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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 16, 1988
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 20, 1988

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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 17, 1988.** 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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MISCELLANEOUS NOTICES

Filing Deadlines

August 15 issue:
Adoptions ..... July 25
September 6 issue:
Proposals ..... August 8
Adoptions ..... August 15
September 19 issue:
Proposals ..... August 22
Adoptions ..... August 26
October 3 issue:
Proposals ..... September 2
Adoptions ..... September 12

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

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Surface Water Quality Standards

Proposed Repeal: N.J.A.C. 7:9-4 Indexes A, B, C, D, E, F, G and Guide to Use of Indexes B through F

Proposed New Rule: N.J.A.C. 7:9-4.15

Proposed Amendments: N.J.A.C. 7:9-4.4, 4.5, 4.6 and 4.14(c)

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., specifically 13:1D-9f, N.J.S.A. 58:10A-1 et seq., specifically 58:10A-4 and 58:10A-5, and N.J.S.A. 58:11A-1 et seq., specifically 58:11A-7, 58:11A-8, 58:11A-9, and 58:11A-10.

DEP Docket Number: 024-88-06.

Proposal Number: PRN 1988-358.

Public hearings concerning this proposal will be held on:

September 1, 1988
10:00 A.M. until the close of testimony
Room 208
Cherry Hill Municipal Building
820 Mercer Street
Cherry Hill, New Jersey 08002

September 1, 1988
7:00 P.M. until the close of testimony
Auditorium
Rutgers University—Cook College Campus
Ryders Lane
New Brunswick, New Jersey 08903

Submit written comments by September 2, 1988 to:

Edward J. Morrison, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

A detailed discussion of the proposed changes to the State's Surface Water Quality Standards is contained in the "Basis and Background for the Proposed Surface Water Quality Standards" (June 1988) which can be obtained by writing to:

Bureau of Water Quality Standards and Analysis
Division of Water Resources
CN 029
Trenton, New Jersey 08625

The Basis and Background document may also be inspected at the Office of Administrative Law, Quakerbridge Road, Building 9, Trenton, New Jersey.

The agency proposal follows:

Summary

The Federal Water Pollution Control Act, 33 U.S.C.A. §§1251-1376 (1987) ("the Clean Water Act"), requires the states to hold public hearings from time to time, but at least every three years, for the purpose of reviewing and, as appropriate, modifying and adopting surface water quality standards. 33 U.S.C.A. §1313(c)(1)(1987). New Jersey's last triennial review of its standards was conducted in 1984 with revised Surface Water Quality Standards adopted in May 1985. The significant changes to the rules in this proposal are discussed below:

N.J.A.C. 7:9-4.4 is being amended by adding a definition of "chlorine produced oxidants" and deleting the definition of "total residual chlorine". The proposed amendment will bring the State's approach to regulating the discharge of toxic substances resulting from chlorination into line with that of the United States Environmental Protection Agency.

The Department is proposing amendments, in N.J.A.C. 7:9-4.5, to the antidegradation policies for FW1 (fresh waters wholly within Federal or State lands or special holdings that are preserved for posterity and are not subject to manmade wastewater discharges) and PL (the general surface water classification applied to Pinelands waters) waters that will make the protection provided to these waters almost identical and which specifically allow for changes in water quality toward the natural background quality. This will be accomplished by modifying the existing antidegradation policy for PL waters to prohibit approval of activities which might cause "changes, other than toward natural water quality". This is a departure from the previous language that prohibited approving activities which might cause "degradation". The antidegradation policy for FW1 waters will be modified by incorporating language from the PL antidegradation policy into the FW1 antidegradation policy. After the modifications are made, the difference between the two policies would be that man-made discharges to FW1 waters would remain prohibited, while man-made discharges to PL waters would still be allowed. The complete definitions of FW1 and PL may be found at N.J.A.C. 7:9-4.4.

Chronic bioassay testing has been used primarily as one of the "other procedures" allowed or required by the Department to further characterize the toxicity of a discharge. Chronic bioassay testing is being deleted from the list of "other procedures" in N.J.A.C. 7:9-4.5(f)3 to reflect changes in the use of chronic bioassay testing by the Department. Specifically, instead of being used primarily to further characterize the toxicity of a discharge, chronic bioassay testing will be used primarily to regulate the toxicity of a discharge. This does not preclude the Department from using it to further characterize the toxicity of a discharge, but merely indicates the Department's intent to use chronic toxicity testing as a regulatory tool.

Two amendments are being proposed to N.J.A.C. 7:9-4.6 concerning water quality based effluent limitations. One modifies the uncertainty/safety factor used in establishing effluent chronic toxicity limitations to reflect the Department's intent to use less than three organisms per test for the foreseeable future. The other amendment specifies that the Department will use the best available scientific information in establishing water quality based effluent limitations for parameters for which the State has not adopted water quality criteria into N.J.A.C. 7:9-4.14. Additionally, the United States Environmental Protection Agency Ambient Criteria, published pursuant to section 304(a) of the Clean Water Act, are identified as a minimum acceptable best scientific information available.

N.J.A.C. 7:9-4.14, covering surface water quality criteria, is being amended to add Enterococci to the Bacterial Quality criteria to begin changing over from the use of fecal coliforms. This changeover follows recommendations made in the United States Environmental Protection Agency's "Ambient Water Quality Criteria for Bacteria—1986". Additionally, the Department is proposing criteria for 14 chemicals which reflect the maximum contaminant levels recommended by the Drinking Water Quality Institute, pursuant to the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. The Department decided to use the maximum contaminant levels recommended by the Drinking Water Quality Institute because: 1.) Available ambient criteria documents published by the United States Environmental Protection Agency were originally published in the early 1980's and are becoming outdated; 2.) The Drinking Water Quality Institute, through the Department's Office of Science and Research conducted an exhaustive scientific evaluation of the available scientific information on the chemicals involved and recommended criteria based upon that review; and 3.) The maximum contaminant levels recommended by the Drinking Water Quality Institute have undergone peer review and are based on the best scientific information available.

Indexes A through G and the "Guide to Use of Indexes B through F" are an essential part of the Surface Water Quality Standards. The currently promulgated indexes and the "Guide to Use of Indexes B through F", which are not printed in N.J.A.C. 7:9-4, are being repealed. The Department is placing an updated guide and updated indexes in the proposed new rule at N.J.A.C. 7:9-4.15. The indexes will be in tabular form. Subsections (c) through (g) contain the surface water classifications by major drainage basin. Subsection (h) lists FW1 waters by tract within basins and subsection (i) identifies the outstanding national resource waters of the State.

Social Impact

The Department expects generally positive social impacts from the proposed new rule and amendments. The various additions and changes being proposed will act together to provide cleaner surface waters, protect existing high quality waters and provide additional protection of the public's health. The entire State's population is expected to benefit from improved public health and increased recreational opportunities.

The segment of the public that will be most directly impacted by the proposal will be those responsible for discharges as defined in the New Jersey Water Pollution Control Act. N.J.S.A. 58:10A-3e. The impact of compliance with the proposed new rule amendments will vary with the situation of the individual discharger, and will depend upon the nature of the substances being discharged and the location of the discharge. No new programs are being proposed and it is expected that the impact on dischargers will not be disruptive. As a result of this new rule and amendments, dischargers may be required to modify their wastewater treatment procedures, modify their operating procedures or, in the more extreme cases, have to either modify existing treatment facilities or even build additional treatment facilities.

Economic Impact

With reference to public health, the State's population will benefit economically due to a reduction in medical expenses occasioned by the increased protection of human health and better water quality expected to result from compliance with the proposal. The increased protection should also result in overall benefits to the State's economy due to increased revenues resulting from improvement of tourism, fishing and other recreational activities.

The economic impact upon specific dischargers will vary on a case-by-case basis. The proposed new rule and amendments do not set forth general requirements resulting in large expenditures in order to achieve compliance. Possible economic impacts include modification of operating procedures, modification of treatment facilities and, in the extreme, the construction of additional treatment units. It is anticipated that the majority of dischargers will be able to comply with the proposed criteria by modification of operating procedures, modification of their existing treatment facilities or by changing the products used at the plant (for industrial facilities). In general, the new rule and amendments will result in increased treatment costs at facilities discharging substances for which new or more stringent criteria are being proposed, and at facilities discharging to waters proposed for reclassification as trout waters.

The other economic impacts associated with the new rule and amendments result from the proposed classification of certain waters of the State as trout waters. Reclassification of certain waters of the State as trout waters will result in application of additional restrictions on activities within stream channels and adjacent wetlands, and within buffers along these waters. These additional restrictions include those imposed pursuant to the State's Flood Hazard Area Regulations, N.J.A.C. 7:13-1 and the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. N.J.A.C. 7:13-5.2 and 7:13-5.6 of the Flood Hazard Area Regulations restrict construction operations to minimize impacts on trout production waters. N.J.S.A. 13:9B-7a(1) classifies wetlands which discharge into FW1 waters and FW2 trout production waters as "wetlands of exceptional resource value". A builder proposing to develop such wetlands must demonstrate a compelling public need to overcome the rebuttable presumption that there is an alternative to the proposed wetland development. N.J.S.A. 13:9B-10c. Wetlands of exceptional resource value must be surrounded by transition areas (development buffer zones). N.J.S.A. 13:9B-16. Transition areas surrounding FW1 and FW2 trout production waters must be of a maximum size (N.J.S.A. 13:9B-16b(1)) and are subject to waiver restrictions. N.J.S.A. 13:9B-18c. Thus the impact on development near a trout water could range from project design changes to outright prohibition of construction.

Environmental Impact

The proposed changes to the Surface Water Quality Standards are designed to provide additional protection of the public health, the aquatic biota and ecological systems associated with the State's waters. As required by the Federal Clean Water Act, the proposal will, in combination with existing provisions of the rules that are not proposed for change, act to restore, maintain, and enhance the chemical, physical, and biological integrity of New Jersey's waters; protect scenic and ecological values; and enhance the domestic, municipal, recreational, and other reasonable uses of the State's waters. Accordingly, the environmental impacts of the proposed new rule and amendments are expected to be beneficial.

Regulatory Flexibility Statement

The proposed new rule and amendments would apply to all surface water dischargers in the State. It is estimated that of the estimated 1500 dischargers impacted, approximately 234 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department does not expect this action will compel any new recordkeeping or reporting requirements.

The Department is proposing new criteria for 14 chemicals. However, only five of the proposed criteria (Chlorobenzene, trans-1,2-dichloroethylene, methylene chloride, 1,2,4 trichlorobenzene and trichloroethylene) are more stringent than the numbers listed in Appendix F of the New Jersey Pollutant Discharge Elimination System Regulations, N.J.A.C. 7:14A, which are currently used to establish permit limitations for these substances.

Small businesses impacted by this action will be those whose effluents contain any of the five chemicals identified above in concentrations that will result in contravention of the proposed criteria. The data currently available to the Department do not allow the Department to estimate the number of small businesses whose effluents contain the five chemicals, identified above, in concentrations that are of concern.

Impacted businesses will need the services of professional engineers to design and supervise construction of treatment facilities. The treatment that would be expected to be used for the five chemicals identified above is advanced wastewater treatment using activated carbon. The Department estimates that the maximum treatment cost for capital construction may be $2.19 per gallon of wastewater treated. Annual operating and maintenance costs are estimated at $0.79 per gallon of wastewater treated.

In developing the proposed new rule and amendments, the Department has balanced the need to protect the environment against the economic impact of the proposed rule and amendments and has determined that to minimize the impact would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

All of the changes, additions and deletions being proposed are required to keep the State's Surface Water Quality Standards consistent with the requirements of the Clean Water Act and the Federal Surface Water Quality Standards Regulations (40 CFR Part 131).

Full text of the indices and guide proposed for repeal is not published in the New Jersey Administrative Code. However, the indices and guide may be inspected at either the Bureau of Systems Analysis and Wasteland Allocation, Division of Water Resources, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey, or the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

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

SUBCHAPTER 4. SURFACE WATER QUALITY STANDARDS

7:9-4.4 Definitions

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

. . .

"Category one waters" means those waters designated in [Indexes B, C, D, E, and F incorporated in this subchapter] **the tables in N.J.A.C. 7:9-4.15(c) through (h)**, for purposes of implementing the [A]**a**ntidegradation [P]**p**olicies in this subchapter, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to:

1. Waters originating wholly within Federal, Interstate, State, County, or Municipal parks, forests, fish and wildlife lands, and other special holding that have not been designated as FW1 in this subchapter;
2. Waters classified in this subchapter as FW2 Trout Production waters and their tributaries;
3. Surface waters classified in this subchapter as FW2 Trout Maintenance or FW2 Nontrout that are upstream of waters classified in this subchapter as FW2 Trout Production;
4. Shellfish waters of exceptional resource value; or
5. Other waters and their tributaries that flow through, or border, Federal, State, County or Municipal parks, forests, fish and wildlife lands, and other special holdings.

. . .

"Chlorine produced oxidants" means the sum of free and combined chlorine and bromine as measured by the methods approved under N.J.A.C. 7:18. In fresh waters the oxidants measured are comprised predominantly of hypochlorous acid (HOCl), hypochlorite ion (OCl), monochloramine and dichloramine. In saline waters the oxidants measured are comprised predominately of the oxidants listed for fresh waters plus hypobromous acid (HOBr), hypobromous ion (OBr) and bromamines.

...

"FW1" means those fresh waters that originate in and are wholly within Federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity) and not subjected to any man-made wastewater discharges, as designated in [Index A incorporated into this subchapter] **N.J.A.C. 7:9-4.15(h) Table 6**.

...

"Outstanding National Resource Waters" means high quality waters that constitute an outstanding national resource (for example, waters of National/State Parks and Wildlife Refuges and waters of exceptional recreational or ecological significance) as designated in [Index G] **N.J.A.C. 7:9-4.15(i)**.

...

["Total residual chlorine" means the sum of the free and combined chlorine fractions that can be detected by methods approved under N.J.A.C. 7:18.]

...

7:9-4.5 Statements of policy

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

(d) Antidegradation policies are as follows:

1.-5. (No change.)

6. These antidegradation policies shall be applied as follows:

i. The quality of Nondegradation waters shall be maintained in their natural state (set aside for posterity) and shall not be subject to any manmade wastewater discharges. **The Department shall not approve any activity which, alone or in combination with any other activities, might cause changes, other than toward natural water quality, in the existing surface water quality characteristics.**

ii. For Pinelands waters, the Department shall not approve any activity which, alone or in combination with any other activities, might cause [degradation] **changes, other than toward natural water quality,** in the existing surface water quality characteristics. This policy shall apply as follows:

(1)-(3) (No change.)

iii.-iv. (No change.)

7.-9. (No change.)

(e) (No change.)

(f) Bioassay and biomonitoring policies are as follows:

1.-2. (No change.)

3. The Department, in order to further characterize the toxicity of a discharge, may allow or require the use of other procedures including, but not limited to:

[i. Chronic bioassay testing;]

Renumber ii.-iv. as **i.-iii.** (No change in text.)

4.-5. (No change.)

(g) (No change.)

7:9-4.6 Establishment of water quality based effluent limitations

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

(c) The Department may develop water quality based effluent limitations for a single point source discharger in response to an application for a DAC or NJPDES permit. The procedure to be followed by the Department in developing such effluent limitations shall be as follows:

1.-3. (No change.)

4. The Department will utilize the following methodologies in the development of chemical specific water quality based effluent limitations for point source discharges:

i.-ii. (No change.)

iii. The Department shall utilize the parameter specific criteria contained in N.J.A.C. 7:9-4.14 in the development of chemical specific water quality based effluent limitations for point source discharges. Whenever parameter specific criteria have not been adopted, the Department will utilize the best available scientific information in the development of chemical specific water quality based effluent limitations for point source discharges. Ambient criteria published by the United States Environmental Protection Agency pursuant to section 304(a) of the Federal Clean Water Act represent the minimum acceptable best scientific information to be used in the development of water quality based effluent limitations for point source discharges.

5. The following methodologies may be utilized by the Department in developing water quality based whole effluent toxicity limitations for point source discharges.

i.-ii. (No change.)

iii. When utilizing chronic bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitation formula may be utilized:

Lc = I[(100)] **(1000)**

Where: Lc = Toxicity limitation expressed as a chronic NOEC in percent effluent.

I = Critical instream waste concentration, determined in accordance with the method of (c)5ii above.

iv. If the calculated limit, L_C, is greater than 100 percent effluent, the draft limit shall be 100.

6. Water quality based effluent limits for [total residual] **chlorine produced oxidants** based on the criteria in N.J.A.C. 7:9-4.14(c)14 are not applicable where:

i.-ii. (No change.)

iii. The maximum concentration of [total residual] **chlorine produced oxidants** in the effluents of such discharges shall not exceed 200 ug/l.

7:9-4.14 Surface water quality criteria

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

(c) Surface Water Quality Criteria for FW2, SE and SC Waters:

SURFACE WATER QUALITY CRITERIA FOR FW2, SE AND SC WATERS
(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
1. Bacterial quality (Counts/100 ml)	i. (No change.)	(No change.)
	ii. Fecal Coliforms:	
	(1) (No change.)	(No change.)
	(2) Fecal coliform levels shall not exceed a geometric average of 200/100 ml nor should more than 10 percent of the total samples taken during any 30-day period exceed 400/100 ml.	FW2, [except as in (3) below,] SE1, and SC 1500 feet to 3 miles from the shoreline.
	[(3) Fecal coliform levels shall not exceed a geometric average of 770/100 ml.]	[Tidal portion of FW2-NT tributaries to the Delaware River, between Rancocas Creek and Big Timber Creek inclusive.]
	Renumber (4) through (6) as **(3) through (5)** (No change in text.)	
	iii. Enterococci:	
	(1) Enterococci levels shall not exceed a geometric mean of 33/100 ml, nor shall any single sample exceed 61/100 ml.	**FW2**
	(2) Enterococci levels shall not exceed a geometric mean of 35/100 ml, nor shall any single sample exceed 104/100 ml.	**SE1 and SC**
	[iii]**iv.** Samples shall be obtained at sufficient frequencies and at locations during periods which will permit valid interpretation of laboratory analyses. As a guideline and for the purpose of these regulations, a minimum of five samples [taken] **as equally spaced** over a 30-day period**, as feasible,** should be collected; however, the number of samples, frequencies and locations will be determined by the [d]**D**epartment or other appropriate agency in any particular case.	All Classifications

2.-13. (No change.)

14. Toxic Substances [(mg/l)] **(ug/l)**:

NOTE: Criteria followed by an (a) represent aquatic protection based criteria.
Criteria followed by an (h) represent criteria based upon New Jersey Drinking Water Quality Institute recommended Maximum Contaminant Levels.
Criteria followed by an (a*) or (h*) represent criteria developed after review of both recommended Maximum Containment Levels and aquatic protection data. The basis for the criterion adopted (recommended Maximum Contaminant Levels or aquatic protection) is indicated by the letter preceding the *.

Substance	Criteria	Classifications
i. Aldrin/Dieldrin	(1) 0.0019(**a**)	All Classifications
ii. Ammonia, un-ionized (24 hr. average)	(1) 20(**a**)	FW2-TP, FW2-TM
	(2) 50(**a**)	FW2-NT
	(3) 0.1 of acute definitive LC50 or EC50(**a**)	All SE, SC
iii. Arsenic, Total	(1) 50(**h**)	FW2
iv. Barium, Total	(1) 1000(**h**)	FW2
v. Benzene	**(1) 1(h)**	**FW2**
[v]**vi.** Benzidine	(1) 0.1(**h**)	All Classifications
[vi]**vii.** Cadmium, Total	(1) 10(**h**)	FW2
viii. Carbon Tetrachloride	**(1) 2(h)**	**FW2**
[vii]**ix.** Chlordane	(1) 0.0043(**a***)	FW2
	(2) 0.0040(**a**)	All SE, SC

[viii]x.	Chlorine[, Total Residual [TRC]]) **Produced Oxidants (CPO)**	(1)	[3.0]**24 hour average less than 11.0. Less than 19 at any time.** (a)	FW2
		(2)	[10.0] **24 hour average less than 7.5. Less than 13 at any time.**(a)	All SE, SC
xi.	**Chlorobenzene**	**(1)**	**4(h)**	**FW2**
[ix]**xii.**	Chromium, Total	(1)	50(**h**)	FW2
[x]**xiii.**	DDT and Metabolites	(1)	0.0010(**a**)	All Classifications
xiv.	**1,2-Dichlorobenzene**	**(1)**	**600(h)**	**FW2**
xv.	**1,3-Dichlorobenzene**	**(1)**	**600(h)**	**FW2**
xvi.	**1,2-Dichloroethane**	**(1)**	**2(h)**	**FW2**
xvii.	**1,1-Dichloroethylene**	**(1)**	**2(h)**	**FW2**
xviii.	**trans-1, 2-Dichloroethylene**	**(1)**	**10(h)**	**FW2**
[xi]**xix.**	Endosulfan	(1)	0.056(**a**)	FW2
		(2)	0.0087(**a**)	All SE, SC
[xii]**xx.**	Endrin	(1)	0.0023(**a**)	All Classifications
[xiii]**xxi.**	Heptachlor	(1)	0.0038(**a**)	FW2
		(2)	0.0036(**a**)	All SE, SC
[xiv]**xxii.**	Lead, Total	(1)	50(**h**)	FW2
[xv]**xxiii.**	Lindane	(1)	0.080(**a**)	FW2
		(2)	0.004(**a**)	All SE, SC
[xvi]**xxiv.**	Mercury, Total	(1)	2(**h**)	FW2
xxv.	**Methylene Chloride**	**(1)**	**2(h)**	**FW2**
[xvii]**xxvi.**	Polychlorinated Biphenyls (PCB's)	(1)	0.014(**a***)	FW2
		(2)	0.030(**a**)	All SE, SC
[xviii]**xxvii.**	Selenium, Total	(1)	10(**h**)	FW2
[xix]**xxviii.**	Silver, Total	(1)	50(**h**)	FW2
xxix.	**Tetrachloroethylene**	**(1)**	**1(h)**	**FW2**
[xx]**xxx.**	Toxaphene	(1)	0.013(**a**)	FW2
		(2)	0.005(**a**)	All SE, SC
xxxi.	**1,2,4-Trichlorobenzene**	**(1)**	**8(h)**	**FW2**
xxxii.	**1,1,1-Trichloroethane**	**(1)**	**26(h)**	**FW2**
xxxiii.	**Trichloroethylene**	**(1)**	**1(h)**	**FW2**
xxxiv.	**Vinyl Chloride**	**(1)**	**2(h)**	**FW2**

15. (No change.)

(d) (No change.)

7:9-4.15 Surface water classifications for the waters of the State of New Jersey

(a) This section contains the surface water classifications for the waters of the State of New Jersey. Surface water classifications are presented in tabular form. Subsections (c) through (g) contain surface water classifications by major drainage basin. Subsection (h) lists FWI waters by tract within basins and subsection (i) identifies the outstanding national resource waters of the State.

(b) The following are instructions for the use of Tables 1 through 5 found in N.J.A.C. 7:9-4.15(c) through (g) respectively:

1. The surface water classification tables give the surface water classifications for waters of the State. Surface waters of the State and their classification are listed in the Table covering the major drainage basin in which they are located. The major drainage basins are:

i. The Atlantic Coastal drainage basin which contains the surface waters listed in Table 1 in (c) below;

ii. The Delaware River which drainage basin contains the surface waters listed in Table 2 in (d) below;

iii. The Passaic River, Hudson River and New York Harbor Complex drainage basin which contains the surface waters listed in Table 3 in (e) below;

iv. The Raritan River and Raritan Bay drainage basin which contains the surface waters listed in Table 4 in (f) below; and

v. The Wallkill River drainage basin which contains the surface waters listed in Table 5 in (g) below.

2. Within each basin the waters are listed alphabetically and segment descriptions begin at the headwaters and proceed downstream.

3. To find a stream:

i. Determine which major drainage basin the stream is in;

ii. Look for the name of the stream in the appropriate Table and find the classification;

iii. For unnamed or unlisted streams, find the stream or other waterbody that the stream of interest flows into and look for the classification of that stream or waterbody. The classification of the stream of interest may then be determined by referring to (b)5 below. If the second stream or waterbody is also unlisted, repeat the process until a listed stream or waterbody is found. Use (b)5iv below to classify streams entering unlisted lakes.

4. To find a lake or other non-stream waterbody:

i. Determine which major drainage basin the waterbody is in;

ii. Look for the waterbody name in the appropriate Table;

iii. If the waterbody is not listed, use (b)5ii, 5iii, 5vi, and 5vii below to determine the appropriate classification.

5. To find unnamed waterways or waterbodies or named waterways or waterbodies which do not appear in the listing, use the following instructions:

i. Unnamed or unlisted freshwater streams that flow into streams classified as FW2-TP, FW2-TM, or FW2-NT take the classification of the classified stream they enter, unless the unlisted stream is a PL water which is covered in (b)5vii below. If the stream could be a C1 water, see (b)5vi below.

ii. All freshwater lakes, ponds and reservoirs that are five or more acres in surface area, that are not located entirely within the Pinelands Area boundaries (see (b)5vii below) and that are not specifically listed as FW2-TM are classified as FW2-NT. This includes lakes, ponds and reservoirs on segments of streams which are classified as FW2-TM or FW2-TP such as Saxton Lake on the Musconetcong River. If the waterbody could be C1 water, also check (b)5vi below.

iii. All freshwater lakes, ponds and reservoirs, that are less than five acres in surface area, upstream of and contiguous with FW2-TP or FW2-TM streams, and which are not located entirely within the Pinelands Area boundaries (see (b)5vii below) are classified as FW2-TM. All other freshwater lakes, ponds and reservoirs that are not

otherwise classified in this subsection or the following Tables are classified as FW2-NT. If the waterbody could be a C1 water, also check (b)5vi below.

iv. Unnamed or unlisted streams that enter FW2 lakes, ponds and reservoirs take the classification of either the listed tributary stream flowing into the lake with the highest classification or the listed tributary stream leaving the lake with the highest classification, whichever has the highest classification, or, if there are no listed tributary or outlet streams to the lake, the first listed stream downstream of the lake. If the stream is located within the boundaries of the Pinelands Area, see (b)5vii below; if it could be a C1 water, also see (b)5vi below.

v. Unnamed or unlisted saline waterways and waterbodies are classified as SE1 in the Atlantic Coastal Basin. Unnamed or unlisted saline waterways which enter SE2 or SE3 waters in the Passaic, Hackensack and New York Harbor Complex basin are classified as SE2 unless otherwise classified within Table 3 in (e) below. Freshwater portions of unnamed or unlisted streams entering SE1, SE2, or SE3 waters are classified as FW2-NT. This only applies to waters that are not PL waters (see (c)5vii below). If the waterbody or waterway could be a C1 water, also see (c)5vi below.

vi. If the waterway or waterbody of interest flows through or is entirely located within State parks, forests or fish and game lands, Federal wildlife refuges, other special holdings, or is a State shellfish water as defined in N.J.A.C. 7:9-4, the Department's maps should be checked to determine if the waterbody of interest is mapped as a C1 water. If the waterway or waterbody does not appear on the United States Geological Survey quadrangle that the Department used as a base map in its designation of the C1 waters, the Department will determine on a case-by-case basis whether the waterway or waterbody should be designated as C1.

vii. All waterways or waterbodies, or portions of waterways or waterbodies, that are located within the boundaries of the Pinelands Area established at N.J.S.A. 13:18A-11a are classified as PL unless they are listed as FW1 waters in Table 6 in (h) below. A tributary entering a PL stream is classified as PL only for those portions of the tributary that are within the Pinelands Area. Lakes are classified as PL only if they are located entirely within the Pinelands Area.

6. The following 10 classifications are used for the sole purpose of identifying the water quality classification of the waters listed in the Tables in (c) through (h) below:

i. "FW1" means freshwaters wholly within Federal or State lands or special holdings that are preserved for posterity and are not subject to manmade wastewater discharges.

ii. "FW2-TP" means FW2 Trout Production.

iii. "FW2-TM" means FW2 Trout Maintenance.

iv. "FW2-NT" means FW2 Non Trout.

v. "PL" means Pinelands Waters.

vi. "SE1" means saline estuarine waters whose designated uses are listed in N.J.A.C. 7:9-4.12(d).

vii. "SE2" means saline estuarine waters whose designated uses are listed in N.J.A.C. 7:9-4.12(e).

viii. "SE3" means saline estuarine waters whose designated uses are listed in N.J.A.C. 7:9-4.12(f).

ix. "SC" means the general surface water classification applied to saline coastal waters.

x. FW2-NT/SE1 (or a similar designation that combines two classifications) means a waterway in which there may be a salt water/fresh water interface. The exact point of demarcation between the fresh and saline waters must be determined by salinity measurements and is that point where the salinity reaches 3.5 parts per thousand at mean high tide. The stream is classified as FW2-NT in the fresh portions (salinity less than or equal to 3.5 parts per thousand at mean high tide) and SE1 in the saline portions.

7. The following water quality designations are used in Tables 1 through 5 in (c) through (g), respectively, below:

i. "(C1)" means Category 1 waters;

ii. "(tp)" indicates trout production in waters which are classified as FW1. This is for information only and does not affect the water quality criteria for those waters;

iii. "(tm)" indicates trout maintenance in waters which are classified as PL or FW1. For FW1 waters this is for information only and does not affect the water quality criteria for those waters.

