number which has not been issued to the alleged licensee, has lapsed or has been revoked or currently suspended.

5. The name, address and telephone number of a mortuary which does not exist, has not been completely constructed or is not currently open for business.

6. A claim of professional superiority or superior quality of services or merchandise, unless such claim can be documented by the licensee upon demand by the Board.

7. Intimidation, undue pressure or undue influence.

8. Testimonials.

(e) An advertisement which refers to or sets forth a price shall disclose all services or merchandise which will be provided for that price. The name of the manufacturer and the model number of any casket which will be included for that price also shall be disclosed in the advertisement. Where a price is advertised, no additional charges shall be made for the advertised service or disposition unless the advertisement includes a specific delineation of additional services or merchandise which may be necessary.

(f) The responsibility for the form and content of any advertisement shall be joint and several among all licensees who are principals, partners, or officers of the mortuary identified in the advertisement.

(g) All advertisements shall contain the name, address, and telephone number of a licensee who is responsible for the fulfillment of the advertised terms and conditions.

(h) A copy of each printed advertisement and a video or audio tape recording of each broadcast advertisement shall be retained by the licensee for a period of three years from the date of initial publication or dissemination. Each such copy or tape shall be made available for review upon request by the Board.

13:36-5.13 Transfer of funeral establishment to new location

Whenever a funeral establishment is to be moved to a new location, it shall be necessary to apply for certificate of registration and to notify the Board, in writing, at least 15 days in advance of the proposed date of opening at the new location in order to allow time for **an** inspection and registration. A certificate of registration is not transferable.

(a)

DIVISION OF CONSUMER AFFAIRS

Notice of Administrative Correction
Automotive Dispute Resolution
Eligibility
N.J.A.C. 13:45A-26.6

Take notice that the Division of Consumer Affairs has discovered an error in the text of the Automotive Dispute Resolution rules, N.J.A.C. 13:45A-26, specifically N.J.A.C. 13:45A-26.6, Eligibility. In subsection (b), the phrase "following the term of protection" places an inadvertent, inappropriate and statutorily unauthorized limitation on the acceptability of written dispute resolution applications, in lieu of unavailable Division-printed forms. The "term of protection" concept bears no relation to acceptability of a form of application. Pursuant to N.J.A.C. 1:30-2.7(a)3, therefore, the phrase "following the term of protection" is deleted from N.J.A.C. 13:45A-26.6(b) through this notice of administrative correction.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

13:45A-26.6 Eligibility
(a) (No change.)
(b) During any periods when forms are not available, any written request for dispute resolution [following the term of protection] shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A-26.7 are included.
(c) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
Office of Weights and Measures
General Commodities; Weights and Measures
Readoption: N.J.A.C. 13:47C

Proposed: May 1, 1989 at 21 N.J.R. 1096(a).
Adopted: June 5, 1989 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.
Filed: June 9, 1989 as R.1989 d.350, **without change.**
Authority: N.J.S.A. 51:1-61.
Effective Date: June 9, 1989.
Expiration Date: June 9, 1994.

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

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:47C.

(b)

VIOLENT CRIMES COMPENSATION BOARD
Rules Relating to Practice and Procedure
Readoption: N.J.A.C. 13:75

Proposed: April 3, 1989 at 21 N.J.R. 881(b).
Adopted: May 24, 1989 by the Violent Crimes Compensation Board, Kenneth W. Welch, Chairman.
Filed: June 5, 1989 as R.1989 d.340, **without change.**
Authority: N.J.S.A. 52:4B-9.
Effective Date: June 5, 1989.
Expiration Date: June 5, 1994.

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

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:75.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(c)

Speed Limits
Route N.J. 35 in Middlesex County
Adopted Amendment: N.J.A.C. 16:28-1.49

Proposed: May 1, 1989 at 21 N.J.R. 1097(a).
Adopted: June 1, 1989 by John F. Dunn Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: June 7, 1989 as R.1989 d.344, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Effective Date: July 3, 1989.
Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35[1] and Route 35 and 71
(a)-(c) (No change.)
(d) The rate of speed designated for State highway Route 35 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:
1.-7. (No change.)
8. Forty-five mph between the City of Perth Amboy-Woodbridge Township line, Middlesex County and 700 feet south of Bunns Lane (milepost 54.20 to 54.74).
9. Thirty-five mph between 700 feet south of Bunns Lane and Seymour Avenue in Woodbridge Township, Middlesex County (milepost 54.74 to 55.82); except
i. (No change.)
10.-11. (No change.)

(d)

Restricted Parking and Stopping
Route U.S. 30 in Camden County
Adopted Amendment: N.J.A.C. 16:28A-1.21

Proposed: May 1, 1989 at 21 N.J.R. 1097(b).
Adopted: June 1, 1989 by John F. Dunn Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: June 7, 1989 as R.1989 d.345, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Effective Date: July 3, 1989.
Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28A-1.21 Route U.S. 30
(a) (No change.)
(b) The certain parts of the State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1.-3. (No change.)
4. Along the (White Horse Pike) southbound on the westerly side in Oaklyn Borough, Camden County:
i. Near side bus stops:
(1) (No change.)
(2) West Lakeview Avenue—Beginning at the northerly curb line of West Lakeview Avenue and extending 115 feet northerly therefrom;
(3) West Oakland Avenue—Beginning at the southerly curb line of West Oakland Avenue and extending 105 feet southerly therefrom;
(4) Capitol Avenue—Beginning at the southerly curb line of Capitol Avenue and extending 105 feet southerly therefrom.
ii. Far side bus stops:
(1) (No change.)
(2) West Beechwood Avenue—Beginning at the southerly curb line of West Beechwood Avenue and extending 100 feet southerly therefrom;
(3) West Collingswood Avenue—Beginning at the southerly curb line of West Collingswood Avenue and extending 100 feet southerly therefrom.
5.-21. (No change.)

22. Along the (White Horse Pike) northbound (easterly) side in the Borough of Lindenwold, Camden County:

i. Near side bus stops:

(1) North United States Avenue—Beginning at the southerly curb line of North United States Avenue and extending 105 feet southerly therefrom;

(2) West Linden Avenue—Beginning at the southerly prolongated curb line of West Linden Avenue and extending 105 feet southerly therefrom;

(3) West Maple Avenue—Beginning at the southerly prolongated curb line of West Maple Avenue and extending 105 feet southerly therefrom.

23. Along the (White Horse Pike) southbound (westerly) side in the Borough of Lindenwold, Camden County:

i. Near side bus stops;

(1) East Maple Avenue—Beginning at the northerly prolongated curb line of East Maple Avenue and extending 105 feet northerly therefrom.

(2) Linden Avenue—Beginning at the northern prolongated curb line of Linden Avenue and extending 105 feet southerly thereform.

Renumber existing 23 through 26 as 24 through 27. (No change in text.)

(a)

CONSTRUCTION SERVICES

Classification of Prospective Bidders

Concurrent Adopted Amendments: N.J.A.C. 16:44-1.2 and 1.4

Proposed: April 17, 1989 at 21 N.J.R. 1023(a).

Adopted: May 29, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: June 7, 1989 as R.1989 d.346, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A-1, 14:15-2 and 52:14B-1 et seq.

Effective Date: July 3, 1989.

Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:44-1.2 Classification of prospective bidders

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

(i) When a prospective bidder has been assigned a classification, he shall be entitled to bid on any proposal within his class for a period not exceeding 18 months from the date shown upon his classification questionnaire. However, no bid will be received from any prospective bidder on any given date unless such prospective bidder shall have filed with the department at least 15 days before such date a classification questionnaire which will not be more than 18 months old on the date such prospective bidder submits his bid. Prospective bidders shall submit classification questionnaires as provided herein, annually, or on such other intermediate occasions as may be deemed necessary by the Commissioner of Transportation.

(j)-(q) (No change.)

16:44-1.4 Effective date of classification

The effective date of the classification shall be 15 days after it is received in the Bureau of Contract Administration or 15 days after receipt of any additional information requested. The expiration date is 18 months after the date of the financial information supplied.

(b)

THE COMMISSIONER

Jurisdictional Assignments for Railroad Overhead Bridges

Adopted New Rules: N.J.A.C. 16:53B

Proposed: May 1, 1989 at 21 N.J.R. 1103(a).

Adopted: June 6, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: June 12, 1989 as R.1989 d.356, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:5G-1 et seq.; and 52:14B-4(3).

Effective Date: July 3, 1989.

Expiration Date: July 3, 1994.

Summary of Public Comments and Agency Responses:

A public hearing concerning the proposed new rules was held on Monday, May 22, 1989, from 2:00 P.M. to 8:00 P.M., in the Multi-Purpose Room, Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625. Twelve persons were present for the hearing and no one commented. Five written comments were received, which were from the County Engineer, Middlesex County; the Director of Engineering and Planning, Union County; NJ Transit, and a Resolution from West Windsor Township Committee. As a result of the written comments received, the Department has caused technical and substantive changes not requiring additional publication and public comment.

COMMENT: Emergency repairs which were necessary for the immediate safety and welfare of the public and which predate the passage of the Railroad Overhead Bridge Act of 1988 should not be considered when the Commissioner determines and assigns permanent responsibilities for a bridge.

RESPONSE: The Department agrees with this comment and believes it is wholly consistent with the policy of encouraging safety oriented initiatives. The intent of the Department in administering this program is to allocate equitable bridge responsibilities and promote responsible initiatives by individual agencies to protect the safety of the traveling public. The adopted rule is amended at N.J.A.C. 16:53B-1.4(a)4 to incorporate this comment.

COMMENT: The Federal "sufficiency rating" of 80 or better should be used to define whether or not a bridge is in good repair.

RESPONSE: The Department evaluated this specific methodology when preparing these rules and found it inappropriate. The Federal sufficiency rating system yields a composite score using many criteria. Many of the elements of the sufficiency rating score are dimensionally based and not structurally oriented. A bridge could be virtually new, but if it had narrow lanes or other dimensional shortcomings it might not be considered in "good repair" under this methodology because its sufficiency rating might not meet a score of 80. Since many of the subject bridges have dimensional shortcomings, this approach is not useful in this particular situation. Sufficiency ratings will not be used as the sole criteria for defining state of repair.

COMMENT: Previous minor safety improvements, such as the placing of guardrail, should not be used as "determining factors" for assessing past jurisdictional responsibilities and future jurisdictional assignments.

RESPONSE: The Department agrees that minor initiatives which are safety oriented should not be routinely construed as a proof of a preexisting jurisdiction. The question of preexisting jurisdictions needs to be evaluated with a rather broader view. The Department believes the adopted rules accommodate this perspective and no amendment to the rules is required.

COMMENT: Costs incurred by railroads during inspection, design and construction of a bridge should be borne by the railroads. Cost items should include plan review, catenary wire relocation, deenergizing, flagman and related services.

RESPONSE: The Commissioner is able to allocate such costs and responsibilities to railroad companies as outlined in the adopted rules.

COMMENT: Amtrak and Conrail claim they are not subject to certain State laws and prior jurisdictional agreements. The State should ensure railroad compliance and cooperation.

RESPONSE: The Department believes that the statutory and regulatory provisions of this program are reasonable to all concerned and will promote interagency and railroad cooperation. Nevertheless, the Department is prepared to take the lead in compelling compliance with provisions of this program when necessary and appropriate.

COMMENT: Railroad companies should not be able to compel anyone to hold the railroad harmless for railroad actions (inactions) by restricting access to railroad rights of way.

RESPONSE: The Department would find it unacceptable if right-of-way access was used as leverage by a railroad company to impose unreasonable conditions into project agreements. The Department, however, reserves judgment on what may be unreasonable to future evaluation and on a case by case basis.

COMMENT: The term "railroad overhead bridge" is confusing as the subject bridges are highways and streets over railroads.

RESPONSE: The origin of this term is in respect to railroad and not highway right of way. Therefore, in respect to the railroad, it is an "overhead" bridge.

COMMENT: Consideration should be given to the replacement of bridges that have substandard height limitations, narrow road widths, or other such deficiencies prior to any jurisdictional assignment.

RESPONSE: It is not a precondition of any assignment process to remedy dimensional shortcomings. The general standard required to be met prior to assignment of bridge responsibilities is the state of repair of a bridge, not dimensional criteria.

COMMENT: "Timely" railroad cooperation should be defined in specific time units. Railroads are not always responsive.

RESPONSE: The Department agrees that railroad cooperation has periodically lacked timeliness. The Department, however, does not agree that the specification of a fixed time frame for railroad responses is a universally useful remedy. The Department anticipates that different projects will require widely differing response times for both railroads and other agencies. Establishing specific time benchmarks at this stage of program development appears inappropriate.

COMMENT: Priorities for repair, rehabilitation, or replacement of bridges should be determined with input from counties and municipalities.

RESPONSE: Virtually all of the bridges affected by this program are on local and county roads. Priorities will be determined in consultation with all interested parties, including county and local authorities.

COMMENT: In respect to a specific bridge, one municipality commented that the county had a superior ability to carry out responsibilities related to bridge jurisdiction. New jurisdictional assignments should take the expertise of the various entities into account.

RESPONSE: To a considerable degree the Railroad Overhead Bridge Act of 1988 already takes into account the expertise of the various affected entities. The Department will endeavor to see that all bridge responsibilities are allocated in a reasonable and rational manner.

COMMENT: In respect to Federally funded bridge projects, the responsibilities allocated to the railroads may qualify for Federal Highway Administration (FHWA) funding or reimbursement. In such cases, railroads should be eligible to be reimbursed for the cost of these responsibilities. This should be noted in the Department rules.

RESPONSE: Under existing FHWA policies, some of the responsibilities identified for railroads may indeed be project costs eligible for Federal funding or reimbursement. In cases where there is Federal funding of a bridge project, the Department does anticipate there will be opportunity for railroads to be reimbursed for eligible project expenses as determined appropriate by Federal authorities. The purpose of these rules, however, is limited to the allocation of general railroad overhead bridge responsibilities. Determination of bridge improvement project shares and subsequent Federal reimbursements were not within the scope of the general purposes of the Railroad Overhead Bridge Act of 1988. These rules will expire in five years, as required under New Jersey Executive Order No. 66. The current Federal funding legislation is the Surface Transportation and Uniform Relocation Assistance Act of 1987. This Federal legislation expires in approximately two years. Given the considerable differences in the expiration dates of the State rules and the Federal legislation, the Department does not wish to adopt rule provisions which will significantly outlast related Federal legislation. For these reasons, it appears to be both unnecessary and undesirable to codify Federal reimbursement provisions within these rules. Reimbursements for Federally funded projects will be done in conformance with all applicable Federal policies.

COMMENT: N.J.A.C. 16:53B-1.6 was a concern to one commenter since it did not clearly state that the railroad responsibilities pertained only to those bridges where a determination for bridge responsibilities has been made by the Commissioner through the outlined regulatory procedure.

RESPONSE: It is stated in N.J.A.C. 16:53B-1.6(a) that the outlined railroad responsibilities pertain only in those situations when there are "railroad overhead bridges assigned under this chapter". The enabling legislation also makes this clear. The Department believes that no further clarification is necessary.

COMMENT: A concern was expressed that an entity already having jurisdiction for a bridge could petition for a jurisdictional determination by the Commissioner. This action might result in a railroad being ordered to provide, with reimbursement, the railroad services outlined in N.J.A.C. 16:53B-1.6.

RESPONSE: The Department does not wish to see the provisions of this chapter used in a divisive or inequitable manner. The concern of the commenter needs to be addressed. Any change upon adoption at N.J.A.C. 16:53B-1.5, Hearings and procedures, has been made to specifically address this concern.

COMMENT: The proposed rules may give the Commissioner broad discretion, not intended in the legislation, to assign bridge responsibilities to individual entities or joint entities.

RESPONSE: The Department does not agree with this view and believes that it was expressly the purpose of the enabling legislation to provide both specific guidelines and a degree of discretion to the Department to resolve questions of bridge jurisdiction. This process is safeguarded by a hearing process and the opportunity for affected parties to be heard and present evidence. The Department is confident that these inherent checks and balances protect proper statutory interpretation and implementation of this program.

Agency Initiated Changes

The Railroad Overhead Bridge Act of 1988 was enacted as P.L. 1988, c.171 and codified in the statutes as N.J.S.A. 27:5G-5 to 27:5G-19. For purposes of clarity, the N.J.S.A. reference found in N.J.A.C. 16:53B-1.1(c) has been amended to read in that exact manner. The prior citation was N.J.S.A. 27:5G-1 et seq.

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

CHAPTER 53B
JURISDICTIONAL ASSIGNMENTS FOR RAILROAD OVERHEAD BRIDGES

SUBCHAPTER 1. GENERAL PROVISIONS

16:53B-1.1 Purpose and general policies

(a) As a result of the bankruptcy and Federal reorganization of the major railroads serving New Jersey, it became increasingly difficult under New Jersey law to determine who had primary responsibility for many bridges carrying roads over rail rights of way.

(b) The lack of definitive jurisdictions for many railroad overhead bridges has complicated the process of ongoing repair, rehabilitation and replacement of these bridges. Resolving jurisdictional questions is absolutely necessary.

(c) The Legislature recognized the importance of this matter and enacted the Railroad Overhead Bridge Act of 1988, P.L. 1988, c. 171 (N.J.S.A. *[27:5G-1 et seq.]* ***27:5G-5 to 27:5G-19***) (referred to herein as the Act) to address many of the questions confronted in this issue. That Act, and this chapter, are established to provide for orderly and equitable allocation of responsibilities for railroad overhead bridges. It is the express purpose of this chapter to avoid contentious deliberations pertaining to the jurisdiction of these bridges and to provide for reasonable and timely allocations of bridge responsibilities to the applicable parties.

(d) In the allocation of responsibilities under this chapter, emphasis will be put upon fashioning workable and cooperative jurisdictions and responsibilities. The resources and expertise of each of the applicable parties will be carefully considered under the provisions and procedures prescribed by this chapter.

(e) The purpose of this chapter is to resolve jurisdictional problems pertaining to railroad overhead bridges. The provisions herein shall not be applied in a manner contrary to the intent of the Railroad Overhead Bridge Act of 1988, the purpose of which is to provide for equitable allocation of bridge responsibility when jurisdictions are uncertain.

(f) The provisions of this chapter shall not be interpreted or applied in a manner which would impede any responsible party from undertaking necessary or emergent bridge repairs. Additionally, this chapter shall not impede the establishment of supplemental agreements which may be necessary to implement interagency coordination or project review or approvals.

16:53B-1.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Transportation.

"Department" means the New Jersey Department of Transportation.

"Good repair" means that the structure is found by the Commissioner to be in safe and serviceable adequate condition for the purposes and uses to be permitted, based upon sound engineering principles, standards or techniques, which may include those that were acceptable at the time of original construction or at the time of any reconstructions.

"Jurisdiction" means control and responsibility for maintenance, rehabilitation, replacement and inspection as may be ordered by the Commissioner under provisions of this chapter.

"Public entity" includes, but is not limited to, any officers, department, board, commission, division, agency, authority or instrumentality of the State or of any county or municipality.

"Railroad overhead bridge" or "bridge" means any bridge carrying a highway or private road over and across a railroad, subway, or street traction, or electric railway, or over and across the right-of-way of such a railroad, subway, or railway.

16:53B-1.3 General provisions

(a) The provisions of chapter 12 of Title 48 of the Revised Statutes (N.J.S.A. 48:12-1 et seq.) have proven inadequate to ensure that each highway bridge crossing a railroad is under the jurisdiction of an agency which is ready, willing, and able to assume responsibility for the maintenance, inspection and, where necessary, the rehabilitation or replacement of the bridge.

(b) Under this chapter, a mechanism is established whereby each railroad overhead bridge which is to be rehabilitated or replaced, or which is determined to be in a state of good repair, can be assigned to the jurisdiction of a public entity. Under the provisions of this chapter, all parties potentially affected by a bridge jurisdiction assignment may present evidence to the Department. Each assignment shall be made by written order of the Commissioner.

(c) Any railroad overhead bridge which has been assigned to a jurisdiction by written order of the Commissioner under this chapter shall not be considered a bridge or passage under N.J.S.A. 48:12-49, and the provisions of chapter 12 of Title 48 shall not apply to it.

(d) Jurisdiction over a railroad overhead bridge assigned under this chapter may be transferred to another party by voluntary agreement between the parties, provided that the Commissioner approves the agreement by written order.

(e) The issuance by the Commissioner of a written order assigning jurisdiction over a railroad overhead bridge under the provisions of this chapter shall not relieve any party of any tort or contractual liability existing prior to the issuance of that order.

(f) The Commissioner shall not make an order assigning jurisdiction for a railroad overhead bridge which does not carry a State highway unless:

1. The bridge is the subject of an improvement project financed in whole or in part by State funds, in which case the Commissioner may make the order contingent upon satisfactory completion of work;

2. The order assigns jurisdiction to a party who has requested jurisdiction over the bridge by written petition to the Commissioner; or

3. The Commissioner determined it to be in the public interest to accept a written petition for assignment from an affected party other than the party to whom jurisdiction would be otherwise assigned under N.J.A.C. 16:53B-1.4 and the Commissioner further determines that the bridge is in good repair.

16:53B-1.4 Assignment of jurisdictions

(a) Railroad overhead bridge jurisdiction assignments made by the Commissioner shall be done under the consideration of the following criteria and in this order of significance:

1. The Commissioner shall assign all bridges carrying State highways to the jurisdiction of the Department.

2. If a railroad overhead bridge carries a private road, the Commissioner shall assign the bridge to the jurisdiction of the person owning the road.

3. The Commissioner shall assign each railroad overhead bridge carrying a highway, other than a State highway, over and across a right-of-way owned by the New Jersey Transit Corporation to the jurisdiction of that corporation, unless the Commissioner determines, subject to the provisions of (d) below, that the bridge should be assigned to the jurisdiction of another public entity.

4. Following a review of available statutes, regulations, local ordinances, maintenance agreements, records concerning improvement projects and maintenance activities, and any other applicable evidence, and based upon preponderance of all the evidence reviewed, if it is determined that a county, municipality or other public entity has assumed effective control or responsibility over a bridge, the Commissioner shall assign the bridge to the jurisdiction of that entity. Evidence of maintenance, repair, reconstruction, inspection or other work done following the December 5, 1988 effective date of the Railroad Overhead Bridge Act of 1988 shall not be considered for purpose of assigning a bridge to an entity under this section. ***Evidence of emergency repairs which were necessary for the immediate safety and welfare of the public and which predate December 5, 1988 shall not be used as a determining factor for assessing past jurisdictional responsibilities.*** This is done in the interest of encouraging entities to maintain the safety of bridges for which the responsibility has yet to be ascertained.

(b) If the provisions of (a) above fail to readily provide for a prospective jurisdictional assignment for a railroad overhead bridge, the Commissioner may order the assignment of joint jurisdiction for the railroad overhead bridge to various persons and/or public entities. The joint jurisdictional order of the Commissioner shall allocate specific jurisdictional responsibilities to the applicable parties. This may include specific responsibilities pertaining to interagency coordination, approvals and inspection responsibilities.

(c) In general, joint jurisdictional orders shall be constructed in the following manner: The Department will assume jurisdictional responsibility for the principal structural elements and abutments of the bridge, which shall include structural repair, maintenance, rehabilitation, and replacement. The entity or entities with jurisdictional responsibility for the approaching roadways shall have responsibility for routine maintenance of the surface roadway carried by the bridge, including but not limited to snow removal, sidewalk and guiderail repair, lighting, appurtenances, striping, signing, patching, and resurfacing. These routine maintenance responsibilities shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

(d) Any county or municipality having jurisdiction over a highway carried by or leading onto a railroad overhead bridge assigned to the jurisdiction of the New Jersey Transit Corporation or the Department shall have responsibility for routine maintenance of the surface roadway carried by the bridge, including, but not limited to, snow removal, sidewalk and guiderail repair, lighting, appurtenances, striping, signing, patching, and resurfacing. Routine maintenance responsibilities of a county or municipality shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

(e) Any jurisdictional order made under the provisions of this chapter may include specific provisions which apply to interagency coordination, review of plans or projects, or any other administrative matter of significance in carrying out the terms of an order.

16:53B-1.5 Hearings and procedures

(a) Under the provisions of this chapter, only the Commissioner may initiate hearings, for the purpose of assigning bridges. This may be on his or her own motion or in response to a petition. The hearings will be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.C.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.C.A. 1:1. Before initiating such hearings, the Commissioner shall first determine that the requirements of section 4b of P.L. 1988, c. 171, as applicable, have been satisfied.

(b) Any party seeking the assignment of jurisdiction over a bridge may petition the Commissioner in writing to initiate hearings. It shall be within the Commissioner's discretion to decide whether or not to initiate hearings based upon such petition.

(c) In any hearing where jurisdiction(s) of a bridge is in question or dispute, the preponderance of the evidence shall serve as the standard for the trier of fact.

(d) Upon receiving the findings and recommendations of the Office of Administrative Law, the Commissioner may issue a final order assigning jurisdiction over a bridge, with such conditions as the Commissioner may deem desirable in the interest of protecting the public safety and welfare.

(e) A final order may be changed or amended by the Commissioner after the Commissioner initiates another hearing, which will be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and upon receipt of the findings and recommendations resulting from such hearing.

(f) In those cases where the Commissioner finds that a bridge is ready under a preexisting jurisdiction, the Commissioner may order continuation of the existing jurisdiction and provide that an allocation of railroad responsibilities as outlined in N.J.A.C. 16:53B-1.6 is not applicable.

16:53B-1.6 Railroad responsibilities

(a) Regarding the inspection, maintenance, rehabilitation, replacement or removal of railroad overhead bridges assigned under this chapter, each person or railroad company owning or controlling a railroad right-of-way shall provide, in the form and in the manner prescribed by the Commissioner, at its own expense and in a timely fashion, the following services to the party with jurisdiction for the bridge over the right-of-way:

1. Necessary and sufficient access to railroad property and right-of-way, including applicable insurance;
2. Necessary track safety personnel and services, such as flag protection and de-energizing/energizing electric power lines;
3. Review of plans and specifications; and
4. Any other incidental railroad services required to enable the party with jurisdiction over the railroad overhead bridge to undertake its applicable responsibilities, such as release of all appropriate records and plans related to a bridge.

(b) Following notice and a public hearing held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Commissioner determines that a person or railroad company has failed to provide the services required under this chapter with respect to a specific project for the repair, inspection, rehabilitation, or replacement of a bridge, and further determines that the project is in the public interest, the Commissioner may, by written order, compel the person or railroad company to provide those services determined to be necessary.

16:53B-1.7 Operative date

The Railroad Overhead Bridge Act of 1988 became effective December 5, 1988, but remains inoperative until the passage of additional bridge bond funding by the Legislature. The Act provides, however, that despite being inoperative the Department must adopt implementing regulations. Unless the Railroad Overhead Bridge Act of 1988 becomes operative, the provisions of this chapter are likewise not operative. All parties are nevertheless encouraged to resolve interim jurisdictional matters in a manner consistent with the principles and intent of this chapter.

TREASURY-GENERAL

DIVISION OF PENSIONS

(a)

State Health Benefits Commission
Ten-Month Employees; Enrolling Dependents
Adopted Amendments: N.J.A.C. 17:9-2.4 and 5.11

Proposed: April 3, 1989, at 21 N.J.R. 886(a).
Adopted: May 25, 1989, by the State Health Benefits Commission, Patricia Mastrocola, Acting Secretary.
Filed: June 1, 1989 as R.1989 d.335, **without change.**
Authority: N.J.S.A. 52:14-17.27.
Effective Date: July 3, 1989.
Expiration Date: October 3, 1993.

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

Full text of the adoption follows.

17:9-2.4 Coverage changes; exceptions

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

(c) An employee who wishes to change his or her enrollment and the enrollment of his or her eligible dependents for any of the reasons included in (a) above but who has failed to complete and forward the required enrollment form within the time limits which have been prescribed, may effect such change of enrollment only during the annual enrollment period. For provisions governing coverages and charges for 10-month employees, see N.J.A.C. 17:9-5.11(c).

17:9-5.11 Charges and coverage; 10-month employees

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

(c) A 10-month employee whose employment resumes in September may enroll eligible dependents within 60 days of the qualifying event. Should any part of the 60-day period occur during July and August, that period will be extended day for day up to 60 days after the employee resumes work in September.

(b)

State Health Benefits Program
Termination Conversion Rights; Effective Dates
Adopted Amendment: N.J.A.C. 17:9-7.2

Proposed: April 3, 1989, at 21 N.J.R. 886(b).
Adopted: May 25, 1989, by the State Health Benefits Commission, Patricia Mastrocola, Acting Secretary.
Filed: June 1, 1989 as R.1989 d.336, **without change.**
Authority: N.J.S.A. 52:14-17.27.
Effective Date: July 3, 1989.
Expiration Date: October 3, 1993.

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

Full text of the adoption follows.

17:9-7.2 Termination conversion rights; effective dates

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

(c) The reasons for termination of eligibility are as follows:

1.-5. (No change.)

6. A retired employee or surviving spouse who voluntarily discontinues coverage because of a return to covered public employment, may reenroll in the State Health Benefits Program upon termination of the covered public employment.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of General Election for Governor

Adopted New Rules: N.J.A.C. 19:25-15.48, 15.49, 15.50, 15.51, 15.52, 15.53, 15.54, 15.55, 15.56, 15.57, 15.58 and 15.64.

Adopted Amendments: N.J.A.C. 19:25-15.3, 15.4, 15.5, 15.6, 15.7, 15.9, 15.11, 15.12, 15.14, 15.16, 15.17, 15.19, 15.22, 15.23 and 15.26.

Adopted Recodifications and Amendments: N.J.A.C. 19:25-15.30, 15.31, 15.32, 15.35, 15.37, 15.38, 15.39, 15.42, 15.43, 15.44, 15.45, 15.59 and 15.61.

Proposed: May 1, 1989 at 21 N.J.R. 1109(a).
Adopted: June 2, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Filed: June 5, 1989 as R.1989 d.341, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with a portion (N.J.A.C. 19:25-15.29) not adopted.**
Authority: N.J.S.A. 19:44A-38 and P.L. 1989, c.4, specifically section 12.
Effective Date: June 5, 1989, pursuant to P.L. 1989, c.4, section 12.
Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: A representative of the Mercer County Chamber of Commerce and the Greater Princeton Chamber of Commerce testified in opposition to the text of proposed N.J.A.C. 19:25-15.50, Application to sponsor debates. Specifically, the commenter said the use of the word "televised" in paragraph 3 of subsection (a) precluded his organizations from being considered as a possible gubernatorial debate sponsor.

RESPONSE: The requirement that an organization applying to sponsor a gubernatorial date must have previously sponsored one or more televised debates for Statewide office in New Jersey since 1976 is specifically mandated by statute (see P.L. 1989, c.4, section 10(c)).

Agency Initiated Changes

1. The Election Law Enforcement Commission (hereafter, "the Commission") is not adopting proposed N.J.A.C. 19:25-15.29, Coordinated expenditures, because that proposed new rule has been superceded by a reproposed new rule published May 15, 1989 at 21 N.J.R. 1286(a). Therefore, for the purpose of this adoption, N.J.A.C. 19:25-15.29 has been reserved.

2. A printer's error appeared in the published text of N.J.A.C. 19:25-15.50(a)3, Application to sponsor debates. The phrase "one of more" has been corrected to read "one or more."

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

19:25-15.3 Definitions for this subchapter

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

"Candidate" means anyone who has filed a nominating petition, or has filed a form D-1 with the Commission, or has solicited contributions or made or incurred expenditures on behalf of his or her candidacy, or has allowed others to solicit contributions or make or incur expenditures on behalf of his or her candidacy for election to the office of Governor of New Jersey in any general election for which the Legislature makes an appropriation for public funding.

...

"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to N.J.S.A. 19:44A-44, no amount of the candidate's own funds in the aggregate in excess of $1,500, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in N.J.S.A. 19:44A-29(a) shall be deemed contributions eligible for match. Funds received by an individual who is "testing the waters" may be matched when the individual becomes a candidate if such contributions meet all the requirements of the regulations.

...

"Debate sponsor" means the private organization or organizations to which the Commission has delegated the responsibility for conducting one or both of the televised interactive general election debates.

...

"Interactive general election debate" means the moderated reciprocal discussion of issues among the candidates for the office of Governor which involves responses by the candidates to questions posed by the representative or representatives of the sponsor organization.

...

"Non-participating candidate" means any candidate who does not make application for public funding in a general election pursuant to N.J.A.C. 19:25-15.17, or who is not a "qualified candidate" as that term is defined in this section. In no case shall a candidate who qualified for and receives any public funding for a general election be subsequently deemed a non-participating candidate for that election.

...

"Person" includes corporations, associations and labor unions. For purposes of this subchapter, person does not include a political committee or continuing political committee. A spouse of any person is deemed to be a separate person.

"Political committee" means any two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does aid or promote the nomination, election, or defeat of a candidate for the office of Governor, but shall not mean a duly constituted State, county or municipal committee of a political party.

...

"Qualified candidate" means:

1. Any candidate for election to the office of Governor whose name appears on the general election ballot and who has deposited and expended $150,000 pursuant to N.J.S.A. 19:44A-32; and who, not later than September 1 preceding a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for general election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial general election debates; or

2. Any candidate for election to the office of Governor whose name does not appear on the general election ballot, but who has deposited and expended $150,000 pursuant to N.J.S.A. 19:44A-32 and who, not later than September 1 preceding a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for general election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial general election debates.

...

"Statement of agreement" means a written declaration by a candidate for election to the office of Governor who intends that application will be made on that candidate's behalf to receive monies for general election campaign expenses pursuant to N.J.S.A. 19:44A-33 that the candidate undertakes to abide by the terms of any rules established by any private organization sponsoring a gubernatorial general election debate. The statement of agreement shall include an acknowledgment of notice to the candidate who signs it that failure on that candidate's part to participate in either of the gubernatorial general election debates may be cause for termination of the payment of such monies on the candidate's behalf and for the imposition of liability for the return to the Commission of such monies as may previously have been so paid.

19:25-15.4 Appointment of treasurers and depositories

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

(c) No political committee, other than the principal campaign committee designated pursuant to (a) above, may contribute to any candidate or expend on behalf of such candidate more than $1,500.

19:25-15.5 Pre-candidacy activity

(a) All funds or other benefits received and payments made pursuant to N.J.A.C. 19:25-3.1 by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example, "testing the waters") are not contributions or expenditures. All funds so received shall be deposited in a separate depository established solely for that purpose. The individual shall keep records of all such funds received and payments made.

(b) (No change.)

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, the funds received and payments made are contributions subject to the contribution limit contained in N.J.A.C. 19:25-15.12 and expenditures subject to the expenditure limit contained in N.J.A.C. 19:25-15.11(a)3 and shall be reported with the first report filed by the candidate or the campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not apply to funds received or payments made for general public political advertising; nor does this exemption apply to funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate. In no instance shall permissible activities conducted solely for the purpose of determining whether an individual will become a candidate be confined or limited on the basis of total funds received or payments made for such purpose.

(d) The separate depository established pursuant to (a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).

19:25-15.6 Contribution limits; applicability

(a) No candidate for the office of Governor, whether or not intending to participate in public funding, and no campaign treasurer or deputy campaign treasurer of such candidate shall knowingly accept from any person, candidate, political committee, or continuing political committee any contribution in aid of the candidacy of or in behalf of such candidate in the aggregate in excess of $1,500 in any general election.

(b) No State committee, and no campaign treasurer or deputy campaign treasurer of such State committee, shall knowingly accept from any person, candidate, political committee, or continuing political committee any contribution in aid of the candidacy of or in behalf of any candidate for the office of Governor in the aggregate in excess of $1,500 in any general election, whether or not such candidate intends to participate in public funding.

19:25-15.7 Separately maintained primary and general bank accounts

(a) Any candidate may establish and designate to the Commission a depository bank account, and/or a matching fund account pursuant to N.J.A.C. 19:25-15.17(b), for a gubernatorial general election and may deposit contributions in such respective accounts at any time after designation. Such general election bank accounts may be established prior to the date of the primary election for nomination for the office of Governor, and prior to the conclusion of any such candidate's primary election campaign. However, if a candidate establishes general election bank accounts prior to or on the date of the primary election for the office of Governor, and such candidate is also a candidate in such primary election, no moneys deposited in such candidate's general election accounts may be transferred or expended until the day following such primary election and may not be expended at any time for primary election expenses.

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

19:25-15.9 Candidates deemed non-participating; effect

Any candidate who does not by September 1 preceding a general election in which the office of Governor is to be filled apply for public funding in a general election pursuant to N.J.A.C. 19:25-15.17 shall be deemed non-participating in public funding of that general election and shall not receive public funds on his or her behalf.

19:25-15.10 Non-participating candidates; generally

(a) A non-participating candidate is subject to the $1,500 limitation on contributions from a person, political committee or continuing political committee, pursuant to N.J.S.A. 19:44A-29.

(b) A non-participating candidate is subject to the $1,500 limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

19:25-15.11 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or this subchapter is subject to the following limitations:

1. (No change.)

2. No candidate, or his or her campaign treasurer or deputy campaign treasurer, shall borrow an amount that at any one time exceeds $50,000 in the aggregate, and such loan must be repaid in full not later than 20 days prior to the general election for which the loan was made from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29. Certification of such repayment shall be made by the borrower to the Commission in accordance with N.J.A.C. 19:25-15.30.

3. The amount which any qualified candidate may spend in aid of his or her candidacy shall not exceed $5,000,000, which amount shall include all expenditures for testing the waters activity prior to candidacy. Such amount shall not include expenditures listed in N.J.A.C. 19:25-15.26.

4. Contributions by any candidate in excess of $1,500 from his or her own funds in aid of his or her candidacy shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

19:25-15.12 Who may or may not contribute; generally

(a) No person, political committee, or continuing political committee other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for election to the office of Governor in a general election, in the aggregate in excess of $1,500. Any such contribution in excess of $1,500 must be promptly returned to the contributor, and evidence of repayment shall be submitted to the Commission.

(b) (No change.)

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds $1,500 in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contributions and the degree to which the decisions whether to contribute to what candidate and in what amount are independent decisions.

19:25-15.14 Contributions eligible for match; generally

(a) (No change.)

(b) Only contributions in cash or by check, money order or negotiable instrument shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of $1,500 and the overall expenditure limit contained in N.J.S.A. 19:44A-7 except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-15.26. The total of all contributions eligible for match from any person or political committee, or continuing political committee shall not exceed $1,500 in the aggregate.

(c) A maximum of $1,500 in the aggregate of a candidate's own funds may be deposited in the matching fund account.

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

19:25-15.16 Limitation on contributions eligible for match

(a) Any contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the $1,500 contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the $1,500 limitation.

(c) (No change.)

19:25-15.17 Matching of funds

(a) Any candidate seeking to qualify for receipt of public matching funds shall not later than September 1 preceding a general election in which the office of Governor is to be filled file with the Commission:

1. A statement of agreement in a form prescribed by the Commission to participate in the series of two interactive gubernatorial general election debates; and

2. Either of the following:

i. A certified application for receipt of public matching funds pursuant to this section; or

ii. A statement of qualification to participate in public financing pursuant to N.J.A.C. 19:25-15.48.

(b) (No change.)

(c) A candidate seeking to become eligible to receive matching funds shall certify to the Commission in a written statement signed by the candidate that he or she is a candidate for Governor in a general election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least $150,000 from persons, political committees, or continuing political committees each of whose contributions in the aggregate does not exceed $1,500, and that at least $150,000 of such contributions have been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

(d) The statement referred to in (c) above shall include an original and one photocopy of a typed or printed list of contributors showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each contribution by the candidate and of the deposit into the matching fund account, the dollar amount of each contribution submitted for match, and the total amount of all contributions submitted for match. The list of contributors shall be segregated by deposit. The statement shall also include a typed or printed list of contributors of contributions not eligible or submitted for match and any other receipt (for example, in-kind contributions, contributions intended to be repaid, or interest on invested funds), showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each such contribution by the candidate and the dollar amount of each such contribution. The statement shall also include an original and one photocopy of a list of repayment by the candidate of any contribution, including any loan described under N.J.A.C. 19:25-15.30.

(e)-(f) (No change.)

(g) The initial certification shall include two photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least $150,000.

(h)-(i) (No change.)

(j) Each submission for public matching fund payments following the date on which a candidate is determined to be a qualified candidate shall contain no less than $12,500 of contributions eligible for match. Upon determination by the Commission that each submission contains no less than $12,500 of contributions eligible for match, public matching funds will be awarded based upon the total amount of contributions determined to be eligible for match.

19:25-15.19 Matching of State committee contributions; submission dates

(a) The campaign treasurer or deputy campaign treasurer of any candidate seeking matching funds must, on the dates of submission provided in N.J.A.C. 19:25-15.18, deliver to the Commission any statement of contributors or expenditures and photocopies received from any State committee pursuant to N.J.A.C. 19:25-15.37 and must so certify to the Commission. In the event no contribution from a State committee has been received and therefore no deposit made of such State committee contributions in such candidate's matching fund account, the campaign treasurer or deputy campaign treasurer shall so certify to the Commission.

(b) No submission or application for public funds pursuant to N.J.A.C. 19:25-15.18 will be considered by the Commission unless accompanied by written certification in compliance with (a) above.

19:25-15.22 Receipt of public funds limitation

(a) No public funds shall be deposited by the Commission in the public fund account of any qualified candidate on or before the date of the primary election for nomination for the office of Governor of New Jersey immediately preceding the general election for the same office.

(b) The maximum amount which any qualified candidate may receive from public funds shall not exceed $3,300,000.

19:25-15.23 Receipt of public funds; procedure

The Commission shall certify to the Treasurer of New Jersey the amount to be disbursed to the Commission for the public fund account of each candidate. The Treasurer shall then deliver such amount to the Commission.

19:25-15.26 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-15.11(a)3:

1.-3.(No change.)

4. Election night celebration or event expenses as defined in N.J.A.C. 19:25-15.47(c).

19:25-15.29 *[Coordinated expenditures]* ***(Reserved)***

*[(a) A communication expenditure by a candidate other than a gubernatorial candidate is a coordinated expenditure of the gubernatorial candidate and is properly allocable against the expenditure limit of the gubernatorial candidate (N.J.S.A. 19:44A-7) if:

1. The communication makes unambiguous reference to the gubernatorial candidate in an audio, video, printed or visual format; and

2. The gubernatorial candidate or his or her campaign has consented to or authorized the coordinated communication, or if the communication has been made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of the gubernatorial candidate or his or her campaign.

(b) Where a coordinated expenditure exists pursuant to (a) above, a minimum of 15 percent of all expenses related to the communication shall be allocated against the expenditure limit of the gubernatorial candidate. A percentage greater than 15 percent of the expenses related to the communication shall be allocated against the expenditure limit of the gubernatorial candidate if the effect of the communication was to aid or promote the gubernatorial candidate in a proportion greater than 15 percent.]*

19:25-15.30 Borrowing of funds; repayment

Any candidate, the candidate's campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate or the State committee may in any way endorse or guarantee such loan in the aggregate in excess of the $1,500 contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her campaign, the amount so borrowed shall not at any one time in the aggregate exceed $50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29 not later than 20 days prior to the general election. Certification of such repayment shall be made by the borrower to the Commission not later than 15 days prior to the date of the general election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the Commission, all payment of public funds to such candidate shall promptly cease and the Commission shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such general election.

19:25-15.31 Computation of value of goods and services

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay $500.00 per day, which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is $1,000 per day. In this example, the amount of $500.00 paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act (N.J.S.A. 19:44A-7). The difference between the $500.00 actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of $500.00. The candidate could obtain the use of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than three days. If the candidate obtained the use of the helicopter for four days under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions ($2,000) from that contributor in this instance would have exceeded $1,500.

2. Example 2: Candidate Y in example 1 wishes to obtain the use of the helicopter from the owner for three days, and the campaign committee for the candidate pays to the owner the reasonable commercial value of $1,000 for each day, or a total of $3,000. The amount paid to the owner is not an expenditure within the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7). On these facts the owner has made no contribution to the candidate.

3. (No change.)

(b) The costs of a political communication as defined in N.J.A.C. 19:25-11.10 which aids or promotes a candidate for Governor, and is undertaken, made or circulated with the cooperation or consent of the candidate, shall be reported by the candidate in the same manner as the receipt of any goods and services, and shall be valued for the purposes of the contribution limit in N.J.A.C. 19:25-15.6 and the expenditure limit in N.J.A.C. 19:25-15.11(a)3 in the same manner as any other contributed goods or services.

19:25-15.32 Establishment of State committee account; contribution limit

(a) (No change.)

(b) Upon or after establishment of a State committee account by a State committee, such State committee may allocate and deposit certain contributions received by it in such account. Only a contribution of up to $1,500, or up to $1,500 of a contribution in excess of $1,500 may be so deposited, and only if such deposit does not result in the contributor exceeding a contribution of $1,500 in the aggregate to such or on behalf of such candidate.

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

19:25-15.33 (No change in text.)

19:25-15:34 (No change in text.)

19:25-15.35 Notice by State committee to contributor

(a) The campaign treasurer or deputy campaign treasurer of any State committee depositing any contribution in a State committee account of such State committee must give written notice of such deposit to the contributor within 48 hours of such deposit, and such notice shall contain the following information:

1. (No change.)

2. The allocated contribution counts toward the $1,500 the contributor may contribute to a candidate for the office of Governor;

3.-5. (No change.)

19:25-15.36 (No change in text.)

19:25-15.37 Certification and delivery of statements

(a) The campaign treasurer or deputy campaign treasurer of a State committee that has established a State committee account in behalf of a candidate shall certify to the campaign treasurer or deputy campaign treasurer of such candidate, and to the Commission, the correctness of the statements and photocopies prepared pursuant to N.J.A.C. 19:25-15.36.

(b) (No change.)

(c) The statements and photocopies to be delivered pursuant to (b) above shall include all contributions and expenditures during the periods of time as follows:

1. The statement of contributors prepared pursuant to N.J.A.C. 19:25-15.36(a) shall include all contributions deposited in the State committee account from the date of the most previous statement of contributors delivered to the candidate or, if no previous statement has been delivered, from the date the State committee account was established, until the date preceding the transfer to the candidate;

2. The statement of expenditures prepared pursuant to N.J.A.C. 19:25-15.36(b) shall include all expenditures from the date of the most previous statement of expenditures delivered to the candidate or, if no previous statement has been delivered, from the date the State committee account was established, until the date preceding the transfer to the candidate;

3. Photocopies of checks prepared pursuant to N.J.A.C. 19:25-15.36(c) shall pertain to contributions listed in the statement of contributors.

19:25-15.38 Transfer of deposits; certification

(a) A State committee may transfer deposits made on behalf of a candidate in its State committee account to the matching fund account of such candidate, provided certified statements and photocopies relating to such deposits have been delivered to the treasurer or deputy campaign treasurer of such candidate as provided in N.J.A.C. 19:25-15.37.

(b) At the time of making a transfer pursuant to (a) above, the campaign treasurer or deputy campaign treasurer of the State committee shall certify in writing to the campaign treasurer or deputy campaign treasurer of the candidate in whose matching fund account a transfer is to be made, and certify to the Commission, that the deposit includes only contributions eligible for match and does not include any contribution which must be or is intended by the contributor or recipient to be refunded or repaid at any time and that no contribution by any county or municipal committee is included.

19:25-15.39 County and municipal committee expenditures; reports

(a) The county committee of a political party in a county and the municipal committees of that political party in the same county may make an expenditure or expenditures in the aggregate of $10,000 in aid of the candidacy of or in behalf of the candidate for election to the office of Governor in a general election.

(b) A candidate or his or her campaign treasurer or deputy campaign treasurer shall determine the exact amount that individual county committees or municipal committees may contribute in aid of the candidacy of or in behalf of such candidate, and shall file a report of such determination with the commission no later than the eleventh day prior to the general election being funded.

(c) Any expenditures in aid of the candidacy of a candidate by the county committee of a political party and the municipal committees of that political party in the same county shall be included in determining the total expenditures of such candidate subject to the expenditure limit contained in N.J.A.C. 19:25-15.11(a)3.

19:25-15.40 (No change in text.)

19:25-15.41 (No change in text.)

19:25-15.42 Maintenance of records; audit

(a) The campaign treasurer or deputy campaign treasurer of each candidate and each State committee shall retain all written instruments, checks, bank statements and all other records of contributions and expenditures, including originals or photocopies of all documents and instruments submitted to the Commission relating to the general election for a period of not less than four years after submission of the final report for the general election.

(b) Each candidate, campaign treasurer or deputy campaign treasurer, or State committee campaign treasurer or deputy campaign treasurer, shall furnish to the Commission any books and records, including bank records for all accounts and supporting documentation for matching fund submissions as may be requested by the Commission for purposes of an audit or other Commission examination.

19:25-15.43 Disclosure of information

The statements and certifications submitted by a candidate in accordance with N.J.A.C. 19:25-15.17 shall not be public records and shall not be available for public inspection; provided, however the Commission shall from time to time publish a listing which shall contain the information included in the statements and certifications for each contribution approved for match, except that it shall not include the name, address or amount of contribution of any contributor whose contributions in the aggregate are $100.00 or less unless the candidate authorizes such disclosure in writing.

19:25-15.44 Prepared statement on behalf of candidate

(a) Each candidate shall be entitled to have a statement in English and in Spanish submitted by the candidate to the Commission, printed and mailed by each county clerk with the sample ballot to each registered voter in the county, together with a short explanation from the Commission that such statements are provided pursuant to the act and this subchapter to assist the voters in making a determination among the candidates for the office of Governor.

(b) Each candidate who wishes such a statement mailed on his or her behalf shall submit to the Commission, on forms to be provided by the Commission, his or her proposed statement in English and in Spanish which shall not exceed 500 words in length. The statement shall be submitted to the Commission on or before the 80th day prior to the date on which the general election is to be held.

(c) On or before the 45th day prior to the date on which the general election is to be held, the Commission shall supply each county clerk with the text of the statement received from each candidate for election to the office of Governor.

(d) On or before the 45th day prior to the date on which the general election is to be held, the Commission shall determine the portion of the cost of printing and mailing of such ballot statements which it will reimburse to all counties and shall notify all county clerks of the amount of the reimbursement. Such reimbursements shall not be made if adequate funds are not appropriated by the Governor and the Legislature to reimburse all counties fully.

19:25-15.45 Post-election contribution; post-election payment of expenses

(a) Any person, political committee, or continuing political committee otherwise eligible to make political contributions to a candidate or a State committee may make a contribution in aid of the candidacy of a candidate after the date of such general election provided such person or political committee does not exceed $1,500 in the aggregate for such general election.

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

19:25-15.46 (No change in text.)

19:25-15.47 (No change in text.)

19:25-15.48 Candidate statement of qualification before participation in public financing

(a) A candidate who intends to apply to the Commission for public matching funds on a date later than September 1 preceding a general election for the office of Governor must on or before September 1 preceding the general election for Governor file:

1. A certified statement of qualification containing evidence that $150,000 has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial general election campaign expenses. Evidence that $150,000 has been deposited and expended shall be filed with the Commission on September 1 preceding a general election for the office of Governor and in a form to be prescribed by the Commission.

2. Each contribution submitted in the report required by (a)1 above as evidence that $150,000 in contributions has been deposited must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order for, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

3. Each disbursement submitted in the report required by (a)1 above as evidence that $150,000 has been expended for primary election expenses shall include two photocopies of checks, receipted bills, contracts, or similar documents as evidence of the expenditure of at least $150,000.

(b) The reports filed pursuant to (a) above to establish qualification shall not be available for public inspection.

(c) Any report required to be filed pursuant to (a) above cannot be handwritten.

19:25-15.49 Statement of candidates electing to participate in debates

(a) A candidate who has not by September 1 preceding a general election applied to the Commission for public matching funds may elect to participate in the series of interactive gubernatorial general election debates by:

1. Notifying the Commission in writing no later than September 1 preceding the general election for the office of Governor of his or her intent to participate in the series of gubernatorial general election debates; and

2. Filing a statement of qualification containing evidence that $150,000 has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial general election expenses. The statement of qualification shall contain the same information as that required at N.J.A.C. 19:25-15.48(a).

(b) The reports filed pursuant to (a) above to establish qualification for participation in gubernatorial general election debates shall not be available for public inspection.

(c) Any report required to be filed pursuant to (a) above cannot be handwritten.

19:25-15.50 Application to sponsor debates

(a) To be eligible for selection by the Commission to sponsor one or both of the interactive gubernatorial general election debates, a private organization:

1. Must be unaffiliated with any political party or with any holder of or candidate for public office;

2. Must not have endorsed any candidate in the pending general election for the office of Governor and must agree not to make any such endorsement until the completion of any debate sponsored by the organization; and

3. Must have previously sponsored one *[of]* *or* more televised debates for Statewide office in New Jersey since 1976.

(b) Written applications by organizations to sponsor one or both of the gubernatorial general election debates shall be submitted to the Commission on a form provided by the Commission not later than July 1 of any year in which a general election is held for the office of Governor. The written application shall set forth plans of the applicant for television and media coverage.

19:25-15.51 Selection of debate sponsor

(a) Based upon the criteria in N.J.A.C. 19:25-15.50(a) above, the Commission shall select the private organization or organizations to sponsor the gubernatorial general election debates within 30 calendar days of the July 1 deadline for receipt of sponsor applications and shall provide written notification to the organization or organizations so selected.

(b) The Commission shall provide each debate sponsor it has selected with a list of candidates who are required to participate in the gubernatorial general election debates or who have elected to participate.

19:25-15.52 Dates, times, and location of debates

(a) Not later than five calendar days after receipt of notification from the Commission that an organization has been selected to sponsor one or both of the gubernatorial general election debates, each sponsoring organization shall:

1. Submit a written calendar to the Commission and to all candidates who are required to or have elected to participate in the debates containing the date, time, location, and plans for television and other media coverage of the debate or debates assigned to the sponsor; and

2. Submit to the Commission a description of the physical facilities available at the debate site or sites for use by television, broadcast and other media personnel.

(b) The debate date or dates selected by each sponsoring organization in the written calendar required in (a) above shall be no earlier than the third Tuesday following the first Monday in September of the year in which a general election is held for the office of Governor and no later than the 11th day prior to the pending general election.

(c) Upon the vote of a majority of the candidates participating in the second general election debate that an emergency condition exists requiring postponement of that debate, the debate sponsor shall:

1. Reschedule the second debate to occur no later than the second calendar day preceding the general election; and

2. Take whatever actions are necessary to notify all participating candidates and the Commission of the date, time, and location of the rescheduled debate.

i. Actions to notify the participating candidates and the Commission of the rescheduled debate shall include, but not be limited to, telephone contact and first class mail, return receipt requested.

(d) The Commission shall review and approve the debate calendars submitted by the debate sponsoring organizations pursuant to (a) above prior to the occurrence of any general election debate and shall create a master debate calendar which ensures compliance with the date requirements of (b) above and ensures that the two debates are scheduled for different dates.

(e) In the event that the Commission determines in its review pursuant to (d) above that a conflict exists in the two scheduled debates, the Commission shall direct the debate sponsors to submit a revised debate schedule or schedules within two calendar days containing new debate dates and times which eliminate the conflict.

19:25-15.53 Rules for conduct of debates

(a) Each debate between or among candidates for the office of Governor shall be of at least one hour's duration.

(b) Promulgation of the rules for the conduct of each debate shall be the responsibility of the private organization selected by the Commission as the sponsor of each debate and such rules shall not be made final without consultation with a representative designated by each of the participating candidates.

(c) Immedidately upon notification of its selection as a sponsor and no later than five calendar days before each debate is to occur, the sponsor shall forward the written rules for conduct of the interactive general election debate to the representatives of the participating candidates, to the Commission, and to the relevant candidates who are required to or have elected to participate in the debate.

(d) The candidates participating in the debate and the Commission shall be notified by the sponsor in writing of any modifications or changes to the rules for conduct of a debate no later than two calendar days before the debate is scheduled to occur.

19:25-15.54 Complaint alleging failure to participate in debate

(a) Any complaint filed with the Commission alleging failure of a general election candidate to participate in a required debate shall:

1. Be in writing and be verified; and

2. Contain a detailed statement alleging with specificity all facts known to the complainant pertinent to the allegation of failure to participate in a debate.

(b) Service of a complaint alleging failure to participate in a general election debate shall be made by the complainant in person or by certified mail, return receipt requested upon the respondent candidate, the debate sponsor, and any person named in the complaint.

19:25-15.55 Temporary cessation of distribution of public funds

(a) Upon receipt by the Commission of a verified complaint alleging failure to participate in a debate, the Commission shall meet as soon as practicable to determine whether there is reasonable cause to believe the respondent candidate may have failed to participate as required in a general election debate.

(b) If it is determined by majority vote of the Commission that there is reasonable cause to believe that a candidate may have failed to participate in a debate as required, the Commission shall:

1. Cease the review and certification of any public fund amounts which have been requested by the respondent candidate from the Commission and which have not previously been approved; and

2. Schedule a hearing before it on the complaint to determine whether the respondent candidate has failed to participate in a debate as alleged.

(c) The Commission shall as soon as practicable notify the respondent candidate in writing of the actions it has taken pursuant to (b) above.

19:25-15.56 Response to complaint for failure to participate in a debate or debates

(a) Within five calendar days of service of the complaint upon the respondent candidate, he or she shall respond to the complaint in a written, verified answer which:

1. Admits or denies each of the factual allegations contained in the complaint; and

2. Sets forth any affirmative defenses to the allegations contained in the complaint including all facts known to the respondent candidate pertinent to any such affirmative defense.

3. Justification and excuse shall be deemed to be affirmative defenses for the purposes of this subsection.

(b) Service of an answer shall be made by the respondent candidate in person or by certified mail, return receipt requested, upon the complainant, the Commission, the debate sponsor, and any person named in the complaint or response.

19:25-15.57 Conduct of the hearing

(a) The complainant and the respondent candidate shall appear at the hearing. Other interested persons may appear as permitted by N.J.A.C. 1:1-16 and may be represented as permitted by N.J.A.C. 1:1-5.

(b) The hearing shall be governed by the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) The complainant shall have the burden of proving non-participation by a preponderance of the credible evidence, and the respondent candidate charged with the failure to participate in a debate shall have the burden of proving justification or excuse by a preponderance of the credible evidence.

(d) At the request of the complainant or respondent candidate, subpoenas shall be issued to compel the attendance of witnesses to testify at the hearing held to determine a candidate's failure to participate in a debate.

(e) The Commission may refer the matter for hearing to the Office of Administrative Law as a contested case pursuant to the provisions of the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) The Commission shall have the authority to assess the costs associated with a hearing held pursuant to this section against any complainant, respondent or interested person permitted to appear.

19:25-15.58 Final decision of non-participation

(a) At the conclusion of a hearing, the Commission shall determine by majority vote:

1. Whether a candidate required to participate in a general election debate has failed to do so;

2. Whether the failure to participate occurred under circumstances which were beyond the control of the candidate and of such a nature that a reasonable person would find the failure justifiable or excusable.

(b) The Commission shall serve its written decision upon the participants or upon their legal representatives as soon as practicable.

(c) If it is determined by the Commission that the respondent candidate failed to participate in a general election debate without reasonable justification or excuse, the Commission shall:

1. Calculate the total amount of public moneys distributed by the Commission pursuant to N.J.S.A. 19:44A-33 to the respondent candidate for campaign expenses;

2. Notify the respondent candidate and campaign treasurer in writing of the total dollar amount of the liability of the campaign for repayment and of the interest due upon the amount at the rate of one per cent for each month or fractional part of a month during which the liability remains unpaid; and

3. Cease certification of any further public fund amounts to the candidate.

d. Within 10 calendar days of receipt of notification of the amount of repayment required to the Commission, the respondent candidate and his or her campaign shall submit to the Commission a written schedule for repayment of public funds which specifies dates and amount of repayment installments.

19:25-15.59 Inaugural event contribution limit; reporting

(a) No person, candidate, political committee, or continuing political committee otherwise eligible to make political contributions, shall make any contribution or contributions for the purpose of any gubernatorial inaugural fund raising event or events in the aggregate in excess of $500.00. A contributor to a gubernatorial inaugural fund raising event may make a contribution not to exceed $500.00 in the aggregate notwithstanding any contribution by such contributor to a candidate for election to the office of Governor.

(b) No person or committee sponsoring a gubernatorial inaugural fund raising event shall accept for deposit in any bank account maintained for the purposes of such event any contribution or contributions from a contributor in the aggregate in excess of $500.00.

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

19:25-15.60 (No change in text.)

19:25-15.61 Inaugural event contributions from affiliated corporations or unions

A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to a gubernatorial fund raising event which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds $500.00 in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contributions and the degree to which the decisions whether or not to contribute, to what candidate and in what amount are independent decisions.

19:25-15.62 (No change in text.)

19:25-15.63 (No change in text.)

19:25-15.64 Contributions and loans prior to candidacy

(a) Each candidate for the office of Governor who did not participate in the preceding primary election, whether or not intending to participate in public funding of the general election for Governor, shall certify to the Commission in writing within 10 days after the date of commencement of his of her candidacy that:

1. The candidate did not have a "testing the waters" account; or

2. The candidate did have a "testing the waters" account. In that event, the candidate shall notify the Commission whether the "testing the waters" account is to be designated as the matching fund account and whether contributions from the "testing the waters" account are to be deposited into the matching fund account.