(c) The surface water classifications in Table 1 are for waters of the Atlantic Coastal Basin;

TABLE 1

WATER BODY	CLASSIFICATION
ABRAMS CREEK	
(Marmoral)—Entire length, except portion outside the boundaries of the Mac-Namara Wildlife Management Area	FW2-NT/SE1(C1)
(Griscom)—Portions of the Creek and tributaries outside of the MacNamara Wildlife Management Area	FW2-NT/SE1
ABSECON BAY (Absecon)—All waters within Absecon Wildlife Management Area	SE1(C1)
ABSECON CREEK (Absecon)—Entire length	FW2-NT/SE1
ARNOLD POND (Barnegat)	FW2-NT/SE1(C1)
ATLANTIC OCEAN	
(Offshore)—Waters from the shoreline out to the three mile limit, except areas described below	SC
(Beach Haven)—Waters of the Atlantic Ocean out to the State's three mile limit from Beach Haven Inlet to Cape May Point, excluding the following waters:	SC(C1)
1. (Atlantic City)—All of the Ocean waters inshore of a line that begins at the center of Convention Hall, Atlantic City bearing approximately 153 degrees T (True North) and extends 2.0 nautical miles to a point with coordinates of latitude 39 degrees 19.4 minutes N., longitude 74 degrees 25.1 minutes W., from this point, approximately 2 nautical miles offshore, the line runs parallel to the shoreline in a southwesterly direction for approximately 2.1 nautical miles to a point with coordinates of latitude 39 degrees 18.4 minutes N., longitude 74 degrees 27.5 minutes W., then bearing approximately 333 degrees T (reciprocal 153 degrees T) for approximately 1.9 nautical miles to the outermost tip of the Ventnor City Fishing Pier located at the Boardwalk and South Cambridge Ave., City of Ventnor, then along that pier to the shore and terminating.	
2. (Ocean City)—All of the ocean waters inshore of a line which begins at the City of Ocean City's Beach Patrol, First Aid and Rest Room building located on the beach at 34th Street, with coordinates of latitude 39 degrees 15.0 minutes N., longitude 74 degrees 36.6 minutes W., and bears approximately 126 degrees T (True North) for approximately 1.5 nautical miles from the	

shoreline to a point with coordinates of latitude 39 degrees 14.1 minutes N., longitude 74 degrees 35.0 minutes W., then bears approximately 216 degrees T along the shoreline in a southwesterly direction 1.5 nautical miles off-shore, for approximately 2.3 nautical miles to a point with coordinates of latitude 39 degrees 12.3 minutes N., longitude 74 degrees 36.7 minutes W., then bears approximately 306 degrees T for approximately 1.4 nautical miles to the outermost tip of Anglers Fishing Club's Pier, 5825 Central Ave., Ocean City, then along that pier to the shoreline.	
3. Seven mile beach outfall exclusion	
4. Wildwood outfall exclusion	
TRIBUTARIES, ATLANTIC OCEAN	
(New Jersey Coast)—All those streams or segments of streams that flow directly into the Atlantic Ocean or into back bays of the Ocean which are not included elsewhere in this list, are not within the boundaries of the Pinelands Protection or Preservation Areas and are not mapped as C1 waters by the Department	FW2-NT/SE1
(Pinelands)—All streams or segments of streams which flow directly into the Atlantic Ocean or into back bays of the Ocean, are within the boundaries of the Pinelands Protection and Preservation Areas and are not classified as FW1 in this Table	PL
(New Jersey Coast)—All streams or segments of streams which flow directly into the Atlantic Ocean or into back bays of the Ocean, are mapped as C1 waters by the Department are not trout maintenance waters, and are not classified as FW1 in this Table	FW2-NT/SE1(C1)
BABCOCK CREEK	
(Marmora)—Entire length	FW2-NT/SE1(C1)
BALLANGER CREEK	
(New Gretna)—Source to Pollys Ditch	FW2-NT/SE1
(New Gretna)—Pollys Ditch to Bay	SE1(C1)
BANKS CREEK (Marmora)—Entire length	SE1(C1)
BARNEGAT BAY	
(Barnegat National Wildlife Refuge)—All waters within the boundaries of the Barnegat National Wildlife Refuge	SE1(C1)
(Barnegat Light)—All other waters of the bay	SE1(C1)
(Island Beach State Park)—All freshwater ponds within the boundaries of Island Beach State Park	FW1
(Island Beach State Park)—All waters in the Park, not classified as FW1 above	FW2-NT/SE1/SC(C1)
BARNEGAT BAY TRIBUTARIES—See ATLANTIC OCEAN, TRIBUTARIES	
BASS RIVER	
(Oswego Lake)—Source to Pineland Protection and Preservation Area boundary at the Garden State Parkway, except those branches described separately below	PL
(New Gretna)—Pineland Protection and Preservation Area boundary to the boundary of shellfish waters	FW2-NT/SE1
(New Gretna)—Boundary of shellfish waters to Mullica River	SE1(C1)
(Bass River State Forest)—Tommy's Branch from its headwaters to the Bass River Recreation Area service road	FW1
(Bass River State Forest)—Falkenburg Branch of Lake Absegami from its headwaters to the Lake	FW1
BATSTO RIVER	
(Browns Mills)—Entire length, except waters described separately below	PL
(Wharton)—Brooks and tributaries to the Batsto River between and immediately to the west of Tylertown and Crowleytown, from their head-waters to the head of tide at mean high water	FW1
(Wharton)—The easterly branches of the Batsto River from Batsto Village upstream to the confluence with Skits Branch	FW1
BEACH THOROFARE	
(Margate)—Entire length	SE1(C1)
BEAR SWAMP BROOK	
(Squankum)—Entire length, except segment described below	FW2-NT
(Allaire)—Segment within the boundaries of Allaire State Park	FW2-NT(C1)
BIG ELDER CREEK	
(Sea Isle City)—Segment within the boundaries of Marmora Wildlife Management Area	SE1(C1)
(Sea Isle City)—Segment outside the boundaries of Marmora Wildlife Management Area	SE1
BIG GRAVELING CREEK (Great Bay)—Entire length	SE1(C1)
BIG GREAVES CREEK	
(MacNamara)—Segment of the Creek outside the boundaries of MacNamara Wildlife Management Area	SE1
(MacNamara)—Creek and tributaries within the boundaries of MacNamara Wildlife Management Area	SE1(C1)
BIG THOROFARE	
(Tuckerton)—Source to boundary of Great Bay Blvd. Wildlife Management Area	SE1
(Tuckerton)—Segment within the boundaries of Great Bay Blvd. Wildlife Management Area	SE1(C1)

BLUEFISH BROTHERS (Stone Harbor)—Entire length	SE1(C1)
BLUEFISH CREEK (Stone Harbor)—Entire length	SE1(C1)
BOG BRANCH CREEK (Middletown)—Entire length	SE1(C1)
BRIGANTINE (Brigantine National Wildlife Refuge)—All waters within the boundaries of the Brigantine National Wildlife Refuge	FW2-NT/SE1(C1)
BRISBANE LAKE	
(Allenwood)—The lake and its tributaries within the boundaries of Allaire State Park, except Mill Run, which is listed separately, and the tributary described separately below	FW2-NT(C1)
(Allaire State Park)—The easterly tributary to Mill Run upstream of Brisbane Lake, located entirely within the Allaire State Park boundaries	FW1
(Mill Run)—Mill Run from its source to Brisbane Lake	FW2-NT(C1)
(Mill Run)—Mill Run from the outlet of Brisbane Lake to the Manasquan River	FW2-NT
BROAD CREEK (New Gretna)—Entire length	SE1(C1)
BROAD THOROFARE	
(Longport)—South of Rt. 152	SE1
(Longport)—North of Rt. 152	SE1(C1)
BROTHERS CREEK (Burleigh)—Entire length	SE1(C1)
CABBAGE THOROFARE (Great Bay)—Entire length	SE1(C1)
CEDAR BRIDGE BRANCH (Lakewood)—Entire length	FW2-NT
CEDAR CREEK	
(Manahawkin)—Source to boundaries of the Manahawkin Wildlife Management Area	FW2-NT/SE1
(Manahawkin)—Creek and tributaries within the boundaries of the Manahawkin Wildlife Management Area	FW2-NT/SE1(C1)
CEDAR CREEK	
(Cedar Crest)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway, except branches described separately below	PL
(Berkeley)—Garden State Parkway to Barnegat Bay	FW2-NT/SE1
(Greenwood Forest)—Webbs Mill Branch and tributaries located entirely within the boundaries of Greenwood Forest Tract	FW1
(Greenwood Forest)—Chamberlain's Branch and five tributaries which originate in and are located entirely within the boundaries of the Greenwood Forest Tract upstream of the blueberry farm exception	FW1
(Greenwood Forest)—Other tributaries to Chamberlain's Branch, located within the boundaries of the Greenwood Forest Tract	FW1
CEDAR HAMMOCKS CREEK (English Creek Landing)—Entire length	SE1(C1)

CEDAR RUN	
(Stafford)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL
(Cedar Run)—Garden State Parkway to the boundaries of the Barnegat National Wildlife Refuge	FW2-NT/SE1
(Barnegat)—National Wildlife Refuge boundaries to Barnegat Bay	FW2-NT/SE1(C1)
CEDAR SWAMP CREEK	
(Cedar Spring)—Entire length, except segment described separately below	FW2-NT/SE1
(Marmora)—Creek and tributaries within the boundaries of the MacNamara Wildlife Management Area	FW2-NT/SE1(C1)
CHAMBERLAIN BRANCH—See CEDAR CREEK	
CHANNEL CREEK (Barnegat Bay)—Entire length	SE1(C1)
CHARLEY CREEK (Marmora)—Entire length	FW2-NT/SE1(C1)
COLLINS TIDE PONDS (Barnegat)	FW2-NT/SE1(C1)
COMMANDO CREEK (Marmora)—Entire length	SE1(C1)
CRANBERRY BROOK (Monmouth)—Entire length	FW2-NT/SE1
DAVENPORT BROOK	
(Berkeley)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Penn Central railroad tracks	PL
(Toms River)—Railroad tracks to confluence with Wrangel Brook	FW2-NT
DEEP CREEK (Herbertsville)—Entire length	FW2-NT
DEEP RUN (Wharton)—Run and tributaries from their sources to Springer's Brook	FW1
DICKS BROOK (Larrabee's Crossing)—Entire length	FW2-NT
DINNER POINT CREEK (Staffordsville)—Entire length	SE1(C1)
DOCK THOROFARE (Northfield)—Entire length	SE1(C1)
DOVE MILL BRANCH—See TOMS RIVER	
EDWARD CREEK	
(Sea Isle City)—Source to the boundary of Marmora Wildlife Management area	SE1
(Sea Isle City)—Boundary of Marmora Wildlife Management Area to Horn Creek	SE1(C1)
FALKENBURG BRANCH—See BASS RIVER	
FLAT CREEK (Marmora)—Entire length	FW2-NT/SE1(C1)
FLATTERAS CREEK (Beach Haven Heights)—Entire length	SE1(C1)
FORKED RIVER	
(Lacey)—River and branches from their sources to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL
(Forked River)—Garden State Parkway to Barnegat Bay	FW2-NT/SE1
FORTESCUE (Fortescue)—All waters within the Fortescue Wildlife Management Area	FW2-NT/SE1(C1)

GIBSON CREEK	
(Gibson Landing)—Entire length, except segment described below	PL
(Marmora)—Segment and tributaries within the MacNamara Wildlife Management area	FW2-NT/SE1(C1)
GO THROUGH CREEK	
(Burleigh)—Entire length, except segment described below	SE1
(Burleigh)—Segment within the boundaries of the Marmora Wildlife Management Area	SE1(C1)
GOING THROUGH CREEK (English Creek Landing)	SE1(C1)
GREAT BAY (Brigantine)—All waters of the Bay and all natural waterways which are tributary to the Bay and all waters, including both natural and manmade channels and ponds within the boundaries of the Brigantine National Wildlife Refuge and the Great Bay Wildlife Management Area	FW2-NT/SE1(C1)
GREAT EGG HARBOR RIVER	
(Berlin)—Source to confluence with Tinker Branch	FW2-NT
(Berlin)—Tinker Branch, the River from its confluence with Tinker Branch, and all tributaries within the Pinelands Protection and Preservation Area, downstream to the boundary at the Rt. 40 bridge in Mays Landing	PL
(Winslow)—All tributaries or segments of tributaries outside of the boundaries of the Pinelands Protection and Preservation Area, downstream to Rt. 40 at Mays Landing	FW2-NT
(Mays Landing)—Rt. 40 bridge to Great Bay Harbor, except those tributaries described separately below	FW2-NT/SE1
(Mays Landing)—All tributaries or segments of tributaries within the boundaries of the Pinelands Protection and Preservation areas	PL
(Egg Harbor)—Tributaries and all other waters within the MacNamara Wildlife Management Area, except tributary described below	FW2-NT/SE1(C1)
(Tuckahoe)—Tributary adjacent to and north of Hawkin's Creek from its origin to the point where the influence of impoundment occurs	FW1
GREAT SOUND (Avalon)—All waters within Great Sound State Park	SE1(C1)
GREAT THOROFARE	
(Ventnor)—West of Rt. 40	SE1(C1)
(Ventnor)—East of Rt. 40	SE1
GRISCOM CREEK (Gibson Landing)—Entire Length	FW2-NT/SE1(C1)
GUNNING RIVER	
(Barnegat)—Entire length, except segment described below	FW2-NT/SE1
(Barnegat)—Stream and tributaries within the boundaries of Barnegat National Wildlife Refuge	FW2-NT/SE1(C1)
HALFWAY CREEK	
(Middletown)—Source to the boundary of the MacNamara Wildlife Management Area	FW2-NT/SE1
(MacNamara)—Creek and tributaries within the boundaries of the MacNamara Wildlife Management Area	SE1(C1)
HARRY POND (Barnegat)	FW2-NT/SE1(C1)
HATFIELD CREEK (Beach Haven Heights)—Entire length	SE1(C1)
HAWKINS CREEK	
(Tuckahoe)—Source to the point where impoundment influences flow	FW1
(Tuckahoe)—Downstream of the influence of impoundment	SE1(C1)
HAY STACK BROOK	
(Howell)—Entire length	FW2-NT
HIGHS BEACH (Highs Beach)—All waters within the Wildlife Management Area south of Highs Beach	FW2-NT/SE1(C1)
HOSPITALITY CREEK	
(Longport)—Entire length	SE1(C1)
JACOVY CREEK (Stone Harbor)—Entire length	SE1(C1)
JAKES BRANCH	
(Berkeley)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL
(Beachwood)—Garden State Parkway to Toms River	FW2-NT/SE1
JAY CREEK	SE1(C1)
JIMMIES CREEK	
(Stone Harbor)—Source to the boundary of Great Bay Wildlife Management Area	SE1(C1)
(Stone Harbor)—Segments of the Creek outside the boundaries of Great Bay Wildlife Management Area	SE1
JOSH CREEK (Stone Harbor)—Entire length	SE1(C1)
JUDIES CREEK	
(Great Bay)—Source to widening of creek	SE1
(Great Bay)—Widening of creek to mouth	SE1(C1)
JUMPING BROOK (Neptune)—Entire length	FW2-NT/SE1
KNOLL POND (Barnegat)	FW2-NT/SE1(C1)
LAKES BAY (Ventnor)	SE1(C1)
LAKES CHANNEL (Ventnor)—Entire length	SE1(C1)
LITTLE GREAVES CREEK	
(MacNamara)—Entire length	SE1(C1)
LITTLE SCOTCH BONNET	
(Stone Harbor)—Entire length, except segment described below	SE1
(Stone Harbor)—Segment within the boundaries of Marmora Wildlife Management Area	SE1(C1)
LITTLE THOROFARE	
(Tuckerton)—Entire length	SE1(C1)
LONG POINT CREEK	
(Marmora)—Entire length	FW2-NT/SE1(C1)
LONG SWAMP BROOK	
(Squankum)—Entire length, except segment within the boundaries of Allaire State Park	FW2-NT

(Allaire)—Segment within the boundaries of Allaire State Park	FW2-NT(C1)
LOWER LONG REACH (Stone Harbor)—Entire length	SE1(C1)
LUDLAM CREEK (Marmora)—Entire length	SE1(C1)
MAIN MARSH CREEK (Brigantine)—Entire length	SE1(C1)
MANAHAWKIN CREEK	
(Manahawkin)—Source to the boundaries of Manahawkin Wildlife Management Area	FW2-NT/SE1
(Manahawkin)—Within the boundaries of the Wildlife Management Area	FW2-NT/SE1(C1)
MANASQUAN RIVER	
MAIN STEM	
(Freehold)—Source to Rt. 9 bridge, except tributaries described separately under Tributaries, below	FW2-NT
(Farmingdale)—Rt. 9 bridge to the "Narrows" in the vicinity of the Meadows Marina, except tributaries described separately under Tributaries, below	FW2-TM
(Meadows Marina)—The "Narrows" to surf waters	SE1
TRIBUTARIES, MANASQUAN RIVER (See also BRISBANE LAKE)	
(Adelphia)—Entire length	FW2-NT
(Allaire)—Those portions of the first and second southerly tributaries west of Hospital Rd. which are located entirely within the boundaries of Allaire State Park	FW1(TM)
(Brick)—Tributaries within the boundaries of Allaire State Park and Manasquan River Wildlife Management Area, except those designated FW1, above	FW2-TM(C1)
(Freehold)—Tributaries within the boundaries of Turkey Swamp Wildlife Management Area	FW2-NT(C1)
MARMORA WILDLIFE MANAGEMENT AREA (Strathmere)—All waters within the boundaries of Marmora Wildlife Management Area	FW2-NT/SE1(C1)
MARSH BOG BROOK	
(Farmingdale)—Source to Yellow Brook Rd.	FW2-NT
(Allaire)—Allaire State Park boundary at Yellow Brook Rd. to Manasquan River	FW2-NT(C1)
MASONS CREEK (Marmora)—Entire length	SE1(C1)
MCNEALS BRANCH—See TUCKAHOE RIVER	
METEDECONK RIVER	
SOUTH BRANCH	
(Lakewood)—Entire length, except segment described below	FW2-NT
(Turkey Swamp)—Tributaries within the boundaries of Turkey Swamp Wildlife Management Area	FW2-NT(C1)
NORTH BRANCH METEDECONK RIVER	
(Freehold)—Source to Aldrich Rd., except segment described below	FW2-NT
(Turkey Swamp)—River and tributaries within the boundaries of Turkey Swamp Wildlife Management Area	FW2-NT(C1)
(Lakewood)—Aldrich Rd. to Lanes Mills	FW2-TM
(Brick)—Lanes Mills to confluence with Metedeconk River, South Branch	FW2-NT
MAIN STEM METEDECONK RIVER	
(Brick)—Confluence of North and South branches to Barnegat Bay	FW2-NT/SE1
MIDDLE RIVER	
(Tuckahoe)—Entire length, except the segment described below	FW2-NT/SE1
(Middletown)—Segment within the boundaries of MacNamara Wildlife Management Area	FW2-NT/SE1(C1)
MILE THOROFARE—Entire length	SE1(C1)
MILL RUN (Allaire)—See BRISBANE LAKE	
MINGAMAHONE BROOK	
(Farmingdale)—Entire length, except segment described below	FW2-TM
(Allaire)—Brook and tributaries within the boundaries of Allaire State Park	FW2-TM(C1)
MIRY RUN (MacNamara)—Entire length	FW2-NT/SE1(C1)
MOTT CREEK (Brigantine)—Entire length	SE1(C1)
MUD CREEK (MacNamara)—Entire length	SE1(C1)
MUDDY FORD BROOK (Larrabee's Crossing)—Entire length	FW2-TM
MULBERRY THOROFARE (Northfield)—Entire length	SE1(C1)
MULLICA RIVER	
(Berlin)—Source to Pinelands Protection and Preservation Area boundaries at the Garden State Parkway, except branches and tributaries described below	PL
(Wharton)—Skit Branch and tributaries from their headwaters to the confluence with Robert's Branch	FW1
(Wharton)—Stream in the southeasterly corner of the Wharton Tract located between Ridge Rd. and Seaf Weeks Rd., downstream to the boundaries of the Wharton Tract	FW1
(Wharton)—Gun Branch from its headwaters to US Rt. 206	FW1
(New Gretna)—River and tributaries from the Pinelands Protection and Preservation Area boundary to Great Bay	SE1(C1)
NARROWS CREEK (Middletown)—Entire length	SE1(C1)
NORTH CHANNEL POND (Stone Harbor)	FW2-NT/SE1(C1)
OLDMAN CREEK (Stone Harbor)—Entire length	SE1(C1)
OTTER CREEK (Middletown)—Entire length	SE1(C1)
OYSTER CREEK	
(Brookville)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL

(Forked River)—Garden State Parkway to Barnegat Bay	FW2-NT/SE1
OYSTER CREEK (Great Bay)—Entire length	SE1(C1)
RING ISLAND CREEK (Stone Harbor)—Entire length	SE1(C1)
RISLEY CHANNEL (Margate)—Entire length	SE1(C1)
ROUNDABOUT CREEK (New Gretna)—Entire length	SE1(C1)
SALT CREEK (Stone Harbor)—Entire length	SE1(C1)
SCULL BAY (Linwood)	SE1(C1)
SEDGE CREEK—Entire length	SE1(C1)
SHARK CREEK (Stone Harbor)—Entire length	SE1(C1)
SHARK RIVER	
(Colts Neck)—Source to Rt. 33	FW2-NT
(Neptune)—Rt. 33 to Brighton Ave. bridge, Glendola	FW2-TM/SE1
(Glendola)—Brighton Ave. bridge to Atlantic Ocean	FW2-NT/SE1
SHELL THOROFARE (Wildwood Gables)—Entire length	SE1(C1)
SHELTER ISLAND BAY (Margate)	SE1(C1)
SHELTER ISLAND WATERS (Margate)—Entire length	SE1(C1)
SKIT BRANCH—See MULLICA RIVER	
SOD THOROFARE (Linwood)—Entire length	SE1(C1)
SOUTHEAST CREEK (Stone Harbor)—Entire length	SE1(C1)
SQUANKUM BROOK	
(Squankum)—Entire length, except segment described below	FW2-NT
(Allaire)—Segment within Allaire State Park	FW2-NT(C1)
STEELMAN BAY (Somers Point)	SE1(C1)
SWAN POND (Marmora)	FW2-NT/SE1(C1)
SWAN POND RACE (Marmora)—Entire length	FW2-NT/SE1(C1)
TAUGH CREEK	
(Whitesboro)—Entire length, except segment described below	SE1(C1)
(Whitesboro)—Portions outside the boundaries of	SE1
TIMBER SWAMP BROOK (Oak Glen)—Entire length	FW2-NT
TINKER BRANCH—See GREAT EGG HARBOR RIVER	
TITMOUSE BROOK (Howell)—Entire length	FW2-TM
TOMMYS BRANCH—See BASS RIVER	
TOMS RIVER	
MAIN STEM	
(Holmeson)—Source to Rt. 528 bridge, Cassville except those tributaries described separately under Tributaries below	FW2-NT
(Van Hiseville)—Rt. 528 bridge to Rt. 547 bridge in Whitesville, except tributaries described separately, under Tributaries below	PL(TM)
(Whitesville)—Rt. 547 bridge to Pinelands Protection and Preservation Area boundaries at the NJ Central Railroad tracks, except tributaries described separately, under Tributaries below	PL(TM)
(Manchester)—NJ Central Railroad tracks to Rt. 571 Bridge, except tributaries described separately, under Tributaries below	FW2-TM
(Toms River)—Rt. 571 Bridge to Barnegat Bay, except tributaries described separately, under Tributaries, below	FW2-NT/SE1
TRIBUTARIES, TOMS RIVER	
(Holmeson)—Tributaries within the boundaries of the Pinelands Protection and Preservation Area	PL
(Van Hiseville)—All tributaries outside the boundaries of the Pinelands Protection and Preservation Area which enter the River between the Rt. 528 bridge, Cassville and the Rt. 547 bridge, Whitesville, except Dove's Mill Branch described separately below	FW2-TM
(Toms River)—All tributaries within the boundaries of the Pinelands Protection and Preservation Area	PL
(Archer's Corners)—All tributaries outside the boundaries of the Pinelands Protection and Preservation Area and within the boundaries of Collier's Mills Wildlife Management Area	FW2-NT(C1)
DOVE'S MILL BRANCH	
(Van Hiseville)—Entire length, except the segment described separately below	FW2-NT
(Holmansville)—Stream and tributaries within Butterfly Bogs Wildlife Management area	FW2-NT(C1)
TUCKAHOE LAKE (Tuckahoe)	FW2-NT(C1)
TUCKAHOE RIVER	
(Milmay)—Source to Pinelands Protection and Preservation Area boundary at Rt. 49	PL
(Head of River)—McNeals Branch and the River within the boundaries of the Peaselee Wildlife Management Area, except tributaries within the boundaries of the Pinelands Protection and Preservation Area, described separately below	FW2-NT/SE1(C1)
(Head of River)—Tributaries within the Pinelands Protection and Preservation Area boundaries	PL
(Tuckahoe)—Edge of Fish and Wildlife Management area at confluence with Warners Mill Stream to Great Egg Harbor except segment described separately below	FW2-NT/SE1(C1)
(Tuckahoe)—River, tributaries and all other waters within boundaries of the MacNamara Wildlife Management Area	FW2-NT/SE1(C1)
TULPEHOCKEN CREEK	
(Wharton)—Creek and tributaries from their origin to the confluence with Featherbed Brook	FW1
(Wharton)—The westerly tributaries and those natural ponds within the lands bounded by Hawkins Rd., Hampton Gate Rd., and Sandy Ridge Rd.	FW1
TURTLE GROUND CREEK (Jeffers Landing)—Entire length	SE1(C1)

TURTLE GUT (Ventnor)—Entire length	SE1(C1)
WADING RIVER	
(Chatsworth)—Entire length, except tributaries described separately below	PL
(Greenwood Forest)—Westerly tributary to Howardsville Cranberry Bog Reservoir and other tributaries located entirely within the boundaries of the Greenwood Forest Tract	FW1
WARNERS MILL STREAM	
(Head of River)—Source to Pinelands Protection and Preservation Area boundary at Aetna Dr.	PL
(Head of River)—Aetna Dr. to boundary of the Peaselee Wildlife Management Area	FW2-NT/SE1
(Head of River)—Within the boundaries of the Peaslee Wildlife Management Area to the Tuckahoe River	FW2-NT/SE1(C1)
WEBBS MILL BRANCH—See CEDAR CREEK	
WIGWAM CREEK	
(Great Bay)—Source to Rt. 9	FW2-NT/SE1
(Great Bay)—Rt. 9 to Mott Creek	SE1(C1)
WINTER CREEK (New Gretna)—Entire length	SE1(C1)
WHIRLPOOL CHANNEL (Margate)—Entire length	SE1(C1)
WORLDS END CREEK (New Gretna)—Entire length	SE1(C1)
WRANGLE BROOK	
(Keswick Grove)—Entire length, except segment described below	FW2-NT/SE1
(Whiting)—Brook and tributaries within Whiting Wildlife Managment Area	FW2-NT(C1)
WRANGLE CREEK (Forked River)—Entire length and all waters within Forked River Game Farm	FW2-NT/SE1(C1)
WRECK POND BROOK (Wall)—Entire length	FW2-NT

(d) The surface water classifications in Table 2 are for waters of the Delaware River Basin;

TABLE 2

WATER BODY	CLASSIFICATION
ALEXAUKEN CREEK (Lambertville)—Entire length	FW2-TM
ALLAMUCHY CREEK (Allamuchy)—Entire length	FW2-NT(C1)
ALLAMUCHY POND (Allamuchy)	FW2-NT(C1)
ALLAMUCHY POND TRIBUTARIES (Allamuchy)—All tributaries that are located entirely within the boundaries of Allamuchy State Park and that flow into Allamuchy Pond	FW1
ALLOWAY CREEK (Alloways)—Entire length	FW2-NT/SE1
ALMS HOUSE BROOK	
(Hampton)—Source to, but not including, County Farm Pond	FW2-TM
(Frankford)—County Farm Pond to Paulins Kill	FW2-NT
ANDOVER JUNCTION BROOK (Andover)—Entire length	FW2-TM
ASSISCUNK CREEK (Burlington)—Entire length	FW2-NT
ASSUNPINK CREEK	
(Washington)—Source to boundary of Van Ness Park, except segments described separately below	FW2-NT
(Roosevelt)—Creek and those tributaries within the boundaries of the Assunpink Wildlife Management Area	FW2-NT(C1)
(Quaker Bridge)—Boundary of Van Ness Park to Quaker Bridge Rd.	FW2-NT(C1)
(Quaker Bridge)—Quaker Bridge Rd. to Park boundary	FW2-TM(C1)
(Lawrence)—Van Ness Park boundary to, but not including, Whitehead Mill Pond	FW2-TM
(Trenton)—Whitehead Mill Pond to Delaware River	FW2-NT
BALDRIDGE CREEK	
(Salem Creek)—Entire length, except segments described below	FW2-NT/SE1(C1)
(Salem Creek)—Segments outside the boundaries of the Supawna National Wildlife Refuge	FW2-NT/SE1
BARKERS MILL BROOK (Independence)—Entire length	FW2-TM
BAY PONDS (Egg Island)	FW2-NT/SE1(C1)
BEADONS CREEK (Fortescue)—Entire length	SE1(C1)
BEAR BROOK (Johnsonburg)—Entire length	FW2-TP(C1)
BEAR CREEK (Johnsonburg)—Entire length	FW2-TM
BEATTY'S BROOK (Penwell)—Entire length	FW2-TP(C1)
BEAVER BROOK (Hope)—Entire length	FW2-NT
BEAVERDAM BRANCH	
(Glassboro)—Source to boundary of the Glassboro Wildlife Management Area	FW2-NT
(Glassboro)—Within the boundaries of Glassboro Wildlife Management Area	FW2-NT(C1)
BEERS CREEK (Shaytown)—Entire length	FW2-TP(C1)
BIG FLAT BROOK	
(Montague)—Sawmill Lake to confluence with Parker Brook, except segments described directly below and those described under the listing for Flat Brook, below	FW2-NT(C1)
(Stokes State Forest)—Two tributaries to Big Flat Brook which originate along Struble Road in Stokes State Forest to their confluences with Big Flat Brook on Fish and Game properties boundaries	FW1
(Sandyston)—Confluence with Parker Brook, through the Blewitt Tract, to the confluence with Little Flat Brook, except tributaries described under the listing for Flat Brook, below	FW2-TP(C1)
BIG TIMBER CREEK (Westville)—Entire length	FW2-NT
BLACKBIRD GUT (Newport)—Entire length	SE1(C1)
BLACKS CREEK (Bordentown)—Entire length	FW2-NT