3. No contributions in excess of $1,500 in the aggregate from a person, political committee, or continuing political committee had theretofore been received for pre-candidacy "testing the waters" activity; or contributions in excess of $1,500 in the aggregate have been received for that purpose, and the amount of each contribution in excess of $1,500 in the aggregate has been returned to the contributor. The certification shall include:

i. A list of all contributors who contributed more than $1,500 and the dates and amounts of all such contributions; and

ii. Written evidence such as photocopy of check, showing that such excess amounts have been returned to the contributor.

(b) In addition to any other penalty provided by law, a candidate failing to make the certification in (a)2 above with respect to excess contributions will not be eligible to receive matching funds.

(c) Each candidate who receives contributions for pre-candidacy "testing the waters" activity and intends to qualify such contributions for matching funds must designate the "testing the waters" account as the matching fund account, or deposit such contributions in the matching fund account, within 10 days after the date of commencement of the candidacy. Each such candidate must also comply with the other provisions of N.J.A.C. 19:25-15.17, Matching of funds. Except as otherwise provided in (d) below, contributions for pre-candidacy "testing the waters" activity not so deposited will not be eligible for match.

(d) Contributions spent for pre-candidacy "testing the waters" activity will be eligible to be matched with public funds if the candidate submits the information required by N.J.A.C. 19:25-15.17, Matching of funds, and, at the same time, in lieu of evidence of deposit of such contributions in a matching fund account pursuant to N.J.A.C. 19:25-15.17(b), submits evidence of deposit in a "testing the waters" account established pursuant to N.J.A.C. 19:25-15.5. Contributions expended which have not been deposited in the matching fund account established pursuant to N.J.A.C. 19:25-15.17, Matching of funds, will not be eligible to be matched with public funds.

(e) Any candidate who contributed or expended for pre-candidacy "testing the waters" activity an amount in excess of $25,000 from his or her own funds shall reimburse his or her campaign account within 10 days after the date of commencement of the candidacy, such amount in excess of $25,000 so contributed and expended, and shall certify to the Commission that such reimbursement has been made.

(f) Any candidate who borrowed an amount in the aggregate in excess of $50,000 shall repay within 10 days after the date of commencement of the candidacy such amount in excess of $50,000 so borrowed, and shall certify to the Commission that such excess amount has been repaid.

(a)

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan and Water Code of the Delaware River Basin

Adopted: May 24, 1989 by the Delaware River Basin Commission, Daniel M. Barolo, Chairman pro tem.
Filed: May 31, 1989 as R.1989 d.334.
Effective Date: May 31, 1989.

Full text of the adoption follows:

NO. 88-2 (Revised)

A RESOLUTION to amend the Comprehensive Plan and Water Code of the Delaware River Basin in relation to water conservation performance standards for plumbing fixtures and fittings.

WHEREAS, the Commission adopted Resolution No. 88-2 on January 13, 1988; and

WHEREAS, Section (4) of Resolution No. 88-2 required the Executive Director to conduct an initial review of the performance standards by January 13, 1989 to consider the revision of the standard for water closets to require low-consumption water closets effective January 1, 1990; and

WHEREAS, a final report documenting the results of the initial review of the standards was prepared by Commission staff in accordance with the directives of the Water Conservation Advisory Committee; and

WHEREAS, the Committee recommended on November 17, 1988 that the Commission amend Resolution No. 88-2 to require low-consumption water closets in new construction and renovation beginning January 1, 1991, and to modify the timetables for state and local compliance with performance standards to January 1, 1991; and

WHEREAS, the Commission held a public hearing on March 20, 1989 regarding the modification of Resolution No. 88-2 and has received and considered testimony from the public, plumbing industry and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin is hereby amended by the substitution of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) for sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) for shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) for water closets and associated flushing mechanism, maximum volume shall not exceed an average of one and six-tenths gallons per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M; and

(iv) for urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1991. In the absence of such regulations, the Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a). Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) To be acceptable for use in the Basin, plumbing fixtures and fittings shall be certified and labeled by the manufacturer as meeting the water conservation performance standards specified in subsection (1). Certification shall be based on independent test results. Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18M and ANSI A112.19.2M.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under Section 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

OAL NOTE: These rules are not subject to codification and will not appear in the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Asbestos Hazard Abatement Subcode
Adopted Amendments: N.J.A.C. 5:23-8.1, 8.2, 8.4 through 8.22
Adopted New Rules: N.J.A.C. 5:23-8.3, 8.16, 8.23 and 8.24
Adopted Repeal: N.J.A.C. 5:23-8.15

Proposed: June 6, 1988 at 20 N.J.R. 1130(b).
Adopted: June 2, 1989 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: June 5, 1989 as R.1989, d.342, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:27D-124 and 34:5A-32.
Effective Date: July 3, 1989.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Copies of the proposed rules were sent by the Bureau of Code Services to the asbestos safety control monitoring firms and the asbestos safety technicians for their review and comments. The bureau staff also met with the firms for general discussion on the proposed rules and to have their input. Several letters were received offering general support for the intent and provisions of these proposed amendments and new rules. Specific comments are set forth below:

N.J.A.C. 5:23-8.1(a)1

COMMENT: The Department of Labor has suggested use of the words "asbestos worker performance permit," which accurately reflects the official title given, instead of "work permit".

RESPONSE: Both N.J.A.C. 5:23-8.1(a)1 and 8.16(b) have been modified accordingly.

N.J.A.C. 5:23-8.1(a)1ii

COMMENT: The Department of Health pointed out that the public may interpret this section as to require a licensed contractor for a minor project, contrary to the exemption at N.J.A.C. 5:23-8.5(a).

RESPONSE: The proposed rule was changed to clarify the intent.

N.J.A.C. 5:23-8.1(c) and (c)3

COMMENT: The Department of Health commented on the use of the word "removal" being too specific.

RESPONSE: The Department substituted the word "abatement" for "removal" which encompasses not only removal but enclosure, encapsulation and repair.

N.J.A.C. 5:23-8.1(c)4

COMMENT: The Division of Building and Construction, Department of Treasury recommended adding the word "asbestos" before the words "floor tiles" in order to be more specific.

RESPONSE: The rules were modified to reflect the suggested change. Other sections which require this modification were changed accordingly.

N.J.A.C. 5:23-8.1(e)

AGENCY CHANGE: A change was made in order to reflect an additional pertinent OSHA cite.

N.J.A.C. 5:23-8.2 Definitions

COMMENT: The Department of Health suggested addition of the phrase "large and small" to the definition of "construction permit for asbestos abatement."

RESPONSE: The rule was changed accordingly to clarify that the permit did not apply to minor asbestos hazard abatement projects.

COMMENT: The Department of Health suggested deletion, in the definitions of large and small asbestos hazard abatement projects, of the phrase "asbestos-containing materials which involves" in order not to be redundant. Also the word "small" is recommended for exclusion from the definition of minor asbestos hazard abatement project to avoid possible confusion.

RESPONSE: The rule was changed accordingly to make it clear that the permit did not apply to minor asbestos hazard abatement projects.

AGENCY CHANGE: A change was made in the definition of "miscellaneous asbestos-containing material" to include the word "asbestos" in the phrase "vinyl asbestos flooring". This suggestion was made by the Division of Building and Construction also for N.J.A.C. 5:23-8.1(c)4.

COMMENT: The Department of Health suggested deletion of bi-state and multi-state agencies from the definition of public buildings.

RESPONSE: The definition of public buildings was changed to delete buildings containing bi-state and multi-state agency employees. This deletion was made pursuant to the recent New Jersey Supreme Court decision in the case entitled *Eastern Paralyzed Veterans v. City of Camden,* 111 *N.J.* 389 (1988), which held that the unilateral application of the Uniform Construction Code to property of an agency created by an interstate compact without the consent of the other parties to the compact was invalid.

N.J.A.C. 5:23-8.3

COMMENT: The Department of Health suggested not requiring both HEPA vacuuming and wet wiping for cleaning of surfaces. The Safe Building Alliance also recommends the use of either of the two cleaning methods.

COMMENT: At the meeting held with the Asbestos Safety Control Monitor (ASCM) firms, it was discussed that the section was too broad, and it should reflect a specific project.

RESPONSE: The rule was changed to incorporate improvement in limiting the section for a specific project and to use the words "and/or" instead of "and" which is the norm being used nationally, due to the fact that either method is suitable and requiring both to be used by regulation would unnecessarily increase the cost of the project.

N.J.A.C. 5:23-8.5(a)

COMMENT: The Safe Building Alliance suggested amending the rule to exclude the words "incidental" and "or be near to" in the examples of minor work.

RESPONSE: The rule was changed accordingly to make the section less ambiguous.

AGENCY CHANGE: The Department made a change to delete the phrase "small quantities of" in order to be consistent with the revised definition of minor asbestos hazard abatement project.

N.J.A.C. 5:23-8.5(b)

COMMENT: The Safe Building Alliance contends that use of a PAPR is beyond OSHA requirements. The Department of Health has suggested that the New Jersey PEOSHA requirement should be followed which stipulates the use of a PAPR as a minimum requirement in the State of New Jersey for Public Employees as delineated in the asbestos direct standard N.J.A.C. 12:100. This may be more stringent than the OSHA requirement; however, OSHA has no regulatory authority over public employees and would not preempt this requirement.

RESPONSE: The rule was changed to reflect the suggestion by the Department of Health.

N.J.A.C. 5:23-8.5(c)1

COMMENT: The Department of Health contends that in case of minor work, objects that can not be removed need not be covered when conducting a glove bag removal.

RESPONSE: This specific section does not exclusively deal with glove bag. Therefore, the rule was changed to include a statement, "If the situation warrants," so as to evaluate the paticular situation and take appropriate action accordingly; this would allow the permitee to require additional requirements for a site specific project which may include electrical hazards.

N.J.A.C. 5:23-8.5(c)3i

COMMENT: The Division of Building Construction contends that air monitoring requirements in the use of glove bag for minor asbestos abatement projects would be excessive.

RESPONSE: The rule was changed to exclude the air monitoring requirement for glove bag removal projects unless the situation warrants it, since minor asbestos hazard abatement projects apply to projects less than 10 linear feet and, if air monitoring were required, it would add to the cost of the project.

N.J.A.C. 5:23-8.5(c)4i

AGENCY CHANGE: The Department made a change in order for the section to meet nationally accepted practices for enclosure which would permit a second individual to assist in removal techniques as delineated in N.J.A.C. 5:23-8.14(b)1.

N.J.A.C. 5:23-8.5(c)4iv

AGENCY CHANGE: The Department rephrased the sentence for clarity in order that the intent may be understood and enforced more readily and not require by rule the construction of a change room since the section pertains to minor projects; the determination of the construction would be made by the project designer.

N.J.A.C. 5:23-8.6(a)i

COMMENT: The ASCM Association requested a repetition within this section that the exemption is for a variation for occupancy.

RESPONSE: The rule was amended to reflect the suggested clarification.

N.J.A.C. 5:23-5:23-8.7(a)

COMMENT: The Department of Health commented that this section should have been as set forth in the proposal for N.J.A.C. 5:23-8.6(a)1 for consistency.

RESPONSE: The Department agrees and has modified the rule to delete the requirements for approval and consultation with the Departments of Health and Education since, pursuant to N.J.A.C. 5:23-8.6(a), the other departmental approval and consultation requirements have been deleted.

N.J.A.C. 5:23—5:23-8.7(b)2ii

COMMENT: The Department of Health requested that the specific accreditation required by the USEPA be named for clarity.

RESPONSE: The Department agrees and has modified the rule.

N.J.A.C. 5:23-8.7(b)2iv

AGENCY CHANGE: The Department decided to include "type and percentage of the asbestos" since it is required to be identified on an assesment of asbestos and the knowledge of same will determine the type of procedures and work practices to be employed pursuant to the subchapter.

N.J.A.C. 5:23-8.7(b)2v

AGENCY CHANGE: The Department decided that this subparagraph should be as set forth in the proposal for N.J.A.C. 5:23-8.6(a)1 for consistency, as the Department of Health had stated in their comment for N.J.A.C. 5:23-8.7(a).

N.J.A.C. 5:23-8.7(f)1

AGENCY CHANGE: The Department made an editorial change to correct the recent change of address for the Bureau of Code Services.

N.J.A.C. 5:23-8.7(g)

AGENCY CHANGE: The Department made an editorial change to name NESHAPs in place of the "10 days prior to the start of an asbestos abatement project" which is the source of the requirement for notificaton of an asbestos abatement project. The reason for this change is that all asbestos abatement work must comply with the Federal requirement; therefore, it is appropriate to remove the "10 day Notice of Requirement" and avoid duplication.

N.J.A.C. 5:23-8.7(g)1i and ii

AGENCY CHANGE: The Department made two editorial changes to avoid redundancy and to correct the recent change of address for the Bureau of Code Services.

N.J.A.C. 5:23-8.8(a)2

AGENCY CHANGE: The Department made an editorial change to avoid redundancy, since every AST must be certified by this Department in order to meet the provisions of the subchapter.

N.J.A.C. 5:23-8.8(a)3

AGENCY CHANGE: The Department made two editorial changes to reflect changes to two words for clarity.

N.J.A.C. 5:23-8.8(c)3i

AGENCY CHANGE: The Department made two editorial changes for purposes of clarity and to reiterate the requirement that all dust and asbestos-containing material be removed.

N.J.A.C. 5:23-8.8(c)4

COMMENT: The Department of Health recommended expanding the statement to re-emphasize the requirements set forth in N.J.A.C. 5:23-8.9(b)4iv

RESPONSE: The rule was modified accordingly.

N.J.A.C. 5:23-8.11(b)4

AGENCY CHANGE: The Department made an editorial change in order to be consistent with current work practices, and to re-affirm that all asbestos contaminated waste shall be disposed of as delineated in this subchapter.

N.J.A.C. 5:23-8.12(b)3

COMMENT: The Department of Health requested that the rule be amended to reflect accurately the courses which are acceptable.

RESPONSE: The Department agrees and has modified the rule.

N.J.A.C. 5:23-8.12(b)5

AGENCY CHANGE: The Department made editorial changes to use language such as that found in N.J.A.C. 5:23-11(f)1 with regard to amended water and a fine low-pressure sprayer.

N.J.A.C. 5:23-8.12(c)

AGENCY CHANGE: The Department made an editorial change to clarify that the previous delineated procedures are requirements and not recommendations.

N.J.A.C. 5:23-8.14(d)1

AGENCY CHANGE: The Department made an editorial change to clarify the intent.

N.J.A.C. 5:23-8.16(b)

COMMENT: The Department of Labor suggested the use of the words "asbestos worker performance permit," which accurately reflects the official title given, instead of "work permit".

RESPONSE: The rules were modified accordingly here and in N.J.A.C. 5:23-8.1(a)1.

N.J.A.C. 5:23-8.16(c)

COMMENT: The Department of Health requested that the rule be amended to reflect accurately work practices which are in place and have been set forth in N.J.A.C. 5:23-8.3(b)1 in order to specifically identify exactly the location of the placement of an air sample; the word "at" was not definitive enough for consistency.

RESPONSE: The Department agrees and has modified the rule.

N.J.A.C. 5:23-8.16(f)3

COMMENT: The Department of Health requested that the rule be amended to reflect accurately the work practices which are in place in N.J.A.C. 5:23-8.11(a)10 where it is delineated that there are various sources of makeup air and each of these sources should be tested to ensure negative air flow.

RESPONSE: The Department agrees and has modified the rule.

N.J.A.C. 5:23-8.16(f)5

COMMENT: Both the Department of Health and the ASCM firms pointed out the practical difficulties in checking the air pressure differentials by testing, since the current rule is too general in nature and additional guidance must be given to the AST with regard to method and frequency of sampling.

RESPONSE: The rule has been modified to incorporate their recommendations.

N.J.A.C. 5:23-8.16(g)1

AGENCY CHANGE: The Department made an editorial change to repeat in this paragraph work practices which are in place and to prevent the final visual inspection from being conducted simultaneously as the final air test. The final visual inspection must be performed and pass before an air test is taken.

N.J.A.C. 5:23-8.16(g)2

COMMENT: The ASCM Association expressed its concern over the availability of one foot radius fans.

RESPONSE: The rule was changed accordingly, and an editorial change made to use the proper word "of" instead of "to".

AGENCY CHANGE: The Department made editorial changes to improve grammar and clarify work practices which are in place in order to physically have the proper placement of the fan direction in order that the air flow is maximized for sample collection. In addition, the Department felt that "low speed" had no bearing, as long as 500 feet per minute was attained from the fan.

N.J.A.C. 5:23-8.16(h)2

COMMENT: The Department of Health commented concerning the anticipated confusion regading the proper registration of the vehicle.

RESPONSE: The rule was modified to include "Department of Environmental Protection" before "registered" and also added "as delineated in N.J.A.C. 5:23-8.15" after "hauler".

N.J.A.C. 5:23-8.18(a)4iii

COMMENT: The Department of Health requested that the Department modify the rule to reflect the current USEPA requirement which is in place; the Proficiency Analytic Testing program by NIOSH is no longer in operation and has been replaced by the Proficiency testing evaluation which is now part of the NIST accreditation process.

RESPONSE: The Department agrees and has modified the rule.

N.J.A.C. 5:23-8.19(d)1 and 3

AGENCY CHANGE: The proposed subject matter was inadvertently placed in paragraph (d)1 in error and not in (d)3.

COMMENT: Mr. William Kerbal of Atlantic Environmental, Inc. brought to the Department's attention the fact that the name of the organization "American Industrial Hygiene Association" in the proposed rule, was incorrect.

RESPONSE: The proposed rule was changed to reflect the proper name of the organization. Also, an editorial change was made to add "the individual is" after it to grammatically improve the sentence structure.

N.J.A.C. 5:23-8.22(a)

AGENCY CHANGE: The Department made a change to re-emphasize that this section pertains only to friable asbestos.

N.J.A.C. 5:23-8.22(c)1i

AGENCY CHANGE: The Department made a change to be consistent with N.J.A.C. 5:23-8.7(b)2ii.

N.J.A.C. 5:23-8.22(e)1

AGENCY CHANGE: The Department made an editorial change to correct the citation.

N.J.A.C. 5:23-8.23

AGENCY CHANGE: The Department made an editorial change to the title to reflect accurately the breadth of the section.

N.J.A.C. 5:23-8.23(a)

AGENCY CHANGE: The Department made an editorial change to accurately reflect the intent of the subsection.

N.J.A.C. 5:23-8.23(a)1

AGENCY CHANGE: The Department made an editorial change to accurately name the Association.

N.J.A.C. 5:23-8.23(b)

AGENCY CHANGE: The Department made an editorial change to be less specific as to location for enforceability; the deletion of "outside the work area" was necessitated since, with regard to paragraph (b)1, the decontamination unit is part of the work area.

N.J.A.C. 5:23-8.23(b)1

AGENCY CHANGE: The Department made editorial changes to grammatically improve the section and be more specific as to the location for collection of the stationary sample.

N.J.A.C. 5:23-8.23(b)2

COMMENT: The Department of Health expressed their concern over the inadequacy of a specific requirement with regard to the calibration of pumps in terms of the frequency and method of calibration. The ASCM Association, also, has desired further clarification of the same requirement during its meeting with the Department.

RESPONSE: The rule was amended to include their recommendations.

N.J.A.C. 5:23-8.23(b)3

COMMENT: The Department of Health pointed out that a methodology for TEM Analysis for work occurring during abatement has not been established; it has only been established for final clearance. The Department of Health recommended the adoption of PCM Analysis, which is accepted industry wide.

RESPONSE: The Department rewrote this section to incorporate their recommendation and to allow TEM as an option.

N.J.A.C. 5:23-8.23(d)

AGENCY CHANGE: The Department made an editorial change to grammatically improve the sentence structure to further clarify the intent for enforceability.

N.J.A.C. 5:23-8.23(d)1

COMMENT: The Department of Health suggested that the Department modify the proposed rules to accurately reflect the USEPA regulations in effect, to include requirements for the mechanism for the number of samples to be taken and for the State's asbestos program to have a uniform number of required samples for PCM analysis. Referencing the USEPA requirements reflects the most current state-of-the-art and state-of-the-science for asbestos abatement industry.

RESPONSE: The Department agrees and has modified the rule.

N.J.A.C. 5:23-8.23(e)

AGENCY CHANGE: An editorial change was made to add to this section the language removed from N.J.A.C. 5:23-8.23(b)4ii.

N.J.A.C. 5:23-8.24(a)

AGENCY CHANGE: An editorial change was made to delete the word "interior"; this was done since subsection (c) is an exception for the exterior of the building.

N.J.A.C. 5:23-8.24(a)1

COMMENT: The Department of Health commented that the use of the phrase "during a large asbestos hazard abatement project "will be confusing and apt to be misinterpreted.

RESPONSE: The rule was modified accordingly.

N.J.A.C. 5:23-8.24(a)1 and 2

COMMENT: See Comment for N.J.A.C. 5:23-8.1(c)4.

RESPONSE: See Response for N.J.A.C. 5:23-8.1(c)4.

N.J.A.C. 5:23-8.24(c)

AGENCY CHANGE: An editorial change was made to correctly identify the document.

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

5:23-8.1 Title; scope; intent

(a) This part of the regulations, adopted pursuant to P.L. 1975, c.217, the Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and entitled Asbestos Hazard Abatement Subcode shall be known and may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in this subchapter, may be cited as "this subchapter."

1. In addition, the New Jersey Departments of Health and Labor have jointly adopted regulations pursuant to P.L. 1984, c.217, the Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.) and are cited as N.J.A.C. 8:60, and N.J.A.C. 12:120, respectively. These regulations provide for: a standardized training course for all asbestos workers; licensing of asbestos *[removal]* ***abatement*** contractors; and issuing *[work-]* ***asbestos worker performance*** permits for asbestos *[removal]* ***abatement*** workers.

i. (No change.)

ii. Copies of N.J.A.C. 12:120 may be obtained from the New Jersey Department of Labor, Division of Workplace Standards, ***Asbestos Control and Licensing,*** CN 054, Trenton, New Jersey 08625-0054. These rules provide that any asbestos abatement project ***, excluding minor asbestos hazard abatement projects,*** must be conducted by a licensed contractor pursuant to the referenced rules, including projects involving buildings and structures which are not within the scope of this subchapter.

2. The New Jersey Department of Environmental Protection has authority to enforce regulations regarding the transport and disposal of asbestos-containing materials pursuant to N.J.S.A. 13:1D-9*[,]* ***and*** 13:1E-1 et seq. These rules are cited as N.J.A.C. 7:26.

i. (No change.)

3. All samples collected and submitted for analysis for asbestos pursuant to this subchapter shall be analyzed for asbestos in accordance with N.J.A.C. 5:23-8.23.

(b) (No change.)

(c) This subchapter, which pertains to educational facilities and public buildings as defined in N.J.A.C. 5:23-8.2 shall control matters relating to: construction permits for asbestos abatement; fees; licenses; certification; work permits; reports required; documentation; inspections by the asbestos safety technician; air monitoring; enforcement responsibilities; and remedies and enforcement. This subchapter controls the *[removal]* ***abatement*** of asbestos from a building. A construction permit for renovation or demolition shall be required pursuant to N.J.A.C. 5:23-2 for any other work performed subsequent to the asbestos abatement project.

1. Any private building which houses a day care center, nursery or educational facility shall be under the jurisdiction of this subchapter when an asbestos hazard abatement project takes place within the building or any part of the building regardless of the remoteness of the facility or its size relative to the building. A small or large asbestos hazard abatement project shall have a construction permit from the administrative authority having jurisdiction.

2. All common areas in a State-leased building such as but not limited to building entrances and lobbies, rest rooms, cafeterias, hallways, stairwells, and elevators where employees from the State-leased portion of the building may normally transverse and all areas with mechanical equipment that serve the State-leased areas shall be under the jurisdiction of this subchapter when an asbestos hazard abatement project takes place within the building or any part of the building.

3. This subchapter shall apply to exterior portions of buildings, such as: exterior hallways connecting buildings; porticos; mechanical system insulation; cooling towers; and steam or other service tunnels serving or connecting buildings. These exterior spaces are to be considered, for the purposes of obtaining a construction permit pursuant to this subchapter, a single homogeneous area for purposes of *[removal]* ***abatement*** project design.

4. Projects involving the removal of non-friable, miscellaneous asbestos-containing material for interior spaces are under the jurisdiction of this subchapter when the method chosen to remove the non-friable material will cause the building environment to become contaminated with airborne fibers such as grinding the surface of vinyl floor ***asbestos*** tiles. Removal shall be in accordance with N.J.A.C. 5:23-8.24.

(d) (No change.)

(e) This subchapter seeks to provide and ensure public safety, health, and welfare insofar as they are affected by asbestos and asbestos-containing materials. It is not intended to, nor shall it be construed to, conflict with or impede the operation of the asbestos work standards issued by the Occupational Safety and Health Administration, 29 CFR Section 1910.1001 et seq.***, 29 CFR Section 1926.58*** and N.J.A.C. 12:100-12, the Asbestos Subchapter of the New Jersey Safety and Health Standards for Public Employees, N.J.A.C. 12:100 et seq. The purpose of this subchapter is to assure that work is performed in a safe manner as a pre-condition to the issuance of a certificate of occupancy.

1.-3. (No change.)

5:23-8.2 Definitions

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

...

"Asbestos" means a general term used to describe a group of naturally occurring hydrated mineral silicates. The asbestiform varieties include chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite and actinolite.

...

"Construction permit for asbestos abatement" means required official approval to commence any ***large or small*** asbestos hazard abatement project. This permit is issued by the administrative authority having jurisdiction.

...

"Decontamination unit" means serial arrangement of rooms or spaces for the purpose of separating the work area from the building environment upon entering the work area for the cleaning of persons, equipment, and contained waste prior to returning to the clean environment.

"Demolition" means the actual destruction and removal of a building, or part of a building, without intent to renovate, repair or replace.

...

"Encapsulation" means the treatment of asbestos-containing materials with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air.

...

"Engineering controls" means all methods used to maintain low work area fiber counts, including air management and barriers to assure public safety.

"EPA" means the United States Environmental Protection Agency.

"Friable" means any material applied to ceilings, walls, piping, duct work, etc., which when dry may be crumbled, pulverized, or reduced to a powder by hand pressure.

...

"Large asbestos hazard abatement project" means *[asbestos-containing materials which involves]* the removal, enclosure, or encapsulation within one year of 160 square feet or more of asbestos-containing material used on an equipment, wall, or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of 260 linear feet or more of asbestos-containing material on covered piping.

"Local education agency" means any local educational agency as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381); the owner of any nonpublic, nonprofit elementary, or secondary school building; or the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

"Minor asbestos hazard abatement project" means corrective action using recommended work practices to minimize the likelihood of fiber release from *[small]* damaged areas of asbestos ceilings, pipe and boiler insulation which involves the removal, repair, encapsulation or enclosure of 25 square feet or less of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, of 10 linear feet or less of asbestos-containing material on covered piping within one year from the start of the initial abatement work. The repair, enclosure and encapsulation by methods other than pressurized spray of any amount of asbestos-containing material, used to cover piping, shall also be a minor asbestos hazard abatement project.

"Miscellaneous asbestos-containing material" means interior building material on structural components, structural members or fixtures such as vinyl ***asbestos*** flooring, ceiling tiles, transite and asbestos cement board, and fire-resistant gaskets and seals but does not include surfacing material or thermal system insulation.

...

"Non-friable" means material *[in a building]* which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

"PCM" means Phase Contrast Microscopy.

...

"Public building" means any building or structure or part thereof, *[whether]* owned, leased or *[otherwise used]* ***managed by a public entity***, in which any public employees of the State, any county or any municipality*,* including any department, division, bureau, board, council, agency or authority of the State, county or municipality, or of any special district*[,]* ***or*** authority, *[bi-state or multi-state agency,]* are regularly present for purposes of work or training.

"Removal" means the taking out or the stripping of asbestos-containing material from a building or structure.

"Repair" means returning damaged asbestos-containing material to an undamaged condition or to an intact state using recommended work practices so as to prevent the likelihood of fiber release.

...

"Small asbestos hazard abatement project" means *[asbestos-containing materials which involves]* the removal, enclosure, or encapsulation within one year of more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.

...

"Surfacing asbestos-containing material" means material in a building that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing or other purposes.

"TEM" means Transmission Electron Microscopy.

"Thermal system insulation" means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

...

5:23-8.3 Pre-project procedures

Before an asbestos abatement project begins, the owner shall *[ensure]* ***have evaluated whether or not the scope of work for a specific project will require*** that all surfaces in the work area *[have been]* ***are to be*** HEPA vacuumed and*/or* wet-wiped*. **This is*** in order to remove any dust which *[is]* ***may contain*** asbestos*[-containing material]* and might*,* therefore*,* interfere with the final inspection and final air clearance level needed to reoccupy the building. The surfaces to be cleaned shall include, but not be limited to, all horizontal and vertical surfaces and such inside spaces as room ventilators, storage lockers, and utility and storage closets. The cleaning shall be accomplished by trained employees of the building owner as delineated in this subchapter before the asbestos abatement project begins or it shall be made part of the scope of work of an asbestos abatement project to be completed by the licensed contractor.

5:23-8.4 Enforcement; licensing; special technical services

(a) (No change.)

(b) Except as is otherwise provided in (b)1 below, the joint regulations adopted by the New Jersey Departments of Health and Labor, which are cited as N.J.A.C. 8:60 and N.J.A.C. 12:120, respectively, provide the licensing requirements of contractors who perform any of the functions of application, enclosure, removal or encapsulation.

1. Rules concerning licenses are as follows:

i. A licensed contractor shall be required for a large asbestos hazard abatement project or a small asbestos hazard abatement project.

ii. A licensed contractor shall not be required for a minor asbestos hazard abatement project.

(c) (No change.)

5:23-8.5 Minor asbestos hazard abatement project

(a) Minor asbestos hazard abatement project, as defined in N.J.A.C. 5:23-8.2, involves asbestos abatement work which may be performed without application or notice to the administrative authority having jurisdiction. Mechanical, electrical, plumbing or general construction work which involves the incidental disturbance of asbestos-containing material shall also be considered a minor asbestos hazard abatement project. Examples of minor work include, but are not limited to, corrective action which includes removal, repair, encapsulation and enclosure of asbestos-containing insulation on pipes, beams, walls or ceilings, etc.; *[incidental]* disturbance or routine maintenance activities which may involve *[or be near to]* asbestos-containing material; clean up of asbestos debris from a floor; and maintenance activities which may include the removal of *[small quantities of]* asbestos-containing material, if required in the performance of another maintenance activity not intended as asbestos abatement, or minor repair to damaged insulation which do not require removal.

1. (No change.)

(b) Minor asbestos hazard abatement work requires general isolation of the work area from the surrounding environment, proper clean-up procedures, and shall be conducted by those who have successfully completed a maintenance/custodial*[/]* ***or*** worker training course approved by the New Jersey Department of Health. Anyone who performs minor work must have access to shower facilities after performing asbestos related work. Any public employee physically involved in maintenance or abatement activities of asbestos-containing material, and who may thus be exposed to airborne fibers, shall wear***, as a minimum*** a powered air purifying respirator (PAPR).

(c) Work practices used either singly or in combination to effectively reduce asbestos exposure during *[small]* maintenance and renovation operations shall employ wetting methods, glove bags, and mini-enclosures as may be appropriate.

1. Preparation of the area before renovation or maintenance activities, regardless of the abatement method that will be used, shall include the wet-wiping and***/or*** HEPA vacuuming of all objects that are to be removed from the work area to protect them from asbestos contamination. *[Objects]* ***If the situation warrants, objects*** that cannot be removed shall be wet-wiped, HEPA-vacuumed and covered completely with a minimum of two layers of six mil polyethylene plastic sheeting before the work begins.

2. Wetting methods requirements are as follows:

i. Wetting methods shall be used whenever asbestos-containing materials are disturbed.

ii. Asbestos materials shall be wetted using amended water or another wetting agent applied by means of an airless sprayer to minimize the disturbance of asbestos-containing material. Asbestos-containing material shall be wetted from the initiation of the maintenance or renovation operation that disturbs asbestos-containing material *[and the]****. The*** wetting agents shall be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is wet and remains wet until final disposal.

3. Glove bag work practices requirements are as follows:

i. The glove bag procedures delineated in N.J.A.C. 5:23-8.14 shall be followed when removing asbestos-containing material from pipes, pipe fittings and elbows. ***Air monitoring shall not be required unless the glove bag procedures pose a potential hazard.***

4. Mini-enclosures requirements are as follows:

i. In order to reduce the size of the containment area, a mini-enclosure may be built around a work area. This might appropriately be done, for example, when the removal of asbestos is from a small ventilation system or from a short length of duct in which a glove bag is either not large enough or not of the proper shape to enclose the work area. Such enclosures shall be constructed of a minimum of two layers of six mil polyethylene plastic sheeting and shall be small enough to restrict entry into the asbestos work area to one ***or two*** worker***s***. For example, a mini-enclosure can be built in a small utility closet when asbestos-containing material is to be removed from it.

ii. A mini-enclosure is not required for incidental disturbance of asbestos-containing material.

iii. The enclosure shall be constructed using the following steps:

(1) Affixing plastic sheeting to the walls with spray adhesive and/or high quality duct tape;

(2) Covering the floor with plastic and sealing the plastic covering of the floor to the plastic on the walls; and

(3) Sealing any penetrations which may occur due to pipes, electrical conduits and the like with a minimum of two layers of six mil polyethylene plastic sheeting and tape.

iv. *[The construction of]* ***If*** a small change room (approximately three feet square) ***is required, then it*** shall be made of a minimum of two layers of six mil polyethylene plastic sheeting supported by at least two by four inch lumber. The change room shall be adjacent to the mini-enclosure *[and is]****. A change room shall be required when it is*** necessary to allow persons who enter to vacuum off and remove disposable protective coveralls*[,]* before leaving the work area.

(d) Specific records of each minor asbestos hazard abatement project shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the administrative authority having jurisdiction and for public inspections during normal business hours.

1. The information required shall be:

i. Exact locations of the work area within the building.

ii.-vii. (No change.)

2. A copy of this information shall be sent to the administrative authority having jurisdiction each time a minor asbestos hazard abatement project takes place.

(e) A certificate of occupancy or completion is not required for a minor asbestos hazard abatement project.

5:23-8.6 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the administrative authority having jurisdiction, after receiving a recommendation in writing from the asbestos safety control monitor firm. Any variation shall be consistent with N.J.A.C. 5:23-2.

1. Exception: When a building or part of a building is required to be occupied during an asbestos hazard abatement project, a written release shall be requested from the Department, and obtained by the authorized asbestos safety control monitor firm. The Department of Community Affairs shall review the application and approve or deny within 20 business days from receipt of the application. A copy of the plans and specifications must accompany the variation request from the authorized asbestos safety control monitor firm to the Department along with the number of intended occupants and their purpose, location within the building and the time of day the occupants will be in the building. A variation for occupancy shall not be required for maintenance or security personnel. In addition, a variation request for occupancy is not required for a cleared area in a multi-phase project which has received a Temporary Certificate of Occupancy from the administrative authority having jurisdiction when such occupancy applies to contractors or related personnel involved with post-abatement activity.

i. The fee for an application for a variation ***for occupancy*** shall be $325.00 and shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

(b) (No change.)

5:23-8.7 Construction permit for asbestos abatement

(a) It shall be unlawful to undertake a large or small, but not a minor, asbestos hazard abatement project unless the owner of the facility, or an authorized representative on behalf of the owner, first files an application in writing with the administrative authority having jurisdiction and obtains the required permit. This permit shall serve as notice for public record in the office of the administrative authority having jurisdiction. All work shall be monitored and controlled by the asbestos safety control monitor, who will advise the administrative authority having jurisdiction of its findings. All asbestos abatement work shall be conducted in unoccupied buildings, unless the work area can be properly separated and sealed off from the occupied portion of the building as approved by the New Jersey Department*[s]* of Community Affairs *[and Health (and New Jersey Department of Education for public school projects)]*. The type of asbestos abatement work to be performed and the amount of asbestos to be removed, encapsulated, enclosed or repaired shall be the governing factor in determining whether it is considered a large asbestos hazard abatement project, a small asbestos hazard abatement project or a minor asbestos hazard abatement project.

1. (No change.)

(b) The application for a construction permit for asbestos abatement shall be subject to the following:

1. (No change.)

2. The application for a construction permit for asbestos abatement shall be required to include the following:

i. (No change.)

ii. The asbestos hazard assessment, which shall be prepared by the New Jersey Department of Health, or by a county or local department of health or a private individual who has received accreditation ***as an inspector*** under the United States Environmental Protection Agency's Model Accreditation Program as referenced in 40 CFR 763. The accreditation will be issued by an EPA-approved training agency, and that accreditation will include the place of training, accreditation number and expiration date. Accreditations are issued for one year. This assessment shall be required unless the requirement for an assessment has been waived in writing by the New Jersey Department of Health;

iii. The name and address of the private air monitoring firm, hired by the building owner, who shall act as the asbestos safety control monitor authorized by the New Jersey Department of Community Affairs and shall be responsible for continuously monitoring the asbestos abatement project;

iv. Plans and specifications (not less than three sets) indicating: the scope of the proposed work; whether the project is a small or large asbestos hazard abatement project; ***type and percentage of the asbestos,*** listing the total amount of square and/or linear footage of asbestos-containing material to be abated; the provisions proposed to contain the asbestos-containing material during abatement work showing but not limited to separation barriers, primary seal/critical barriers, and the route of travel of removing asbestos waste from the work area; a copy of the site plan; and a floor plan indicating exits.

v. Documentation that all buildings, except as approved by the Department *[after consultation with the New Jersey Department of Health or Education, as appropriate,]* will be unoccupied at the time an asbestos abatement project takes place. A building may be occupied only if the work area can be properly separated and sealed off from the occupied portion of the building and a variation for occupancy is obtained from the Department pursuant to N.J.A.C. 5:23-8.6.

vi.-vii. (No change.)

viii. The method of air analysis used pursuant to N.J.A.C. 5:23-8.23 for determining the final clearance level in order to reoccupy the building.

3. (No change.)

(c) The issuance of a construction permit for asbestos abatement shall be subject to the following:

1. (No change.)

2. The described work and containment measures shall conform to the requirements of this subchapter and the requirements of any other applicable law or rule adopted or enforced by any other State agency;

3.-5. (No change.)

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

(f) The owner or his or her agent shall notify the Department in writing within three business days of the issuance of the construction permit for asbestos abatement, if the administrative authority is a municipal enforcing agency and not the Department. Such notice shall be supplied in the form of a copy of the completed application for a construction permit for asbestos abatement and a copy of the permit.

1. Notification shall be sent to:
New Jersey Department of Community Affairs
Bureau of Code Services
Asbestos Safety Unit
CN *[805]* ***816***
Trenton, N.J. 08625-*[0805]* ***0816***

(g) The owner or his or her agent shall notify the following in writing *[10 days prior to the start of the asbestos abatement project.]* ***as required under NESHAPS (40 CFR 61.146):***

1. Notification shall be sent to:

i. U.S. Environmental Protection Agency
Asbestos NESHAP*[s]**S* contact
Air and Waste Management Division
[USEPA]
26 Federal Plaza
New York, New York 10007; and

ii. New Jersey Department of Community Affairs
Bureau of Code Services
Asbestos Safety Unit
CN *[805]* ***816***
Trenton, N.J. 08625-*[0805]* ***0816***

5:23-8.8 Inspections; violations

(a) Pre-commencement inspections shall be conducted as follows:

1. Notification in writing to the Asbestos Safety Control Monitor shall be made by the applicant or contractor to request a pre-commencement inspection at least 48 hours in advance of the desired date of inspection. This inspection shall be requested each time another work area is started in a multi-phase project.

2. The asbestos safety technician*[, or another certified asbestos safety technician designated by the asbestos safety control monitor,]* shall ensure that:

i. The work area is properly prepared and that all containment measures are in place pursuant to this subchapter;

ii.-iii. (No change.)

iv. The contractor has a list of emergency telephone numbers at the work area which shall include the asbestos safety control monitor firm employed by the building owner and telephone numbers for fire, police, emergency squad, local hospital and health officer, New Jersey Department of Labor, New Jersey Department of Health and New Jersey Department of Community Affairs.

3. If all is in order, the asbestos safety technician*[, or another certified asbestos safety technician designated by the asbestos safety control monitor,]* shall issue a written notice to proceed with the asbestos *[removal]* ***abatement*** in the field. If the *[work area]* ***project site*** is not in order, then any needed corrective action must be taken before any work is to commence. Conditional approvals shall not be granted.

4. The Department reserves the right to make a pre-commencement inspection in addition to the required pre-commencement inspection conducted by the asbestos safety technician before a written notice to proceed is issued.

(b) Progress inspections shall be conducted as follows:

1. Primary responsibility for ensuring that the asbestos abatement work progresses in accordance with this subchapter rests with the asbestos safety technician. This asbestos safety technician shall continuously be present to observe the progress of work and perform required inspections and tests.

2. If the asbestos safety technician observes irregularities at any time, the asbestos safety technician shall direct such corrective action as may be necessary.

3. (No change.)

(c) Clean-up inspections shall be conducted as follows:

1.-2. (No change.)

3. The asbestos safety technician*[, or another certified asbestos safety technician designated by the asbestos safety control monitor,]* shall ensure that:

i. The *[work area]* ***project site*** has been thoroughly cleaned and is free of all visible ***dust and*** asbestos-containing material *[and dust]*; and

ii. (No change.)

4. If all is in order, ***and acceptable air results have been achieved,*** the asbestos safety technician*[, or another certified asbestos safety technician designated by the asbestos safety control monitor,]* shall issue a written notice of authorization to remove barriers from the work area.

(d) Final inspections shall be conducted as follows:

1. Upon notice by the owner or by the contractor and within 48 hours after the removal of the critical barriers, a final inspection shall be made to ensure the absence of any visible signs of asbestos or asbestos-containing materials and that all removed asbestos and asbestos contaminated materials have been properly disposed of off-site in accordance with the rules of the New Jersey Department of Environmental Protection, N.J.A.C. 7:26, which is referenced in N.J.A.C. 5:23-8.15.

2. The Department reserves the right to make a final inspection in addition to the required final inspection conducted by the asbestos safety technician before a certificate of occupancy is issued by the administrative authority having jurisdiction.

(e) Department inspections shall be conducted as follows:

1. The Department shall make unannounced periodic inspections of any work area involving asbestos abatement work.

(f) Violations: The asbestos safety technician shall ensure that the work conforms to this subchapter. If it is found that the asbestos abatement work is being conducted in violation of this subchapter, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to comply with the corrective action required, or if the contractor or any of their employees habitually and/or excessively violate the requirement of any rule, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the administrative authority having jurisdiction who shall issue a stop work order to the contractor, have the work area secured until all violations are abated, and assess a penalty of $500.00 which shall not be reduced or settled for any reason.

5:23-8.9 Certificate of occupancy; certificate of completion

(a) Certificate of occupancy requirements are as follows:

1. (No change.)

2. The application for a certificate of occupancy shall be in writing and submitted in such form as the Department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the following:

(1)-(3) (No change.)

3. (No change.)

(b) Certificate of completion requirements are as follows:

1. (No change.)

2. Within 5 days of completion of an asbestos hazard abatement project, the owner/agent shall file for a certificate of completion from the asbestos safety control monitor.

3. (No change.)

4. A certificate of completion shall be issued only if:

i.-iii. (No change.)

iv. An acceptable final air monitoring level has been attained pursuant to N.J.A.C. 5:23-8.23 and submitted in writing.

5:23-8.10 Fees

(a) (No change.)

(b) The authorization and reauthorization fees for the asbestos safety control monitor are delineated in N.J.A.C. 5:23-8.18.

(c) The application fee for certification as an asbestos safety technician is delineated in N.J.A.C. 5:23-8.19.

5:23-8.11 Precautions and procedures during a large asbestos hazard abatement project

(a) Protective clothing and equipment for asbestos abatement shall be subject to the following requirements:

1. The contractor shall provide the required respirators and *[make available]* protective clothing to all who may inspect or visit the work area;

2.-9. (No change.)

10. Air shall flow into the work area through all openings, including the decontamination chamber and waste exit ports, and any areas in the work area where air leakage may occur. Air should exhaust through the air pressure differential filtration unit by means of flexible or solid duct leading outside the building. If air exhaust outside the building is not feasible, the asbestos safety technician shall determine where the exhaust shall be emitted outside the work area. The air-filtering equipment should be positioned at a maximum distance from the decontamination chamber to maximize filtration of airborne fibers. Sufficient air shall be exhausted by HEPA filtered vacuum cleaner or approved HEPA equipped vacuum truck or HEPA equipped air filtration units when necessary to provide air pressure differential. Air pressure differential filtration units shall be in operation at all times;

11. No asbestos hazard abatement work including preparation can be performed without having a certified asbestos safety technician at the work area.

(b) Decontamination procedures are as follows:

1. (No change.)

2. The decontamination areas shall consist of the following:

i. (No change.)

ii. Shower room: This is a separate room used for transit by cleanly dressed people entering the work area from the clean room and for showering by them after they have undressed in the equipment room. This is a contaminated area.

iii. (No change.)

3. The contractor in order to prevent contamination of the environment shall be responsible for controlling access at the work area and shall maintain a daily log of personnel entering the work area. A list of names of workers shall be posted with their start and stop times for each day. In addition, the contractor shall assure that all who enter the work area (hereafter referred to as person) shall observe the following work area entry and exit procedures:

i.-viii. (No change.)

4. The contractor shall assure that filters in dual cartridge type respirators used during the preparation ***and abatement*** phase of the project shall be removed, wetted and discarded as contaminated waste. A new filter shall be in place in the respirator prior to reuse. For powered air purifying respirators or supplied air respirators, the manufacturer shall be consulted about the proper decontamination sequence.

5.-6. (No change.)

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

(g) Final clean-up work of the work area shall be conducted as follows in the order listed:

1.-6. (No change.)

Recodify 8. through 10. as 7. through 9. (No change in text.)

5:23-8.12 Precautions and procedures during a small asbestos hazard abatement project

(a) Small asbestos hazard abatement projects shall be carried out according to the following procedures which require that all asbestos abatement work be performed by a licensed contractor and that the employees have valid work permits issued by the New Jersey Department of Labor. A construction permit shall be required. An asbestos safety control monitor authorized by the New Jersey Department of Community Affairs shall ensure compliance with the rules except air monitoring will not be required. However, a final air sample*(s)* shall be taken pursuant to N.J.A.C. 5:23-8.23.

1. (No change.)

(b) The following minimum level of precautions and procedures shall be employed:

1. The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the work area.

2. (No change.)

3. Prior to the start of the project adequate warning signs of asbestos dust hazard shall be posted outside of all work areas where work on asbestos-containing materials will be conducted. Work areas where asbestos-containing materials will be disturbed must be isolated from the surrounding environment. This enclosure is extremely important where work is to be performed adjacent to occupied areas. Furniture and movable equipment shall be removed

from the work area. Proper cleaning of these items using cloths wetted with amended water or removal encapsulant, and/or HEPA vacuuming shall be performed by employees of the contractor permitted under N.J.A.C. 8:60 and N.J.A.C. 12:120 or persons employed by the building owner, who have successfully completed a maintenance/custodial*[/]* *or* worker training course approved by the New Jersey Department of Health, unless the room and items within it are shown to be uncontaminated. The work area shall then be sealed off from the surrounding area with polyethylene sheeting having a thickness of six mil. The material and building conditions involved in each project need to be evaluated carefully to develop a proper enclosure;

4. Only personnel essential to the asbestos abatement project shall be present in the work area. This may necessitate that the work not be done during normal work hours, so as to avoid exposure to people who usually occupy the area;

5. Release of asbestos fibers from material to be *[repaired or removed]* ***abated*** can be controlled by thoroughly wetting the materials. Before removal of asbestos-containing materials from covered pipes, boilers, hot water heaters, etc. all asbestos-containing material must be thoroughly *[sprayed (using a large garden-type insect sprayer)]* ***wetted*** with ***amended*** water, using a *[wetting agent]* ***fine low-pressure sprayer***. Wetting agents shall be tested on a small area first before full scale use to *[insure]* ***ensure*** effectiveness;

6.-14. (No change.)

(c) Asbestos repair projects in tunnels, crawl spaces and plumbing access spaces are likely to present unique conditions which will require modification of the *[recommended]* procedures described in this section. In all instances, every effort should be made to minimize airborne fibers and contamination of surrounding areas by enclosing the work area effectively.

(d) (No change.)

5:23-8.13 Asbestos encapsulation and enclosure

(a) Encapsulation constitutes spraying friable asbestos-containing material with a liquid sealant (not including paint) that helps bind the asbestos together with other material components to adhere it firmly to the building structure.

1. The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos encapsulation work.

i. (No change.)

ii. Encapsulation may be performed when:

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

(3) The encapsulating material is known to bond asbestos to the subsurface and asbestos-containing material *[still remains]* ***and also*** retains its bonding integrity.

(4) No change.

iii.-viii. (No change.)

ix. Sealants used in the encapsulation shall not alter the existing fire rating and shall be flame resistant and meet the flame spread and smoke generation requirements of N.J.A.C. 5:23-3 of the Uniform Construction Code.

(b) Enclosure constitutes construction of a permanent (that is, for the life of the building), air-tight, impact-resistant, solid structure of new construction materials which must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent these materials from casual contact during future maintenance operations. The enclosure shall not alter the existing fire rating and shall be flame resistant and meet the flame spread and smoke generation requirements of N.J.A.C. 5:23-3 of the Uniform Construction Code.

1. The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos enclosure work. The following procedures shall be adhered to:

i. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in the area shall be moved to ensure that the enclosure will not have to be reopened later for routine or emergency maintenance. If for any reason, lights or other equipment cannot be moved, removal of the asbestos-containing materials rather than enclosure shall be the appropriate control method to use;

ii. Enclosure walls shall be made of tongue and groove boards, boards with spine joints, or gypsum boards having taped seams. All joints between the walls and ceiling of the enclosure shall be caulked to prevent the escape of asbestos fibers;

iii. The underlying structure must be able to support the weight of the enclosure. Suspended ceilings with laid-in panels do not provide air-tight enclosures and shall not be used to enclose structures covered with asbestos-containing materials;

iv. (No change in text.)

v. Power drills or other tools which may disturb asbestos containing material shall be equipped with or used in conjunction with HEPA vacuum filters;

Recodify iii. and iv. as vi. and vii. (No change in text.)

viii. Enclosures for asbestos-containing materials shall be identified by signs, labels, color coding or some other mechanism to warn persons who may be required to disturb the enclosure that asbestos is present; and

ix. (No change in text.)

5:23-8.14 Glove bag technique

(a) (No change.)

(b) The preparation of the work area for glove bag removal shall include the following:

1. A minimum of two persons shall perform a glove bag removal project. A third person may be required to conduct air monitoring or assist with supplies.

2.-3. (No change.)

(c) (No change.)

(d) Removal procedures shall be conducted as follows:

1. A visual inspection of the pipe where the work will be performed shall be made to determine if any damaged pipe covering (broken lagging, hanging etc.) exists. If there is, ***then*** the ***damaged portion of the*** pipe shall be wrapped in polyethylene plastic and fully secured with duct tape. This procedure will prevent *[high]* ***excessive*** airborne fiber concentrations from occurring during the glove bag work caused by pipe lagging, hanging several feet or even several yards away which may be jarred loose by the activity. All dust and debris on the floor and other surfaces which has accumulated due to the asbestos abatement project and contains asbestos shall be cleaned up as necessary. If the pipe is undamaged, one layer of duct tape shall be placed around the pipe at each end of where the glove bag will be attached. This permits a good surface to which to seal the ends of the glove bag, and it minimizes the chance of releasing fibers when the tape at the ends of the glove bag is peeled off at the completion of the project.

2.-4. (No change.)

5. Place the glove bag around the section of pipe to be worked on and staple the top together through the reinforcing duct tape. Staple at intervals of approximately one inch. Next, fold the stapled top flap back and tape it down with a strip of duct tape. This should provide an adequate seal along the top. Next, duct tape the ends of the glove bag to the pipe itself previously covered with plastic or duct tape (see (d)1 above). The bottom seam of the glove bag shall be sealed with high quality duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam.

6.-23. (No change.)

24. Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.15.

25. (No change.)

5:23-8.15 (No change in text.)

5:23-8.16 Duties of the asbestos safety technician

(a) The asbestos safety technician shall perform all air sampling specified in this subchapter, and shall be thoroughly familiar with this subchapter. He or she shall inform the Department who his or her employer is at the time of his or her application for certification, and shall notify the Department in writing within 10 working days of any change in status or employer. He or she shall have access to all areas of the asbestos removal project at all times and shall *[continually]* ***continuously*** inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter while work is in progress. The asbestos safety technician shall be on site from the initial preparation of the work area through the approved final visual inspection.

(b) The asbestos safety technician shall direct the actions of the contractor verbally and in writing to assure compliance. The asbestos safety technician shall require that all workers present a valid *[work]* ***asbestos worker performance*** permit issued by the New Jersey Department of Labor before entering the work area. The asbestos safety technician shall have the authority to test the seal of the respirator of each person who enters the work area to ensure a proper fit. In matters of gross negligence and/or flagrant disregard for the safety of others, including the possibility of contaminating the building environment and the appearance of an emergent unsafe condition at the work area, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action, or if the contractor or any of his or her employees habitually and/or excessively violate the requirements of any regulation, the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, the asbestos safety technician shall notify the administrative authority having jurisdiction who shall issue a Stop Work Order to the contractor and have the work area secured until all violations are abated.

(c) Upon receipt of testing results indicated that concentrations above the acceptance criteria pursuant to N.J.A.C. 5:23-8.23 have occurred *[outside the containment barriers]* during the abatement project, the asbestos safety technician shall immediately direct corrective action and verbally report these results within 24 hours to the contractor, the owner and the abatement project designer. Such verbal notification shall be followed by written notification to the contractor, the owner and the abatement project designer. A copy shall be sent to the administrative authority having jurisdiction and the Department within three business days from receipt of the results.

(d) The asbestos safety technician shall keep an up-to-date and comprehensive daily log of on-site activities. One section of the log shall contain observations concerning contractor compliance with activities required under this subchapter listing all deficiencies encountered. In addition, the log shall list the names of each person entering the work area. The log shall be kept at the job site and shall be made available upon request at all times to the owner, the abatement project designer and to appropriate local and State agencies.

(e) The asbestos safety technician shall prepare a comprehensive final report to include daily logs, required inspection reports, observations and air monitoring results. This report shall be made part of the official record filed by the asbestos safety control monitor.

(f) During the removal phase the duties of the asbestos safety technician shall be as follows:

1. Air monitoring outside the work area shall be provided throughout removal operations to ensure that no outside contamination is occurring, pursuant to N.J.A.C. 5:23-8.23;

2. If the contractor's barriers or other control methods are observed to malfunction, and if the contractor does not immediately correct the problems upon notification, the asbestos safety technician shall inform the administrative authority having jurisdiction who shall take immediate measures needed to ensure corrective action. In such a situation, sampling of a minimum of three additional samples per day shall be performed by the asbestos safety technician;

3. A series of smoke tests shall be performed by the asbestos safety technician at ***all sources of make up air including*** the decontamination unit entrance to ensure continuous air pressure differential. This test shall be performed before each work shift and every four hours thereafter until the work stops;

4. The asbestos safety technician shall calculate the required number of air pressure differential filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety technician shall inform the owner, contractor and the abatement project designer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the asbestos safety technician shall inform the administrative authority having jurisdiction who shall take necessary measures to ensure corrective action;

5. The asbestos safety technician shall test and record the *[air flow]* ***exhaust volume (CFMs)*** of the air pressure differential units ***prior to the beginning of any abatement project. In addition, the asbestos safety technician shall read and record the pressure drop across the filter from the magnetic gauge or manometer off the air filtration units*** at the beginning of every shift and every four hours thereafter to *[insure]* ***ensure*** a complete air change or total air filtration within the work area once every 15 minutes to effectively reduce the work area fiber count;

6. A record shall be maintained in the daily log of all on-site observations, inspections and required activities of the contractor, asbestos safety technician and the owner;

7. The asbestos safety technician shall supervise the removal of all asbestos waste from the work area to ensure that it takes place in one of the following manners:

i. Direct removal by a collector/hauler registered with the New Jersey Department of Environmental Protection; or

ii. Indirect removal by placement in a locked and secure container, for temporary storage, awaiting the New Jersey Department of Environmental Protection registered waste hauler.

(g) The asbestos safety technician shall perform post-removal air testing in accordance with the following procedures:

1. Within 48 hours after clean-up for post-removal air testing, and before the removal of critical barriers, a thorough and complete visual inspection and a ***subsequent*** final air test shall be performed. This test is required to establish safe conditions for the removal of critical barriers and to permit the beginning of reconstruction activity, if required. Sufficient time following clean-up activities shall be allowed so that all surfaces shall be dry during monitoring. Air pressure differential filtration units shall be in use during monitoring. Post-removal testing shall begin when all work area surfaces are completely dry.

2. Aggressive air sampling shall be employed using propeller-type fans and***/or*** leaf blowers. The fans shall be placed in each room to be sampled so as to cause settled fibers to rise and enter the air. Prior to air monitoring, floors, ceilings, and walls shall be swept with the exhaust of a one-horsepower leaf blower. Particular attention shall be made to *[insure]* ***ensure*** that areas which would be subject to dead-air conditions are swept. The fans ***used*** shall *[have blades with a radius of at least one foot and shall]* be capable *[to]* ***of*** creating a minimum air velocity of 500 feet per minute. These fans may be of the oscillating type. Stationary fans shall be placed at a height of two meters (approximately 79 inches) in locations which will not interfere with air monitoring equipment. Fan air shall be directed *[at]* ***toward*** the ceiling *[and shall be operated at low speed]*. One fan shall be used for each 10,000 cubic feet of the work area. The sampling pump and sampling media shall be placed *[20 to 40 feet at a right angle from the line(s) of air flow created in front of the fan]* ***in the abatement area on a random basis to provide unbiased and representative samples***. The leaf blower and its use must meet the criteria set forth in EPA document 560/5-85-024, "Guidance for Controlling Asbestos-Containing Materials in Buildings," appendix section M.1.5., or any replacement criteria set fourth by the EPA. Their use should be restricted to general occupancy areas that are contained, and they should not be used in any space with an open dirt, sand or gravel floor.

3. Evaluation criteria: If test results exceed the value delineated in N.J.A.C. 5:23-8.23, the asbestos safety technician, or his or her employer, shall so inform the contractor, the owner and the abatement project designer. If these criteria have not been met, the contractor shall be required to re-clean all surfaces using wet cleaning methods and provide HEPA filtration units to exhaust air during the re-cleaning process. This process of re-cleaning, allowing surfaces to dry and re-testing shall be repeated until compliance is achieved.

(h) Final inspections shall be conducted by the asbestos safety technician as follows:

1. Upon notice by the owner or agent and after the removal of the critical barriers, a final inspection shall be conducted to ensure

the absence of any visible signs of asbestos, or asbestos-containing material or work related materials; and

2. The asbestos safety technician shall ensure that all asbestos waste and asbestos-contaminated waste have been removed from the *[work area]* ***project site*** in a ***Department of Environmental Protection*** registered vehicle by a registered waste hauler ***as delineated in N.J.A.C. 5:23-8.15***.

5:23-8.17 (No change in text.)

5:23-8.18 Asbestos safety control monitor

(a) The Department shall authorize the establishment of an asbestos safety control monitor:

1.-2. (No change.)

3. Following a determination by the Department that an application is complete and suitable for processing, the Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the Department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the Department shall provide the applicant with a written explanation of the reasons therefore and provide for a hearing pursuant to N.J.A.C. 5:23-8.21

4. The authorization application shall contain information relating to:

i.-ii. (No change.)

iii. The applicant shall indicate the type of analysis done (for example, NIOSH 7400) and the laboratory(ies) that do the procedures. If the applicant does its own lab analysis, then it shall list the type of equipment used and the personnel using it, with their qualifications. All laboratories shall *[participate in the Proficiency Analytic Testing Program conducted by the National Institute for Occupational Safety and Health and in the U.S. Environmental Protection Agency Asbestos Bulk Sample Analysis Quality Assurance Program]****, for bulk sample analysis, be accredited by the National Institute of Standards and Technology (NIST)***. Laboratories shall be enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program for PCM. The TEM analysis, laboratories shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E which is referenced in section N.J.A.C. 5:23-8.23;

iv.-viii. (No change.)

5.-6. (No change.)

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

5:23-8.19 Asbestos safety technician: certification requirements

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

(d) Any candidate for certification as an asbestos safety technician shall submit an application to the Department accompanied by the required application fee established in (i) below. The requirements for certification as an asbestos safety technician are as follows:

1. At least two years of college in academic sciences, that is, biology, chemistry, industrial hygiene, environmental science, or related fields; or one year experience which included performing environmental assessment activities may be substituted for this education requirement*[; or one year experience monitoring asbestos abatement if an industrial hygienist certified by the American Industrial Hygiene Association]*;

2. (No change.)

3. Successful completion in an approved training course for asbestos worker/supervisors certified by the New Jersey Department of Health pursuant to N.J.A.C. 12:120 and N.J.A.C. 8:60; or two years of experience in monitoring asbestos abatement activities may be substituted for completion of a certified training course; ***or one year experience monitoring asbestos abatement if the individual is an industrial hygienist certified by the American Board of Industrial Hygiene;***

4. Successful completion of a special course for asbestos safety technicians approved by the New Jersey Department of Health.

5. Successful passing of a special examination for asbestos safety technicians approved and administered by the New Jersey Department of Health (pursuant to N.J.A.C. 12:120-6.12 and 8:60-6.12).

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

5:23-8.20 (No change in text.)

5:23-8.21 (No change in text.)

5:23-8.22 Demolition

(a) The ***friable*** asbestos that is present in a building or portion of a building that is to be demolished, shall be removed from that building or portion of a building prior to the demolition of that building.

1. (No change.)

(b) (No change.)

(c) The permit for the removal of asbestos shall be obtained in the following manner:

1. A plan review must be conducted by the administrative authority having jurisdiction. The following shall be available for the plan review:

i. An asbestos hazard assessment prepared by the New Jersey Department of Health, or by a county or local department of health, or a private individual who has received accreditation ***as an inspector*** under the United States Environmental Protection Agency's Model Accreditation Program as referenced in 40 CFR 763. The accreditation will be issued by an EPA approved training agency, and that accreditation will include the place of training, accreditation number and its expiration date; accreditations are issued for one year. This assessment shall be required unless the requirement for an assessment has been waived by any of the above. This requirement can be met by removing all suspect material as asbestos-containing waste.

ii. Uncertified plans and specifications as follows:

(1) Plans and specifications (not less than three sets) indicating: the scope of the proposed work; whether the project is a small or large asbestos hazard abatement project; listing the total amount of square and/or linear footage of asbestos-containing material to be abated; the provisions proposed to contain the asbestos-containing material during abatement work showing, but not limited to, separation barriers, primary seal/critical barriers, route of travel of removing asbestos waste from the work area; a copy of the site plan; and a floor plan indicating exits.

Recodify (5) and (6) as (2) and (3) (No change in text.)

2. The plans and specifications will be released in writing by the asbestos safety control monitor.

3. The issuance of a construction permit for asbestos abatement shall be subject to the following:

i. A written release of the plans and specifications by the asbestos safety control monitor;

ii.-vi. (No change.)

(d) (No change.)

(e) Air monitoring samples during removal shall be required for a large asbestos abatement project, and a small asbestos abatement project if it has been determined by the asbestos safety control monitor to be required during the plan review. Final air samples after removal will be required for large and small asbestos abatement projects.

1. Results of .02*[0]* fibers/cc or less shall be attained by phase contrast microscopy (PCM) prior to demolition;

2.-3. (No change.)

5:23-8.23 Air monitoring methodology***; acceptance criteria***

(a) *[All air]* ***Air*** sampling specified in this section***, except as is otherwise provided in (b) below,*** shall be performed by the asbestos safety technician in accordance with the procedures specified in this subchapter and shall be analyzed by a laboratory pursuant to 40 CFR 763.90.

1. For phase contrast microscopy (PCM) analysis, laboratories shall be enrolled in the American ***Industrial*** Hygiene Association Proficiency Analytical Testing Program.

2. For transmission electron microscopy (TEM) analysis, laboratories shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E of 40 CFR 763.

(b) Air sampling *[outside the work area]* while abatement is in progress shall comply with the following procedures:

1. A minimum of three samples per day shall be collected. One stationary sample shall be collected *[at]* ***within the clean room of*** the decontamination unit *[entrance/exit]* and two samples collected adjacent to the work area but remote from the decontamination unit entrance. In the selection of adjacent areas to be monitored, preference shall be given to rooms adjacent to critical barriers and/or work area. Testing results shall not indicate ***that*** concentrations above 0.01 fibers per cubic centimeter have occurred outside the containment barrier or above 0.02 fibers per cubic centimeter within the clean room of the decontamination chamber during the abatement project.

2. *[Pumps shall be calibrated before and after sampling and a record kept of this calibration.]* ***All pumps shall be calibrated prior to initial sampling using a primary standard. Pumps shall be recalibrated with a minimum of a secondary standard before and after each sample is collected. Protocols shall be established for periodic calibration, using a primary standard. The frequency of primary recalibration checks shall be initially high, until experience is accumulated to show that it can be reduced safely. Records shall be kept of all calibrations.***

3. Analysis shall be by PCM *[or TEM]* ***and shall be by the methodology specified using the NIOSH 7400 method entitled "Fibers" publication in the NIOSH manual of Analytical Methods, 3rd edition, 2nd supplement, August 1987. Maximum turnaround time from sample collection through data reporting shall be 24 hours***.

i. *[PCM analysis shall be by the methodology specified by NIOSH 7400.]* ***TEM analysis may also be permitted if a proper methodology meeting nationally recognized standards is to be used. This shall need specific approval from the Asbestos Safety Control Monitoring firm prior to the commencement of the asbestos abatement project. Maximum turnaround time from sample collection through data reporting shall be 72 hours.***

[ii. TEM analysis shall be by the methodology specified by 40 CFR 763 Appendix A to Subpart E.]

*[4. Maximum turnaround time from sample collection through data reporting shall be:

i. PCM analysis method: 24 hours; and

ii. TEM analysis method: 72 hours.]*

(c) Final clearance level, sampling and analysis method for small and large asbestos abatement projects *[and]* ***for*** local education agencies, as defined in section N.J.A.C. 5:23-8.2, shall be performed as follows:

1. Samples collected within the affected work area shall be analyzed by TEM except as delineated below:

i. Until October 7, 1989, an owner or his or her agent may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of an asbestos abatement project that is less than or equal to 3,000 square feet or 1,000 linear feet.

ii. From October 8, 1989 to October 7, 1990, an owner or his or her agent may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of an asbestos abatement project that is less than or equal to 1,500 square feet or 500 linear feet.

iii. After October 8, 1990, an owner or his or her agent may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of an asbestos abatement project that is less than or equal to 160 square feet or 260 linear feet (small asbestos hazard abatement project).

iv. To determine the amount of asbestos-containing material pursuant to this section, the owner or his or her agent shall add the total square or linear footage of asbestos-containing material within the containment barriers used to isolate the work area for the asbestos abatement project. Contiguous portions of material subject to such project conducted concurrently or at approximately the same time within the same building shall not be separated to qualify for the exceptions delineated above.

(d) Final clearance level, sampling and analysis method for small and large asbestos abatement projects for *[all other]* buildings *[pursuant to this subchapter except]* ***other than*** for local education agencies, as defined in N.J.A.C. 5:23-8.2, shall be as follows:

1. ***One sample per 10,000 square feet of work area with a minimum of five samples shall be required.*** Samples collected within the affected work area space may be analyzed by PCM to confirm completion of an asbestos abatement project ***using the methodology specified in NIOSH 7400. Maximum turnaround time from sample collection through data reporting shall be 24 hours***.

(e) For TEM, the project shall be considered complete when the results of samples collected in the affected work area comply with 40 CFR 763.90 and Appendix A to Subpart E. ***Maximum turnaround time from sample collection through data reporting shall be 72 hours.***

(f) For PCM, the project shall be considered complete when the results of samples collected in the affected work area show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM of 0.01 fibers per cubic centimeter.

(g) When the air analysis results for projects covered by this subchapter show asbestos fiber concentrations above the acceptance criteria, then clean-up shall be repeated until compliance is achieved by re-cleaning all surfaces using wet methods and operating all HEPA air filtration units to filter the air.

5:23-8.24 Removal of non-friable asbestos-containing material

(a) This section applies to all *[interior]* building, non-friable, miscellaneous asbestos-containing material.

1. When the removal method will cause the building environment to become contaminated with airborne fibers caused by a combination of mechancial and manual tasks, such as grinding the surface of vinyl ***asbestos*** floor tiles, then complete separation of the worksite from the rest of the building shall be required and the precautions and procedures *[during a large asbestos hazard abatement project]* as delineated in N.J.A.C. 5:23-8.11 shall be followed. A construction permit for asbestos abatement pursuant to this subchapter shall be required.

2. When the removal method will not contaminate the building environment with airborne fibers, such as when an electric heating appliance is used to loosen vinyl ***asbestos*** floor tiles, then general isolation of the work area from the surrounding environment, safe work practices and proper clean-up procedures, including having access to shower facilities after performing the asbestos-related work, shall be required. A contractor licensed by the New Jersey Department of Labor shall be required pursuant to N.J.A.C. 12:120 to perform this work. A construction permit pursuant to N.J.A.C. 5:23-2 shall be required.

(b) The disposal of non-friable asbestos-containing waste shall conform to the requirements specified in N.J.A.C. 5:23-8.15.

(c) Exception: This section shall not apply to non-friable asbestos-containing material found on the exterior of the building such as asbestos siding, transite and asbestos cement board, asbestos roof shingle, felts and built up roofing materials. Safe work practices shall be employed to minimize asbestos fiber exposure during the tear-off period and, in particular, for asbestos shingle roofs, work precautions described in the National Institute for Occupational Safety and Health (NIOSH) Health Hazard Evaluation Report No. *[HETH]* ***HETA*** 84-321***1590*** shall be followed. A construction permit pursuant to N.J.A.C. 5:23-2 shall be required. Disposal of this waste shall be in accordance with N.J.A.C. 5:23-8.15.

LAW AND PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

(a)

Adopted New Rules: N.J.A.C. 7:6

Proposed: May 1, 1989 at 21 N.J.R. 1157(a).
Adopted: June 9, 1989 by Frederick P. DeVesa, Acting Attorney General, and the New Jersey Boat Regulation Commission, Kenneth L. Husted, Chairman.
Filed: June 9, 1989 as R.1989 d.351, **without change.**
Authority: N.J.S.A. 12:7-34.36 et seq., particularly 12:7-34.40 and 12:7-34.49 and 12:7A-29.
Effective Date: June 9, 1989.
Expiration Date: June 9, 1994.

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

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 7:6.

ENVIRONMENTAL PROTECTION

(b)

Boating Regulations
Lanyard Cut-off Switch; Operation on Greenwood Lake; Personal Watercraft
Adopted Concurrent New Rules: N.J.A.C. 7:6-1.44, 4.7 and 9

Proposed: May 1, 1989 at 21 N.J.R. 1157(b).
Adopted: June 9, 1989 by the New Jersey Boat Regulation Commission, Kenneth L. Husted, Chairman, and Frederick P. DeVesa, Acting Attorney General.
Filed: June 9, 1989 as R.1989 d.352, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 12:7-34.36 et seq., particularly 12:7-34.40 and 12:7-34.49 and 12:7A-29.
Effective Date: June 9, 1989 (rules adopted as proposed); July 3, 1989 (changes upon adoption).
Expiration Date: June 9, 1994.

Summary of Public Comments and Agency Responses:

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rules were proposed for adoption in compliance with the normal rule-making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), except for the changes upon adoption, which are effective upon publication in the New Jersey Register (July 3, 1989).

COMMENT: The Department should amend N.J.A.C. 7:6-4.7(d) to provide headway speed for "five miles per hour" since personal watercraft need at least headway speed to maintain adequate steering.

RESPONSE: The Department's intent in adopting the "five miles per hour" standard was that all vessels maintain adequate maneuverability, particularly when approaching "shore, a dock, pier, raft or float, or an anchored or moored vessel." The Department concludes that operation at "five miles per hour" in light of the prevailing conditions on Greenwood Lake is sufficient to maintain headway speed and also adequate steering for all vessels.

COMMENT: The Department should adopt the definition of personal watercraft adopted by the Personal Watercraft Industry Association (see N.J.A.C. 7:6-9.2 Definitions).

RESPONSE: The Department feels that its definition is as comprehensive or more comprehensive than that proposed by the Personal Watercraft Industry Association.

COMMENT: The Department should amend N.J.A.C. 7:6-9.3(a) to provide for operation at times of restricted visibility and between sunset and sunrise if the personal watercraft is equipped with running lights approved by the New Jersey State Police.

RESPONSE: The Department concludes that personal watercraft are small vessels with a very low profile and hence their ability to be detected by other vessels in darkness and restricted visibility warrants not operating during those times and conditions. In addition, operators of personal watercraft often fall off with the personal watercraft continuing for a distance. At times of restricted visibility and between sunset and sunrise this is an increased risk to operators and other vessels.

COMMENT: The Department should permit operation of personal watercraft in the Point Pleasant Canal (see N.J.A.C. 7:6-9.3(b)).

RESPONSE: The Point Pleasant Canal is a very narrow waterway. It has a tide velocity, at times, of 12 knots. Ocean County, New Jersey in which the canal is situated has a very dense population of recreational and commercial vessels. There is no waterskiing permitted in the canal. The canal is designated as a slow speed/no wake zone for its entire length. Allowing personal watercraft to operate in this area would be extremely hazardous to both the operator of the personal watercraft and to other boaters. If the operator were to fall off or capsize, as has happened, the operator would be in danger and the personal watercraft would be operating unmanned. This would greatly enhance the danger of an accident.

COMMENT: The Department should permit operation of personal watercraft in the Cape May Canal (see N.J.A.C. 7:6-9.3(c)).

RESPONSE: The Cape May Canal is a narrow body of water. The port of Cape May is home for a large boating fleet consisting of commercial fishing, commercial clamming and numerous recreational vessels which use the canal. The west end of the canal is also home port to the Cape May-Lewis Ferry Service. There is no waterskiing in the Cape May Canal as its width is prohibitive. The volume of traffic that use the Cape May Canal makes it dangerous to the operators of personal watercraft, particularly when they become separated from their craft. In addition, their low profile exacerbates their limited visibility to the very large vessels using this waterway.

COMMENT: The Department received 25 comments on N.J.A.C. 7:6-9.3(d) pointing out that operation of a personal watercraft at idle speed decreases maneuverability of the vessel. In addition, it was noted that operation in close proximity was an integral part of the sport.

RESPONSE: The Department concludes that there is merit in permitting operation above idle speed within 50 feet of another vessel in order to assure adequate maneuverability and that adhering to the rule as proposed could be unsafe. In order to clarify the intent of the rule and remain consistent with distance and speed requirements for other vessels, the Department has made the recommended modification as to speed. However, when a personal watercraft is operated within close proximity to another vessel, certain dangers exist. If the operator should fall off the personal watercraft and the craft is travelling at a high rate of speed, the craft would continue on until it decelerates. During the deceleration period, risk of a collision exists.

COMMENT: The Department received 17 comments on N.J.A.C. 7:6-9.3(e) pointing out that in highly travelled areas of New Jersey's waterways it was inevitable to encounter the wakes of other vessels and at times become airborne. It was also pointed out that becoming airborne is an integral part of the sport.

RESPONSE: It was the Department's intention in adopting this subsection (N.J.A.C. 7:6-9.3(e)) to prohibit personal watercraft and their operators from being placed in jeopardy from additional unobserved vessels when becoming airborne in the wake of a vessel. When a personal watercraft becomes airborne while crossing the wake of another vessel it cannot maintain steerage and avoid a collision. These risks are dramatically increased when an operator falls off during such a maneuver. However, as was pointed out in the comments, this maneuver can be safely accomplished if undertaken at a safe distance from the vessel creating the wake. The congestion of many of New Jersey's waterways also makes the crossing of another vessel's wake inevitable. Accordingly, the Department has adopted the recommended modification.

COMMENT: Personal watercraft should be permitted to operate within 50 feet of a marked bathing beach (see N.J.A.C. 7:6-9.3(f)).

RESPONSE: Operating within 50 feet of a marked bathing beach could constitute negligent operation in violation of N.J.A.C. 7:6-1.29 (operation in a manner that could endanger life or limb). When an operator falls from a personal watercraft travelling at a high rate of speed the momentum of the vessel will cause it to travel, not under control, for a distance of approximately 50 feet or more.

COMMENT: Personal watercraft should be permitted to operate within 50 feet of the shoreline or a person in the water (see N.J.A.C. 7:6-9.3(g)).

RESPONSE: Most of the lagoons which abound along the New Jersey Coast are under 100 feet in width and consequently are slow speed areas for vessels by virtue of N.J.A.C. 7:6-1.31. Open shoreline beaches, sandbars and meadow banks are places commonly used by boaters and others as unmarked bathing areas. Many people using these often remote areas for bathing are not aware of personal watercraft in the vicinity. Likewise, personal watercraft operators are not alerted that these areas can be used for bathing because they are unmarked. Maintenance of a 50 foot buffer in these areas will assure the safety of bathers and avoid additional risk of collision to operators of personal watercraft.

COMMENT: An operator of a personal watercraft should be permitted to tow a waterskier or other device (see N.J.A.C. 7:6-9.3(h)).

RESPONSE: Most personal watercraft are not capable of carrying three people. N.J.A.C. 7:6-1.37 requires that an observer be carried on board any vessel towing a waterskier. A personal watercraft does not provide for a suitable location to properly position an observer as required under N.J.A.C. 7:6-1.37. A person operating a personal watercraft with a second person on board has no room to put a skier on board should the need arise. A personal watercraft by design is a low profile craft. If a personal watercraft were to engage in towing another vessel or dunnage, and the towline should part, no protection would be afforded the person or people on board. This could result in serious injury.

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

7:6-1.44 Lanyard cut-off switch

The operator of a vessel equipped with a lanyard cut-off switch shall wear the safety switch lanyard at all times when the vessel is in operation.

7:6-4.7 Operation on Greenwood Lake

(a) A person shall not operate a vessel on Greenwood Lake, Passaic County, in such a way as to unreasonably interfere with or endanger any other vessel or person. Every vessel operated on Greenwood Lake shall be operated in a careful and prudent manner.

(b) A vessel shall not be operated upon Greenwood Lake at a speed exceeding 45 miles per hour.

(c) A vessel shall not be operated upon Greenwood Lake at a speed exceeding 15 miles per hour between one-half hour after sunset and one-half hour before sunrise.

(d) A vessel shall not be operated upon Greenwood Lake within 200 feet of shore, a dock, pier, raft or float, or an anchored or moored vessel at a speed exceeding five miles per hour.

(e) The provisions of this section shall not apply to any vessel or to any person operating a vessel while actually competing in an authorized race or regatta.

7:6-4.8 (No change in text.)

SUBCHAPTER 9. PERSONAL WATERCRAFT

7:6-9.1 Scope

The following rules shall goven the operation of personal watercraft operating on the waters of New Jersey. These rules are in addition to all other applicable laws, rules and regulations governing personal watercraft.

7:6-9.2 Definitions

"Personal watercraft" means a power vessel which:

1. Is designed to be operated by a person or persons, sitting, standing or kneeling;

2. Uses an internal combustion engine to power a water jet pump which propels the vessel through the water; and

3. Uses an internal combustion engine that does not have the ability to reverse the pump's thrust so as to allow the vessel to be operated in reverse or have the ability to disengage the pump so as to prevent the vessel from making headway.

7:6-9.3 Operation limitations

(a) A person shall not operate a personal watercraft during the hours between sunset and sunrise or during times of restricted visibility.

(b) A person shall not operate a personal watercraft in the confines of the Point Pleasant Canal.

(c) A person shall not operate a personal watercraft within the Cape May Canal.

(d) *[A person shall not operate a personal watercraft above idle speed within 50 feet or another vessel.]* ***A personal watercraft shall at all times proceed at a safe speed so that it can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.***

(e) A person shall not operate a personal watercraft in such a manner so as to become airborne or completely leave the water while crossing the wake of another vessel ***within 100 feet of the vessel creating the wake***.

(f) A person shall not operate a personal watercraft within 50 feet of a bathing beach that has its boundaries marked by buoys or signs.

(g) A person shall not operate a personal watercraft above idle speed within 50 feet of the shoreline or 50 feet from a person in the water.

(h) A person shall not tow a waterskier or any device with a personal watercraft.

(i) Any person operating a personal watercraft and any passenger on a personal watercraft shall at all times, when the personal watercraft is in operation, wear a United States Coast Guard Approved Type I, II, III, or V Hybrid Personal Flotation Device.

(a)

DIVISION OF COASTAL RESOURCES

Notice of Administrative Correction
Coastal Resource and Development Policies
High Rise Structures
N.J.A.C. 7:7E-7.14

Take notice that the Office of Administrative Law has discovered errors in the text of the N.J.A.C. 7:7E-7.14(a)1 in that rule text proposed at 20 N.J.R. 139(a) and adopted at 20 N.J.R. 2085(b) was not reproduced in the New Jersey Administrative Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a).

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

7:7E-7.14 High rise structures

(a) All high rise structures more than six stories or more than 60 feet from existing pre-construction ground level are encouraged to locate in an area of high density, high-rise and/or intense settlements. High rise housing and structures are acceptable subject to the following conditions:

1. High-rise structures within the view of coastal waters [must] **shall** be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public **except as provided by N.J.A.C. 7:7E-3.46**;

2.-7. (No change.)

(b) (No change.)

DIVISION OF COASTAL RESOURCES

(a)

Transition Area Requirements for Freshwater Wetlands

Adopted New Rules: N.J.A.C. 7:7A-6, 7, 16.6 and 16.7

Adopted Amendments: N.J.A.C. 7:7A-1.4 and 2.5.

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

Filed: June 14, 1989 as R.1989 d.362, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156), particularly 13:9B-16, 17, 18 and 25.

DEP Docket Number: 007-89-02.

Effective Date: July 3, 1989.

Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter stated that the rules should be modified to exempt from the transition area requirements all linear development projects pursued by public entities. This exemption is required because almost all bridge reconstruction projects, carried out for safety reasons, will involve some disturbance of wetlands. The area of disturbance associated with these projects is usually limited and must adhere to soil conservation service criteria for erosion protection and sediment control and therefore will result in very limited impacts to wetlands.

RESPONSE: The Freshwater Wetland Protection Act (Act), N.J.S.A. 13:9B-1 et seq., does not provide such an exemption. Instead, the Act provides special standards for issuing transition area waivers for linear development. The standards for these waivers are found at N.J.A.C. 7:7A-7.4(c).

COMMENT: One commenter stated that the rules should be modified to exempt all soil investigation work, including excavations made to obtain soil logs. Soil investigations are often a part of conducting a wetlands investigation and delineation and result in minimal impacts.

RESPONSE: In a future rule proposal, surveying activities carried out without the aid of motorized tools may be considered non-regulated activities and only surveying activities and soil investigations which involve motorized tools and significant disruption of the vegetation or soil will require a special activity transition area waiver. Until then, the provisions at N.J.A.C. 7:7A-7.4(e), transition area waivers, have been clarified to indicate that surveying activities covered by the Statewide General Permit at N.J.A.C. 7:7A-9.2(a)14 may be authorized through transitionary waivers.

COMMENT: One commenter stated that the Department should provide a method of obtaining a notice of classification without having to obtain a letter of interpretation.

RESPONSE: The Department currently provides a notice of classification as an attachment for all letters of interpretation. If an applicant desires an inexpensive method of obtaining a notice of classification, they may apply to the Department for a presence/absence letter of interpretation, which will include a notice of classification through the procedure at N.J.A.C. 7:7A-8.2(a). The fee for this service is $100.00 and it will be provided for any size parcel of land. Since this option is already available, the Department believes that the suggested change is unnecessary and the rules will remain as proposed.

COMMENT: One commenter stated that the transition area provides a good location for subsurface wastewater disposal fields, if the soils are suitable. After installation, the area above the fields would be revegetated to grass, which is pre-existing in many cases, and therefore this activity would not have any lasting impact on the wetlands.

RESPONSE: The Department disagrees with the assertion that this would have no lasting impact on a wetland. The rules at N.J.A.C. 7:7A-7.2(c) and 7.3(c) prohibit any reduction in the transition area if the proposed project includes onsite wastewater treatment facilities. This standard is intended to reduce the effects of wastewater effluent upon wetlands and the ground and surface waters associated with them. The provisions at N.J.A.C. 7:7A-7.2(c) and 7.3(c) will remain as proposed.

COMMENT: One commenter stated that the rules should mandate the use of the United States Environmental Protection Agency (USEPA) three-parameter approach (see definition of freshwater wetlands at N.J.A.C. 7:7A-1.4) for the identification of wetlands and that all three parameters must always be present.

RESPONSE: The rules do mandate the use of the three-parameter approach at N.J.A.C. 7:7A-1.4. The EPA three-parameter approach itself dictates when all three parameters need to be present and provides that in atypical situations, all parameters need not be present. The EPA three-parameter approach is set forth in the "Wetland Identification and Delineation Manual," published by EPA.

COMMENT: One commenter stated that the rules place emphasis on the protection of "existing plant patterns" and seem to ignore the fact that, over time, wetlands vegetation progresses through several natural stages.

RESPONSE: When the Department refers to the protection of the "existing" vegetational community, "existing" refers to the condition of the vegetational community at the date of application for a transition area waiver. The rules do not mandate the continued maintenance of the status quo of the transition area vegetation, but allow for natural change.

COMMENT: Several commenters stated their opposition to any movement or legislation that would repeal or amend the transition area requirements of the Freshwater Wetlands Protection Act.

RESPONSE: The Department acknowledges this comment in support of the legislation.

COMMENT: One commenter stated that throughout the transition area rules the term "prohibited activity" should be replaced with "regulated activity" to ensure consistency throughout the Freshwater Wetlands Protection Act Rules.

RESPONSE: Since the Act, at N.J.S.A. 13:9B-3, identifies certain activities in freshwater wetlands as "regulated activities" and identifies somewhat different activities in transition areas as "prohibited," it would be inconsistent and misleading for the Department to make the indicated change.

COMMENT: One commenter stated that within the transition area, it is essential that the requirements of a certified soil erosion and sediment control plan take precedence over the transition area rules. It was suggested that the Department modify the language at N.J.A.C. 7:7A-6.2 to allow all necessary soil erosion, sediment and stormwater controls, both temporary and permanent, in any transition area, without requiring a transition area waiver.

RESPONSE: The Act does not exempt soil erosion and sediment control activities. Therefore, to the extent that these activities and/or their installation involve prohibited activities, they will require a transition area waiver.

COMMENT: One commenter stated that the presence of a transition area surrounding an isolated wetland will encourage the filling of these areas under Statewide General Permit #6 to eliminate the transition area and the associated restriction on prohibited activities. They further suggested that all isolated wetlands be classified as ordinary resource value to eliminate the associated transition area.

RESPONSE: There is some confusion over the definition of "isolated freshwater wetlands". As stated at N.J.A.C. 7:7A-2.5(c)1, isolated wetlands that are more than 50 percent surrounded by development and are less than 5,000 square feet in size are classified as ordinary resource value wetlands and therefore do not require a transition area. Wetlands that are not connected to surface water features and do not meet these requirements are classified as intermediate resource value wetlands. The Department realizes that some applicants may attempt to use a freshwater wetlands general permit to destroy freshwater wetlands and thereby destroy transition areas. However, general permit authorization can be conditioned, or an individual permit can be required, if necessary, to ensure minimal environmental impact.

COMMENT: One commenter questioned whether building an addition to a home on an existing lot, completely surrounded by a transition area, would require a transition area waiver.

RESPONSE: The rules at N.J.A.C. 7:7A-7.4(e), special activity transition area waivers, allow limited additions to existing homes in transition areas as one of the activities covered by a Statewide general permit at N.J.A.C. 7:7A-9.2.

COMMENT: One commenter stated that the Department should require that individuals conducting wetlands investigations place permanent wetlands boundary markers showing their names or registration number, instead of using unidentifiable colored ribbon. This would remove undue liability from the land surveyors who must sort out the various ribbons that may be located on a development site.

RESPONSE: The Department believes that such a requirement would be burdensome, and would not result in any substantial gain.

COMMENT: One commenter stated that the rules should include a set of standards for obtaining a transition area waiver for activities and instances not addressed in the proposal. Provisions should be included for those cases where the applicant cannot obtain a waiver under the outlined standards. Further these standards should not be as stringent as the individual freshwater wetlands permit criteria.

RESPONSE: The Department believes that there will be a limited class of activities that cannot meet the criteria for one of the types of transition area waivers listed at N.J.A.C. 7:7A-7.1(c) (width reductions, special activities, and averaging plans). For this limited class of projects, the provisions of hardship waivers, listed at N.J.A.C. 7:7A-7.2(f) and 7.3(c), may be applicable.

COMMENT: One commenter stated that the rules should be modified to include a separate subchapter which would specifically state which transition area waivers apply to exceptional resource value wetlands and which can be requested for intermediate resource value wetlands.

RESPONSE: The language at N.J.A.C. 7:7A-7.1(c), regarding types of transition area waivers, and the definition of "transition area waiver" at N.J.A.C. 7:7A-1.4 have been clarified to address this concern.

COMMENT: One commenter stated that the proposed rules do not cover the circumstances of transition areas for isolated upland areas contained wholly within wetlands.

RESPONSE: The transition area rules apply to this situation in the same manner that they apply to non-isolated upland areas.

COMMENT: One commenter stated that, once a letter of interpretation has identified the presence and extent of wetlands and the associated transition area, all delineated transition areas should be placed in conservation easements, described by metes and bounds on a survey, and deed restricted to prohibit further reductions. In addition, a data base containing this information should be developed for tracking purposes. This information would effectively notify all concerned individuals of the restriction placed on the property.

RESPONSE: The requirement of surveying and recording transition area boundaries would be too onerous for the applicant, especially for small property owners. Accordingly, the rules remain as proposed.

COMMENT: One commenter stated that the transition area rules should require the formation of an advisory group to establish standards and best management practices for landscape design, construction, and maintenance of transition areas. This information would be made available to the regulated public.

RESPONSE: The Department has formed two advisory groups to review freshwater wetlands issues and will bring this issue to the attention of these committees.

COMMENT: One commenter stated that the transition area rules give no consideration to the development of linear park systems for passive recreation along stream corridors with associated wetlands and required transition areas. The rules should include park development standards.

RESPONSE: It is not clear what is referred to by "park development standards." The rules at N.J.A.C. 7:7A-7.4(e), regarding special activity transition area waivers, specifically permit the construction of boardwalks and trails in recreational areas for passive recreation by reference to the Statewide General Permit at N.J.A.C. 7:7A-9.2(a)17. The overall scheme of the Act regulates specific activities, without regard to whether these activities are part of the development of a park, a home, or a commercial building. The effects upon the freshwater wetland and transition areas would not necessarily be different. The rules reflect this scheme.

COMMENT: One commenter stated that the transition area rules should exempt landscape design and planting to enhance filtration of pollutants, soil stabilization and aesthetic values, instead of mandating the exclusive use of native vegetation.

RESPONSE: The rules at N.J.A.C. 7:7A-6.2(b) have been clarified to indicate when non-native planting may be allowed. Extensive planting of non-native species that would change the characteristics of the transition area is classified as a prohibited activity at N.J.A.C. 7:7A-6.2(h)ii.

COMMENT: One commenter stated that the summary of the proposed transition area rules, under the social and economic impact sections, does not adequately address the potential impact of these rules on existing single family lots.

RESPONSE: The Department has reviewed the summaries and believes they did adequately address these concerns. No specific deficiencies were described by the commenter.

COMMENT: One commenter stated that linear development projects, in particular utility lines, because of their limited long-term impacts, should be exempt from the requirement of obtaining transition area waivers or should be approved on a blanket basis.

RESPONSE: The Act does not differentiate between long and short-term impacts. Any project involving prohibited activities, as described at N.J.A.C. 7:7A-6.2(a), will require a transition area waiver. Linear development in freshwater wetlands may be permitted under Statewide general permits and, in transition areas, under special activity transition area waivers (see N.J.A.C. 7:7A-7.4).

COMMENT: One commenter stated that the placement of distribution poles, transmission poles, electric towers, pad mounted transformers, feeder rows, bus supports, switch gear and guy anchors, where no access road development is required, should be exempt from the need for obtaining transition area waivers, since these structures cover small areas.

RESPONSE: The rules at N.J.A.C. 7:7A-6.2(b) allow for the repair, replacement, and maintenance of lawfully existing structures in the transition area. However, any erection of structure or placement of pavements will require a transition area waiver because these are defined by Section 17 of the Act and at N.J.A.C. 7:7A-6.2(a) as prohibited activities.

COMMENT: One commenter stated that the Department is in the process of consolidating the wetlands review of projects within the Bureau of Freshwater Wetlands and asked whether the Bureau of Freshwater Wetlands will be responsible for determining the buffer areas under the Waterfront Development Law.

RESPONSE: The Bureau of Freshwater Wetlands (BFW) is currently responsible only for the administration of the Freshwater Wetlands Protection Act. Pursuant to Section 4c of the Act, the Act governs only transition areas adjacent to those wetlands not subject to the jurisdiction of the Wetlands Act of 1970.

COMMENT: One commenter stated that the Department should consider the development of a wetlands buffer model to consider the environmental and developmental factors in order to determine transition area waiver reduction.

RESPONSE: The Department has already done so. The rules at N.J.A.C. 7:7A-7.2 and 7.3 are based partly on the "Wetlands Buffer Delineation Method," prepared for the Department by Rogers, Golden and Halpern. Instead of requiring applicants to hire a consultant to apply the buffer model to each project, the Department has provided a predictable and consistent set of factors to determine transition area waiver reductions based upon this model. In addition, the Department has clarified the language at N.J.A.C. 7:7A-7.2(g) to provide guidance to applicants on how to demonstrate, on a case-by-case basis, no substantial impact. This guidance includes the use of scientific studies and models to make this demonstration.

COMMENT: Several commenters objected to the findings in the "Wetlands Buffer Delineation Method," prepared by Rogers, Golden and Halpern, upon which parts of the proposed rules and amendments were based. The commenters felt that the findings were random and unrealistic to the development community at large.

RESPONSE: The Department believes that this study represents the best available scientific data regarding the ability of transition areas to perform the functions which the Act outlines at Section 16.

COMMENT: Several commenters stated that the list of EPA Priority Wetlands and the criteria by which they were established should be made available for public review.

RESPONSE: This document is produced by the EPA and copies are available from that agency. In addition, the Department is publishing this document and it will be available from the Division of Coastal Resources Reference Library, CN 401, Trenton, N.J. 08625. Comments regarding the criteria for designation of EPA Priority Wetlands may be directed to the U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278-0090.

COMMENT: Several commenters stated that copies of the "Wetlands Buffer Delineation Method," prepared by Rogers, Golden and Halpern, were not made available for review.

RESPONSE: The "Wetlands Buffer Delineation Method" (the buffer study), prepared by Rogers, Golden and Halpern has only recently been finalized. The study is one of the many pieces of scientific data which were used to formulate the rules. Copies were thereafter and continue to be available from the Division of Coastal Resources, Bureau of Freshwater Wetlands upon request.

COMMENT: Several commenters stated that the rules should either exempt mitigation projects creating wetlands or include a specific transition area waiver for them. Further, the wetlands created as mitigation should require no transition area or a minimum 20 foot transition area.

RESPONSE: The rules at N.J.A.C. 7:7A-7.1(f) have been clarified to indicate that the Department's authorization of activities under an individual freshwater wetlands or Statewide general permit shall automatically include a transition area waiver which will allow access for the permitted activity as well as a waiver to accomplish any mitigation project required as a condition of the permit.

Wetlands created as mitigation will require transition areas. The Act does not exempt artificially created freshwater wetlands from transition area requirements. In addition, the objective of mitigation is to replace functioning wetlands. Eliminating the transition area adjacent to a newly created freshwater wetland would seriously impair the freshwater wetland's chances of becoming a functioning wetlands, thereby defeating the objective of the mitigation. All wetlands mitigation projects will have a transition area equal in width to that which is required for the adjacent existing wetland complex, if any. If there is no adjacent wetland, the Department will require a transition area width based on circumstances unique to the proposed mitigation project.

COMMENT: Seventy letters, the majority of which were form letters, stated commenters' opposition to the proposed transition area rules on the grounds that the rules would violate the commenters' constitutional rights as private landowners since the rules do not provide for compensation for land which is regulated by the rules. Many of the commenters requested that the rules not be adopted due to the unfairness to landowners.

RESPONSE: Regulation of activities in transition areas next to certain wetlands in New Jersey is required by the Act. The Department wrote the rules to implement the provisions of the Act (Sections 16, 17, and 18) addressing transition areas. In addition, landowners should note that normal property maintenance, continued use of the transition area for existing activities, and certain other encroachments are allowed in the transition area. The Department does not believe that the application of these rules would constitute a taking of property. Section 22 of the Act affords the Department several options if a court of competent jurisdiction finds that a taking has occurred.

COMMENT: Fifty commenters wrote in opposition to the proposed transition area rules because they will restrict the agricultural use of land on existing farms. They stated that the proposed rules would decrease the available land for farming activities.

RESPONSE: The Act and the rules promulgated pursuant to the Act specifically exempt ongoing farming activities in transition areas. Only the expansion of existing farms requires a transition area waiver. The farming exemption is specifically stated at N.J.A.C. 7:7A-2.7(a) and 6.2(c).

COMMENT: One commenter wrote in opposition to the proposed transition area rules because they will regulate an ongoing silvicultural operation which has an approved Forestry Management Plan.

RESPONSE: The Act and the rules promulgated pursuant to the Act specifically exempt ongoing silvicultural operations. Only the expansion of silvicultural operations into areas previously unmanaged for silviculture would require Department approval. This exemption is specifically stated in N.J.A.C. 7:7A-2.7(a) and 6.2(c).

COMMENT: Several commenters expressed their support of the transition area rules which provide clear and predictable protection for freshwater wetlands ecological systems. This protection fully complies with the intent of the Act. The criteria the rules establish for granting transition area waivers create predictability for both the regulated community and regulatory agencies.

RESPONSE: The Department acknowledges this comment in support of the rules.

COMMENT: One commenter stated that the proposed transition area rules discourage sound planning practices in the area of stormwater management. A developer will be discouraged from installing a drainage swale or ditch and/or a detention or retention basin for fear that the development of such facilities will result in the creation of intermediate freshwater wetlands, which will require a transition area and hinder or prevent future development of the property.

RESPONSE: The rules at N.J.A.C. 7:7A-2.5(c) define drainage ditches, swales, or detention facilities to be wetlands of ordinary resource value. Therefore, they will not need transition areas.

7:7A-1.4

COMMENT: One commenter stated that the definition of documented habitat at N.J.A.C. 7:7A-1.4 should include reference to "habitation by" threatened and endangered flora and the evidence used to document flora should include herbarium records.

RESPONSE: The Department proposed elimination of habitation as part of the proposal. The definition has been further clarified at N.J.A.C. 7:7A-1.4 to reflect the inclusion of herbarium records in the list of examples of evidence of past use by the species.

COMMENT: Ten commenters wrote in support of the revised definition for "documented habitat for threatened or endangered species" in N.J.A.C. 7:7A-1.4, asserting that the definition clearly reflects the legislative intent of the Act and is a major improvement over the original language. Inclusion of both feeding and resting habitat for these species is absolutely critical to the protection of habitat and future survival of these species.

RESPONSE: The Department acknowledges this comment in support of the rules.

COMMENT: Two commenters wrote in support of the revised definition for "documented habitat for threatened or endangered species" in N.J.A.C. 7:7A-1.4, but suggested that the definition be reworded to include "present and past use" by the species. Presently, the definition only addresses past use of wetland and should also include the current use of the wetlands.

RESPONSE: The Department acknowledges this comment in support of the rules. The Act and the rules at N.J.A.C. 7:7A-2.5(b) state that consideration will be given to both present and documented habitat when determining the resource classification of a wetland, therefore the proposed language change to the definition of "documented habitat" is unnecessary.

COMMENT: Several commenters opposed the changes in the definition of "documented habitat for threatened or endangered species" in N.J.A.C. 7:7A-1.4, because these changes create imprecise conditions for applicants. The proposed definition changes the wording in the definition from "habitat" to "areas," thereby expanding the potential area to be classified as "documented habitat for threatened and endangered species." The definition should not be changed and should be left as it appeared in the rules adopted May 16, 1988. The commenters felt that the original language more closely followed the intent of the Act.

RESPONSE: The Department believes that the revised definition more accurately reflects the intent of the Act. The change from "habitat" to "areas" does not expand the area regulated under the Act as a result of such definition change.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-1.4 and at N.J.A.C. 7:7A-7.2(c)2, where the term "threatened and endangered species" is used, the wording should specify the use of either State or Federal threatened and endangered species lists, and should include only plants on the Federal list.

RESPONSE: Since the Act and rules set forth the appropriate statutory authorities, this change is unnecessary.

COMMENT: One commenter stated that the proposed phrase "recorded evidence", in the definition of documented habitat, is questionable since no criteria for judging the quality of the record or the qualifications of the person reporting a sighting are listed in the rules.

RESPONSE: The Division of Fish, Game and Wildlife, Endangered and Nongame Species Program, and the Division of Parks & Forestry, Office of Natural Lands Management, New Jersey Natural Heritage Program, determine the validity of a record of a threatened and endangered species sighting. These programs are responsible for maintenance of a Statewide, state-of-the-art data base on threatened and endangered species.

COMMENT: One commenter stated that it is not clear who pays the Department to make the finding that the area is suitable for use by a "documented" species.

RESPONSE: Department employees who perform wildlife surveys and determinations are almost entirely supported through fees authorized by the Act.

COMMENT: One commenter stated that the Department should only consider sightings of threatened and endangered species that are recently recorded as valid for establishng documented habitat.

RESPONSE: The Act at Section 7a(2), discussing documented habitat for threatened and endangered species, states that a habitat shall be considered documented if the Department makes a finding that the habitat remains suitable for use by the specific documented threatened and endangered species. The Act does not require a sighting to be "recently recorded". Where sightings are not recent, Department staff field check the habitat to determine whether it remains suitable for the subject species.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-1.4, it is unclear how the Department determines if a specific site constitutes threatened and endangered species habitat if the evidence of past use identifies only a general area, as opposed to a specific site.

RESPONSE: If the Department determines that the specific site of a proposed activity may be within the habitat range of the documented species for which there is evidence of past use in the general area, the Department will review the habitat specifications on the site to determine if the habitat is suitable for the specific documented species.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-1.4, the list of threatened and endangered species of flora should be limited to only those species included on the Federal threatened and endangered species list. Addition of flora to the list must be authorized by the State Legislature. The Department should revise the definition of documented habitat to limit the list of plants to only the Federal endangered species list.

RESPONSE: The definition of threatened and endangered species was not the subject of this rule proposal. Because the Department solicited comment on this definition in connection with its December 21, 1987 proposal of N.J.A.C. 7:7A, it is no longer accepting and responding to comments on this issue.

7:7A-2.5

COMMENT: One commenter stated that at N.J.A.C. 7:7A-2.5, classification of freshwater wetlands by resource value, the Department should provide information on the standard procedures for contesting a resource value classification.

RESPONSE: N.J.A.C. 7:7A-2.5(b)2i outlines the procedure for requesting a downgrade of the Department's determination of exceptional resource value. To contest the resource value classification of ordinary or intermediate value wetlands, the applicant must establish that a wetland does not meet the definition of these classifications set forth at N.J.A.C. 7:7A-2.5(c) and (d). If the classification is the basis for a waiver decision, the decision can be appealed according to the procedure for appeals of permit decisions outlined in N.J.A.C. 7:7A-12.8.

COMMENT: A commenter suggested changes to the definitions at N.J.A.C. 7:7A-2.5(c), regarding ordinary resource value freshwater wetlands.

RESPONSE: This provision is beyond the scope of the proposal. Opportunity for comment was provided in connection with prior rulemaking, with a close of the comment period thereon, on February 20, 1988.

7:7A-6.1

COMMENTS: Several commenters stated that N.J.A.C. 7:7A-6.1(a) states that "a transition area serves . . ." various functions. The Act, at Section 16, states that "a transition area shall serve. . ." various functions. By making this language change the rule proposal implies that every land area adjacent to a freshwater wetlands serves each function listed, is worthy of maximum protection and is therefore a transition area. The commenters stated that not every area adjacent to a freshwater wetlands serves all the listed functions. For example, existing developments adjacent to wetlands, such as buildings, parking lots, roads or railroads, do not provide the functions or values of a transition area. This fact should be considered in determining the size of a transition area so that areas adjacent to freshwater wetlands which do not serve all these functions are not accorded maximum protection. The language should be changed to quote the statute.

RESPONSE: The Department believes that the commenter has misinterpreted the statute. The Act identifies any area adjacent to a wetland of intermediate or exceptional resource value as a transition area.

COMMENT: N.J.A.C. 7:7A-6.1(b)7 states that a transition area may serve as "a sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands and nearby waterways." One commenter suggested that the rule be modified to read "a sediment and storm water control area to reduce the secondary adverse effects of development or disturbance upon freshwater wetlands, freshwater wetlands flora and fauna, and nearby waterways."

RESPONSE: N.J.A.C. 7:7A-6.1(b)7 has been clarified to include flora and fauna, to express the fact that such are implied by the term freshwater wetlands, however, the rule as proposed addresses all impacts, both primary and secondary, and need not be changed.

COMMENT: One commenter suggested that in N.J.A.C. 7:7A-6.1(a)2, the phrase "freshwater wetlands species" be changed to read "freshwater wetlands flora and fauna".

RESPONSE: The term "species" includes both flora and fauna, so the change is unnecessary.

COMMENT: Several commenters expressed their support for N.J.A.C. 7:7A-6.1(b) which states that both acts and acts of omission that adversely affect the functions of a transition area shall be deemed inconsistent with the general provisions found at N.J.A.C. 7:7A-6.1(a) and N.J.S.A. 13:9B-16a. An act of omission, such as failure to place silt fences, could cause the deposition of silt and eroded materials and adversely affect reptile and amphibian species either within the transition area or within the wetland.

RESPONSE: The Department acknowledges this comment in support of the rules.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.1(b), "acts or acts of omission" should be expanded to read "acts or acts of omission, individually or in combination."

RESPONSE: The Department believes that the proposed language would not improve or change the meaning of this section.

COMMENT: All of N.J.A.C. 7:7A-6.1(b) as proposed is beyond the authority of the Act because it allows the Department to regulate acts or omissions not included in the statute, such as "noise traffic, and other . . . indirect human impacts . . ."

RESPONSE: The provision has been clarified to indicate that the rule does not regulate activities which are not in the transition area.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.1(b)5, regarding value and functions of a transition area, should be modified to limit only "detrimental" human activities in close proximity to wetlands. Human activities such as passive recreation and environmental education would be allowed by this change.

RESPONSE: Activities such as walking through a transition are or a wetland area not regulated activities. Environmental education and passive recreation are allowed in the wetlands or transition areas without a permit or waiver provided they do not result in any regulated or prohibited activities.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.1(b)6 and 7, describing functions of a transition area, the reference to streams and waterways should be eliminated since the statute applies only to transition areas adjacent to freshwater wetlands and is not applicable to waterways or streams.

RESPONSE: The Act and the rules clearly state that the transition area rules regulate only areas adjacent to freshwater wetlands of intermediate and exceptional resource value. However, these areas are commonly associated with streams and waterways which is why these were included in the list of functions of a transition area.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.1(b)7, regarding values and functions of transition areas, should be deleted because transition areas are designed to protect wetlands. Therefore, stormwater quality basins should be permitted within the transition area.

RESPONSE: N.J.A.C. 7:7A-6.1(b) lists the natural values and functions of transition areas. The construction of a stormwater management facility in a transition area has significant potential adverse impacts on the adjacent wetlands and is therefore regulated by the Department as required by the Act at section 18.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.1(c) should require a transition area adjacent to State open waters.

RESPONSE: The Act requires transition areas only adjacent to freshwater wetlands.

COMMENT: N.J.A.C. 7:7A-6.1(d) and (e) sets the Act's maximum transition area widths for both exceptional and intermediate resource value freshwater wetlands as the regulatory minimum widths. This fails to consider the statutory scheme of establishing transition areas based upon their functional importance to the adjacent freshwater wetlands. The Department should publish its scientific justification of this in the response-to-comments document.

RESPONSE: The rule does not establish the Act's maximum widths (150 feet next to exceptional value freshwater wetlands; 50 feet next to intermediate value freshwater wetlands) as regulatory minimum widths. This provision merely establishes the standard width. The standard width can then be reduced pursuant to a Department approved waiver. The Department is not authorized by the Act to allow any prohibited activity within the statutory maximum widths without a waiver (see N.J.S.A. 13:9B-17b). The statutory scheme establishes transition area widths by starting at 150 or 50 feet, and then allowing the Department to authorize reductions only when there is "no substantial impact" on the adjacent wetland, or when there is a hardship. See N.J.S.A. 13:9B-18. The rule implements the intended statutory scheme.

COMMENT: N.J.A.C. 7:7A-6.1(d) should not regulate uplands adjacent to freshwater wetlands if they do not function as transition areas, for instance because of impervious surfaces such as roads or buildings which are located between the transition area and the proposed activities.

RESPONSE: The Act does not provide an exemption from transition area requirements for those prohibited activities which are located on the other side of an impervious surface from a freshwater wetlands. Further, there are many instances where a transition area continues to serve the functions intended by the Legislature despite some impervious cover.

COMMENT: Several commenters supported the method of determining the measurement of the standard transition area at N.J.A.C. 7:7A-6.1(g) which states that a transition area shall be measured on a horizontal scale, perpendicular to the freshwater wetlands boundary line, as opposed to measuring distances parallel to the slope of the ground. Employing this method best reflects the intent of the Act by providing adequate protection to all wetlands including those adjacent to areas with steep slopes. Additionally, in many areas of the State this may give some added protection to steep scenic vistas, and overlooks.

RESPONSE: The Department acknowledges this comment in support of the rules.

7:7A-6.2

COMMENT: The rules should add a provision allowing transition area elimination for water dependent activities such as beaches, boat ramps, and aesthetic views. Otherwise, these are de facto prohibited activities.

RESPONSE: All of the above mentioned activities are water dependent and would require either a freshwater wetland or State open water permit. N.J.A.C. 7:7A-7.1(f) provides an automatic transition area waiver to provide access to perform permitted, regulated activities.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(a), the inclusion of "removal, excavation, or disturbance of the soil" as a prohibited activity would render the transition areas virtually valueless for farming and that the rules provide for no method of compensation. It was further urged that the implementation of this section of the rules be delayed until a method of equitable compensation be developed for the loss of productive crop land.

RESPONSE: As stated at N.J.A.C. 7:7A-6.2(c), the exemptions listed at N.J.A.C. 7:7A-2.7(a) including established, ongoing farming, ranching or silviculture operations on a property which have received or are eligible for farmland assessment are exempt from the requirements of the freshwater wetlands and open water fill permits, or transition area waivers. Therefore, there will be no loss of currently productive farmlands as a result of the implementation of these rules. Where a taking of property may have been effected by the Department, the Legislature has provided the option of a suit for compensation at N.J.S.A. 13:9B-22.

COMMENT: Several commenters expressed their support for section N.J.A.C. 7:7A-6.2(a) which lists the prohibited activities in transition areas verbatim from the Act.

RESPONSE: The Department acknowledges this comment in support of the rules.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(a)3, prohibited activities, it is unclear if fences are defined as structures.

RESPONSE: The Department considers fences without a permanent foundation to be temporary structures. N.J.A.C. 7:7A-6.2(b)3 provides that the "erection of temporary structures covering less than 150 square feet or less of the transition area" shall not require a waiver.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(a)5, regarding prohibited activities, the rules should allow the control of invasive, non-native plant species.

RESPONSE: The rules at N.J.A.C. 7:7A-6.2(b)1i defining normal property maintenance would allow this control.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b), regarding activities allowed in transition areas, utility companies should be granted a one-time or annual "blanket permit" for right-of-way maintenance activities.

RESPONSE: The maintenance of a right-of-way by mowing and selective cutting can be classified as "normal property maintenance" as defined at N.J.A.C. 7:7A-6.2(b)1, provided the maintenance does not result in other prohibited or regulated activities. Therefore, such maintenance would not require a waiver. However, more extensive activities may have substantial impacts, and therefore require a waiver.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b), non-prohibited activities, underground facilities should be considered a "temporary disturbance" since once in place and back-filled there is no obstruction to water flow and visual impact.

RESPONSE: Even though the ground contours of the disturbed area would be restored to preconstruction elevations, the area above such facilities is invariably maintained to allow access. This maintenance typically includes the removal of vegetation, and periodic human disturbance. These areas are almost never allowed to revert to their original state. Therefore, to the extent that these activities would constitute more than a minor and temporary disturbance, they would have a substantial impact and be prohibited. A waiver may be available.

COMMENT: Several commenters expressed their support for N.J.A.C. 7:7A-6.2(b)1i which defines normal property maintenance and limits landscape plantings to native species. This language is essential for protection of wildlife in transition zones and to ensure that invasive, non-native plants are not introduced.

RESPONSE: The Department acknowledges this comment in support of the rules; however, the rules have been modified at N.J.A.C. 7:7A-6.2(b)1 to allow limited planting of non-native vegetation as either a supplement to existing native vegetation or as a replacement of existing non-native vegetation. These plantings remain limited by the requirement that they not result in a substantial change in the characteristics of the existing transition area. In addition, clarifying language was added at N.J.A.C. 7:7A-6.2(b)1ii specifying that regrading or significant changes in the existing surface contours are not considered normal property maintenance.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b)1, normal property maintenance, it would impose undue hardship to charge homeowners $100.00 for a transition area waiver for either maintenance or development of small flower or vegetable gardens.

RESPONSE: N.J.A.C. 7:7A-6.2(b)1 was clarified to indicate that the continued cultivation or development of small home owner's gardens are classified as normal property maintenance and do not require a transition area waiver.

COMMENT: Several commenters stated that the language at N.J.A.C. 7:7A-6.2(b)1i and ii should be modified to allow a broader range of activities to be considered normal property maintenance. For example; liming, fertilizing, clear cutting, burning, limited planting of non-native species and application of herbicides should be allowed.

RESPONSE: The Department has clarified N.J.A.C. 7:7A-6.2(b)1ii to indicate that these activities are considered "normal property maintenance" only when they will not result in extensive removal or destruction of vegetation or other significant impacts to the transition area and freshwater wetlands.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.2(b)2, defining minor and temporary disturbances, should have a more stringent definition of when these activities may occur in a transition area that has been reduced pursuant to a waiver.

RESPONSE: The Department believes that the activities listed at N.J.A.C. 7:7A-6.2(b)2 would have no substantial impact on the adjacent freshwater wetland even where pursued in a transition area reduced pursuant to a waiver.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.2(b)2, in the definition of minor and temporary disturbances, improperly implies that the Department has authority to regulate activities "on land adjacent to the transition area."

RESPONSE: The commenter has misconstrued this provision. It allows temporary and minor disturbances carried out in the transition area that are a result of normal construction activities on land adjacent to the transition area, and in no way regulates construction activities outside the transition area.

COMMENT: Five commenters stated that in N.J.A.C. 7:7A-6.2(b)2i, the definition of "minor and temporary disturbances" should be modified to exclude certain activities which could have adverse environmental impacts. The placement of temporary soil erosion and sediment control structures in transition areas during construction should not be permitted. These structures could significantly change the transition area habitat for wildlife species which depend on the transition area of part of their life cycle, for example, wood turtle (Clemmys insculpta). In addition, these structures cause the accumulation of sediment which would have to be removed, causing further disturbances to the transition area. The placement of soil erosion and sediment control structures should be classified as a prohibited activity and should be regulated by the Department.

RESPONSE: The Department has clarified the rule to indicate that soil erosion and sediment control structures which cause the deposition of sediment and eroded materials are not considered minor and temporary disturbances within the meaning of N.J.A.C. 7:7A-6.2(b)2i.

COMMENT: Five commenters stated that in N.J.A.C. 7:7A-6.2(b)2i, the definition of "minor and temporary disturbances" and the activities defined with this group of disturbances should be modified to exclude certain activities which could have adverse environmental impacts. The removal of human-made debris may cause damage to the vegetation and soil in the transition area if it is performed by mechanical equipment such as bulldozers or front end loaders. The Department should condition the removal of human-made debris such that it is done without damage to woody vegetation and should require the restoration of herbaceous vegetation upon completion.

RESPONSE: The language has been clarified to indicate that, in order to be minor and temporary, non-mechanized measures must be used for debris removal.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b)2i, the definition of "minor and temporary disturbances" should include construction activities that do not encroach more than 10 feet inside the transition area.

RESPONSE: This addition would, if universally applied, reduce the protection to the freshwater wetlands afforded by the transition areas. The Act, at N.J.S.A. 13:9B-18, specifically provides for transition area width reductions through the issuance of a transition area waiver if the criteria at N.J.A.C. 7:7A-7.2(c) and 7.3(c) are met. The suggested change would significantly weaken the proposed rule, and may contravene Section 17a of the Act. Therefore the rules remain as proposed.

COMMENT: One commenter stated that the rules at N.J.A.C. 7:7A-6.2(b)2i defining minor and temporary disturbances mandate the removal of all debris. This requirement will greatly increase the cost of maintaining and clearing thousands of miles of transmission/distribution right-of-ways. Therefore, the word "removal" should be deleted from this section.

RESPONSE: The language at N.J.A.C. 7:7A-6.2(b)2i refers to the removal of human-made debris, not vegetative materials, resulting from construction activities on land adjacent to transition areas. Further, N.J.A.C. 7:7A-6.2(b) describes activities which may be conducted (that is, are not prohibited) in transition areas, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands. These activities are not required. Therefore, the rule remains as proposed.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b)2i, minor and temporary disturbances should include the placement of access roads in transition areas to facilitate the siting and maintenance of utility structures.

RESPONSE: The placement of a road, whether temporary or permanent, will require the placement of fill and/or the removal of vegetation that will result in the alteration of the transition area. The activity will, therefore, cause a substantial alteration or change of the existing characteristics of a transition area and cannot be considered a minor or temporary disturbance.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b)2i, the definition of minor and temporary disturbances should be modified to allow for temporary and minor disturbances which have minimal adverse impacts. Otherwise the term "normal construction activities" is vague and useless.

RESPONSE: Section 17a of the Act exempts only minor and temporary disturbances "resulting from, and necessary for, normal construction activities." The rule has been clarified at N.J.A.C. 7:7A-6.2(b)2i to set forth examples of this class of activities.

COMMENT: Five commenters stated that in N.J.A.C. 7:7A-6.2(b)3i, the definition of "temporary structures" should be modified to exclude certain activities which could have adverse environmental impacts. The erection of temporary structures should be prohibited or the provision reworded such that only activities which do not disturb the vegetation, soils or hydrology should be allowed.

RESPONSE: Section 17a of the Act allows temporary structures in transition areas. The rules as proposed were written to minimize impacts from these structures (see N.J.A.C. 7:7A-6.2(b)).

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b)3i, in the definition of temporary structures, temporary structures should be allowed to remain in the transition area for two years, instead of only six months.

RESPONSE: Extending this limitation to two years would result in substantial impacts on preexisting vegetation and on the character of the transition area. Therefore, the provision remains as proposed.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-6.2(b)3i, the definition of temporary structures should not include fences.

RESPONSE: The Department disagrees. Fences which do not have permanent foundations are considered temporary structures and result in no substantial adverse impacts on the adjacent freshwater wetlands and therefore are not regulated pursuant to the Act.

COMMENT: A new provision should be added after N.J.A.C. 7:7A-6.2(b)3 which authorizes the right to rebuild, repair or replace lawfully existing structures or improvements located in transition areas.

RESPONSE: N.J.A.C. 7:7A-6.2(b)1i clearly states that normal property maintenance includes the maintenance of lawfully existing artificial and natural features. An example has been added to the rule to clarify that artificial features includes structures.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.2(b) should list activities that will not require Department approval in the transition area, to avoid spurious nuisance complaints.

RESPONSE: A list of some of these activities is provided at N.J.A.C. 7:7A-6.2(b). A complete list of all possible activities that are allowed in the transition areas without approval would be very extensive and have limited value because there could be unanticipated activities that may be conducted in the transition areas.

COMMENT: Several commenters stated that N.J.A.C. 7:7A-6.2(c) should exempt whole projects with United States Army Corps of Engineers (Corps) Nationwide Permits, not just approved activities. The rules exempt only activities.

RESPONSE: When the Corps reviews a proposed project under a Nationwide permit, it evaluates only those activities over which it has jurisdiction. Therefore, only those activities which are authorized by the Nationwide approval are exempted from freshwater wetlands and transition area requirements. To exempt project portions which had received no environmental review would contravene the strict protective intent of the Act.

COMMENT: N.J.A.C. 7:7A-6.2(c) should provide automatic transition area waivers for activities permitted under Corps Nationwide permits.

RESPONSE: The Act, at Section 4, exempts only activities approved pursuant to a Corps permit prior to July 1, 1988. It does not exempt activities approved after that date.

COMMENT: Many commenters stated that N.J.A.C. 7:7A-6.2(c) errs in its interpretation of the Act regarding exemptions. All projects that receive preliminary site plan, subdivision, Army Corps of Engineers approval or Department freshwater wetlands approvals prior to July 1, 1989 should be exempt from transition area requirements. This incorrect interpretation will cost the regulated community tens of millions of dollars without saving any additional freshwater wetlands.

RESPONSE: The Act is clear in Section 4d that projects not subject to the jurisdiction of the U.S. Army Corps of Engineers and for which preliminary site or subdivision applications have been approved prior to the effective date of this Act shall not require transition areas. Since the Legislature enacted the Act in July of 1987, there has been ample notice to the regulated community that regulation of transition areas will begin on July 1, 1989. It would contravene the intent of the Legislature, and may allow destruction of many acres of transition areas and result in substantial impacts to the adjacent freshwater wetlands, if the Department were to create numerous exemptions from transition area requirements. In addition, persons with projects which are already under construction on July 1,1989 will be allowed to complete them because activities for which on-site construction, excluding site preparation, was in progress in the transition area prior to July 1, 1989, shall not require a transition area waiver. "Construction, excluding site preparation" encompasses projects which have completed construction of all proposed foundations. In order for such improvements to be considered "in progress" before July 1, 1989, a valid building permit issued prior to that date and proof that the local building inspector has completed the inspection listed at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3), inspection of the finished foundation, must be provided. "Construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other work or earth work associated with preparing a site for construction. This provides ample allowance for persons with projects in progress as of July 1, 1989. Therefore, the rule will remain as proposed.