BLAIR CREEK	
(Hardwick)—Source to Bass Lake	FW2-NT
(Hardwick Center)—Bass Lake outlet to Paulins Kill	FW2-TM
BOILER DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
BRASS CASTLE CREEK (Brass Castle)—Entire length	FW2-TP(C1)
BROOKALOO SWAMP (Hope)—Entire length	FW2-TM
BUCKHORN CREEK (Hutchinson)—Entire length	FW2-TP(C1)
BUCKS DITCH (Mad Horse Creek)—Entire length	SE1(C1)
BUCKSHUTEM CREEK	
(Centre Grove)—Entire length, except segments described separately below	FW2-NT
(Millville)—Creek and tributaries within the boundaries of Millville Wildlife Management Area, except those tributaries described separately below	FW2-NT(C1)
(Millville)—Joshua and Pine Branches to their confluence with Buckshutem Creek	FW1
CAT GUT (Mad Horse Creek)—Entire length	SE1(C1)
CEDAR BRANCH (Manumuskin River)—Source to Manumuskin River	FW1
CEDAR BRANCH	
(Frames Corner)—Entire length, except segment described below	FW2-NT/SE1
(Bevans)—That portion of the Branch and all tributaries within the boundaries of Bevans Wildlife Management Area	FW2-NT/SE1(C1)
CEDAR BRANCH (Millville)—See NANTUXENT CREEK	
CEDAR CREEK	
(Dividing Creek Station)—Entire length, except portions described separately below	FW2-NT
(Millville)—Those tributaries to Cedar Creek that originate in and are located entirely within the boundaries of the Millville Fish and Game Tract	FW1
CEDARVILLE POND (Cedarville)	FW2-NT(C1)
CHERRY TREE CREEK (Mad Horse Creek)—Entire length	SE1(C1)
CLARKS POND (Bridgeton)	FW2-NT(C1)
CLEARVIEW CREEK (Hampton)—Source to Alms House Brook	FW2-NT
CLINT MILLPOND	FW2-NT(C1)
CLOVE (MILL) BROOK	
(Montague)—Lake Marcia outlet to State line, except tributaries described below	FW2-TP(C1)
(High Point State Park)—The second and third northerly tributaries to Clove Brook, the tributaries to Steeny Kill Lake, and those tributaries downstream of Steeny Kill Lake that originate in High Point State Park downstream to their confluence with Clove Brook or to the High Point State Park Boundaries	FW1 (tp)
(High Point State Park)—Those northerly tributaries to Mill Brook that are located due west of Steeny Kill Lake, within the boundaries of High Point State Park	FW1 (tp)
COHANSEY RIVER (Bridgeton)—Entire length	FW2-NT/SE1
COOPER BRANCH—See RANCOCAS CREEK	
COOPER CREEK (Camden)—Entire length	FW2-NT
COPPERMINE BROOK (Pahaquarry)—Entire length	FW1
COURTENY PONDS (Egg Island)	FW2-NT/SE1(C1)
CRANBERRY LAKE (Byram)	FW2-TM(C1)
CRANBERRY LAKE OUTLET STREAM	
(Byram)—Entire length within Cranberry Lake State Park	FW2-NT(C1)
(Byram)—Stream outside of Cranberry Lake State Park	FW2-NT
CRISS BROOK (Stokes State Forest)—Entire length	FW1
CROSSWICKS CREEK (Bordentown)—Entire length	FW2-NT
CROW CREEK (S. Dennis)—Entire length	FW2-NT/SE1(C1)
CULVER'S CREEK (Frankford)—Entire length	FW2-TM
CULVER'S LAKE (Frankford)	FW2-TM
DEER PARK BRANCH—See RANCOCAS CREEK	
DEER PARK POND	
(Allamuchy)—Pond and tributaries to the pond within Allamuchy State Park, except those tributaries classified as FW1, below	FW2-NT(C1)
(Allamuchy)—All tributaries to the Pond and to its outlet stream that are located entirely within the boundaries of Allamuchy State Park	FW1
(Allamuchy)—Deer Park Pond outlet stream downstream to Musconetcong River	FW2-TM(C1)
DELAWANNA CREEK (Delaware)—Entire length	FW2-TM
DELAWARE AND RARITAN CANAL (Lambertville)—Entire length	FW2-NT
DELAWARE RIVER	
MAIN STEM (Interstate Waters—Classifications from Delaware River Basin Commission (DRBC))	
(State Line)—That portion of DRBC's Zone 1C from the New York-New Jersey state line to the proposed axis of the Tocks Island Dam at River Mile 217.0	Zone 1C
(Tocks Island)—Proposed axis of Tocks Island Dam at River Mile 217.0 to the mouth of the Lehigh River at Easton, Pennsylvania, at River Mile 183.66	Zone 1D
(Easton, Pa.)—Mouth of the Lehigh River at River Mile 183.66, to the head of tide at the Trenton-Morrisville Toll Bridge, Trenton at River Mile 133.4	Zone 1E

(Trenton)—Head of tide at the Trenton-Morrisville Bridge, Trenton, River Mile 133.4 to below the mouth of Pennypack Creek, Pennsylvania at River Mile 108.4	Zone 2
(Philadelphia)—River Mile 108.4 to below the mouth of Big Timber Creek, New Jersey, at River Mile 95.0	Zone 3
(Gloucester)—River Mile 95.0 to the Pennsylvania-Delaware state line at River Mile 78.8	Zone 4
(Marcus Hook)—Pennsylvania-Delaware state line at River Mile 78.8 to Liston Pt., Delaware at River Mile 48.2	Zone 5
(Liston Point)—Delaware Bay from Liston Point, Delaware at River Mile 48.2 to River Mile 0.0 at the intersection of the centerline of the navigation channel and a line between Cape May Light and the tip of Cape Henlopen, Delaware	Zone 6(C1)
TRIBUTARIES, DELAWARE RIVER	
(Holland)—Entire length	FW2-TP(C1)
(Port Jervis)—Unnamed or unlisted direct tributaries that are north of Big Timber Creek, are outside of the Pinelands Protection and Preservation Areas, and are not mapped as C1 waters by the Department	FW2-NT
(Titusville)—Unnamed tributaries through Washington Crossing State Park	FW2-NT(C1)
(Brooklawn)—Unnamed or unlisted direct tributaries, south of Big Timber Creek and north of Oldman's Creek, that are outside of the Pinelands Protection and Preservation Areas and are not mapped as C1 waters by the Department	FW2-NT/SE2
(Penns Grove)—Unnamed or unlisted direct tributaries, south of and including Oldmans Creek, that are outside of the Pinelands Protection and Preservation Areas and are not mapped as C1 waters by the Department	FW2-NT/SE1
(Pinelands)—All streams or segments of streams which flow directly into the Delaware River, are within the boundaries of the Pinelands Area and are not classified as FW1 waters in this Table	PL
DENNIS CREEK	
(South Dennis)—Entire length, except segments described below	FW2-NT/SE1
(Woodbine)—All tributaries within the boundaries of the Pinelands Protection and Preservation Areas	PL
(Dennis Creek)—Segment of the Creek, all tributaries, and all other surface waters within the boundaries of the Dennis Creek Wildlife Management Area	FW2-NT/SE1(C1)
DEVILS GUT	
(Mad Horse Creek)—Entire length, except tributaries described below	SE1(C1)
(Mad Horse Creek)—Tributaries outside the Mad Horse Creek Wildlife Management Area	SE1
DIVIDING CREEK	
(Dividing Creek)—Entire length, except those segments described below	FW2-NT/SE1
(Millville)—Those segments of tributaries that are located entirely within the boundaries of the Millville Fish and Game Tract, north of Whitehead Station	FW1
DIVISION CREEK (Dix)—Entire length	SE1(C1)
DOCTORS CREEK	
(Red Creek)—Entire length, except segment described below	FW2-NT
(Imlaystown)—Segment within Imlaystown Lake Wildlife Management Area	FW2-NT(C1)
DONKEY'S CORNER BROOK	
(Delaware Water Gap)—Entire length	FW1
DRUMBO CREEK	
(Dix)—Entire length except segment described below	FW2-NT/SE1
(Dix)—Segment within the boundaries of Dix Wildlife Management Area	FW2-NT/SE1(C1)
DRY BROOK (Branchville)—Entire length	FW2-NT
DUCK POND (Swartswood)	FW2-NT(C1)
DUNNFIELD CREEK	
(Del. Water Gap)—Source to Rt. I-80	FW1
(Del. Water Gap)—Rt. I-80 to Delaware River, except tributaries described below	FW2-TP(C1)
(Worthington)—Sunfish Pond, its outlet stream to the Delaware River and all unnamed waters that are located entirely within the boundaries of the Worthington Tract	FW1
EAST CREEK	
(Lake Nummi)—Source to boundaries of the Pinelands Protection and Preservation Area except those portions described separately below	PL
(Belleplain)—All tributaries to Lake Nummi from their origins to the Lake	FW1
(Belleplain)—A stream and tributary that originate just south of East Creek Mill Rd., 1.2+ miles north-northeast of Eldora and are located entirely within the boundaries of Belleplain State Forest	FW1
(Eldora)—Boundary of the Pinelands Protection and Preservation Area to Delaware Bay except segment described separately below	FW2-NT/SE1
(Dennis Creek)—Segment within the boundaries of the Dennis Creek Wildlife Management Area	FW2-NT/SE1(C1)
ELDER GUT (Egg Island)—Entire length	FW2-NT/SE1(C1)
FIDDLERS CREEK	
(Titusville)—Entire length	FW2-NT
FISHING CREEK (Egg Island)—Entire length	FW2-NT/SE1(C1)

FISHING CREEK	
(Canton)—Source to Mad Horse Creek Wildlife Management Area and all tributaries outside of the boundaries of Mad Horse Creek Wildlife Management Area	SE1
(Mad Horse Creek)—Creek and tributaries within the boundaries of Mad Horse Creek Wildlife Management Area	SE1(C1)
FLAT BROOK	
(Blewitt)—Confluence of Big Flat Brook and Little Flat Brook to the boundary of the Blewitt Tract, except segments described below	FW2-TP(C1)
(Flatbrookville)—Blewitt Tract boundary to Delaware River, except segments described below	FW2-TM
(Walpack)—Segment of the Brook within Walpack Wildlife Management Area	FW2-TM(C1)
(High Point)—All surface waters of the Flat Brook drainage area within the boundaries of High Point State Park and Stokes State Forest, except the following waters:	(FW1)
1. Saw Mill Pond and Big Flat Brook downstream;	
2. Mashipacong Pond and its outlet stream (Parker Brook) to the confluence with Big Flat Brook;	
3. Lake Wapalanne and its outlet stream to the confluence with Big Flat Brook;	
4. Lake Ocquittunk and waters connecting it with Big Flat Brook;	
5. Stony Lake and its outlet stream (Stony Brook) to the confluence with Big Flat Brook;	
6. Kittatinny Lake, that portion of its inlet stream outside the Stokes State Forest boundaries, and its outlet stream, including the Shotwell Camping Area tributary, to the confluence with Big Flat Brook;	
7. Deer Lake and its outlet stream to Lake Ashroe;	
8. Lake Ashroe, portions of its tributaries outside the Stokes State Forest boundaries, and its outlet stream to the confluence with Big Flat Brook;	
9. Lake Shawanni and its outlet stream to its confluence with Big Flat Brook;	
10. Crigger Brook and tributary to its confluence with Big Flat Brook	
(Del. Water Gap)—All tributaries to Flat Brook that flow from the Kittatinny Ridge and are located entirely within the proposed boundaries of the Delaware Water Gap National Recreation Area	FW1
FORKED BROOK (Stokes State Forest)—Entire length	FW2-TP(C1)
FURNACE BROOK	
(Oxford)—Source to railroad bridge at Oxford	FW2-TP(C1)
(Oxford)—Railroad bridge to Pequest River	FW2-NT

FURNACE LAKE (Oxford)	FW2-TM
GARDNERS LAKE (Andover)	FW2-TM
GOOSE POND (Mad Horse Creek)	SE1(C1)
GOSHEN CREEK	
(Woodbine)—Entire length except segment described below	SE1
(Dennis Creek)—Segment and all tributaries within the Dennis Creek Wildlife Management Area	SE1(C1)
GRAVELLY RUN	
(Millville)—Downstream to the Millville Fish and Game Tract boundaries	FW1
HAINESVILLE POND (Hainesville)	FW2-NT(C1)
HAKIHOKAKE CREEK	
(Milford)—Entire length, except section known as Little York Creek	FW2-TM
HANCES BROOK (Rockport)—Entire length	FW2-TP(C1)
HARIHOKAKE CREEK	
(Alexandria)—Source to Rt. 519 bridge	FW2-NT
(Frenchtown)—Rt. 519 bridge to Delaware River	FW2-TM
HARRISONVILLE LAKE (Harrisonville)	FW2-NT(C1)
HATCHERY BROOK (Hackettstown)—Entire length	FW2-TM
HONEY RUN (Hope)—Entire length	FW2-TM
HOPATCONG, LAKE (Hopatcong)	FW2-TM
ILLIF, LAKE (Andover)	FW2-TM
IMLAYSTOWN LAKE (Imlaystown)	FW2-NT(C1)
INDEPENDENCE CREEK	
(Alphano)—Source to Alphano Rd.	FW2-TP(C1)
(Alphano)—Alphano Rd. to Pequest River	FW2-NT
INDIAN DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
ISLAND DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
JACKSONBURG CREEK (Blairstown)—Entire length	FW2-TM
JACOBS CREEK (Hopewell)—Entire length	FW2-NT
JADE RUN (Lebanon State Forest)	FW1
JOSHUA BRANCH—See BUCKSHUTEM CREEK	
KING POND (Egg Island)	SE1(C1)
KITTATINNY LAKE (Sandyston)	FW2-NT(C1)
KITTATINNY LAKE TRIBUTARY (Sandyston)—Entire length	FW2-TP(C1)
KYMER BROOK (Andover)—Entire length	FW2-NT
LAHAWAY CREEK	
(Prospertown)—Entire length, except tributaries described separately below	FW2-NT
(Colliers Mills)—All tributaries which originate in the Colliers Mills Tract north-northeast of Archers Corners, from their sources to Lahaway Creek	FW1
LAKE—See listing under Name	
LITTLE EASE RUN	
(Glassboro)—Entire length, except portion described separately below	FW2-NT
(Glassboro)—Run and tributaries within the Glassboro Wildlife Management Area, except tributary described separately below	FW2-NT(C1)

(Glassboro)—That tributary to the Branch of Little East Run which joins the Branch just south of Stangor Ave.	FW1
(Glassboro)—The first and second easterly tributaries to Little East Run north of Academy Ave.	FW1
LITTLE FLAT BROOK	
(Layton)—Source to, but not including, Hainesville Pond, except tributaries described below or under the listing for Flat Brook above	FW2-TM(C1)
(Bevans)—Tributary which originates north of Bevans—Layton Rd. downstream to the first pond adjacent to the Fish and Game headquarters building	FW1
(Hainesville)—Hainesville Pond to Rt. 206 bridge, except tributaries described under the listing for Flat Brook, above	FW2-NT(C1)
(Hainesville)—Rt. 206 bridge to confluence with Big Flat Brook, except tributaries described under listing for Flat Brook, above	FW2-TM(C1)
LITTLE SHABACUNK CREEK (Lawrence)—Entire length	FW2-NT
LITTLE SWARTSWOOD LAKE (Swartswood)	FW2-NT(C1)
LITTLE YORK CREEK (Little York)—Entire length	FW2-TP(C1)
LOCKATONG CREEK	
(Kingwood)—Source to Idell Bridge	FW2-NT
(Raven Rock)—Idell Bridge to Delaware River	FW2-TM
LOGAN POND (Repaupo)	FW2-NT(C1)
LOMISONS GLEN BROOK (Lomisons Glen)—Entire length	FW2-TP(C1)
LONG POND (Mad Horse Creek)	SE1(C1)
LONG TREE CREEK (Egg Island)—Entire length	SE1(C1)
LOPATCONG CREEK	
(Allens Mills)—Source to Decker Rd. bridge	FW2-TP(C1)
(Herkers Hollow)—Decker Rd. bridge to Rt. 22 bridge	FW2-TM
(Phillipsburg)—Rt. 22 bridge to Delaware River	FW2-NT
LOWER BROTHERS CREEK (Egg Island)—Entire length	SE1(C1)
LOWER DEEP CREEK (Mad Horse Creek)—Entire length	SE1(C1)
LUBBERS RUN (Byram)—Entire length	FW2-TM
MAD HORSE CREEK	
(Canton)—Source to the boundary of Mad Horse Creek Wildlife Management Area and all tributaries outside the boundaries of the Wildlife Management Area	FW2-NT/SE1
(Mad Horse Creek)—Creek and all waters within the Mad Horse Creek Wildlife Management Area	FW2-NT/SE1(C1)
MALAPATIS CREEK	
(Mad Horse Creek)—Entire length, except segment described below	SE1(C1)
(Mad Horse Creek)—Portions of the Creek beyond the boundaries of the Mad Horse Creek Wildlife Management Area	SE1
MANANTICO CREEK	
(Millville)—Entire length, except segment described below	FW2-NT
(Menantico)—Segment within the boundaries of the Menantico Ponds Wildlife Management Area	FW2-NT(C1)
MANTUA CREEK	
(Woodbury)—Entire length	FW2-NT/SE2
MARCIA LAKE (Montague)	FW2-TM(C1)
MASON CREEK	
(Springfield)—Entire length, except segment described below	FW2-NT
(Medford)—Segment within Medford Wildlife Management Area	FW2-NT(C1)
MASONS RUN	
(Pine Hill)—Source to Little Mill Rd.	FW2-TP(C1)
(Lindenwold)—Little Mill Rd. to confluence with Big Timber Creek	FW2-NT
MAURICE RIVER	
MAIN STEM	
(Willow's Grove)—Source to the boundary of the section of Union Lake Wildlife Management Area north of Vineland	FW2-NT
(Vineland)—Boundary of the Union Lake Wildlife Management Area to confluence with Blackwater Branch	FW2-NT(C1)
(Vineland)—Confluence with Blackwater Branch to Delaware Bay, except tributaries described under Tributaries below	FW2-NT/SE1
TRIBUTARIES, MAURICE RIVER	
(Willow's Grove)—Those portions of tributaries that are within the boundaries of the Pinelands Protection and Preservation Area	PL
(Vineland)—All tributaries within the boundaries of the Union Lake Wildlife Management Area and within the Wildlife Management Area that borders Delaware Bay	FW2-NT/SE1(C1)
MCCORMICK POND (Egg Island)	FW2-NT/SE1(C1)
MACDONALD BRANCH—See RANCOCAS CREEK	
MERRILL CREEK	
(Harmony)—Entire length	FW2-TP(C1)
MIDDLE BROTHERS CREEK (Egg Island)—Entire length	SE1(C1)
MIDDLE MARSH CREEK	
(Dix)—All fresh waters which originate in and are located entirely within the boundaries of the Dix Wildlife Management Area	FW1
MILE BRANCH—See NANTUXENT CREEK	
MILL BROOK (Montague)—See CLOVE BROOK	
MILL BROOK (Broadway)—Entire length	FW2-TP(C1)
MILL CREEK	
(Carmel)—Entire length, except segment described below	FW2-NT
(Union Lake)—Creek and tributaries within the boundaries of the Union Lake Wildlife Management Area	FW2-NT(C1)
MINE BROOK	
(Mt. Olive)—Source to, but not including, Upper Mine Brook Reservoir	FW2-TM
(Mt. Olive)—Upper Mine Brook Reservoir to Musconetcong River	FW2-NT

MIRY RUN (Mercerville)—Entire length	FW2-NT
MOORE CREEK (Hopewell)—Entire length	FW2-TM
MOUNT MISERY BROOK	
(Woodmansie)—Entire length, except segments described below	PL
SOUTH BRANCH, MOUNT MISERY BROOK	
(Lebanon State Forest)—All tributaries to the South Branch that are located entirely within the boundaries of Lebanon State Forest	FW1
(Pasadena)—The two easterly branches of the Branch which are located entirely within the boundaries of the Pasadena Fish and Game Tract	FW1
MOUNTAIN LAKE (Liberty)	FW2-TM
MOUNTAIN LAKE CREEK	
(Liberty)—Source to Mountain Lake	FW2-TM
(White)—Mountain Lake dam to Pequest River	FW2-NT
MUD POND (Johnsonburg)—Pond and its outlet stream to the Erie-Lackawanna Railroad trestle north of Johnsonburg	
MUDDY CREEK	
(Mad Horse Creek)—Entire length, except segments described below	SE1(C1)
(Mad Horse Creek)—Segments outside of the boundaries of the Mad Horse Creek Wildlife Management Area	SE1
MUDDY RUN	
(Elmer)—Entire length, except segments described below	FW2-NT
(Elmer)—Portion of the Run within Greenwood Pond Wildlife Management Area	FW2-NT(C1)
(Centerton)—Portion of the Run within Parvin State Park	FW2-NT(C1)
MUDDY RUN	
(Pittsgrove)—Entire length, except segment described below	FW2-NT
(Vineland)—Segment within Union Lake Wildlife Management Area	FW2-NT(C1)
MUSCONETCONG RIVER	
(Hackettstown)—Lake Hopatcong dam to Delaware River, except tributaries described below	FW2-TM
TRIBUTARIES	
(Changewater)—Entire length	FW2-TP(C1)
(Deer Park Pond)—See DEER PARK POND	
(Franklin)—Entire length	FW2-TP(C1)
(Lebanon)—Entire length	FW2-TP(C1)
(Port Murray)—Entire length	FW2-TP(C1)
(S. of Schooley's Mtn. Brook)—Entire length	FW2-TP(C1)
MUSKEE CREEK	
(Port Elizabeth)—Source to boundary of Pinelands Protection and Preservation Area, except segments described separately, below	PL
(Peaselee)—The Middle Branch from its origin to the boundaries of the Peaselee Fish and Game Tract	FW1
(Peaselee)—Those portions of the tributaries to Slab Branch which are located entirely within the boundaries of the Peaselee Fish and Game Tract	FW1
(Bricksboro)—Pinelands Protection and Preservation Area boundaries to Maurice River	FW2-NT
NANCY GUT	
(Newport)—Source to the boundary of Nantuxent Creek Wildlife Management Area	SE1(C1)
(Newport)—Stream and all tributaries outside of the boundaries of the Nantuxent Creek Wildlife Management Area	SE1
NANTUXENT CREEK	
(Newport Landing)—Entire length, except segment described below	FW2-NT/SE1
(Newport Landing)—All waters within the boundaries of Nantuxent Creek Wildlife Management Area	FW2-NT/SE1(C1)
(Newport Landing)—Cedar and Mill Branches to Shaw's Mill Pond	FW1
NEW WAWAYANDA LAKE (Andover)	FW2-TM
NISHISAKAWICK CREEK (Frenchtown)—Entire length	FW2-NT
OLDMANS CREEK	
(Lincoln)—Entire length, except portion described below	FW2-NT/SE1
(Harrisonville)—Portion within Harrisonville Lake Wildlife Management Area	FW2-NT(C1)
ORANDAKEN CREEK	
(Fortescue)—Source to boundary of Egg Island Berrytown Wildlife Management Area	FW2-NT/SE1
(Egg Island)—Creek and tributaries within the boundaries of the Egg Island Berrytown Wildlife Management Area	FW2-NT/SE1(C1)
PARGEY CREEK	
(Gibbstown)—Entire length, except segment described below	FW2-NT/SE2
(Logans Pond)—Segment within the boundaries of Logans Pond Wildlife Management Area	FW2-NT/SE2(C1)
PARKER BROOK (Montague)—Entire length	FW2-TP(C1)
PARVIN LAKE (Parvin State Park)	FW2-NT(C1)
PATTYS FORK—See MAD HORSE CREEK	
PAULINA CREEK (Paulina)—Entire length	FW2-TM
PAULINS KILL	
EAST BRANCH	
(Andover)—Source to Limecrest quarry	FW2-NT(C1)
(Lafayette)—Limecrest quarry to confluence with Paulins Kill, West Branch, except tributary described below	FW2-TP(C1)
TRIBUTARY EAST BRANCH	
(Sussex Mills)—Entire length of tributary to the East Branch at Sussex Mills	FW2-NT(C1)
WEST BRANCH	
(Newton)—Entire length	FW2-NT

MAIN STEM	
(Blairstown)—Confluence of East and West branches to Rt. 15 bridge (bench mark 507)	FW2-TM
(Hampton)—Rt. 15 bridge to Paulins Kill Lake dam	FW2-NT
(Paulins Kill Lake)—Paulins Kill Lake dam to Delaware River, except tributaries described separately below	FW2-TM
TRIBUTARIES, MAIN STEM	
(Emmons Station)—Entire length	FW2-TP(C1)
(Stillwater Station)—Entire length	FW2-TP(C1)
PENNSAUKEN CREEK	
(Cinnaminson)—Entire length	FW2-NT
PEQUEST RIVER	
(Belvidere)—Source to Tranquility bridge except segments described below	FW2-TM
(Whittingham)—Northwesterly tributaries which are located within the boundaries of the Whittingham Tract from their origin to their confluence with the Pequest River	FW1 (tm)
(Whittingham)—Stream and tributaries within the Whittingham tract, except those classified as FW1, above	FW2-TM(C1)
(Vienna)—Tranquility bridge to Townsbury bridge	FW2-NT
(Townsbury)—Townsbury bridge to Delaware River, except segment described below	FW2-TM
(Pequest)—Segment and tributaries within the boundaries of the Pequest Wildlife Management Area	FW2-TM(C1)
PIERSONS DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
PINE BRANCH—See BUCKSHUTEM CREEK	
PLUM BROOK	
(Sergeantsville)—Entire length	FW2-TM
POHATCONG CREEK	
MAIN STEM	
(Mansfield)—Source to Karrsville bridge	FW2-TP(C1)
(Pohatcong)—Karrsville bridge to Delaware River	FW2-TM
TRIBUTARIES	
(Greenwich)—Entire length	FW2-TP(C1)
(New Village)—Entire length	FW2-TP(C1)
(Willow Grove)—Entire length	FW2-TP(C1)
POND BROOK	
(Middleville)—Swartswood Lake outlet to Trout Brook	FW2-NT
POPHANDUSING BROOK	
(Belvidere)—Entire length	FW2-TM
RACCOON CREEK (Logan)—Entire length	FW2-NT/SE2
RANCOCAS CREEK	
NORTH BRANCH	
(North Hanover)—Source to boundary of the Pinelands Protection and Preservation Area at Pemberton	PL
(Pemberton)—Boundary of the Pinelands Protection and Preservation Area to the Delaware River, except tributaries described below	FW2-NT
(Pemberton)—Tributaries within the boundaries of the Pinelands Protection and Preservation Areas	PL
SOUTH BRANCH RANCOCAS CREEK	
(Southhampton)—Source to Pinelands Protection and Preservation Area boundaries at Rt. 206 bridge south of Vincentown	PL
(Vincentown)—Vincentown to Delaware River, except tributaries described separately below	FW2-NT
(Vincentown)—All tributaries within the Pinelands Protection and Preservation Areas	PL
COOPER BRANCH RANCOCAS CREEK	
(Woodmansie)—Entire length, except portions described separately below	PL
(Lebanon State Forest)—Branch and tributaries downstream to Pakim Pond, and tributaries to Cooper Branch located entirely within the Lebanon State Forest boundaries	FW1
DEER PARK BRANCH RANCOCAS CREEK	
(Buckingham)—Stream and tributaries near Buckingham to confluence with Pole Bridge Branch	FW1
MACDONALD BRANCH RANCOCAS CREEK	
(Woodmansie)—Entire length, except as described separately below	PL
(Lebanon State Forest)—Branch and tributaries located entirely within Lebanon State Forest	FW1
SHINNS BRANCH RANCOCAS CREEK	
(Lebanon State Forest)—Branch and tributaries located entirely within the boundaries of Lebanon State Forest, from their sources to the forest boundary	FW1
(Lebanon Lake Estates)—Forest boundary to lake	PL
ROARING DITCH	
(Heislerville)—Entire length, except segment described below	SE1
(Eldora)—Ditch and all tributaries within the Dennis Creek Wildlife Management Area boundaries	SE1(C1)
ROWANDS POND	
(Clementon)—Pond, inlet stream and outlet stream within Rowands Pond Wildlife Management Area	FW2-NT(C1)
RUNDLE BROOK (Del. Water Gap)—Source to Flatbrook Rd.	FW1
SALEM CREEK [River]	
(Salem)—Entire length	FW2-NT/SE1
SAMBO ISLAND BROOK (Del. Water Gap)—Entire length	FW1
SAMBO ISLAND POND (Del. Water Gap)	FW1
SANDYSTON CREEK	
(Sandyston)—Entire length	FW2-TP(C1)
SAVAGES RUN (East Creek)	
(Lake Nummi)—Entire length, except portions described separately below)	PL

(Belleplain)—Those two tributaries and portions thereof downstream of Lake Nummi that are located entirely within the boundaries of Belleplain State Forest	FW1
SAWMILL POND (High Point)	FW2-NT(C1)
SCHOOLEYS MTN. BROOK (Schooley's Mtn.)—Entire length	FW2-TP(C1)
SHABACUNK [SHABBECONG] CREEK (Ewing)—Entire length	FW2-NT
SHAWS MILL POND (Cedarville)	FW2-NT/SE1(C1)
SHAWANNI CREEK (Walpack)—Entire length	FW2-TP(C1)
SHAWANNI LAKE	
SHIMERS BROOK	
(Millville)—Entire length, except those segments and tributaries designated FW1, below	FW2-TP(C1)
(High Point)—That segment of Shimers Brook and all tributaries within the boundaries of High Point State Park	FW1(tp)
SHINNS BRANCH—See RANCOCAS CREEK	
SHIPETAUKIN CREEK (Lawrenceville)—Entire length	FW2-NT
SHORE DITCH (Mad Horse Creek)—Entire length	SE1(C1)
SILVER LAKE (Hope)	FW2-TM
SILVER LAKE FORK—See MAD HORSE CREEK	
SLAB BRANCH—See MUSKEE CREEK	
SLUICE CREEK	
(South Dennis)—Entire length, except segment described below	FW2-NT/SE1
(Dennis Creek)—Segments of tributaries that are within the Dennis Creek and the Beaver Swamp Wildlife Management Areas	FW2-NT/SE1(C1)
SMITH FERRY BROOK (Del. Water Gap)—Entire length	FW1
SPARTA JUNCTION BROOK (Sparta Junction)—Entire length	FW2-TM(C1)
SPRING MILLS BROOK	
(Spring Mills)—Source to Rt. 519 bridge	FW2-TP(C1)
(Milford)—Rt. 519 bridge to confluence with Hakihokake Creek	FW2-TM
STEELE RUN	
(Washington Crossing State Park)—Source to Rt. 29	FW1
(Titusville)—Rt. 29 to the Delaware River	FW2-NT
STEENY KILL LAKE (High Point)	FW2-NT(C1)
STEEP RUN (Mauricetown)—Entire length	FW2-NT(C1)
STEPHENSBURG BROOK (Stephensburg)—Entire length	FW2-TP(C1)
STONY BROOK (Knowlton)—Entire length	FW2-NT
STONY BROOK (Stokes State Forest)	FW2-TP(C1)
STONY LAKE (Stokes State Forest)	FW2-TM(C1)
STOW CREEK	
(Stow Creek Landing)—Entire length, except tributaries described separately below	FW2-NT/SE1
(Mad Horse Creek)—Tributaries within the boundaries of the Mad Horse Creek Wildlife Management Area	FW2-NT/SE1(C1)
STRAIGHT CREEK (Berrytown)—Entire length	SE1(C1)
SWAN CREEK (Lambertville)—Entire length	FW2-NT
SWARTSWOOD CREEK (Swartswood)—Entire length	FW2-TM
SWARTSWOOD LAKE (Stillwater)	FW2-TM(C1)
TAR HILL BROOK	
(Lake Lenape)—Source to, but not including, Lake Lenape	FW2-TM
(Lake Lenape)—Lake Lenape to Andover Junction Brook	FW2-NT
THREE MOUTHS (Egg Island)	FW2-NT/SE1(C1)
THUNDERGUST BROOK	
(Deerfield)—Entire length, except segment described below	FW2-NT
(Deerfield)—That segment within the boundaries of Parvin State Park	FW2-NT(C1)
THUNDERGUST LAKE (Parvin State Park)	FW2-NT(C1)
TILLMAN BROOK (Walpack)—Entire length	FW2-TP(C1)
TROUT BROOK (Hackettstown)—Entire length	FW2-TM(C1)
TROUT BROOK (Tranquility)—Entire length	FW2-TP(C1)
TROUT BROOK (Hope)—Entire length	FW2-TM
TROUT BROOK (Allamuchy)—Entire length	FW2-NT
TROUT BROOK	
(Middleville)—Source to confluence with Pond Brook	FW2-TP(C1)
(Middleville)—Confluence with Pond Brook to Paulins Kill	FW2-NT
TURKEY HILL BROOK (Bethlehem)—Entire length	FW2-TM
TURNERS FORK—See MAD HORSE CREEK	FW2-TM
TUTTLES CORNER BROOK (Tuttles Corner)—Entire length	FW2-TP(C1)
UPPER BROTHERS CREEK (Egg Island)—Entire length	SE1(C1)
UPPER DEEP CREEK (Mad Horse Creek)—Entire length	SE1(C1)
VANCAMPENS BROOK (Millbrook)—Entire length	FW2-TP(C1)
WAPALANNE LAKE (Stokes State Forest)	FW2-NT(C1)
WELDON BROOK (Jefferson Township), from source to, but not including, Lake Shawnee	FW2-TM
WEST CREEK	
(Halberton)—Source to the boundary of the Pinelands Protection and Preservation Areas, except those portions described separately below	PL
(Belleplain)—The portion of the tributary that originates about 0.9 miles southeast of Hoffman's Mill and is located entirely within the boundaries of Belleplain State Forest	FW1
(Belleplain)—Those tributaries that originate about 0.5 miles upstream of Hoffman's Mill and are located entirely within the boundaries of Belleplain State Forest	FW1
(Belleplain)—Eastern branch of the easterly tributary to Pickle Factory Pond from its origin to its confluence with the western branch	FW1