COMMENT: One commenter stated that all normal farming activities should be exempt from the transition area rules. This should include converting previously non-cultivated land within the transition area to cultivated land, and also should include the installation of essential soil conservation structures without obtaining a transition area waiver. There should not be any unspecified farming uses which would necessitate even a general permit procedure.

RESPONSE: N.J.A.C. 7:7A-6.2(c) states that all ongoing farming activities may continue in the transition area without applying to the Department for a transition area waiver. However, the expansion of farming activities and the installation of soil conservation structures into previously unfarmed transition areas would be prohibited activities and will require a transition area waiver. To allow all new farming and soil conservation practices without review would allow abuse of the waiver system, and would contravene the protective intent of the Act.

COMMENT: One commenter stated that the Department incorrectly interpreted the effective date of the Act's transition area requirements at N.J.A.C. 7:7A-6.2(c). The transition area requirements must conform to the Act, and therefore should be effective as of July 1, 1988. Extending the effective date allows developers almost two years from enactment of the Act to gain exemption. The Legislature did not intend to provide this much time. This interpretation will cause significant losses of transition areas adjacent to freshwater wetlands.

RESPONSE: Since the transition area implementation date is July 1, 1989, the Department interprets the Act to authorize the exemptions as proposed.

COMMENT: One commenter stated that N.J.A.C. 7:7A-6.2(c), allowing the exemption found at N.J.A.C. 7:7A-2.7(g) for activities authorized under U.S. Army Corps of Engineers Nationwide permits, should be eliminated because the Act at N.J.S.A. 13:9B-4 does not provide for these exemptions.

RESPONSE: The Act at subsection 4d provides an exemption for applications which have received U.S. Army Corps of Engineers approval. Since Nationwide permit approvals are a form of Corps permit approval, it is the Department's position that activities approved by the Corps under Nationwide permits prior to July 1, 1988 are exempt from transition area requirements.

7:7A-6.3

COMMENT: Many commenters felt that N.J.A.C. 7:7A-6.3 does not provide an equitable solution for applicants who are refused the right of entry to adjacent properties to conduct a wetlands investigation. The requirement of obtaining entry on neighboring land is beyond the intent of the Act.

RESPONSE: There are many cases where entry onto neighboring land is helpful or necessary for compliance with Federal or State law. If the applicant cannot obtain access to adjacent properties, the Department has provided a setback option so that the applicant can ensure compliance. In addition, there are many cases where a determination of resource value classification (available from the Department pursuant to N.J.A.C. 7:7A-8.) of the freshwater wetlands in the immediate area will show no freshwater wetlands in the area, or that all freshwater wetlands in the area are of ordinary value. In those cases, no investigation of neighboring land is necessary.

COMMENT: Three commenters felt that N.J.A.C. 7:7A-6.3 is unworkable for linear development and an alternative form of access agreement should be accepted by the Department. A landowner could stop or delay a proposed project simply by refusing access.

RESPONSE: The Department does not have the resources to evaluate a different access agreement for every project. Adjacent landowners can be offered consideration, such as a copy of the wetlands delineation report, as compensation for the right to enter. The rule will remain as proposed.

COMMENT: Several commenters stated that N.J.A.C. 7:7A-6.3, regarding transition areas due to the presence of wetlands on adjacent properties, should be modified to place the burden of determining the presence, extent, and classification of freshwater wetlands on properties adjacent to the applicant's property on the Department. If applicants are refused access to adjacent properties, the Department should conduct the required investigation.

RESPONSE: The Department does not have the resources to investigate every piece of property in the State to which an applicant may have difficulty obtaining entry. In addition, this suggested change would provide no incentive for a transition area waiver applicant to sincerely try to obtain approval from neighboring property owners. Lastly, access to the adjacent property is to the applicant's benefit, and therefore should not be the responsibility of the Department.

COMMENT: One commenter suggested that N.J.A.C. 7:7A-6.3 should state that, if an applicant is refused access to adjacent properties, the applicant is entitled to assume that any wetlands located adjacent to the subject property are of ordinary resource value and will require no transition area.

RESPONSE: Making an assumption that a freshwater wetland is ordinary and requiring no transition area would contravene the Act's mandate to preserve transition areas around all freshwater wetlands of intermediate and exceptional resource value. The Act did not provide an exemption from transition area requirements for projects in areas adjacent to freshwater wetlands whose resource value is unknown to the applicant.

COMMENT: Several commenters stated that N.J.A.C. 7:7A-6.3 should be modified to allow the applicant to demonstrate the likely presence or resource value of freshwater wetlands on adjacent property using any reasonable means (soil maps, U.S. Fish and Wildlife National Wetlands Inventory maps, aerial photographs, etc.).

RESPONSE: The currently available maps and photographs are not sufficiently detailed and accurate to reliably indicate the presence of freshwater wetlands.

COMMENT: One commenter suggested that N.J.A.C. 7:7A-6.3 should state that, if an applicant is refused access to adjacent properties, the applicant is entitled to assume that any wetlands located adjacent to the subject property are of intermediate resource value and will require only the statutory minimum width of 25 foot transition area .

RESPONSE: Making an assumption that a freshwater wetland is of intermediate value and requiring only the statutory minimum 25 foot width transition area would contravene the Act's mandate to preserve certain sized transition areas around all freshwater wetlands of intermediate and exceptional resource value. The Act did not provide special reduction standards for projects in areas adjacent to freshwater wetlands whose resource value is unknown to the applicant.

COMMENT: One commenter stated that in the event a transition area on a parcel is found to exist solely as a result of the presence of freshwater wetlands on adjacent property, said condition should be deemed an extraordinary hardship for the purposes of determining whether to grant a transition area waiver.

RESPONSE: The presence of transition areas due to the existence of wetlands on adjacent properties does not meet the criteria for "extraordinary hardship" set forth at Section 18a of the Act.

COMMENT: One commenter stated that the Department should issue an order to allow the subject property owner access to an adjacent property for the purposes of a wetland delineation if access cannot be obtained with an agreement pursuant to N.J.A.C. 7:7A-7.6(a)7. If the order is not issued or the delineation completed by the Department within 10 days, the applicant should be able to assume that the wetlands are of ordinary value, and no transition area would be required.

RESPONSE: The Department does not believe it has the authority to order a landowner to allow a neighboring landowner onto a property for the purposes of conducting a freshwater wetlands delineation. Nor does the Department have the resources to delineate all properties for which an applicant asserts that they cannot obtain entry.

COMMENT: One commenter stated that the Department should notify the adjacent landowner that the Department or its designated representative will be entering the land for the purposes of inspection if that landowner will not sign an agreement pursuant to N.J.A.C. 7:7A-7.6(a)7. The Department should then appoint the applicant's consultant as its agent, to enter the property and perform the delineation.

RESPONSE: The Department does not believe it has the authority to order an adjacent landowner to allow a third party onto their property for the purpose of conducting a freshwater wetlands delineation.

COMMENT: At N.J.A.C. 7:7A-6 Regulatory Appendix B, the Right of Entry agreement should be relaxed to allow the applicant to provide any reasonable evidence of an agreement allowing entry. In particular, the reference to "good and sufficient consideration" is unnecessarily cumbersome and may encourage a practice of charging for the right of entry.

RESPONSE: It is not clear what the commenter means by "any reasonable evidence of an agreement." In order to preclude any potential employee and Departmental liability in connection with its entry onto the site, it is necessary for the Department inspection staff to have a signed, written approval for site entry. The Department has provided a standard agreement to ensure consistency, and to provide a simple and inexpensive legal form for applicants. The reference to consideration is necessary because, in order to have a legal contract, there must be an exchange of service or goods for payment. One possible item to supply to a neighbor in exchange for entry is a copy of the wetlands report, which has real and tangible value and would constitute "good and sufficient consideration."

COMMENT: At N.J.A.C. 7:7A-6 Regulatory Appendix B, the Right of Entry agreement should be changed from "good and sufficient consideration" to read "the grantor, in return for providing access, will be furnished by the applicant with copies of the maps, reports, and reply letters from the Department at the applicant's expense."

RESPONSE: It is not the intent of the Department to structure the terms of the Right of Entry agreement beyond what is necessary to effect its purpose of applicant and Departmental entry for the limited purposes of a specific site inspection or survey. So long as the consideration given is legally sufficient, its form is up to the parties to negotiate.

COMMENT: At N.J.A.C. 7:7A-6 Regulatory Appendix B, the Right of entry agreement should be simplified so that the agreement is understandable to lay people.

RESPONSE: The Right of Entry agreement contains all the necessary language to be a legally binding contract. Therefore, it will remain as proposed.

COMMENT: One commenter stated that the required Right of Entry agreement found at N.J.A.C. 7:7A-6 Regulatory Appendix B would be an administrative burden and time consuming endeavor for a linear facility development. For example, obtaining these agreements for a facility of 10 miles or more, especially in view of absentee owners, would be onerous.

RESPONSE: The Department does not have the resources to evaluate different access agreements for every project. In addition, the Department must have written authority to enter property for inspection purposes. Therefore, the rule remains as proposed.

7:7A-7.1

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.1, general provisions for granting transition area waivers, the language should be modified to require that the Department consider the cumulative impacts on the wetlands of all transition area waivers granted for that site.

RESPONSE: The Act at Section 18b authorizes the use of multiple waivers. However, since the granting of transition area waivers is authorized only where it will not result in substantial impacts to the freshwater wetlands or to the functions of the transition areas, cumulative impacts will be evaluated in the Department's assessment set forth in N.J.A.C. 7:7A-7.1(a).

COMMENT: One commenter stated that by allowing the use of multiple waivers at N.J.A.C. 7:7A-7.1(c)4, the transition area could be significantly reduced in size and its ecological value compromised.

RESPONSE: The Act at Section 18b authorizes the use of multiple waivers. However, it is the intent of the rules to ensure that the granting of transition area waivers will not result in substantial impacts to the freshwater wetlands or to the functions of the transition areas. The rules' formula for evaluating this will prevent cumulative impacts.

COMMENT: One commenter recommended that the language at N.J.A.C. 7:7A-7.1(d) which states that "reduction or modification of a transition area shall be based solely on the transition area adjacent to one freshwater wetland," be changed to read "based solely on the transition area adjacent to a particular freshwater wetland." This change will clarify that a transition area waiver will be modified for only a specific wetland. For example, a transition area waiver will not allow the elimination or modification of a transition area surrounding a specific wetland while adding to the transition area associated with a different wetland onsite.

RESPONSE: The Department agrees and the language has been clarified at N.J.A.C. 7:7A-7.1(d).

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.1(e), regarding consideration of additional information during review of a transition area waiver, this language should specify that the additional information shall become part of the public record.

RESPONSE: All information contained in applications to the Department for transition area waivers are public records and are available for review at Department offices during normal business hours upon the filing of a written request to the Division of Coastal Resources Records Custodian. Therefore, no such change is necessary.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.1(f), regarding authorization for a transition area waiver to accomplish activities with freshwater wetlands permits, engineers must be available on staff to determine what encroachment in the transition area will be required to accomplish a permitted activity.

RESPONSE: The Department has engineers on staff to assist in its determination as it deems necessary.

7:7A-7.2

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.2, regarding transition area waivers for exceptional resource value wetlands, should include a transition area waiver to reduce the transition area to 75 feet if the applicant includes the planting of native trees and shrubs, and the removal of non-native plants in the remaining transition area.

RESPONSE: The Department has taken into account a number of factors in the determination of transition area reductions and the inclusion of a planting plan alone would generally be insufficient to alleviate substantial adverse impacts. Therefore, the rule remains as proposed.

COMMENT: A commenter stated that at N.J.A.C. 7:7A-7.2 and 7.3, regarding transition area waivers for exceptional resource value and intermediate resource value wetlands, transition area waivers should be considered for areas with steep slopes. These slopes are an integral part of most wetland systems and should not be considered as a limitation to the use of transition area waivers.

RESPONSE: Wetland areas with adjacent steep slopes are especially susceptible to adverse sediment and erosion impacts, as well as the transport of other pollutants associated with these sediments. Where adjacent slopes are steep, wetlands protection with the maximum transition area widths is critical. Therefore, the rule will remain as proposed.

COMMENT: Twenty-two commenters stated their support for the proposed N.J.A.C. 7:7A-7.2 since it provides predictability to applicants for transition area width reductions and provide clear direction for the Department in implementing the program. Also, due to the compromised size of the transition areas during the drafting of the Act, the restrictions in the proposed rule are necessary to maintain the integrity of important and valuable freshwater wetlands.

RESPONSE: The Department acknowledges this comment in support of the rule.

COMMENT: At N.J.A.C. 7:7A-7.2, it appears that no consideration was given to the soil type on a project site during the development of the transition area waiver matrix.

RESPONSE: The "Wetland Buffer Delineation Method," prepared by Rogers, Golden and Halpern, Inc., on which the transition area waiver matrix was partially based, factored soil types into the methodology. The soil type has been included in the calculation of the allowable transition area reduction width figures included in the matrix.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.2(a) states that a transition area adjacent to an exceptional resource value wetland shall not be reduced to less than 75 feet. This limit would severely restrict necessary expansions of wastewater or water treatment facilities which are located on small sites.

RESPONSE: This restriction is stated at section 18c of the Act. The Act does not provide a hardship waiver to reduce a transition area to below 75 feet for necessary expansion of wastewater treatment facilities.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.3(a) prohibits transition area waiver reductions for intermediate resource value freshwater wetlands to below 25 feet. This limit could cause a hardship for persons siting required improvements to existing water and wastewater treatment facilities.

RESPONSE: Although a reduction below 25 feet is not available pursuant to N.J.A.C. 7:7A-7.3(a), by using a transition area averaging plan as provided at N.J.A.C. 7:7A-7.5, it may be possible to adjust the shape of the transition area and allow for the required expansion.

COMMENT: The proposed new rules ignore the needs of publicly and privately owned treatment works adjacent to freshwater wetlands. These should be exempt from the rules, or given special consideration and not subjected to the same limits as other proposed projects. The Department requires these facilities to be upgraded to attain water quality goals, and the rules should facilitate this objective.

RESPONSE: The Division of Coastal Resources recognizes the overall goals of water treatment programs. However, these programs often fail to address freshwater wetlands protection issues. The Act mandates the careful review of all projects in the transition areas. The Act does not provide an exemption for all water treatment activities. The Bureau of Freshwater Wetlands is working to coordinate with other programs which affect projects in freshwater wetlands and transition areas, in order to alleviate potential confusion and conflicts and to facilitate timely permit reviews.

COMMENT: Five commenters suggested that, to more closely follow the Act, all of N.J.A.C. 7:7A-7.2(b)1 should be changed from allowing a transition area waiver only where there is "no substantial impact as determined pursuant to (b), (c), and (d) below", to "no substantial impact on the water quality of FW1 waters and FW2 trout production waters" or "documented habitat for threatened or endangered species as defined in N.J.A.C. 7:7A-1.4, based on the methodology at (a) below."

RESPONSE: This restatement of the Act's language considerably narrows the intent of Section 18 of the Act. There the Act states that there must be "no substantial impact" on "the adjacent freshwater wetlands." First, the commenter's suggested language eliminates all impacts from consideration except those on water quality. Second, the language limits the class of freshwater wetlands protected from impacts caused by transition areas to only FW1 and FW2 trout production waters, thus allowing substantial impacts on other types of exceptional resource value freshwater wetlands, such as tributaries to those waters. It is not clear what methodology is referred to in the suggested language, as there is no "(a) below" in the provision addressed.

COMMENT: Several commenters stated that N.J.A.C. 7:7A-7.2(b) and 7.3(b), conditions for granting a waiver for exceptional and intermediate resource value wetlands, respectively, should be deleted completely or modified to establish a reasonable criteria for determining substantial impact. As presently structured, it appears that practically no activities will be granted transition area waiver reductions.

RESPONSE: The Act allows transition area reductions only when there is no substantial impact. The rules as proposed set forth the Department's method for determining substantial impact. Through the use of the "Wetlands Buffer Delineation Method," prepared by Rogers, Golden and Halpern, which is currently the best state-of-the-art data available regarding the determination of the appropriate transition area widths, and through the experience of Department staff and others, these minimum criteria are intended to carry out the Act's mandate. For those projects with special or unusual circumstances, which do not qualify for a finding of no substantial impact under the Department's criteria for transition area reductions at N.J.A.C. 7:7A-7.2, 7.3, 7.4 and 7.5, the rules provide the option for the applicant to try to demonstrate no substantial impacts on a case-by-case basis (see N.J.A.C. 7:7A-7.2(g)).

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(b)1, regarding conditions for granting a transition area waiver, the wording should be modified to state that, "the proposed activity also should have no significant impacts on the transition area pursuant to N.J.A.C. 7:7A-6.1(a)1."

RESPONSE: It is beyond the scope of the Act to provide this protection to the transition area.

COMMENT: Several commenters stated that at N.J.A.C. 7:7A-7.2(c), the Department has created a "Catch 22" situation, where activities adjacent to all freshwater wetlands of exceptional resource value are deemed to have a substantial impact, and, therefore, no transition area reduction waivers can be obtained under this section in transition areas adjacent to exceptional value wetlands.

RESPONSE: The criteria at N.J.A.C. 7:7A-7.2(c)3 do not prohibit waivers in transition areas adjacent to all exceptional resource value freshwater wetlands. The type of waiver covered by this provision remains available in transition areas adjacent to exceptional resource value wetlands which are tributary to FW1 or FW2 trout production waters. In addition, some special activity waivers (see N.J.A.C. 7:7A-7.4), and transition area averaging plans (see N.J.A.C. 7:7A-7.5) are available in transition areas adjacent to exceptional resource value wetlands. Finally, for those projects with special circumstances which do not qualify for a transition area waiver under the Department's criteria for reductions at N.J.A.C. 7:7A-7.2(c) and 7.3(c), the applicant has the option to try to demonstrate no substantial impact on a case-by-case basis. The Department has added clarifying language at N.J.A.C. 7:7A-7.2(g) to provide guidance to applicants on how to demonstrate no substantial impact on a case-by-case basis through the use of scientific studies and models.

COMMENT: Twenty commenters stated that at N.J.A.C. 7:7A-7.2(c), the Department's list of conditions which will be deemed to cause a substantial impact properly includes adjacency to EPA wetlands, to a Federal or State Wild and Scenic River or study river, to FW1 or FW2 trout production waters, to wildlife refuges, to threatened and endangered species habitat; the presence of acidic soils, and the pursuit of several activities covered by (SIC) categories. These conditions were not authorized by the Act as criteria for determining "substantial impact".

RESPONSE: The Department was charged by the Legislature with implementing the Act. One part of that implementation requires the development of criteria for determining when an activity in a transition area will have no substantial impact on the adjacent wetland. The provisions at N.J.A.C. 7:7A-7.2(c) provide environmentally sound, consistent and predictable criteria for determining substantial impact, based upon the best available scientific data. Accordingly, the rule remains as proposed.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(c)4, a list of the waterways in the Federal and State Wild and Scenic River System should be provided.

RESPONSE: A list of the designated waterways is available from the New Jersey Department of Environmental Protection, Division of Parks and Forestry, CN 401, Trenton, New Jersey 08625.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(c)7iii, a distinction should be made between septic systems located in, or adjacent to, the transition area, and those located well away from the transition area and associated wetland.

RESPONSE: Because of the tendency of contamination from septic systems to travel long distances underground this limit is necessary to reduce the impacts of wastewater effluent upon wetlands and the ground and surface waters associated with them. Therefore, the provision remains as proposed.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(c)iii, a distinction should be made between development with onsite septic systems and those that are connected to regional sewer systems.

RESPONSE: The rules do make this distinction at N.J.A.C. 7:7A-7.2(c)7iii. Developments with sewer connections are not precluded from transition area waiver reductions merely because they connect to regional sewer systems.

COMMENT: Twenty-five commenters stated that at N.J.A.C. 7:7A-7.2(c)6 and 7.3(c)5, which describe conditions which will be deemed to cause substantial impacts, the phrase "the property is located adjacent to a local, State or Federal wildlife refuge, sanctuary or management area" should be reworded to include properties listed on the New Jersey Register of Natural Areas. The language should read "The property is located adjacent to a public or private local, State, or Federal wildlife refuge, sanctuary, management area, park, or forest, or property included in the New Jersey Register of Natural Areas."

RESPONSE: The Department has clarified the language at N.J.A.C. 7:7A-7.2(c)5 and N.J.A.C. 7:7A-7.3(c)6 to indicate that areas listed on the New Jersey Register of Natural Areas and public parks are included. The intent of the provision was to include registered natural areas and managed, publicly owned areas within the coverage of the provision.

COMMENT: At N.J.A.C. 7:7A-7.2(c)7i, listing conditions determining substantial impact, several commenters felt that the use of the Standard Industrial Classification (SIC) codes was inappropriate and irrelevant to the issue of substantial impact. Further, the use of SIC codes is beyond the scope of the Act.

RESPONSE: The potential impact of an industrial facility constructed in a transition area adjacent to a freshwater wetlands will vary with the types of material used in the facility, and the types of activities conducted at the facility. Therefore, it is appropriate to use SIC codes as a standard identifier for industries which may have an impact. Those included on the list at N.J.A.C. 7:7A-7.2(c)7 have been determined to pose an unacceptable level of risk of substantial impact on the adjacent freshwater wetlands.

COMMENT: The language in N.J.A.C. 7:7A-7.2(c) and 7.3(c) states that, for the purposes of N.J.A.C. 7:7A-7, a substantial impact shall be deemed to exist on freshwater wetlands of exceptional or intermediate resource value if one or more of the following are true, "unless the applicant demonstrates otherwise to the Department's satisfaction." These provisions should be modified to exclude "unless the applicant demonstrates otherwise to the Department's satisfaction." This phrase compromises the intent of the Act, and the rules already provide ample opportunity for applicants to reduce transition area widths through the averaging plan and through the provision for extraordinary hardship.

RESPONSE: The provision is necessary for those persons with special activities or circumstances which, although they do not qualify for a transition area reduction under the Department's criteria at N.J.A.C. 7:7A-7.2(c) and 7.3(c), still may be able to prove that no substantial impact will arise from the proposed activity. The Department has, however, added clarifying language at N.J.A.C. 7:7A-7.2(g) to provide guidance to applicants on how to demonstrate no substantial impact on a case-by-case basis through the use of scientific studies and models.

COMMENT: Several commenters stated that because of the language in N.J.A.C. 7:7A-7.2(c) and 7.3(c) which states: "For the purposes of 7:7A-7, a substantial impact shall be deemed to exist on freshwater wetland of exceptional or intermediate resource value if one or more of the following are true, unless the applicant demonstrates otherwise to the Department's satisfaction" should be modified to exclude "unless the applicant demonstrates otherwise to the Department's satisfaction." Instead, the Department should provide a set of standards by which to judge potential impacts of activities on adjacent wetlands.

RESPONSE: The rules at N.J.A.C. 7:7A-7.2(c), (d), (e), and 7.3(c) and (d) provide the Department's standards for determining potential impacts of activities on adjacent wetlands. The provision is necessary for those persons with special activities or circumstances which, although they do not qualify for a transition area reduction under the Department's criteria at N.J.A.C. 7:7A-7.2(c) and 7.3(c), still may be able to prove that no substantial impact will arise from the proposed activity. The Department has, however, added clarifying language at N.J.A.C. 7:7A-7.2(g) to provide guidance to applicants on how to demonstrate no substantial impact on a case-by-case basis through the use of scientific studies and models.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(c)5, in the definition of acid producing soils, a citation is incorrect.

RESPONSE: The citation at N.J.A.C. 7:7A-7.2(c)5 has been clarified to read N.J.A.C. 7:13-5.10, to address the commenter's concerns.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d) the Department should amend the proposed language to allow a more liberal application of this specific transition area waiver if it can be demonstrated that the activity will not have a substantial impact on freshwater wetlands.

RESPONSE: This specific transition area waiver was proposed as a means for providing a method of reducing the transition area for recently farmed land where the vegetational characteristics would prohibit a transition area waiver reduction under the standard criteria. Any person with a project which cannot qualify for a transition area reduction under the criteria at N.J.A.C. 7:7A-7.2(d) has the option to attempt to demonstrate no substantial impact through the use of scientific studies and models, using the guidelines at N.J.A.C. 7:7A-7.2(g).

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d), concerning the transition area waiver designed for replanted farmland, if all the conditions are met the transition area should be reduced to 75 feet, as intended by the Act.

RESPONSE: This specific transition area waiver was proposed as a means for providing a method of reducing the transition area for recently farmed land where the vegetational characteristics would prohibit a transition area waiver reduction under the standard criteria. The Act does not intend reductions to 75 feet unless there will be no substantial impact on the adjacent wetland. Since a replanting scheme can never guarantee a value equivalent to that of natural vegetation, a reduction to no less than 100 feet is required to ensure that there will be no substantial impact on the adjacent wetland.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d), it should be clarified whether the required 85 percent areal coverage refers to pre-existing plus newly planted vegetation, or to 85 percent coverage of the newly planted vegetation only. How is the 85 percent areal coverage calculated?

RESPONSE: N.J.A.C. 7:7A-7.2(d) states that the 85 percent areal coverage refers to scrub-shrub and tree canopy coverage that is newly planted since, in order to qualify for this waiver, the existing vegetational community must be either bare ground or herbaceous (see N.J.A.C. 7:7A-7.2(d)2). The replanting project must cover 85 percent of the dedicated 100 foot transition area.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d), it is unreasonable that the Department should require planting of shrubs and trees in an area containing dense, varied herbaceous cover, since these plantings would change the existing value with regard to wildlife habitat and water quality maintenance and could result in a decrease in the value of the transition area.

RESPONSE: The Department disagrees. The addition of shrub and tree species to any existing herbaceous cover will result in a heightened ability of the transition area to improve water quality and may result in positive benefits to the transition area's value as wildlife habitat.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d)4, the criteria for a transition area waiver reduction for recently farmed areas, the required use of native plants may not achieve the general intent of the Act for soil stabilization, and for filtration for enhancing water quality.

RESPONSE: The use of native plant species is required in order to encourage the development of a natural transition area, and to discourage the use of potentially invasive non-native species. Accordingly, the rule remains as proposed.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d)4, concerning the criteria for a transition area waiver reduction for replanting farmland, there appears to be an inadequate supply of native vegetation associated with wetlands available for purchase. This will hinder compliance with the rule.

RESPONSE: The native species required by this section are not necessarily wetlands species and should be commercially available. Transplanting of some existing vegetation from other upland portions of the site may also be an option for obtaining native species.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d)4, the criteria for a transition area waiver reduction for replanting farmland, the expertise to maintain an 85 percent success ratio of the required planting may not be available at this time.

RESPONSE: The Department believes that the expertise necessary to ensure 85 percent survival of plantings is available at this time from competent nurseries, landscape architects and biologists.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d)4, regarding the criteria for a transition area waiver reduction for replanting farmland, alternative methods of landscape design and maintenance which can be considered "best management practices" appear to be excluded from the rules.

RESPONSE: It is unclear which "best management practices" the commenter is referring to as excluded alternatives.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(d)4, regarding the criteria for a transition area waiver reduction for replanting farmland, the Department should require that planting plans be prepared by a certified landscape architect.

RESPONSE: It is not currently the Department's position to require the applicant to obtain a professionally prepared plan of plantings. The average homeowner may be capable of preparing an adequate plan and therefore is afforded this opportunity.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.2(e), in the matrix for transition area waiver reduction, should be modified to classify projects with a stormwater management plan, which captures runoff and prevents overland flow through the transition area until after stormwater has been properly filtered, as having low development intensity.

RESPONSE: There are other impacts associated with development intensity beside stormwater runoff and therefore a stormwater management plan alone is not sufficient to reduce a development intensity rating.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.2(e), in the matrix for transition area waiver reduction, should allow reductions in transition areas with slopes up to and including five percent.

RESPONSE: In order to ensure no substantial impact on adjacent wetlands, the matrix at N.J.A.C. 7:7A-7.2(e) allows reductions for transition areas with both scrub-shrub vegetational communities and slopes up to five percent and for transition areas with both forested vegetational communities and slopes of greater than 20 percent.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(e)1iii, regarding classification of vegetational communities, it is unclear why a forested area with little or no herbaceous or shrub layer (understory) will be considered a scrub-shrub vegetational community. Further, the commenter questioned whether the forested areas defined in this subparagraph are those 20 feet or less in height.

RESPONSE: According to the "Wetlands Buffer Delineation Model" by Rogers, Golden, and Halpern, a forested area is assigned the highest value for reducing sheet flow runoff velocity and for the removal of sediment, followed by scrub-shrub and then herbaceous cover or bare ground. Forested areas without a dense, varied understory are approximately as efficient in reducing sheet flow runoff velocity and sediment transport as a scrub-shrub vegetational community. Therefore, these two vegetation types are grouped together. The forested areas defined in this subparagraph are those over 20 feet tall.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(e)2, it appears that linear development would be required to use the transition area waiver matrix to obtain a transition area waiver.

RESPONSE: Waivers for linear development are available through the standards at N.J.A.C. 7:7A-7.2, 7.3, 7.4 or 7.5. The use of the matrix is not required except for waivers issued pursuant to N.J.A.C. 7:7A-7.2.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(e)2, the slope of the reduced transition area may be significantly different from that of the standard transition area. This could result in adverse impacts to the wetlands.

RESPONSE: If the existing slopes from the wetlands edge to the outside boundary of the reduced transition area are exceptionally steep this fact should generally be reflected in the resultant average slope of the standard, pre-activity transition area. Therefore, a significant transition area waiver reduction would not be approved for the site.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(e)3, which defines development intensity, the proposed language fails to take into account transition areas which drain away from a freshwater wetland. In addition, the calculation should include the total square footage of the entire property and should not exclude freshwater wetlands, State open waters, and transition areas.

RESPONSE: Stormwater runoff is not the only impact being assessed when defining development intensity. In the rare instances when the transition area drains away from the wetlands, the remaining impacts of development, for example, noise and human disturbance, must still be accounted for in defining development intensity at N.J.A.C. 7:7A-7.2(e)3. The Department did not include freshwater wetlands, State open waters, and transition areas since these areas are undevelopable. If undevelopable areas of freshwater wetlands, State open waters and transition areas were included in the calculation of development intensity, a lower development intensity would result which may allow a greater reduction of the transition area adjacent to these sensitive areas. This further reduction would result in a substantial impact to the adjacent freshwater wetland.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(e)3, in the definition of development intensity, the definition of impervious surfaces should consider the material rather than the function of the surface. For example, sidewalks and driveways are often constructed of pervious materials such as gravel.

RESPONSE: The rules at N.J.A.C. 7:7A-7.3(e)3 refer only to impervious surfaces. Sidewalks and driveways were included as typical examples of impervious cover, but only those constructed of impervious materials will be included in this calculation.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.2(e)3, in the definition of development intensity, the Department should remove the restriction that mandates municipalities to include freshwater wetlands, State open waters, and transition areas in their calculations of development intensity.

RESPONSE: The definition of development intensity found at N.J.A.C. 7:7A-7.2(e)3 does not mandate or restrict municipalities in determining development intensity for their own purposes. The rule only applies to the Department's determination of transition area widths.

COMMENT: N.J.A.C. 7:7A-7.2(e)3 defines "development intensity" using a percentage of impervious cover. This language should be changed to include any development including pervious cover.

RESPONSE: Because pervious cover does not substantially contribute to stormwater runoff, it is generally less damaging to wetlands than impervious cover. The exclusion of pervious cover from the calculation of development intensity is intended to encourage the minimization of the placement of impervious cover.

COMMENT: N.J.A.C. 7:7A-7.2(e)3 defines "development intensity" using a percentage of impervious cover. This calculation should not include pre-existing impervious cover or impervious cover on adjacent properties.

RESPONSE: The rule, as proposed, does not require the inclusion of impervious surfaces on adjacent properties in the development intensity calculation. However, pre-existing impervious cover onsite affects the potential impact of proposed development on the adjacent wetlands. Accordingly, the rule remains as proposed.

COMMENT: N.J.A.C. 7:7A-7.2(f) and 7.3(e) should say that waivers for extraordinary hardships will be allowed by the Department only if they include conditions as necessary to ensure that the resulting transition area meets the purposes and functions of the transition area as set forth in N.J.A.C. 7:7A-6.1(a) and (b). The new subsections should read "the project or activity includes conditions as necessary to ensure that it results in minimal enviromental impact and satisfies the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-6.1(a) and (b)."

RESPONSE: This change is unnecessary as the rules already provide this condition on all waivers in N.J.A.C. 7:7A-7.1(a), whether granted for hardship or other reasons.

COMMENT: The definitions of both substantial hardship and extraordinary hardship are self-contradictory. They apply only to the property owner's personal situation, and not to the parcel of land. This contradicts the Freshwater Wetlands Protection Act's focus on protection of land.

RESPONSE: Neither definition of hardship applies to the property owner's personal situation. N.J.A.C. 7:7A-7.2(f)1ii and 7.3(e)ii clearly state that the inability to obtain a reasonable use from the land must "relate to or arise out of the subject property, rather than the personal situation of the applicant."

COMMENT: At N.J.A.C. 7:7A-7.2(f) and 7.3(e), the terms "extraordinary hardship" and "substantial hardship" are defined. There appears to be no differentiation between the two terms. In addition, there should be a clearer definition of "reasonable use."

RESPONSE: As stated at N.J.A.C 7:7A-7.2(f)1, the phrase "extraordinary hardship" is modified by the term "unique and extreme circumstances," and by the requirement that this hardship does not apply to or affect other property in the local region. At N.J.A.C. 7:7A-7.3(e)1, "substantial hardship" is modified by the term "unique circumstances," and by the requirement that this hardship does not apply or affect other property in the immediate vicinity. The term "reasonable use" is a term of art frequently used in connection with the appropriation of property for use by governmental entities. Where propety is subject to State regulation, but remains susceptible to generating economic return to those having a legal interest in such property, a "reasonable use" will be found for the property and a "taking" of property, entitling the holders of such interests to cooperation from the State, will not result.

COMMENT: In the definition of "extraordinary hardship" at N.J.A.C. 7:7A-7.2(f)1, several commenters objected to the phrase "unique and extreme circumstances," and to the requirement that the hardship not apply to or affect other property in the local region.

RESPONSE: These phrases distinguish extraordinary hardship from substantial hardship. The intent of this language is to allow reductions or individuals who truly have hardships which are unique to their site. This strict standard is necessary to carry out the protection intent of the Act.

COMMENT: At N.J.A.C. 7:7A-7.2(f) and 7.3(e), the terms "extraordinary hardship" and "substantial hardship" are defined. Three commenters stated that this language should be modified to read "and this limitation does not result form any attempt by the owner or applicant to create circumstances of substantial hardship" and the remainder of the definition should be deleted. As proposed, this section unfairly penalizes the present property owner for the former use of the site.

RESPONSE: The suggested change would allow a hardship waiver for any land owner who carelessly caused their own property to become undevelopable, and for land owners whose predecessors caused such a condition. This change would allow the loss of transition areas because of poor planning practices of present and/or previous landowners. The Legislature has mandated the protection of wetlands as a valuable natural resource through the enactment of the Act. This would shift the consequences of these poor practices from the land owner to the citizens and wildlife of the State thus contravening the protective intent of the Act.

7:7A-7.3

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.3(a), regarding standards for an intermediate resource value wetlands transition area, the reference to N.J.A.C. 7:7A-7.2(f) is incorrect and should read N.J.A.C. 7:7A-7.1(f).

RESPONSE: The citation at N.J.A.C. 7:7A-7.3(a) has been corrected to read N.J.A.C. 7:7A-7.1(f).

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.3(c), regarding limitations to the use of transition area waiver reductions for intermediate resource value wetlands, the Act does not authorize the Department to regulate critical habitats for flora and fauna, wild and scenic study rivers. EPA priority wetlands, specific land uses (SIC codes), or natural conditions such as acid soils. The recommendation was made that this section be deleted in its entirety.

RESPONSE: The Department was charged by section 17 of the Act to allow prohibited activities in a transition area only if they would not result in substantial impacts to adjacent wetlands. The listed criteria at N.J.A.C. 7:7A-7.3(c) all relate to the impact of an activity on a freshwater wetlands. For example, the presence of acid soils in a transition area greatly increases the impact of any soil disturbances on the adjacent wetland (see N.J.A.C. 7:7A-7.3(c)4). Similarly, development activities such as traffic, noise, and human disturbance represent greater potential impacts to wetlands with critical habitat than to other wetlands (see N.J.A.C. 7:7A-7.3(c)2).

COMMENT: One commenter expressed support for N.J.A.C. 7:7A-7.3(c)2, which provides protection for transition areas adjacent to wetlands that are critical habitat for species other than those that are threatened and endangered.

RESPONSE: The Department acknowledges this comment in support of the rules.

COMMENT: A commenter suggested the addition of "ecologically important, endangered or threatened plants and animals" to the definition of critical habitat at N.J.A.C. 7:7A-7.3(c)2.

RESPONSE: This addition would not be appropriate because, if threatened or endangered species were present, the freshwater wetlands would be classified as exceptional resource value freshwater wetlands, and would be covered by N.J.A.C. 7:7A-7.2, rather than 7.3.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.3(c)2, the term "critical habitat" is not defined and gives the Department broad authority in identifying areas that cannot have reduced transition areas. In addition, the Department has included a definition of critical habitat which may be based on the presence of flora which is "uncommon". All possible components of critical habitat should be defined and lists should be published for review.

RESPONSE: The rule defines critical habitat in the provision cited by the commenter and identifies the principal components thereof. Further listing and publication of "all possible components of critical habitat" would be of little value and an unnecessary use of the Department's limited resources.

COMMENT: Several commenters stated that the citation at N.J.A.C. 7:7A-7.3(c)6 should read as N.J.A.C. 7:7A-7.2(c)7, instead of N.J.A.C. 7:7A-7.2(c)6.

RESPONSE: The citation at N.J.A.C. 7:7A-7.3(c)6 has been corrected to read N.J.A.C. 7:7A-7.2(c)7.

COMMENT: One commenter stated that under N.J.A.C. 7:7A-7.3(d), the criteria for transition area waiver reductions, paragraphs 1, 2, 3 and 4 should apply only if a project does not include a stormwater management system. If the project does include a stormwater management system, then the transition area width should be reduced to 25 feet regardless of whether the project meets these criteria.

RESPONSE: There are other impacts associated with development intensity beside stormwater runoff. Therefore a stormwater management system alone is not sufficient to reduce a development intensity rating.

COMMENT: Two commenters stated that a matrix at N.J.A.C. 7:7A-7.3(d) would be helpful to calculate the width of the transition area.

RESPONSE: Due to the limited number of situations where a waiver reduction will be permitted, the Department believes that a matrix diagramming the information at N.J.A.C. 7:7A-7.3(d) is not warranted.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.3(d)3, the transition area waiver should reduce the width of the transition area to 45 feet instead of to 35 feet as stated.

RESPONSE: The Department disagrees. Based on the expertise and judgement of Department staff, and on the information in the "Wetlands Buffer Delineation Model" by Rogers, Golden, and Halpern, a width of 35 feet will produce no substantial impact on the adjacent wetlands.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.3(e), in the definition of substantial hardship, should be rewritten to equate a monetary value on the term substantial hardship. Measuring substantial hardship in monetary terms would be a more practical way to provide relief for cases that merit a transition area waiver.

RESPONSE: Many hardships are not measurable in financial terms. Further, the Act did not limit hardship waivers to situations where a person can show monetary loss. The intent of the provision is to allow transition area reductions for individuals who truly have hardships which are unique to their site.

7:7A-7.4

COMMENT: The transition area proposal so strictly regulates transition areas that it is easier and more predictable to apply for the Department's permission to disturb wetlands rather than apply for a transition area waiver.

RESPONSE: The Department disagarees. N.J.A.C. 7:7A-7.2(c) and 7.3(c) provide an applicant with the option of demonstrating, on a case-by-case basis, that a project will have no substantial impact on adjacent wetlands. In addition, the use of special activity waivers covering Statewide general permit activities provides consistency between the standards for wetlands permits and for transition area waivers.

COMMENT: One commenter stated that it is unclear how the waivers outlined at N.J.A.C. 7:7A-7.4 differ from those found at N.J.A.C. 7:7A-7.2 and 7.3. It is suggested that instead of transition area waivers they should be called transition area permits since they refer to specific activities.

RESPONSE: The waivers at N.J.A.C. 7:7A-7.4 are waivers for special activities. It would be inappropriate to call these permits because it would be inconsistent with language found in the Act at N.J.S.A. 13:9B-16, 17 and 18. There are three types of transition area waivers; transition area waiver reductions, transition area waiver averaging plans, and transition area waivers for special activities.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.4(a), special activity transition area waivers, the refererence to N.J.A.C. 7:7A-7.4(f) is incorrect and should be deleted.

RESPONSE: The rule at N.J.A.C. 7:7A-7.4(a) has been corrected.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.4(a), regarding special activity transition area waivers, should be modified to omit protection for transition areas because they are not protected by the Act.

RESPONSE: The Act at Section 16a(1) defines transition areas as an integral portion of the freshwater wetlands ecosystem and Section 17 outlines prohibited activities in transition areas. These sections read together provide authority for and require the protection of transition areas.

COMMENT: The provisions at N.J.A.C. 7:7A-7.4(b)3 and (c)2, regarding alternative onsite locations and alternative locations respectively, effectively render null and void the hardship provisions at N.J.A.C. 7:7A-7.2(f) and 7.3(e).

RESPONSE: The Act at N.J.S.A. 13:9B-18a sets specific standards for the granting of transition area waivers for linear development and for stormwater management facilities. These standards do not involve the hardship provisions at N.J.A.C. 7:7A-7.2(f) and 7.3(e) applicable to other activities. Therefore, no actual conflict results.

COMMENT: Several commenters stated that at N.J.A.C. 7:7A-7.4(e), regarding special activity waivers, all activities permitted under the Statewide general permit program should also be allowed to be conducted in transition areas with the same limitations as the Statewide general permits. Currently, an automatic waiver for Statewide general permit activities is only available if one is disturbing freshwater wetlands in addition to transition areas.

RESPONSE: Prior to the adoption of Statewide general permits, each Statewide general permit activity was assessed by the Department and found to have minimal adverse environmental impacts, both separately and cumulatively, and to have no significant adverse environmental impacts when performed in wetlands. It follows that an activity with no significant adverse environmental impacts when performed in a wetland will also have no substantial impact on that wetland if performed in the adjacent transition area. Since the Act mandates the granting of a transition area waiver for activities in transition areas which have no substantial impact on adjacent wetlands, all appropriate activities allowed under Statewide general permits shall be allowed to be pursued in transition areas in order to be consistent with the Act. N.J.A.C. 7:7A-7.4(e), regarding special activity transition area waivers, was modified to allow the activities under Statewide general permits numbers 2, 9, 10, 11, 12, 13, and 14 to be authorized as special activity transition area waivers. All activities permitted under Statewide permit #1 (N.J.A.C. 7:7A-9.2(a)1) are non-prohibited activities because they are considered normal property maintenance (see N.J.A.C. 7:7A-6.2(b)1). Several Statewide general permits are not applicable to the transition areas. For example, Statewide general permit #5 (N.J.A.C. 7:7A-9.2(a)5) allows the removal of non-historic, wrecked or abandoned vessels, or the removal of human-made obstructions to navigation.

COMMENT: Several commenters stated that at N.J.A.C. 7:7A-7.4(e), regarding special activity transition area waivers, it is unclear why only certain Statewide general permits are listed, when at N.J.A.C. 7:7A-7.1(f) it states that all wetland permits grant access through the transition area.

RESPONSE: N.J.A.C. 7:7A-7.4(e) provides a transition area waiver to carry out activities described at N.J.A.C. 7:7A-9.2 (Statewide general permits) in the transition area, but not in the adjacent wetland. N.J.A.C. 7:7A-7.1(f) provides a transition area waiver only to the extent necessary to carry out an activity authorized in the wetlands by an individual or Statewide general permit.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.4(e), regarding special activity transition area waivers, it is unclear if these activities are permitted in the transition area or freshwater wetlands.

RESPONSE: N.J.A.C. 7:7A-7.4(e) allows some activities described at N.J.A.C. 7:7A-9.2, Statewide general permits, to be carried out in transition areas, not in wetlands.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.4, special activity waivers, the limitations set for these waivers are more restrictive than the standard conditions established for Statewide general permits numbers 2 and 10, stormwater outfalls and minor road crossings. It also appears that to construct linear development which will extend through transition areas as well as through freshwater wetlands, an applicant would be required to obtain dual permits.

RESPONSE: Stormwater outfalls and linear development may be constructed using the standards for waivers set forth in N.J.A.C. 7:7A-7.2 and 7.3, Transition area waiver, reductions. Transition areas may then be further reduced for these activities through the standards for special activity waivers at N.J.A.C. 7:7A-7.4(b) and (c). Alternatively, these activities can be pursued using the standards for special activity waivers based on Statewide general permits set forth at N.J.A.C. 7:7A-7.4(e). Authorization of activities under a Statewide general permit or individual freshwater wetlands permit automatically includes a transition area waiver allowing encroachment only in that portion of the transition area that is necessary to accomplish the permitted activity (see N.J.A.C. 7:7A-7.1(f)). Therefore, dual permits will not be required.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.4, it is unclear whether the Department will require averaging for a special activity waiver.

RESPONSE: The special activity transition area waiver will not require compensation for that portion of the transition area eliminated. This point has been clarified at N.J.A.C. 7:7A-7.4(a).

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.4(a), special activity waivers, it is unlcear whether the Department will require two separate applications for a project which involves the development of a roadway with an associated underground utility line or the construction of a roadway and the associated stormwater facility when located in the same roadbed.

RESPONSE: First, the Bureau of Freshwater Wetlands will never require separate applications for one project. Separate review criteria may be applied to different activities or parts of a project, but only one application will be required, and only one waiver will be issued. In both of the examples cited above, all activities would be considered as part of one linear development activity and would be subject to the same review criteria. Only when a project involves two different types of activities with different review criteria will separate authorizations be required. However, both authorizations will be evaluated as part of one application.

COMMENT: Several commenters stated that stormwater management facilities and linear development should be prohibited in transition areas except in unusual circumstances since the impacts of stormwater on transition areas is not known. The burden of proof should be on the applicant. Specific wording should also be added stating that the Department discourages the siting of stormwater facilities and linear development in transition areas.

RESPONSE: The Act at subsection 18a requires that the Department grant transition area waivers for stormwater management facilities and linear development, and provides standards for granting these waivers. N.J.A.C. 7:7A-7.4(b) and (c) set forth these standards.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.4(b) and (c), concerning special activity waviers for stormwater management facilities and linear development, are too restrictive and do not follow the intent of the Act. The rules should not consider a reduction in the scope of the project as an alternative for stormwater facilities or alternative locations for linear development.

RESPONSE: The rule does not consider a reduction in scope of the project an alternative for linear development. Regarding stormwater management facilities, it is the Department's interpretation that a reduction in the scope of a project can be a reasonable consideration in determining a feasible onsite alternative.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.4(d), regarding alternative locations for linear development, is too stringent and the Department must recognize that an alternative is infeasible if it is not consistent with governmental requirements, for instance municipal requirements or generally accepted engineering requirements.

RESPONSE: The rules do not state whether the Department would consider an alternative infeasible based on municipal requirements or engineering requirements. The determination of feasibility will be made on a case-by-case basis. Municipal and engineering requirements are often developed without consideration for freshwater wetlands protection. The Act mandates the protection of freshwater wetlands, therefore, this protection takes precedence over municipal or engineering requirements.

7:7A-7.5

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5, transition area waiver averaging plans, the limitations placed on this section are unreasonable and do not carry out the intent of the Act. The Act states that the applicant has the sole right to determine the area of transition area reduction or partial elimination provided that consistency with subsection 16a of the Act is demonstrated.

RESPONSE: N.J.A.C. 7:7A-7.5 allows for the applicant to determine the area of reduction. However, it is the Department's determination that, without the limitations found at N.J.A.C. 7:7A-7.5(c) and (d), the averaging plan cannot be consistent with subsection 16a of the Act.

COMMENT: N.J.A.C. 7:7A-7.5, regarding transition area waiver averaging plans, states that the plan allows for the reduction of the transition area adjacent to intermediate resource value wetlands to 10 feet wide for a distance of 100 feet. One commenter queried that, if the use of a transition area averaging plan maintains the total square footage of the transition area, what ecological value will the extended compensation area provide?

RESPONSE: Averaging provides an opportunity to compensate on a one-to-one basis in areal terms for the loss of transition areas as a result of required intrusions. Ecologically, the functions and values of the increased transition area will minimize the cumulative impacts of the reduction in the standard transition area. Averaging is required by the Act and is, therefore, provided for by the rules.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5, transition area averaging plan criteria, it is unclear if a transition area averaging plan will be authorized for an exceptional resource value wetland since there is no reference made to a transition area averaging plan at N.J.A.C. 7:7A-7.2(a).

RESPONSE: N.J.A.C. 7:7A-7.5, regarding transition area averaging plan criteria, authorizes the use of transition area averaging plans for transition areas adjacent to exceptional resource value wetlands. N.J.A.C. 7:7A-7.5(a) and N.J.A.C. 7:7A-1.4 have been clarified to address this commenter's concern.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(b), regarding limitations on transition area averaging plans, the phrase "or potentially eliminated" is confusing because averaging should not eliminate a transition area but should compensate by relocating it.

RESPONSE: The phrase referred to is "or partially eliminated." The phrase refers only to eliminating a portion of the transition area, and does not imply that the elimination need not be compensated for. The phrase has been deleted to clarify the rule.

COMMENT: In N.J.A.C. 7:7A-7.5(b)1i, the existing transition area may have a slope of up to 25 percent and still be granted a transition area waiver. A commenter suggested that this be reduced to 15 percent.

RESPONSE: Slope is only one of the criteria considered when determining if it is appropriate to reduce the width of the transition area. When considered in concert with the other factors of vegetation type and development intensity, a finding of no significant impacts upon the wetlands or the transition area could be made. Therefore, the rule remains as proposed.

COMMENT: One commenter questioned what criteria the Department used to determine the conditions for granting a transition area averaging plan listed at N.J.A.C. 7:7A-7.5(b)1.

RESPONSE: The Department based its determination on the requirements of the Act, the experience of Department staff, factors considered in the "Wetland Buffer Delineation Method" by Rogers, Golden and Halpern Inc., the "Coastal Wetlands Buffer Delineation" by Joseph Shisler, on other scientific literature, and on the values and functions of transition areas listed at N.J.A.C. 7:7A-6.1.

COMMENT: N.J.A.C. 7:7A-7.5(b)1iii(2) describes the limitation on reducing a transition area to a minimum of 10 feet for more than 20 percent of the wetland border contained on the property. One commenter stated that if a person's site is small, this limitation should not apply. Rather, the limitations at N.J.A.C. 7:7A-7.5(b)1iii(1) should apply.

RESPONSE: Due to the unworkable nature of the proposed requirement in the context of averaging on small sites, this limit has been deleted from the rules at N.J.A.C. 7:7A-7.5(b)1iii(2).

COMMENT: N.J.A.C. 7:7A-7.5(b)1iii(3) provides limits on transition area averaging plans. The provision prohibiting impervious surfaces within 20 feet of a wetland should be changed to prohibit them within 25 feet. This would be consistent with the minimum width of a transition area adjacent to an intermediate freshwater wetlands.

RESPONSE: In the provision prohibiting impervious surfaces within 20 feet, the reduction in the transition area is compensated for by an equal expansion of the transition area in another area. Therefore the impact of the impervious surface is not anticipated to be as severe as an overall reduction of the transition area to 20 feet. Accordingly, the averaging plan reduction to 20 feet will have no substantial impact.

COMMENT: At N.J.A.C. 7:7A-1.4, the definition of documented habitat for threatened or endangered species includes the activities of feeding, resting, breeding and nesting. Therefore, N.J.A.C. 7:7A-7.5(b)1ii, regarding transition area averaging plan limitations, which are currently proposed as "breeding and nesting", should also include feeding and resting areas.

RESPONSE: The proposed rule prohibits the use of transition area averaging plans only in those areas used by threatened and endangered species for feeding and nesting. During these activities, species are not very mobile and are in an extremely sensitive portion of their life cycles. Disturbances at these times are most harmful. Species that are resting and feeding, however, are more mobile and can escape disturbances by moving to other parts of a transition area. Because transition area averaging plans require compensatory expansion of the transition area for those areas that have been reduced, the species will still have the same total area available adjacent to that freshwater wetlands which can be used for resting and feeding. To broaden this limitation by the suggested change would unnecessarily prohibit the use of transition area averaging plans in any areas classified as exceptional resource value based on the presence of threatened and endangered species.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(b)1ii, the presence of threatened and endangered species as a bar to the use of a transition area averaging plan is inappropriate and not authorized by the Act.

RESPONSE: The mere presence of threatened or endangered species is not a bar to the use of an averaging plan. Only if threatened and endangered species are breeding or nesting in the vicinity would an averaging plan not be approvable by the Department.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(b)1iii(1) and (2), the limitations to the use of transition area averaging plans that prohibit reduction of the transition area width to less than 10 feet for a continuous distance of over 100 feet, and that prohibit reduction of the transition area width to less than 20 percent of the transition area contained on the property, allow no flexibility and force applicants into a hardship situation.

RESPONSE: An averaging plan that incorporated development below the limit stated at N.J.A.C. 7:7A-7.5(b)1iii(1) would no longer serve the functions of a transition area as stated at N.J.A.C. 7:7A-6.1(a) and (b) and thereby would contravene the Act's requirement that transition area averaging plans result in a transition area which is consistent with subsection 16a of the Act. The limitation stated at N.J.A.C. 7:7A-7.5(b)1iii(2) has been eliminated because of its unworkable nature when applied on small lots.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(b)1iii(3), limitations on the use of a transition area averaging plan, the proposed prohibition of placement of impervious cover within 20 feet of the wetlands precludes the combination of special activity waivers, Statewide general permits numbers 6 and 11 in wetlands, and transition area averaging plans. This provision should be deleted.

RESPONSE: The limitation at N.J.A.C. 7:7A-7.5(b)1iii(3) applies only to the approval of a transition area averaging plan and does not preclude the use of other types of waivers or Statewide general permits.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(b)1iii(3), regarding limitations to the use of transition area averaging plans, detention basins should be permitted within 20 feet of a wetland because they are not impervious.

RESPONSE: The fact that a development is pervious does not automatically mean it will have no substantial impact. If a detention basin meets the criteria for a waiver, however, it could be permitted within 20 feet of the wetland boundary.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.5(b)1iii(4), regarding limitations of transition area averaging plans, should be modified to read that "not more than 50 percent of the wetland boundary can have an averaged transition area greater than 100 percent increase of the standard transition area."

RESPONSE: An averaging plan designed according to the suggested criteria would no longer serve the functions of a transition area set forth in subsection 16a of the Act. It may result in long narrow transition areas extending perpendicularly away from the wetlands, adjacent to areas where the transition area has been completely eliminated. Therefore, the rule remains as proposed.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(d), the transition area waiver averaging plan standards should be modified to require a uniform 150 foot width instead of the stated 100 foot width.

RESPONSE: The Act at subsection 18c allows transition area averaging based on a uniform transition area width of not less than 100 feet. The Department can require a greater uniform width on a case-by-case basis as needed to meet the standards of the Act. Requiring a uniform 150 foot width in every case would contravene the Legislature's intent to allow transition area reductions to be combined with transition area averaging plans.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.5(d), the transition area waiver averaging plan standards should be modified to require a uniform 75 foot width instead of the stated 100 foot width.

RESPONSE: The Act at subsection 18c states that a transition area waiver approved pursuant to this subsection shall be conditioned on a transition area averaging plan which provides an average transition area of not less than 100 feet. Therefore, the rule remains as proposed.

7:7A-7.6

COMMENT: One commenter stated that the provisions for application contents at N.J.A.C. 7:7A-7.6 should be modified to extend the comment response period. Currently, the review period for commenters is 15 days. This is inadequate since most municipal governing bodies meet only on a monthly basis, and the 15 day period may not allow them enough time to respond.

RESPONSE: The Department understands that this time frame may be difficult for some commenters. The short comment period is necessary in order for the Department to be able to complete the application review within 90 days of submission of a complete application as required by the Act.

COMMENT: N.J.A.C. 7:7A-7.6(a)3 should allow 7.5 minute National Wetlands Inventory quadrangle maps to be submitted with a transition area waiver application, instead of U.S. Geological Survey 7.5 minute quadrangle maps.

RESPONSE: The National Wetlands Inventory maps do not provide the Department with sufficient detail for transition area waiver review. Therefore, the rule remains as proposed.

COMMENT: One commenter stated that the notice requirements at N.J.A.C. 7:7A-7.6(a)6 should require that the Department receive a copy of the applicant's letter of notification.

RESPONSE: At N.J.A.C. 7:7A-7.6(a)6iv (adopted at 7.6(a)6v), the Department has provided a standard letter of notification for applicants' use. Since the Department has standardized this notification letter, and it contains no details specific to the applicant, there is no reason to request a copy.

COMMENT: In N.J.A.C. 7:7A-7.6, a new subsection should be added to require applicants for a transition area waiver to provide legal notification to adjacent property owners within 200 feet of the property where the proposed activity is to take place. The language should be consistent with the adopted rules at N.J.A.C 7:7A-11.1(a)9.

RESPONSE: This change would be beyond the scope of the proposal. However, it may be considered in a future proposal.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.6(a), regarding application contents, should provide FW-1 application instructions for transition area waivers.

RESPONSE: Application instructions will be made available once the rules have been adopted. The forms and instructions change too often to be adopted through rulemaking. However, the substantive requirements contained therein do not go beyond what is required in the adopted rules.

COMMENT: One commenter stated that in the notice requirements at N.J.A.C. 7:7A-7.6(a)6, the Department should require that a complete application package be forwarded to the Municipal Clerk's office and to the County Planning Board. This will facilitate review by interested parties within the 15 day review period.

RESPONSE: The rule has been clarified by the addition of N.J.A.C. 7:7A-7.6(a)6 to indicate that a complete copy of the application package should be sent to the Municipal Clerk's office to facilitate local review. However, requiring that a second package be sent to the County Planning Board would be onerous to the applicant, and would be unnecessary since a package will be locally available at the Municipal Clerk's office.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(a)6, the notice requirements should be modified to include the New Jersey Division of Water Resources, to determine consistency with the State Water Quality Planning Act.

RESPONSE: The Department is in the process of developing a Memorandum of Agreement between the Divisions of Water Resources and Coastal Resources to ensure coordination on these issues. Therefore, no such change is needed. It is unnecessary to burden the applicant with notifying divisions in the Department other than Coastal Resources.

COMMENT: One commenter stated that in the notice requirements at N.J.A.C. 7:7A-7.6(a)6 the Department should require that a notice of filing be published in a newspaper of general circulation. Since wetlands often cross municipal boundaries and affect public parklands and private conservation lands, there must be as wide a dissemination of information as possible to permit interested parties to submit comments and request public hearings.

RESPONSE: This change would be beyond the scope of the proposal. However, it may be considered in a future proposal.

COMMENT: One commenter stated that in the notice requirements at N.J.A.C. 7:7A-7.6(a)6, the Department should eliminate the phrase "if any" which appears after the words "environmental commission." Many municipalities have environmental committees or other appointed bodies with responsibilities similar to environmental commissions. Mail addressed to environmental commissions would be directed to these bodies.

RESPONSE: The rule language has been clarified at N.J.A.C. 7:7A-7.6(a)6 (adopted as N.J.A.C. 7:7A-7.6(a)7) to address this commenter's concerns.

COMMENT: One commenter stated that the notice requirements at N.J.A.C. 7:7A-7.6(a)6 should be modified to only require evidence that the notification letters were mailed. The certified mail receipt cards should not be required.

RESPONSE: The intent of the notification is to allow interested persons to comment on the application. Certified mail reciept cards are the best mechanism to evidence to the Department that notice was actually received. The additional costs are insubstantial.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(a)6, notice requirements, if notifications have been made to adjacent property owners pursuant to other permit requests, no additional notifications should be required.

RESPONSE: The Department disagrees. The intent of the transition area notice is to advise adjacent property owners of action proposed in the transition area. To allow other notices to replace the transition area notice would not adequately advise adjacent property owners of the proposed action. However, the transition area notice may be combined with the other required notice provided that the notice clearly states that a transition area waiver is being requested.

COMMENT: In N.J.A.C. 7:7A-7.6(a)6iii, the information regarding a transition area waiver application which is sent to local government bodies should also include a map of the proposed project and the types of activities within the transition area.

RESPONSE: The Department has added clarifying language at N.J.A.C. 7:7A-7.6(a)6iv (adopted as N.J.A.C. 7:7A-7.6(a)7iv) to indicate that a map of the area is required. The rules at N.J.A.C. 7:7A-7.6(a)6iii (adopted as N.J.A.C. 7:7A-7.6(a)7iii) already require a list of proposed activities.

COMMENT: In N.J.A.C. 7:7A-7.6(a)6iv, the information required for a transition area notice should contain the statement that interested persons may request in writing that the Department hold a public hearing on a particular application. The written request must be submitted within 20 days of publication of the notice of application in the DEP Bulletin. If granted, the hearing shall be held in the county where the transition area is located.

RESPONSE: The Department has clarified the notice language at N.J.A.C. 7:7A-7.6(a)6v (adopted as N.J.A.C. 7:7A-7.6(a)7v) to include the citation (N.J.A.,C. 7:7A-7) where hearing requirements are found. The cited rules state that the hearing, if granted, shall be in the county where the transition area is located "whenever practicable." (See N.J.A.C. 7:7A-7.7(h)2)

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(a)6iv, the statement that is to be included in the application notice letter should be changed from "A transition area waiver, if approved by the Department, will allow certain prohibited activities . . ." to read "A transition area waiver, if approved by the Department, will allow certain otherwise prohibited activities . . . "

RESPONSE: The language has been clarified at N.J.A.C. 7:7A-7.6(a)6v (adopted as N.J.A.C. 7:7A-7.6(a)7v), to address the commenter's concerns.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(a)7 and 7.6(b), the requirements for access to adjacent properties may not be feasible if the adjacent landowners are uncooperative.

RESPONSE: The Department understands that permission to access adjacent properties may in some cases be difficult to obtain. However, written permission is necessary in order to allow the Department staff to conduct proper wetlands and transition area investigations.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(c)1i, the description of vegetative communities is irrelevant and should be deleted.

RESPONSE: As stated at N.J.A.C. 7:7A-7.2(e), the type of vegetative community is a major factor in determining whether a transition area waiver reduction is approvable. Therefore, the information required at N.J.A.C. 7:7A-7.6(c)1i is necessary for a complete application.

COMMENT: N.J.A.C. 7:7A-7.6(c)2ii should be amended to delete the requirement of an elevational view because it provides no useful information.

RESPONSE: N.J.A.C. 7:7A-7.6(c)2ii was clarified to indicate that a "cross-sectional", rather than "elevational", view must be provided. This information will be valuable in reviewing a proposed activity in the transition area.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(c)2iv, regarding monitoring and maintenance required for the transition area waiver described at N.J.A.C. 7:7A-7.2(d), the coverage and survival rates are extremely high and the rule should be modified to allow flexibility on a case by case basis when warranted.

RESPONSE: The standards stated at N.J.A.C. 7:7A-7.6(c)2iv are the same as those required for mitigation projects. These standards are appropriate since the remaining transition area must serve as the only buffer adjacent to an exceptional resource value wetland.

COMMENT: At N.J.A.C. 7:7A-7.6(c)2vi, the wrong citation is given.

RESPONSE: There is no citation in this provision.

COMMENT: One commenter questioned if the information required at N.J.A.C. 7:7A-7.6(c)2vi can be obtained from a Soil Conservation Service survey map, or if this information must be provided by a soil scientist.

RESPONSE: The soils information required at N.J.A.C. 7:7A-7.6(c)2vi can be obtained from a county soil survey map.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(c)2vii and at (c)3iv regarding application requirements, the requirement of a recorded easement or deed restriction and the installation of permanent monuments before the approval of a transition area waiver is onerous to the applicant.

RESPONSE: The requirements at N.J.A.C. 7:7A-7.6(c)2vii have been deleted and the language at N.J.A.C. 7:7A-7.6(c)3iv (adopted as 7.6(c)4iv) has been clarified to remove the requirement of placing monuments at the time of application. These requirements must be satisfied by the applicant once the Department has reached a decision to issue a transition area waiver.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(c)2vii, regarding application requirements, a mechanism should be provided to amend or remove the deed restriction or conservation easement in response to changes in the nature and size of the associated wetland.

RESPONSE: There are established legal mechanisms for amending or removing deed restrictions and conservation easements. It is not appropriate to include them in this rule.

COMMENT: At N.J.A.C. 7:7A-7.6(c)3ii, regarding application requirements for averaging plans, a commenter suggested requiring that the square footage of the transition area which is averaged be based on the standard transition area width.

RESPONSE: This contravenes the Act's allowing simultaneous use of both a transition area reduction waiver and a transition area averaging plan.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.6(c)4, concerning application requirements for a special activity waiver for a stormwater facility, it is inconsistent with the intent of the Act to require an onsite alternatives analysis.

RESPONSE: The language at Section 18 of the Act states that a transition area waiver will be granted "if the proposed activity is the construction of a stormwater management facility having no feasible alternative on-site location." In order to make this finding, it is necessary to require an on-site alternatives analysis as stated at N.J.A.C. 7:7A-7.6(c)4 (adopted as 7.6(c)3).

7:7A-7.7

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.7, setting forth review procedures for transition area waivers, it appears that the rule grants an additional 90 day period for the Department to complete its review after additional information is requested.

RESPONSE: There is only one 90 day review period, which begins after the Department has certified that the application is complete for review. If additional information or clarification is requested, this review period will not begin until after the information is received.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.7(b) and (c), the proposed provisions for the Department to request clarification of the additional information requested during the initial 15 day review period violates the intent of the Act to limit the review of a complete application to 90 days.

RESPONSE: It is the Department's intent to expedite the review process by requesting this clarification instead of being forced to deny an application because of unclear information and an expired review period. Experience with the review of freshwater wetlands permit applications indicates that this is the best method to provide expedited service to the regulated public.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.7(e), regarding cancellation, withdrawal, resubmission and amendment of applications, should be modified so that the Department cannot unilaterally cancel a pending application.

RESPONSE: As stated at N.J.A.C. 7:7A-12.7(b), regarding cancellation of an application by the Department, the Department will only exercise this option after an application remains incomplete after 60 days of requesting additional information, and 30 days after the Department has provided notification to the applicant of the pending cancellation by certified mail, and after the applicant fails to demonstrate good cause for the delay in completing the application. This procedure is necessary in order to close out inactive applications.

COMMENT: One commenter objected to N.J.A.C. 7:7A-7.7(h), regarding the public hearing process, because the applicant is required to bear the expense for any hearing held in connection with the transition area waiver application.

RESPONSE: It is appropriate that the applicant, rather than the State's taxpayers, bear the cost of any public hearings held since it is the applicant who will benefit from any transition area reduction.

COMMENT: One commenter objected to N.J.A.C. 7:7A-7.7(h) because if a public hearing is requested, the Department could not process the application within 90 days as required by the Act. The commenter believes that this provision should be deleted in its entirety.

RESPONSE: As stated at N.J.A.C. 7:7A-7.7(h), an application is not considered complete until 15 days after the public hearing is held. The 90 day review period will begin at that point. The Department will use its discretion in granting a request for a public hearing based on the degree of public interest in the application.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.7(h), the time limits specified for allowing the public to request a hearing are unclear.

RESPONSE: N.J.A.C. 7:7A-7.7(h) was clarified to indicate that the Department will set a time, place and date for the public hearing within 15 days of the close of the 20 day notification period, and will hold the public hearing within 60 days from the close of the 20 day notification period.

COMMENT: One commenter stated that N.J.A.C. 7:7A-7.7(h) should be revised to only allow public hearings based on "reasonable issues of scientific fact relative to significant impacts on the resource". This will prevent frivolous hearing requests based on the "NIMBY" ("not in my back yard") syndrome.

RESPONSE: A public hearing may be warranted in some cases which would not fit into the narrow language suggested, for example, in order to obtain additional public input into the waiver process. In order to ensure a fair permitting process, the rule remains as proposed.

7:7A-7.8

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.8(b) the effective duration of a transition area waiver (five years) is insufficient based on the uncertain time frames of the permit process for a large scale project. The provision of requiring a new application without a guarantee of approval or the possibility of requiring new conditions is onerous to the applicant.

RESPONSE: N.J.A.C. 7:7A-7.8(b) states that a transition area waiver shall be considered valid after the five year term provided the construction of the permitted project, excluding site preparation, began on or before three years from the transition area waiver's date of issue, and provided that construction is performed on a continuous basis after the expiration of the five year term. If a project requires a longer period, it would be appropriate to re-evaluate the project under the standards existing at that time.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-7.8(b), the five year duration of a transition area should remain valid if the municipal land use approval for the project remains valid, or construction activities, including site preparation, begin within three years.

RESPONSE: The provisions found at N.J.A.C. 7:7A-7.8(b) and (c) regarding duration and renewal of transition area waivers are reasonable and sufficient to allow the construction of long-term, large-scale projects.

COMMENT: Two commenters stated that at N.J.A.C. 7:7A-7.8(d) and (e), the Department's interpretation that the transition area waiver is not a part of a project and is not easily transferred from owner to owner is onerous to the applicant. This section should be modified to provide the Department with appropriate recourse to all successors and assignees to the holder of the waiver without resorting to the procedures for transfer of permits required by N.J.A.C. 7:7A-7.8(f).

RESPONSE: The transfer of transition area waivers or freshwater wetlands permits is accomplished easily through the procedure for minor modifications at N.J.A.C. 7:7A-13.9(b)3 (see N.J.A.C. 7:7A-7.8(f)3). Therefore, the provision remains as proposed.

7:7A-16.6

COMMENT: One commenter stated that at N.J.A.C. 7:7A-16.6, the Department should modify the fee schedule to reflect the size and number of wetlands that exist on a given site, instead of charging based on the total acreage of a site.

RESPONSE: Until a letter of interpretation or the technical information necessary to perform one has been submitted, the Department is unable to accurately determine the exact location and acreage of wetlands present on and adjacent to a site. In order to be as equitable as possible the Department has provided two fee schedules at N.J.A.C. 7:7A-16.6, one for projects with a completed letter of interpretation and one for those without. The first schedule is based on a known amount of wetlands and, therefore, the applicant is charged only for that area of transition area that is proposed to be affected or disturbed by the proposed activity.

COMMENT: One commenter stated that the fee schedule that would apply to linear projects is unclear.

RESPONSE: For linear projects with letters of interpretation, the fee will be based on the acreage of standard transition area affected or disturbed by the proposed activity, as stated at N.J.A.C. 7:7A-16.6(a)1ii. N.J.A.C. 7:7A-16.6(a)1i, 16.6(a)1ii, 16.6(a)2i and 16.6(a)2ii have been clarified to include the term "right-of-way" in the fee schedule since this is an alternative description of property.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-16.6(a)2, regarding fees for transition area waiver applications without a letter of interpretation, in exchange for the required fee, the Department should supply a letter of interpretation for the entire property.

RESPONSE: As stated at N.J.A.C. 7:7A-16.6(a)2 and (a)3 for the fee required, which is based on size of the property, the Department will provide a letter of interpretation for the entire property.

COMMENT: One commenter stated that at N.J.A.C. 7:7A-16.6, it is unclear if additional fees will be required for the Department's investigation of wetlands on adjacent properties.

RESPONSE: There are two separate fee schedules for a transition area waiver: the first for properties with a letter of interpretation (LOI) and the second for properties without an LOI. For properties with an LOI, the applicant will be charged for the acreage of transition area to be affected or disturbed on the subject property. For properties without an LOI, the fee will be based on the total acreage of the subject property. In no case will the applicant be charged an additional fee for the investigation of adjacent properties.

7:7A-16.7

COMMENT: One commenter stated it is unfair to charge for a letter of exemption for an ongoing forestry operation as implied at N.J.A.C. 7:7A-16.7.

RESPONSE: The letter of exemption is an optional service provided by the Department and is not required by the Act. The letter does not establish exempt status, it merely confirms the Department's position that the activity is exempt. It is essential that the Department assess a fee if it is to continue to offer this service.

Agency Initiated Changes

Some further changes and clarifications have been made to the chapter. These changes either clarify the rules or make them consistent with those parts of the rules which were changed in response to comments. Some changes were technical, that is, renumbering and correcting typographical errors. A summary of the changes is set forth below.

1. The term "freshwater" was added at N.J.A.C. 7:7A-6.1(b)6, functions and values of transition areas, to avoid confusion.

2. The Department has clarified the language at N.J.A.C. 7:7A-7.2(c)7 to distinguish between certain ongoing activities and the proposed initiation, construction, or expansion of an operation or facility. This clarification will allow the continuation of ongoing operations without the requirement of a transition area waiver.

3. N.J.A.C. 7:7A-7.2(e)1i, explaining the term herbaceous vegetational community as used in the matrix for determining a transition area waiver reduction, has been clarified to indicate that bare ground would be considered to have the same ecological value, for purposes of a transition area waiver reduction, as an herbaceous vegetational community.

4. N.J.A.C. 7:7A-16.6(a)4 was added to specify that an agency of the State will not be required to submit a fee for transition area waivers as provided at N.J.S.A. 13:9B-17b.

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

7:7A-1.4 Definitions

. . .

"Documented habitat for threatened or endangered species" means areas for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting, or feeding.

Evidence of past use by a species may include, but is not limited to, sightings of the species, or of its sign (for example, skin, scat, shell, track, nest, ***herbarium records,*** etc.), as well as identification of its call; and

2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

. . .

["Transition area waiver" means an approval from the Department to modify the size or shape of the standard transition area required by N.J.A.C. 7:7A-6.1 in order to conduct prohibited activities specified at N.J.A.C. 7:7A-6.2, in what would otherwise be the transition area.]

***Transition area waiver" means a waiver from the prohibitions against engaging in any of the prohibited activities enumented at N.J.A.C. 7:7A-6.2(a) in a transition area issued by the Department pursuant to the Act and this chapter. A transition area waiver may be issued by the Department in the transition area adjacent to either a freshwater wetlands of exceptional or intermediate resource value and may take one of the following forms:**

1. Transition area waiver, Reduction. This waiver may be approved on the basis of a finding of no substantial impact or if the waiver is necessary to avoid a substantial hardship. The waiver would result in a reduction in the standard width of a transition area without requiring an expansion of the remaining transition area for compensation;

2. Transition area waiver, Special Activities. This waiver may approve the partial elimination of the standard transition area, without requiring an expansion of the remaining transition area for compensation, for the special activities set forth below:

i. Stormwater management facilities as defined at N.J.A.C. 7:7A-7.4(b)1;

ii. Linear development as defined at N.J.A.C. 7:7A-1.4; and

iii. Activities permitted under the specific Statewide general permits listed at N.J.A.C. 7:7A-7.4(e). The Statewide general permits themselves are set forth at N.J.A.C. 7:7A-9.2(a); or

3. Transition area waiver, Averaging Plan. This waiver may approve a plan to modify the overall shape of the standard transition area without reducing the total square footage of the standard transition area.*

. . .

7:7A-2.5 Classification of freshwater wetlands by resource value

(a) (No change.)

(b) Freshwater wetlands of exceptional resource value shall be freshwater wetlands which exhibit any of the following characteristics:

1. (No change.)

2. Those which are present habitats for threatened or endangered species, or those which are documented habitats for threatened or endangered species, and which remain suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat.

i. (No change.)

(c)-(e) (No change.)

SUBCHAPTER 6. TRANSITION AREAS

7:7A-6.1 General provisions

(a) A transition area serves as:

1. An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

2. A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

(b) Acts or acts of omission ***in a transition area*** that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with the provisions of (a) above and with N.J.S.A. 13:9B-16a:

1. A temporary refuge for freshwater wetlands fauna during high water episodes;

2. A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;

3. An area to accommodate slight variations in freshwater wetland boundaries over time due to hydrologic or climatologic effects;

4. A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the freshwater wetlands;

5. A buffer area to keep human activities at a distance from freshwater wetlands, thus reducing the impact of noise, traffic, and other direct and indirect human impacts on freshwater wetlands species;

6. A corridor area which facilitates the movement of wildlife to and from ***freshwater*** wetlands from ***and to*** uplands, streams and other waterways; and

7. A sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands***, flora and fauna,*** and nearby waterways.

(c) A transition area is required adjacent to freshwater wetlands of exceptional resource value and of intermediate resource value as classified in N.J.A.C. 7:7A-2.5. A transition area is not required adjacent to freshwater wetlands of ordinary resource value as classified in N.J.A.C. 7:7A-2.5 or adjacent to State open waters as defined at N.J.A.C. 7:7A-1.4.

(d) The ***standard*** width of *[the standard]* ***a*** transition area adjacent to a freshwater wetland*[s]* of exceptional resource value shall be 150 feet. *[The width of a transition area shall be the]* ***This*** standard width *[unless]* ***shall only be*** modified *[by the Department]* through the *[approval]* ***issuance*** of a transition area waiver ***by the Department*** pursuant to ***the Act and this chapter. The types of transition area waivers are listed at*** N.J.A.C. 7:7A-7***.1(c).***

(e) The ***standard*** width of *[the standard]* ***a*** transition area adjacent to a freshwater wetland*[s]* of intermediate resource value shall be 50 feet. *[The width of a transition area shall be the]* ***This*** standard width *[unless]* ***shall only be*** modified *[by the Department]* through the *[approval]* ***issuance*** of a transition area waiver ***by the Department pursuant to the Act and this chapter***.

(f) A person shall not engage in activities prohibited in a transition area as set forth at N.J.A.C. 7:7A-6.2 except pursuant to a transition area waiver *[approved]* ***issued*** by the Department ***pursuant to this chapter***.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in N.J.A.C. 7:7A-6, Appendix A, which is incorporated by reference in this chapter. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless a transition area waiver is approved under N.J.A.C. 7:7A-7.4 or N.J.A.C. 7:7A-7.5. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

(h) The outside boundary of a transition area is determined solely by reference to the freshwater wetlands boundary and is in no way affected by property lines. Therefore, a property within 150 feet of a freshwater wetlands may contain a transition area which arises from a freshwater wetlands on another property. Any property or piece of property encompassing the transition area of a freshwater wetlands is subject to the Act and this chapter, not withstanding that the freshwater wetland is located on another property.

7:7A-6.2 Prohibited activities in transition areas

(a) Except as provided in (b) and (c) below, a person shall not conduct the following prohibited activities in transition areas:

1. Removal, excavation, or disturbance of the soil;

2. Dumping or filling with any materials;

3. Erection of structures;

4. Placement of pavements; and

5. Destruction of plant life which would alter the existing pattern of vegetation.

(b) The following activities may be conducted (that is, are not prohibited) in transition areas, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands:

1. Normal property maintenance;

i. For the purposes of this paragraph, "normal property maintenance" means activities required to maintain lawfully existing artificial and natural features, *[including mowing of existing lawns, pruning of trees and shrubs, selective cutting of individual trees, and limited planting of native vegetation (that is, plants naturally occurring in transition areas in the local region).]* ***landscaping and gardening. These activities include:***

(1) Mowing of existing fields or lawns;

(2) Pruning of trees and shrubs;

(3) Selective cutting of trees;

(4) Replacement of existing non-native plants with either native or non-native species;

(5) Limited supplemental planting of non-native plant species that will not significantly change the character of the existing vegetational community of the transition area. The creation of a lawn is not considered supplemental planting;

(6) Planting of native species, that is, plants naturally occurring in transition areas in the local region, (the county agricultural agent may be consulted to obtain information regarding these species);

(7) Continued cultivation of existing gardens and the development of new gardens no larger than one quarter acre in size; and

(8) Maintenance of artificial features including the repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure, lawfully existing prior to July 1, 1989, or permitted under the Act and this chapter, provided such activities do not result in additional disturbance of the transition area upon completion of the activity. Minor deviations from the existing structure due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional transition area upon completion of the activity.*

ii. Any activity which involves or causes the substantial alteration or change of the existing characteristics of a transition area shall not be considered normal property maintenance. Activities which involve or cause substantial alteration or change of the transition area include, but are not limited to, *[clear cutting,]* ***extensive*** removal or destruction of vegetation by ***clear cutting,*** cutting, mowing (except as described in (b)1i above), burning or application of herbicides, planting of ornamental plants or lawns for landscaping purposes ***(except as described in (b)1i above), regrading or significant changes in the existing surface contours*** and the placement of fill, pavement or other impervious surfaces.

2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area;

i. For the purposes of this paragraph, "minor and temporary disturbances ***of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area,***" means activities which do not result in adverse environmental effects on the transition area or on the adjacent freshwater wetlands and which activities do not continue for a period of more than six months. Normal construction activities which would be minor and temporary disturbances include***, but are not necessarily limited to,*** the placement of ***scaffolds or ladders*** *[temporary soil erosion and sediment control structures]*, the removal of human-made debris ***by non-mechanized means which does not destroy woody vegetation***, and the placement of temporary construction supports.

3. The erection of temporary structures covering a combined total of 150 square feet or less of the transition area.

i. For the purposes of this paragraph, "temporary structures" means sheds or fences which do not have a foundation, or other structures that remain in the transition area for no more than a total of six months.

(c) Projects or activities which are exempt from the requirement of a freshwater wetlands permit pursuant to N.J.A.C. 7:7A-2.7(a), (b), (d), (f) and (g) shall also be exempt from transition area requirements. These transition area exemptions are subject to the same limitations as the corresponding freshwater wetlands permit exemptions. These limitations can be found at N.J.A.C. 7:7A-2.7.

(d) To confirm that an activity or project is exempt, an exemption letter may be requested from the Department through the procedures established for freshwater wetlands permit exemptions in N.J.A.C. 7:7A-2.9, including submittal of the fee specified at N.J.A.C. 7:7A-16.7.

7:7A-6.3 Determination of transition areas due to the presence of freshwater wetlands on adjacent property

(a) Any person engaging in prohibited activities in a transition area without Department approval shall be in violation of the Act and this chapter. A transition area may be located on a property even though the freshwater wetlands adjacent to that transition area are located on a different property (see N.J.A.C. 7:7A-6.1(h)).

(b) To determine whether a transition area is required on a parcel, where freshwater wetlands may exist on other nearby parcels, a person may follow the procedures at (c) below or follow those procedures at (b)1 through 7 below as applicable:

1. Locate any freshwater wetlands that may be within 150 feet of the subject parcel property lines and any freshwater wetlands that may be within 50 feet of the subject parcel property lines. If there are no freshwater wetlands on the subject parcel or on land within 150 feet of the subject parcel property line, no transition areas exist on the subject parcel.

2. If there are freshwater wetlands on neighboring land within 150 feet of the parcel boundary, determine if they are classified as freshwater wetlands of ordinary resource value as specified in N.J.A.C. 7:7A-2.5. If a determination of classification by the Department is desired, a letter of interpretation classifying any freshwater wetlands can be obtained from the Department pursuant to N.J.A.C. 7:7A-8. No transition area is required adjacent to ordinary resource value wetlands.

3. If any of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary cannot be classified as ordinary, determine whether they are freshwater wetlands of intermediate or freshwater wetlands of exceptional resource value as specified in N.J.A.C. 7:7A-2.5. If a determination of classification by the Department is desired, a letter of interpretation***, including a notice of classification,*** classifying any freshwater wetlands can be obtained from the Department pursuant to N.J.A.C. 7:7A-8.

4. If the freshwater wetlands on the subject parcel or within 150 feet of the subject parcel property boundary are freshwater wetlands of exceptional resource value, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(d).

i. To avoid the necessity of delineating exceptional resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 150 feet of its boundary.

5. If the freshwater wetlands on land within 150 feet of the subject parcel boundary are freshwater wetlands of intermediate resource value, determine whether any of the freshwater wetlands are within 50 feet of the subject parcel boundary.

6. If there are freshwater wetlands of intermediate resource value on land within 50 feet of the subject parcel boundary, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 50 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(e).

i. To avoid the necessity of delineating intermediate resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 50 feet of its boundary.

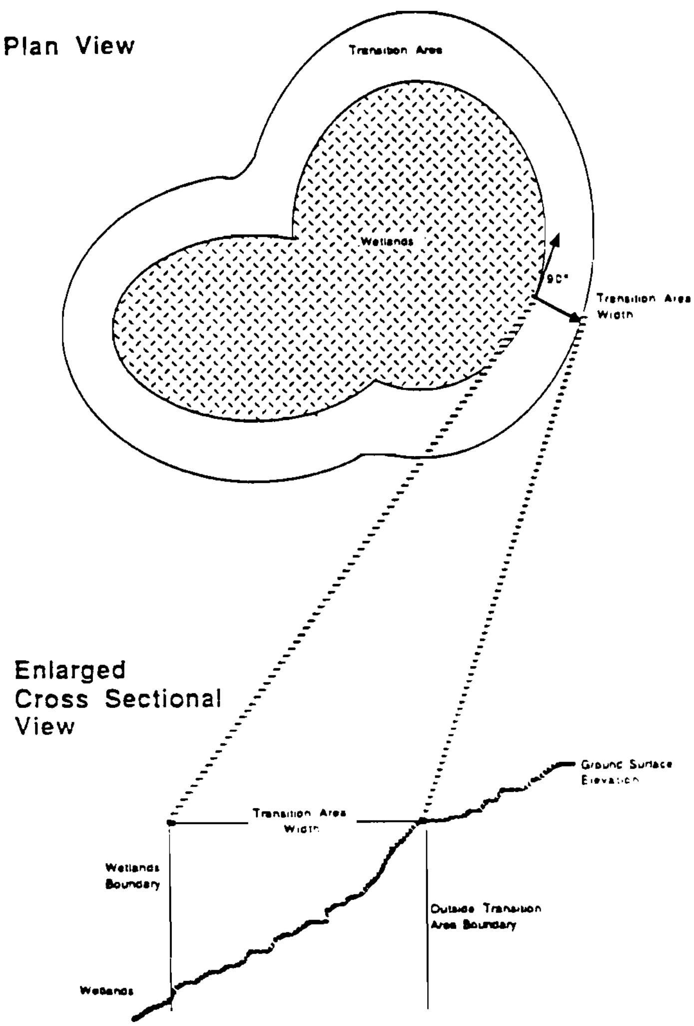
7. It may be necessary to obtain written permission from neighboring property owners to investigate their land to within 150 feet

of the subject parcel boundary. If a transition area waiver or letter of interpretation is needed, written permission shall also include permission for the Department to enter the land to verify the information submitted to the Department in the application, and shall follow the form in N.J.A.C. 7:7A-6 Appendix B, which is incorporated by reference in this chapter.

(c) Instead of following the procedures at (b)1 to 7 above, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 150 feet of the subject parcel property line.

7:7A-6 Appendix A

Example of a transition area adjacent to a freshwater wetland. Depicted are a plan and elevational view.



7:7A-6 Appendix B

Note: All information designated in parentheses in the agreement below shall be completed as specified therein prior to execution of the agreement.

Right of Entry Agreement For Wetlands and Transition Area Delineations

FROM: (adjacent property owner(s) name and address of residency), hereinafter referred to as GRANTOR,

TO: (property owner(s) name (that is, the applicant) and address of residency), hereinafter referred to as the GRANTEE.

The GRANTOR does hereby grant to the GRANTEE, its agents, and the State of New Jersey, Department of Environmental Protection, the right to enter onto the property owned by the GRANTOR designated as (municipal block and lot, municipality, county and state of grantor's property) for the purpose of conducting a site inspection or survey to determine the presence, absence or boundaries of freshwater wetlands and transition areas. This information is required by the New Jersey Department of Environmental Protection, Bureau of Freshwater Wetlands, in order to comply with the requirements set forth in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

The GRANTOR acknowledges that it has received good and sufficient consideration in return for granting the right to enter the above referenced premises for the purpose set forth above and, as such, the GRANTEE shall make available to the GRANTOR a copy of the information collected on the above referenced premises.

The GRANTEE agrees that any activities conducted pursuant to this agreement will be carried out in a manner to not unreasonably interfere with the GRANTOR'S use and occupation of the premises; and

Subsequent to any entry, GRANTEE agrees that it will restore any portion of the premises disturbed by such entry to its condition immediately prior to entry.

The State of New Jersey, for itself, its successors and assigns, agrees to indemnify and hold harmless the GRANTOR, its heirs, successors and assigns, from any and all liability, claims, damages and actions which may result from the negligent use of the site by the State of New Jersey subject to the following exceptions: (a) the State of New Jersey shall have no obligation to indemnify or hold harmless the GRANTOR, its heirs, successors or assigns, or any of them, for any claims or damages for which the State of New Jersey would have no liability under the New Jersey Tort Claims Act (N.J.S.A. 59:1 et seq.); (b) the liability, if any, of the State of New Jersey shall be subject to the availability of State of New Jersey funds; (c) the Agreement of the State of New Jersey to indemnify and hold harmless, as set forth in this paragraph, shall not apply to any claims, actions or damages which may arise out of, be occasioned by or result from any condition existing on, or which did exist on, the site of the time of the execution of this agreement, or at any time prior to the execution of this agreement.

This agreement shall take effect on the date executed by the GRANTOR:

WITNESS: ____________ BY: ____________________
GRANTEE
DATE: ____________________

WITNESS: ____________ BY: ____________________
GRANTOR
DATE: ____________________

SUBCHAPTER 7. TRANSITION AREA WAIVERS

7:7A-7.1 General provisions

(a) A transition area waiver shall not be granted by the Department pursuant to the Act and this chapter unless it includes conditions as necessary to ensure that a particular project or activity results in minimal environmental impact and unless the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-6.1(a) and (b) are satisfied.

(b) Any person proposing to engage in a prohibited activity within 150 feet of an exceptional resource value wetland, or within 50 feet of an intermediate resource value wetland, shall apply to the Department for a transition area waiver.

(c) The Department may authorize the following through a transition area waiver:

1. A reduction in the *[width of the]* standard transition area ***width established in N.J.A.C. 7:7A-6.1(d) and (e). Reductions are determined at N.J.A.C. 7:7A-7.2 for exceptional resource value freshwater wetlands and at N.J.A.C. 7:7A-7.3 for intermediate resource value freshwater wetlands***;

2. A modification in the shape, but not the square footage, of the standard transition area through a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5*. **This waiver is available for transition**

areas adjacent to both exceptional and intermediate resource value freshwater wetlands*;

3. A partial elimination of the standard transition area width along a portion of the freshwater wetland to allow special activities as established in N.J.A.C. 7:7A-7.4*. **This waiver is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands***; or

4. Any combination of (c)1, 2, and 3 above.

(d) Reduction or modification of a transition area shall be based solely on the transition area adjacent to *[one]* ***a particular*** freshwater wetland. For property with more than one freshwater wetland, the *[width of the]* standard transition area ***width*** and the criteria for reducing *[the]* ***or modifying the standard*** width shall be applied separately to each freshwater wetland. In no case may expansion of a transition area adjacent to one freshwater wetland compensate for reduction of a transition area adjacent to a separate freshwater wetland. However, one transition area waiver application may be used to request transition area waivers for more than one transition area located on a single property.

(e) In determining whether to issue or deny a transition area waiver, the Department shall consider information submitted by the applicant; local, county, state and Federal government agencies; and interested citizens and may consider any other available information.

(f) The Department's authorization of activities under a Statewide general permit*,* *[or]* individual freshwater wetlands permit ***or mitigation plan*** shall automatically include a transition area waiver. ***No fee or application will be required for this waiver if it is requested concurrently with the freshwater wetlands permit.*** The transition area waiver will allow encroachment only in that portion of the transition area bordering on that portion of the freshwater wetland in which the *[permitted]* ***authorized*** activity is to take place which the Department determines is necessary to accomplish the *[permitted]* ***authorized*** activity. Any additional prohibited activities in the transition area not directly required for the *[permitted]* ***authorized*** activity, shall require a separate transition area waiver from the Department pursuant to the Act and this chapter. If the permitted activity involves the placement of fill in the wetland, the post-fill freshwater wetlands boundary will be considered to be the freshwater wetlands boundary for the purposes of this subsection.

7:7A-7.2 Exceptional resource value freshwater wetlands: standards for *[and extent of]* transition area width reduction

(a) ***This section addresses standards for overall width reduction of transition areas adjacent to exceptional resource value wetlands.*** A transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a transition area waiver for access ***to an authorized activity,*** granted by the Department*[,]* pursuant to N.J.A.C. 7:7A-7.1(f), *[in connection with a freshwater wetlands permit,]* a transition area adjacent to a freshwater wetland of exceptional resource value shall not be reduced to less than 75 feet ***wide***.

(b) The Department shall grant a transition area waiver *[for a transition area]* ***to reduce a transition area*** adjacent to a freshwater wetland of exceptional resource value ***from the standard transition area width*** only if:

1. The proposed activity would have no substantial impact, as determined pursuant to (c), (d) and (e) below, on the adjacent freshwater wetland; or

2. The waiver is necessary to avoid an extraordinary hardship to the applicant, as described at (f) below.

(c) For the purposes of N.J.A.C. 7:7A-7, a substantial impact shall be deemed to exist on a freshwater wetland of exceptional resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction ***pursuant to (g) below***:

1. The freshwater wetland is designated as an EPA priority wetland by USEPA;

2. The freshwater wetland contains a present or "documented habitat for threatened or endangered species" as defined at N.J.A.C. 7:7A-1.4;

3. The freshwater wetland is located adjacent to FW1 waters or FW2 trout production waters;

4. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system, while the river is in an official study status;

5. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:13-*[1.2]****5.10*** will be disturbed by the proposed activity;

6. The property is located adjacent to a local, ***county,*** State, or Federal ***park,*** wildlife refuge, sanctuary *[or]***,* management area ***or area listed on the New Jersey Register of Natural Areas***; or

7. The proposed activity or project includes one or more of the following:

i. *[A]* ***Construction or expansion of a*** commercial or industrial facility within the following Standard Industrial Classification (SIC) major groups as designated in the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

SIC	Industry Category
22	Textile Mill Products
23	Apparel
24	Lumber & Wood Products
25	Furniture & Fixtures
26	Paper & Allied Products
27	Printing, Publishing & Allied Industries
28	Chemicals & Allied Products
29	Petroleum Refining & Related Industries
30	Rubber & Miscellaneous Plastics Products
31	Leather & Leather Products
32	Stone, Clay, Glass & Concrete Products
33	Primary Metal Industries
34	Fabricated Metal Products
35	Machinery
36	Electrical & Electronic Machinery
37	Transportation Equipment
38	Measuring, Analyzing & Controlling Instruments, Photographic, Medical & Optical Goods
39	Miscellaneous Manufacturing Industries
47	Transportation Services
48	Communications
49	Utilities (Electric, Gas, Sewer), excluding linear development
51	Nondurable Goods Wholesaling
55	Automotive Dealers and Gasoline Service Stations
76	Miscellaneous Repair Services;

ii. ***Establishment of new or expansion of existing mineral*** *[Mineral]* extraction and/or processing ***operations. This includes mining or processing*** of construction sand, industrial sand, gravel, ilmenite, glauconite, limestone, or other minerals; or

iii. *[Wastewater]* ***Construction of wastewater*** treatment or septic systems which are located or discharged on-site.

(d) The Department will consider the proposed project to have no substantial impact, and will issue a transition area waiver reducing the standard transition area width to 100 feet, if no activity prohibited pursuant to N.J.A.C. 7:7A-6.2 is conducted within the reduced 100 foot transition area and if all of the following transition area characteristics and proposed project factors are true:

1. The property or proposed project or activity does not fall into any of the categories at (c)1, 2, 4, 6 or 7 above.

2. The existing, pre-development transition area is unvegetated or has a herbaceous vegetational community as the dominant vegetational community as determined in (e)1 below;

3. The property has been part of an "established ongoing farming, ranching or silviculture operation" as defined at N.J.A.C. 7:7A-1.4 within the two years before the transition area waiver application is submitted;

4. The proposed project will include the planting of native trees and shrubs in the reduced 100 foot transition area pursuant to a plan approved by the Department. The planting shall achieve no less than an 85 percent area coverage in the entire 100 foot transition area and ensure no less than 85 percent survival of the plants for no less than three years; and

5. The reduced 100 foot transition area is placed under a permanent conservation easement or restriction, recorded as part of the deed to the property, which provides that the reduced transition area may not be improved, altered or in any way disturbed or cleared except pursuant to the Department-approved planting project.

(e) If the project, activities and/or property do not meet any of the criteria in (c) or (d) above, the Department shall determine the transition area width based on the slope and dominant vegetational community type of the transition area and the development intensity of the proposed project, as described below at (e)1 to 3, as indices of impact on a freshwater wetland of exceptional resource value, using the matrix below.

Dominant Vegetational Community		Slope%	Development Intensity: Low (0-10%)	Development Intensity: Moderate (>10-40%)	Development Intensity: High (>40%)
	Herbaceous	0-2	100	120	140
	Herbaceous	>2	150	150	150
	Scrub-Shrub	0-2	75	75	80
	Scrub-Shrub	>2-5	95	115	130
	Scrub-Shrub	>5	150	150	150
	Forest	0-2	75	75	75
	Forest	>2-5	75	75	85
	Forest	>5-10	75	85	95
	Forest	>10-15	95	105	115
	Forest	>15-20	115	125	135
	Forest	>20	135	145	150

1. The dominant vegetational community in a transition area is the plant community which covers the most surface area of the transition area contained within the subject property. Vegetational communities are classified as herbaceous, scrub-shrub, or forested.

i. *[A]* *An* herbaceous vegetational community is characterized by the presence of annual and perennial plant species *or bare ground*.

ii. A scrub-shrub vegetational community is characterized by shrub and herbaceous plant species with an average height equal to or less than 20 feet. A forested area with little or no herbaceous or shrub layer (understory) shall be considered a scrub-shrub vegetational community for the purposes of this chapter.

iii. A forested vegetational community is characterized by tree species with an average height greater than 20 feet accompanied by a herbaceous or shrub layer.

2. The average slope of the ground in the existing pre-activity standard transition area is measured as the arithmetic mean of slope measurements of the transition area taken every 200 feet along the outside transition area boundary. Slope shall be measured as the change in elevation of the ground from the freshwater wetlands boundary to the outside transition area boundary over the *[width of the]* standard transition area *width* established in N.J.A.C. 7:7A-6.1.

3. The development intensity of the proposed project is the percentage of the surface area of the property, measured on a horizontal scale, which will be covered by impervious surfaces at the completion of the proposed project. For the purposes of this paragraph, "property" means the municipal tax lot or lots upon which *any part of* the proposed project will occur. Impervious surfaces are areas which prevent the infiltration and percolation of water into the soil. Impervious cover includes, but is not limited to, pavement, rooftops, sidewalks, driveways, tennis courts and swimming pools. The area used to calculate development intensity shall exclude freshwater wetlands, *transition areas,* and State open waters. The sum of the square footage of freshwater wetlands, transition areas, and State open waters on the property is subtracted from the square footage of the entire property. The resulting number is divided into the square footage of all impervious cover which will result on the property upon completion of the proposed project. This quotient is multiplied by 100 percent to obtain the percentage of impervious cover, also known as the development intensity, which can be expressed mathematicly as:

DI = IC/(PA−(FW+TA+SOW)*)* × 100%, where:

i. DI is the development intensity of the project expressed as a percentage;

ii. IC is the square footage of impervious cover which will exist on the entire subject property or properties which are affected by the proposed project, at the completion of the proposed project, including pre-existing impervious cover.

iii. PA is the square footage of the property or properties on which the proposed project or activity will occur;

iv. FW is the square footage of freshwater wetlands present on the subject property;

v. TA is the square footage of the transition area based on the standard transition area width established at N.J.A.C. 7:7A-6.1; and

vi. SOW is the square footage of State open waters on the subject property.

(f) An extraordinary hardship to the applicant will be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is or developed as authorized by the provisions of the Act and this chapter and this limitation results from unique and extreme circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the local region; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

(g) If the applicant is unable to demonstrate that an activity will have no substantial impact on the adjacent wetland by satisfying the criteria at (c) above or at N.J.A.C. 7:7A-7.3, 7.4(e), or 7.5, an applicant may demonstrate no substantial impact through the use of scientific documentation. This documentation may include but is not limited to, nutrient or sediment transport models, buffer models such as "The Wetlands Buffer Delineation Method," prepared by Rogers, Golden and Halpern, Inc., the "Buffer Delineation Model for New Jersey Pinelands Wetlands," prepared by Charles T. Roman and Ralph E. Good, or wildlife habitat suitability studies. If the applicant elects to use a buffer model, the following shall be addressed as they relate to the adjacent wetlands: sediment, nutrient, and pollutant transport and removal, impacts on sensitive species, and potential impacts to surface water quality.

7:7A-7.3 Intermediate resource value freshwater wetlands: standards for *[and extent of]* transition area width reduction

(a) *This section addresses standards for overall width reduction of transition areas adjacent to intermediate resource value wetlands.* A transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a Department-approved transition area averaging plan *issued pursuant to N.J.A.C. 7:7A-7.5*, or a transition area waiver *for access to an authorized activity* granted *by the Department* pursuant to

N.J.A.C. 7:7A-*[7.2]****7.1***(f), *[in no case shall]* a transition area adjacent to a freshwater wetlands of intermediate resource value ***shall not be reduced to*** *[be]* less than 25 feet wide.

(b) The Department shall grant a transition area waiver *[for a transition area]* ***to reduce a transition area*** adjacent to a freshwater wetland of intermediate resource value ***from the standard transition area*** only if:

1. The proposed activity would have no substantial impact, as determined pursuant to (c) and (d) below, on the adjacent freshwater wetland; or

2. The waiver is necessary to avoid a substantial hardship to the applicant, as defined in (e) below.

(c) For the purposes of this subchapter, a substantial impact shall be deemed to exist on a freshwater wetland of intermediate resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction ***pursuant to N.J.A.C. 7:7A-7.2(g)***:

1. The freshwater wetland is *[listed as an EPA priority wetland]* ***designated as an EPA priority wetland by the United States Environmental Protection Agency***;

2. The freshwater wetland is a critical habitat for fauna or flora, as determined by the Department. Critical habitat for fauna are areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities. Critical habitat for flora are areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey;

3. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system, while the river is in an official study status;

4. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:13-*[1.2]****5.10*** will be disturbed by the proposed activity;

5. The property is located adjacent to a local, ***county,*** State or Federal ***park,*** wildlife refuge, sanctuary *[or]***,** management area ***, or area listed on the New Jersey Register of Natural Areas***; or

6. The proposed activity or project includes one or more of the operations or activities at N.J.A.C. 7:7A-7.2(c)*[6]****7***.

(d) If the project, activities and/or property do not meet any of the criteria in (c) above, the Department shall determine the transition area width reduction from that of the standard transition area width based on the slope and dominant vegetational community type of the ***transition*** area and the development intensity of the proposed project, as described at N.J.A.C. 7:7A-7.2(e)1 through 3, as indices of the impact on a freshwater wetland of intermediate resource value, using the criteria below:

1. A transition area waiver reducing the transition area width to 25 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

2. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to three percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 40 percent.

3. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is scrub-shrub or herbaceous vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

4. A substantial impact on the freshwater wetland shall be deemed to exist, and a transition area waiver shall not be granted pursuant to this section, if the conditions in (d)1, 2 or 3 above are not met.

(e) A substantial hardship to the applicant shall be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is or developed as authorized by the provisions of the Act and this chapter and this limitation results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

7:7A-7.4 Special activities: standards for granting transition area waivers

(a) ***The Department will issue transition area waivers for certain special activities meeting the criteria in this section. Waivers under this section are not subject to the criteria in N.J.A.C. 7:7A-7.2, 7.3 or 7.5.*** The Department *[shall]* ***will*** issue a transition area waiver to reduce or partially eliminate the standard transition area ***to allow*** for the special activities listed below at (a)1 through 3, provided the ***applicable*** conditions for each activity set forth below at ***(b),*** (c), (d), (e) and (f) are met; provided the project is designed to minimize impacts to the freshwater wetland and transition area; and provided the transition area continues to serve the purposes set out at N.J.A.C. 7:7A-6.1(a) ***and (b). Reductions or partial eliminations authorized under this section shall not require compensation pursuant to N.J.A.C. 7:7A-7.5***. Except pursuant to ***a transition area waiver for access to an authorized activity issued by the Department pursuant to*** N.J.A.C. 7:7A-7.1(f), a transition area adjacent to freshwater wetlands of exceptional resource value shall *[be no]* ***not be reduced to*** less than 75 feet wide. The special activities are:

1. Stormwater management facilities as defined at (b) below;

2. Linear development as defined at N.J.A.C. 7:7A-1.4; and

3. Activities ***performed in the transition area which are*** permitted under ***the*** specific Statewide general permits listed in (e) below.

(b) If the proposed activity is the construction of a stormwater management facility, the Department will approve a transition area waiver for the reduction or partial elimination of a transition area if there is no feasible alternative onsite location for the facility.

1. For the purposes of this paragraph, "stormwater management facility" means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with all applicable local, county and state regulations. These facilities may include retention and detention basins and infiltration structures; grassed swales; filter fabric; rip-rap channels and/or stormwater outfalls.

2. An alternative onsite location shall not be considered infeasible merely because it would require one or more of the following:

i. Relocating part or all ***of*** the stormwater management facility outside of the transition area ***and into the upland***;

ii. Modifying the type of stormwater management facility;

iii. Redesigning the layout, size, scope or configuration of the buildings, roads or other aspects of the project in order to accommodate the stormwater management facility; or

iv. Reducing the scope or density of the project generating the stormwater.

3. An alternative onsite location shall be considered feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of stormwater management goals.

(c) If the proposed activity is the construction of a linear development as defined at N.J.A.C. 7:7A-1.4, the Department will approve a ***further*** transition area waiver for the reduction or partial elimination of a transition area if there is no feasible alternative location for the linear development.

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:

i. Modifying the route of the linear development to avoid freshwater wetlands and transition areas; or

ii. Reducing the width of the linear development.

2. An alternative shall be feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of the overall project purposes.

3. An alternative shall not be excluded from consideration merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained or used to fulfill the basic purpose of the proposed activity.

(d) An alternative ***on-site*** location***, as described in (b) above, or an alternative location, as described in (c) above,*** may be considered infeasible if its use for the project would cause other significant adverse environmental consequences.

(e) No substantial impact will be deemed to exist on a freshwater wetland, and a transition area waiver will be granted for the reduction ***or partial elimination*** of transition area in order to conduct activities ***in the transition area*** which are covered by the Statewide general permits at N.J.A.C. 7:7A-9.2(a)***2,*** 3, 4, 8, ***9, 10, 11, 12, 13, 14,*** 15, 16, and 17. ***All limitations and conditions contained in the description of Statewide general permit activities at N.J.A.C. 7:7A-9.2(a) will also apply to those activities when authorized under this subsection. For example, those Statewide general permit activities that are prohibited in EPA priority wetlands will also be prohibited in the transition areas adjacent to EPA priority wetlands. Also, for example, where the Statewide general permit at N.J.A.C. 7:7A-9.2(a)10, minor road crossings, is limited to 0.25 acres of wetland or open water disturbance, the special activity waiver for this activity will be limited to 0.25 acres of transition area disturbance. In addition, the limits at N.J.A.C. 7:7A-9.4 on the use of multiple Statewide general permits in freshwater wetlands also apply to the use in transition areas of multiple special activity waivers issued under this subsection. For example, pursuant to N.J.A.C. 7:7A-9.4(d), an approval under the Statewide general permit at N.J.A.C. 7:7A-9.2(a)8 will be authorized only once for a single property. Likewise, only one special activity waiver for the activity covered by that Statewide general permit shall be approved in a transition area.***

(f) A person shall not commence a prohibited activity in a transition area pursuant to *[this subsection]* ***(e) above*** prior to obtaining a transition area waiver from the Department pursuant to ***the Act and*** this chapter. The limitations of N.J.A.C. 7:7A-7.2(c) and 7.3(c) do not apply to transition area waivers granted under *[this subsection]* ***(e) above***.

7:7A-7.5 Transition area waivers***, averaging plans***: Standards for *[averaging plan approval]* ***modifying the shape of a transition area***

(a) A transition area averaging plan, a type of transition area waiver, is a plan to modify the overall shape of the transition area without reducing the total square footage of the transition area. ***A transition area averaging plan may be approved for activities adjacent to either intermediate or exceptional resource value freshwater wetlands.*** An example of transition area averaging is shown in N.J.A.C. 7:7A-7 Appendix A, which is incorporated by reference in this subchapter.

(b) Subject to the limitations of (c) and (d) below, an applicant may change the shape of a transition area consistent with a Department approved transition area averaging plan. Portions of the required transition area width may be reduced *[or partially eliminated]* provided that the reduction in width is compensated, on a square footage basis, by the expansion of another portion of the same transition area on the same property, and provided that the resulting transition area continues to serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) ***and (b)***.

1. If any of the following conditions exist, the ***transition area*** averaging plan shall be deemed to result in a transition area which does not serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) ***and (b)***, and, therefore, the transition area averaging plan shall not be approved:

i. The slope of the existing, pre-activity transition area where the reduction is proposed is greater than 25 percent;

ii. The freshwater wetland adjacent to the transition area is a breeding or nesting habitat for "threatened or endangered species", as defined at N.J.A.C. 7:7A-1.4; or

iii. The transition area averaging plan proposes to:

(1) Reduce the transition area to less than 10 feet wide for a continuous distance of 100 linear feet or more along the freshwater wetlands boundary;

[(2) Reduce the transition area width to less than 10 feet along more than 20 percent of that portion of the freshwater wetlands boundary which is contained on the property;]

*[(3)]****(2)*** Place structures or impervious surfaces within 20 feet of the freshwater wetlands; or

*[(4)]****(3)*** Compensate for the reduction of the transition area by increasing the width of any portion of the transition area to more than 50 percent of *[the width of]* the standard transition area ***width***.

(c) A transition area averaging plan shall be based on each individual freshwater wetland and its associated transition area. Any expansion(s) of a transition area to compensate for a reduction elsewhere shall be located on the same transition area as the reduction, shall be adjacent to the same freshwater wetland where the transition area was reduced, and shall be on property owned or legally controlled by the applicant.

(d) In no case shall a transition area adjacent to a freshwater wetland of exceptional resource value cover a total square footage that is less than the square footage which would result from a transition area with a uniform 100 foot width*[, nor]****. In no case*** shall the width of any part of *[the]* ***a*** transition area ***adjacent to a freshwater wetland of exceptional resource value*** be reduced to less than 75 feet except pursuant to N.J.A.C. 7:7A-7.1(f) (transition area waivers for access to *[permitted]* ***authorized*** activities).

7:7A-7.6 Application contents for transition area waivers

(a) The application for a transition area waiver shall include the applicable fee for the review and processing of a transition area waiver application specified at N.J.A.C. 7:7A-16.6 and five copies of the following information:

1. A completed FW-1 application form, obtainable at the address at N.J.A.C. 7:7A-1.3, filled out as directed for a transition area waiver in the instructions accompanying the application form;

2. A written description of the location of the proposed activity and property including county, municipality, municipal lot(s), block(s) and street address;

3. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, New Jersey 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries;

4. A preliminary site plan or subdivision map of the property, or out-bound survey map of the property if no preliminary site plan or subdivision map exists, clearly identifying all proposed activities on the entire property, all existing structures on the property, and the freshwater wetland boundary;

i. Note: The freshwater wetlands boundary shown on the site plan or subdivision map shall be visibly flagged and/or staked in the field according to the procedure at N.J.A.C. 7:7A-8.2(c)7.

5. A detailed written description of the proposed activity or activities, describing the total area to be modified by the entire project, and the total square footage of the transition area potentially affected, either temporarily or permanently;

***6. A certified mail return receipt card, signed by the receiver, from the U.S. Post Office, showing that a complete copy of the submittal to the Department requesting a transition area waiver, including all materials required by this subsection, has been submitted to the clerk**

of each municipality in which the prohibited activity is proposed to take place;*

*[6.]***7.** A certified mail return receipt card, signed by the receiver, from the U.S. Post Office, showing that a written notice has been forwarded to the municipal clerk, the environmental commission, *[if any]* ***or any other public body with similar responsibilities***, and planning board of *[the]* ***each*** municipality, and the planning board of *[the]* ***each*** county in which the activity is to occur. The written notice shall include, at a minimum, the following information and statement:

i. The name(s) and address(es) of the property owner(s);

ii. The property location by municipal lot(s) and block(s), municipality, county, and street address;

iii. A description of the proposed project and types of activities in the transition area; *[and]*

iv. A map of the type required by (a)3 above showing the location of the property; and

*[iv.]***v.** The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the *[New Jersey Department of Environmental Protection,]* Bureau of Freshwater Wetlands***, Division of Coastal Resources, Department of Environmental Protection,*** for a transition area waiver. ***The rules governing transition areas are found at N.J.A.C. 7:7A.***

A transition area waiver, if approved by the Department, will allow certain ***otherwise*** prohibited activities, as defined in N.J.A.C. 7:7A-6.2, to occur in a transition area. A transition area is an area adjacent to a freshwater wetlands which minimizes adverse environmental impacts on the freshwater wetlands and serves as an integral component of the freshwater wetlands ecosystem. A transition area can extend up to 150 feet from the freshwater wetlands boundary depending on the resource value classification of the freshwater wetlands.

A copy of the application can be viewed at the address below during normal business hours. The Department welcomes comments on the transition area waiver application. ***Procedures for the Department's review of transition area waiver applications can be found at N.J.A.C. 7:7A-7.7.*** Please submit your written comments within 15 days of receiving this letter along with a copy of this letter to:

Bureau of Freshwater Wetlands
Division of Coastal Resources
New Jersey Department of Environmental Protection
CN 401
Trenton, New Jersey 08625

The Department will notify the environmental commission, *[if any]* ***or any other public body with similar responsibilities***, and the planning board of *[the]* ***each*** municipality and *[the]* ***each*** county planning board ***in which the activity is to occur*** of the Department's final decision concerning this transition area waiver application";

*[7.]***8.** Written consent by the applicant to allow access to the subject property by representatives or agents of the Department for the purpose of conducting site inspections or surveys of the freshwater wetlands and transition areas thereon and, if necessary, written consent by neighboring property owner(s), following the form provided in N.J.A.C. 7:7A-6 Appendix B, to allow access to the neighboring property by representatives or agents of the Department for the purpose of conducting site inspections of the freshwater wetlands and transition areas on the property (see N.J.A.C. 7:7A-6.3(b)7); and

*[8.]***9.** Any information establishing a claim of hardship as determined pursuant to N.J.A.C. 7:7A-*[7.3(e) or]* 7.2(f) ***or 7.3(e), if applicable***.

(b) If the freshwater wetlands boundary on the property has not been confirmed or delineated by the Department through a letter of interpretation pursuant to N.J.A.C. 7:7A-8 and the property is greater than one acre, the applicant shall also provide as part of the transition area waiver application the information required in N.J.A.C. 7:7A-8.2(c)2, 5, 6, 7, 8, and 9 ***, Application for letters of interpretation***.

(c) In addition to the information required in (a) and (b) above, the following information shall be submitted depending on the type of transition area waiver(s) requested in the application:

1. To reduce the *[width of the]* standard transition area ***width*** pursuant to N.J.A.C. 7:7A-7.2 ***and 7.3*** (except pursuant to *[N.J.A.C. 7:7A]*-7.2(d)) *[and N.J.A.C. 7:7A-7.3]*:

i. A description of the dominant vegetational community in the standard transition area, as described at N.J.A.C. 7:7A-7.2(e)1;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2; and

iii. The development intensity of the proposed project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3.

2. To reduce the *[width of a]* standard transition area ***width*** pursuant to N.J.A.C. 7:7A-7.2(d), a proposal containing:

i. A detailed description of the size and type of the transition area planting project;

ii. A site plan showing the location of the proposed work and *[an elevational]* ***a cross-sectional*** and plan view of the proposed work;

iii. A description of the types of native trees and shrubs to be planted and at what spacing, as well as the type of seeding, fertilization and other stabilization activities;

iv. A monitoring and maintenance plan of the ***reduced*** transition area to ensure no less than 85 percent area coverage in the entire *[reduced]* 100 foot ***wide*** transition area and no less than 85 percent survival of the plants for three years;

v. A schedule from initiation to completion of the planting project including the dates of planting and fertilization (rates and types), dates of monitoring measurements, as well as any other activities; *[and]*

vi. Existing soil type(s) and soil conditions in the transition area; ***and***

[vii. A permanent, recorded, conservation easement or deed restriction which meets the requirements of N.J.A.C. 7:7A-7.2(d)4; and]

*[viii.]***vii.** Proof that the standard transition area has been part of an "established ongoing farming, ranching or silviculture operation" ***as defined at N.J.A.C. 7:7A-1.4*** within the two years prior to submittal of the application.

*[3.]***4.** For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:

i. The total square footage of the standard transition area;

ii. The total square footage of the transition area to be disturbed by the proposed project;

iii. The total square footage proposed for transition area reduction, and proposed for transition area expansion in compensation for the propsed reduction, pursuant to the transition area averaging plan; and

iv. A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field *[by reference to permanent onsite monuments]*.

*[4.]***3.** For a special activity ***transition area*** waiver for the construction of a stormwater management facility or a linear development pursuant to N.J.A.C. 7:7A-7.4.

[, a] ***i. A*** written alternatives analysis describing the various alternatives considered including a written description and site plan drawings of each possible alternative considered and the reason(s) each alternative is not considered feasible.

(d) Applicants shall perform recordkeeping activities for transition area waiver applications according to the requirements at N.J.A.C. 7:7A-11.2.

(e) All transition area waiver applications shall be signed according to the signatory requirements at N.J.A.C. 7:7A-11.3.

(f) All ***transition area*** application fees shall be paid according to the requirements set forth for payment of permit fees at N.J.A.C. 7:7A-16.*[1]*.

7:7A-7.7 Procedure for review of transition area waiver applications

(a) Within 30 days of the receipt of an application for a transition area waiver, the Department shall review the application for completeness and make any necessary requests for additional information or declare the application complete. If the application does not include the fee specified at N.J.A.C. 7:7A-16, no action shall be taken by the Department under this section, the submittal will not be considered an application, and completeness review will not begin.

(b) If additional information is required of an applicant, the Department shall have 15 days after receipt of the information to request clarification of the submitted additional information. In such cases, the application shall not be considered complete until the clarification is received by the Department. If no clarification of the additional information is necessary, the application shall be considered complete as of the date of receipt of the additional information.

(c) Except as indicated in (d) and (h) below, the Department shall issue or deny a transition area waiver within 90 days of receiving a complete transition area waiver application or within 90 days after receipt of the requested additional information or clarification sufficient for the application to be considered complete.

(d) If the transition area waiver application is submitted together with an individual freshwater wetlands permit application concerning the same property, the Department shall approve or deny the transition area waiver within the time period set forth in N.J.A.C. 7:7A-12 for the approval or denial of the individual freshwater wetlands permit application.

(e) Applications may be cancelled by the Department or withdrawn, amended, or resubmitted by the applicant pursuant to N.J.A.C. 7:7A-12.7.

(f) When a transition area waiver is issued pursuant to this subchapter, the Department shall send copies to all municipal and county agencies which received copies of the transition area waiver application.

(g) The Department *[shall]* ***will*** provide notice of application for a transition area waiver***,*** the status of all applications, and the final decision concerning all applications in the DEP Bulletin, as set forth in N.J.A.C. 7:7A-12.4.

1. Copies of all transition area waiver applications will be available for public review by interested persons in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) during normal business hours.

(h) Within 20 days of publication of the notice of application in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. ***The Department will set a time, place and date for the public hearing within 15 days of the close of the 20 day hearing request period, and will hold the public hearing within 60 days from the close of the 20 day period.***

1. The Department may issue or deny a waiver without a public hearing unless there is a significant degree of public interest in the application as manifested by written requests for a hearing submitted within *[20 days]* ***the 20 day hearing request period***. If the Department grants a hearing, the application shall not be considered complete until 15 days after the public hearing.

2. If the Department grants a hearing, the Department shall set a date, time and location for the public hearing and shall so notify the applicant. The hearing shall be in the county wherein the transition area is located whenever practicable.

3. The Department and the applicant shall follow the public hearing procedures for freshwater wetlands permits established in N.J.A.C. 7:7A-12.5(e) through (j).

(i) The Department shall establish conditions in transition area waivers as required on a case-by-case basis, to assure compliance with all applicable provisions of this chapter and the Act.

7:7A-7.8 Duration, effect, modification and transfer of transition area waivers

(a) A transition area waiver issued by the Department shall be effective for a fixed term of five years.

(b) A transition ***area*** waiver shall be considered valid after the five year term provided that construction of the *[permitted]* ***authorized*** project, excluding site preparation, began on or before three years from the transition area waiver's date of issue*[,]* and provided that construction is performed on a continuous basis after the expiration of the five year term.

(c) The term of a transition area waiver shall not exceed five years except as described at (b) above. However, a transition area waiver may be renewed by submitting a new application in accordance with the procedures set forth in this subchapter.

(d) The issuance of a transition area waiver does not convey property rights of any sort, or any exclusive privilege.

(e) A transition area waiver may be transferred by the permittee to a new owner or operator only if the transition area waiver has been modified or revoked and reissued as described at (f) below or a minor modification has been made as described at (f) below to identify the new permittee and incorporate any additional requirements the Department determines to be necessary under the Act and this chapter.

(f) A transition area waiver may be modified, revoked, or reissued in accordance with the procedures for permits at N.J.A.C. 7:7A-13.6 for the following causes:

1. For modification as established at N.J.A.C. 7:7A-13.7;
2. For modification or revocation and reissuance as established at N.J.A.C. 7:7A-13.8; or
3. For minor modifications as established at N.J.A.C. 7:7A-13.9.

7:7A-16.6 Fees for review and processing of *[requests for]* transition area *[waivers]* ***waiver applications***

(a) *[The fee for the review and processing of a transition area waiver application shall be as follows:]* ***Each request for a transition area waiver shall be accompanied by the appropriate fee as follows:***

1. If a letter of interpretation has been performed on the property by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area waiver application fee shall be:

i. For ***a*** property ***or right of way*** of one acre or less: $100.00; and

ii. For ***a*** property ***or right of way*** over one acre: $200.00 plus $20.00 per acre, or any fraction thereof, of the standard transition area affected or disturbed by the proposed activity.