(Delmont)—Boundary of the Pinelands Protection and Preservation Area to the boundary of the Fish and Game lands	FW2-NT/SE1(C1)
(Delmont)—Boundary of the Fish and Game lands to Delaware Bay	SE1
WEST PORTAL CREEK (West Portal)—Entire length	FW2-TP(C1)
WHITE BROOK (Montague)—Entire length	FW2-TP(C1)
WHITE LAKE (Hardwick)	FW2-TM
WICKECHEOKE CREEK	
(Locktown)—Source to confluence with Plum Brook	FW2-NT
(Stockton)—Confluence with Plum Brook to Delaware River	FW2-TM
WIDGEON PONDS (Egg Island)	FW2-NT/SE1(C1)
WILLS BROOK (Mt. Olive)—Entire length	FW2-TM
YARDS CREEK (Blairstown)—Entire length	FW2-TP(C1)

(e) The surface water classifications in Table 3 are for waters of the Passaic, Hackensack and New York Harbor Complex Basin;

TABLE 3

WATER BODY	CLASSIFICATION
ARTHUR KILL	
(Perth Amboy)—The Kill and its saline New Jersey tributaries between the Outerbridge Crossing and a line connecting Ferry Pt., Perth Amboy to Wards Pt., Staten Island, New York	SE2
(Elizabeth)—From an east-west line connecting Elizabethport with Bergen Pt., Bayonne to the Outerbridge Crossing	SE3
(Woodbridge)—All freshwater tributaries	FW2-NT
BEAR SWAMP BROOK	
(Mahwah)—Entire length	FW2-TP(C1)
BEAR SWAMP LAKE (Ringwood)	FW2-NT(C1)
BEAVER BROOK	
(Meriden)—from Splitrock Reservoir Dam downstream to Meriden Road Bridge	FW2-TM
(Denville)—Meriden Road Bridge to Rockaway River	FW2-NT
BEECH BROOK	
(West Milford)—from State line downstream to Wanaque River	FW2-TM
BELCHER CREEK (W. Milford)—Entire length	FW2-NT
BERRYS CREEK (Secaucus)—Entire length	FW2-NT/SE2
BLACK BROOK	
(Meyersville)—Entire length, except segment described below	FW2-NT
(Great Swamp)—Segment and tributaries within the Great Swamp National Wildlife Refuge	FW2-NT(C1)
BLUE MINE BROOK	
(Wanaque)—Entire length, except segment described below	FW2-TM
(Norvin Green State Forest)—That portion of the stream and any tributaries within Norvin Green State Forest	FW2-TM(C1)
BRUSHWOOD POND (Ringwood)	FW2-TM(C1)
BUCKABEAR POND	
(Newfoundland)—Pond, its tributaries and connecting stream to Clinton Reservoir	FW2-NT(C1)
BURNT MEADOW BROOK	
(Stonetown)—Entire length	FW2-TP(C1)
CANISTEAR RESERVOIR (Vernon)	FW2-TM
CANISTEAR RESERVOIR TRIBUTARY (Vernon)—The southern branch of the eastern tributary to the Reservoir	FW1
CANOE BROOK (Chatham)—Entire length	FW2-NT
CEDAR POND (Clinton)—Pond and all tributaries	FW1
CHARLOTTEBURG RESERVOIR (Charlotteburg)	FW2-TM
CHERRY RIDGE BROOK	
(Vernon)—Entire length, except segments described below	FW2-NT
(Canistear)—Brook and tributaries upstream of Canistear Reservoir located entirely within the boundaries of Wawayanda State Park and the Newark Watershed lands	FW1
CLINTON BROOK	
(Mossmans Brook) (W. Milford)—Source to, but not including, Clinton Reservoir	FW2-NT(C1)
(Newfoundland)—Clinton Reservoir dam to Pequannock River	FW2-TP(C1)
CLINTON RESERVOIR (W. Milford)	FW2-TM (C1)
CLOVE BROOK—See STAG BROOK	
COOLEY BROOK	
(W. Milford)—Entire length, except segments described below	FW2-TP(C1)
(Hewitt)—Segments of the brook and all tributaries located entirely within Hewitt State Forest	FW1(tp)
CORYS BROOK (Warren)—Entire length	FW2-NT
CRESSKILL BROOK	
(Alpine)—Source to Duck Pond Rd. bridge, Demarest	FW2-TP(C1)
(Demarest)—Duck Pond Rd. bridge to Tenakill Brook	FW2-NT
CUPSAW BROOK	
(Skylands)—Source to Wanaque Reservoir, except segment described below	FW2-NT
(Skylands)—That segment of Cupsaw Brook within the boundaries of Ringwood State Park	FW2-NT(C1)
DEAD RIVER (Liberty Corners)—Entire length	FW2-NT
DEN BROOK (Denville)—Entire length	FW2-NT
DUCK POND (Ringwood)	FW2-NT(C1)
ELIZABETH RIVER	
(Elizabeth)—Source to Broad St. bridge, Elizabeth and all freshwater tributaries	FW2-NT
(Elizabeth)—Broad St. bridge to mouth	SE3
FOX BROOK (Mahwah)—Entire length	FW2-NT
GLASMERE PONDS (Ringwood)	FW2-NT(C1)
GOFFLE BROOK (Hawthorne)—Entire length	FW2-NT
GRANNIS BROOK (Morris Plains)—Entire length	FW2-NT
GREAT BROOK	
(Chatham)—Entire length, except segment described below	FW2-NT
(Great Swamp)—Segment within the boundaries of the Great Swamp National Wildlife Refuge	FW2-NT(C1)

GREEN BROOK	
(W. Milford)—Entire length, except those segments described below	FW2-TP(C1)
(Hewitt)—Those segments located entirely within the Hewitt State Forest boundaries	FW1(tp)
GREEN POND (Rockaway)	FW2-TM
GREEN POND BROOK (Picatinny Arsenal)—Green Pond outlet to Rockaway River	FW2-NT
GREENWOOD LAKE (W. Milford)	FW2-TM
HACKENSACK RIVER	
(Oradell)—Source to Oradell dam	FW2-NT
(Oradell)—Main stem and saline tributaries from Oradell dam to the confluence with Overpeck Creek	SE1
(Little Ferry)—Main stem and saline tributaries from Overpeck Creek to Route 1 and 9 crossing	SE2
(Kearny Point)—Main stem downstream from Route 1 and 9 crossing	SE3
TRIBUTARIES	
(Oradell)—Tributaries joining the main stem between Oradell dam and the confluence with Overpeck Creek	FW2-NT/SE1
(Little Ferry)—Tributaries joining the main stem downstream of Overpeck Creek	FW2-NT/SE2
HANKS POND (Clinton)—Pond and all tributaries	FW1
HARMONY BROOK (Brookside)—Entire length	FW2-TP(C1)
HARRISONS BROOK (Bernards)—Entire length	FW2-NT
HAVEMEYER BROOK	
(Mahwah)—Entire length	FW2-TP(C1)
HEWITT BROOK (W. Milford)—Entire length	FW2-TP(C1)
HIBERNIA BROOK	
(Hibernia)—Entire length, except tributary described separately below	FW2-TM
(Rockaway)—Entire length of tributary at Rockaway	FW2-TP(C1)
HIGH MOUNTAIN BROOK	
(Ringwood)—Source to, but not including, Skyline Lake	FW2-TP(C1)
HOHOKUS BROOK (Hohokus)—Entire length	FW2-NT/SE2
HUDSON RIVER	
(Rockleigh)—River and saline portions New Jersey tributaries from the New Jersey-New York boundary line in the north to its confluence with the Harlem River, New York	SE1
(Englewood Cliffs)—River and saline portions of New Jersey tributaries from the confluence with the Harlem River, New York to a north-south line connecting Constable Hook (Bayonne) to St. George (Staten Island, New York)	SE2
TRIBUTARIES	
(Rockleigh)—Freshwater portions of tributaries to the Hudson River in New Jersey	FW2-NT
INDIAN GROVE BROOK	
(Somersetin)—Entire length	FW2-TM
JACKSON BROOK	
(Mine Hill)—Source to the boundary of Hurd Park, Dover	FW2-TP(C1)
(Dover)—Hurd Park to Rockaway River	FW2-NT
JENNINGS CREEK (W. Milford)—State line to Wanaque River	FW2-TP(C1)
JERSEY CITY RESERVOIR (Boonton)	FW2-TM
KANOUSE BROOK	
(Newfoundland)—Entire length	FW2-TP(C1)
KIKEOUT BROOK (Butler)—Entire length	FW2-NT
KILL VAN KULL (Bayonne)—Westerly from a north-south line connecting Constable Hook (Bayonne) to St. George (Staten Island, New York)	SE3
LAKE RICKONDA OUTLET STREAM	
(Monks)—That segment of the outlet stream from Lake Rickonda within Ringwood State Park	FW2-TM(C1)
LAKE STOCKHOLM BROOK	
(Stockholm)—Entire length, except tributaries described separately below	FW2-TP(C1)
(Stockholm)—Westerly tributary located entirely within the boundaries of the Newark Watershed	FW1(tp)
(Stockholm)—Brook between Hamburg Turnpike and Williamsville-Stockholm Rd. to its confluence with Lake Stockholm Brook, north of Rt. 23	FW1(tp)
LITTLE POND BROOK	
(Oakland)—Entire length	FW2-TP(C1)
LOANTAKA BROOK	
(Green Village)—Entire length, except segment described below	FW2-NT
(Great Swamp)—Brook and all tributaries within the boundaries of Great Swamp National Wildlife Refuge	FW2-NT(C1)
LUD-DAY BROOK	
(Camp Garfield)—Source to confluence with a tributary from Camp Garfield	FW1
MACOPIN RIVER	
(Newfoundland)—Source to Echo Lake dam	FW2-NT
(Newfoundland)—Echo Lake dam to Pequannock River	FW2-TM
MEADOW BROOK (Wanaque)—Skyline Lake to Wanaque River	FW2-NT
MILL BROOK	
(Randolph)—Source to Rt. 10 bridge	FW2-TP(C1)
(Randolph)—Rt. 10 bridge to Rockaway River	FW2-NT
MORSES CREEK—Entire length	FW2-NT/SE3
MOSSMAN'S BROOK—See CLINTON BROOK	
MT. TABOR BROOK (Morris Plains)—Entire length	FW2-NT
NEWARK BAY (Newark)—North of an east-west line connecting Elizabethport with Bergen Pt., Bayonne up to the mouths of the Passaic and Hackensack Rivers	SE3
NOSENZO POND (Upper Macopin)	FW2-NT(C1)
OAK RIDGE RESERVOIR (Oak Ridge)	FW2-TM
OAK RIDGE RESERVOIR (Oak Ridge)—Northwestern tributary to Reservoir	FW1(tm)
OVERPECK CREEK (Palisades Park)—Entire length	FW2-NT/SE2
PACACK BROOK	
(Stockholm)—Source to Pequannock River, excluding Canistear Reservoir, except segments described separately below	FW2-NT

(Canistear)—Brook and tributaries upstream of Canistear Reservoir located entirely within the boundaries of the Newark Watershed	FW1
PASSAIC RIVER	
(Mendham)—Source to Rt. 202 bridge (Van Doren's Mill), except tributaries described separately below	FW2-TM
(Paterson)—Rt. 202 bridge to Dundee Lake dam	FW2-NT
(Little Falls)—Dundee Lake dam to confluence with Second River	FW2-NT/SE2
(Newark)—Confluence with Second River to mouth	SE3
TRIBUTARIES	
(Fairfield)—Tributaries within Great Piece Meadows	FW2-NT(C1)
PECKMAN RIVER (Verona)—Entire length	FW2-NT
PEQUANNOCK RIVER	
MAIN STEM	
(Vernon)—Source to confluence with Pacack Brook	FW1(tp)
(Newfoundland)—Pacack Brook to Hamburg Turnpike, (Bench Mark 257) in Bloomingdale except tributaries described separately below	FW2-TM
(Riverdale)—Hamburg Turnpike bridge to Pompton River	FW2-NT
TRIBUTARIES	
(Copperas Mtn.)—Entire length	FW2-TP(C1)
(Smoke Rise)—Entire length	FW2-TP(C1)
(Green Pond Junction)—Tributary at Green Pond Junction	FW1(tm)
(Jefferson)—Tributary joining the Main Stem about 3500± feet southeast of the Sussex-Passaic County line, near Jefferson	FW1(tm)
(Lake Kampfe)—Source to, but not including, Lake Kampfe	FW2-TM
(Lake Kampfe)—Lake Kampfe to Pequannock River, except tributary described separately below	FW2-NT
(Lake Kampfe)—Tributary within the boundaries of Norvin Green State Forest, originating west of Torne Mtn.	FW2-NT(C1)
PILES CREEK—Entire length	SE3
POMPTON LAKE (Pompton Lakes)	FW2-NT
POMPTON RIVER (Wayne)—Entire length	FW2-NT
POND BROOK (Oakland)—Entire length	FW2-NT
POSTS BROOK	
(Bloomingdale)—Source to Wanaque Reservoir, except segment described below	FW2-TM
(Norvin Green State Forest)—That segment of the stream and all tributaries within the boundaries of Norvin Green State Forest	FW2-TM(C1)
(Haskell)—Wanaque Reservoir dam to Wanaque River	FW2-NT
PREAKNESS [SINGAC] BROOK	
(Wayne)—Source to, but not including, Barbours Pond	FW2-TP(C1)
(Barbours Pond)—Pond to Passaic River	FW2-NT
PRIMROSE BROOK	
(Harding)—Source to Lees Hill Road bridge	FW2-TP(C1)
(Harding)—Lees Hill Road bridge to Great Swamp National Wildlife Refuge boundary	FW2-NT
(Great Swamp)—Wildlife Refuge boundary to Great Brook	FW2-NT(C1)
RAHWAY RIVER	
SOUTH BRANCH	
(Rahway)—Source to Hazelwood Ave., Rahway	FW2-NT
(Rahway)—Hazelwood Ave. to mouth	SE2
MAIN STEM	
(Rahway)—Upstream of Pennsylvania Railroad bridge	FW2-NT
(Linden)—Penn. Railroad bridge to Route 1&9 crossing	SE2
(Carteret)—Route 1-9 crossing to mouth	SE3
RAMAPO LAKE (Ramapo)—Lake and all outlet streams and tributaries within the boundaries of Ramapo Mtn. State Forest	FW2-NT(C1)
RAMAPO RIVER (Mahwah)—State line to Pompton River	FW2-NT
TRIBUTARY (Oakland)—Entire length	FW2-TP(C1)
RINGWOOD CREEK	
(Ringwood)—Entire length, except segment described below	FW2-TM
(Sloatsburg)—Creek within Ringwood State Park	FW2-TM(C1)
RINGWOOD MILL POND (Ringwood)	FW2-NT(C1)
ROCKAWAY RIVER	
(Dover)—Source to Passaic River, excluding the Jersey City Reservoir and the segment described below	FW2-NT
(Berkshire Valley)—That segment within the boundaries of the Berkshire Valley Wildlife Management Area	FW2-NT(C1)
RUSSIA BROOK	
(Sparta)—Source to Lake Hartung dam	FW2-NT
(Milton)—Lake Hartung dam to, but not including, Lake Swannanoa	FW2-TM
SADDLE RIVER	
(Upper Saddle River)—State line to Bergen County Rt. 2 bridge	FW2-TP(C1)
(Saddle River)—Bergen County Rt. 2 bridge to Allendale Rd. bridge	FW2-TM
(Lodi)—Allendale Rd. bridge to Passaic River	FW2-NT/SE3
SAWMILL CREEK (Pompton Plains)—Entire length	FW2-NT
SHEPPARD LAKE (Ringwood)	FW2-TM(C1)
SINGAC BROOK—See PREAKNESS BROOK	
SLOUGH BROOK (Livingston)—Entire length	FW2-NT
SMITH CREEK—Entire length	FW2-NT/SE3
SPLIT ROCK RESERVOIR (Rockaway)	FW2-TM
SPLIT ROCK RESERVOIR TRIBUTARIES (Farny State Park)—Three tributaries within Farny State Park	FW2-NT(C1)
SPRING GARDEN BROOK (Florham)—Entire length	FW2-NT
STAG [CLOVE] BROOK (Mahwah)—Entire length	FW2-TP(C1)
STEPHENS BROOK	
(Roxbury)—Entire length, except segment described separately, below	FW2-NT
(Berkshire Valley)—That segment north of the boundaries of the Berkshire Valley Tract	FW1
STONE HOUSE BROOK (Kinnelon)—Entire length	FW2-NT
STONY BROOK (Boonton)—Entire length	FW2-NT
SURPRISE LAKE (Hewitt)	FW1
SWAN POND (Ringwood)	FW2-NT(C1)

TENAKILL BROOK (Demarest)—Entire length	FW2-NT
TERRACE POND (Wawayanda)	FW2-NT(C1)
TIMBER BROOK (Kitchell)—Entire length, except tributary described separately below	FW2-NT
TIMBER BROOK (Farny State Park)—Headwater segment of tributary to Timber Brook within Farny State Park	FW2-NT(C1)
TROY BROOK (Troy Hills)—Entire length	FW2-NT
WANAQUE RESERVOIR	FW2-TM
WANAQUE RIVER	
MAIN STEM	
(Hewitt)—Greenwood Lake outlet, through Wanaque Wildlife Management Area to the boundary of the State Park and Forest land at Monks, except tributary described separately below	FW2-TM(C1)
(Hewitt)—Entire length of tributary south of Jennings Creek	FW2-TP(C1)
(Monks)—Parkland boundary to Wanaque Reservoir	FW2-TM
(Pompton Lakes)—Wanaque Reservoir dam to Pompton River	FW2-NT
WEST BROOK (W. Milford)—Entire length	FW2-TP(C1)
WEST POND (Hewitt)	FW1
WEYBLE POND (Ringwood)	FW2-NT(C1)
WHIPPANY RIVER	
(Brookside)—Source to Whitehead Rd. bridge	FW2-TP(C1)
(Morristown)—Whitehead Rd. bridge to Passaic River	FW2-NT
TRIBUTARIES	
(Brookside)—Entire length	FW2-TP(C1)
(E. of Brookside)—Entire length	FW2-TM
(E. of Washington Valley)—Entire length	FW2-TM
(Gillespie Hill)—Entire length	FW2-TP(C1)
(Shongum Mtn.)—Entire length	FW2-NT
WONDER LAKE (West Milford)	FW2-NT(C1)
WOODBRIDGE RIVER—Entire length	FW2-NT/SE3

(f) The surface water classifications in Table 4 are for waters of the Raritan River and Raritan Bay Basin;

TABLE 4

WATER BODY	CLASSIFICATION
ALLERTON CREEK (Allerton)—Entire length	FW2-NT
AMBROSE BROOK (Piscataway)—Entire length	FW2-NT
AMWELL LAKE (Snydertown)	FW2-NT(C1)
ASSISCONG CREEK (Flemington)—Entire length	FW2-NT
BACK BROOK (Vanliew's Corners)—Entire length	FW2-Nt
BALDWINS CREEK	
(Pennington)—Entire length, except segment described separately below	FW2-NT
(Baldwin)—Segment within the boundaries of Baldwin Lake Wildlife Management Area	FW2-NT(C1)
BARCLAY BROOK (Redshaw Corners)—Entire length	FW2-NT
BEAVER BROOK	
(Cokesbury)—Source to Reformatory Road bridge	FW2-TP(C1)
(Annandale)—Reformatory Rd. bridge to Raritan River, South Branch	FW2-TM
BEDEN BROOK (Montgomery)—Entire length	FW2-NT
BIG BEAR BROOK (West Windsor)—Entire length	FW2-NT
BIG BROOK (Vanderberg)—Entire length	FW2-NT
BLACK BROOK (Polktown)—Entire length	FW2-TP(C1)
BLACK RIVER—See LAMINGTON RIVER	
BLACKBERRY CREEK	
(Oceanport)—Source to a line beginning on the easternmost extent of Gooseneck Point and bearing approximately 162 degrees True North to its terminus on the westernmost extent of an unnamed point of land in the vicinity of the western extent of Cayuga Ave. in Oceanport	SE1
(Oceanport)—Creek below the line described above	SE1
BLUE BROOK (Mountainside)—Entire length	FW2-NT
BOULDER HILL BROOK (Tewksbury)—Entire length	FW2-TP(C1)
BOUND BROOK (Dunellen)—Entire length	FW2-NT
BRANCHPORT CREEK	
(Long Branch)—Source to a line beginning on the northernmost extent of an unnamed point of land lying north of Pocano Ave. in Oceanport and bearing approximately 055 degrees True North to its terminus on the westernmost extent of the northern bulkhead at the lagoon located between France Rd. and Lori Rd. in Monmouth Beach	FW2-NT/SE1
(Monmouth Beach)—Creek below line described above	SE1(C1)
BUDD LAKE (Mt. Olive)	FW2-NT(C1)
BURNETT BROOK (Ralston)—Entire length	FW2-TP(C1)
CAPOOLONG CREEK (Sydney)—Entire length	FW2-TP(C1)
CEDAR BROOK (Spotswood)—Entire length	FW2-NT
CHAMBERS BROOK (Whitehouse)—Entire length	FW2-NT
CHEESEQUAKE STATE PARK WATERS (S. Amboy)—Fresh waters within the park upstream of the limits of tidal influence	FW2-NT(C1)
CLAYPIT CREEK	
(Navesink)—Source to widening of the Creek near Linden Ave. and just north to the Locust Ave. bridge in Navesink	FW2-NT/SE1
(Navesink)—Widening of Creek to Navesink River	SE1(C1)
COLD BROOK (Oldwick)—Entire length	FW2-TP(C1)
CRAMERS CREEK (Hamden)—Entire length	FW2-NT
CRANBURY BROOK (Old Church)—Entire length	FW2-NT

CRUSER BROOK	
(Montgomery)—Entire length	FW2-NT
CUCKELS BROOK	
(Bridgewater)—Entire length	FW2-NT
DAWSONS BROOK (Ironia)—Entire length	FW2-TP(C1)
DEEP RUN (Old Bridge)—Entire length	FW2-NT
DEVILS BROOK (Schalks)—Entire length	FW2-NT
DRAKES BROOK (Flanders)—Entire length	FW2-NT(C1)
DUCK POND RUN (Port Mercer)—Entire length	FW2-NT
DUKES BROOK (Somerville)—Entire length	FW2-NT
ELECTRIC BROOK (Schooley's Mtn.)—Entire length	FW2-TP(C1)
FLANDER'S BROOK	
(Flanders)—Entire length	FW2-TP(C1)
FLANDERS CANAL	
(Flanders)—Entire length	FW2-NT(C1)
FROG HOLLOW BROOK	
(Califon)—Entire length	FW2-TP(C1)
GANDER BROOK	
(Manalapan)—Entire length	FW2-NT
GLADSTONE BROOK (St. Bernards School)—Entire length	FW2-TP(C1)
GREAT DITCH (S. Brunswick)—That portion of Great Ditch and its tributaries within Pigeon Swamp State Park	FW2-NT(C1)
GREEN BROOK	
(Watchung)—Source to Rt. 22 bridge	FW2-TM
(Plainfield)—Rt. 22 bridge to Bound Brook	FW2-NT
GUINEA HOLLOW BROOK	
(Tewksbury)	FW2-TP(C1)
HACKLEBARNEY BROOK	
(Hacklebarney)—Entire length	FW2-TP(C1)
HEATHCOTE BROOK	
(Kingston)—Entire length	FW2-NT
HERZOG BROOK	
(Pottersville)—Entire length	FW2-TP(C1)
HICKORY RUN (Califon)—Entire length	FW2-TP(C1)
HOCKHOCKSON BROOK (Colts Neck)—Entire length	FW2-TM
HOLLAND BROOK	
(Readington)—Entire length	FW2-NT
HOLLOW BROOK	
(Pottersville)—Entire length	FW2-TP(C1)
HOOKS CREEK LAKE (Cheesequake State Park)	FW2-NT(C1)
HOOPSTICK BROOK	
(Bedminster)—Entire length	FW2-NT
INDIA BROOK [NORTH BRANCH, RARITAN RIVER]	
(Randolph)—Entire length	FW2-TP(C1)
IRELAND BROOK (Paulus Corners)—Entire length	FW2-NT
IRESICK BROOK	
(Spotswood)—Entire length	FW2-NT
LAMINGTON RIVER [BLACK RIVER]	
(Succasunna)—Source to Rt. 206 bridge	FW2-NT(C1)
(Milltown)—Rt. 206 bridge to confluence with Rinehart Brook	FW2-TM(C1)
(Pottersville)—Confluence with Rinehart Brook to Camp Brady bridge, Bedminster	FW2-TP(C1)
(Vliettown)—Camp Brady bridge to Rt. 523 bridge	FW2-TM
(Burnt Mills)—Rt. 523 to North Branch, Raritan River	FW2-NT
LAWRENCE BROOK	
(Deans)—Source to the intake of the New Brunswick Water Department at Weston's Mill Dam	FW2-NT
(New Brunswick)—Weston's Mill Dam to Raritan River	SE1
LEDGEWOOD BROOK	
(Ledgewood)—Entire length	FW2-TP(C1)
LITTLE BROOK (Califon)—Entire length	FW2-TP(C1)
LITTLE SILVER CREEK	
(Shrewsbury)—Source to a line beginning on the eastern bank of that unnamed lagoon located between Wardell Ave. and Oakes Rd. in Rumson and bearing approximately 171 degrees T (True North) to its terminus on the south shore of Little Silver Creek	FW2-NT/SE1
(Rumson)—Creek below line described above	SE1(C1)
LOMERSON BROOK—See HERZOG BROOK	
MANALAPAN BROOK	
(Jamesburg)—Source to Duhernal Lake dam except tributary described separately below	FW2-NT
(Tennent)—That portion of the tributary at Tennent along the boundary of Monmouth Battlefield State Park	FW2-NT(C1)
MATCHAPONIX BROOK (WEAMACONK CREEK)	
(Mount Mills)—Entire length, except segments described below	FW2-NT
(Freehold)—The brook and tributaries within the boundaries of Monmouth Battlefield State Park	FW2-NT(C1)
MCGELLAIRDS BROOK	
(Englishtown)—Entire length, except tributary described separately below	FW2-NT
(Freehold)—Tributary within Monmouth Battlefield State Park	FW2-NT(C1)
MCVICKERS (Mendham)—Entire length	FW2-TM(C1)
MIDDLE BROOK (Greater Cross Roads)—Entire length	FW2-NT
MIDDLE BROOK	
EAST BRANCH	
(Springfield)—Entire length	FW2-TM
WEST BRANCH	
(Martinsville)—Entire length	FW2-NT
MAIN STEM (Bound Brook)—Confluence of East and West branches to Raritan River	FW2-NT
MILFORD BROOK (Lafayette Mills)—Entire length	FW2-NT
MILLSTONE RIVER	
(Hightstown)—Entire length	FW2-NT
MINE BROOK (Mine Brook)—Entire length	FW2-NT
MINE BROOK (Colts Neck)—Entire length	FW2-NT
MULHOCKAWAY CREEK	
(Pattenburg)—Entire length	FW2-TP(C1)

NAVESINK RIVER	
(Red Bank)—Source to a line starting at a point at the northeast end of Blossom Cove, bearing approximately 142 degrees T (True North), through navigational aid C23 to the south bank near Riverview Hospital	SE1
(Rumson)—River southeast of the line described above, except segment described below	SE1(C1)
(Monmouth Beach)—All waters south and east of a line beginning on the northwesternmost point of land on Raccoon Island (in the vicinity of the western extent of Highland Ave.) in Monmouth Beach, and bearing approximately 056 degrees T (True North) to the southernmost point of a small unnamed island, and then bearing approximately 091 degrees T (True North) to its terminus on the northernmost point of land located at the northern extent of Monmouth Parkway in Monmouth Beach and all waters south of a line beginning on the western shoreline (just east of Monmouth Parkway in Monmouth Beach) and bearing approximately 081 degrees T (True North), intersecting Channel Marker Flashing Red 4 and Channel Marker Flashing Red 2 and terminating on the eastern shoreline of the Galilee section of Monmouth Beach.	SE1
NESHANIC RIVER (Reaville)—Entire length	FW2-NT
NORTON BROOK (Norton)—Entire length	FW2-TP(C1)
OAKDALE CREEK (Chester)—Entire length	FW2-TP(C1)
OAKEYS BROOK (Deans)—Entire length	FW2-NT
OCEANPORT CREEK	
(Fort Monmouth)—Source to a line beginning on the easternmost extent of Horseneck Point and bearing approximately 140 degrees T (True North) to its terminus on the westernmost extent of an unnamed point of land located at the westernmost extent of Monmouth Boulevard in Oceanport	FW2-NT/SE1
(Oceanport)—Creek downstream of line described above	SE1(C1)
PARKERS CREEK	
(Fort Monmouth)—Source to a line beginning on the easternmost extent of Horseneck Point and bearing approximately 000 degrees T (True North) to its terminus on Breezy Point on the Little Silver side (north) side of the creek.	FW2-NT/SE1
(Fort Monmouth)—Creek downstream of line described above	SE1(C1)
PEAPACK BROOK	
(Gladstone)—Entire length	FW2-TP(C1)
PETERS BROOK (Somerville)—Entire length	FW2-NT