2. If no letter of interpretation for the property has been prepared by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area waiver application fee shall be:

i. For ***a*** property ***or right of way*** of one acre or less: $200.00;

ii. For ***a*** property ***or right of way*** over one acre: $450.00 plus $25.00 per acre, or any fraction thereof, of the total property.

3. If a letter of interpretation for the property which provides only a determination of the presence or absence of freshwater wetlands has been prepared for a property by the Department pursuant to N.J.A.C. 7:7A-8, the transition area waiver application fee shall be:

i. For ***a*** property ***or right of way*** of one acre or less: $100.00;

ii. For ***a*** property ***or right of way*** over one acre: $450.00 plus $25.00 per acre, or any fraction thereof, of the total property.

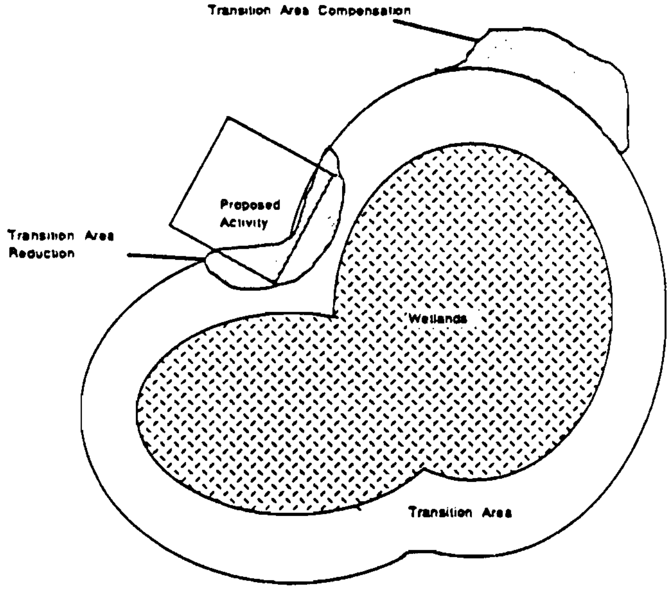
4. If a transition area waiver is sought by an agency of the State, no application fee is required.

*[4.]****5.*** If, in order to review and process a transition area waiver application, more than one site inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No transition area waiver shall be issued until this additional fee is paid.

7:7A-16.7 Fees for the review and processing of requests for exemption letters

The fee for the review and processing of a request for an exemption letter certifying that a project or activity is exempt from freshwater wetlands or open water fill permit requirements, or from transition area requirements, shall be $100.00.

7:7A-7 Appendix A.
Example of a transition area averaging plan.



The square footage in the compensation area is equal to that of the reduction area.

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Readoption with Amendments: N.J.A.C.7:14A

Proposed: March 20, 1989 at 21 N.J.R. 707(a).

Adopted: June 2, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: June 2, 1989 as R. 1989 d. 339, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5 et seq., 58:4A-4.1 et seq., and 58:12A-1 et seq.

DEP Docket Number: 009-89-02.

Effective Date: June 2, 1989. Readoption; July 3, 1989, Amendments.

Expiration Date: June 2, 1994.

Summary of Public Comments and Agency Responses:

A public hearing on this proposed readoption with amendments was held in the Labor Education Center Auditorium of Cook College on May 8, 1989, at which no members of the public attended. Three commenters submitted written comments prior to the close of the comment period on May 10, 1989.

COMMENT: Statements made in the Economic Impact section of the proposal at 21 N.J.R. 709 are misleading. The Economic Impact statement deals only with the effect upon the Department's budget. The costs of regulation have been passed on to the permittee in the form of very significant annual fees. This fee is now the greatest single operational cost for those facilities which discharge less than one million gallons per day and perhaps for larger facilities as well. For some facilities, the NJPDES permit fee exceeds all other operating costs combined.

RESPONSE: The Department's statements in the Economic Impact section of the proposal clearly set forth the procedure whereby NJPDES fees are assessed for discharge permits and are subject to an annual fee hearing. Discussion of the NJPDES budget is essential to inform the public of the cost of this fee supported program. The entire cycle of permitting, monitoring and administering the NJPDES program is a significant responsibility requiring appropriate fees in order to support a high level of performance. The concept behind the NJPDES fee system is to develop a means to place the burden of environmental responsibility heavily on the polluting industries and lightly on cleaner industries. Many permittees pay only minimal fees using this system. By assessing higher fees for higher pollutant loadings, the Department is also providing an incentive to reduce pollutant volume and thereby reduce the permit fee.

COMMENT: Statements included in the Regulatory Flexibility Statement of the proposal at 21 N.J.R. 709 are grossly inaccurate. The cost of compliance with these rules is stated to be minimal, from approximately $200.00 to several thousand dollars. Actually, the cost of preparing a submittal for a NJPDES permit ranges from a minimum of $25,000 to upwards of $100,000 in professional services, without complications. Acquisition of a co-applicant ranges from $100,000 to one million dollars or more, and the associated risks incurred during the one to two year period required to obtain the permit can be even larger. This does not include the construction costs of the facilities required to conform to the conditions of the permit or to the operating compliance costs.

RESPONSE: The cost of the preparation of a NJPDES permit application for an existing facility may be minimal, as they are not usually required to perform soil borings, obtain background ground water samples, install ground water monitoring wells, perform upstream/downstream analysis, or similar background requirements. An existing facility submitting a renewal application without an expansion of the amount of wastewater being discharged may incur costs of only $200.00. The cost of preparing an application for a proposed facility is higher due to the site characterization studies needed to determine what can be discharged to the receiving waters and still maintain water quality standards. It is from the information obtained in the site characterization study that the Department establishes discharge limitations which a treatment system must be designed to meet. Although the Department may, in some cases, require a co-permittee, the cost of acquiring a co-permittee is not established by the Department, but by the party which agrees to become the co-permittee. The costs are typically in the form of performance bonds posted by the applicant to cover liabilities which the co-permittee may incur. The purpose of requiring a co-permittee is to ensure that there will be a legally responsible party that is subject to a NJPDES permit at all times. Construction and operating costs are usually only minimally affected by permit requirements for new facilities. It is recognized that there are requirements within the NJPDES rules which do cause significant expenditures; however, there is nothing contained in the amendments to N.J.A.C. 7:14A to greatly increase expenses over and above existing costs.

COMMENT: The method of computing the total pollutant load in N.J.A.C. 7:14A-1.8(a)10 is based upon flow volume and pollutant type. This is not actually the true pollutant load, which should be based on volume and concentration, with a weighting factor for type of pollutant. The Department requires a more stringent standard for private (non-regional) dischargers than they do for public regional dischargers. The additional costs for tertiary treatment and subsurface discharge facilities are not recognized in this formula, thus the facilities which discharge the greatest pollutant load are not bearing their appropriate share of the permit fees.

RESPONSE: The total pollutant load for surface water discharges is already based on concentration, volume and risk factors. It is not appropriate to compare a ground water discharge to a surface water discharge because the parameters of concern (pollutant load) are significantly different. For example, discharge limitations for some types of pollutants to surface water may be more lenient than for ground water due to the capacity of a surface water body to assimilate the pollutant, effectively neutralizing its effect on the environment. What a ground water facility may save in permit fees might be offset by the cost of treatment and monitoring.

The comment that standards are more stringent for private dischargers (non-regional) than for public regional dischargers is somewhat vague and without example or citation. Generally, standards to be met by a private facility are the same as those for a public facility in that effluent limitations are based on water quality standards and the quality of the receiving waters. Although the cost of a particular type of treatment is not directly included in the fee formula, it is ultimately reflected in pollutant load, hence in the NJPDES permit fee either causing an increase or decrease in the fee. The present use of the cube root of the total pollutant load, in N.J.A.C. 7:14A-1.8(a)10, results in the assessment of proportionally higher fees for small or more efficient dischargers, but as of July 1 the fees will be based on the square root of the total pollutant load. This will benefit those smaller and more efficient dischargers.

COMMENT: The following terms and definitions are suggested to be included in N.J.A.C. 7:14A-1.9:

"Monthly" means one day each month (the same day each month as best as practicable) and a normal operating day, plus or minus three days.

"Net" means the amount of a pollutant contained in the discharge measured in appropriate units as specified herein, less the amount of a pollutant contained in the intake source (i.e., ambient), measured in the same units, over the same period of time.

"Oral Notification" means notification made to the Department regarding any violation of the NJPDES permit by telephone, telegraph or other reasonable facsimile.

"Weekly" means one day each week (the same day each week as best as practicable) and a normal operating day, plus or minus one day.

"Written Notification" means a formal written notification submitted to the Department as required by N.J.A.C. 7:14A-2.5(a)12vi(1) through (4).

RESPONSE: The Department did not propose these changes as part of this readoption; therefore, they will not be made at this time. However, this comment will be considered in forthcoming proposals amending N.J.A.C. 7:14A.

COMMENT: Changing the "final draft NJPDES permit" to "final NJPDES permit" for non-DAC dischargers (all new non-regional permits) in N.J.A.C. 7:14A-7.2 could have the effect of moving the invoice for fee payment and residual management report forward, prior to treatment works approval ("TWA") or facility construction.

RESPONSE: The term "final draft NJPDES permit" will remain in the rules for the present. Because the term itself has caused some confusion in the past as to whether a permit is actually a "final" or a "draft", future revisions of the rule will address changes to this terminology. In any event, this would not have the effect of moving the invoice for fee payment or residual management report forward. The final permit must precede the actual commencement of the discharge activity but does not precede the TWA or construction.

The proposed amendments to N.J.A.C. 7:14A-1.9 and 7.2 contain the proposed deletion of the term "final draft NJPDES permit". This was to be replaced by either "final NJPDES permit" or "DAC" ("discharge allocation certificate"). These proposed amendments are being deleted due to possible interpretation difficulties and conflict with terminology in other subchapters. A final draft NJPDES permit is a permit for a new source where the discharge is not to surface water. In effect, a final draft NJPDES permit is a DAC for non-surface water discharges. Since the definition of a DAC is limited to surface water discharges, the Department will retain the term "final draft permit". Also, in N.J.A.C. 7:14A-7.2(a)12, the proposed 180 day notice to be given prior to a planned discharge will remain at 60 days to be consistent with the timeframes for DACs in N.J.A.C. 7:14A-3.3(h)4. N.J.A.C. 7:14A-7.2(a)13 will also retain the requirement that the Department inspect a facility within 60 days of a planned discharge to assure such inspections are carried out in a timely fashion.

COMMENT: The United States Environmental Protection Agency's ("USEPA") regulations state that an upset "constitutes" an affirmative defense to an action for noncompliance with a permit term or condition (40 CFR 122.41(n)). As a result, the words "may constitute" found at N.J.A.C. 7:14A-3.10(c)1 should be replaced with "constitutes". There is no reason to have a detailed upset regulation which, even if satisfied, still leaves open the question of whether the permittee has established this defense.

RESPONSE: The Department is not required to adopt regulatory language identical to that of the USEPA and reserves judgment regarding whether an upset constitutes an affirmative defense in every case.

COMMENT: The proposed amendment to N.J.A.C. 7:14A-3.14(d)2 states that toxic substance limits shall be stated as a daily maximum concentration. A daily maximum concentration could imply that daily testing will be required, which would cause a significant increase in laboratory and reporting burdens. It should be stated that such testing will not be required except for cause and under such circumstances as are specifically stated in conditions of the permit, enforcement action or consent order.

RESPONSE: In general, the Department sets monitoring requirements in permits in accordance with Appendix H of N.J.A.C. 7:14A. For characteristics not listed in Appendix H, the Department will set the monitoring requirements for a characteristic in accordance with the requirements in other applicable sections of N.J.A.C. 7:14A (for example, N.J.A.C. 7:14A-14, for oil and grease) or if no other sections apply, the appropriate frequency and type for the characteristic, but in no case less frequently than required in Appendix H for the applicable flow rate. The commenter is correct in the statement that monitoring may be required by the Department as frequently as daily or continuously, as N.J.A.C. 7:14A-2.9(a)2 provides for such monitoring frequencies where required to obtain a representative sample. If a facility is not currently required to test daily or continuously, laboratory costs would naturally increase. NJPDES permits are already required to specify monitoring intervals as shown at N.J.A.C. 7:14A-2.9(a)2. An applicant for a NJPDES permit renewal, discharging toxics, as opposed to the conventional type pollutants (for example, BOD, suspended solids, etc.) may be required to increase the frequency of monitoring, in accordance with the Federal Water Quality Act of 1987 (P.L. 100-4, February 4, 1987).

COMMENT: N.J.A.C. 7:14A-7.2(a)4 requires a Stage 2 approval prior to issuance of a final NJPDES permit, where a TWA is required. The Stage 2 approval does not seem to be mentioned elsewhere, unless it is the equivalent ot the NJPDES discharge permit mentioned in N.J.A.C. 7:14A-7.2(a)13, which is issued after submittal of form WQM005 and final inspection. If this is the case, rules regarding issuance of the NJPDES permit after the 30 day comment period on the draft would be affected, as would the policy of not issuing the TWA prior to finalizing of the NJPDES permit. A circumstance would then be created where the TWA would be awaiting the final NJPDES permit, and vice versa.

RESPONSE: A Stage 2 approval is not the equivalent of the NJPDES discharge permit mentioned in N.J.A.C. 7:14A-7.2(a)13. The Stage 2 approval refers to the TWA in N.J.A.C. 7:14A-7.2(a)1. A Stage 2 TWA is an approval to construct, install, or modify a treatment works as required by N.J.A.C. 7:14A-12.12 through 16. Permission to commence discharging is requested by way of the procedure specified at N.J.A.C. 7:14A-7.2(a)12. A reference in N.J.A.C. 7:14A-12.10 has been included in N.J.A.C. 7:14A-7.2(a)4 in order to clarify the meaning of a Stage 2 approval.

COMMENT: The proposed amendments to N.J.A.C. 7:14-10.8(e)2iii(1) through (6) include new parameters for the analysis of sludge for the land application of sludge. The summary section of the proposal does not provide any basis or background for the inclusion of these additional parameters. There has been no showing of need, benefit or impact for inclusion of these parameters.

RESPONSE: As stated in the proposal to N.J.A.C. 7:14A, the Department has increased the number of parameters to be analyzed in order to be consistent with the sludge quality assurance rules in N.J.A.C. 7:14-4. The analysis of these parameters will help determine the degree of chemical contamination in the sludge processed by treatment works. A tracking system of the sludge analysis will be maintained by the Department which can be used to enable treatment works to develop environmentally sound sludge management alternatives. The newly added land based application parameters provide for monitoring of all parameters identified in the USEPA's study entitled, "Summary of Environmental Profiles and Hazard Indices for Constituents for Municipal Sludge: Methods and Residuals", July 1985, USEPA, Office of Water Regulations and Standards, Washington, D.C. 20460. Those parameters and a basis for the parameters have also been included in the February 21, 1989 proposed readoption with amendments of the Water Pollution Control rules, N.J.A.C. 7:14 (see 21 N.J.R. 373(a) adopted April 27, 1989 and published in the June 5, 1989 New Jersey Register at 21 N.J.R. 1530(a)). The basis and background for inclusion of the additional parameters was also set forth in that regulatory action.

Agency Initiated Changes

1. Editorial changes which do not alter the meaning of the text have been made to clarify the rules.

2. Industrial waste management facilities ("IWMFs") which discharge to a publicly owned treatment works ("POTW") and which have an approved pretreatment program were proposed to be excluded from the requirement to obtain an individual NJPDES/SIU permit unless otherwise required to do so under other provisions of the NJPDES rules (see N.J.A.C. 7:14A-10.5(a)1ii). The determination that a facility is an IWMF includes the requirement for a determination that a treatment system influent or residue is a hazardous waste under N.J.A.C. 7:26-8. The effect of the proposed amendment was to delegate the permitting of IWMFs to a POTW when the POTW has an approved pretreatment program.

The Department has determined that it will be necessary to establish a specific regulatory framework outlining the mechanism and resources by which the POTW can specifically regulate this type of facility operation. Also, N.J.A.C. 7:14A-4 and 13 require IWMF operations to be supervised by a treatment system operator, who is currently not required to be licensed for wastewater treatment unless the discharge is subject to regulation under a NJPDES permit. Therefore, N.J.A.C. 7:14A-10.5(a)1ii is readopted without the proposed amendments. All IWMFs with indirect discharges will continue to be required to obtain individual NJPDES/SIU permits. However, the Department will review the regulatory framework and local POTW mechanisms regarding IWMFs, with the intention of eliminating any possible redundancy in future rulemaking.

3. The proposed amendment of N.J.A.C. 7:14A-3.3(h)5i changed a reference from N.J.A.C. 7:14A-3.3(f)2ii to N.J.A.C. 7:14A-3.3(f)2iii. This change is not being adopted because N.J.A.C. 7:14-3.3(f)2ii is the correct citation.

4. In response to a comment to the sludge quality assurance rules, N.J.A.C. 7:14-4, the Department has changed the definition of a significant indirect user in N.J.A.C. 7:14A-1.9 and 10.5(a) to read "... pure, treated or diluted by ground water ..." in order to be consistent with N.J.A.C. 7:14-4.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:14A.

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

7:14A-1.3 General prohibitions

(a) The Department shall not issue a NJPDES permit:

1.-4. (No change.)

5. To a domestic treatment works (DTW) where the NJPDES permit provides for the disposal of domestic wastewater sludge at a landfill unless:

i. The Department determines that there are no reasonable alternative sludge management options available to the DTW;

ii. The Department determines that the landfill is equipped with an adequate system for the interception, collection and treatment of any and all leachate; and

iii. The DTW has signed a consent order with the Department which sets forth the date sewage sludge disposal shall cease and the date acceptable sewage sludge management shall be instituted.

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1.-3. (No change.)

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
CN 402
Trenton, New Jersey 08625

5.-9. (No change.)

10. The Department shall calculate environmental impact by taking the cube root of the total pollutant load for the period July 1, 1987 to June 30, 1989. The Department shall take the square root of the total pollutant load to calculate environmental impact for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load in all subsequent fee years.

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

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water is derived by applying the formula: Environmental Impact = Pollutant Type x Volume Discharged x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (Total Weighted Pollutant Load is applicable during corrective action under N.J.A.C. 7:14A-6.15), where:

i. Pollutant Type is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows:

Rating	Pollutant Type
1	Non-contact cooling water, treated ground water, filter backwash.
2	Sanitary wastewater, food processing waste, stormwater runoff including non-hazardous waste storage areas, sanitary sludge.
5	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, stormwater including runoff from hazardous substance storage areas, landfill leachate, ground water, wastewater or sludge containing hazardous constituents.

ii.-vi. (No change.)

(e)-(f) (No change.)

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a significant indirect user (SIU) to a domestic treatment works (DTW) is derived by applying the formula: Environmental Impact = Toxicity Factor x (COD Load) where:

i. Toxicity Factor is the rating number, based on the degree of hazard, assigned by the Department to each industrial category. The rating numbers are assigned as follows:

Rating	Industrial Category
1	Food Products
2	Brewery/Yeast, Glass
3	Coffee, Soap and Detergent, Foundry, Pulp, Paper and Paperbound, Glue, Coil Coating
4	Explosives, Machine and Mechanical (Roller Bearing)
5	Electroplating, Leather Tanning, Tank Storage, Inorganic Chemicals
6	Organic Chemicals, Pharmaceuticals
10	Ground water decontamination, Hazardous Waste Facilities that recover and recycle hazardous waste
15	Landfill leachate
20	Hazardous Waste Facilities that treat and discharge hazardous waste, Industrial Waste Management Facilities

ii. (No change.)

(h) (No change.)

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Applicant" means any person, corporation, government body or other legal entity which applies for a NJPDES permit, DAC, or Departmental approval pursuant to this chapter, or makes a request for an exemption from a sewer connection ban as provided for at N.J.A.C. 7:14A-12.22 and has a substantial interest in the property subject to such ban.

...

"BOD" (biochemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter, mg/l) required during stabilization of decomposable organic matter by aerobic biochemical action as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes" (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

...

"COD" (chemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter, mg/l) required to oxidize the organic matter in a waste sample under specific conditions of an oxidizing agent, temperature and time as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes" (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

...

"Domestic pollutant" means a pollutant which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens which are predominantly the result of natural human waste elimination associated with bodily function and food preparation.

"Domestic treatment works" (DTW) means all publicly owned treatment works as well as any privately owned treatment works processing primarily domestic wastewater and pollutants together with any ground water, surface water, storm water or process wastewater that may be present.

"Domestic wastewater" means the liquid waste or liquid borne wastes discharged into a domestic treatment works.

...

"Final ***draft*** permit" means a document issued according to the procedures at N.J.A.C. 7:14A-7.2.

...

"Grab sample" means a single sample collected at a particular time and place.

...

"Individual *[IWMP]* ***IWMF*** permit" means a permit, authorization, license, or equivalent control document issued by the Department to an IWMF pursuant to N.J.A.C. 7:14A-4.4. An individual IWMF permit does not include an IWMF permit-by-rule.

...

"Industrial treatment works" means a treatment works which treats primarily process wastewater and/or industrial pollutants as determined by the percentage of process wastewater, or mass loading of BOD, COD or suspended solids in the wastewater flow. Industrial treatment works shall also include any treatment works, whether publicly or privately owned, which treats primarily wastewater or leachate from a municipal solid waste facility or a potable water treatment plant. This definition shall also encompass SIU pretreatment works.

...

"Permitted flow" means a treatment work's maximum allowable flow (in MGD) as stated in the facility's NJPDES Permit.

...

"Pretreatment" means applications of physical, chemical and/or biological processes to reduce the amount of pollutants in, or alter the nature of the polluting properties of, a process wastewater prior to discharging such wastewater into a domestic treatment works.

...

"Publicly owned treatment works" ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality". This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. However, despite public ownership of potable water treatment plants and solid waste facilities which may provide for treatment and/or discharge of pollutants, treatment works associated with potable water treatment and solid waste facilities shall be considered industrial treatment works for the purpose of this chapter.

...

"Residuals" means solids and associated liquids which are removed through a physical, chemical or biological process or any other process designed to treat wastewater or any other discharges subject to regulation under the State Act. For the purposes of this chapter residuals include, but are not limited to, sludges, grit and screenings and scum.

...

"Significant *[Indirect User]* ***indirect user***" ("SIU") means, solely for the purposes of this chapter, any user, excluding municipal collection systems, who discharges on any one day wastewater into a DTW where:

1.-7. (No change.)

8. The discharge consists of landfill leachate, either pure***, treated*** or diluted by *[groundwater]* ***ground water*** or surface runoff; or

9.-10. (No change.)

...

"SIU pretreatment works" means any treatment works serving exclusively a SIU facility and treating the facility's industrial process wastewater, or a combination of its process and domestic wastewater, prior to the discharge thereof into a domestic treatment works.

...

"Suspended solids" means the total nonfilterable residue as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes" (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

...

"Ultimate management" means final management of sludge at a facility or operation such that no additional permit or approval actions are required for further processing or movement.

...

7:14A-2.1 Application for a NJPDES permit

(a) All applications for a NJPDES permit shall be submitted to:

Assistant Director
Wastewater Facilities Management Element
Division of Water Resources
CN-029
Trenton, N.J. 08625

(b)-(k) (No change.)

7:14A-2.2 Emergency permits

(a) (No change.)

(b) Notwithstanding any other provision of this chapter, the Department may issue an emergency permit, except for a DSW, to an owner and/or operator of a facility to allow:

1. (No change.)

2. Treatment and storage or disposal of hazardous waste for a non-permitted IWMF or of hazardous waste not covered by the permit for an IWMF with an effective permit; or

3. (No change.)

(c) (No change.)

7:14A-2.5 Conditions applicable to all permits

(a) Permittees shall comply with the following:

1.-3. (No change.)

4. The permittee may only continue an activity regulated by a NJPDES permit after the expiration of a permit if it has complied with the provisions of N.J.A.C. 7:14A-2.3.

5.-11. (No change.)

12. The permittee shall provide for monitoring and records as follows:

i.-vii. (No change.)

viii. Wastewater monitoring frequency and sample type shall, at a minimum, be in accordance with Appendix H for the parameters listed therein.

13.-14. (No change.)

15. The permittee shall conform with the requirements for the management of residuals under:

i.-iii. (No change.)

iv. The Statewide Sludge Management Plan promulgated pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and

v. The provisions concerning disposal of sewage sludge and septage in sanitary landfills set forth at N.J.A.C. 7:14A-1.3, N.J.S.A. 13:1E-42 and the Statewide Sludge Management Plan.

7:14A-2.8 Schedules of compliance

(a) The Department may, when appropriate, specify in the permit a schedule of compliance leading to compliance with the State and Federal Acts and all other applicable authority for this chapter.

1. (No change.)

2. Except as provided in (b)1ii below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

i. (No change.)

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. Examples of interim requirements include:

(1) Submit a complete New Jersey Wastewater Treatment Trust Fund Loan Application (for POTWs);

(2)-(4) (No change.)

3. (No change.)

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

7:14A-2.11 Transfer of permits

(a) (No change.)

(b) As an alternative to transfers under (a) above, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:

i. Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date":

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

(6) A notarized statement signed by the new principal officer stating that he or she has read the NJPDES permit and certifies (pursuant to N.J.A.C. 7:14A-2.4(b)5i to abide by all the conditions of the permit and that production levels, products produced, rates of discharge and wastewater characteristics shall remain unchanged.

ii. (No change.)

2.-4. (No change.)

7:14A-2.12 Modification, suspension or revocation of permits

(a) When the Department receives any information as, for example, from inspection of the facility or from information submitted by the permittee as required in the permit (for example, see N.J.A.C. 7:14A-2.5, 3.10 and 3.11 (DSW), 4.4 (IWMF), 5.9 (UIC), 7:14A-6), receives a request for modification or revocation under N.J.A.C. 7:14A-7.5, or conducts a review of the permit file, a determination may be made by the Department as to whether cause exists including, but not limited to, causes as provided under this subsection and (b) below, for modification, suspension or revocation of the permit. If cause exists, the Department may modify, suspend or revoke the permit accordingly, subject to the limitations of (c) below, and may request an updated application if necessary. When a permit is modified, only those conditions subject to modification shall be reopened. If a permit is revoked, the entire permit shall be reopened and subject to revision. The permit may be reissued for a new term (see N.J.A.C. 7:14A-7.5(c)2). If a permit modification satisfies the criteria in N.J.A.C. 7:14A-2.14 for "minor modifications", the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in N.J.A.C. 7:14A-7 and 8 shall apply.

(b) The following are causes for modification, suspension, or revocation of a permit:

1.-3. (No change.)

4. For a modification of a compliance schedule, good cause as determined by the Department, and including an act of God, strike, flood, or other events over which the permittee has little or no control, for which the Department determines there is no control, and for which there is no reasonably available remedy. However, in no case shall a NJPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also N.J.A.C. 7:14A-2.14 (minor modifications) and (c)11 below (DSW) innovative technology). This does not preclude the Department from the revocation or suspension of a compliance schedule for good cause shown.

5. Notification has been received by the Department (pursuant to N.J.A.C. 7:14A-2.5(a)14iii) of a proposed transfer of the permit. A permit may also be modified to reflect a transfer after the effective date of an automatic transfer (N.J.A.C. 7:14A-2.11(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

6. Where the Department classifies a facility with an existing NJPDES permit as an IWMF (see N.J.A.C. 7:14A-4).

(c) The Department may only modify, suspend or revoke a permit for discharges to surface water (DSW):

1.-12. (No change.)

13. To incorporate new information and/or applicable water quality standards, effluent standards, other standards or judicial decisions.

(d) (No change.)

7:14A-2.14 Minor modification of permits

(a) The Department, with the consent of the permittee, may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section. Such changes shall be made without following the procedures set forth in N.J.A.C. 7:14A-7 and 8. A permit modification not processed as a minor modification under this section shall be made for cause and shall conform with the draft permit and public notice requirements of N.J.A.C. 7:14A-7 and 8 as required in N.J.A.C. 7:14A-2.12. Minor modification may only:

1.-3. (No change.)

4. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department;

5.-7. (No change.)

8. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

9. List sewer extensions to a domestic treatment works which are approved by the Department pursuant to N.J.A.C. 7:14A-12. Public notice of approved sewer extensions shall be published in the DEP Bulletin; or

10. Incorporate IWMF permit-by-rule conditions (N.J.A.C. 7:14A-4.6) into the existing NJPDES permits of IWMFs.

7:14A-3.1 Scope

(a) (No change.)

(b) The following discharges do not require DSW permits:

1.-2. (No change.)

3. Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.101(e) (Pollution by Oil and Hazardous Substances), and the State "Spill Compensation and Control Act", N.J.S.A. 58:10-23.11 et seq.;

4.-5. (No change.)

(c) (No change.)

7:14A-3.3 Discharge allocation certificate (DAC)

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

(f) DAC duration is as follows:

1.-3. (No change.)

4. A POTW may apply for a new DAC at least 180 days but not more than 360 days prior to the expiration of a DAC. The terms and conditions of a DAC for a POTW shall expire and shall not be stayed pending the issuance of a new DAC.

(g) (No change.)

(h) Submission of application for a DSW permit shall be as follows:

1.-4. (No change.)

5. Within 60 days of the planned discharge, the Department shall inspect the facility or site and shall issue a DSW discharge permit provided:

i. The applicant submits the certification described in N.J.A.C. 7:14A-3.3(f)2*[iii]***ii.**; and

ii. (No change.)

6. (No change.)

7:14A-3.8 Separate storm sewers

(a) Permit requirement: Separate storm sewers, as defined in this section, are point sources subject to the DSW permit program. Separate storm sewers may be permitted either individually or under a general permit (see N.J.A.C. 7:14A-3.9). A DSW permit for discharges into waters of the State from a storm sewer covers all conveyances which are part of that separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm systems may also require a permit.

(b) For purposes of this section, definitions are as follows:

1.-4. (No change.)

(c) Case-by-case designation of separate storm sewers: The Department may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

1.-2. (No change.)

7:14A-3.10 Additional conditions applicable to all DSW permits

(a) (No change.)

(b) Bypass requirements are as follows:

1. (No change.)

2. Notice requirements are as follows:

i.-ii. (No change.)

3. Bypass prohibition is as follows:

i. Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(1)-(3) (No change.)

ii. (No change.)

(c) The following relate to an upset:

1. Effect of an upset: An upset may constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of (c)2 below are met. Where no determination was made during administrative review of claims that noncompliance was caused by upset, and there has been no Departmental action for noncompliance, the lack of such determination is final administrative action subject to judicial review.

2-3. (No change.)

7:14A-3.11 Additional conditions applicable to specified categories of DSW permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, 3.10 and 3.12, apply to all DSW permits within the categories specified below:

1. (No change.)

2. DTWs: All DTWs must provide adequate notice to the Department of the following:

i.-ii. (No change.)

3. For purposes of (a)2 above, adequate notice shall include information on:

i. The quality and quantity of effluent introduced into the DTW; and

ii. (No change in text.)

7:14A-3.12 Emergency plans

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

(e) The requirements for filing for an exemption are as follows:

1.-3. (No change.)

4. If the quality and/or quantity of the discharge from the facility changes in such a manner that the facility no longer qualifies for an exemption, the permittee shall notify the Department of the changes, in writing, within 30 days of such change.

5. (No change.)

(f)-(h) (No change.)

7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1.-2. (No change.)

3. The requirements under Section 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act for the inclusion of a reopener clause in permits. The provisions are as follows:

i. On or before June 30, 1981, for any discharger within a primary industry category (see Appendix E):

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

ii. (No change.)

iii. The Department shall promptly modify or revoke and reissue any permit, including any permit containing the clause required under (a)3i above, to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

iv. The Department may modify or revoke and reissue any permit to incorporate limitations or requirements to control the discharge of toxic pollutants, including whole effluent, chronic and acute toxicity requirements, chemical specific limitations or toxicity reduction requirements, as applicable.

4.-14. (No change.)

15. Residuals: Any requirements under:

i. (No change.)

ii. The "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq.

iii. The "Sludge Quality Assurance Regulations", N.J.A.C. 7:14-4; and

iv. The Statewide Sludge Management Plan adopted November 4, 1987 under the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

16.-17. (No change.)

7:14A-3.14 Calculating NJPDES permit conditions

(a) Outfalls and discharge points: All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under N.J.A.C. 7:14A-3.13(a)11ii (BMPs where limitations are infeasible) and (i) below (limitations on internal waste streams).

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

(d) Continuous discharges: For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as:

1. (No change.)

2. Average weekly and average monthly discharge limitations for POTWs, except that effluent limitations for any toxic substance listed in N.J.A.C. 7:9-4.14 or Appendix F, shall be stated as a daily maximum concentration. Average monthly limitations may be calculated using applicable scientific or statistical procedures including "Technical Support Document for Water Quality Based Toxics Control" (EPA publication number, EPA-440/4-85-032, September 1985), and subsequent revisions.

(e)-(j) (No change.)

(k) Water quality based effluent limitations applicable to discharge into the surface waters of the State shall be developed in accordance with "Wastewater Discharge Requirements", N.J.A.C. 7:9-5 and/or "Surface Water Quality Standards", N.J.A.C. 7:9-4.

(l) The values assigned to the toxic substances listed in Appendix F shall be used in computing limitations of an individual toxic substance being discharged from a source into surface waters. The limitation derived through use of these values shall determine the permissible effluent concentration of an individual toxic substance provided that the effluent standard for toxic discharges, as set forth at N.J.A.C. 7:9-5.7(a), and where applicable, 40 CFR Section 125.3, is not exceeded.

1.-2. (No change.)

3. The limitation (W) established through use of the following formula(e) shall apply only when the Department, through more rigorous scientific analysis (including where applicable, bioassays) does not establish revised effluent limitations in conformance with the wasteload allocation procedures in N.J.A.C. 7:9-4.6. The Department reserves the right to set toxic effluent limitations for existing

dischargers in conformance with such wasteload allocation procedures.

i. (No change.)

ii. For effluent discharges into surface waters of the State with essentially multi-dimensional flow:

$W = 0.0864 \times C \times Q^e \times S$

W = The maximum total weight in kilograms per day (kg/d) which may be discharged by the treatment works of any pollutant listed in Appendix F, over any 24-hour period.

C = The values for determination of NJPDES permit toxic effluent limitations in micrograms per liter (ug/l) of any pollutant listed in Appendix F. This concentration cannot be exceeded at the water surface at the point indicated as S in figure 1 of Appendix F.

Q^e = The effluent discharge flow rate of the treatment works in cubic meters per second (m^3/sec).

S = The dilution factor of the effluent at the surface as shown in figure 1 of Appendix F. S shall be calculated based on the type of diffuser as follows:

(1) (No change.)

(2) (No change in text.)

7:14A-4.2 Scope

(a) Specific inclusions: An industrial waste management facility (IWMF) which treats, stores, or disposes of hazardous waste which is received exclusively from intracompany and intrastate sources and includes the following:

1. Wastewater treatment units which are subject to regulation under Section 402 or 307(b) of the Federal Act and that:

i.-iii. (No change.)

2. The treatment, storage or disposal of hazardous waste in a surface impoundment;

3. A land treatment facility for hazardous waste;

4.-5. (No change.)

(b) Specific exclusions: The following exclusions to this subchapter are required to obtain a Hazardous Waste Facility (HWF) permit pursuant to N.J.A.C. 7:26.12.

1. Wastewater treatment units which meet the requirements of (a)1 above where the hazardous wastewater is received from intercompany or interstate sources except as provided in (a)5 above;

2.-3. (No change.)

(c) General requirements are as follows:

1. (No change.)

2. Where eligibility for an IWMF permit-by-rule has been terminated by the Department, the owner or operator of the IWMF shall apply for and is required to obtain an individual IWMF permit in accordance with N.J.A.C 7:14A-4.4.

3. The owner or operator of an IWMF as described in (a)2 and 3 above shall obtain an individual NJPDES/IWMF permit in accordance with N.J.A.C. 7:14A-4.4.

7:14A-4.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"Chemical agent" means those elements, compounds, or mixtures that disperse, dissolve, emulsify, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, gel, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects of removal of the pollutant from the wastewater.

"Existing facility" means a facility which was in operation or for which construction has commenced, on or before November 19, 1980. Construction had commenced if the owner or operator has obtained all necessary Federal permits as well as any permit required by the Division of Solid Waste Management and either:

1-2. (No change in text.)

"Wastewater treatment unit" means a device which:

1. (No change in text.)

2. Is designed to change the physical, chemical or biological character or composition of the wastewater so as to prepare it for further treatment or for reuse or disposal; and

3. Meets the criteria specified in N.J.A.C. 7:14A-4.2(a)1i through iii.

7:14A-4.4 Application for an individual IWMF permit

(a) Unless eligible for a permit-by-rule as provided at N.J.A.C. 7:14A-4.5, an IWMF shall apply for an individual IWMF permit in accordance with this section. Applicants shall refer to N.J.A.C. 7:26-12 (Permit Requirements for Hazardous Waste Facilities—Rules of the Division of Solid Waste Management) for requirements and procedures for submission of an application for an individual IWMF permit. Such IWMFs shall comply with all of the requirements set forth therein with the exception of the following:

1. An environmental and health impact statement (EHIS) is not required *[or]* **for** an IWMF; and

2. (No change.)

(b) For land treatment facilities only, the following apply:

1. In addition to complying with the requirements of N.J.A.C. 7:26-12, an applicant for a hazardous waste land treatment facility shall comply with N.J.A.C. 7:14A-10.8 and shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:14A-4.7.

2-3. (No change.)

(c) For surface impoundments only: In addition to complying with the requirements of N.J.A.C. 7:26-12.1, applicants for an individual IWMF permit for a surface impoundment which treats or stores hazardous waste shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:26-10.6.

(d) Existing IWMFs: Prior to final disposition of an individual IWMF permit application submitted in accordance with this section, an existing IWMF may continue to operate in accordance with the standards and procedures set forth at N.J.A.C. 7:26-12.3. In addition to the requirements set forth at N.J.A.C. 7:26-12.3(e), an owner or operator of an existing treatment facility shall comply with the standards set forth at 40 CFR 265.270 through 282.

7:14A-4.5 IWMF permits-by-rule

(a) Notwithstanding any other provision of this subchapter or N.J.A.C. 7:14A-7 and 8, the following shall be deemed to have an individual IWMF permit if the conditions listed are met:

1.-2. (No change.)

3. Wastewater treatment units, as follows:

i. The owner or operator of a wastewater treatment unit if he or she complies with the requirements of N.J.A.C. 7:14A-4.6, unless required to have an individual IWMF permit under (a)3ii below. Additional NJPDES Permit requirements which may apply to wastewater treatment units that are industrial waste management facilities are contained in N.J.A.C. 7:14A-3 (DSW), 6 (DGW) and 13.2 (SIU). Compliance with N.J.A.C. 7:14A-4.6 does not waive these additional requirements.

ii. The Department may terminate eligibility for a permit-by-rule under this section and require an owner or operator of a wastewater treatment unit to apply for and obtain an individual IWMF permit in accordance with N.J.A.C. 7:14A-4.4(a), if:

(1)-(3) (No change.)

7:14A-4.6 Standards for wastewater treatment units subject to a permit-by-rule

(a) Purpose, scope and applicability are as follows:

1.-2. (No change.)

(b) EPA identification number requirements are as follows:

1.-2. (No change.)

(c) Security requirements are as follows:

1. (No change.)

(d) Inspection requirements are as follows:

1. The owner or operator must inspect the wastewater treatment unit for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to unauthorized release of hazardous waste to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they may pose a threat to or harm human health or the environment. For DSWs, such inspections and the basis for the inspection shall be addressed in an emergency plan as required by N.J.A.C. 7:14A-3.12.

2.-6. (No change.)

7. The owner or operator must record inspections in an inspection log. He or she must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of each inspection, the name of the inspector, a recording of the observations made, and the date and nature of any repairs or other remedial actions taken as a result of inspection observations.

(e) General operating requirements are as follows:

1. The emergency plan required at N.J.A.C. 7:14A-3.12 for DSWs shall address the requirements of this subsection.

2-3. (No change.)

4. Wastewater treatment units must be designed, constructed and operated so as to prevent hazardous wastes from being discharged into or on any land or water during the operating life of the unit.

(f)-(h) (No change.)

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

(a) The following applies to this section:

1. (No change.)

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

"Closure period" means the period described at N.J.A.C. 7:26-9.8(i).

"Ground water pollutant" means a hazardous waste or a hazardous waste constituent as defined at N.J.A.C. 7:26-8.16, those pollutants identified at N.J.A.C. 7:9-6, pollutants that may adversely affect ground water quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

...

(b) An owner or operator who has fully complied with the requirements for existing facilities as defined at N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26-12 shall comply with the regulations specified in 40 CFR Part 265, subpart M, in lieu of the standards and requirements of this section, until final disposition of the permit application is made.

1. Hazardous wastes which are listed at N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

i.-iv. (No change.)

2. (No change in text.)

(c)-(o) (No change.)

7:14A-5.1 Policy and scope

(a) Policy: The purpose of the State Underground Injection Control (UIC) program is to establish a system of controls which will insure that underground injection practices do not endanger underground sources of drinking water (USDWs). The aim of this subchapter is clearly preventative. The Department's policy is to liberally interpret and enforce this subchapter to prevent the contamination of the State's ground water resources. Water, therefore, is not a prerequisite for the enforcement of this subchapter.

(b) Scope: "Underground injection" means the subsurface emplacement of fluids by well injection. Accordingly, the UIC program regulates not only the disposal of wastes by well injection, but also the underground storage of fluids (which includes gases) which have been emplaced by means of an injection well, and the injection of water. Paragraph (b)1 below contains further examples of underground injection activities regulated under this subchapter. The regulatory scheme divides all injection wells into five classifications, which are set forth at N.J.A.C. 7:14A-5.2. The types of regulatory controls imposed on the different classes are contained in subsequent sections.

1. Specific inclusions: The following wells are included among those types of injection activities which are regulated under this subchapter. (This list is not intended to be exclusive but is for clarification only.)

i. Any injection well located on a drilling platform inside the State's territorial waters;

ii. Any well, including any dug hole, that is deeper than its largest surface dimension, where the principal function of the well is emplacement of fluids;

iii. Any septic tank, seepage pit, or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste; and

iv. (No change.)

2. (No change.)

7:14A-5.2 Classification of injection wells

(a) Injection wells are classified as follows:

1.-3. (No change.)

4. Class IV: Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, by owners or operators of radioactive waste disposal sites, or by any other person:

i. To dispose of hazardous wastes or radioactive wastes into or above a formation which, within two miles of the well bore, contains an underground source of drinking water (USDW);

ii. To dispose of other municipal and industrial wastes into or above a formation which, within two miles of the well bore, contains an underground source of drinking water (USDW), and the injection fluid quality does not meet the primary drinking water standards under N.J.A.C. 7:10-5 or 7:10-16, or applicable ground water quality standards (including anti-degradation or non-degradation policies, where applicable), whichever are more stringent. Excluded from Class IV are disposal systems regulated under "Standards for the Construction of Individual Subsurface Sewerage Disposal Systems", N.J.A.C. 7:9-2; these are regulated as Class V wells.

5. Class V: Injection wells not included in Class I, II, III, or IV. Some examples of Class V wells include:

i.-viii. (No change.)

ix. Geothermal wells and ground water heat pumps used in heating and aquaculture.

7:14A-5.4 Prohibition of movement of fluid into underground sources of drinking water

(a) No UIC authorization by permit or by rule shall be allowed in the following circumstances:

1. (No change.)

2. Where a Class IV or V well causes or allows movement of fluid containing any contaminant into underground sources of drinking water, and the presence of that contaminant may cause a violation of any primary drinking water rule under N.J.A.C. 7:10-5 or 7:10-16, any ground water quality standards under N.J.A.C. 7:9-6, or which may adversely affect the health of persons.

(b) For Class I, II, and III wells, and any Class IV well allowed under N.J.A.C. 7:14A-5.7(a)5i or (b), if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Department shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necesssary to prevent such movement. These additional requirements shall be imposed by modifying the permit in accordance with N.J.A.C. 7:14A-2.12, or the permit may be terminated under N.J.A.C. 7:14A-2.13 if cause exists, or appropriate enforcement action may be taken if the permit has been violated.

(c) For Class V wells, if at any time the Department learns that a Class V well may cause a violation of primary drinking water rules under N.J.A.C. 7:10-5 or 7:10-16, or any ground water quality standards under N.J.A.C. 7:9-6, it shall:

1.-3. (No change.)

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

7:14A-5.14 Criteria and standards applicable to Class I wells

(a) (No change.)

(b) This section establishes the criteria and standards for Class I wells disposing of municipal and/or industrial wastes (other than hazardous wastes or radioactive wastes), where the injection stream quality meets primary drinking water standards or applicable ground water quality standards (including anti-degradation or non-degradation policies, where applicable), whichever are more stringent.

1.-2. (No change.)
(c) Construction requirements are as follows:
1. (No change.)
2. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
i. Depth to the injection;
ii.-vii. (No change.)
3.-5. (No change.)
(d) Operating, monitoring and reporting requirements are as follows:
1.-3. (No change.)

7:14A-6.1 General requirements
(a) The scope of this subchapter is as follows:
1. This subchaper describes the requirements for ground water monitoring programs for all discharges, past or present, actual or potential, of pollutants, including hazardous and non-hazardous waste as defined at N.J.A.C. 7:14A-1.9, to ground water or onto land which might flow or drain into the waters of the State. A new source shall not discharge to ground water prior to installing a ground water monitoring system which satisfies the requirements of this subchapter and has been approved by the Department. All permits for a DGW shall include requirements for ground water monitoring programs.
2.-3. (No change.)
4. N.J.A.C. 7:14-6.3 through 6.6 shall be applicable to:
i. (No change.)
ii. IWMFs which are existing facilities under N.J.A.C. 7:14A-4.3; and
iii. (No change.)
5. N.J.A.C. 7:14A-6.15 shall be applicable to:
i. (No change.)
ii. IWMFs which have been issued a permit pursuant to N.J.A.C. 7:14A-4.4(a).
iii. (No change.)
6. N.J.A.C. 7:14A-6.15 may also be applicable to any activity, process or operation where current or past practices have resulted in an actual or potential discharge of hazardous waste, hazardous waste constituents or other ground water pollutants onto the land or into the ground water as determined by the Department based on the criteria set forth in N.J.A.C. 7:14-6.15(d)2. The Department may require the discharger to obtain a NJPDES permit in order to satisfy the requirements of this section.
7. (No change.)
(b) (No change.)

7:14A-6.2 Hazardous waste monitoring
(a) As specified in N.J.A.C. 7:14A-6.1(a)4, the owner or operator of a surface impoundment, landfill, overland flow disposal system or infiltration-percolation system, land treatment facility or other means of land disposal or solid or liquid hazardous waste must implement a ground water monitoring program approved by the Department which is capable of determining the facility's impact on the quality of ground water. The owner or operator must install, operate and maintain a ground water monitoring system which meets the requirements of N.J.A.C. 7:14A-6.3, and must comply with N.J.A.C. 7:14A-6.4 through 6.6. This monitoring program must be carried out during the active life of the facility, and, for disposal facilities, during the post-closure care period. An owner or operator may install, operate and maintain an alternate ground water monitoring system other than the one described in N.J.A.C. 7:14A-6.3 and 6.4. If the owner or operator decides to use an alternate ground water monitoring system, the owner or operator must:
1. Submit to the Department a specific plan certified by a qualified geologist or geohydrologist which satisifies the requirements of N.J.A.C. 7:14A-6.5(d)3 for an alternate ground water monitoring system and initiate the determinations specified in N.J.A.C. 7:14A-6.5(d)4.
2. (No change.)

7:14A-6.7 Applicability of non-hazardous waste monitoring
The owner or operator of a surface impoundment, landfill, overland flow disposal system, infiltration-percolation system or other land treatment facility that is used to manage non-hazardous waste must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water in the site vicinity. This ground water monitoring program must be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well. N.J.A.C. 7:14A-10.7 through 10.12 present filing requirements for applications for NJPDES permits for land disposal and treatment facilities. These include requirements as to any ground water monitoring plans and proposals which must be submitted as part of the application. The application and the ground water monitoring program subsequently implemented must conform with these requirements and the following requirements of this subchapter.

7:14A-6.8 Ground water monitoring system for DGW of non-hazardous waste
(No change in text.)

7:14A-6.9 Sampling and analysis for DGW of non-hazardous waste
(a) (No change.)
(b) In addition to ground water sampling and analysis of parameters specified in N.J.A.C. 7:14A-10.7 through 10.12 and approved by the Department, elevations of the ground water surface at each monitoring well must be determined each time a sample is obtained. The Department shall determine, based on the type of facility, type of waste and site specific characteristics whether to expand the list of parameters to be monitored. In addition, the Department may require that annually a gas chromatograph or a gas chromatograph/mass spectrometer (GC/MS) scan for volatile organics, acid extractables, base-neutral extractables and pesticides/PCB's be performed.
(c) (No change.)

7:14A-6.10 Preparation, evaluation and response for non-hazardous waste
(a)-(b) (No change.)
(c) Within 15 days after the notification under (b) above, if any of the parameters have increased (or pH decreased) such that they do not conform with allowable levels under the specific terms and conditions of the facility's NJPDES permit, the owner or operator must develop and submit to the Department a specific plan certified by a geologist or geohydrologist for a ground water quality monitoring program that is more comprehensive than that described in N.J.A.C. 7:14A-6.8 and 6.9 for the initial ground water monitoring program employed prior to any occurrence of significant increase (or pH decrease) for concentrations or values of parameters required under N.J.A.C. 7:14A-6.9(b). This more comprehensive plan must be capable of determining:
1.-7. (No change.)
(d) The owner or operator must implement the ground water quality assessment plan which satisfies the requirements of (c) above and, at a minimum, make the determinations related to ground water impact and specified in (c)2 and 3 above. The owner or operator must make his or her first determination under this paragraph as soon as technically feasible, and within 15 days after that determination, submit to the Department a written report containing an assessment of the ground water quality.
(e) If the owner or operator demonstrates and the Department concurs that the facility has not contaminated ground water, he or she may reinstate the initial ground water monitoring program described in N.J.A.C. 7:14A-6.7 through 6.9 and (a) above. He or she must so notify the Department in the report submitted under (d) above.
(f) (No change.)
(g) Unless the ground water is monitored to satisfy the requirements of (d) above, the owner or operator must, at least annually, evaluate the date on ground water surface elevations obtained under N.J.A.C. 7:14A-6.9(b) to determine whether the number, location and depth of upgradient monitoring wells continues to be sufficient to yield ground water samples that are:

1. Representative of background ground water quality near the facility; and

2. (No change.)

(h) The evaluation must also determine whether downgradient monitoring wells continue to be sufficient in number, location and depth that they are able to immediately detect any statistically significant amount of ground water contamination migrating from the facility to the ground water. If the evaluation shows that monitoring wells are no longer adequate to fulfill the requirements of this subsection, the owner or operator must immediately modify the number, location and depth of the ground water monitoring wells to bring the ground water monitoring system into conformance with these requirements.

7:14A-6.11 Recordkeeping and reporting for DGW of non-hazardous waste

(a) Unless the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.10(d), the owner or operator must keep records of the analyses and ground water surface elevations required in N.J.A.C. 7:14A-6.9(b) for all monitoring wells and the evaluations required in N.J.A.C. 7:14A-6.10(g) and (h) throughout the active life of the facility, and for disposal facilities, throughout the post-closure care period as well; and report the following ground water monitoring information to the Department:

1. (No change.)

2. Annually concentrations or values of the parameters specified in N.J.A.C. 7:14A-6.9(b) for each ground water monitoring well, along with the required evaluations, under N.J.A.C. 7:14A-6.10(a) and (g). Results of the evaluations of ground water surface elevations under N.J.A.C. 7:14A-6.10(g) and (h) and a description of the response to that evaluation, where applicable, must be reported annually.

(b) (No change.)

7:14A-6.12 Ground water sampling procedures
(No change in text.)

7:14A-6.15 Criteria for ground water protection and response

(a) The following apply to this section:

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

...

"Ground water pollutant" means a hazardous waste or hazardous waste constituent as defined at N.J.A.C. 7:26-8.16, those pollutants identified in N.J.A.C. 7:9-6, pollutants that may adversely affect ground water quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

"Point of compliance" means a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer, uppermost zone of ground water or any other ground water or aquifer that may be impacted by the discharge underlying the regulated units.

"Regulated unit" means any surface impoundment, waste pile, land treatment unit or landfill, or part thereof, that receives hazardous waste or other potential ground water pollutants after January 26, 1983.

...

2.-3. (No change.)

4. After closure of the regulated unit, this section:

i. Does not apply if all ground water pollutants, waste, waste residues, contaminated containment system components contaminated ground water and contaminated soils and subsoils are removed or decontaminated at closure;

ii.-iii. (No change.)

(b) The required programs are as follows:

1. Owners and operators subject to this section shall conduct a monitoring and response program as follows:

i. Whenever hazardous constituents under (d) below, from a regulated unit are detected at the compliance point under (f) below, the owner or operator shall institute a compliance monitoring program under (j) below. Further, the Department may require the compliance program to be implemented when the ground water quality standards, N.J.A.C. 7:9-6, or a permit-specified limitation is exceeded.

ii. Whenever the ground water protection standard for a hazardous constituent under (c) below is exceeded, the owner or operator shall institute a corrective action program under (k) below. For non-hazardous constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2 below.

iii. Whenever hazardous constituents under (d) below, from a regulated unit exceed concentration limits under (e) below, in ground water between the point of compliance under (f) below, and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under (k) below. For non-hazardous constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2 below.

iv. In all other cases, the owner or operator shall institute a detection monitoring program under (i) below.

v. The Department may require additional monitoring wells to be installed within 30 days of the notification to the Department that the ground water protection standard in (c) below, is exceeded in order to make the determination under (b)1iii above.

vi. Any ground water pollutants migrating beyond the waste management area are assumed to originate from a regulated unit unless the owner or operator can prove to the satisfaction of the Department that such waste, waste constituent or other ground water pollutant originated from another source.

2. (No change.)

(c) The owner or operator shall comply with conditions specified in the permit that are designed to ensure that hazardous constituents or other ground water pollutants under (d) below, entering the ground water from a regulated unit do not exceed the concentration limits under (e) below, in the uppermost aquifer, uppermost zone of ground water or any other ground water or aquifer that may be impacted by the discharge underlying the waste management area beyond the point of compliance under (f) below, during the compliance period under (g) below. The Department will establish this ground water protection standard in the permit. When hazardous constituents of other ground water pollutants have entered the ground water from a regulated unit the Department will modify the permit to include a new ground water protection standard if it is necessary.

(d) The ground water pollutant identification is as follows:

1. The Department will specify in the permit the hazardous constituents or other ground water pollutants to which the ground water protection standard of (c) above applies.

2. The Department may exclude a hazardous waste constituent identified in N.J.A.C. 7:26-8.16 from the list of hazardous constituents specified in the permit if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Department will consider the following:

i. Potential adverse effects on ground water quality in an aquifer where the discharge is occurring or that may be hydraulically connected to the aquifer where the discharge is occurring, considering:

(1) The physical and chemical characteristics of the hazardous waste or other ground water pollutants in the regulated unit, including its potential for migration;

(2) (No change.)

(3) The quantity of ground water and the rate and direction of ground water flow;

(4) The proximity and withdrawal rates of ground water users;

(5) The current and future uses of ground water in the area;

(6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality insofar as this is consistent with the State ground water quality standards, N.J.A.C. 7:9-6;

(7) The potential for health risks caused by human exposure to hazardous waste constituents or other ground water pollutants.

(8) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other ground water pollutants.

(9) (No change.)

ii. Potential adverse effects on hydraulically connected surface water quality, considering:

(1) The volume and physical and chemical characteristics of the hazardous waste and other ground water pollutants in the regulated unit;

(2) The hydrogeological characteristics of the facility and surrounding land;

(3) The quantity and quality of ground water, and the rate and direction of ground water flow;

(4)-(7) (No change.)

(8) The potential for health risks caused by human exposure to hazardous waste constituents or other ground water pollutants;

(9) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other ground water pollutants; and

(10) (No change.)

3. In making any determination under (d)2 above about the use of ground water in the area around the facility, the Department will consider any identification of underground sources of drinking water and State ground water quality standards, N.J.A.C. 7:9-6.

(e) The Department will specify in the permit the concentration limits in the ground water for hazardous constituents established under (d) above,

1. The concentration of a hazardous constituent:

i. Shall not exceed the natural background level for individual hazardous constituents as identified in N.J.A.C. 7:26-8.16 in the ground water;

ii. For parameters not included in (e)1i above, shall not exceed the concentration limit specified in the State ground water quality standards, N.J.A.C. 7:9-6, or State surface water quality standards, N.J.A.C. 7:9-4;

iii. For any of the constituents listed in Table 1, shall not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1. Where the maximum concentrations specified in Table 1 conflict with the ground water quality criteria in N.J.A.C. 7:9-6, the more stringent concentration limit will be applied;

iv. (No change.)

2. (No change.)

TABLE 1 (No change.)

3. In making any determination under (e)2 above about the use of ground water in the area around the facility the Department will consider any identification of underground sources of drinking water and State ground water quality standards.

4. (No change.)

(f) The Department will specify in the permit the point of compliance at which the ground water protection standard of (c) above applies and at which monitoring shall be conducted.

(g) The compliance period is as follows:

1. (No change.)

2. If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in (g)1 above, the compliance period is extended until the owner or operator can demonstrate that the ground water protection standard of (c) above has not been exceeded for a period of three consecutive years.

(h) The owner or operator shall comply with the following requirements for any ground water monitoring program developed to satisfy (i), (j), or (k) below:

1. The ground water monitoring system shall consist of a sufficient number of satisfactory wells installed at appropriate locations and depths to yield ground water samples that:

i. (No change.)

ii. Represent the quality of ground water passing under the regulated unit and through the point of compliance.

2. If a facility contains more than one regulated unit, separate ground water monitoring systems may not be required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer, uppermost zone of ground water or any other ground water or aquifer that may be impacted by the discharge will enable detection and measurement at the compliance point of hazaardous constituents or other ground water pollutants from the regulated units that have entered the ground water.

3. All ground water monitoring wells shall be constructed pursuant to N.J.A.C. 7:14A-6.13. In cases where the ground water monitoring wells do not meet the requirements of the Department, they shall be replaced within 30 days of receipt of notification from the Department that they are not satisfactory. The replacement wells shall be subject to Departmental approval.

4. The ground water monitoring program shall also be consistent with N.J.A.C. 7:14A-6.12. Sampling and analysis procedures shall be designed to ensure monitoring results that provide a reliable indication of ground water quality below the waste management area. At a minimum, the program shall include procedures and techniques for:

i.-iv. (No change.)

5. The ground water monitoring program shall include Department approved sampling and analytical methods that are appropriate for ground water sampling in order to accurately measure hazardous constituents or other ground water pollutants in ground water samples.

6. The ground water monitoring program shall include a determination of the ground water surface elevation made prior to flushing, pumping or evacuating the well or sampling each time ground water is sampled.

7. When required by the Department, the ground water monitoring program shall establish background ground water quality for any or all of the hazardous constituents or other ground water pollutants specified in the permit.

i. In the detection monitoring program under (i) below, background ground water quality shall be based on data from quarterly sampling of wells upgradient from the waste management area for one year.

ii. In the compliance monitoring program under (j) below, background ground water quality for a hazardous constituent shall be based on data from upgradient wells that:

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

(3) Accounts, to the extent possible, for seasonal fluctuations in background ground water quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

iii. With Department approval, background quality may be based on sampling of wells that are not upgradient from the waste management area where:

(1) (No change.)

(2) Sampling at other wells will provide an accurate indication of background ground water quality that is as representative or more representative than that provided by the upgradient wells.

iv. In developing the data base used to determine a background value for each ground water pollutant or hazardous waste constituent, the owner or operator shall take a minimum of one sample for each well and a minimum of four samples from the entire system used to determine background ground water quality, each time the ground water monitoring system is sampled.

8. (No change.)

(i) The owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor for indicator parameters (such as pH, specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. The Department shall specify the parameters or constituents to be monitored in the permit, after considering the following factors:

i.-iii. (No change.)

iv. The concentrations or values and coefficients of variation of proposed monitoring parameters of constituents in the background ground water.

2. The owner or operator shall install a ground water monitoring system at the compliance point as specified in (f) above. The ground water monitoring system shall comply with (h)1ii, 2 and 3 above.

3. The owner or operator shall establish a background value for each monitoring parameter or constituent specified in the permit pursuant to (i)1 above. The permit shall specify the background values for each parameter or specify the procedures to be used to calculate the background values.

i.-ii. (No change.)

iii. In taking samples used in the determination of background values, the owner or operator shall use a ground water monitoring system that complies with (h)1i, 2 and 3 above.

4. The owner or operator shall determine ground water quality at each ground water monitoring well at the compliance point as specified in the permit, but at least semi-annually during the active life of a regulated unit (including the closure period) at the post-closure care period. The owner or operator shall express the ground water quality at each ground water monitoring well in a form necessary for the determination of statistically significant increases under (h)8 above.

5. At least annually or on a more frequent basis as specified in the facility's NJPDES permit, the owner or operator shall determine the ground water flow gradients, rates, and directions for all geologic formations or zones monitored.

6. (No change.)

7. The owner or operator shall determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to (i)1 above, each time he or she determines ground water quality at the compliance point under (i)4 above.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality at each ground water monitoring well at the compliance point for each parameter or constituent, according to the statistical procedure specified in the permit under (h)8 above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each ground water monitoring well at the compliance point within a reasonable time period after completion of sampling. The Department will specify that time period in the permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.

8. If the owner or operator determines, pursuant to (i)7 above, that there is a statistically significant increase for parameters or constituents specified pursuant to (i)1 above any ground water monitoring well at the compliance point, the owner or operator shall:

i. (No change.)

ii. Immediately sample the ground water in all monitoring wells and determine the concentration of all constituents identified in N.J.A.C. 7:26-8.16 and other permit-limited pollutants that are present in ground water;

iii. (No change.)

iv. Within 45 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of (j) below. The application shall include the following information:

(1) An identification of the concentration of any N.J.A.C. 7:26-8.16 constituents found in the ground water at each ground water monitoring well at the compliance point;

(2) Any proposed changes to the ground water monitoring system at the facility necessary to meet the requirements of (j) below;

(3) (No change.)

v. (No change.)

9. If the owner or operator determines, pursuant to (i)7 above, that there is a statistically significant increase of parameters of constituents specified pursuant to (i)1 above, a violation of State ground water quality standards, N.J.A.C. 7:9-6, or a violation of permit conditions at any ground water monitoring well at the compliance point, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (i)8iv above, the owner or operator is not relieved of the requirement to submit a permit modification application within the same time specified in (i)8iv above unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department in writing within seven days of determining a statistically significant increase at the compliance point a violation of State ground water quality standards, N.J.A.C. 7:9-6, or a violation of permit conditions that the owner or operator intends to make a demonstration under (i)9 above;

ii-iv. (No change.)

10. (No change.)

11. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the ground water protection standard under (c) above are taken during the term of the permit.

(j) An owner or operator required to establish a compliance monitoring program under this subsection shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor the ground water to determine whether regulated units are in compliance with the ground water protection standard under (c) above. The Department will specify the ground water protection standard in the permit, including:

i. A list of hazardous constituents identified under (d) above and other ground water pollutants;

ii. Concentration limits under (e) above for each of the hazardous constituents. The Department may also set concentration limits for the other ground water pollutants;

iii. The compliance point under (f) above; and

iv. The compliance period under (g) above.

2. The owner or operator shall install a ground water monitoring system at the compliance point as required by (f) above. The ground water monitoring system shall comply with (h)1ii, 2 and 3 above.

3. Where a concentration limit established under (h)1ii above is based on background ground water quality, the Department will specify the concentration limit in the permit as follows:

i. If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the Department may establish the concentration limit through sampling at upgradient wells each time ground water is sampled at the compliance point. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

ii. (No change.)

iii. The owner or operator shall:

(1) Comply with (h)7 above in developing the data base used to determine background values;

(2) Express background values in a form necessary for the determination of statistically significant increases under (h)8 above; and

(3) Use a ground water monitoring system that complies with (h)1i, 2 and 3 above.

4. (No change.)

5. The owner or operator shall determine the ground water flow rate annually and determine the ground water flow direction in all affected geologic formations or zones at each sampling event specified in the permit but, in any case, at least quarterly.

6. The owner or operator shall analyze samples from all ground water monitoring wells at the compliance point for all constituents contained in N.J.A.C. 7:26-8.16 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, uppermost zone of ground water or any other ground water aquifer that may be impacted by the discharge. If the owner or operator finds N.J.A.C. 7:26-8.16 constituents in the ground water that are not identified in the permit as hazardous constituents, the owner or operator shall report the concentrations of these additional constituents to the Department within seven days after completion of the analysis.

7. (No change.)

8. The owner or operator shall determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to (j)1 above, each time the owner or operator determines the concentration of hazardous constituents in ground water at the compliance point.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality at each ground water monitoring well at the compliance point for each hazardous constituent as to the concentration limit for that constituent according to the statistical procedures specified in the permit under (h)8 above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each ground water monitoring well at the compliance point, within a reasonable time period after completion of sampling. The Department will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.

9. If the owner or operator determines, pursuant to (j)8 above, that the ground water protection standard in (j)1 above is being exceeded at any ground water monitoring well at the point of compliance, the owner or operator shall.

i. (No change.)

ii. Submit to the Department an application for a permit modification to establish a corrective action program meeting the requirements of (k) below within 60 days, or within 45 days if an engineering feasibility study previously has been submitted to the Department under (i)8v above. The application shall at a minimum include the following information:

(1) A detailed description of corrective actions that will achieve compliance with the ground water protection standard specified in the permit under (j)1 above; and

(2) A plan for a ground water monitoring program that will demonstrate the effectiveness of the corrective action. Such a ground water monitoring program may be based on a compliance monitoring program developed to meet the requirements of this subsection.

10. If the owner or operator determines, pursuant to (j)8 above, that the ground water protection standard is being exceeded at any ground water monitoring well at the point of compliance, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit application under (j)9ii above, the owner or operator is not relieved of the requirement to submit a permit modification application within the time period specified in (j)9ii above unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department within seven days that the owner or operator intends to make a demonstration under (j)10 above;

ii. Within 30 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent non-compliance with the standards resulted from error in sampling, analysis or evaluation;

iii. (No change in text.)

iv. Continue to monitor in accordance with the compliance monitoring program established under this subsection.

11. (No change.)

12. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the ground water protection standard under (c) above are taken during the term of the permit.

13. In those cases where the owner or operator demonstrates in accordance with (j)10 above, that the source is other than a regulated unit but the source is under the control of the owner or operator, the Department may require the owner or operator to undertake ground water monitoring which is equivalent to that specified in this subsection, and corrective action which is equivalent to that specified in (k) below.

(k) An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall take corrective action to ensure that regulated units are in compliance with the ground water protection standard under (c) above. The Department will specify the ground water protection standard in the permit, including:

i. A list of the hazardous constituents identified under (d) above;

ii. Concentration limits under (e) above for each of those hazardous constituents;

iii. The compliance point under (f) above; and

iv. The compliance period under (g) above.

2. (No change.)

3. The owner or operator shall begin corrective action within a reasonable time period after the ground water protection standard is exceeded. The Department will specify that time period in the permit. If a permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of (j)9ii above.

4. In conjunction with a corrective action program, the owner or operator shall establish and implement a ground water monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under (j) above, and shall be as effective as that program in determining compliance with the ground water protection standard under (c) above, and in determining the success of a corrective action program under (k)5 below, where appropriate.

5. In addition to the other requirements of this subsection, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under (d) above, that exceed concentration limits under (e) above, in ground water between the compliance point under (f) above, and the furthest extent of ground water contamination which is either statistically significant as defined in (h)8 above, or exceeds the State ground water quality standards in N.J.A.C. 7:9-6 or exceeds permit limits. The permit will specify the measures to be taken.

i.-ii. (No change.)

6. The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the ground water protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator shall continue that corrective action for as long as necessary to achieve compliance with the ground water protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the water management area (including the closure period) if the owner or operator can demonstrate to the Department's satisfaction, based on data from the ground water monitoring program under (k)4 above, that the ground water protection standard of (c) above, has not been exceeded for a period of three consecutive years.

7.-8. (No change.)

7:14A-7.2 Procedures for decision making

(a) Initial issuance of a new source NJPDES permit (except a DSW new source which shall comply with N.J.A.C. 7:14A-3.3 and (b) below) includes the following procedural stages:

1. No person shall build, install, or substantially modify a facility for the collection or treatment of any pollutant prior to the issuance of a final ***draft*** NJPDES permit. The final ***draft*** NJPDES permit shall serve as approval for such action in accordance with Section 6(b) of the State Act, unless the Department specifically requires the applicant to apply for a treatment works approval in accordance with N.J.A.C. 7:14A-12. All treatment works shall conform with the requirements of N.J.A.C. 7:14A-12, even though not specifically required to obtain Departmental approval.

2.-3. (No change.)

4. Where the Department issues a draft permit, after consideration of any comments submitted during the public comment period, the Department shall issue a final ***draft*** permit in accordance with N.J.A.C. 7:14A-8.6. Where a person is required to obtain a treatment works approval, a final permit shall not be issued until a Stage 2 approval ***(see N.J.A.C. 7:14A-12.10)*** is obtained by the applicant.

5. (No change.)

6. The Office of Administrative Law shall hold hearings in accordance with the "Administrative Procedure Act", N.J.A.C. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The Office of Administrative Law shall make the initial decisions concerning the final ***draft*** NJPDES permit.

7. The Commissioner shall make all final decisions concerning the final ***draft*** NJPDES permit.

8. A ***final draft NJPDES permit*** DAC shall be issued for a fixed term of 18 months for non-POTWs and minor industrial and ***minor*** publicly owned facilities, and 30 months for major industrial and *[other]* ***major*** publicly owned facilities.

9. A ***DAC*** ***final draft NJPDES permit*** may be extended for one additional period of 18 months for non-POTWs and minor industrial and ***minor*** publicly owned facilities and 30 months for major industrial and ***major*** publicly owned facilities provided.

i. The applicant has demonstrated completion of final engineering designs, specifications and plans of the treatment works; and

ii. The applicant submits a certification from a Licensed Professional Engineer that the treatment works has been designed to meet the applicable *[conditions in the DAC]* ***requirements of the final draft NJPDES*** and submits a copy of the final engineering design; and

iii. The applicant has submitted a written request for the extension 30 days prior to the expiration date of the *[DAC]* ***final draft NJPDES permit***.

10. When a final ***draft*** NJPDES permit expires, a permittee must reapply for a new NJPDES permit where the permittee intends to discharge. An application for a renewal NJPDES permit shall be made in proper form in accordance with N.J.A.C. 7:14A-2 and 7:14A-10.

11. No person shall discharge any pollutant prior to the issuance of a final NJPDES permit.

12. All holders of a final ***DAC*** ***draft permit*** shall submit a request for a NJPDES discharge *[to surface water]* permit and where applicable, Stage 3 approval ***(see N.J.A.C. 7:14A-12.10)***, at least *[180]* ***60*** days prior to a planned discharge.

13. *[The]* ***Within 60 days of planned discharge, the*** Department shall inspect the facility or site and shall issue a NJPDES discharge permit provided the applicant submits certifications from a Licensed Professional Engineer that:

i. The treatment works has been designed to meet the applicable conditions in the final *[DAC]* ***draft permit***; and

ii. The treatment works has been constructed in accordance with the original design specifications or with any modifications which were approved by a Licensed Professional Engineer and the Department.

14. The NJPDES discharge permit shall contain the same terms and conditions as the valid final *[DAC]* ***draft NJPDES permit***.

(b) (No change.)

7:14A-7.3 Application review by the Department

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

(c) The Department shall determine whether a site visit and inspection are necessary requirements and part of the application in order to evaluate the discharge completely and accurately. If the Department decides that a site visit and inspection are necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a date shall be scheduled.

(d) The Department may require any applicant who discharges or who proposes to discharge pollutants to the land or to the ground water to install monitoring wells in order to determine background ground water quality. The installation of monitoring wells and any information obtained from said monitoring wells shall be a necessary part of the application. The location and number of monitoring wells shall be approved by the Department. All monitoring wells shall be installed in accordance with applicable Department procedures.

(e)-(f) (No change.)

7:14A-7.6 Draft permits and draft DACs

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

(e) If the Department decides to prepare a draft permit or draft DAC, the permits shall contain the following information:

1. All conditions under N.J.A.C. 7:14A-2.5 and 2.6;
2. All compliance schedules under N.J.A.C. 7:14A-2.8;
3. All monitoring requirements under N.J.A.C. 7:14A-2.9;
4. For IWMF permits, standards for treatment storage, or disposal and other permit conditions under N.J.A.C. 7:14A-4.4;
5. For UIC permits, permit conditions under N.J.A.C. 7:14A-5.10; and
6. For DSW permits, effluent limitations, standards, prohibitions and conditions under N.J.A.C. 7:14A-3.10 and 3.11 and all variances that are to be included under N.J.A.C. 7:14A-9.6.

(f) (No change.)

7:14A-7.8 Fact sheet

(a) A fact sheet shall be prepared for every draft permit or draft DAC for a major facility or activity, for every general permit (40 CFR Section 123.95 and N.J.A.C. 7:14A-3.9), for every draft DAC or draft permit that incorporates a variance or requires an explanation under N.J.A.C. 7:14A-9.6, and for every draft DAC or draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit or draft DAC. The Department shall send this fact sheet to the applicant and, on request, to any other person.

(b) (No change.)

7:14A-8.1 Public notice of permit actions and public comment period

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

(f) The Department shall include the following information in all public notices provided pursuant to this subchapter:

1.-4. (No change.)

5. Name and address of the Bureau within the Division of Water Resources to which interested persons can make a written request for a copy of the administrative record and the times and place at which the record will be open for public inspection;

6.-7. (No change.)

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

7:14A-9.6 Variances under the State and Federal Acts

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

(d) Applications for a modification to water quality based effluent limitations for POTWs and non-POTWs shall be made in accordance with N.J.A.C. 7:9-4.8 and 4.9 prior to the close of the public comment period under N.J.A.C. 7:14A-8.

7:14A-10.1 Schedule for submission of applications

(a) (No change.)

(b) Any facility which requires a permit covered by this chapter shall apply for a permit in accordance with the requirements of N.J.A.C. 7:14A-2.1, 3.2(DSW), 4.4(IWMF), 5.8(UIC), N.J.A.C. 7:14A-6(DGW), and the applicable sections of this subchapter.

(c)-(g) (No change.)

(h) Except as described in N.J.A.C. 7:14A-2.1(g) and N.J.A.C. 7:14A-10.2, existing dischargers shall apply for a NJPDES permit in compliance with the following schedule except where the Department determines that an application should be submitted in furtherance of a consolidated permit system (see N.J.A.C. 7:14A-1.4) or where the Department makes a determination that certain dischargers shall file sooner because of potential environmental hazards, threats to the public health or safety or other factors consistent with the intent of the State Act:

1. Land application of sludge and septage as follows:

i. Any person who land applies hazardous waste shall submit a Part B application within six months of request by the Department.

ii.-v. (No change.)

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

7:14A-10.3 Discharges to surface waters (DSW)

(a) Any person planning to discharge pollutants to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. Any person who is currently discharging pollutants to the surface waters of the State, and who does not have a NJPDES or NPDES permit, shall apply for a NJPDES permit within 30 days of the effective date of this chapter. Any person with a valid NPDES or NJPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2 and 10. Pre-application conferences with the Department are strongly recommended. The following information, in addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit:

1. Name and location of facility, and type of waste to be discharged.

2. Expiration date of existing permit or proposed start up date for new source. Applications must be received at least 180 days prior to expiration of existing permits or 180 days before proposed start up for new sources.

3.-6. (No change.)

7. Maximum production. If an effluent guideline promulgated under Section 304 of the Federal Act applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline must be given. The reported measure must reflect the actual production of the facility as required by N.J.A.C. 7:14A-3.14(b)2.

8. (No change.)

9. Effluent characteristics. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant must comply with N.J.A.C. 7:14A-2.5(a)10iii. The requirements in (a)9iv and v below that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used unless otherwise specified by the Department. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.) Each applicant shall report as follows:

i. Every applicant must report quantitative data for every outfall for the following pollutants:

(1)-(7) (No change.)

ii. (No change.)

iii. Each applicant with processes in one or more primary industry category (see Appendix E) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

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

iv. Each applicant must report for each outfall, quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:

(1) All pollutants listed in Table II or Table III of Appendix B (the toxic pollutants) for which quantitative data is not otherwise required under (a)9iii above except that an applicant qualifying as a small business under (a)10 below is not required to analyze for the pollutants listed in Table II of Appendix B (the organic toxic pollutants).

(2) (No change.)

v. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix B, Tables V (certain hazardous substances and asbestos) and VI (Miscellaneous Toxic Pollutants) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

vi. (No change.)

10.-16. (No change.)

(b) (No change.)

(c) NJPDES Permit: Upon receipt of a Discharge Allocation Certificate, the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a treatment works approval is also required in accordance with N.J.A.C. 7:14A-12. At least 60 days prior to planned discharge, the applicant shall apply for NJPDES permit to discharge in accordance with N.J.A.C. 7:14A-2.1 and 7.2. The following items and the information required for a DAC must be submitted for the NJPDES permit:

1.-7. (No change.)

(d) (No change.)

7:14A-10.4 Environmental Assessment for a Discharge Allocation Certificate (DAC)

(a) Applications for proposals which will disturb 10,000 square feet or less of surface area of land to accommodate construction in the project area will be exempt from the following environmental assessment requirements.

1.-2. (No change.)

3. The body of the assessment document shall be kept to less than 100 pages. The degree of informational detail required will depend on the size, type, and location of the proposed facility. The assessment requirements have been written attempting to cover all project types. Therefore, preapplication meetings are strongly recommended to assure an understanding of the degree of detail required for the particular project proposal. The information specified in Appendix B of this section incorporated herein by reference may be required on a case-by-case basis.

(b) (No change.)

(c) The description of the existing environmental conditions, both built and natural, must be developed with sufficient detail so that all environmental impacts attributable to the proposal may be identified as follows:

1. Natural resources:

i.-vi. (No change.)

vii. Environmentally sensitive areas:

(1) (No change.)

(2) Sensitive areas shall be defined to include the following:

(A) (No change.)

(B) Wetlands (swamps, marshes, bogs, wet meadows, inland wetlands as defined in the "Wetlands Act of 1970", N.J.S.A. 13:9A-1 et seq. and the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:1B-1 et seq. and the U.S. Fish and Wildlife Service's National Wetlands Inventory;

(C)-(K) (No change.)

viii. Air quality: Discuss the ambient air quality in conjunction with the specific findings and requirements of the State Implementation Plan, and Federal Clean Air Act. Consult with the Department's Division of Environmental Quality.

2. Social factors:

i. Land uses: Describe Federal, State, Regional and local plans, laws, ordinances and/or regulations that may affect the project see Appendix A to this section, incorporated herein by reference).

ii. (No change.)

(d) Impacts on the existing environment as described in (c) above shall be identified, evaluated and described by analyzing each project component requirement and operation, including site preparation and construction. Sources of data and methods of analysis used to identify impacts shall be documented.

1.-3. (No change.)

4. Site development impacts:

i. (No change.)

ii. Demonstrate conformance with any Federal, State, Regional and local plans, laws, ordinances, standards of performance and/or regulation that may affect the project. (See Appendix A)

5.-6. (No change.)

7. Secondary impacts: Describe those impacts resulting from an indirect demand of the project upon the environment, society, or economy which may occur at some future time or place. Examples, of secondary impacts include increased water supply treatment costs to users downstream of effluent discharge or increased demand on the natural resources of the area resulting from labor in-flow.

(e) (No change.)

APPENDIX A
PLANS AND STATUTES AND RESPONSIBLE AGENCY WHICH MAY AFFECT THE PROJECT

Wetlands Act of 1970 N.J.S.A. 13:9A-1 et seq.	Department of Environmental Protection Division of Coastal Resources
Waterfront Development Act N.J.S.A. 12:5-1 et seq.	Department of Environmental Protection Division of Coastal Resources
Coastal Area Facilities Review Act N.J.S.A. 13:19-1 et seq.	Department of Environmental Protection Division of Coastal Resources
State Development Guide Plan Pursuant to P.L. 1961 Chapter 47	Department of Community Affairs
201 Wastewater Facilities Plans Pursuant to P.L. 95-217, Clean Water Act	Department of Environmental Protection Division of Water Resources
208 Water Quality Management Plans Pursuant to P.L. 95-217, Clean Water Act	Department of Environmental Protection Division of Water Resources
State Flood Control Facilities Act N.J.S.A. 58:16A-1 et seq.	Department of Environmental Protection Bureau of Floodplain Management and Corps of Engineers
Endangered and Nongame Species Conservation Act N.J.S.A. 23:2A-1 et seq.	Department of Environmental Protection Division of Fish, Game and Wildlife Endangered Species and Nongame Project
Solid Waste Management Plan Pursuant to N.J.S.A. 13:1E-1 through 37	Department of Environmental Protection Division of Solid Waste Management
Pinelands Comprehensive Management Plan Pursuant to P.L. 95-625 and N.J.S.A. 13:18A-1 through 29	Pinelands Environmental Commission
Water Supply Plan N.J.S.A. 58:1A-13	Department of Environmental Protection Bureau of Water Supply Planning
Hackensack Meadowlands Development Plan N.J.S.A. 13:17-1 et seq.	Hackensack Meadowlands Development Commission
Freshwater Wetlands Protection Act N.J.S.A. 13:9B-1 et seq.	Department of Environmental Protection Division of Coastal Resources

APPENDIX B

The following detailed information may be required of the applicant depending on the size, type and location of the proposed facility.

A.-D. (No change.)

E. Hydrology

(1) Describe the existing ground water quality using physical, chemical and biological parameters.

(2) Describe ground water movement (Direction and velocity).

(3) Describe ground water recharge area, rate of recharge and depletion and storage volume.

(4)-(5) (No change.)

F.-G. (No change.)

7:14A-10.5 Discharges into a domestic treatment works (DTW)

(a) Discharges into a DTW are indirect discharges. An individual NJPDES significant indirect user (SIU) permit is required for an indirect discharger when:

1. The indirect discharger is one of the following types of SIUs and does not meet the requirements of (g) below:

i. (No change.)

ii. The user is determined to be an Industrial Waste Management Facility (IWMF) under N.J.A.C. 7:14A-4 *[and discharges to a DTW that does not have a pretreatment program approved, or is not in the process of being approved pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13. IWMFs subject to the permit-by-rule provisions of N.J.A.C. 7:14A-4.5 discharging to a DTW that has an approved pretreatment program shall obtain a SIU permit where permit-by-rule status has been terminated pursuant to N.J.A.C. 7:14A-4.5(a)3ii]*;

iii. (No change.)

iv. The discharge consists of landfill leachate, either pure*, **treated*** or diluted by ground water or surface runoff;

v. The discharge consists of ground water which on any one day exceeds 25,000 gallons per day and is pumped from the ground in order to decontaminate an aquifer;

vi.-vii. (No change.)

2. (No change.)

3. The indirect discharger is a SIU and discharges to a DTW that does not have a Pretreatment Program approved, or is not in the process of being approved pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13.1.

(b) When to apply for a NJPDES permit:

1. Significant indirect users shall file an application in accordance with the schedule in N.J.A.C. 7:14A-10.1(h)4.

2. (No change.)

3. An indirect discharger who discharges into a privately owned treatment works as per (a)2 above shall apply for a permit as required in N.J.A.C. 7:14A-3.13(a)13.

4. (No change.)

(c) An indirect discharger required to apply for a NJPDES permit in accordance with (a) above shall submit the following information on forms available from the Department:

1.-2. (No change.)

3. Name, address of all owner(s) and the DTW being utilized.

4.-16. (No change.)

17. For new discharges only, notification from the affected DTW and owner of applicable wastewater conveyance systems stating that the discharge is acceptable.

18. (No change.)

(d)-(f) (No change.)

(g) The Department may allow a NJPDES/SIU permit for SIUs enumerated by (a)1iii, vi or vii above to expire after the initial term of the permit is over without reissuing the individual permit. After expiration of the permit, the discharger shall comply with (f) above and the permit-by-rule provisions in N.J.A.C. 7:14A-13.5. The individual permit will be allowed to expire provided that:

1.-2. (No change.)

7:14A-10.7 Surface impoundments

(a) In addition to the information required in N.J.A.C. 7:14A-2.1, an applicant for a NJPDES permit for a surface impoundment shall submit information to the Department as follows:

1. Existing dischargers shall submit the information in (c), (d), and (e) below in accordance with the schedule in N.J.A.C. 7:14A-10.1;

2. New source discharges shall submit:

i. The information in (c) and (d) below to apply for a draft NJPDES permit in accordance with N.J.A.C. 7:14A-7.2; and

ii. The information in (e) below to apply for a final NJPDES permit in accordance with N.J.A.C. 7:14A-7.2.

3. (No change.)

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

(d) A request for endorsement shall be submitted in accordance with N.J.A.C. 7:14A-2.1 (new source dischargers only).

(e) (No change.)

7:14A-10.8 Land application of residuals

(a) In addition to the information required in N.J.A.C. 7:14A-2.1, an applicant for a NJPDES permit for land application of residuals shall submit information to the Department as follows:

1.-3. (No change.)

(b) (No change.)

(c) Submission of information required in this section shall not exempt the applicant from compliance with any other filing requirements which apply to the residuals application site, to any treatment system of which the residuals application site is a component, or to any other existing or proposed discharges at the facility.

(d) (No change.)

(e) The following information shall be submitted for land application of residuals:

1. (No change.)

2. Waste characteristics as follows:

i. The origin and volume of the waste;

ii. (No change.)

iii. A dated analysis of the sludge on a mg/kg dry solids basis including the following parameters:

(1) Residual Constituents and Characteristics:
Total Solids (TS) %;
Volatile Solids (VS % of TS);
pH (units);
Total Kjeldahl Nitrogen (TKN (%);
Ammonium-Nitrogen (NH_4-N) (%);
Nitrate-Nitrogen (NO_3-N) (%);
Potassium (k);
Phosphorus (P);
Iron (Fe);
Sodium (Na).

(2) Heavy Metals:
Arsenic (AS);
Beryllium;
Cadmium (Cd);
Chromium (CR);
Copper (Cu);
Lead (Pb);
Mercury (Hg);
Molybdenum (Mo);
Nickel (Ni);
Selenium (Se);
Zinc (Zn).

(3) Pesticides and Toxic Organics:
Aldrin;
Dieldrin;
Heptachlor;
DDT;
Methoxychlor;
Chlordane;
Lindane;
Toxaphene.

(4) Base/neutrals and Acids:
Benzinine;
Benzo(a)pyrene;
Bis (2-ethylhexyl) phthalate;
Hexachlorobensene;
Hexachlorobutaladiene;
N-nitrosodimethylamine.

(5) Purgeables:
Benzene;
Carbontetrachloride;
Chloroform;
Methylene Chloride;
Tetrachloroethylene;
Trichloroethylene;
Vinyl Chloride.

(6) Miscellaneous:
Cyanide;
Fluride;
Oils and Grease (percent of TS);
Phenols.

(7) (No change in text.)

3. Site-related information as follows:

i.-ii. (No change.)

iii. An up-to-date plot plan including the following information:

(1)-(7) (No change.)

iv.-v. (No change.)

vi. Soil sample results as recommended by the Statewide Sludge Management Plan and Appendix thereto. In cases of unusual soil variability or uniformity, the number of soil samples and/or depth of a sampling required by the Department may be revised;

vii. Site evaluation with regard to permeability, pH, runoff class, erosion factor, soil drainage class, flooding, available water holding capacity, slope, depth to seasonally high water table and depth to mottling or bedrock as recommended in the Statewide Sludge Management Plan and Appendix thereto;

viii. The results of soil borings taken in the proposed residuals application area shall be provided in accordance with the following table:

Acreage	Minimum number of borings
1- 10	3
10- 50	6
50-100	12
100-200	18
over 200	minimum 24

(1)-(3) (No change.)

4. Application rates as follows:

i. The methods for determining the annual and cumulative residual application rates shall be specified. This shall include the residual effect of previously applied sludge, septage, or other residuals. Procedures given in the Statewide Sludge Management Plan and Appendix thereto should be used for determining these rates. Where the above application rate criteria are not appropriate, additional application rates and criteria shall be developed by the applicant and submitted to the Department for review.

ii. If the residual is in liquid form, the volume to be applied at any one time shall be specified.

iii. For compost application, annual and cumulative rates shall be specified. Procedures given in the Statewide Sludge Management Plan and Appendix thereto should be used for determining these rates.

5. Operational considerations as follows:

i. The method and equipment proposed to be used for residual application shall be submitted.

ii. The crop management plan shall be submitted and shall include:

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

(3) Residual application rate using the most recent soil and sludge/septage quality data;

(4) (No change.)

(5) Provisions for soil testing to determine the residual application rate and the amount of lime necessary to adjust soil pH to 6.5; and

(6) (No change.)

iii. Provisions for odor control and restriction of public access to residual application site shall be specified.

6. Procedures Manual as follows:

i. (No change.)

(f) For the final NJPDES Permit, the following additional information must be submitted:

1.-3. (No change.)

4. A final Procedures Manual which shall include:

i.-vi. (No change.)

vii. Residual quality monitoring provisions;

viii. A statement as to the ability to transfer to other disposal areas or options if residual applications must cease;

ix. (No change.)

x. Mode of transportation of residual to application site(s).

7:14A-10.9 Land application of effluents by spray irrigation

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

(c) Submission of information required in this section shall not exempt the applicant from compliance with any other filing requirements which apply to any treatment system of which the spray irrigation is a component, or to any other existing or proposed discharges at the facility.

(d) (No change.)

(e) The following information shall be submitted.

1. (No change.)

2. Wastewater Characteristics as follows:

i. The origin and volume of the waste water.

ii. (No change in text.)

iii. (No change in text.)

iv. The compatibility of the effluent for land disposal shall be substantiated by the applicant.

3. Site related information as follows:

i.-iii. (No change.)

iv. A water table map showing ground water flow conditions beneath the disposal site and surrounding area, based on synoptic well data, as defined in this chapter, collected within 18 months prior to the date of application.

v. (No change.)

vi. Soils evalution as follows:

(1) A soil log described by a geologist or soil scientist prepared from each boring or backhoe pit at the existing or proposed site. Borings or pits shall reach a depth of 20 feet or to bedrock. A sufficient number of borings shall be drilled in order to determine soil characteristics, depth to bedrock (where applicable), permeabilities and ground water elevations. Where, in the judgment of the Department, submitted information is insufficient to adequately evaluate the site, additional and/or deeper borings, supplemented by evacuations, test pits or geophysical methods may be required.

(2)-(3) (No change.)

4. (No change.)

5. Engineering Considerations as follows:

i.-iii. (No change.)

6. Operational and Monitoring Considerations as follows:

i.-ii. (No change.)

iii. Monitoring wells and sites:

(1)-(7) (No change.)

(8) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

(9)-(12) (No change.)

(13) In no case shall less than three monitoring wells be located at a facility. The number of wells, their design and location shall remain subject to Departmental approval, and must be of sufficient number to define the ground water hydrology of the site.

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

7:14A-10.10 Land application of effluents by overland flow

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

(e) The following information shall be submitted for land application of effluents by overland flow:

1. (No change.)

2. Wastewater Characteristics as follows:

i. The origin and volume of the wastewater.

ii. (No change in text.)

iii. For existing facilities a sufficient number of dated analyses of the raw and treated effluent to accurately characterize the composition and variability. For proposed facilities, estimates of the quantity and quality of the effluent, the treatment processes, and the anticipated load to the system shall be provided. This shall include a justification for all estimates.

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

iv. (No change in text.)

3. Site Related Information as follows:

i.-vi. (No change.)

4. (No change.)

5. Engineering Considerations as follows:

i.-iii. (No change.)

6. Operational and Monitoring Considerations as follows:

i. (No change.)

ii. Monitoring wells:

(1)-(7) (No change.)

(8) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

(9) The monitoring plan shall include at least one monitoring well located up-flow of the overland flow area to define and monitor prevailing background ground water quality. In no case shall less than three monitoring wells be located at a facility. The number of wells, their design and location shall remain subject to Departmental approval and must be of sufficient number to define the ground water hydrology of the site.

(10)-(12) (No change.)

iii. A description of the overland flow system operation shall be submitted:

(1) (No change.)

(2) An operations manual and maintenance schedule shall be submitted. "Guidelines for Land Disposal of Effluents by Overland Flow" should be used as a reference.

(f) (No change.)

(g) The following information shall also be submitted:

1.-2. (No change.)

3. Final ground water monitoring provisions, parameters and schedules.

4.-6. (No change.)

7:14A-10.11 Land discharge by infiltration-percolation lagoons

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

(e) The following information shall be submitted for land disposal by infiltration-percolation lagoons:

1. (No change.)

2. Wastewater Characteristics as follows:

i. The origin and volume of the wastewater.

ii.-iv. (No change in text.)

3. Site Related Information as follows:

i.-ii. (No change.)

iii. Topographic (contour interval two feet), geologic and soil (USDA) maps of the land disposal site and surrounding area sufficient to define conditions and evaluate the probable impact of the infiltration-percolation lagoon on ground and/or surface waters.

iv. (No change.)

v. A plot plan to scale showing the infiltration-percolation lagoon, storage facility, all piping and discharge points, buffer zones, monitoring wells, buildings and all attendant equipment.

vi. (No change.)

4. Application rates as follows:

5. Engineering considerations as follows:

i. (No change.)

ii. Design calculations for infiltration-percolation lagoon sites shall be prepared using a 25-year design storm, with estimates of the effect of such runoff on treatment capacity, storage capacity, erosion, flooding and related details.

iii. A description of existing and proposed storage facilities including discharge rates to the infiltration-percolation lagoon, operating schedules, construction details, capacity, estimates of bottom and sides permeabilities and leakage calculations and a description of liner material, and installation details shall be submitted.

6. Operational and monitoring considerations as follows:

i. (No change.)

ii. Monitoring wells:

(1)-(7) (No change.)

(8) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

(9) The monitoring plan shall include at least one monitoring well located up-flow of the infiltration-percolation lagoon to define and monitor prevailing background ground water quality. In no case shall less than three monitoring wells be located at a facility. The number of wells, their design and location shall remain subject to Departmental approval and must be of sufficient number to define the ground water hydrology of the site.

(10) Water sample parameters shall be proposed by the applicant and approved by the Department. Background sample analyses shall be submitted prior to any utilization of the infiltration-percolation lagoon and shall be required prior to final design approval.

(11)-(12) (No change.)

iii. A description of the infiltration-percolation lagoon operation shall be submitted.

(1) (No change.)

(2) An operations manual and maintenance schedule shall be submitted. "Guidelines for Land Disposal Infiltration-Percolation Lagooning" should be used as a reference.

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

7:14A-10.12 Discharges from sanitary landfills

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

(e) The following information shall be submitted for sanitary landfills:

1. (No change.)

2. Maps, cross sections and reports. Some of the maps may be combined if all required features are clearly shown.

i.-vii. (No change.)

viii. Monitoring: Ground water monitoring wells are required for detection of ground water contamination from landfill leachate.

(1)-(6) (No change.)

(7) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

ix. Water Quality:

(1) All sanitary landfills shall have a ground water monitoring system constructed and located in accordance with instructions furnished by this Department. The registrant shall notify the Division of Water Resources, in writing, seven days prior to the commencement of the installation of the approved ground water monitoring system.

(2) No sanitary landfill shall operate without installing a ground water monitoring system as approved by this Department and obtaining ground water samples, and analyses thereof, for the purpose of establishing existing ground water quality data. The initial sampling of each monitoring well shall include analyses for the following parameters:

Presence of organisms in the Coliform Group;
Turbidity;
Color;
Odor;
Mercury (Hg);
Arsenic (As);
Barium (Ba);
Cadmium (Cd);
Chromium (hexavalent Cr +6);
Cyanide (CN);
Fluoride (F);
Lead (Pb);
Selenium (Se);
Silver (Ag);
A.B.S./L.A.S. (Alkyle-Benzene-Sulfonate and Linear-Alkyl-Sulfonate or similar methylene blue reactive substances contained in synthetic detergents);
Chloride (Cl);
Copper (Cu);
Hardness (s $CaCO_3$);
Iron (Fe);
Manganese (Mn);
Nitrogen (including NO_3-N and NH_4-N;
Phenolic Compounds (as phenol);
Sodium (Na);
Sulfate (SO_4);
Total Dissolved Solids;
Zinc (Zn);
Chemical Oxygen Demand (COD);
Biochemical Oxygen Demand (BOD);
Total Organic Carbon (TOC).

(3) (No change.)

(4) All sanitary landfills shall submit an annual analysis from each ground water monitoring well for the parameters listed in (e)2ix(2) above. Organic scans shall be accomplished as required by the Department.

(5)-(8) (No change.)

x.-xii. (No change.)

7:14A-10.13 Underground injection control

(a) Class I wells: This subsection sets forth the information which must be considered by the Department in authorizing Class I wells. Certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Department (for example, in the Department's files) and sufficiently identified to be retrievable.

1. Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well, the Department shall consider the following:

i.-vi. (No change.)
vii. Proposed operating data as follows:
(1)-(2) (No change.)
(3) Source and analysis of the chemical, physical, radiological and biological characteristics of injection fluids;
viii.-xvi. (No change.)
2.-3. (No change.)
(b) Class II wells: This subsection sets forth the information which must be considered by the Department in authorizing Class II wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Department (for example, in the Department's files) and sufficiently identified to be retrievable.
1. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well, the Department shall consider the following:
i. (No change.)
ii. A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, or wells, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. All wells, reservoirs, and other bodies of water used for public water supply that are within a five mile radius of the injection well must be indicated on the map. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map. The Department, however, may request additional information as it becomes necessary. Additional information may be eligible for treatment as confidential information if it meets the criteria in N.J.A.C. 7:14A-11.
iii.-xiv. (No change.)
2.-3. (No change.)
(c) Class III wells: this subsection sets forth the information which must be considered by the Department in authorizing Class III wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Department (for example, in the Department's files) and sufficiently identified to be retrievable.
1. Prior to the issuance of a permit for an existing Class III well or area to operate, or the construction of a new Class III well, the Department shall consider the following:
i. (No change.)
ii. A map showing the injection well(s) for which the permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes or wells, surface bodies of water, mines (surface and subsurface), quarries, public water systems, water wells and other pertinent surface features including residences and roads. All wells, reservoirs, and other bodies of water used for public water supply that are within a five mile radius of the injection well must be indicated on the map. The map should also show faults if known or suspected. Only information of public record is required to be included on this map. However, the Department may request additional information as needed. Additional information may be eligible for treatment as confidential information if it meets the criteria in N.J.A.C. 7:14A-11.
iii. A tabulation of data on all wells within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type construction, date drilled, location, depth, record of plugging and completion, geological and geophysical logs, and any additional information the Department may require;
iv.-xvi. (No change.)
2.-3. (No change.)

7:14A-11.2 Confidentiality
(a) (No change.)
(b) Included among those items for which claims of confidentiality will be denied are the following:
1.-4. (No change.)
5. Information required by NJPDES application forms provided by the Department under N.J.A.C. 7:14A-2.1 and required in application forms pursuant to N.J.A.C. 7:26-12. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7:14A-11.5 Procedure for confidentiality determinations
(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment unless:
1. (No change.)
2. A claim of confidentiality has been made in an IWMF permit application or an application required pursuant to N.J.A.C. 7:26-12, in which case the following procedures apply:
i. Claims of confidentiality for permit application information must be substantiated at the time the application is submitted and in the manner prescribed in the application instructions.
ii. If a submitter does not provide substantiation, the Department will notify it by certified mail of the requirements to do so. If the Department does not receive the substantiation within 10 days after the submitter receives the notice, the Department shall place the unsubstantiated information in the public file.
(b) (No change.)
(c) The initial determination of entitlement to confidential treatment is as follows:
1. If, in connection with any person's claim, the Department determines that the information may be entitled to confidential treatment, the Department shall:
i. (No change.)
ii. Furnish, to any person whose request for release of the information is pending under N.J.S.A. 47:1A-1 et seq., a notification that the information may be entitled to confidential treatment under this subchapter, that further inquiry by the Department pursuant to this subsection is required before a final determination on the request can be issued, that the person's request is therefore initially denied, and that after further inquiry a final determination will be issued by the Department.
2. (No change.)
(d)-(g) (No change.)
(h) Emergency situation: If the Department finds that disclosure of information covered by a confidentiality claim would serve to alleviate a situation posing an imminent and substantial danger to public health or safety, it may:
1. Prescribe and make known to interested persons such shorter comment period pursuant to (d)1 above, post determination waiting period pursuant to (g)2 above, or both, as it finds necessary under the circumstances; or
2.-3. (No change.)
(i.) (No change.)

7:14A-11.8 Access to and safeguarding of confidential information
(a)-(b) (No change.)
(c) No Department officer or employee may disclose, or use for his or her private gain or advantage, any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment, except as authorized by N.J.A.C. 7:14A-11.10.
(d)-(e) (No change.)

7:14A-11.10 Disclosure of confidential information to authorized agents
(a) The Department may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the Department if:
1. The Department determines that such disclosure is necessary in order for the agent to carry out the work required by the contract;
2. The Department notifies the affected person; and
3. The affected person so requests, the agent contracts with the affected person to protect the confidentiality of the information.
(b)-(c) (No change.)

7:14A-11.13 Use of confidential information in rulemaking, permitting, and enforcement proceedings

(a) (No change.)

(b) Where the Department determines that there shall be an adjudicatory hearing, information determined to be eligible for confidential treatment pursuant to N.J.A.C. 7:14A-11.5 and 11.6 may be used in any enforcement and permitting proceeding subject to the protection from making the information available to the public as provided in N.J.A.C. 1:1-1.

(c) (No change.)

7:14A-12.4 Activities for which a treatment works approval is not required

(a) The Department shall not require a treatment works approval for the following activities:

1.-3. (No change.)

7:14A-13.1 Purpose and scope

(a) The Department herein provides notice that it adopts the "General Pretreatment Regulations for Existing and New Sources of Pollution," 40 CFR Part 403. All users shall comply with the requirements of 40 CFR Part 403.

(b) (No change.)

(c) This subchapter also provides the specific NJPDES permit requirements for a significant indirect user (SIU), as defined in N.J.A.C. 7:14A-1.9.

(d) (No change.)

7:14A-13.5 Permit-by-rule

(a) (No change.)

(b) Termination of eligibility for a permit-by-rule shall be as follows:

1. (No change.)

2. Whenever a DTW's Pretreatment Program approval has been withdrawn based upon the criteria set forth in N.J.A.C. 7:14A-13.8, all SIUs discharging to the DTW will lose their eligibility for a permit-by-rule and will be required to obtain an individual NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.1(h).

(c) (No change.)

7:14A-13.6 Water quality violations

(a) (No change.)

(b) The following limitations shall apply in order to control gross pollution of surface waters by any of the pollutants listed in Appendix F. The amount of any substance, listed in Appendix F, which is discharged by any user shall not exceed the amount W determined by the equations listed below:

1. For dischargers into DTWs which discharge into surface waters of the State with essentially one dimensional flow (stream discharge):

i.-iii. (No change.)

iv. Q = The seven day, 10 year low flow in cubic meters/second (M^3/sec) of the receiving stream immediately downstream of the DTW outfall.

v. R = Efficiency of a DTW to remove a toxic pollutant from the influent, computed according to the procedure in (c) below.

2. For discharges into DTWs which discharge into surface waters of the State with essentially multi-dimensional flow:

i.-ii. (No change.)

iii. C = The values for determination of NJPDES permit toxic effluent limitations in micrograms per liter (ug/1) of any pollutant listed in Appendix F. This concentration cannot be exceeded at the water surface at the point indicated as S (see Figure 1 in Appendix F).

iv. Q = The effluent discharge flow rate of the DTW in cubic meters per second (m^3/sec).

v.-vi. (No change.)

(c) (No change.)

7:14A-13.7 Sludge quality violation

(a) No indirect discharger shall discharge into a DTW any pollutant in such quantities or concentration such that the discharge alone causes the DTW to exceed the State's criteria or standards for the management of sludge.

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

7:14A-13.8 Criteria for withdrawal of Pretreatment Program approval

(a) The Department may withdraw Pretreatment Program approval when a DTW's program no longer complies with the requirements of this chapter and the DTW fails to take corrective action. Such circumstances include the following:

1. (No change.)

2. When the procedure of the DTW's program no longer complies with the requirements of the chapter, including but not limited to:

i. (No change.)

ii. Failure to comply with the public participation requirements of this chapter (N.J.A.C. 7:14A-8):

iii. (No change.)

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

(a)

DIVISION OF COASTAL RESOURCES

Emergency Flood Control Bond Act Rules

Readoption with Amendments: N.J.A.C. 7:23

Proposed: May 1, 1989 at 21 N.J.R. 1051(a).

Adopted: June 8, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: June 9, 1989 as R.1989 d.348, **without change.**

Authority: Emergency Flood Control Bond Act (P.L. 1978, c.78), and N.J.S.A. 13:1D-1 et seq.

DEP Docket Number: 019-89-04.

Effective Date: June 9, 1989, Readoption; July 3, 1989, Amendments.

Expiration Date: June 9, 1994.

Summary of Public Comments and Agency Responses:

The readoption of this chapter with amendments was proposed on May 1, 1989. The comment period closed on May 31, 1989.

No comments were received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:23.

Full text of the adopted amendments follows:

7:23-2.2 Definitions

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

...

"Assistant Director" means the Assistant Director of the Engineering and Construction Element, Division of Coastal Resources, New Jersey Department of Environmental Protection.

...

"Division" means the Division of Coastal Resources.

...

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

7:23-2.4 Preapplication procedures

(a) (No change.)

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

Chief, Flood Plain Management Section
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625
(609) 292-2296

7:23-2.5 Application procedures

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

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

(h) Applications shall be sent to:

Chief, Flood Plain Management Section
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625

(i) (No change.)

7:23-2.9 Amount and terms of grant

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

7:23-2.11 Grant award document

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

7:23-2.14 Allowable project costs

(a) (No change.)

(b) In determining acquisition costs the applicant shall:

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

i.-ii. (No change.)

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

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Radiation Laboratory Fee Schedule

Adopted Repeals and New Rules: N.J.A.C. 7:28-25

Proposed: April 3, 1989 at 21 N.J.R. 826(a).
Adopted: June 5, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: June 9, 1989 as R.1989 d.349, **without change.**
Authority: N.J.S.A. 13:1B-3, 13:1D-9, 58:12A-1 et seq., and N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 58:12A-4, 58:12A-9h and p, and N.J.S.A. 26:2D-91.

DEP Docket Number: 012-89-03.
Effective Date: July 3, 1989.
Expiration Date: October 7, 1990.

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

Full text of the adoption follows:

SUBCHAPTER 25. RADIATION LABORATORY FEE SCHEDULE

7:28-25.1 Scope

This subchapter establishes the Department's fee schedule for conducting various radioanalytical services in the monitoring of public water systems for radioactivity in accordance with the New Jersey Primary Drinking Water Regulations, N.J.A.C. 7:10-5.

7:28-25.2 Definitions

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

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Public community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Public noncommunity water system" means a public water system that is not a community water system.

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "noncommunity water system".

"Supplier of water" means any person who owns or operates a public water system.

"Water system" means a system for providing potable water to any person.

7:28-25.3 Terms and conditions for use of the State radiation protection laboratory radioanalytical services

(a) Any supplier of water wishing to utilize the State radiation protection laboratory for the purpose of monitoring a public water system for radioactivity shall apply, in writing, to the address listed below for a sample delivery schedule to be established by the State laboratory:

New Jersey Department of
Environmental Protection
Radiation Protection Laboratory
CN 411
380 Scotch Road
Trenton, New Jersey 08625

(b) The laboratory shall provide appropriate containers to the suppliers of water for use in submitting water samples. No samples will be accepted without prior approval from the laboratory, and only those samples delivered in laboratory provided containers will be accepted and analyzed by the laboratory.

(c) Suppliers of water desiring priority analysis and reporting of water samples may request expedited services as follows:

1. Immediate testing, that is, analysis and reporting of results within the three to 25 day turnaround times specified in N.J.A.C. 7:28-25.4(b).

2. Emergency testing, that is, analysis and reporting of results within the one to 21 day turnaround times specified in N.J.A.C. 7:28-25.4(b).

3. The laboratory will charge an additional fee for such expedited analysis as provided in N.J.A.C. 7:28-25.4(a).

7:28-25.4 Fees for radioanalytical services

(a) The fees for radioanalytical services, priority analysis, and containers are as follows:

Test	Fee ($)
Gross Alpha	50.00
Gross Beta	50.00
Gross Alpha & Beta	60.00
Tritium	60.00
Radium-226	80.00

Radium-228	140.00
Iodine-131	130.00
Strontium-90	140.00
Cesium-134 and 137	100.00
Strontium-89 and 90	140.00
Uranium	180.00
Radon-222	20.00
Gamma-ray Spectroscopy	95.00
Priority Analysis	
Immediate	+50 percent of prescribed fee per sample
Emergency	+100 percent of prescribed fee per sample
Container Fee	10.00 per sample

(b) The priority analysis turnaround times (in days from sample receipt by the Department) are as follows:

Test	Immediate Priority	Emergency Priority
Gross Alpha	5	2
Gross Beta	5	2
Gross Alpha & Beta	5	2
Tritium	4	2
Radium-226	25	18
Radium-228	12	8
Iodine-131	7	4
Strontium-90	25	21
Cesium-134 and 137	7	3
Strontium-89 and 90	25	21
Uranium	10	5
Radon-222	3	1
Gamma-ray Spectroscopy	5	1

7:28-25.5 Payment of fees

Payment of fees shall be made by check or money order, payable to "Treasurer, State of New Jersey", no later than 60 days following the date of the laboratory invoice, to the following address:

Department of Environmental Protection
Bureau of Revenue
CN 402
25 Scotch Road
Trenton, N.J. 08625

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Lead Toxicity Control Program

Adopted New Rules: N.J.A.C. 10:48-3

Proposed: October 17, 1988 at 20 N.J.R. 2555(a).

Adopted By: Drew Altman, Commissioner, Department of Human Services.

Filed: June 9, 1989 as R.1989 d.347, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12, 30:6D-5b.

Effective Date: July 3, 1989.

Expiration Date: January 21, 1991.

Summary of Public Comments and Agency Responses:

Comments were received from the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled. The comments and responses follow.

COMMENT: The Public Advocate is concerned that the proposed rules erroneously equate pica behavior with lead poisoning. These two conditions are not synonymous. One may have pica behavior and never have lead poisoning. Likewise, lead poisoning is not always the result of pica, even within institutional settings. Therefore, the Public Advocate urges the Division of Developmental Disabilities (DDD) to eliminate any reference to pica in these proposed rules. Furthermore, the need for a pica registry is unnecessary.

RESPONSE: The Division does not intend to imply that pica behavior is synonymous with lead poisoning. Pica behavior describes the ingestion of inedible objects. If the object that is ingested is leaded, the risk to the individual is greater. The rules, therefore, address the significance of pica behavior, if there is lead present in the environment.

COMMENT: N.J.A.C. 10:48-3.9 provides for the inspection of buildings, but does not specify how the inspections shall be done and at what level the building is considered to be safe. The Department of Health currently recommends that a lead reading of 1.0 milligrams per square centimeter and above is not safe. The Center for Disease Control recommends that a lead reading of .70 milligrams per square centimeter and above is not safe.

RESPONSE: The Division relies upon the New Jersey Department of Health to establish the criteria for inspections and for establishing a safe environmental lead level. At such time that the Department of Health changes its standard the Division will amend the rule. Additional review by the Division revealed the need for amendments upon adoption. N.J.A.C. 10:48-3.6(a)5 was amended to clarify that the required report shall be forwarded within 10 working days, due to staffing constraints. N.J.A.C. 10:48-3.13(a) was amended to change the date from January 1, 1989 to January 1, 1990, since it is not possible for the rules to be enforced retroactively and this period of time would enable the agencies to prepare for compliance with the rule. N.J.A.C. 10:48-3.19 has been amended to add structures which have not been evaluated, in order to provide a more comprehensive listing of structures in the pica/lead registry.

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

SUBCHAPTER 3. LEAD CONTROL PROGRAM

10:48-3.1 Purpose

The purpose of this subchapter is to establish standards for a lead control program and a pica/lead registry.

10:48-3.2 Scope

The provisions of this subchapter shall apply to all clients of the Division of Developmental Disabilities who are residing in State-operated facilities, as well as those clients residing in facilities run by provider agencies who contract with or who are regulated by the Division. Additionally, this subchapter applies to day programs operated by the Division or by provider agencies under contract with or regulated by the Division.

10:48-3.3 Definitions

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

"Certified Lead Safe" means any structure which has been deemed lead safe by the Division's Lead Control Supervisor or the Office of Institutional Environmental Services of the Department of Human Services.

"Class I Risk" means individuals at low risk of lead poisoning.

"Class Ia Risk" means individuals with blood lead of less than 25 micrograms per deciliter (mcg/dl) with equal to or more than Erythrocyte Protoporphyrin (EP) 35 mcg/dl. It is not uncommon to see iron deficiency anemia in this class.

"Class Ib Risk" means individuals with blood lead of 25-49 mcg/dl and EP of less than 35 mcg/dl.

"Class II Risk" means individuals with blood lead of 25-49 mcg/dl and EP of 35-109 mcg/dl.

"Class III Risk" means individuals with blood lead of 25-49 mcg/dl with EP of 110 mcg/dl or over, or blood lead of 50-69 mcg/dl with 35-249 mcg/dl.

"Class IV Risk" means individuals with blood lead over 70 mcg/dl and EP of 110 mcg/dl or over. It also includes individuals with blood lead of 50 mcg/dl and over with EP greater than 250 mcg/dl.

"Component" or "service component" means a developmental center, Special Residential Services, or Community Services.

"Individual habilitation plan" (IHP) means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the goals and objectives being pursued on behalf on the individual and the steps being taken to achieve them by each agency. It identifies a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The individual habilitation plan is a single, consistent and comprehensive plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a service plan, a treatment plan, and a health care plan. Various aspects of the plan, such as education, rehabilitation, health care, and others, are assigned to those persons or agencies who can provide, or are legally required to provide, the training or services.

"Interdisciplinary team" ("IDT") means an individually constituted group of individuals responsible to develop a single integrated IHP. The team consists of the client, the client's parent (if the client is a minor or an adult who desires that the parent be included), guardian or advocate, those persons who work most directly with the client and professionals and representatives of service areas who are relevant to the identification of the client's needs and the design and evaluation of programs to meet them.

"Lead poisoning" means a toxic condition which results from absorption of lead into the body by means of ingestion or inhalation.

"Pica" means the maladaptive behavior of mouthing or ingesting inedible substances or objects, including, but not limited to, soil, toys, or paint chips.

"Pica/lead registry" means a current record of clients who exhibit pica behavior or who have been diagnosed by a physician as having lead poisoning, and a current record of all program sites or residences used by clients who exhibit pica behavior.

10:48-3.4 Classification of clients

(a) Clients who exhibit pica or who have a history of lead toxicity shall be tested for Erythrocyte Protoporphyrin (EP) and blood lead level.

(b) Based upon results of the tests in (a) above, clients shall be divided into four classes, as follows:

ERYTHROCYTE PROTOPORPHYRIN (EP) BY EXTRACTION
Risk Classification of Asymptomatic Children
for Priority Medical Evaluation

	Erythrocyte Protoporphyrin (EP) #			
Blood Level #	<35	35-109	110-249	≥250
Not done	I	†	†	†
≤24	I	Ia	Ia	EPP+
25-49	Ib	II	III	III
50-69	††	III	III	IV
≥70	††	††	IV	IV

\# Units are in mcg/dl of whole blood.

† Blood lead test needed to estimate risk.

EPP+ Erythropoietic protoporphyria. Iron deficiency may cause elevated EP levels up to 300 mcg/dl, but this is rare.

†† In practice, this combination of results is not generally observed; if it is observed, immediately retest with venous blood.

≦ Equal to or less than

≧ Equal to or greater than

NOTE: Diagnostic evaluation is more urgent than the classification indicates for:

1. Children with any symptoms compatible with lead toxicity.
2. Children under 36 months of age.
3. Children whose blood lead and EP levels place them in the upper part of a particular class.
4. Children whose siblings are in a higher class.

(c) The guidelines in (b) above refer to the interpretation of screening results, but the final diagnosis and disposition rest on a more complete medical and laboratory examination of the child.

10:48-3.5 Behavior modification plan

The interdisciplinary team shall consider whether to prepare a behavior modification plan, as part of the IHP of every client who exhibits pica behavior. If a behavior modification plan is not recommended, the IDT shall document in the client's record the reason(s) for not providing a behavior modification plan.

10:48-3.6 Duties of the Lead Control Supervisor

(a) The primary duty of the Lead Control Supervisor shall be to coordinate the efforts of the lead control programs in the operational units of the Division. The Lead Control Supervisor in the Division's Central Office shall:

1. Develop and maintain a centralized Pica/Lead Registry for the Division, in accordance with the provisions of this subchapter;
2. Act as liaison to the New Jersey department of Health on lead control matters and, as necessary, make referrals to the lead abatement spcialists recommended by the Department of Health;
3. Supervise all lead abatement projects to assure compliance with applicable safety standards (see N.J.S.A. 24:14A-1 et seq.)
4. Evaluate, within 20 working days of receipt of a request to evaluate, all proposed public, private and community residential and program sites proposed for use by a client who exhibits pica behavior;
5. Forward a written report of findings within 10 ***working*** days of completion of the evaluation to the person requesting the evaluation;
6. Monitor Division lead control programs for compliance with this subchapter;
7. Certify as "lead safe" sites which have been evaluated and/or lead abated in compliance with (a)3 above; and
8. Determine, if a client exhibits a change in blood lead levels;
   i. Whether an evaluation of the environment for a potential lead source is necessary; and
   ii. Whether more frequent testing is appropriate.

10:48-3.7 Duties of the Lead Control Coordinator

(a) A Lead Control Coordinator shall be appointed at each Regional Office of the Office of Community Services; at the Bureau of Special Residential Services and at each developmental center to oversee and direct the lead control program. The Lead Control Coordinator, as part of his or her duties, shall:

1. Develop and maintain a pica/lead registry which conforms to the provisions of this chapter;
2. Advise the Lead Control Supervisor by telephone immediately when a client's test results indicate that he or she is in Class II, III, or IV;
3. Advise the Medical Director for clients in developmental centers;
4. Advise the Coordinator of Nursing for clients in community programs; and
5. Develop operational procedures for the program within the developmental center, Bureau of Special Residential Services, or the regional office.

(b) The Lead Control Coordinator shall assure that orientation or refresher courses are offered to all staff who work with clients, as needed.

(c) The Lead Control Coordinator shall prepare, and forward to the Lead Control Supervisor, a quarterly report of lead control activities, including, but not limited to, test results, abatement projects and transfers. The Lead Control Coordinator shall forward copies of the quarterly report to the developmental center Superintendent and Medical Director, or to the Regional Administrator, Deputy Director and Coordinator of Nursing in the Office of Community Services, or to the Chief of the Bureau of Special Residential Services, as appropriate, and to the Chief Medical Consultant in the Commissioner's Office.

(d) The Lead Control Coordinator shall inform the Lead Control Supervisor of all planned lead abatement projects.

10:48-3.8 Duties of the Medical Director

The Medical Director in a developmental center shall direct and supervise the medical care and treatment of clients who have lead toxicity.

10:48-3.9 Site evaluation

(a) The Lead Control Supervisor shall order a lead analysis of each unevaluated building which is currently used, or is proposed to be used, by clients who exhibit pica behavior.

(b) As soon as a site is selected, any unevaluated site shall be referred to the Lead Control Supervisor as follows:

1. By the Regional Adult Training Office, for adult training and crew labor programs;

2. By the Office of Licensing and Inspection, for Skill Development Homes, Family Care Homes and Family-based Respite;

3. By the Program Development Unit, for Group Homes, Supervised Apartments, Unsupervised Apartments and Supportive Living Arrangements;

4. By the Regional Placement Coordinator, for established community residences not previously evaluated.

(c) Before the placement of a client who exhibits pica behavior into an unanalyzed, established community program, the site shall be referred to the Lead Control Supervisor, as follows:

1. By the Regional Placement Coordinator, for residential placement;

2. By the Regional Adult Training Office, for a day program.

(d) Any Developmental Center building which is used by clients who exhibit pica behavior shall be referred to the Lead Control Supervisor by the Center's Lead Control Coordinator.

(e) The Office of Licensing and Inspection shall refer proposed private residential facilities to the Lead Control Supervisor for evaluation.

10:48-3.10 Content of referrals for lead analysis

(a) A referral to determine the lead content of buildings used for community programs and private residential facilities shall be in writing and shall include:

1. The address of the site;

2. The name and telephone number of the service provider; and

3. The name and telephone number of the person making the referral.

(b) A referral to determine the lead content of buildings in developmental centers shall be in writing and shall include:

1. The location of the building; and

2. The name and telephone number of the person to be contacted in order to be admitted to conduct the analysis.

10:48-3.11 Monitoring and evaluation of lead abatement procedures

(a) The Lead Control Supervisor or designee shall monitor the lead abatement procedures in any structure undergoing renovation.

(b) The Lead Control Supervisor or designee shall evaluate any area previously abated which has not been certified lead safe.

10:48-3.12 Site certification process

(a) When the Lead Control Supervisor has certified a site as lead safe, the Supervisor shall notify the person who requested the evaluation.

(b) The Lead Control Supervisor shall maintain a record of all sites evaluated, the results of each analysis and certifications granted.

10:48-3.13 Ceramics

[(a)] By January 1, 1989, only non-toxic ceramic materials and supplies may be utilized in programs of the Division and all kilns shall be vented to the exterior of the building in which the kiln is located and shall have a minimum captured velocity of 100 feet per minute.