PIGEON SWAMP (S. Brunswick)—All waters within the boundaries of Pigeon Swamp State Park	FW2-NT(C1)
PIKE RUN (Belle Meade)—Entire length	FW2-NT
PINE BROOK (Clarks Mills)—Entire length	FW2-NT
PINE BROOK (Cooks Mill)—Entire length	FW2-TM
PLEASANT RUN (Readington)—Entire length	FW2-NT
PRESCOTT BROOK (Stanton Station)—Entire length	FW2-TM
RAMANESSIN (HOP) BROOK (Holmdel)—Entire length	FW2-TM
RARITAN BAY—Entire drainage	FW2-NT/SE1
RARITAN RIVER	
NORTH BRANCH (Also see INDIA BROOK)	
(Pleasant Valley)—Source to, but not including, Ravine Lake	FW2-TP(C1)
(Far Hills)—Ravine Lake dam to Rt. 512 bridge	FW2-TM
(Bedminster)—Rt. 512 bridge to confluence with South Branch, Raritan River	FW2-NT
SOUTH BRANCH RARITAN RIVER	
(Mt. Olive)—Source to the dam that is 390 feet upstream of the Flanders-Drakestown Road bridge	FW2-NT(C1)
(Mt. Olive)—Dam to confluence with Turkey Brook	FW2-TM(C1)
(Naughright)—Confluence with Turkey Brook to confluence with Electric Brook	FW2-TP(C1)
(Clinton)—Confluence with Electric Brook to downstream end of Packers Island, except segment described separately, below	FW2-TM
(Ken Lockwood Gorge)—River and tributaries within Ken Lockwood Gorge Wildlife Management Area	FW2-TM(C1)
(Neshanic Sta.)—Downstream end of Packers Island to confluence with North Branch, Raritan River	FW2-NT
MAIN STEM RARITAN RIVER	
(Bound Brook)—From confluence of North and South Branches to Landing Lane bridge in New Brunswick and all freshwater tributaries downstream of Landing Lane bridge.	FW2-NT
(Sayreville)—Landing Lane bridge to Raritan Bay and all saline water tributaries	SE1
RINEHART BROOK (Hacklebarney)—Entire length	FW2-TP(C1)
ROCK BROOK (Montgomery)—Entire length	FW2-NT
ROCKAWAY CREEK	
NORTH BRANCH	
(Mountainville)—Source to Rt. 523 Bridge	FW2-TP(C1)
(Whitehouse)—Rt. 523 bridge to confluence with South Branch	FW2-TM
SOUTH BRANCH	
(Whitehouse)—Entire length	FW2-TM

MAIN STEM	
(Whitehouse)—Confluence of North and South Branches to Lamington River	FW2-NT
ROUND VALLEY RESERVOIR (Clinton)	FW2-TM
ROYCE BROOK (Manville)—Entire length	FW2-NT
SHREWSUBURY RIVER	
(Little Silver)—Source to Rt. 36 highway bridge	SE1(C1)
(Highlands)—Rt. 36 bridge to Sandy Hook bay	SE1
SIMONSON BROOK (Griggstown)—Entire length	FW2-NT
SIX MILE RUN (Franklin Church)—Entire length, except segment described below	FW2-NT
(Hillsborough)—Segment within the boundaries of Six Mile Run State Park	FW2-NT(C1)
SOUTH RIVER	
(Old Bridge)—Duhernal Lake to intake of the Sayreville Water Department.	FW2-NT
(Sayreville)—Below the intake of the Saryreville Water Department	SE1
SPOOKY BROOK (Bound Brook)	FW2-NT
SPRUCE RUN	
(Glen Gardner)—Source to, but not including, Spruce Run Reservoir	FW2-TP(C1)
(Clinton)—Spruce Run Reservoir dam to Raritan River, South Branch	FW2-TM
SPRUCE RUN RESERVOIR (Union)—Reservoir and tributaries	FW2-TM(C1)
STONY BROOK (Washington)—Entire length	FW2-TP(C1)
STONY BROOK	
(Hopewell)—Entire length, except that segment described below	FW2-NT
(Syndertown)—Brook and tributaries within Amwell Lake Wildlife Management Area	FW2-NT(C1)
STONY BROOK (Watchung)—Entire length	FW2-NT
SUN VALLEY BROOK (Mt. Olive)—Entire length	FW2-TP(C1)
SWIMMING RIVER	
(Red Bank)—Source to the intake of the Monmouth Consolidated Water Company at the Swimming River Reservoir dam	FW2-NT
(Red Bank)—Below the Swimming River Reservoir dam to the Navesink River	FW2-NT/SE1
TANNERS BROOK (Washington)—Entire length	FW2-NT(C1)
TEETERTOWN BROOK (Lebanon)—Entire length	FW2-TP(C1)
TEN MILE RUN (Franklin)—Entire length	FW2-NT
TENNENT BROOK (Old Bridge)—Entire length	FW2-NT
TEPEHEMUS BROOK (Manalapan)—Entire length	FW2-NT
TOWN NECK CREEK	
(Little Silver)—Source to a line beginning on the easternmost extent of the unnamed point of land located just east of Paag Circle on the south bank of Town Neck Creek and bearing approximately 095 degrees True North and terminating on Silver Point	FW2-NT/SE1
(Little Silver)—Creek below line described below	SE1(C1)
TROUT BROOK (Hacklebarney)—Entire length	FW2-TP(C1)
TURKEY BROOK (Mt. Olive)—Entire length	FW2-TP(C1)
WALNUT BROOK (Flemington)—Entire length	FW2-TM
WEAMACONK CREEK—See MATCHAPONIX BROOK	
WEMROCK BROOK	
(Millhurst)—Entire length, except that segment described below	FW2-NT
(Monmouth Battlefield State Park)—Those segments of the brook and its tributaries within the boundaries of Monmouth Battlefield State Park	FW2-NT(C1)
WEMROCK POND (Monmouth Battlefield State Park)	FW2-NT(C1)
WILLOUGHBY BROOK (Buffalo Hollow)—Entire length	FW2-TP(C1)
WILLOW BROOK (Holmdel)—Entire length	FW2-NT
YELLOW BROOK (Colts Neck)—Entire length	FW2-NT

(g) The surface water classifications in Table 5 are for waters of the Wallkill River Basin;

TABLE 5

WATER BODY	CLASSIFICATION
BEARFORT WATERS (Wawayanda)	FW2-NT(C1)
BEAVER RUN (Wantage)—Entire length	FW2-NT
BLACK CREEK	
(McAfee)—Source to Rt. 94 bridge, except those tributaries described separately, below	FW2-TM
(Vernon)—Rt. 94 bridge to Pochuck Creek	FW2-NT
TRIBUTARIES	
(Hamburg)—Three tributaries to Black Creek which originate in the Hamburg Mtn. Tract from their sources to the Tract Boundaries	FW1(tm)
(Rudeville)—Tributaries within the Hamburg Mtn. Tract not classified as FW1, above	FW2-TM(C1)
(McAfee)—Entire length	FW2-TP(C1)
(Vernon Valley)—Entire length	FW2-NT
CLOVE CREEK (Colesville)—Entire length	FW2-TM
CLOVE RIVER	
(Wantage)—Source to, but not including, Clove Acres Lake, except those tributaries described separately below	FW2-TM
(Sussex)—Clove Acres Lake to Papakating Creek	FW2-NT
(High Point)—Those portions of the two northern-most tributaries located entirely within High Point State Park boundaries, immediately east of Lake Marcia	FW1(tp)

FRANKLIN POND CREEK	
(Franklin)—Entire length, except those tributaries described separately, below	FW2-TM
(Hamburg Mtn.)—The first tributary, just south of Hamburg Mtn. flowing to the Wallkill River and located entirely within the Hamburg Mtn. Tract	FW1(tm)
(Hamburg Mtn.)—Tributaries within the Hamburg Mtn. Tract not classified as FW1 as described above	FW2-TM(C1)
GLENWOOD BROOK	
(Glenwood)—Outlet of Glenwood Lake to State line	FW2-TM
HAMBURG CREEK	
(Hamburg Mtn.)—Source to Rt. 517 bridge, Rudeville, except tributary described separately below	FW2-TM
(Hardistonville)—Rt. 517 bridge to Wallkill River	FW2-NT
(Hamburg Mtn.)—The third tributary just southwest of Hamburg Mtn. flowing toward the Wallkill River and located entirely within the Hamburg Mtn. Tract	FW1
HANFORD BROOK	
(Hanford)—Entire length within New Jersey	FW2-NT
LAKE LOOKOUT (Wawayanda)	FW2-NT(C1)
LAKE LOOKOUT BROOK	
(Wawayanda)—Brook and tributaries from source in Newark City Holdings, through the Wawayanda Tract, to confluence with the outlet stream from Lake Wawayanda	FW1
LAKE RUTHERFORD (Wantage)	FW1(tm)
LAUREL POND	
(Wawayanda)—Laurel Pond, including its outlet stream and tributaries, to the outlet stream from Lake Wawayanda	FW1
LIVINGSTON PONDS	
(Wawayanda)—The two northwestern ponds which are within State Park lands	FW2-NT(C1)
LONG HOUSE BROOK	
(Upper Greenwood Lake)—Source to State line, except segment described below	FW2-NT
(Upper Greenwood Lake)—Segment within the bounds of Hewitt State Forest	FW2-NT(C1)
LOUNSBERRY HOLLOW BROOK	
(Vernon Valley)—Outlet of Glenwood Lake to Pochuck Creek	FW2-TM
MUD POND OUTLET STREAM	
(Hamburg)—Outlet stream from the Pond, located within Hamburg Mtn. Tract	FW2-NT(C1)
PAPAKATING CREEK	
MAIN STEM	
(Frankford)—Source to Rt. 629 bridge	FW2-TM
(Pellettown)—Entire length of tributary	FW2-NT
(Wantage)—Rt. 629 bridge to Wallkill River	FW2-NT
WEST BRANCH	
(Wantage)—Entire length	FW2-NT
PARKER LAKE (Wawayanda)	FW2-NT(C1)
POCHUCK CREEK	
(Vernon)—Source to State line, except segment described separately below	FW2-NT
(High Point)—Segment within State Park lands	FW2-NT(C1)
QUARRYVILLE BROOK—See WILLOW BROOK	
RUTGERS CREEK (High Point)—The Cedar Swamp headwaters of the tributary to Rutgers Creek located entirely within the High Point State Park boundaries just south of the State line	FW1
SAND HILLS BROOK	
(Hamburg Mtn.)—The upstream portion of Sand Hills Brook located entirely within the boundaries of the Hamburg Mtn. Tract	FW1
(Hamburg)—Brook and tributaries beyond tract boundaries	FW2-NT
SAWMILL POND BROOK	
(W. Milford)—Entire length, except segment described separately below	FW2-NT
(Wawayanda)—Segment within the boundaries of Wawayanda State Park	FW2-NT(C1)
SPARTA GLEN BROOK	
(Sparta)—Entire length	FW2-TM
SPRING BROOK (Maple Grange)—Entire length	FW2-TP(C1)
TOWN BROOK (Vernon)—Entire length	FW2-TM
WALLKILL RIVER	
(Sparta)—Source to confluence with Sparta Glen Brook	FW2-NT
(Franklin)—Sparta Glen Brook to Rt. 23 bridge	FW2-TM
(Wantage)—Rt. 23 bridge to State line	FW2-NT
WANTAGE BROOK	
(Wantage)—Entire length	FW2-NT
WAWAYANDA CREEK	
(Vernon)—State line to Pochuck Creek, except unnamed tributary described below	FW2-TM
TRIBUTARY	
(Wawayanda)—Source to State line	FW2-NT
(Wawayanda)—Segment within State Park boundaries	FW2-NT(C1)
WAWAYANDA LAKE (Wawayanda)	FW2-TM(C1)
WILDCAT BROOK (Franklin)—Entire length	FW2-NT
WILLOW (QUARRYVILLE) BROOK	
(Wantage)—Entire length	FW2-TM

(h) FW1 waters are listed in Table 6 by tract within basins;

TABLE 6

ATLANTIC COASTAL PLAIN BASIN	
ALLAIRE STATE PARK	MANASQAUN RIVER WATERSHED Those portions of the first and second southerly tributaries to the Manasquan River, which are west of Hospital Rd. and are located entirely within the boundaries of Allaire State Park The easterly tributary to Mill Run upstream of Brisbane Lake, located entirely within the boundaries of Allaire State Park
BASS RIVER STATE FOREST	BASS RIVER WATERSHED Tommy's Branch from its headwaters downstream to the Bass River State Forest Recreation Area service road Falkenburg Branch of Lake Absegami from its headwaters to the Lake
GREENWOOD FOREST WILDLIFE MANAGEMENT AREA	CEDAR CREEK WATERSHED Webbs Mill Branch and tributaries, located entirely within the Greenwood Forest Wildlife Management Area boundaries Chamberlain's Branch from its origins to a point 1000 feet west of Route 539 Those portions of the tributaries to Chamberlain's Branch originating and wholly contained within the boundaries of the Greenwood Forest Wildlife Management Area WADING RIVER WATERSHED Westerly tributary to the Howardsville Cranberry Bog Reservoir and other tributaries that are located entirely within the boundaries of the Greenwood Forest Wildlife Management Area
ISLAND BEACH STATE PARK	BARNEGAT BAY WATERSHED All freshwater ponds in Island Beach State Park
LESTER G. MACNAMARA WILDLIFE MANAGEMENT AREA	GREAT EGG HARBOR RIVER WATERSHED Hawkins Creek and tributaries and the next adjacent, northern stream and tributaries that enter the Great Egg Harbor River, from their origins downstream to where the influence of impoundment begins
TUCKAHOE PUBLIC FISHING AND HUNTING GROUNDS	See LESTER G. MACNAMARA WILDLIFE MANAGEMENT AREA
WHARTON STATE FOREST	MULLICA RIVER WATERSHED Deep Run and tributaries from their headwaters downstream to Springer's Brook Skit Branch and tributaries from their headwaters downstream to the confluence with Robert's Branch Tulpehocken Creek and tributaries from their sources downstream to the confluence with Featherbed Branch The westerly tributaries to Tulpehocken Creek and those natural ponds within the lands bounded by Hawkins Rd., Hampton Gate Rd., and Sandy Ridge Rd. Stream in the southeasterly corner of Wharton State Forest, located between Ridge Rd. and Seaf Weeks Rd. downstream to the boundaries of Wharton State Forest. Brooks and tributaries immediately to the west of Tylertown and Crowleytown, from their headwaters downstream to the head of tide at mean high water The easterly branches of the Batsto River from Batsto Village to the confluence with Skits Branch Gun Branch from its headwaters downstream to U.S. Route 206
DELAWARE RIVER BASIN	
ALLAMUCHY STATE PARK	MUSCONETCONG RIVER WATERSHED All those tributaries to Deer Park Pond and its outlet stream, that are located entirely within the boundaries of Allamuchy State Park PEQUEST RIVER WATERSHED All tributaries that are located entirely within Allamuchy State Park and flow into Allamuchy Pond
BELLEPLAIN STATE FOREST	EAST CREEK WATERSHED All tributaries to Lake Nummi from their origins downstream to the Lake Those two tributaries to Savages Run and portions thereof downstream of Lake Nummi, which are located entirely within the Belleplain State Forest boundaries The stream and its tributaries that originate just south of East Creek Mill Rd., 1.2± miles north-northeast of Eldora, and are located entirely within the boundaries of Belleplain State Forest WEST CREEK WATERSHED The portion of the tributary to West Creek that originates about 0.9 miles southeast of Hoffman's Mill and is located entirely within the boundaries of Belleplain State Forest Eastern branch of the easterly tributary to Pickle Factory Pond from its origin to its confluence with the western branch

Those tributaries to the stream which enter West Creek approximately 0.5 miles upstream of Hoffman's Mill and which are located entirely within the boundaries of Belleplain State Forest

COLLIERS MILLS WILDLIFE MANAGEMENT AREA	CROSSWICKS CREEK WATERSHED All tributaries to Lahaway Creek originating in the Colliers Mills Wildlife Management Area north-northeast of Archers Corner, from their origins downstream to the boundaries of the Colliers Mills Wildlife Management Area.
DELAWARE WATER GAP NATIONAL RECREATION AREA	DELAWARE RIVER WATERSHED All tributaries to Flat Brook flowing from the Kittatinny Ridge and located entirely within the boundaries of the Delaware Water Gap National Recreation Area Rundle Brook upstream of Sussex County Route 615 Smith Ferry Brook Donkey's Corner Brook Sambo Island Brook and Pond Coppermine Brook in Pahaquarry Dunnfield Creek to Route I-80
DIX WILDLIFE MANAGEMENT AREA	MIDDLE MARSH CREEK WATERSHED All fresh waters which originate in and are located entirely within the boundaries of the Dix Wildlife Management Area
EDWARD G. BEVAN WILDLIFE MANAGEMENT AREA	MAURICE RIVER WATERSHED Joshua and Pine Branches of Buckshutem Creek to their confluences with Buckshutem Creek Gravelly Run downstream to the boundaries of the Edward G. Bevan Wildlife Management Area NANTUXENT CREEK WATERSHED Cedar and Mile Branches to Shaw's Mill Pond DIVIDING CREEK WATERSHED Those tributaries to Cedar Creek which originate in and are located entirely within the boundaries of the Edward G. Bevan Wildlife Management Area Those portions of tributaries to Dividing Creek, located entirely within the boundaries of the Edward G. Bevan Wildlife Management Area
FLATBROOK-ROY WILDLIFE MANAGEMENT AREA	FLAT BROOK WATERSHED The tributary to Little Flat Brook which originates north of the Bevans-Layton Rd., downstream to the first pond adjacent to the Fish and Game headquarters building Two tributaries to Big Flat Brook which originate along Struble Rd. in Stokes State Forest, downstream to the confluence with Big Flat Brook on Fish and Game property
GLASSBORO WILDLIFE MANAGEMENT AREA	MAURICE RIVER WATERSHED The portion of a branch of Little Ease Run situated immediately north of Stangor Avenue, and entirely within the Glassboro Wildlife Management Area First and second easterly tributaries to Little Ease Run north of Academy Road
HIGH POINT STATE PARK AND STOKES STATE FOREST	CLOVE BROOK WATERSHED The second and third northerly tributaries to Clove Brook, those tributaries to Steeny Kill Lake and those downstream of the Lake which originate in High Point State Park, downstream to the confluence with Clove Brook or to the boundaries of High Point State Park The northerly tributaries to Mill Brook due west of Steeny Kill Lake, within the High Point State Park boundaries FLAT BROOK WATERSHED All surface waters of the Flat Brook drainage within the boundaries of High Point State Park and Stokes State Forest except the following: (1) Saw Mill Pond and Big Flat Brook downstream; (2) Mashipacong Pond and its outlet stream (Parker Brook) to the confluence with Big Flat Brook; (3) Lake Wapalanne and its outlet stream to the confluence with Big Flat Brook; (4) Lake Ocquittunk and waters connecting it with Big Flat Brook; (5) Stony Lake and its outlet stream (Stony Brook) downstream to the confluence with the Big Flat Brook; (6) Kittatinny Lake, that portion of its inlet stream outside the Stokes State Forest boundaries, and its outlet stream, including the Shotwell Camping Area tributary, to the confluence with Big Flat Brook; (7) Deer Lake and its outlet stream to Lake Ashroe; (8) Lake Ashroe, the portions of its tributaries outside the Stokes State Forest boundaries, and its outlet stream to the confluence with Big Flat Brook; (9) Lake Shawanni and its outlet stream to the confluence with Big Flat Brook; (10) Crigger Brook and its tributary to the confluence with Big Flat Brook

	SHIMERS BROOK WATERSHED The portion of Shimers Brook and its tributaries that are located within the boundaries of High Point State Park
JOHNSONBURG NATURAL AREA	PEQUEST RIVER WATERSHED Mud Pond and its outlet stream, Bear Creek, to the Erie-Lackawanna Railroad trestle, north of Johnsonburg
LEBANON STATE FOREST	RANCOCAS CREEK WATERSHED Deer Park Branch and tributaries near Buckingham, downstream to the confluence with Pole Bridge Branch Tributaries to the South Branch of Mount Misery Brook located entirely within the boundaries of Lebanon State Forest Cooper Branch and tributaries downstream to Pakim Pond and those tributaries to Cooper Branch downstream of Pakim Pond that are located entirely within the boundaries of Lebanon State Forest Shinns Branch and tributaries located entirely within the boundaries of Lebanon State Forest Jade Run located entirely within the boundaries of Lebanon State Forest MacDonald's Branch and tributaries located entirely within the boundaries of Lebanon State Forest
MILLVILLE FISH AND GAME TRACT	See EDWARD G. BEVAN WILDLIFE MANAGEMENT AREA
PASADENA WILDLIFE MANAGEMENT AREA	RANCOCAS CREEK WATERSHED The two easterly branches of the South Branch of Mount Misery Brook, located entirely within the boundaries of the Pasadena Wildlife Management Area
PEASELEE WILDLIFE MANAGEMENT AREA	MAURICE RIVER WATERSHED Middle Branch of Muskee Creek from its origin to the boundaries of the Peaselee Wildlife Management Area Cedar Branch of the Manumuski River, from its origin to the boundaries of the Peaselee Wildlife Management Area Those portions of tributaries to Slab Branch located entirely within the boundaries of the Peaselee Wildlife Management Area
WASHINGTON CROSSING STATE PARK	STEELE RUN WATERSHED That portion of Steele Run which is located within the boundaries of Washington Crossing State Park and is upstream of New Jersey Rt. 29
WHITTINGHAM WILDLIFE MANAGEMENT AREA	PEQUEST RIVER WATERSHED Northwesterly tributaries to the Pequest River, including Big Spring, located within the boundaries of the Whittingham Wildlife Management Area southwest of Springdale, from their origins to their confluence with the Pequest River
WORTHINGTON STATE FOREST	DUNNFIELD CREEK WATERSHED Dunnfield Creek to I-80 Sunfish Pond, its outlet stream to the Delaware River and all unnamed waters located entirely within the boundaries of the Worthington State Forest
PASSAIC RIVER, HACKENSACK RIVER, NY HARBOR COMPLEX BASIN	
A.S. HEWITT STATE FOREST	WANAQUE RIVER WATERSHED Cooley Brook and tributaries located entirely within the boundaries of Hewitt State Forest Surprise Lake Green Brook and tributaries located entirely within the boundaries of Hewitt State Forest West Pond
BERKSHIRE VALLEY WILDLIFE MANAGEMENT AREA	ROCKAWAY RIVER WATERSHED Stephens Brook north of the boundaries of the Berkshire Valley Wildlife Management Area
CITY OF NEWARK HOLDINGS AND WAWAYANDA STATE PARK	PEQUANNOCK RIVER WATERSHED Northern tributary to Cedar Pond from its origin, downstream to about 1000 feet from the entrance into the pond Hanks Pond and all tributaries Tributary to Pequannock River at Green Pond Junction from its origin downstream to Route 23 Tributary joining the main stem of the Pequannock River 3500± feet southeast of the Sussex-Passaic County line, near Jefferson, from its origin to about 2000 feet upstream of the pond Pacack Brook and its tributaries upstream of Canistear Reservoir, located entirely within the boundaries of the Newark watershed and Wawayanda State Park Cherry Ridge Brook and its tributaries north of Canistear Reservoir, located entirely within the boundaries of the Newark watershed lands and Wawayanda State Park

	The southern branch of the easterly tributary to Canistear Reservoir Pequannock River and tributaries upstream of the confluence with Pacack Brook The northwestern tributary to Oak Ridge Reservoir The portion of the westerly tributary to Lake Stockholm Brook, from its origins to about 1000 feet south of the Route 23 Bridge, located entirely within the boundaries of the Newark watershed Lud-Day Brook downstream to its confluence with the southwestern outlet stream from Clinton Reservoir just upstream of the confluence of the outlet stream and a tributary from Camp Garfield Brook between Hamburg Turnpike and Vernon-Stockholm Road, downstream to its confluence with Lake Stockholm Brook, north of Rt. 23
RARITAN RIVER BASIN	NONE
WALLKILL RIVER BASIN	
CITY OF NEWARK HOLDINGS AND WAWAYANDA STATE	LAKE LOOKOUT BROOK WATERSHED Lake Lookout Brook and tributaries from its headwaters in the Newark City holdings, downstream through the State-owned Wawayanda State Park, to the confluence with the outlet stream from Lake Wawayanda
HAMBURG MOUNTAIN WILDLIFE MANAGEMENT AREA	SAND HILLS BROOK WATERSHED The upstream portion of Sand Hills Brook located entirely within the boundaries of the Hamburg Mtn. Wildlife Management Area BLACK CREEK WATERSHED All those portions of three tributaries to Black Creek originating in the Hamburg Mtn. Wildlife Management Area, from their origin downstream to the Management Area boundaries FRANKLIN POND CREEK WATERSHED The first tributary to Franklin Pond Creek just south of Hamburg Mountain, flowing toward the Wallkill River and located entirely within the Hamburg Mtn. Wildlife Management Area HAMBURG CREEK WATERSHED The third tributary just southwest of Hamburg Mountain, which flows toward the Wallkill River and is located entirely within the Hamburg Mtn. Wildlife Management Area
HIGH POINT STATE PARK	CLOVE RIVER WATERSHED Those portions of the two northernmost tributaries to Clove River which are located entirely within the boundaries of High Point State Park, and are immediately east of Lake Marcia RUTGERS CREEK WATERSHED The Cedar Swamp headwaters of the tributary to Rutgers Creek, located entirely within the boundaries of High Point State Park, just south of the New Jersey-New York state line
SUSSEX BOROUGH WATER SUPPLY LAND	LAKE RUTHERFORD WATERSHED Lake Rutherford, located northwest of Colesville
WAWAYANDA STATE PARK	LAUREL POND WATERSHED Laurel Pond, and its outlet stream and tributaries downstream to the outlet stream from Lake Wawayanda

(i) The following are the outstanding national resource waters of the State:

1. FW1 Waters; and

2. PL Waters.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1989-90 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: 023-88-06.

Proposal Number: PRN 1988-356.

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

August 9, 1988 at 7:30 P.M.
Assunpink Wildlife Conservation Center
Eldridge Road
Assunpink Wildlife Management Area
Robbinsville, New Jersey 08691

Submit comments by August 17, 1988 to:

Martin J. McHugh, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Fish Code states when, by what means, at which location, in what numbers, and at what sizes fish may be pursued, caught, killed or possessed.

The proposed amendments to N.J.A.C. 7:25-6 are as follows:

1. Opening day of the trout season has been set for April 8, 1989. All dates throughout the Code which are dependent on this date have been adjusted accordingly.

2. Chronic low water situations and habitat degradation has resulted in the reduction of the number of trout stockings in Flanders Brook, Rhinehart's Brook and Trout Brook (Morris County). In the case of Drake's Brook (Morris County), a large single in-season stocking has been split into two smaller in-season stockings.

3. Monksville Reservoir will be available for public fishing and will have been stocked with trout, in-season, in 1988. It will be stocked both pre-season and in-season in 1989.

4. Beaver Run Brook and Hardystonville Brook (Sussex County) have been deleted from the stocking list because of a lack of angler utilization.

5. It is anticipated that Merrill Creek Reservoir will be available for public fishing and will be stocked, in-season, in 1989.

6. Closed seasons on striped bass have been abolished in marine waters by legislation (N.J.S.A. 23:5-43, 44, 45, 46, 47 and 48, effective June 28, 1985) and it was deemed appropriate that the freshwater rules be made consistent with the marine rules.

7. A size limit reduction on the striped bass X white bass hybrid has been recommended to allow for a more productive utilization of this fishery. As this is a hybrid species which does not reproduce itself in the wild, a size limit is not needed to protect a spawning population. Hybrids from the 1986 stockings will be measuring 16 inches and above in 1988 and at this size they make for an attractive fishery that should be utilized.

8. Ice fishing rules at Greenwood Lake have been made consistent with the New York State regulations for that lake. Currently, New York State anglers have an advantage over New Jersey anglers on this bi-state lake as the New Yorkers are allowed to use five tip-ups and two hand-held rods for taking fish through the ice while the New Jersey angler is limited to five devices in total. Also, a description of the ice fishing season as "ice-in to ice-out" is more logical than the use of the dates (for example, November 15 to April 30) which often are inappropriate in light of prevailing weather conditions.

9. The Department has determined that is is unnecessary to include the statement at N.J.A.C. 7:25-6.1(d) providing for annual supersession of the Fish Code. Pursuant to Executive Order No. 66(1978) and its implementation pursuant to N.J.A.C. 1:30-4.4, the Fish Code and all other subchapters in N.J.A.C. 7:25 expire on February 18, 1991. Therefore, it is incorrect and inappropriate to provide for the supersession of the entire Fish Code when only certain portions are revised through the annual amendatory process.

10. The intent of N.J.A.C. 7:25-6.8(c) was to regulate the netting of fish only from those waters previously covered by the now repealed N.J.S.A. 23:9-22. This section only applied to the portions of the tributaries ". . . wherein the tide ebbs and flows."

Social Impact

The removal of waters from the trout stocking list invariably draws opposition from anglers who regularly fish them. In the cases created by these proposed amendments, such opposition is expected to be minimal because the Bureau of Freshwater Fisheries survey had found so few anglers utilizing these waters. The Fish and Game Council has determined that in order to maximize recreational utilization of the resource and the public benefit, the trout stocked in these streams should be redistributed to waters which have a greater potential for satisfying public demand for trout fishing, such as Monksville Reservoir and Merrill Creek Reservoir which are now available for fishing.

The other changes in the rules, as compared to those adopted for 1988-1989, are of a minor nature and expected to be unobjectionable.

Economic Impact

No specific, significant economic impact or detriment is foreseen arising 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. Annual revisions to the Fish Code ensure the maximizing of the recreational potential and the preservation and maintenance of the resource as changes in that 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. [1988-89]**1989-90** FISH CODE

7:25-6.1 General provisions

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

[(d) This Code, when adopted and when effective, shall supersede the provisions of the 1987-88 Fish Code.]

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

(a) The trout season for [1988] **1989** shall commence 12:01 A.M. January 1, [1988] **1989** and extend to midnight March [13, 1988] **19, 1989**. The trout season shall re-open at 8:00 A.M. Saturday, April [2, 1988] **8, 1989** and extend to include March [29, 1989] **18, 1990**. (See separate [regulations] **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.)

(b) It shall be unlawful to fish for any species of fish from midnight of the [13th] **19th** of March to 8:00 A.M. on April [2, 1988] **8, 1989** in ponds, lakes or those portions of streams that are listed herein for stocking during [1988] **1989**. (See separate [regulations] **rules** for Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake and Wawayanda Lake.)

(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. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [8, 15, 22, 29; May 6, 13, 20, 27] **14, 21, 28; May 5, 12, 19, 26**;

2. Black River—Route 206, Chester at Dam to lower end of Hacklebarney State Park—April [7, 14, 21, 28; May 5, 12, 19] **13, 20, 27; May 4, 11, 18, 25**;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [4, 11, 18, 25; May 2, 9, 16] **10, 17, 24; May 1, 8, 15, 22**;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [4, 11, 18, 25; May 2, 9, 16] **10, 17, 24; May 1, 8, 15, 22**;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [4, 11, 18, 25; May 2, 9, 16] **10, 17, 24; May 1, 8, 15, 22**;

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [8, 15, 22, 29; May 6, 13, 20] **14, 21, 28; May 5, 12, 19, 26**;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Delaware River—April [7, 14, 21, 28; May 5, 12, 19] **13, 20, 27; May 4, 11, 18, 25**;

8. Pequest River—Source to Delaware River—April [8, 15, 22, 29; May 6, 13, 20] **14, 21, 28; May 5, 12, 19, 26**;

9. Pohatcong Creek—Route 31 to Delaware River—April [5, 12, 19, 26; May 3, 10, 17] **11, 18, 25; May 2, 9, 16, 23**;

10. Ramapo River—State line to Pompton Lake—April [7, 14, 21, 28; May 5, 12] **13, 20, 27; May 4, 11, 18**;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [6, 13, 20, 27; May 4, 11, 18] **12, 19, 26; May 3, 10, 17, 24**;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [5, 12, 19, 26; May 3, 10, 17] **11, 18, 25; May 2, 9, 16, 23**;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [4, 11, 18, 25; May 2, 9, 16] **10, 17, 24; May 1, 8, 15, 22**;

14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April [4, 11, 18, 25; May 2, 9, 16] **10, 17, 24; May 1, 8, 15, 22**;

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April [4, 11, 18, 25; May 2, 9, 16] **10, 17, 24; May 1, 8, 15, 22**; and

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April [8, 15, 22, 29; May 6, 13, 20] **14, 21, 28; May 5, 12, 19, 26**.