10:48-3.14 Testing of clients

(a) For any client newly admitted to any service component, testing shall be as follows:

1. The client shall be tested for blood lead, EP, and hematocrit within 72 hours of admission, unless testing has been done within the three months before admission;

2. A client who exhibits pica behavior shall be retested for blood lead, EP and hematocrit three months after admission; and

3. All test results shall be documented in the client's record and reported to the Lead Control Coordinator.

(b) When clients who exhibit pica behavior and/or elevated lead levels are permanently transferred from one service component to another, testing shall be as follows:

1. The service component from which the client is transferred shall:

i. Test each client for blood lead, EP, and hematocrit prior to transfer, unless these tests were performed within the last three months before the scheduled transfer;

ii. Permanently mark the outside cover of the record to reflect the client's pica behavior or elevated lead level;

iii. Inform the Lead Control Coordinator at the service component to which the client is transferred, in writing, of the client's transfer;

2. The service component to which the client is transferred shall:

i. Immediately review the transfer documents of each transferred client to ascertain the presence of a pica and/or lead problem; and

ii. If pica behavior or test results shown in the record indicate, enter the client's name in the pica/lead registry.

(c) Follow-up testing, which shall include blood lead, EP and hematocrit, shall be completed three months after the client has been admitted.

(d) A client who is on the pica/lead registry shall be tested for blood lead, EP and hematocrit upon return from a home visit of more than 30 days duration.

10:48-3.15 Transfer of clients listed in the pica/lead registry.

A client listed in the pica/lead registry shall be transferred only to a lead safe residence.

10:48-3.16 Transfer of clients who exhibit pica behavior

(a) No client who exhibits pica behavior shall be transferred to a site which has not been certified lead safe.

(b) A referral for evaluation shall be made to the Lead Control Supervisor of any facility which has not been certified lead safe and is scheduled to receive a client who exhibits pica behavior.

10:48-3.17 Mandatory hospitalization

Hospitalization is mandatory for clients with a Class IV blood lead level, unless physician certification that hospitalization is otherwise medically contraindicated is placed in the client's record.

10:48-3.18 Monitoring and evaluation of clients

(a) Clients listed on the pica/lead registry shall be tested for blood lead, EP and hematocrit, at least yearly, as follows:

1. For Class I, Ia and Ib blood levels, testing shall be conducted annually;

2. For Class II blood lead levels, blood lead level shall be tested every three months;

3. For Class III blood lead levels, blood lead level shall be tested monthly;

4. For Class IV serum lead levels, blood lead level, E.P. and hematocrit shall be tested at least monthly, with additional testing done at the discretion of the attending physician.

(b) When a client's test results change, the client shall be tested according to the requirements for the class of greater risk. After the client's test results have consistently remained in a class of lesser risk for a period of one year, the client shall be tested according to the requirements for the class of lesser risk.

(c) Any client with a history or current classification of Class II, III, or IV shall reside in a lead safe environment.

(d) Any client with a history or current classification of Class I, Ia, or Ib currently residing, or receiving a day program in, a leaded environment shall be tested quarterly.

(e) The name of any client who has a classification of Class I for a period of two years, without change, may be removed from the pica/lead registry and placed in a history file, upon certification from the Medical Director at a developmental center, or the Lead Control Coordinator of Special Residential Services or the Lead Control Coordinator at the regional office, as appropriate. The certification shall be placed and permanently retained in the client's record. If pica behavior occurs after certification, the client shall be tested and the client's name placed on the pica/lead registry.

(f) Any client who exhibits, or is reported to exhibit, pica behavior and has no known history of pica behavior shall be examined by a physician and reported to the Lead Control Coordinator, who shall add the client's name to the pica/lead registry.

(g) Individuals categorized as Class IV Risk should be medically evaluated within 24 hours and in any case shall be evaluated within 48 hours.

10:48-3.19 Pica/lead registry

(a) The pica/lead registry shall be a loose-leaf binder divided into three sections, with the following information:

1. For each client listed as an active pica/lead client of Classes I, II, III or IV, the registry shall include a separate page designed as a flow chart to contain the client's:

i. Name, date of birth, residence, and any change in residence, with the date of change noted;

ii. Test values for blood lead, EP and hematocrit, with the date of each test and the classification of lead level; and

iii. Specific treatment program for lead poisoning, where the client was treated, and the date of treatment; and

2. For each client listed as an inactive pica/lead client, the section shall be divided as follows:

i. A list of clients with a history of pica, to include physician certification of the cessation of pica behavior; and

ii. A list of clients with a history of lead poisoning; and

3. An environmental inventory of all residential and program buildings, to include:

i. Structures which contain lead;

ii. Structures which are lead-abated, and the dates of abatement;

iii. Structures which have been reconstructed and lead-abated, with the dates of abatement; *[and]*

iv. Copies of all lead analysis findings with the dates of inspection of the sites*[.]**; and**

v. Structures which have not been evaluated.

10:48-3.20 Prevention and treatment of lead poisoning for clients who engage in pica behavior

(a) All client records shall be permanently marked on the outside cover to designate the client's current status on the pica/lead registry.

(b) All areas to which the clients are exposed shall be evaluated and objects or materials which could cause lead poisoning shall be removed or secured away from client areas.

(c) All staff who work with clients shall be informed of the clients' pica behavior. Staff shall supervise clients to prevent mouthing or ingestion of leaded or other dangerous material.

(d) Any other persons who may have temporary care of a client shall be advised by staff responsible for the client that the client exhibits pica behavior and shall be advised of precautions to take to prevent pica behavior.

(e) Staff shall ask the person returning a client whether a client exhibited pica behavior, and about the details of the pica behavior, whenever a client is returned to a developmental center or other residential facility from a visit.

(f) The client's attending physician shall be informed of the client's pica behavior and of the client's latest blood lead level test results by appropriate Division or agency staff.

DIVISION OF PUBLIC WELFARE

(a)

Public Assistance Manual
Child Support Paternity; Direct Support Payments
Adopted Amendment: N.J.A.C. 10:81-11.4

Proposed: February 21, 1989 at 21 N.J.R. 423(a).

Adopted: June 1, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: June 1, 1989 as R.1989 d.337, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: July 3, 1989.

Expiration Date: October 15, 1989.

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

Full text of the adoption follows.

10:81-11.4 Assignment of support rights

(a) (No change.)

(b) Purpose: Upon application for AFDC benefits, each client assigns to the county welfare agency all rights to support from the absent parent of the AFDC children and any other legally responsibile relative to which the eligible unit may be entitled and includes any support obligation which has accrued at the time such application is executed.

(c) (No change.)

(d) IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C, shall complete the appropriate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check.

i. Relationship to application process: The fact that eligibility is not immediately established shall not delay routing of the IV-D referral document to the IV-D Unit. However, when a case is determined ineligible the IM worker shall notify the IV-D Unit promptly.

ii. (No change.)

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the client shall, upon receipt, be forwarded to the CWA/IV-D Unit. If the IV-D Unit discovers that directly received support payments are being, or have been retained by the client, it shall immediately notify the IV-A Unit in writing.

(1) The client shall be requested to remit the support payment to the CWA. If the client fails to comply, the amount of the direct support, less the $50.00 disregarded child support payment, shall be counted as unearned income received in the budget month and used to determine the amount of the assistance payment to be issued for the corresponding payment month as set forth at N.J.A.C. 10:90-4.3(c)2ii.

(2) If, due to lack of timely notification, the grant cannot be adjusted, the assistance payment issued for the payment month corresponding to the budget month in which the direct support was received shall be considered an overpayment. The CWA's Income Maintenance Unit shall recover the overpayment, less the $50.00 disregarded child support payment amount, upon termination of assistance or in subsequent payment months as set forth at N.J.A.C. 10:82-2.19(a)5.

iv. Termination or suspension of assistance: In the case of termination or suspension of assistance, the IM worker shall concurrently send a copy of the adverse action notice to the AFDC client and the IV-D Unit (see N.J.A.C. 10:81-11.12). The IV-D Unit shall be notified immediately if assistance is continued pending or following a fair hearing.

v.-vii. (No change.)

(b)

Public Assistance Manual
Realizing Economic Achievement Program (REACH): Support Services; Post-AFDC Child Care
Adopted Amendments: N.J.A.C. 10:81-14.5 and 14.18

Proposed: May 1, 1989 at 21 N.J.R. 1086(b).

Adopted: June 12, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: June 12, 1989 as R.1989 d.353, **without change.**

Authority: N.J.S.A. 44:10-1 et seq., especially 44:10-13.
Effective Date: July 3, 1989.
Expiration Date: October 15, 1989.

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

Full text of the adoption follows.

10:81-14.5 REACH Agreement

(a) Purpose and scope: The REACH Agreement will set forth provisions for both the REACH participant and the agency to comply with under the principle of mutual obligation. Each REACH participant will sign a REACH Agreement with the case manager affirming participation, provision of support services (such as child care and transportation) and commitment to self-sufficiency. The REACH Agreement will be tailored to each participant's skills and necessary employment activities. A Spanish language version of the REACH Agreement is available for any participant whose primary language is Spanish.

1.-2. (No change.)

3. Post-AFDC REACH participants: All REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving post-AFDC child care. All REACH participants receiving post-AFDC Medicaid (see N.J.A.C. 10:81-14.20) should complete and sign a REACH Agreement. Exceptions may be granted where the participant would be penalized by the employer for taking time off from work. Absence of a REACH Agreement will not relieve the participant of complying with eligibility requirements for extended Medicaid benefits (see N.J.A.C. 10:81-14.20).

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

10:81-14.18 REACH support services: child care

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

(d) Duration of payment: REACH child care benefits are routinely available to participants for one year of participation in a REACH employment-directed activity, for the post-employment period after the commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, to supplement as necessary child care paid by the participant as required by the Social Security Act (see (f)4 below), and one year post-AFDC after the commencement of employment that results in ineligibility for AFDC.

1. The one year period of participation in a REACH employment-directed activity will start with the first week in which an individual participates in any employment-directed activity set forth at N.J.A.C. 10:81-14.2. Participation in orientation, individual evaluation, assessment and employment while receiving AFDC do not count toward this one year period. One year is defined as 52 consecutive weeks.

2. Post-employment child care: The post-employment period shall start with the first week in which a participant is employed and receiving AFDC and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. State REACH funds shall be used for the cost of post-employment child care in any month in which the cost of child care exceeds $175.00 for any child age two or older and $200.00 for any child under age two (see (f)3 below).

i. If an employed participant becomes ineligible for AFDC for a reason other than a sanction or similar penalty for noncompliance with AFDC program requirements, the participant shall be eligible for payment of child care through the REACH program for the one year post-AFDC period while the participant is employed, subject to (f)3 below.

3. Post-AFDC child care: The one year Post-AFDC period shall coincide with the 12 month period of extended Medicaid benefits at N.J.A.C. 10:81-14.20(d) to the extent possible. The one year period shall begin with the month AFDC is terminated due to income from employment, but no later than the payment month corresponding to the budget month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the one year period shall begin with the first month in which the family became ineligible for AFDC. State REACH funds shall be used for the cost of post-AFDC child care.

i. Only weeks during which the participant is employed and not receiving AFDC shall be counted toward the one year post-AFDC period. Employment shall be presumed unless the participant reports otherwise.

ii. The one year post-AFDC period shall consist of 52 consecutive weeks if the participant remains employed and does not receive AFDC during that year. If an employed participant loses employment and begins receiving AFDC during the one year post-AFDC period, payment of child care for the subsequent post-AFDC period shall be available for the number of weeks remaining in the one year post-AFDC period.

iii. Eligibility for post-AFDC child care: Before AFDC is terminated, the case manager shall evaluate the need for post-AFDC child care. In addition to demonstrating need, in order to be eligible for post-AFDC child care the participant must:

(1) Sign a REACH Agreement covering the period during which the child care is to be provided;

(2) Participate in post-AFDC activities set forth in the Agreement; and

(3) Comply with REACH program requirements to report participation in post-AFDC activities.

4. Transitional support services for working families: Payment for child care after the one year post-AFDC period may be available from the REACH program, as transitional support services for working families, subject to availability of State funds. Duration of payment and eligibility for transitional support services shall be based on criteria established by the Department of Human Services, and may include mandatory verification of income, size of household or family, shelter costs and similar factors.

5. Exceptions and waiver: Exceptions to the one year limit on REACH child care payments for participation in a REACH employment-directed activity may be allowed in exceptional circumstances and must be approved through waiver procedures determined by the Department of Human Services.

i.-iii. (No change.)

(e) (No change.)

(f) Payment methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

1.-3. (No change.)

4. Special requirements for employed participants: The Social Security Act requires that for any employed AFDC recipient, the actual cost of child care up to and including $175.00 per month per child age two or older and $200.00 per month per child under age two shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first $175.00 or $200.00 in child care directly to the provider. The amount in excess of $175.00 or $200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider or as a direct payment to the participant, in accordance with (f)1 and 2 above. However, any amount in excess of $175.00 or $200.00 per month per child that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.

i.-ii. (No change.)

(g) Case manager responsibilities: The case manager shall be responsible for assessing and determining the need for child care and authorizing issuance of REACH child care payments. Since the REACH program will be the payor of last resort, before payments may be issued, a REACH participant shall be required to certify that no other acceptable family members or other resources for child care that are in the best interest of the child are available. The case manager shall document this certification in the REACH case record. The welfare of the children and the quality of their care shall be considered.

1. Before the one year period of post-AFDC child care expires, the case manager shall advise the participant, the provider and the lead child care entity of the expiration date of REACH child care payments and that the participant shall be responsible for payment

of the entire cost of child care. The case manager, with the assistance of the lead child care entity, will work with the participant to ease the transition to payment of child care not subsidized by REACH.

(h)-(i) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone Correspondence

Adopted Amendments: N.J.A.C. 10A:18-2.6, 2.19, 2.20 and 2.22

Proposed: November 21, 1988 at 20 N.J.R. 2854(a).

Adopted: May 30, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 2, 1989 as R.1989 d.338, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: July 3, 1989.

Expiration Date: July 6, 1992.

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

Full text of the adoption follows.

10A:18-2.6 Inspection and identification of incoming correspondence

(a) (No change.)

(b) The sender's name and address and the inmate's name and number should appear legibly on the outside of all incoming correspondence.

(c) If the inmate's name or number does not appear on the outside of the incoming correspondence, the correspondence shall be returned to the sender.

(d) If the sender's name or address does not appear but the inmate's name and number appear on the outside of the incoming correspondence, the correspondence may be delivered to the inmate after the correspondence has been opened and inspected for contraband.

(e) If the inmate's name or number and the sender's name and address do not appear on the outside of the incoming correspondence, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.

(f) If it is necessary to return correspondence to a sender and the return address is incomplete, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.

(g) Incoming correspondence shall be opened and inspected for contraband, but it shall not be read unless there is reason to believe that the correspondence contains disapproved content. If there is reason to believe that the correspondence contains disapproved content, the correspondence shall be read only upon prior authorization of the Superintendent or his or her designee.

(h) A confidential list of the names of inmates whose incoming correspondence is authorized to be read shall be established and maintained in the correctional facility's Internal Affairs Unit or mail room, or wherever the confidentiality of the list can be maintained.

10A:18-2.19 Forwarding correspondence to an inmate transferred to another correctional facility

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

(c) Any correspondence received after the three month period shall be returned to the sender. If the sender cannot be identified, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.

10A:18-2.20 Forwarding correspondence to an inmate released on parole or at expiration of maximum sentence

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

(e) Correspondence shall be forwarded for a maximum of three months from the date of the inmate's release. Correspondence received thereafter shall be returned to the sender. If the sender cannot be identified, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.

10A:18-2.22 Forwarding correspondence of an inmate who has escaped

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

(c) If the sender cannot be identified, the correspondence shall be resealed and returned to the United States Post Office.

PUBLIC NOTICES

EDUCATION

(a)

BUREAU OF GRANTS AND CONTRACTS

Directory of Federal and State Programs

Public Notice

Take notice that the New Jersey Department of Education has available for the general public in the 1989 edition of the *Directory of Federal and State Programs* which gives information regarding the availability of Federal and State grant funds, pursuant to Chapter 7, Laws of 1987, supplementing Title 52 of the Revised Statutes. A copy of this directory has been given to each local education agency and county office of education. **Copies may be obtained by writing to:**

Bureau of Grants and Contracts
N.J. State Department of Education
CN 500
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION

(b)

OFFICE OF ENVIRONMENTAL CLAIMS ADMINISTRATION

Appraisal Methods for Property Value Diminution Damage

Take notice that the Department of Environmental Protection is changing its method of appraising residential properties pursuant to N.J.A.C. 7:1I, Sanitary Landfill Contingency Fund, governing procedures for preparation, submission and review of claims for real property damages proximately resulting from the operation or closure of a sanitary landfill.

N.J.A.C. 7:1I sets forth the rules governing submission and payment of claims for compensation for damages proximately resulting from the operations or closure of any sanitary landfill, pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq. Among the types of damages for which a claimant may be compensated is the diminution in fair market value of real property. N.J.A.C. 7:1I-3.3 sets forth the criteria and procedures for claiming property value diminution. As part of the process, N.J.A.C. 7:1I-3.3(d) requires that a Departmental appraisal be made of the subject property.

There are several methods of property appraisal that are generally recognized by the claims adjustment industry as alternative standards for evaluating the value of a property. Since approximately 1985, the Department has been using an appraisal method which employed three components: purchase price, appreciation, and improvements to calculate the value of a property. The Department is changing to the method commonly referred to as the Market Analysis or Sales Comparison Approach. In using this latter appraisal method, the appraiser accumulates information on sales of substantively similar properties, makes adjustments for any factors that are different between the sold properties and the subject of the appraisal, and determines a projected sales price for the subject property.

In 1988, in response to its proposal to revise N.J.A.C. 7:1I, the Department received a comment questioning the Department's use of its current real estate appraisal method and recommending a change to the Market Analysis (Sales Comparison) method (see 20 N.J.R. 443(a), published March 7, 1988, and 20 N.J.R. 1732(b), published July 18, 1988). In the subject response, the Department stated, in part, that its "appraisal process is based solely on three factors: purchase price, appreciation and improvements . . . Past appraisals conducted by the Fund have compared favorably with actual market conditions . . . The Department will continue to ensure that Fund appraisals closely approximate actual market conditions." (See 20 N.J.R. at 1735.)

In keeping with the Department's commitment to ensure the competence of the real property valuation process, the Department periodically reviews that process. Evaluation of data generated by the Department's most recent review, which commenced early in 1989, has demonstrated that the current appraisal method will not provide valuations of the concerned property commensurate with actual market conditions for pending claims and that evaluation of alternative methods was now warranted. After consideration of the other various standard property valuation methods available (for example, Cost, Market or Sales Comparison and Income methods), it was the finding of the Department that the Sales Comparison Approach will generally be the best method of establishing the property valuation of residential real property pursuant to N.J.A.C. 7:1I-3.3(d) for all pending claims. In conducting its most recent appraisal process evaluation, the Department compared a sample of residential properties valued pursuant both the current method and the Sales Comparison method. The Sales Comparison method was considered the most likely alternative to the current method since most residential properties are not sold by the strict Cost or Income methods. The results of that study showed that the Sales Comparison method was more accurate than the current method in use in establishing the required valuation when compared to actual sales absent any landfill effects.

Therefore, the Department will use the Sales Comparison method to satisfy its responsibilities under N.J.A.C. 7:1I-3.3(d) for all pending claims for property valuation diminution damage of residential real properties.

Interested persons may submit written comments on the above until August 2, 1989 to:

New Jersey Department of Environmental Protection
Environmental Claims Administration
David C. Mack
Administrator
CN 402
Trenton, New Jersey 08625

(c)

DIVISION OF REGULATORY AFFAIRS

Notice of Regulatory Agenda

Take notice that the Department of Environmental Protection hereby gives notice of its Regulatory Agenda. This agenda, which is published biannually, provides public notice of major rulemaking activities for the following six months.

The following items constitute the Department's anticipated significant rulemaking activities likely to occur by the end of December 1989.

Table I—Rule Proposals

Description	Division	Cite	Estimated NJR Date	Agency Note
Freshwater Wetlands	DCR	7:7A	9/89	Requirements for Assumption
Right to Know	DEQ	7:1G	8/89	Readoption
Air Permit Fees	DEQ	7:27-8	9/89	Revision
Underground Storage Tanks (Technical Requirements)	DWR	7:14C	7/89	New
Safe Drinking Water Act	DWR	7:10	7/89	Readoption
Disclosure Statements (A.901)	DSWM	7:26-16	8/89	Revisions
Solid and Hazardous Waste Penalty Rules	DSWM/ DHWM	7:26	9/89	Revisions

Table II—Rule Adoptions

Description	Division	Citation	Estimated NJR Date
Freshwater Wetlands: Transitionary Rules	DCR	7:7A	7/89
Freshwater Wetlands: General Permits	DCR	7:7A	7/89
Flood Hazard Area Act (Stream Encroachment)	DCR	7:13	7/89
Subsurface Disposal (Chapter 199)	DWR	7:9A	8/89
Water Quality Planning	DWR	7:15	9/89
Surface Water Quality Standards	DWR	7:9-4	8/89
Treatment Works Approval Fees	DWR	7:14A	9/89
Air Penalty Rules	DEQ	7:27-8	11/89
ECRA	DHWM	7:26B	7/89
Listing of PCB's	DHWM	7:26-8	11/89

This notice is given as a matter of public information.

(a)

DIVISION OF COASTAL RESOURCES

Notice of Petition for Rulemaking and Agency Response

Conceptual Approval of Coastal Projects

Petitioner: Peter J. Herzberg, Esquire.
Authority: N.J.S.A. 52:14B-4(f).

Take notice that on March 9, 1989, a petition was filed with the Department of Environmental Protection requesting that a rule be proposed to create a process within the Division of Coastal Resources by which conceptual approval may be given to those projects designated as "major planned developments" in accordance with the provisions of the Department's Coastal Resource and Development Policies, N.J.A.C. 7:7E, at N.J.A.C. 7:7E-7.2(i).

The petitioner states that he represents several developers who are contemplating projects within the coastal area as defined by the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. These projects are in the conceptual stage and are "large-scale multi-use developments" as defined by N.J.A.C. 7:7E-7.2(i). As a result of changes in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., conceptual approval of a general development plan can now be obtained from local planning boards for planned developments over 100 acres pursuant to N.J.S.A. 40:55D-45.1 through 45.8. Because developments in the coastal area must receive both local and State approvals, it would be desirable to obtain simultaneous conceptual approval of the general development plan from the Department and the local planning board.

The petitioner states further that a process of conceptual approval is appropriate in view of the amendments to the Municipal Land Use Law and in view of the decision in *Crema v. New Jersey Department of Environmental Protection*, 94 *N.J.* 286 (1983), in which the court held, in part, that the Department could grant conceptual approval of projects provided that it promulgated rules to establish standards and criteria for doing so.

Agency Response: After the decision of the Court in *Crema*, the Department found that the grant of conceptual approval was technically possible only in a very small portion of permit cases. The use of conceptual approval would, in most cases, be potentially confusing to the general public and possibly be unfair to a permit applicant. An applicant, by obtaining conceptual approval, would still have no certainty of eventually receiving full approval. The applicant would still be required to submit to the full Department permit review process for each phase of the project.

Additionally, the Department presently offers to meet with potential applicants in an informed pre-application conference (see N.J.A.C. 7:7-3). Such a conference allows the Department to inform potential applicants of the various procedures and policies which may be applicable to a particular permit application. The Department will discuss the apparent strengths and weaknesses of the proposed project during the pre-application conference but can, in no way, commit itself to approval or rejection of a proposed facility until the proposed project has thoroughly reviewed a full permit application. The pre-application conference "consists of the Department's candid but non-binding discussion and evaluation of the proposed application." *Crema, supra*, 296 *N.J.* 297.

In view of the foregoing and after due consideration pursuant to N.J.S.A. 52:14B-4(f), the Department hereby denies this petition to initiate rulemaking.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-3.6.

(a)

PINELANDS COMMISSION

Notice of Extension for Review of Petition for Rulemaking

Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioners: Anatole Kalinuk et al.
Authority: N.J.S.A. 13:18A-65.

Take notice that on March 14, 1989, Anatole Kalinuk et al. filed a request for the Pinelands Commission to delay its action on a pending petition for rulemaking.

A petition for rulemaking was filed with the Pinelands Commission on December 7, 1988. A notice of the petition was published on February 6, 1989 at 21 N.J.R. 345(a). The Pinelands Commission was originally scheduled to receive a report on the petition from the Commission's Executive Director and decide whether the petition warranted a formal rulemaking proposal at its meeting on April 7, 1989. Because the petitioners wished to review comments received by the Pinelands Commission from the public and governmental agencies and submit additional information in response to those comments, the Pinelands Commission was requested and agreed not to take action until June 2, 1989.

Take further notice that the Executive Director of the Pinelands Commission has agreed to another extension. The Pinelands Commission is now scheduled to consider the petition at its meeting of July 7, 1989. Although the Commission received the additional information from the petitioners on May 5, 1989, the petitioners also asked that the Department of Environmental Protection review the material and submit comments to the Commission. Since the Department of Environmental Protection is unable to do this prior to the June 2, 1989 meeting of the Commission, the petitioners have asked that the Commission defer action until July.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the Atlantic County Department of Regional Planning and Development has petitioned to amend the Atlantic County Water Quality Management (WQM) Plan. A Wastewater Management Plan (WMP) has been submitted for Egg Harbor City. The WMP makes provision for the construction of an interceptor through Galloway Township. The interceptor will connect the Egg Harbor City collection system to the Atlantic County Utilities Authority regional plant at City Island. The WMP additionally delineates the existing sewered area and a proposed sewer service area coinciding with the Pinelands Town designation. The remainder of the municipality is designated as a septic service area.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. These documents are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Richard Dovey, the Director of Planning at the County Office Building address cited above; and Mr. George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders within 45 days from the date of the notice. Adoption of the amendment shall be by ordinance by the Atlantic County Board of Chosen Freeholders. The NJDEP thereafter may approve and adopt this amendment without further notice.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on January 25, 1989 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment requires an update of a water quality model be prepared to establish effluent limits for the Bergen County Utilities Authority's (BCUA) wastewater treatment facility. Upon the completion of the water quality study being prepared by BCUA, the Little Ferry Wastewater Treatment Facility will be modified, if necessary, to meet applicable Water Quality Standards reflecting the study. The Department will review and develop its wasteload allocations using the study which will be based on water quality events for the seven consecutive days, 10 year low flow conditions during the summer months. The existing treatment facility will maintain current permit conditions or modifications as determined by the Department to meet Water Quality Standards.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on April 26, 1989 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. As part of the amendment, a Wastewater Management Plan (WMP) has been submitted for Clinton Township. The WMP identifies an expanded sewer service area to be served by the Town of Clinton Sewage Treatment Plant (STP). Also identified are the sewer service areas of the proposed Township of Clinton West STP and the Township of Clinton East STP, both of which propose surface water discharges, and will serve areas along Interstate 78 and Route 22. An on-site groundwater disposal area in the southwest portion of the Township is identified. The remainder of the Township will be served by individual septic systems.

Comments on this amendment were received during the public comment period, and are summarized below with the Department's response.

COMMENT: One commenter expressed concern regarding the requirement to install "dry sewers" for all development located within Subarea A as identified in the WMP, when there is no time table as to when capacity will become available in the Town of Clinton STP.

RESPONSE: The Department does not require the installation of dry sewers. The proposed WMP merely reflects the Township's recommendation that dry sewers "should be" installed for all new development. By recommending that dry sewers be installed, the Township is anticipating the future connection of these areas to the Town of Clinton STP. The installation of dry sewers at the time of construction is more cost-effective and also lessens the degree of future disruption which the physical sewer connection would create to both the homeowner and the local transportation routes. The Department would only consider approval of dry sewers for projects that are located within a proposed sewer service area as identified in the Township of Clinton WMP.

COMMENT: Concern was expressed regarding the effects which the proposed wastewater facilities may have upon the water quality of potable water supplies.

RESPONSE: Adoption of the WMP would not allow the indiscriminate discharge of effluent into the waterways. Prior to construction and operation of any of the proposed wastewater treatment facilities, the applicant must obtain all necessary permits, including a Discharge Allocation Certificate (for surface water discharges) and a NJPDES discharge permit. The effects which these facilities will have on the water quality will be addressed during the technical review of the permit application. Appropriate effluent limitations will be imposed by the NJPDES discharge permit. Comments regarding the actual parameters established in the NJPDES permit may be presented to the Department during the permit public comment period.

COMMENT: Comments were received from three parties regarding the desire to construct on-site groundwater disposal facilities to serve their individual project proposals.

RESPONSE: The Township of Clinton WMP has been prepared in accordance with the objective of the Department to regionalize the management and treatment of wastewater. The Township of Clinton WMP has identified the need for centralized wastewater treatment facilities to accommodate the increased development pressures the Township is experiencing along the I-78/US 22 corridor. If individually proposed wastewater treatment facilities meet the definition of interim facilities, as identified in the Statewide Water Quality Management Plan, these facilities would be allowable for a limited time of operation pending technical review, without the need to amend the WMP. On-site groundwater disposal facilities are allowed in the areas designated for such facilities.

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Notice of Grant Availability

Local Health Development Services Evaluation and Training

Take notice that, in compliance with N.J.S.A. 52:14-34.4 through 34.6, the Department of Health hereby publishes notice of the availability of the following grant:

A. Name of Grant Program: Local Health Development Services Evaluation and Training, Grant Program No. 90-75-LHD.

B. Purpose for which the Grant Program Funds will be used: To provide affordable continuing education for public health professionals, specifically, courses designed for health officers, environmental health specialists and local board of health members.

C. Amount of money in the Grant Program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

D. Group or Entities which may apply for the Grant Program: Educational institutions.

E. Qualifications needed by an applicant to be considered for the Grant: Applicant must be an accredited educational institution and have an accredited program in public health.

F. Procedures for eligible entities to apply for Grant Funds: Submit complete New Jersey Department of Health Application for Health Service Grant. Applications and information may be obtained from:

Ron Ulinsky, Chief, Evaluation and Training
Division of Community Health Services
Department of Health
CN 360
Trenton, NJ 08625
(609) 292-4076

G. Deadline by which applications must be submitted: August 1, 1989.

H. Date by which applicant shall be notified whether they will receive funds: September 1, 1989.

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

General Assistance Rate in Residential Health Care Facilities

Public Notice

Take notice that, in accordance with N.J.A.C. 10:85-3.3(f)4i, the Department of Human Services announces that the rate to be paid for General Assistance recipients in Residential Health Care Facilities has been increased from $504.05 to $518.05 monthly. This change is effective January 1, 1989 and is the same in both the amount and effective date as the change in the rate for the same service paid to recipients under the Federal program of Supplemental Security Income.

LABOR

(c)

DIVISION OF UNEMPLOYMENT AND DISABILITY INSURANCE

Public Notice

Quality Control Survey Results

Take notice that the Department of Labor, pursuant to the requirements set forth in the Federal Register, Vol. 84, No. 45, will release the results of the Quality Control Survey conducted by the Department. To obtain a copy of the results, interested persons may write to:

Michael P. Malloy, Director
Unemployment and Disability Insurance
Department of Labor, Room 601
John Fitch Plaza
Trenton, New Jersey 08625

LAW AND PUBLIC SAFETY

(d)

OFFICE OF THE ATTORNEY GENERAL

Notice of Availability and Summary of the Quarterly Report of Legislative Agents for the First Quarter of 1989

Take notice that Peter N. Perretti, Jr., Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the First Quarter of 1989, accompanied by a Summary of the Quarterly Report.

At the conclusion of the First Quarter of 1989 the Notices of Representation filed with this office reflect that **660** individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence Legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of the Summary and copies of all Quarterly Reports filed by Legislative Agents for the First Calendar Quarter of 1989, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

1. The names of registered Agents, their registration numbers, their business addresses and whom they represent.
2. A list of Agents who have filed Quarterly Reports by Statutory and Compilation Deadlines for this quarter.
3. A list of Agents whose Quarterly Reports were not received by the Compilation Deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the First Calendar Quarter of 1989:

No. 345 Roger Bodman, representing Impact Government Relations.

No. 505 Jared Blum, representing May Department Stores Corp.

No. 511 Kenneth F. Lane, representing Miller Brewing Co.

No. 394 Jack Eisenstein, representing N.J. Association of School Administrators.

No. 394 Russell J. Schumacher, representing N.J. Association of School Administrators.

No. 394 Margaret C. Murphy, representing N.J. Association of School Administrators.

No. 394 Andrew Kaplan, representing N.J. Association of School Administrators.
No. 394 Jean F. Emmons, representing N.J. Association of School Administrators.
No. 394 Joseph Hancock, representing N.J. Association of School Administrators.
No. 433 James McQueeny, representing Public Strategies Inc.
No. 21 Kathryn McMichael, representing N.J. School Boards Association.
No. 507 Dolores A. Phillips, representing N.J. Legislative Action for Animals.
No. 508 Angi Metler, representing N.J. Legislative Action for Animals.
No. 509 Jerome C. Harris, representing Greater Newark Chamber of Commerce.
No. 510 Randall L. Currier, representing N.J. State Bar Association.
No. 512 David Whitehead, representing Ciba Geigy Pharmaceuticals Division.
No. 513 Hillary Horn, representing Work Environment Council.
No. 514 Judith Peters, representing Eastman Kodak Co.
No. 433 Tracie DeSarno, representing Public Strategies Inc.
No. 515 David Smith, representing N.J. Dental Association.
No. 516 Mary T. Nilson, representing Waste Management Association Inc.
No. 517 Eugene E. McNany, representing Bellcore—Bell Communications.
No. 518 Christopher S. Bateman, representing Chambers Development Co.

Following is a listing of all Legislative Agents who have filed Notices of Termination during the First Calendar Quarter of 1989:

DATE RECEIVED	LEGISLATIVE AGENT	REGISTRATION NUMBER
1-01-89	Suzy M. Chichester	393
1-04-89	Mary C. Tanner	372
1-05-89	Phoenix Smith	480
1-05-89	W. Morgan Shumake	273
1-12-89	Henry S. Patterson	226
1-12-89	Michael Redpath	310
1-24-89	Phyllis M. Forsyth	82
2-21-89	Gilbert G. Bashe	108
2-29-89	Thomas N. Lyons	298
3-09-89	Sharon A. Harrington	433
3-17-89	Shannon L. Bybee	60
3-29-89	Travis E. Nichols	112
3-31-89	Francene Hogan	275
3-31-89	Patrick J. Sullivan	453

For further information contact the Legislative Agents Unit at (609) 984-9371.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments—Month of May 1989

Solicitation of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated May 1, 1989.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
C392	Professional Services Consultant 6-96 Bed Prototype for Design/Build Procurement at Newark, Leesburg, Annandale, Bordentown	CUH2A	$200,000 Services
B006	Press Relocation NJ State House Trenton, NJ	Short & Ford Architects	$600,000
P593	Sanitary Building Renovation & Addition Belleplain State Forest Cape May County, NJ	Oliver & Becica, AIA, PA	$200,000
P596	Sawmill Structural Evaluation Batsto Village	Watson & Henry Assoc.	$2,500 Services
P597	Stucco Repairs Batsto Village	Short & Ford Architects	$350,000
A580	Asbestos Removal N.J. State Library	Testwell-Craig Testing Labs	$38,000
M1011	Sanitary Sewer Relocation Marlboro Psychiatric Hospital Marlboro, N.J.	T & M Associates	$60,000
M421	Forensic Facility Trenton Psychiatric Hospital Trenton, N.J.	Gonchor & Sput	$29,000 Services
C399	Water Tower Repair Youth Correctional Facility Bordentown, N.J.	Ray Larry Schlein & Assoc.	$140,000
C403	Emergency Temporary Trailer Unit New Jersey State Prison Trenton, N.J.	Capriotti Vining Rudzenski	$300,000
P600	Sawmill Structural Study Double Trouble Historic Village Ocean Co., N.J.	Watson & Henry Assoc.	$72,200 Services
C366	Steamline Repair/Replacement N.J. Training School for Boys Jamesburg, N.J.	M. Benton & Assoc.	$185,000
M1012	Replacement of Air Conditioning Units Woodbine Development Center Woodbine, N.J.	Stone & Webster Eng. Corp.	$305,000
E814	Domestic Hot/Cold Water Survey Marie Katzenbach School for the Deaf W. Trenton, N.J.	Technical Assoc., Inc.	$2,000 Services
J056	Facility Consultant FY '89 Div. of Bldg. & Construction	K & H Professional Mgmt. Serv., Inc.	$50,000 Services
J057	Facility Consultant FY '89 Div. of Bldg. & Construction	Empire Testing & Balancing	$50,000 Services
A576	Telecommunications Design Services Newark Office Consolidation Newark, NJ	DVI Communications, Inc.	
	COMPETITIVE PROPOSALS		
	DVI Communications, Inc.	$219,750 Lump Sum	
	JWP Information Systems	$298,600 Lump Sum	
	Electronic Systems Assoc.	$380,000 Lump Sum	
P496-02	Asbestos Removal—Phase II Old Barracks Building Trenton, N.J.	Environmental Connection, Inc.	$40,000
	COMPETITIVE PROPOSALS		
	Environmental Connection, Inc.	$4,750 Lump Sum	
	Environmental Health Inspections	$10,850 Lump Sum	
	Abernethy Associates	$11,975 Lump Sum	
M1001	Replacement of Shower Room Floors Ancora Psychiatric Hospital Hammonton, N.J.	Kolbe & Poponi, PA	$160,000
	COMPETITIVE PROPOSALS		
	Kolbe & Poponi, PA	$24,175 Lump Sum	
	Lammey & Giorgio, PA	$25,625 Lump Sum	
	DiFazio Architects	$29,752 Lump Sum	
C382	Six Classroom Addition Juvenile Medium Security Fac. Bordentown, N.J.	Vaughn Org., PC	$410,000

COMPETITIVE PROPOSALS

	Vaughn Organization	$50,950 Lump Sum	
	Harsen & Johns Partnership	$77,800 Lump Sum	
	Johnson-Jones, PA	$121,605 Lump Sum	
P608	Feasibility Study New Entrance Road Cheesequake State Park Matawan, N.J.	Schoor DePalma & Canger Group	$11,250 Services

COMPETITIVE PROPOSALS

	Schoor DePalma & Canger Group	$11,250 Lump Sum	
	Frederic R. Harris, Inc.	$17,500 Lump Sum	
	Sidney M. Johnson & Assoc.	$35,000 Lump Sum	
P592	Administrative Office & Pro Shop Spring Meadow Golf Course Monmouth County, N.J.	Ronald A. Sebring & Assoc.	$400,000

COMPETITIVE PROPOSALS

	Ronald A. Sebring & Assoc.	$28,000 Lump Sum	
	Morton, Russo & Maggio	$48,600 Lump Sum	
	Staruch Assoc.	$75,300 Lump Sum	
P611	Ramapo Dam Reconstruction Ramapo Mountain State Forest	Frederic R. Harris, Inc.	$500,000

COMPETITIVE PROPOSALS

Frederic R. Harris, Inc.	$48,350 Lump Sum
Woodward-Clyde Consultants	$59,500 Lump Sum
Ebasco Services, Inc.	$175,520 Lump Sum
Buck, Seifert & Jost, Inc.	$205,000 Lump Sum

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93

N.J.A.C.	Expiration Date
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	4/10/94
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90

N.J.A.C.	Expiration Date
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33N	5/15/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89

N.J.A.C.	Expiration Date
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91

N.J.A.C.	Expiration Date
10:72	8/27/92
10:80	5/19/94
10:81	10/15/89
10:82	10/29/89
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:5	3/6/94
16:6	9/3/90
16:6	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 1, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT APRIL 17, 1989

NEXT UPDATE: SUPPLEMENT MAY 15, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1472	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to OAL	21 N.J.R. 1181(a)		
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		

Most recent update to Title 1: TRANSMITTAL 1989-3 (supplement April 17, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)		
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)		
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)	R.1989 d.270	21 N.J.R. 1384(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)	R.1989 d.326	21 N.J.R. 1668(a)
2:71-2.2, 2.4	"Jersey Fresh" logo program	21 N.J.R. 591(a)	R.1989 d.235	21 N.J.R. 1118(a)
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)	R.1989 d.234	21 N.J.R. 1118(b)
2:76	State Agricultural Development Committee rules	21 N.J.R. 1601(a)		
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)		
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)		

Most recent update to Title 2: TRANSMITTAL 1989-4 (supplement April 17, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
BANKING—TITLE 3				
3:1-2.25, 2.26	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:1-16.1	Mortgage loan practices	21 N.J.R. 957(a)	R.1989 d.332	21 N.J.R. 1668(b)
3:6-13.3, 13.5, 14.1, 14.2	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:11	Lending and investments by State banks	21 N.J.R. 367(a)	R.1989 d.236	21 N.J.R. 1121(a)
3:11-5.1, 11.9	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)	R.1989 d.307	21 N.J.R. 1516(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)		
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		

Most recent update to Title 3: TRANSMITTAL 1989-1 (supplement April 17, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)		
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)		
4:3-16	Layoffs in local service	21 N.J.R. 1185(a)		
4:3-16	Layoffs in local service: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1480(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		

Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)		
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)		
4A:3-2.2	Designation of SES positions: administrative correction	________	________	21 N.J.R. 1824(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:4-2.3, 2.9, 2.15, 5.2, 6.3-6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)		

Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)

COMMUNITY AFFAIRS—TITLE 5				
5:2-1	Organization of department (see also 5:51-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:2-2	Petitions for rules (recodified from 5:29-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:10-11.1	Hotels and multiple dwellings: correction to text	________	________	21 N.J.R. 1123(a)
5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)	R.1989 d.10	21 N.J.R. 1123(b)
5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)		
5:17	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)	R.1989 d.342	21 N.J.R. 1844(b)
5:26-1.3, 11.7	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:29-1	Petitions for rules (see 5:2-2)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:29-2	Landlord-tenant relations	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)	R.1989 d.227	21 N.J.R. 1133(a)
5:51-1	Handicapped Persons' Recreational Opportunities Act (recodified from 5:2-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)	R.1989 d.259	21 N.J.R. 1331(b)
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)	R.1989 d.264	21 N.J.R. 1331(c)
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)	R.1989 d.265	21 N.J.R. 1332(a)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)	R.1989 d.295	21 N.J.R. 1516(b)
5:100	Ombudsman for the institutionalized elderly: extension of comment period	21 N.J.R. 958(b)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		

Most recent update to Title 5: TRANSMITTAL 1989-4 (supplement April 17, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
EDUCATION—TITLE 6				
6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)	R.1989 d.354	21 N.J.R. 1824(b)
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:24-5.4	Public testimony session concerning charges against tenured employees of other State departments	21 N.J.R. 1775(a)		
6:28	Special education	21 N.J.R. 239(a)	R.1989 d.239	21 N.J.R. 1385(a)
6:29-9.2, 9.3, 9.5, 9.6	Substance abuse control and education	21 N.J.R. 1603(a)		
6:30-1.7, 2.3, 2.6	Adult education programs: monitoring and funding	21 N.J.R. 1039(b)	R.1989 d.355	21 N.J.R. 1826(a)
6:39	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)		
6:46-4.1, 4.4–4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)	R.1989 d.241	21 N.J.R. 1137(a)
6:70	Public testimony session concerning library network services	21 N.J.R. 1775(a)		

Most recent update to Title 6: TRANSMITTAL 1989-4 (supplement April 17, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2–1.5, 1.7–1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)		
7:6	Boating rules	21 N.J.R. 1157(a)	R.1989 d.351	21 N.J.R. 1856(a)
7:6-1.44, 4.7, 9	Lanyard cut-off switch; Greenwood Lake boating; personal watercraft	21 N.J.R. 1157(b)	R.1989 d.352	21 N.J.R. 1856(b)
7:7	Coastal Permit Program	21 N.J.R. 369(a)	R.1989 d.309	21 N.J.R. 1526(a)
7:7	Coastal Permit Program: extension of comment period	21 N.J.R. 1041(a)		
7:7	Coastal Permit Program: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:7-2.3	Waterfront development	21 N.J.R. 4(a)	R.1989 d.243	21 N.J.R. 1141(a)
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-1.4, 2.5, 6, 7, 16.6, 16.7	Freshwater wetlands transition areas	21 N.J.R. 596(a)	R.1989 d.362	21 N.J.R. 1858(a)
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)	R.1989 d.271	21 N.J.R. 1332(b)
7:7E-7.14	High rise structures: administrative correction	————	————	21 N.J.R. 1857(a)
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:11-2.1–2.5, 2.8–2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)	R.1989 d.310	21 N.J.R. 1527(a)
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, 9.12	Shellfish-growing water classification	21 N.J.R. 1041(b)		
7:13	Flood hazard area control	21 N.J.R. 371(a)		
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)		
7:13-7.1(d)	Redelineation of Ramapo River: extension of comment period	21 N.J.R. 1482(a)		
7:14	Water pollution control	21 N.J.R. 373(a)	R.1989 d.282	21 N.J.R. 1530(a)
7:14A	New Jersey Pollutant Discharge Elimination System (NJPDES)	21 N.J.R. 707(a)	R.1989 d.339	21 N.J.R. 1883(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:23	Emergency flood control	21 N.J.R. 1051(a)	R.1989 d.348	21 N.J.R. 1903(a)
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)		
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)		
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)	R.1989 d.269	21 N.J.R. 1333(a)
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)	R.1989 d.308	21 N.J.R. 1558(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)	R.1989 d.331	21 N.J.R. 1669(b)
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)	R.1989 d.349	21 N.J.R. 1904(a)
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

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HEALTH—TITLE 8

8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)	R.1989 d.246	21 N.J.R. 1412(a)
8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)		
8:31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51-3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1-5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.22, 3.23, 3.24, App. XI	Hospital reimbursement: graduate medical education	21 N.J.R. 1059(a)		
8:31B-3.27	Capital facilities: administrative correction	———	———	21 N.J.R. 1827(a)
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-3.66	Hospital reimbursement: adjusted admission fee ceiling	21 N.J.R. 1606(a)		
8:31B-3.73	Hospital reimbursement: rates adjustment and reconciliation	21 N.J.R. 1606(b)		
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)	R.1989 d.272	21 N.J.R. 1419(a)
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)	R.1989 d.322	21 N.J.R. 1680(a)
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)		
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)		
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)	R.1989 d.276	21 N.J.R. 1423(a)
8:33J-1.1-1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)	R.1989 d.274	21 N.J.R. 1423(b)
8:33M	Rehabilitation hospitals and comprehensive rehabilitation services: need review process	21 N.J.R. 1062(a)		
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(b)	R.1989 d.273	21 N.J.R. 1425(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)	R.1989 d.323	21 N.J.R. 1681(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
8:43B-11.1, 11.3, 11.4	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:60-1.4, 2.1 (12:120-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)	R.1989 d.275	21 N.J.R. 1429(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b), 756(b))	20 N.J.R. 1766(a)	R.1989 d.257	21 N.J.R. 1430(a)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a))	20 N.J.R. 2356(a)	R.1989 d.256	21 N.J.R. 1429(c)
8:71	Interchangeable drug products (see 21 N.J.R. 755(b))	20 N.J.R. 3078(a)	R.1989 d.255	21 N.J.R. 1429(b)
8:71	List of Interchangeable Drug Products (see 21 N.J.R. 755(a))	21 N.J.R. 7(a)		
8:71	Interchangeable drug products	21 N.J.R. 662(a)		
8:71	Interchangeable drug products	21 N.J.R. 1488(a)		
8:71	Interchangeable drug products: administrative correction	————	————	21 N.J.R. 1699(a)
8:71	Interchangeable drug products	21 N.J.R. 1790(a)		

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HIGHER EDUCATION—TITLE 9

9:1-5.1, 5.2, 5.4, 5.5, 5.8, 5.10	Proprietary institutions and academic degree standards	21 N.J.R. 1632(a)		
9:2-4.1	Alternate benefit program: eligibility for enrollment	21 N.J.R. 1268(a)		
9:4-1.3, 1.9, 1.10, 2.1–2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:9-11	Stafford Loan Program: institution compliance standards	21 N.J.R. 963(a)	R.1989 d.343	21 N.J.R. 1827(b)
9:11-1.5	Educational Opportunity Fund: eligibility for undergraduate grants	21 N.J.R. 1489(a)		
9:15	Graduate medical education program	21 N.J.R. 1271(a)		

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10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)	R.1989 d.315	21 N.J.R. 1699(b)
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)	R.1989 d.284	21 N.J.R. 1562(a)
10:37-5.6–5.11, 5.16–5.24	Repeal (see 10:31)	21 N.J.R. 273(a)	R.1989 d.283	21 N.J.R. 1572(a)
10:40	Organization of Division of Developmental Disabilities	Exempt	R.1989 d.301	21 N.J.R. 1572(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)	R.1989 d.302	21 N.J.R. 1573(a)
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)	R.1989 d.347	21 N.J.R. 1905(a)

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10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:49-1.1, 1.2	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)		
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:63-3.21	Long-term care facilities: Medicaid occupancy level supplemental payment	Emergency (expires 6-17-89)	R.1989 d.254	21 N.J.R. 1456(a)
10:65	Medical Day Care Program	21 N.J.R. 1794(a)		
10:66-1.5	Independent Clinic providers: prior authorization for mental health services	21 N.J.R. 1794(b)		
10:67-1.1, 1.6	Psychological Services: correction to text	________	________	21 N.J.R. 1430(b)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-6.1, 6.3	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)		
10:80-1	Organization of Division of Public Welfare	Exempt	R.1989 d.316	21 N.J.R. 1700(a)
10:81	Public Assistance Manual	21 N.J.R. 1795(a)		
10:81-3.5	Verification of income and resources: administrative correction	________	________	21 N.J.R. 1430(c)
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)	R.1989 d.337	21 N.J.R. 1908(a)
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		
10:81-14.5, 14.18	REACH Program: post-AFDC child care	21 N.J.R. 1086(b)	R.1989 d.353	21 N.J.R. 1908(b)
10:82	Assistance Standards Handbook; AFDC Program	21 N.J.R. 1811(a)		
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)		
10:85-3.2	GAM application process: correction to text	________	________	21 N.J.R. 1147(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:87-2.13, 2.30, 2.33, 2.36, 2.37, 4.8, 5.9, 6.2, 9.7	Food Stamp Program revisions	21 N.J.R. 1636(a)		
10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)	R.1989 d.249	21 N.J.R. 1431(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:120	Youth and Family Services hearings: reopening of comment period	21 N.J.R. 1580(a)		
10:122	Requirements for child care centers	20 N.J.R. 3079(b)	R.1989 d.261	21 N.J.R. 1431(b)
10:123-3.2	Residential health care facilities/boarding homes: personal needs allowance	21 N.J.R. 788(a)	R.1989 d.285	21 N.J.R. 1575(a)
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)		

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10A:9-1.3, 5.2	Application of time credits to mandatory minimum term	21 N.J.R. 664(a)	R.1989 d.299	21 N.J.R. 1516(c)
10A:16-2.9	Infirmary care	21 N.J.R. 969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)		
10A:18-2.5, 4.4	Correspondence between inmates at different facilities; exchange of publications	21 N.J.R. 837(a)	R.1989 d.318	21 N.J.R. 1701(a)
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)	R.1989 d.338	21 N.J.R. 1910(a)
10A:19	Public information	21 N.J.R. 1490(a)		
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)	R.1989 d.286	21 N.J.R. 1517(a)
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)		

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11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.1	FAIR Plan surcharge	21 N.J.R. 1816(a)		

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11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)	R.1989 d.329	21 N.J.R. 1702(a)
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-11.1, 11.6, 11.15, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: third-party endorsements	21 N.J.R. 970(a)		
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
11:3-17	Rating organizations: private passenger automobile filings	21 N.J.R. 973(a)	R.1989 d.328	21 N.J.R. 1708(a)
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20	Private passenger automobile insurers: financial disclosure and excess profits reporting	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1335(a)
11:3-20	Financial disclosure and excess profits reporting: corrected responses to comments	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1517(b)
11:3-20A	Private passenger automobile insurers: computation of excess profits	21 N.J.R. 842(a)	R.1989 d.306	21 N.J.R. 1517(c)
11:3-22.1, 22.3, Forms A, B	Automobile coverage option survey: PIP and tort threshold	21 N.J.R. 619(a)	R.1989 d.267	21 N.J.R. 1358(a)
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)	R.1989 d.278	21 N.J.R. 1358(b)
11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)	R.1989 d.279	21 N.J.R. 1361(a)
11:3-25.3, 25.4	Residual market equalization charges: administrative correction	————	————	21 N.J.R. 1708(b)
11:3-26, 27, 28	Unsatisfied Claim and Judgment Fund rules	21 N.J.R. 688(a)	R.1989 d.268	21 N.J.R. 1363(a)
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)		
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11:5-1.10	Real estate broker and salesperson employment agreement	21 N.J.R. 1308(b)		
11:5-1.10	Real estate broker and salesperson employment agreement: correction to proposal summary	21 N.J.R. 1494(a)		
11:5-1.12	Record maintenance by real estate brokers	21 N.J.R. 1310(a)		
11:5-1.14	License lending by real estate licenses	21 N.J.R. 1311(a)		
11:5-1.15	Advertising by licensed real estate brokers	21 N.J.R. 1312(a)		
11:5-1.15	Real estate advertising: administrative correction	————	————	21 N.J.R. 1708(c)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of primary real estate offices	21 N.J.R. 1312(b)		
11:5-1.19	Supervision of branch real estate offices	21 N.J.R. 1313(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:5-2	Organization of Real Estate Commission	Exempt	R.1989 d.258	21 N.J.R. 1364(a)
11:5-2.2, 2.3	Real Estate Commission organization and functions	Exempt	R.1989 d.324	21 N.J.R. 1709(a)
11:5-3, 4, 5	Formal proceedings by Real Estate Commission	21 N.J.R. 1314(a)		
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)		
11:15-2.2, 2.13, 2.21	Joint insurance funds for local government units	21 N.J.R. 1494(b)		
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 1642(a)		

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12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
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12:41-1	Job Training Partnership Act/N.J. Jobs Training Act: grievance procedures	21 N.J.R. 1498(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-2	Transportation for employees of sheltered workshops	21 N.J.R. 690(a)	R.1989 d.305	21 N.J.R. 1576(b)
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12:100-4.2	Public employee safety and health: air contaminant exposure limits	21 N.J.R. 1089(a)	R.1989 d.358	21 N.J.R. 1829(a)
12:100-4.2, 5.2	Public employee safety and health: hazardous waste operations and emergency response	21 N.J.R. 1646(a)		
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
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12:100-8	Public employee safety and health: indoor firing ranges	21 N.J.R. 1094(a)	R.1989 d.357	21 N.J.R. 1829(b)
12:100-9.2	Public employee safety and health: work in confined spaces	21 N.J.R. 1647(a)		
12:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)	R.1989 d.238	21 N.J.R. 1144(a)
12:120-1.4, 2.1 (8:60-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)

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12A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)		

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13:2-21	Transportation of alcoholic beverages into, through or out of State	21 N.J.R. 1304(a)		
13:19	Driver control service	21 N.J.R. 1817(b)		
13:19-13	Supplemental motor vehicle insurance surcharges	21 N.J.R. 1817(b)		
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)		
13:23	Commercial driving schools	21 N.J.R. 976(a)	R.1989 d.333	21 N.J.R. 1710(a)
13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)	R.1989 d.294	21 N.J.R. 1519(a)
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:29-6.5	Practice of accountancy: clarification concerning CPE credits	————	————	21 N.J.R. 1147(b)
13:29-6.8	Accountancy continuing education credit hours: administrative correction	————	————	21 N.J.R. 1366(a)
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13:35-6.10	Advertising and solicitation by physicians	21 N.J.R. 696(a)	R.1989 d.325	21 N.J.R. 1710(b)
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)		
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13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)		
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)	R.1989 d.252	21 N.J.R. 1366(b)
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)	R.1989 d.314	21 N.J.R. 1712(a)
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	21 N.J.R. 1649(a)		
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13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)	R.1989 d.253	21 N.J.R. 1368(a)
13:45A-2.3	Motor vehicle advertising practices: administrative correction	————	————	21 N.J.R. 1520(a)
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		

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13:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)		
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13:47C	Weights and measures: general commodities	21 N.J.R. 1096(a)	R.1989 d.350	21 N.J.R. 1832(a)
13:75	Practice and procedure before Violent Crimes Compensation Board	21 N.J.R. 881(b)	R.1989 d.340	21 N.J.R. 1832(b)

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14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
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14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
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14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
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14A:14-2.1	Definition of electric facility	21 N.J.R. 882(a)		

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16:26-1, 2, 3	Bureau of Electrical Engineering: release of traffic signal information; drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 1653(b)		
16:26-3	Reimbursed highway safety lighting	21 N.J.R. 628(a)	R.1989 d.230	21 N.J.R. 1151(a)
16:28-1.49	Speed limits on Route 35 in Monmouth County	21 N.J.R. 698(c)	R.1989 d.287	21 N.J.R. 1520(c)
16:28-1.49	Speed limits along Route 35 in Woodbridge	21 N.J.R. 1097(a)	R.1989 d.344	21 N.J.R. 1832(c)
16:28-1.72, 1.75	Speed limit zones along U.S. 206 in Atlantic and Burlington counties, and Route 36 in Monmouth County	21 N.J.R. 435(a)	R.1989 d.248	21 N.J.R. 1375(a)
16:28-1.72, 1.77	School and speed limit zones along U.S. 206 in Hamilton and Route 29 in Stockton	21 N.J.R. 1501(b)		
16:28-1.76	Speed limit zones along Route 15 in Sussex County	21 N.J.R. 699(a)	R.1989 d.292	21 N.J.R. 1521(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.1, 1.21, 1.24, 1.38	Parking and stopping restrictions along U.S. 1 in Plainsboro, U.S. 30 in Somerdale, Route 34 in Old Bridge, and Route 71 in Asbury Park	21 N.J.R. 1283(a)		
16:28A-1.6	Handicapped parking space on Route 7 in Belleville	21 N.J.R. 883(a)	R.1989 d.296	21 N.J.R. 1521(b)
16:28A-1.7	Bus stop zone along U.S. 9 in Old Bridge	21 N.J.R. 1284(a)		
16:28A-1.13, 1.25, 1.46, 1.110	Restricted parking and standing along U.S. 22 in Lopatcong, Route 35 in Eatontown, U.S. 130 in Westville, and Route 91 in North Brunswick	21 N.J.R. 883(b)	R.1989 d.298	21 N.J.R. 1522(a)
16:28A-1.18	No parking zones along Route 27 in South Brunswick and Franklin Township	21 N.J.R. 700(a)	R.1989 d.288	21 N.J.R. 1522(b)
16:28A-1.18, 1.71	Parking and standing restrictions along Route 27 in Linden and Route 67 in Fort Lee	21 N.J.R. 978(a)	R.1989 d.321	21 N.J.R. 1742(a)
16:28A-1.19, 1.109	Restricted parking along Route 28 in Elizabeth, and no stopping or standing zones along Route 324 in Logan Township	21 N.J.R. 701(a)	R.1989 d.290	21 N.J.R. 1523(b)
16:28A-1.21	Bus stop zones along U.S. 30 in Lindenwold	21 N.J.R. 1097(b)	R.1989 d.345	21 N.J.R. 1832(d)
16:28A-1.31, 1.46	Bus stop zones along Route 45 in Mannington Township and U.S. 130 in Delran Township	21 N.J.R. 701(b)	R.1989 d.289	21 N.J.R. 1523(a)
16:28A-1.53	Parking alone Route 179 in Lambertville: administrative correction	————	————	21 N.J.R. 1152(a)
16:28A-1.55	Time limit parking zones along U.S. 202 in Bernardsville	21 N.J.R. 436(a)	R.1989 d.250	21 N.J.R. 1376(a)
16:30-9.1	Use of Route 35 bridge over Manasquan River in Point Pleasant and Brielle	21 N.J.R. 437(a)	R.1989 d.251	21 N.J.R. 1376(b)
16:31-1.26	No left turn from Route 27 in Metuchen	21 N.J.R. 702(a)	R.1989 d.291	21 N.J.R. 1524(a)
16:31-1.27	Prohibited turns along Route 17 in Rutherford	21 N.J.R. 884(a)	R.1989 d.297	21 N.J.R. 1524(b)
16:33	Repeal (see 16:45)	21 N.J.R. 1284(b)		
16:44-1.2, 1.4	Classification of prospective bidders	21 N.J.R. 1023(a)	R.1989 d.346	21 N.J.R. 1833(a)
16:45	Construction control: contractor claims; substantial completion	21 N.J.R. 1284(b)		
16:53	Autobus specifications and inspection fees	21 N.J.R. 1098(a)		
16:53B	Jurisdictional assignments for railroad overhead bridges	21 N.J.R. 1103(a)	R.1989 d.356	21 N.J.R. 1833(b)
16:53D	Bus carrier zone of rate freedom	21 N.J.R. 703(a)	R.1989 d.293	21 N.J.R. 1524(c)
16:56	Airport Safety Improvement Aid	21 N.J.R. 1502(a)		
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)	R.1989 d.242	21 N.J.R. 1376(c)
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
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17:2-4.3	Public Employees' Retirement System: school year members	21 N.J.R. 979(a)		
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)		
17:2-6.4	Public Employees' Retirement System: outstanding loans at retirement	21 N.J.R. 629(a)	R.1989 d.313	21 N.J.R. 1743(b)
17:2-6.27	Public Employees' Retirement System: benefit coverage during work-related travel	21 N.J.R. 1285(a)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	21 N.J.R. 980(a)		
17:3-5.9	Teachers' Pension and Annuity Fund: lump-sum purchases	21 N.J.R. 980(b)		
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)		
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17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:9-7.2	State Health Benefits Program: reenrollment after termination of covered public employment	21 N.J.R. 886(b)	R.1989 d.336	21 N.J.R. 1836(b)
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- **Proposals** .... **July 24**
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