(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 (figures in parentheses indicates the anticipated number of stockings to be carried out from April [4] **11** through May [20;] **31):**

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

1.-13. (No change.)

14. Morris County

Beaver Brook—Rockaway, entire length—(3)
Burnham Park Pond—Morristown—(1)
Drakes Brook—Flanders, entire length—[(1)] **(2)**
Flanders Brook—Mt. Olive, entire length—[(3)] **(2)**
Hibernia Brook—Hibernia, entire length—(4)
India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)
Lake Hopatcong—Lake Hopatcong—(2)
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)
Rhinehart's Brook—Hacklebarney State Park, entire length—[(2)] **(1)**
Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(3)
Speedwell Lake—Morristown—(2)
Trout Brook—Hacklebarney State Park, entire length—[(2)] **(1)**
Whippany River—[Washington Valley Road] **Tingley Road, Morris Township**, to Rt. 202, Morristown—(3)

15. (No change.)

16. Passaic County

Barbour's Pond—West Paterson—(2)
Clinton Reservoir—Newark Watershed—(2)
Greenwood Lake—West Milford—(3)
Monksville Reservoir—Hewitt—(3)
Oldham Pond—North Haledon—(2)
Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—(3)
Pompton Lake—Pompton Lakes—(2)
Pompton River—Pompton Lake to Newark—Paterson Turnpike—(6)
Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)
Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)

17.-18. (No change.)

19. Sussex County

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

20. (No change.)

21. Warren County

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

(g) (No change.)

(h) No person shall 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 [2, 1988] **8, 1989** until midnight May 31, [1988] **1989**, or more than four of these species during the periods of January 1, [1988] **1989** to midnight March [13, 1988] **19, 1989** and June 1, [1988] **1989** through midnight March [19, 1989] **18, 1990** except as designated for specially regulated trout fishing areas.

(i) 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 [13, 1988] **19, 1989** and extending to 8:00 A.M., April [2, 1988] **8, 1989**, must be returned to the water immediately and unharmed.

7:25-6.3 Fly-fishing waters

(a) From 5:00 A.M. on Monday, April [11, 1988] **17, 1989** to and including November 30, [1988] **1989** 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, [1988] **1989** to midnight March [13, 1988] **19, 1989** and from 8:00 A.M. on April [2, 1988] **8, 1989** to midnight, March [19, 1989] **18, 1990**, 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) (No change.)

(d) The following [regulations] **rules** shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than six trout may be killed daily during the April [4] **8** through May 31 portion of the season; at other times the limit is four.

i. (No change.)

3.-5. (No change.)

7:25-6.4 (No change.)

7:25-6.5 Pequest Trout Conservation Area

(a) (No change.)

(b) During the period of May [30] **29** through October [2] **1**, the following [regulations] **rules** shall apply to the above designated Pequest River Trout Conservation Area:

1.-5. (No change.)

7:25-6.6 Round Valley Reservoir

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

(d) The season for lake trout shall extend from 12:01 A.M. January 1 to midnight September 30 [1988] **1989**.

(e)-(f) (No change.)

7:25-6.7 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 [14] **20** 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 Nets

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

(c) In the **tidal** waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls[,] and Birch Creek:

1.-8. (No change.)

(d) (No change.)

7:25-6.9 (No change.)

7:25-6.10 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 [in and upstream of any impoundment or inland lake or pond. The season for the taking of striped bass from all other fresh waters is March 1 to December 31]. (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate [regulations] **rules**.)

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

(n) The minimum length for striped bass shall be 33 inches and the minimum length for their hybrids shall be [18] **16** inches. The daily bag and possession limit for either shall be two.

7:25-6.11 through 6.14 (No change.)

7:25-6.15 Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following [regulations] **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. (No change.)

2. On Greenwood Lake, it shall be [illegal] **legal** for any ice fisherman to use [at any time more than five devices] **up to five tip-ups and two hand-held devices** for the taking of fish. All devices that are not hand-held must be plainly marked with the name and address of the angler. The ice fishing season is [November 15 to the next following April 30] **from ice-in to ice-out (when ice is present in a sufficient quantity to support fishing activities)**.

3.-5. (No change.)

7:25-6.16 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following [regulations] **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 [2] **8**-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	[March 1-Dec. 31] **No closed season**	33 inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed—endangered species		
All other freshwater species	No closed season	No minimum	No limit

2.-7. (No change.)

7:25-6.17 and 6.18 (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Vehicular Fuels

Proposed New Rules: N.J.A.C. 7:27-25

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 022-88-06.

Proposal Number: PRN 1988-357.

A **public hearing** concerning these proposed new rules will be held on:
August 18, 1988 from 10:00 A.M. to 12:00 P.M. and 1:00 P.M. to 4:00 P.M.
Lewis Herrman Labor Education Building
Ryders Lane
Cook College Campus
Rutgers University
New Brunswick, New Jersey 08903

Submit comments by August 19, 1988 to:
Gary J. Brower, Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The Department has prepared a basis and background document for the proposed new rules. Requests for copies of the basis and background document should be addressed to:
William O'Sullivan, Assistant Director
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625

Copies of this notice, of the proposed new rule and of the basis and background document are being deposited and will be available for inspection during normal office hours until August 19, 1988 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, New Jersey 08330

Burlington County Health Department
Woodlane Road
Mount Holly, New Jersey 08060

Hudson Regional Health Commission
215 Harrison Avenue
Harrison, New Jersey 07029

Middlesex County Air Pollution Control Program
280 Hobart Street
Room #518
Perth Amboy, New Jersey 08861

Warren County Health Department
151 Washington Avenue
Washington, New Jersey 07882

New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street
Second Floor
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Northern Regional Office
1259 Route #46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 East Clementon Road
Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Twin Rivers Professional Building
Route #33
East Windsor, New Jersey 08520

This subchpater will become operative 60 days after adoption by the Commissioner (See N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing to add a subchapter to N.J.S.C. 7:27. entitled. "Control and Prohibition of Air Pollution by Vehicular Fuels", hereinafer referred to as "subchapter 25", to regulate and reduce the volatility of gasoline as part of a continuing effort to attain the National Ambient Air Standard (NAAQS) for ozone.

Ozone is formed from the reaction of volatile organic substances (VOS) with oxides of nitrogen and is activitated by the ultraviolt radiation in sunlight. During the late spring and summer, the concentration of ozone in the ambient air in New Jersey often exceeds the NAAQS established to protect human health and welfare. This standard was exceeded on 32 days between May and August of 1987 in New Jersey.

Since the early 1970's, when the United States Environmental Protection Agency (USEPA) promulgated regulations requiring the phasedown of tetraethyl lead as a gasoline additive, summertime gasoline volatility has increased from about 9.0 pounds per square inch (psi) Reid vapor pressure (RVP) to 11.5 psi RVP in the northeastern United States. This has resulted in increasing evaporative emissions of VOS from motor vehicles, gasoline transfer operations and storage facilities throughout the entire gasoline distribution system.

The economic advantage to refiners of increasing gasoline volatility combined with technological advances in motor vehicle design which tolerate higher volatility make it probable that, left unchecked, the volatility of gasoline will continue to increase.

By reducing evaporative VOS emissions, the proposed new rules will reduce the concentration of ozone in the ambient air. It is estimated that during the effective period of these rules, evaporative emissions of gasoline will be reduced by 152 tons per day, corresponding to 15 percent of New Jersey total VOS emission inventory.

Both the USEPA and the Northeast States for Coordinated Air Use Management (NESCAUM), of which New Jersey is a member, have studied the potential benefits of reducing the volatility of gasoline.

The USEPA published a Notice of Proposed Rulemaking in the August 19, 1987 Federal Register at 52 FR 31274 proclaiming its intent to restrict the volatility of gasoline. It held a public hearing in October 1987. After two extensions, the period for public comment was closed in February 1988. Due to the extensive amount of testimony received during the public comment period, limited USEPA resources for reviewing and responding to those comments, and the fact that the proposed gasoline volatility regulation is administratively tied to USEPA's onboard vapor recovery proposal, USEPA's schedule for implementing its proposed gasoline volatility regulation may be delayed.

In addition to concerns over possible delays in implementation of Federal controls, the Department desired to structure its proposed new rules to more closely address the specific conditions and concerns facing the State and the Northeast region. This approach has resulted in some variations from the proposed USEPA regulation. Most significantly, the Department's proposed new rules expand the season covered by the rules from the May 16 through September 15 proposed by USEPA to May 1 through September 15 in response to recorded violations of the NAAQS for ozone in the region prior to May 16 and requires volatility to be more rapidly reduced than the proposal made by USEPA. The Department feels its proposed new rules are both appropriate and necessary for the State. The Basis and Background document available for these proposed new rules should be consulted for further documentation explaining the parameters chosen.

The Department is committed to reducing the concentration of ozone in the ambient air. Commitments were made in the State implementation plan to implement strategies to control the emission of VOS to the atmosphere. Even though many of these control measures have been implemented, their benefit has been offset by a corresponding increase in gasoline volatility. The gasoline volatility limits proposed here will prevent approximately 21,000 tons of gasoline vapor from being emitted to the atmosphere from the gasoline distribution system and from the fuel systems of motor vehicles. This reduction in the emission of gasoline vapors is expected to provide significant progress toward achieving attainment of the NAAQS for ozone.

Subchapter 25 establishes, at N.J.A.C. 7:27-25.3, a limitation of 9.0 psi RVP on the maximum allowable volatility of gasoline during the ozone-producing season of May 1 through September 15. This limitation will be effective beginning with the 1989 season. The subchapter additionally specifies, at N.J.A.C. 7:27-25.4, record keeping and testing requirements to be followed by those subject to these rules.

Social Impact

These proposed new rules will have a positive social impact by contributing to the attainment of the NAAQS for ozone. The proposed gasoline volatility limits are designed to control emissions of organic substances which are part of a mixture of pollutants that react in the air to form ozone. The Federal government has established a NAAQS of 0.12 parts per million for ozone, a standard which is regularly exceeded during the summer in New Jersey. During the summer of 1987, the ozone NAAQS was exceeded on 32 days between May and August.

Ozone is a powerful oxidant, and as such reacts readily with a wide range of substances. In humans, ozone irritates the respiratory system and reduces lung functions. Laboratory studies suggest that it may damage lung and other tissue. There is concern that this damage can impair breathing and reduce immunity to disease for people in good health, and the effect may be more severe for people with pre-existing respiratory diseases. Thus, violation of the NAAQS is considered a serious public health concern. The proposed rules will greatly contribute to alleviating these concerns.

Another benefit of reducing gasoline volatility is increased vehicle driveability. In the northeastern United States, the volatility of gasoline has reached, and in some cases exceeded, the limit recommended by the American Society for Testing of Materials (ASTM). Although during the same period vehicles have been designed to run satisfactorily on higher volatility fuels, there is evidence which suggests that the current fuel volatility has increased beyond the design point of many vehicles in service. Some vehicles experience varying levels of vapor lock and fuel foaming, both of which are caused by high violatility, and both of which cause vehicle surge, hesitation, power sags, engine stalling, difficulty or failure to start. This poor engine performance in turn results in a severe increase in vehicle exhaust emissions.

Economic Impact

The proposed new rules are expected to increase the cost of manufacturing gasoline for petroleum refiners. These costs are related to: the elimination of butane as a final blending component of gasoline; capital expenditures to build the refining capacity needed to produce a lower volatility gasoline; increased crude oil purchases and refining to compensate for the volume of butane removed from the blending process; costs of disposing of excess butane; and changes in the gasoline distribution system.

Distributors will be affected by increased recordkeeping requirements and the expense of determining the Reid vapor pressure of their product.

It is expected the expense of comply with these rules to the refiners, distributors and retailers will be passed on to the consumer through an increase in retail price. The estimated increase is 1.5 cents per gallon of gasoline or a cost of approximately $2,000/ton of emission reduction.

The consumer will, however, also see some economic benefits. A lower volatility gasoline means less loss by evaporation, leaving more available to be consumed as fuel by the motor vehicle. In addition, by reducing the volatility of gasoline by removing butane and replacing it with other fuel components, the energy content of the gasoline will increase, providing increased vehicle fuel economy. In other words, a car will travel further on a tankful of a less volatile gasoline.

Environmental Impact

The implementation of these rules will result in a positive environmental impact by reducing the concentration of ozone in the ambient air. Evaporative hydrocarbon emissions from gasoline-related sources are volatile VOS's, and as such they contribute substantially to the formation of ozone (and other photochemical oxidants) in the atmospheric. Ozone formation is most active during the summer months because the chemical reactions involved require direct sunlight and high ambient temperatures.

Oxidation by ozone and other photochemical oxidants has been shown to impair plant tissue and reduce the yield of some crops. Injury from excessive ozone in the environment manifests itself in foliar damage with subsequent effects including reduced plant growth and decreased crop yield. The proposed rules will help decrease foliar damage and its subsequent effects by reducing the ambient ozone concentration.

Oxidation by ozone has been shown to increase the rate of degradation of natural and man made materials including rubber, textiles, dyes and paints as compared to oxidation by atmospheric oxygen alone. Damage to materials by ozone can occur in a variety of forms including increased rates of surface erosion, corrosion of metals and electrical components, discoloration of paint, fading and reduction of tensile strength of fabrics, and soiling and spalling of non-metallic building materials. Additionally, natural rubbers and synthetic polymers have been shown to become hard and brittle at an increased rate from ozone oxidation. The reductions in ozone achievable through the control of fuel volatility are expected to reduce the rate of degradation.

Regulatory Flexibility Statement

These rules would apply to all facilities that refine, import, sell, store or distribute gasoline in New Jersey. It is estimated that of the facilities affected by these rules, 1,000 retailers and 15 distributors are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The small businesses affected by these rules are some of the independent gasoline distributors and retailers.

For distributors, the proposed rules will require the added expense of additional recordkeeping and out testing of the Reid vapor pressure (RVP) of outgoing gasoline. Once the gasoline sample is obtained, the laboratory analysis costs approximately $90.00 per sample.

For retailers, the expense of complying with these rules are minimal. They are required to maintain records and allow the Department to take gasoline samples from their retail outlet. The information requested by the rules is easily available and, in most cases, already recorded by the retailer.

In developing these rules, the Department has balanced the need to protect the environment against the economic impact of the rules and has determined that the effect of the rules on small businesses is reasonable; therefore, no exemption from coverage is provided.

Full text of the proposal follows:

SUBCHAPTERS 19 THROUGH 24. (RESERVED)

SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

7:27-25.1 Applicability

This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. The following shall govern the volatility standards for fuels used and provided for use in the State and the methods to be followed by refiners, distributors, wholesale purchaser-consumers and retailers to assure these standards are met.

7:27-25.2 Definitions

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

"Crude oil" means a petroleum liquid removed from the earth and not previously used, including, but not limited to, partially refined oil.

"Department" means the New Jersey Department of Environmental Protection.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any refinery or importer and any retail outlet or wholesale purchaser-consumer.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) or greater and which is used as a motor vehicle fuel.

"Importer" means a person who imports gasoline from a foreign country into the United States.

"Motor vehicle" means all vehicles propelled by an internal combustion engine, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies as well as individuals, and shall also include political subdivisions of the State or any agencies or instrumentalities thereof.

"Petroleum distillate" means any mixture of volatile organic substances produced by a refining process, including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

"Reid vapor pressure" (RVP) means the absolute vapor pressure of a petroleum product at 100 degrees Fahrenheit (37.8 degrees Centigrade) as measured by the standard test method set forth in the American Society for Testing of Materials (ASTM) Designation D-176 or Department approved equivalent.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

"Refinery" means a facility which carries out refining processes.

"Refining process" means the combination of physical and chemical operations, including but not limited to distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products.

"Retail outlet" means any establishment at which gasoline is provided, sold, or offered for sale directly for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees Centigrade) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"State" means the State of New Jersey.

"Vapor" means the gaseous form of substances which, under standard conditions, are in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

"Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

"Wholesale purchaser-consumer" means any person that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least a 550 gallon capacity substantially under the control of that person.

7:27-25.3 Gasoline volatility standards

No refiner, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the period May 1 through September 15 of each year starting in 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

7:27-25.4 Recordkeeping and testing

(a) Each refiner or distributor shall:

1. Between April 15 and September 1 of each year, test and document the RVP of all gasoline as it leaves the refinery or distribution facility for use in the State. A copy of this documentation shall be provided to the distributor, retailer or wholesale purchaser-consumer to whom the gasoline is delivered.

2. Maintain records regarding the gasoline leaving the facility, including Reid vapor pressure, shipment quantity, shipment date, and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records regarding each delivery of gasoline, including Reid vapor pressure, delivery quantity, date of delivery, and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets and loading tickets.

(c) All sampling of gasoline required pursuant to the provision of this subchapter shall be conducted by the following methods or by an equivalent method approved by the Department based on a study of comparability data. Such data shall compare the performance of the proposed alternative test procedure to the performance of the approved test procedures.

1. For manual sampling, ASTM D-4057; and

2. For continuous sampling, California Administrative Code Title 13, R.2261(k)(3)(1987).

(d) All testing pursuant to the provisions of this subchapter shall be conducted using the standard test method set forth in ASTM Designation D-176 or an equivalent method approved by the Department based on a study of comparability data. Such data shall compare the performance of the proposed alternative test procedure to the performance of the approved test procedures.

(e) All records and documentation shall be maintained for not less than three years, and shall, upon request of the Department be available for review.

7:27-25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of gasoline being provided, stored, transported, exchanged in trade, sold, or offered for sale at that refinery, retail, wholesale purchaser-consumer or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

HEALTH

(a)

FACILITIES RATE SETTING
Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Proposed Amendments: N.J.A.C. 8:31A-7.2, 7.4, 7.5 and 7.11

Authorized By: Thomas A. Burke, Ph.D., M.P.H. Acting Commissioner, Department of Health, with approval of the Health Care Administration Board.

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

Proposal Number: PRN 1988-347.

Submit written comments by August 17, 1988 to:
Charles J. O'Donnell, Director
Health Facilities Rate Setting
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Current Hospital Rate Review Guidelines (SHARE Manual) were developed and implemented to determine that costs currently incurred are reasonable for the level of service provided and increases in those costs are reasonable. This criteria can only be applied to existing SHARE hospitals.

In response to recent and anticipated openings of hospitals not now reimbursed under SHARE, the New Jersey State Department of Health (NJDOH) has developed a methodology to provide for reasonable payment by hospital services corporations and government agencies for health care services provided by a hospital.

This methodology provides for reasonable reimbursement, based on median unit costs of existing hospitals and an orderly transition period utilizing:

1. Statewde median unit costs at 80 percent occupancy;
2. Certificate of Need approved capital costs; and
3. Multi-year phase-in to existing methodology.

The amendments proposed define the reimbursement method for those hospitals made part of the SHARE program since January 1, 1986 so that standards applied to these hospitals will be consistent with established principles and standards of SHARE reimbursement. The application of the rules to these hospitals will not impact on the final rates established for current SHARE facilities, thereby insuring consistency within the SHARE system. This application will not affect the rates for more than one or two SHARE facilities.

Social Impact

The proposed amendments were precipitated because of the uncertainty of the reimbursement methodology for new SHARE providers. This will alleviate conflicting interpretations of existing rules.

By insuring reasonable reimbursements to providers, the affected patient population (Medicaid and Blue Cross subscribers) will benefit from the certainty of the funding. This may encourage a greater number of facilities willing to accept Medicaid and Blue Cross payments under SHARE.

Economic Impact

The proposed amendments define the reimbursement for new SHARE facilities, which is beneficial for new providers. This will provide the orderly entry or transition into the Standard Hospital Accounting and Rate Evaluation (SHARE) reimbursement program for Specialized and Rehabilitation Hospitals. It will enable facilities to plan their budgetary and revenue projections. This certainty will also be beneficial to the two SHARE payers, Blue Cross and Medicaid.

The amendments insure a reasonable reimbursement to new SHARE providers, thereby placing them on a comparable peer reimbursement level with all other SHARE facilities.

Regulatory Flexibility Statement

The proposed amendments apply to Specialized and Rehabilitation Hospitals not covered under N.J.A.C. 8:31B-1 et seq., which have no historical base year statistics or costs or "Approved Rate" described in 8:31A-7.2 of the Hospital Rate Review Guidelines.

Although it cannot be known with certainty, since these amendments will apply to future health care providers, it is anticipated that these hospitals will employ more than 100 full-time employees and, therefore, do not fall into the category of small businesses defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (P.L. 1986 c.1969).

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

8:31A-7.2 Hospital Rate Review Guidelines

(a) The Commissioner of Health, pursuant to the authority of N.J.S.A. 17:2H-1 et seq. and with the approval of the Health Care Administration Board, adopts the following rules concerning the rate review for Specialized and Rehabilitation Hospitals.

1.-2. (No change.)

3. Definitions:

...

"Alternate Rate" means the rate determined by applying these rate review guidelines to the lower of the base year actual costs or base year approved costs, **or the Methodology for new or non-SHARE base year hospitals,** as described in N.J.A.C. 8:31A-7.5 and all subsequent sections.

...

4. (No change.)

8:31A-7.4 Methodology for Calculating Global Rates

(a) Global Rate will be developed from the hospital's prior year Global Rate **or from the Methodology for new or non-SHARE base year hospitals described in N.J.A.C. 8:31A-7.5(c)**, established pursuant to the SHARE Guidelines. Acceptance of the Global Rate shall constitute a waiver of any Right of Appeal concerning the rate and no adjustments to any prior rate shall affect the Global Rate.

1.-7. (No change.)

(b) (No change.)

8:31A-7.5 Methodology for Alternate Rates

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

(c) For hospitals with no historical statistics and costs in the base year and which do not have an "Approved Rate" in accordance with N.J.A.C. 8:31A-7.2 of the Hospital Rate Review Guidelines, the Alternate rate will be developed from equalized median unit costs from base year actual costs in accordance with Appendix A cost centers, peer groups and units of service; and base year median cost per admission for the Other Physical Medicine and the Education and Research cost centers. Certificate of Need square feet projections will be utilized as the units of service for the Plant and Housekeeping cost centers. Depreciation and lease costs reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application. Interest expense on long-term debt reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application.

1. During the median methodology years an occupancy rate of 80 percent and projected admissions and plant square feet, adjusted for the period of operation in a calendar year, will be applied to the median unit costs to develop covered inpatient costs (CIP) and an approved per diem. The approved CIP base year costs will be adjusted to actual occupancy for the period of operation for the calculation of subsequent year rates. Median methodology years will be calculated as follows:

i. Year 1 is the initial period of operation of 12 calendar months or less. The SHARE base year median methodology described in N.J.A.C. 8:31A-7.2(a) and 8:31A-7.6(b-3i) will be used to establish the Year 1 Alternate Rate.

ii. The Year 2 rate is an Alternate Rate based on the Year 1 Alternate Rate adjusted for measured inflation as described in N.J.A.C. 8:31A-7.9 and a management adjustment of two percent.

iii. The Year 3 Global Rate will be developed from the Year 2 Alternate Rate, in accordance with N.J.A.C. 8:31A-7.4, if a facility has an initial period of operation of 12 complete calendar months in Year 1. The Year 3 Alternate Rate will be developed in accordance with 8:31A-7.6 unless 8:31A-7.5(c) applies.

1. If a facility in Year 1 did not have an initial period of operation of 12 complete calendar months in Year 1, a Year 2 Global Rate will not be developed but a Year 3 Alternate Rate will be developed from Year 2 Approved Covered Inpatient Costs (CIP) adjusted for measured inflation and a management adjustment of two percent.

iv. The Year 4 Global Rate will be developed from the Year 3 Global or Alternate Rate in accordance with 8:31A-7.4. The Alternate Rate will be developed in accordance with 8:31A-7.6.

v. Rate Appeals Process during the Median Methodology years will be as follows:

(1) Hospitals with an initial period of operation in Year 1 of 12 complete calendar months, (January through December) may reject the Global Rate in Year 3 and elect the Alternate Rate and pursue an appeals process described in 8:31A-7.5 and 8:31A-7.13.

(2) Hospitals with an initial period of operation in Year 1 of less than 12 complete calendar months, (January through December) may reject the Global Rate in Year 4 and elect the Alternate Rate and pursue an appeals process described in 8:31A-7.5 and 8:31A-7.13.

8:31A-7.11 Reasonableness Tests—Education/Physician Coverage
(a)-(b) (No change.)

(c) Physician Compensation for new or non-SHARE base year hospitals will be reimbursed the median physician hours per patient day from base year actual costs at 80 percent occupancy applied to the median average physician compensation in accordance with N.J.A.C. 8:31A-7.11(b).

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Scholarships
Academic Requirements; Eligibility Requirements; Award Amounts

Proposed Repeal and New Rule: N.J.A.C. 9:7-4.2.
Proposed Amendment: N.J.A.C. 9:7-4.3.
Proposed New Rule: N.J.A.C. 9:7-4.4.

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-26.5, 18A:71-26.6, 18A:71-26.8, 18A:71-26.10, and 18A:71-26.12.

Proposal Number: PRN 1988-353.

Submit comments by August 17, 1988 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Revisions to the rules under this subchapter, N.J.A.C. 9:7-4, were recently adopted in the July 5, 1988 New Jersey Register at 20 N.J.R. 1558(a).

Due to recent court decisions regarding administrative rules, the language in several of the rules has been amended to incorporate more specificity concerning the academic and eligibility requirements as well as award benefits of the program. Pursuant to N.J.A.C. 1:30-4.3, it is necessary to republish several sections of this subchapter for an additional public comment period in order to adopt the changes desired by the Student Assistance Board.

The proposed repeal, new rules, and amendment outline the specific academic requirements under the new consolidated Garden State Scholarship Program in order for students to qualify as Distinguished Scholars, Urban Scholars, or as Garden State Scholars in general utilizing secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores or the appropriate equivalent from the American College Testing (ACT) Program. The new rules also specify the award amounts for which each category of scholars may qualify based strictly on their academic performance as well as supplemental scholarship awards when financial need is taken into consideration. Under the proposed amendment to the eligibility requirements, additional information is given relating to the types of awards which may not be received by students simultaneously.

Social Impact

The proposed repeal, new rules, and amendment complement existing rules under the consolidated Garden State Scholarship Program by providing further clarification and specific information concerning the academic requirements, award amounts, and eligibility requirements in qualifying for these awards. The proposed new rules allow students to clearly recognize their eligibility as scholars based on their academic achievements as New Jersey secondary school students. Scholarships are granted to assist these students in meeting their undergraduate educational costs at New Jersey colleges and universities and supplemental awards are also available depending upon the student's financial need. New Jersey institutions will be guaranteed payments for all scholarship recipients enrolled at each institution. The broad range of eligibility requirements and the collection of class rank and Scholastic Aptitude Test (SAT) data by the Office of Grants and Scholarships will provide the opportunity for all New Jersey colleges and universities to participate fully in the scholarship programs.

Economic Impact

Under the single Garden State Scholarship Program, the highest achieving students will be recognized as Distinguished Scholars and will receive annual awards valued at $1,000 and other high achieving students from Type A and B school districts (urban scholars) will also be recognized as Distinguished Scholars and will receive $1,000 annual awards. Other Garden State Scholars will receive awards valued at $500.00 depending on their class rank and SAT scores. The number of eligible students and the amount of their scholarship awards will be provided within Fiscal Year 1990 State appropriations for all scholarship programs administered by the Student Assistance Board through the Office of Grants and Scholarships.

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 proposed repeal, new rules, and amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The Department is merely providing further clarification and specific information relating to the academic and eligibility requirements as well as award amounts in qualifying for Garden State Scholarships.

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

[9:7-4.2 Award amounts

Undergraduate scholarship award amounts shall be a minimum of $200.00. The maximum Garden State Scholarship award shall be $1,000 and the Student Assistance Board shall annually establish award amounts in recognition of various levels of academic achievement. The exact amount of the Garden State Scholarship award shall be determined by the college financial aid officer in accordance with N.J.A.C. 9:7-2.9. The Garden State Distinguished Scholar award amount shall be established annually by the Student Assistance Board.]

9:7-4.2 Academic requirements

(a) Garden State Scholarship recipients shall meet the academic requirements defined by the Student Assistance Board to be eligible to receive a grant in any program category.

(b) The academic requirements for Garden State Scholarships shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores. Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used.

(c) Distinguished Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 10 percent of the graduating class at the end of the junior year; and

2. SAT scores of 1,200 or above at the end of the junior year; or

3. Class rank of one or two in the graduating class at the end of the junior year.

(d) Distinguished Garden State Scholars who are identified as Urban Scholars attending secondary schools within the Type A and B school districts as determined by the New Jersey Department of Education shall be selected on the basis of the following criteria:

1. Class rank within the top 10 percent of the graduating class at the end of the junior year; and

2. Grade point average (GPA) of at least 3.0 on a scale of 4.0 (or an equivalent scale) at the end of the junior year.

(e) Students from each school selected pursuant to (d) above shall be ranked among the students selected at that school according to the following formula and the highest ranking students will be offered scholarships:

1. Academic qualification for a scholarship is determined by an Academic Index (AI). The AI is derived by combining two factors, secondary school GPA and rank in class which will be weighted equally. The formula for combining the two factors is:

AI = (GPA x 37.5) + 2 Converted Rank

2. The converted rank shall be determined from the table set forth in (h)1ii below.

(f) For students selected pursuant to (d) and (e) above, each school located within a Type A and B school district will receive that proportion of the total available scholarships which reflects the size of the graduating class at the end of the junior year as compared to the total number of students in the graduating classes from all schools within Type A and B districts at the end of the junior year.

(g) Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 30 percent of the graduating class at the end of the junior year; and

2. SAT scores of 1,000 or above at the end of the junior year, or through the January administration of the SAT in the senior year.

(h) Garden State Scholars shall be ranked according to the following formula and the highest ranking students will be offered scholarships at the end of the junior year, with additional scholarships offered during the second half of the senior year.

1. Academic qualification for a scholarship is determined by an Academic Index (AI). The AI is derived by combining two factors, the SAT scores from the College Entrance Examination Board and a converted secondary school rank in class. The formula for combining the two factors is:

$$AI = \frac{\text{Verbal + Math SAT scores}}{10} + 2 \text{ Converted Rank}$$

i. SAT scores: Verbal and math scores are to be weighed equally. Where SAT scores are not available, the appropriate equivalent from the ACT may be used. The highest verbal score from any administration may be combined with the highest math score from any administration.

ii. Rank in class: In order to weigh secondary school rank equally with SAT scores, the converted rank is multiplied by two. Conversion of the secondary school rank to a standardized score is necessary in order to combine it equally with the SAT scores which have also been standardized. The following table gives the converted rank multiplied by two, which is the figure to be combined with the test score sum in the AI formula given in this subsection.

SECONDARY SCHOOL RANK CONVERSION TABLE

Percent Standing		Converted Rank × 2	Percent Standing		Converted Rank × 2	Percent Standing		Converted Rank × 2
00–01	=	150	13–14	=	122	44–47	=	102
02	=	142	15–16	=	120	48–52	=	100
03	=	138	17–18	=	118	53–56	=	98
04	=	136	19–21	=	116	57–60	=	96
05	=	134	22–24	=	114	61–64	=	94
06	=	132	25–27	=	112	65–68	=	92
07	=	130	28–31	=	110	69–72	=	90
08	=	128	32–35	=	108	73–75	=	88
09–10	=	126	36–39	=	106			
11–12	=	124	40–43	=	104			

(i) Up to 10 percent of freshman Garden State Scholars awards may be provided to students, including students who do not meet the criteria set forth in (g) above, if these students are recommended by the president of a New Jersey college or university.

9:7-4.3 Eligibility requirements

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

(d) Students may not simultaneously hold a Garden State Distinguished Scholars award and a Garden State Scholars award.

9:7-4.4 [(Reserved)] Award amounts

(a) Garden State Scholars shall receive annual awards of up to $500.00 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(h). The award may be increased up to an additional $500.00 based upon the student's New Jersey Eligibility Index pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following formula:

New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	$500
3500-9499	250
over 9499	0

(b) Distinguished Garden State Scholars shall receive annual awards of up to $1,000 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(c), (d), and (e). The award may be increased up to an additional $1,000 based upon the student's New Jersey Eligibility Index pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following formula:

New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	$1,000
3500-6499	500
6500-9499	250
over 9499	0

(c) Undergraduate scholarship award amounts shall be a minimum of $200.00.

(d) These scholarships in combination with other financial aid shall not exceed the cost of attendance as determined by the institution.

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program
Student Loans: Procedures and Policies
Proposed Readoption with Amendments: N.J.A.C. 9:9

Authorized By: New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Authority: N.J.S.A. 18A:72-10.
Proposal Number: PRN 1988-355.

Submit comments by August 17, 1988 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:9 expires on October 3, 1988. The NJHEAA in consultation with representatives of the higher education community, and the members of the Higher Education Assistance Authority, have reviewed the rules proposed for readoption and determined them to be necessary, reasonable, and proper for the efficient operation of the student loan programs for which they were originally promulgated as required by the Executive Order.

The Guaranteed Student Loan, PLUS, and SLS Programs are national in scope in that criteria for eligibility, terms of repayment, origination fee, amount limits, rates of interest, etc., are prescribed by Federal regulations. Procedures and slight variations between programs exist and are contained in the proposed amendments to the readopted rules.

The proposed amendments to the Policies and Procedures for the overall administration of all student loan programs, N.J.A.C. 9:9-1, provide additional clarification of application requirements, applicable required fees, loan receipt procedures, and repayment of loans. Unnecessary or redundant text has been removed to simplify interpretation. The majority of changes in this subsection were made to reflect recent changes in Federal regulations governing student loan programs.

Subchapter 2 of the proposal incorporates the federal statutes and regulations applicable to the GSL Program. As the Guaranteed Student Loan Program is a federally funded program, the NJHEAA is required to comply with and reflect all Federal rules pertaining to this program.

Subchapter 3 of the proposal incorporates Federal rules and statutes pertaining to the PLUS and Supplemental Loans for Students (SLS) Programs. This subsection also sets forth eligibility requirements, applicable fees, and interest calculation pertaining to these loan programs.

Subchapter 4 sets forth specific requirements concerning eligibility, loan amounts, and repayment for Direct Student Loans. The Direct Student Loan Program provides guaranteed student loans made directly by the NJHEAA to students who are unable to procure a Guaranteed Student Loan through a lending institution.

The Graduate Insured Loans Program, N.J.A.C. 9:9-5, was instituted to allow medical and dental students to supplement their Guaranteed Student Loan in defraying educational costs. The subchapter covers eligibility requirements, loan amounts, terms of loan, and repayment. The proposal makes no change to this subchapter.

Sale, Consolidation, and Refinancing of Loan, N.J.A.C. 9:9-6, are new rules detailing various repayment options open to qualified students seeking to minimize their financial burden in the repayment of their student loans.

Under Consolidation a student may apply for a separately guaranteed loan to consolidate certain specified prior educational loans. The interest rate of the Consolidation loan would be the weighted average of the interest rates of the loans consolidated. The major advantage of a consolidation loan is an extended repayment period allowing a reduced monthly payment.

Refinancing options offer qualified borrowers an opportunity to have a variable interest rate rather than a fixed rate on their PLUS/SLS student loans, or a weighted average interest rate, and permit these borrowers to extend the repayment to up to 10 years from the date of the last loan.

Subchapter 7, Policy Governing Educational Institutions, governed educational institutions who operated as lenders under the Guaranteed Student Loan Program. This program has not been utilized for some time and the material contained in this subchapter has been deleted and the subchapter reserved.

Subchapter 8 of the proposal sets forth procedures regarding the Institution of Higher Education Loan Act, N.J.S.A. 18A:11.1 et seq. This program is a state loan program unconnected with the Federal Guaranteed Student Loan program, which allows educational institutions in the state to make loans to students. The proposal sets forth requirements for eligibility of institutions, terms of the loan, required reports, and provision for suspension and termination of institutions from the program.

Subchapter 9 of the proposal provides the Policy Governing the Direct PLUS/Supplementary Student Loans (SLS) Programs. Included here are procedures required to qualify for the loan, loan amounts, procedure for application, interest rates, and repayment.

Subchapter 10 of the proposal has been deleted and reserved. Reduction in Default Rate: Institutional Monetary Incentive was a temporary program which is no longer funded and has been terminated.

This proposed readoption of N.J.A.C. 9:9 includes the adoption of N.J.A.C. 9:9-11 (see proposal at 20 N.J.R. 872) which is found in the Adoption section of this issue of the Register.

Social Impact

The various loan programs administered by the Authority assure that students who wish to pursue higher educational opportunities will have access to public loan programs. Through the availability of these programs many students who would otherwise be precluded from pursuing their educational goals due to lack of sufficient finances will be allowed to apply for loans which will enable them to attend school and achieve their maximum potential. By completion of a postsecondary education, such individuals will be better qualified for employment throughout the State.

Economic Impact

The various loan programs covered in this readoption provide students attending higher education institutions the opportunity to apply for loans to help finance the cost of their education. Without the availability of these various loan programs, many lower income students would never be able to take advantage of educational opportunities for advancement.

The proposal has a minor economic impact on institutions of higher education. By accepting students who finance their education through student loans, a school is required to devote manpower resources to administration of the loan programs. This function may require the addition of personnel if the school is not currently performing functions of this type.

Regulatory Flexibility Statement

As discussed under Economic Impact, the readoption governs the administration of the Guaranteed Student Loan Program and other related programs by colleges, universities, and private postsecondary proprietary schools. The private proprietary schools range in size and include some institutions which would be considered small businesses.

Administration of the loan programs requires the services of the financial aid director and clerical support staff. The services which this staff must provide to comply with various program requirements include the completion of application forms, the disbursement of loan funds, counseling of students pertaining to their loans, notification to the lender and the Authority of changes in student status, and maintenance of complete and accurate student loan records.

The costs to the school in administering this program are, for the most part, governed by personnel costs. As several other financial aid programs exist and are administered by these schools, such personnel are not employed by the schools solely to administer these programs. The amount of employee time necessary to administer the program is directly proportional to the number of students receiving loans.

The programs are governed by federal regulations which do not differentiate between requirements depending on the size of the institution.

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

CHAPTER 9
STUDENT LOANS: PROCEDURES AND POLICIES

SUBCHAPTER 1. STUDENT LOAN PROGRAM—POLICIES AND PROCEDURES

9:9-1.1 Definitions

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

["Delinquent" means the nonmaintenance of installment payments when due or the noncompliance with other terms of the note or agreement.] **"Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the United States Secretary of Education or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.**

"Foreign school" is a school not located in the United States.

"PLUS" is a [supplemental] loan program which is targeted for parents of **dependent** undergraduate **or graduate** students[; independent undergraduate students; and graduate students].

["Resident" is synonymous with "domicile". Domicile is an actual and physical taking up of an abode in a particular state, together with an intention to make his or her home there permanently or at least indefinitely and an intention, whenever absent, to return to that particular state. (Domicile is often a complicated issue of law and should be resolved in individual cases on the basis of circumstances and intent.) The domicile of a minor is that of his or her parents or legal guardian. Presence in the State of New Jersey solely for the purpose of attending school in New Jersey does not constitute domicile.]

"SLS" is a loan program targeted for independent undergradute students, graduate students, and dependent undergraduate students whose parents are unable to procure a PLUS loan.

(b) Terms not defined in this section shall be defined in accordance with 34 C.F.R. §682.200.

9:9-1.2 Loan [A]amounts

(a) No student shall be permitted to borrow a second time for the same stated grade level in school, as indicated on the previous loan application, if the request is the result of either academic failure or the failure to complete a full-time course load for the [state] **stated** grade level at the institution attended; provided, however, that the Authority shall have the discretion to permit borrowing a second time for the same stated grade level in school when, in the discretion of the Authority, the borrower's request for repetitive funding is substantially based upon circumstances which were beyond his or her immediate control.

(b) The minimum amount the Authority will guaranty is $200.00.

9:9-1.3 (No change.)

9:9-1.4 [Junior year abroad] **(Reserved)**

[(a) A student loan may be approved for junior year abroad programs provided a letter is received from the college in the United States certifying the following:

1. That this program is approved by the college;

2. That the student will receive full credit toward his undergraduate degree; and

3. That the student is expected to return to the college in the United States for his senior year.]

9:9-1.5 Change of lenders

(a) A student should obtain all loans from the same lender. [If a student wishes to borrow from a different lender, the new lender must agree in writing to the Authority to purchase the prior loan. The note must be assigned and forwarded with the duplicate application to the new lender. After this transaction has been completed, the Authority should be notified by the purchaser. In a case where a student has a loan outstanding for a prior academic year and the lender holding that note is unwilling to grant a loan under the limits prescribed by law or has discontinued participation in the student loan program, the student may obtain a new loan from any lender of his choice without the new lender being required to purchase the prior loan. However, a letter of loan denial from the original lender must be submitted to the Authority.] **If the student is unable to do so, the student must:**

1. Request the new lender to purchase the prior outstanding loan;

2. Submit a letter to the Authority from the original lender stating it is unwilling to process his or her current application; or

3. Submit to the Authority a letter from the original lender stating it is willing to process his or her current application and a letter from the student requesting a change of lenders.

9:9-1.6 Insurance and origination fees

(a) An applicant for a student loan must:

1. Pay an insurance fee of one percent of the [requested] **guaranteed** amount of the loan. [Checks should be made payable to the lender.] Any adjustments or refunds [is] **shall be** made by the lender[.] **or the Authority.** The fee is only charged upon disbursement[,]; however, the fee is not charged twice if the student changes schools within the same academic year;

2. Pay an origination fee based upon a rate assigned by Federal guidelines, on the principal amount of the loan. [This fee may be directly deducted from the proceeds or the loan prior to disbursement by the lender or paid to the lender prior to processing.] Refunds shall be made by the lender in accordance with promulgated Federal guidelines.

(b) [No educational institution may charge an applicant a fee for processing an application for a Guaranteed Student Loan or a PLUS Loan.] **The above fees may be directly deducted from the proceeds of the loan prior to disbursement by the lender or paid to the lender prior to processing.**

(c) No educational institution may charge an applicant a fee for processing an application for a Guaranteed Student Loan, PLUS Loan, or SLS Loan.

9:9-1.7 Authority action

Upon approval of the loan application, the lending institution will receive the student loan [interim promissory note] **Guarantee Notice/Disclosure Statement**. This is the lender's guarantee and authorization to disburse the funds and must then be attached to the [duplicate copy of the] application[.] **/note or otherwise maintained.** Notification of guarant[y]**ee** will be sent to the student and the school at the same time.

9:9-1.8 Securing the note

[(a) After] **Prior to** apparoval of the loan, the lender must secure the student's signature on the [original] **application/**note. The [note] forms provided by the Authority must be used in all cases except when prior approval by the Authority has been given to the lender's forms.

[(b) When it is anticipated that the student will be away at school at the time the application is approved by the Authority, the lender may follow the following procedure for securing the note:

1. Mail the note directly to the student for signature;

2. The student's signature on the note must be notarized and the original note must be returned to the lender.]

9:9-1.9 Disbursement procedures

(a) Disbursement of funds [should occur at such time and in such amounts as the lending institution and the applicant agree best meets the applicant's needs. This] shall **not** be [not] **made** more than [60] **30** days prior to the beginning of the academic year.

(b) [After disbursement of funds, the duplicate copies of the original note and the agreement between the student and the Authority should be given to the student.] **The check shall be made jointly payable to the borrower and the school. The check must be sent directly to the school by the lender. For students attending foreign schools, the check shall be made payable solely to the borrower and sent directly to the borrower.**

(c) Requirements of single or multiple disbursements shall be handled as prescribed by Federal regulations.

(d) At or before the disbursement of funds, the lender shall provide the borrower with a disclosure statement and other borrower information required by Federal regulations.

9:9-1.10 Change of school before disbursement

If, prior to disbursement of funds, the applicant indicates he **or she** will be attending a school other than the one indicated on the application, he **or she** must notify the lender to cancel the loan application. The loan is not transferable from school to school. Another application for the new school must be completed. No insurance fee will be charged if amounts remain the same.

9:9-1.11 Interest

(a) Interest is charged on the unpaid principal balance but, if not paid when due, may at the option of the holder of the note be **capitalized and** added to the unpaid principal balance [in accordance with application regulations. The rate charged on the original note must remain in effect for the duration of that loan].

(b) [On all loans made subsequent to September 30, 1982, interest] **Interest** must be calculated on a simple interest basis by all lenders.

(c) On all loans not approved for Federal interest subsidy, the [student] **borrower** will be required to pay the full amount of interest.

9:9-1.12 Repayment of loan; installment arrangements

When a [student] **borrower** ceases to be enrolled at least half time at an eligible school, the [student] **borrower** must contact the lender within four months **prior to the expiration of the grace period** for the purpose of making arrangements toward repayment of the loan.

9:9-1.13 Delinquent payments; responsibility of lender

When an account becomes delinquent as a result of nonpayment of interest on a nonsubsidized loan when due or nonpayment of installment when due or the failure to return funds due to nonenrollment in school, the Authority must be notified to such an event [either through a carbon copy of a statement or other correspondence] at the time of occurrence.

9:9-1.14 (No change.)

9:9-1.15 Notification of bankruptcy proceedings

In the event the lender is notified of **any** bankruptcy proceedings against the borrower **subsequent to purchase of the defaulted loan by the Authority**, [a copy of the notice bankruptcy petition must be sent to the Authority immediately.] **the lender shall be responsible for protecting the Authority's interests by actively participating in all legal proceedings before the courts and filing the appropriate documents with the courts and shall notify the Authority of such action.**

9:9-1.16 Procedure for filing claim.

(a) [Calling the note:] With loans meeting the definition of default status, [the lender reserves the right to call the note demanding payment in full within 30 days or to insist that the account be brought current immediately] **a request for claim forms may be submitted upon expiration of the required default time period as set forth in Federal regulations provided the lender has been in compliance with all Federal and State due diligence regulations.**

[(b) Request for claims forms: A request for claims forms may be submitted upon expiration of the required time period provided proper due diligence has been exercised by the lender.]

[(c)] **(b)** [Separate claims must be submitted on each loan accruing interest at different rates. It is permissible to combine more] **More** than one loan **may be combined** on one claim form as long as the interest rate is the same. [Two sets of claims forms will be sent with both copies expected to be returned in completed form.] The lender will be reimbursed for the total unpaid principal and interest due for a period not to exceed 90 days beyond the date of default. [A photostatic copy of the note] **The original note(s), properly assigned to the Authority,** must be forwarded with the claims. By law, the Authority may not reimburse the lender for late charges.

9:9-1.17 [Assignment of note] **(Reserved)**

[(a) When payment is received from the State, the original note should be assigned to the Authority.

(b) The original note and duplicate application(s) should then be returned to the Authority.]

[RECORDKEEPING AND REPORTING]

9:9-1.18 Certification of loans outstanding

[Periodically] **At least annually**, a list of loans outstanding will be sent to each lending institution. This list [should] **shall** be checked against the lender's records and returned within 60 days with necessary corrections. Loans which have been cancelled, paid in full, reduced in amount, currently on installment or on deferment [should] **shall** be noted and documented.

9:9-1.19 Certification of student enrollment in school

If a lender suspects a student is no longer attending the institution stated on the most recent application, steps [should] **shall** be taken immediately to verify this data in the following manner. The lender [should] **shall** communicate with the student requesting written evidence of current status from the school and [must also] **shall simultaneously** notify the Authority [if it is suspected that the borrower has withdrawn from school].

9:9-1.20 (No change.)

9:9-1.21 Notification of paid or cancelled loans

Lenders must return immediately to the Authority [the lender] **a** copy of the application and/or the [interim or installment] promissory note [clearly] **appropriately** marked **in a clear fashion** when the loan is either paid in full, cancelled[,] or has entered default status.

SUBCHAPTER 2. GUARANTEED STUDENT LOAN PROGRAM STATUTES AND REGULATIONS

9:9-2.1 Rules and statutes incorporated by reference

(a) The part of **the** Code of Federal Regulations known as 34 C.F.R. §682.100 through and including 34 C.F.R. [§682.713] **§682.830** (as of July 1, [1981] **1987**) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(b) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §1071 through and including §1087[-2]**e3** (as of [August 13, 1981] **December 22, 1987**) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations with modifications indicated in (c) below.

(c) The following are modifications to (b) above:

1. 20 U.S.C. §1078-1 is deleted.

[1]**2.** 20 U.S.C. §1078-2 is deleted.

3. 20 U.S.C. §1078-3 is deleted.

[2]**4.** 20 U.S.C. §1086 is deleted.

SUBCHAPTER 3. POLICY GOVERNING PLUS AND **SUPPLEMENTAL LOANS FOR STUDENTS (SLS)** LOAN PROGRAMS

9:9-3.1 Rules and statutes incorporated by reference

(a) The part of the Code of Federal Regulations known as 34 C.F.R. [§683.1] **§682.100** through and including 34 C.F.R. [§683.113] **§682.830** (as of [April 21, 1982] **July 1, 1987**) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(b) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §1078-[2]**1** (as of [August 13, 1981] **June 3, 1987**) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(c) The provisions of subchapter 1 of this chapter, N.J.A.C. 9:9-1, governing the Guaranteed Student Loan Program shall also apply to loans made under the PLUS/**SLS** programs unless they are inconsistent with or otherwise excepted within the provisions of this subchapter.

9:9-3.2 Eligibility

[(a)] An applicant for a PLUS **or SLS** loan must meet the [following] requirements[:] **set forth in 34 C.F.R. §682.201.**

[1. Be a resident of New Jersey as defined by N.J.A.C. 9:9-1.1; and

2. Otherwise fulfill the requirements set forth in 34 C.F.R. §683.11.]

9:9-3.3 Insurance fee

An applicant for a PLUS **or SLS** loan must pay an insurance fee as set forth in N.J.A.C. 9:9-1.6; however no applicant for a PLUS **or SLS** loan shall be charged an origination fee as [expressed] **provided** in N.J.A.C. 9:9-1.6(a)(2).

9:9-3.4 Interest

[On all loans made subsequent to September 30, 1982, interest] **Interest must be calculated on a simple interest basis by all lenders.**

9:9-3.5 Capitalization of accrued interest

(a) For PLUS **or SLS** loans insured under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance according to the institution's own billing cycle but in no case more frequently than [on the] quarterly [basis].

(b) [This section shall be effective for] **For** all PLUS **or SLS** loans made [on or after] **prior to** July 6, 1987[.]**,** [For all PLUS loans made prior to July 6, 1987,] this section shall only be applicable upon the written consent of the borrower.

SUBCHAPTER 4. POLICY GOVERNING DIRECT [PUBLIC] **GUARANTEED STUDENT** LOANS **(GSL)**

9:9-4.1 Qualifications for eligibility

(a) To be eligible for a direct [public] **GSL** loan:

1.-3. (No change.)

4. An applicant must request assistance in obtaining **a** loan from the Authority.

9:9-4.2 Loan amount

(a) Students unable to obtain [the] **a sufficient** amount of loans needed to defray educational costs may apply for the difference between the amount granted by an eligible lender and [$5,000] **the maximum loan amount** per academic year **allowed by Federal regulations**.

(b) The entire loan amount, not to exceed [$5,000] **the maximum allowable amount**, may be obtained from the Authority [or its agent when circumstances warrant].

9:9-4.3 and 4.4 (No change.)

SUBCHAPTER 5. POLICY GOVERNING GRADUATE INSURED LOANS

9:9-5.1 through 5.4 (No change.)

SUBCHAPTER 6. [LOAN REFINANCING WITH THE FEDERALLY SPONSORED STUDENT LOAN MARKETING ASSOCIATION] **SALE, CONSOLIDATION, AND REFINANCING OF LOAN**

9:9-6.1 Eligible lenders

Refinancing by an eligible lender **or holder** of student loans guaranteed by the Authority [with the Student Loan Marketing Association (hereinafter SLMA), a private corporation Federally sponsored in accordance with 20 U.S.C. §1087-2 et seq.,] shall be in conformance with all applicable Authority statutes, rules and regulations, as amended, and [SLMA] **Authority** guidelines for loan servicing.

9:9-6.2 Written notification of transfer/refinance

Upon transfer or refinance of an Authority guaranteed note [to SLMA], an eligible lender **or holder** shall give written notification of such transfer/refinance to the Authority. Each notification shall contain the name of the student borrower, the student borrower's Social Security number [and], the amount of the student borrower's loan(s)**, and any other documentation required by the Authority**.

9:9-6.3 Notice of rejection

If [SLMA] **an eligible lender or holder** rejects a note after its transfer/refinance, the eligible lender **or holder** shall immediately notify the Authority of such rejection. If [SLMA] **the eligible holder** permits the eligible lender to substitute a new note in place of the rejected note, the eligible [lender] **holder** shall immediately notify the Authority of such substitution and shall provide the Authority with the requisite information.

[9:9-6.4 Alterations and modifications]

[The only loan condition or term which may be altered or modified is the extension of the repayment period as provided by N.J.S.A. 18A:72-15 or an authorized deferment period. The maximum permissible repayment period for a student loan(s) shall be 15 years, which period of time shall commence on the execution date of the student borrower's first Authority guaranteed loan.]

9:9-6.4 Consolidation loans

(a) Student borrowers may apply for a separately guaranteed consolidation loan to consolidate certain prior educational loans. Loans eligible for consolidation include a Federally Insured Student Loan (FISL), Guaranteed Student Loan (GSL), Perkins (formerly National Direct Student Loan (NDSL)), PLUS (student), Supplemental Loan for Students (SLS), and Health Professions Student Loan (HPSL) programs. Health Education Assistance Loans (HEAL) and PLUS loans made to parents may not be consolidated.

(b) To be eligible for a consolidation loan, a student must:

1. Have a minimum debt of at least $5,000 under the eligible loan programs;

2. Be in his or her grace periods or repayment status on all loans being consolidated;

3. Not be over 90 days delinquent on any loan being consolidated; and

4. Not currently have another application for a consolidation loan pending.

(c) The interest rate on consolidation loans is the greater of nine percent or the weighted average of the interest rates of the loans discharged by consolidation, rounded to the nearest whole percent.

(d) Repayment of a consolidation loan must begin within 60 days after all loans selected for consolidation have been discharged.

(e) There shall be no origination or insurance fees levied on the borrower by either the Authority or the lender for consolidation loans.

(f) Purchase of defaulted consolidation loans by the Authority shall be subject to all pertinent Federal and State requirements for the purpose of defaulted Guaranteed Student Loans.

9:9-6.5 [(Reserved)] **Refinancing to secure combined payment**

(a) If requested by a borrower, a lender may combine into a single repayment schedule a borrower's SLS and PLUS loans held by that lender.

(b) The interest rate on the refinanced loan will be the weighted average of the rates of all loans to be included.

(c) The 10 year repayment period for the refinanced loan begins on the first day of the repayment period of the most recent included loan. The lender must report the extension of any repayment of an included loan made under this option to the Authority.

(d) The borrower may not be charged an additional insurance premium, and a new promissory note is not required.

9:9-6.6 Refinancing to secure a variable interest rate

(a) If requested by a borrower, a lender may refinance an outstanding fixed-rate SLS or PLUS at a variable interest rate.

(b) This interest rate, which will change each July 1, may not exceed 12 percent.

(c) The lender may charge the borrower a fee of up to $100.00 per loan to cover its administrative costs. The lender shall pay the Authority 50 percent of the amount charged the borrower to cover the costs of reissuance.

(d) No additional insurance premium may be charged to the borrower.

9:9-6.7 Refinancing by discharge of previous loan

(a) If a lender holding a borrower's PLUS/SLS loan denies the borrower the option of refinancing to secure a variable interest rate under N.J.A.C. 9:9-6.6, the borrower may apply to another lender for a new loan discharging the loans held by the original lender. The lender making the new loan shall send the proceeds of the loan to the original lender to retire the original debt.

(b) The borrower may be charged an insurance premium on the new loan, but may not be charged a refinancing fee.

(c) The length of the repayment period on the original loan may not be extended, except if necessary for an adjustment due to changes in the interest rate.

9:9-6.8 Refinancing ineligibility

Loans that are in default or otherwise uninsurable are not eligible for refinancing as set forth in N.J.A.C. 9:9-6.5, 6.6, and 6.7.

9:9-6.9 Rules and statutes incorporated by reference

(a) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §1078-3 through and including §1087e (as of December 22, 1987) including subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(b) Federal regulations regarding deferments and periods of repayment applicable to the original loan(s) shall be applicable to loans refinanced pursuant to N.J.A.C. 9:9-6.5, 6.6, and 6.7.

(c) Purchase of defaulted refinanced loans by the Authority shall be subject to all pertinent Federal and State requirements for the purchase of defaulted Guaranteed Student Loans.

SUBCHAPTER 7. [POLICY GOVERNING EDUCATIONAL INSTITUTIONS] **(RESERVED)**

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:9-7.

SUBCHAPTER 8. POLICY CONCERNING THE INSTITUTION OF THE HIGHER EDUCATION EDUCATIONAL LOAN ACT

9:9-8.1 through 8.6 (No change.)

SUBCHAPTER 9. POLICY GOVERNING DIRECT PLUS/**SLS** LOANS

9:9-9.1 Qualifications for eligibility

[(a)] An applicant for a direct PLUS/**SLS** loan [must meet the following requirements] **shall**[:]

[1. Be a resident of New Jersey as defined by N.J.A.C. 9:9-1.1; and]

[(b) Otherwise] fulfill the requirements set forth in 34 C.F.R. [§683.11; and] **§682.201.**

[(c) Request assistance in obtaining a PLUS loan from the Authority.]

9:9-9.2 Loan prerequisites

(a) Prior to obtaining a direct PLUS/**SLS** loan, the borrower must satisfy the following additional requirements:

1. A first-time applicant must exhaust the possibility of using eligible lenders first, by providing documented evidence of loan denial by at least one eligible lending institution;

2. An applicant who has previously borrowed under the PLUS/**SLS** program must provide documented evidence that the previous lender will not grant an additional loan;

3. Each applicant may be required to have a co-signer for each loan[;] at the discretion of the Authority; and

4. Each applicant**, along with the co-signer,** [shall] **may** be required [along with the co-signer] to personally appear at the office of the Authority prior to disbursement of the loan funds; and

5. Creditworthiness will be evaluated on both the borrower and the co-signer.

9:9-9.3 Loan amount

(a) The maximum amount a parent of a dependent undergraduate student or a graduate student may borrow for one academic year (grade level) shall not exceed [$3,000] **$4,000** excluding Guaranteed Student Loan funds.

(b) The maximum amount a full-time independent undergraduate student may borrow for one academic year shall not exceed [$2,500] **$4,000** including any amounts borrowed under the Guaranteed Student Loan Program for the same academic year.

(c) The total amount to any one student or parent shall not exceed [$15,000] **$20,000** excluding Guaranteed Student Loan funds for the parent of a dependent undergraduate student [or]**,** a graduate student, or [$12,500 for] an independent undergraduate student [including any amounts borrowed under the Guaranteed Student Loan Program].

9:9-9.4 Application procedure; applicant

(a) An applicant for a direct PLUS/**SLS** loan [must] **shall**:

1. Provide written evidence of denial from a participating PLUS/**SLS** lender. An applicant who has previously borrowed under the PLUS/**SLS** program must provide documented evidence that the previous lender will not grant an additional loan;

2. Once loan denial has been proven, an applicant will be forwarded an application and two credit applications (for borrower and co-signer); these forms may only be obtained from the direct PLUS/**SLS** loan office at the Authority;

3. Complete the application and two credit applications following the directions on the forms; all parts of the application and credit applications must be completed regardless of the applicant's and co-signer's age or marital status;

4. Submit the application to the eligible educational institution the borrower plans to attend for certification of enrollment and completion of school section;

5. Pay an insurance fee of one percent of the requested amount of the loan. Checks [should] **shall** be made payable to "Treasurer, State of New Jersey" and must be submitted with the application. No refunds will be issued after the application has been approved by the Authority;

6. If approved, **borrower and co-signer should** appear at the direct loan office [(borrower and co-signer)] to [sign promissory note and pick up] **procure the** check; however, in some cases where the borrower and co-signer are unable to appear at the direct loan office, [a notarized signature may be acquired by mailing the promissory note for signature of borrower and co-signer, upon receipt of signed and notarized promissory note], the check will be mailed to the borrower.

9:9-9.5 Interest rates

Loans shall be governed by the interest rates of the PLUS/**SLS** program in effect at the time the loan is made.

9:9-9.6 Repayment

Terms of repayment shall be governed by the regulations of the PLUS/**SLS** program, 34 C.F.R. [§683.1] **§682.209** et seq., as amended.

9:9-9.7 Deferment of payment

Deferments of payment shall be governed by the regulations of the PLUS/**SLS** program, 34 C.F.R. [§683.1] **§682.210** et seq., as amended.

SUBCHAPTER 10: [REDUCTION IN DEFAULT RATE: INSTITUTIONAL MONETARY INCENTIVE] **(RESERVED)**

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:9-10.

SUBCHAPTER 11. POLICY GOVERNING INSTITUTIONAL COMPLIANCE WITH THE GUARANTEED STUDENT LOAN PROGRAM: CORRECTIVE MEASURES

9:9-11.1 through 11.4 (No change.)

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program
Policy Governing Institution Compliance; Corrective Measures—Noncompliance Standards
Proposed Amendment: N.J.A.C. 9:9-11.2

Authorized By: New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Authority: N.J.S.A. 18A:72-10
Proposal Number: PRN 1988-354.

Submit comments by August 17, 1988 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority is statutorily responsible for the supervision of the Guaranteed Student Loan Program in New Jersey. The proposed amendment to N.J.A.C. 9:9-11.2, a new rule proposed at 20 N.J.R. 872(a) and adopted elsewhere in this issue of the New Jersey Register, sets forth specific standards of loan program

noncompliance for participating institutions. Institutions which exceed these standards demonstrate serious deficiencies in program administration and shall be subject to corrective action by the Authority.

Social Impact

The proposed amendment will help ensure that schools are providing proper administration to the student loan program by requiring compliance with the standards established in the amendment. By requiring this compliance, schools are encouraged to increase the effectiveness of support services provided to Guaranteed Student Loan (GSL) borrowers. Strengthening administration and support services of the schools ensures the students of a stronger GSL Program.

Economic Impact

The proposed amendment sets forth specific standards whereby the Authority can assure itself that the GSL Program is being appropriately administered by educational institutions. Compliance with the standards might require schools to devote additional resources in terms of time and personnel to ensure that the standards are met. Whether it will be necessary for an educational institution to devote additional resources is dependent upon each school and the current quality of its loan program administration.

Regulatory Flexibility Statement

The proposed amendment may affect some small busineses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that the amendment provides specific standards by which the GSL Programs of such businesses will be evaluated. Relatively simple collection of data regarding students attending the schools, recordkeeping, and procedure compliance must be completed. All of the required data is within the schools' records. The necessary required work is not unduly burdensome and should be able to be performed by existing personnel. No recordkeeping, bookkeeping, or procedure compliance requirements are placed on such businesses by this amendment which are not elsewhere imposed by other Federal or State regulations.

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

9:9-11.2 Evaluation review procedures

(a) Program review findings utilized to ascertain program noncompliance shall include but not be limited to the following areas:

1. The student loan default rate;

2. Student withdrawals before completion of programs or academic year;

3. Failure to provide timely notification to the Authority of student enrollment status changes;

4. Failure to refund loan monies to lenders on behalf of students or refunds not made in a timely manner; and

5. Failure of student files to include information required pursuant to Federal regulations, or inaccurate or missing student files.

(b) [The Authority shall annually establish and publish the default rate and standards of noncompliance for the categories set forth in (a) above which shall indicate a serious deficiency in institution program administration and shall subject the institution to corrective action by the Authority.] **Institutions which exceed any of the standards set forth in this subsection demonstrate serious deficiencies in loan program administration and these institutions shall be subject to corrective action by the Authority. The standards of noncompliance for the categories enumerated in (a) above shall be:**

1. For audits covering the period 1984-85:

i. Paragraph (a)1 above: 33 percent; and

ii. Paragraphs (a)2 through 5 above: 33 percent.

2. For audits covering the period 1986-87:

i. Paragraph (a)1 above: 30 percent; and

ii. Paragraphs (a)2 through 5 above: 23 percent.

3. For audits covering the period 1988-89:

i. Paragraph (a)1 above: 25 percent; and

ii. Paragraphs (a)2 through 5 above: 15 percent.

4. For audits covering the period 1990 and thereafter:

i. Paragraph (a)1 above: 20 percent; and

ii. Paragraphs (a)2 through 5 above: 10 percent.

5. For audits covering time periods which fall into more than one of the categories set forth in (b)1 through 4 above, the audit shall be governed by the standards pertaining to the earliest audited year.

(c) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Guaranteed Student Loan Program participation where the program review indicates that the institution is in substantial violation of other Federal or State Guaranteed Student Loan Program regulations.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual
Timely Claim Submittal—Pharmaceutical Services
Proposed Amendment: N.J.A.C. 10:49-1.12

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

Authority: N.J.S.A. 30:4D-6b(6), 7a,b,c; 30:4D-12; 30:4D-20, 22, 24.

Proposal Number: PRN 1988-340.

Submit comments by August 17, 1988 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 proposal amends the regulation concerning timely filing of claims for pharmaceutical services. The time period, which is currently 180 days, was published at 19 N.J.R. 1800(a), effective October 5, 1987. This amendment will increase the time period to 365 days, which is the maximum time period for Medicaid claims pursuant to Federal regulations (42 CFR 447.45(d)). PAAD (Pharmaceutical Assistance to the Aged and Disabled) claims will also be subject to the same time period to insure consistency of administration and to comply with N.J.S.A. 30:4D-20. The historical note accompanying the enabling legislation for PAAD indicates that it is a supplement to the New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413).

The time frame is computed by using the dispensing date as day one. Both Medicaid and PAAD claims must be submitted to the Fiscal Agent (Blue Cross and Blue Shield of New Jersey) within 365 days of the dispensing date or the claims will be denied payment.

Social Impact

The proposed amendment impacts pharmaceutical service providers who participate as Medicaid and/or PAAD providers. They will now have one year in which to submit claims. It is anticipated that providers will submit claims as soon as possible after the dispensing date in order to be promptly reimbursed for rendering the service.

This amendment will impact indirectly on both Medicaid patients and PAAD beneficiaries because it should enable them to continue to receive necessary pharmaceutical services.

Economic Impact

This proposal will have no economic impact upon the Division. The administrative mechanism for processing claims by the Fiscal Agent is already in place. It is not anticipated there will be a significant change in the number of Medicaid or PAAD claims submitted because of the increased time frames.

There should be no economic impact on pharmaceutical providers because there is no change in fees associated with this proposal. Reimbursement for pharmaceutical services under the Title XIX (Medicaid) is subject to federal matching funds. The PAAD program is wholly State funded. Medicaid patients are not required to pay for the cost of pharmaceutical services.

PAAD beneficiaries are required to pay a $2.00 copayment for each prescription pursuant to N.J.S.A. 30:4D-22.

Regulatory Flexibility Analysis

This proposal will impact on small businesses, that is, pharmacies that fill prescriptions for Medicaid and/or PAAD patients. However, this proposal does not impose any additional reporting, recordkeeping, or other compliance requirements.

Pharmaceutical providers are already required to maintain sufficient records to identify the recipient to whom the service was rendered, the date and nature of the service, and any additional information required by regulation (N.J.S.A. 30:4D-12). In addition, pharmaceutical providers are already required to submit claims within 180 days from the dispensing date. The proposed amendment simply extends the time frame to 365 days. Since there are no capital costs associated with this proposal and no additional requirements upon small businesses, a regulatory flexibility analysis is not required.

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

10:49-1.12 Timeliness of claim submission and claim inquiry

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

1. It is the responsibility of a long-term care provider to submit a claim to the Bureau of Claims and Accounts in the Division of Medical Assistance and Health Services in conformance with the time frames as indicated in this section. It is the responsibility of all other providers to submit a claim, make a follow-up inquiry, or supply information to the appropriate Fiscal Agent, in conformance with the time frames as indicated in this section.

i. A claim will not be reimbursed if submitted outside the prescribed time frame. This policy also applies to inquiries concerning a claim or claim related information supplied outside the prescribed time frames.

(b) The policy for submitting an institutional claim is as follows:

1. An institutional claim is a claim submitted by a hospital, a special hospital, a home health agency, or a long-term care facility.

2. A claim for payment of an institutional service rendered to a Medicaid-eligible individual must be submitted to the appropriate Fiscal Agent, either Blue Cross and Blue Shield of New Jersey, Inc., or The Prudential Insurance Company of America, within:

i. One year of the date of discharge on an inpatient hospital claim; or

ii. One year of the date of service entered on an outpatient hospital claim or home health claim; or

iii. One year of the earliest date of service entered on an outpatient hospital claim or home health claim, if the claim carries more than one date of service.

3. All claims for services performed in skilled nursing facilities, intermediate care facilities, ICFs/MR and State and county psychiatric hospitals must be received by the Division of Medical Assistance and Health Services no later than:

i. Six months from the last day of the billing month in which services were initially provided; or

ii. Six months from the last day of the billing month in which an improperly submitted claim was rejected; but

iii. Never later than 11 months from the last day of the billing month in which services were initially provided.

(c) The policy for submitting a noninstitutional claim is as follows:

1. A noninstitutional claim is a claim submitted by all providers except a hospital, a special hospital, a home health agency or a long-term care facility.

2. A claim for payment of a noninstitutional service (excluding a pharmaceutical service) provided to a Medicaid-eligible individual must be submitted to the Fiscal Agent, The Prudential Insurance Company of America, within:

i. One year of the date of service; or

ii. One year of the earliest date of service entered on the claim form if the claim carries more than one date of service.

3. A claim for payment of a pharmaceutical service provided to a Medicaid-eligible individual must be submitted to the Fiscal Agent, Blue Cross and Blue Shield of New Jersey, Inc., within [180] **365** days of the dispensing date.

(d) The policy for a claim that requires follow-up information is as follows:

1. A provider may inquire about a claim that has been paid or denied but must make the inquiry within 90 days of the date of adjudication as indicated on the Statement of Payment Voucher.

2. A provider may inquire about the status of a claim for which neither payment nor denial has been received. The inquiry may be made at any time after the claim is submitted, but not more than 90 days after the end of the timely submission period.

3. If additional information is required in order to process a claim, the provider should supply the information as soon as possible, but not more than 90 days after the end of the timely submission period.

(a)

DIVISION OF PUBLIC WELFARE

Home Energy Assistance Handbook
Program Eligibility; Income Eligibility Guidelines; Emergency Energy Assistance and Application Process

Proposed Amendments: N.J.A.C. 10:89-2.1, 2.3, 3.4 and 4.1

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

Authority: N.J.S.A. 30:4B-2.

Proposal Number: PRN: 1988-351.

Submit comments by August 17, 1988 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Home Energy Assistance (HEA) program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low-income households meet increasing costs of home heating and medically necessary cooling.

Emergency energy assistance is also available to eligible individuals and families who are without heat or in danger of being without heat and lack sufficient income to purchase the necessary heating fuel or service.

The maximum total HEA benefits which any household may receive was increased from $750.00 to $900.00 in federal fiscal year (FFY) 1983, in line with available federal funding and rising average fuel costs. However, in FFY 1988, in an effort to alleviate cases of homelessness due to heating-related emergencies, the emergency energy assistance segment of the program was expanded to include benefits to prevent eviction of eligible households. In FFY 1988, HEA funds had already been made available for payment to eligible households facing eviction due to non-payment of rent or mortgage arrears whose heating costs are included in a single monthly rental charge or mortgage payment, or who pay only for a secondary source of heat, or who pay a separate charge to their landlord for heat. Such assistance to prevent eviction may not exceed the difference between the amount of the HEA entitlement for the program year and $900.00.

The proposed amendments include the following: N.J.A.C. 10:89-2.1 states that recipients must use the HEA benefit to offset current costs of home energy.

N.J.A.C. 10:89-2.3(f)4i adds grandparents in the determination of household members as roomer-boarders.

N.J.A.C. 10:89-2.3(g) adjusts the monthly allowable gross income limits to continue to reflect 150 percent of the current Federal Poverty Level.

N.J.A.C. 10:89-3.4(a) ensures availability of emergency energy assistance benefits for recipients in crisis situations and complies with Federal HEA emergency energy assistance regulations.

N.J.A.C. 10:89-3.4(d)1i clarifies existing emergency energy assistance rules authorizing payment for furnace repair.

N.J.A.C. 10:89-3.4(f) authorizes emergency energy assistance payments to prevent eviction of eligible households.

N.J.A.C. 10:89-4.1(d)1i(2) clarifies existing rules concerning the documentation of applicant social security numbers, that is, the Social Security number being the control or identifying case number in HEA program records.

N.J.A.C. 10:89-4.1(d)1ii is amended to include gross monthly income and total monthly household expenditures in the documentation of questionable information regarding applicant household income, specifically when household expenses exceed income.

Social Impact

The proposed amendments represent a continuing effort on the part of the Department's Division of Public Welfare to provide expeditious delivery of HEA benefits to its low-income population. The proposed revisions which make HEA funds available to prevent eviction will assist county welfare agencies to continue to provide direct assistance to those low-income eligible households who might otherwise find themselves in a state of homelessness. Additionally, the upward adjustment in the monthly allowable gross income limit for HEA program eligibility is expected to increase the number of households served.

Economic Impact

There will be no direct impact upon New Jersey taxpayers, since the entire cost of assistance and administration of the HEA program is federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The direct beneficiaries of the program will be those households eligible to receive Home Energy Assistance benefits in FFY 1989.

Regulatory Flexibility Statement

This proposal has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. This rulemaking action imposes no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required.

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

10:89-2.1 General

In order to receive Home Energy Assistance benefits, the household must meet the eligibility requirements found in this chapter and must make application in accordance with N.J.A.C. 10:89-4 (Application Process) or be entitled to automatic payments in accordance with N.J.A.C. 10:89-3.1. **All Home Energy Assistance benefits must be used to offset current costs of home energy.**

10:89-2.3 Income Eligibility

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

(f) Income computation: Countable gross monthly earned and unearned income, as defined in (c) and (d) above, and verified in accordance with N.J.A.C. 10:89-4.1(d), shall be added to determine the household's total gross monthly income. Cents shall be rounded to the nearest dollar. If the household's total gross monthly income is equal to or less than the gross income limit for the household size, the household is income eligible for Home Energy Assistance.

1.-3. (No change.)

4. Roomer-boarders residing with an applicant household are not to be included in the household size and the income of such individuals is not to be considered in the eligibility determination. However, in accordance with N.J.A.C. 10:82-4.3(c) in the Assistance Standards Handbook (ASH), any income to the HEA Program applicant household in roomer-boarder situations in excess of $125.00 per month shall be considered in determining the household's gross monthly income.

i. The only exception to (f)4 above will occur if the roomer-boarder is a spouse, parent, **grandparent,** child, brother or sister of a household member. In such instances, the roomer-boarder shall be included in the household size and his or her gross monthly income considered as part of the household's income in determination of eligibility.

5. (No change.)

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	$[688] **721**
2	[926] **966**
3	[1164] **1211**
4	[1402] **1456**
5	[1640] **1701**
6	[1878] **1946**
7	[2116] **2191**
8	[2354] **2436**
9	[2592] **2681**
10	[2830] **2926**
Each additional member	+[238] **245**

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1.-4. (No change.)

5. The CWA shall, no later than 48 hours after a household or its representative signs the declaration of energy emergency, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits.

6. The CWA shall also, not later than 18 hours after a household or its representative signs the declaration of energy emergency, provide some form of assistance that will resolve the crisis if such household is eligible to receive such benefits and is in a life-threatening situation.

Renumber existing 5.-6. as **7.-8.** (No change in text.)

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

(d) Emergency energy assistance for specific services:

1. Emergency energy assistance is authorized through the CWA when a household is without heat or is in danger of being without heat. Payments for the following services shall only be authorized for a household if the household owns and resides in the residence requiring the service:

i. Furnace repairs up to $1,000[; or] **are authorized when an HEA eligible household that pays a fuel supplier directly for their primary source of heat is in need of furnace repair to prevent homelessness or where assistance for furnace replacement is not available through the New Jersey Department of Community Affairs (DCA) Weatherization and Furnace Retrofit Programs.**

(1) HEA funds are not intended to supplant or supplement existing services available through DCA and are to be considered assistance to the homeowner to prevent homelessness only.

(2) CWAs shall obtain written estimates of necessary repairs prior to authorizing payment.

(3) Once payment is authorized, an itemized receipt for furnace repair services shall be included in the HEA case record.

(e) (No change.)

(f) Emergency assistance benefits to prevent eviction:

1. Payment may be authorized to eligible households facing eviction due to non-payment of rent or mortgage arrears whose heating costs are included in a single monthly rental charge or mortgage payment, or who pay only for a secondary source of heat, or who pay a separate charge to their landlord for heat.

2. Emergency assistance to prevent eviction may not exceed the difference between the amount of the HEA entitlement for the program year and $900.00, and shall be the lowest amount necessary to prevent eviction from the residence.

3. The applicant household must have received official documentation of pending eviction due to non-payment of rent, such as a tenancy complaint filed by the landlord or an order for eviction from the courts. The assistance available must be sufficient to prevent eviction. Households which have already been evicted are not eligible for this assistance.

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

10:89-4.1 Opportunity and decision to apply

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

(d) At the time of application, the CWA shall advise the household of all program eligibility requirements and the method by which assistance will be provided. Additionally, the CWA shall assist the household in completing the application and explain what elements of eligibility must be verified. The CWA must advise the household what verification is required and explain that the case will be denied if verification is not provided.

1. Verification requirements: The CWA shall assist the household in obtaining the required verification.

i. Required documentation: The following must be verified, documented and retained in the case record by the CWA prior to transmitting the application to DPW:

(1) (No change.)

(2) Social Security number of the applicant. If an applicant has not previously obtained a Social Security number, the CWA shall ensure that the applicant applies for a Social Security number by submitting Form SS-5. (Social Security numbers for all other adult household members shall be recorded);

(A) **SS-5 forms may not be utilized to enumerate HEA only applicants (those who do not have an AFDC or Food Stamp Program case number). Any applicant for HEA-only who has not been assigned a Social Security number must be referred to the local Social Security Administration district office to apply for same, and must submit verification of such application to the CWA.**

(3)-(10) (No change.)

ii. Documentation of questionable information: The following must be verified and documented if the information provided by the applicant is questionable or inconsistent:

(1) (No change.)

(2) Gross monthly income and total monthly household expenditures.

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

(e)-(j) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Classification Process

Decision Making Criteria for Facility or Program Assignment

Proposed Amendment: N.J.A.C. 10A:9-11.4

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-348.

Submit comments by August 17, 1988 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:9-11.4(b)4 to specify that the Jamesburg Detention Unit at the Training School for Boys and Girls at Jamesburg no longer provides a disciplinary unit for female juvenile offenders, and that the current disciplinary unit for female juvenile offenders is provided by the Girl's Unit at the Training School for Boys and Girls at Skillman.

Social Impact

The change in the location of the disciplinary unit specified in the proposed amendment, from Jamesburg to Skillman, provides the administrative flexibility that is necessary for the management and control of female juvenile offenders whose behavior is such that they can no longer be contained at other female juvenile facilities.

Economic Impact

The proposed amendment will have no economic impact because no additional costs are necessary to implement or maintain this amendment.

Regularly Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

10A:9-11.4 Decision making criteria for facility or program assignment

(a) (No change.)

(b) Criteria for assignment to a correctional facility or program are as follows:

1.-3. (No change.)

4. [Jamesburg Detention Unit located at the Training School for Boys and Girls at Jamesburg] **The Girls Unit at the Training School for Boys at Skillman** provides a disciplinary unit for female juvenile offenders when behavior is of such a nature that they can no longer be contained at the Turrell Residential Group Center or the [Skillman Unit] **Alpha House Community Treatment Center.**

i. Transfers to the [Jamesburg Detention Unit] **Girls Unit at the Training School for Boys at Skillman** must be approved by the Supervisor of Juvenile Female Programs. In his or her absence, the Deputy Director or the Assistant Commissioner of the Division of Juvenile Services shall be contacted for approval.

ii. Whenever a female juvenile is transferred to the [Jamesburg Detention Unit] **Girls Unit at the Training School for Boys at Skillman,** it shall be considered a disciplinary action, subject to the due process requirement stated in N.J.A.C. 10A:4 INMATE DISCIPLINE.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF NURSING

Accreditation of Nursing Programs

Proposed Amendment: N.J.A.C. 13:37-1.1 and 1.2

Authorized By: New Jersey Board of Nursing, Sylvia C. Edge, R.A., M.A., President.

Authority: N.J.S.A. 45:11-24(d).

Proposal Number: PRN 1988-350.

Submit comments by August 17, 1988:
Sister Teresa Harris, R.N., M.S.N.
Executive Director
New Jersey State Board of Nursing
1100 Raymond Boulevard, Room 319
Newark, New Jersey 07102

The agency proposal follows.

Summary

The Board of Nursing proposes to amend N.J.A.C. 13:37-1.1 and 1.2, relating to the establishment and accreditation of programs in nursing education. Certain portions of the amendments are proposed in order to meet specific needs; the majority of amendments however, are intended to clarify the language of the rules.

The proposed amendment to N.J.A.C. 13:37-1.1(a), regarding the establishment of a new nursing program or the reorganization of an existing program, clarifies the information requested by the Board and the procedure to be followed. In N.J.A.C. 13:37-1.1(b), the specific references to dates have been deleted to lessen the impact on new programs and to allow for programs starting in January rather than September.

N.J.A.C. 13:37-1.2(c)2, which sets forth matters related to conditional accreditation, is amended to prevent repeated poor performances on the National Council Licensing Exam (NCLEX). The current rules permit a program to have less than 75 percent of its graduates achieve a passing score on the licensing examination for two consecutive years before receiving conditional accreditation status. Under the amended rules any program with less than 75 percent of its graduates achieving passing scores will immediately be placed on conditional accreditation. If graduates fail to achieve a 75 percent pass rate for two consecutive years, the program will be placed on probation and prohibited from accepting any new or transfer students.

Following N.J.A.C. 13:37-1.2(c)5, a sentence has been added to (c)6 to clarify that no predetermined order exists for taking action against a program. In other words, the Board need not first place a program on conditional accreditation before placing it on probation.

Significant additions have been made to N.J.A.C. 13:37-1.2(e) to give direction to nursing programs and help establish the essential characteristics of the program's philosophy and objectives. The Board also amended N.J.A.C. 13:37-1.2(k)6 to ensure that all programs include subjects concerning chemical substance abuse.

N.J.A.C. 13:37-1.2(l) has been completely revised to better define which program or curriculum changes require prior Board approval, as well as the process through which a program obtains Board approval. The wording of N.J.A.C. 13:37-1.2(n), dealing with clinical affiliates, has been changed to more accurately reflect the relevant factors which will be evaluated by the Board. In addition, the language of N.J.A.C. 13:37-1.2(y) has been consolidated and portions have been deleted to eliminate any misunderstanding over the applicability of the rule.

Social Impact

These proposed amendments will affect all nursing programs in the State of New Jersey. The nature of the impact will be positive because the proposed changes have been made to clarify the rules and their application. Since the proposed amendments are intended to lessen confusion among those institutions governed by the Board's rules, the Board does not anticipate any opposition to the proposal.

Economic Impact

The proposed amendments to N.J.A.C. 13:37-1.1 and 1.2 will have no economic impact on Board licensees, nursing schools or the general public.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. The compliance and reporting requirements established by this proposal will affect only nursing schools and institutions of higher education wishing to establish nursing schools, neither of which qualify as "small businesses" under the Regulatory Flexibility Act.

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

13:37-1.1 Application for [initiating and developing a program in nursing] **establishment of a new program in nursing or reorganization of an existing program**

(a) An institution seeking to [initiate and develop a program in nursing] **establish a new program in nursing and/or reorganize an existing program** shall submit **in writing** to the Board of Nursing **an application consisting** of the following items:

1. [A statement of the] **The** philosophy and objectives of the [proposed] program **in accordance with N.J.A.C. 13:37-1.2, criteria for accreditation;**

2. **An analysis of** [Evidence of the] need for the [proposed] program;

3. [Evidence of financial resources adequate for the planning, implementation and continuation of the proposed program including a] **A** projected budget for a five year period;

4. Organizational chart describing **the lines of authority and** the administrative structure of the [proposed] program [and its relationship to the sponsoring institution];

5. [The names and curricula] **Curricula** vitae for all nurse educators and consultants responsible for **the development and administration of the** [developing the proposed] program.

(b) [These materials] **The application** shall be submitted to the Board no later than [October 1 of any year for a program anticipated to begin in September of the following year.] **11 months prior to the establishment of a new program or the reorganization of an existing program.**

(c) After reviewing these materials the Board shall **either**:

1. Grant **preliminary** permission to [develop] **pursue the development of** the proposed program. [with the stipulation that this] **This preliminary** permission does not [insure] **ensure** that provisional accreditation will be granted; or

2. [Recommend] **Require the redesign and/or** revision of the [proposed] **preliminary** program **materials** or submission of [further] **additional** information. **Redesign or revision of preliminary program materials does not ensure that provisional accreditation will be granted; or**

3. Deny permission [to develop the proposed program. The institution may be given the opportunity for a hearing before the Board to appeal this decision.] **to establish a new program and/or reorganize an existing program.**

(d) The institution may request a hearing before the Board to appeal a decision of 2. or 3. above.

[(d)](**e**) After receiving **preliminary** permission to [develop the proposed program,] **establish a new program and/or reorganize an existing program,** the institution shall submit to the Board no later than five full calendar months prior to the month anticipated for the start of the program the following items:

1. [Updated statement of the philosophy and objectives of the program as contained in (a) above] **Documents required in N.J.A.C. 13:37-1.2 (criteria for accreditation)**;

2. [Updated evidence of financial resources as contained in (a) above] **A statement of the conceptual/organizational framework of the curriculum**;

3. [Updated organizational chart as contained in (a) above] **A projected budget for a five year period;**

4. [Information on the student population, including number of students to be admitted to each of its first four classes, maximum size of the student population, timetable for attained maximum population size, admission policies, sources of recruitment of students and student services] **Organization chart as contained in (a) above**;

5. [Information on the faculty and staff including number of faculty to be employed, dates of appointment of initial faculty members, and subsequent schedules of increases in faculty as needed and plans for faculty recruitment;] **A written statement containing information on the anticipated student population including at least the following:**

i. **The number of students to be admitted to each of the first four classes after establishment or reorganization of the program;**

ii. **Maximum student enrollment;**

iii. **Timetable for attainment of maximum student enrollment;**

iv. **Admission, retention and dismissal policies;**

v. **Student services.**

6. [Evidence of compliance with all the requirements of N.J.A.C. 13:37-1.2 (Criteria for accreditation).] **A written statement describing the support staff, the curricula vitae for all faculty members, dates of faculty appointment, and time phase plan for increases in faculty commensurate with student enrollment.**

13:37-1.2 Criteria for accreditation

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

(c) Accreditation shall be granted as follows:

1. (No change.)

2. Conditional accreditation shall be given to any accredited program which subsequently fails to meet and maintain the standards and requirements for accreditation contained in this subchapter. The Board may limit the number of students enrolled in such a program. The institution shall be given the opportunity for a hearing to appeal this decision.

i. A program shall be placed on conditional accreditation if less than 75 percent of its graduates achieve passing grades in the licensing examination [for a period of two consecutive years]. The program shall be sent written notification of conditional accreditation by the Board.

ii. [A] **The Board may place** a program [shall be placed] on conditional accreditation if it fails to comply with any of the **rules** [standards and requirements] of the Board contained in this subchapter. The program shall be **notified by letter** [sent written notification] of conditional accreditation by the Board including the conditions which must be corrected within a specific time period **established** [set] by the Board. **Removal from conditional accreditation may be granted if it can be demonstrated that the standards and requirements contained in this subchapter have been met.**

iii. [Removal from conditional accreditation may be granted if it can be demonstrated that the standards and requirements contained in this subchapter have been met.] **A program placed on conditional accreditation shall request Board action to remove the conditional accreditation status.**

3. (No change.)

4. [A program which fails to correct deficiencies to the Board's satisfaction, within the time limit set by the board, shall be placed on probation.] **A program may be placed on probation when its graduates fail to achieve 75 percent passing on two consecutive licensing examinations.** The program shall **not admit** [be unable to accept] new or transfer students into the program. The institution shall be given the opportunity for a hearing to appeal this decision.

[i. Nursing programs will be given two years, but under no circumstances more than three years, to revise or improve the nursing curriculum to upgrade the quality of nursing students graduating. Failure to achieve satisfactory results in subsequent licensing examinations may indicate a need for further Board action, including a possible loss of accreditation.]

5. A program which does not [meet] **comply with** the **rules** [standards and requirements] of this subchapter [shall] **may** have its accreditation withdrawn. The institution shall be given the opportunity for a hearing to appeal this decision.

[Note:] **6.** Any change in the accreditation status as described in (c) 1, 2, 3 [and 4] **and 5** above of a program in nursing shall not affect the eligibility of students currently enrolled in the program to sit for the licensing examination. **There is no predetermined order for taking action against a program.**

(d) Plans of organization and administration shall be subject to the following:

1.-2. (No change.)

3. There shall be a qualified **nurse** administrator of the nursing program who shall have direct authority **for the fiscal and academic administration of** [and responsibility for administering] the program. The administrator shall be responsible to the governing body of the sponsoring institution.

(e) [The philosophy, purposes,] **Requirements for the philosophy** and objectives of the program [shall be] **follow**:

1. [Clearly defined in a written statement] **The nursing program shall have in writing a defined statement of philosophy and program objectives which are consistent with those of the controlling institution and with the law regulating the practice of nursing (N.J.S.A. 45:11-23 et seq.)**;

2. [Formulated and accepted by the faculty of the program and ratified by the governing body of the sponsoring institution] **The philosophy and program objectives shall be developed by the faculty and give consideration to the development of the student as a person, practitioner, and citizen;**

3. [The basis for planning, implementing and evaluating the total program] **The philosophy of the program shall include, but not be limited to, the faculty's beliefs about the following:**

i. Nursing and nursing education.

ii. Humans and society.

iii. Education as a life-long process (continuing education).

iv. Teaching-learning process.

4. [Consistent with N.J.S.A. 45:11-23 (Defintion of Nursing) and professional, educational and ethical standards of nursing.] **The program objectives shall measure the entry level competencies of the graduate;**

5. The philosophy and program objectives shall be used by the faculty in planning, developing, implementing, and evaluating the total program;

6. The written statement of philosophy and objectives shall be shared with the faculty, students, cooperating agencies, advisory committees and interested persons;

7. The philosophy and objectives shall be consistent with professional, educational and ethical standards of nursing.

(f) (No change.)

(g) Faculty qualifications follow:

1. The program shall provide and maintain a qualified faculty. For purposes of this subsection, faculty shall include persons from out-of-state nursing programs who are responsible for teaching students in a clinical affiliate located in New Jersey. The qualifications for all faculty members shall include:

i.-ii. (No change.)

iii. Academic [and professional], **professional/clinical experience** qualifications appropriate to the specific area of responsibility of the appointed position. For purposes of this subchapter, all degrees shall be earned at accredited schools of nursing;

iv. (No change.)

2. Each newly appointed faculty member shall file a record of professional preparation and experience with the Board. [Said record shall include the application, job description, terms of employment and advancement and activity, including preparation and participation in professional organizations, research and writing.]

NOTE: Only those faculty members who began their employment on or before September 1, 1981 may qualify for an exemption from this requirement in accordance with previous Board policy.

3. (No change.)

(h)-(j) (No change.)

(k) Curriculum content shall include the following:

1.-5. (No change.)

6. All nursing programs shall contain content relating to chemical substance abuse.

[(l) The following changes require prior Board approval:

1. Whenever a change in the curriculum of any nursing program is contemplated, the Board shall be notified of the proposed changes in writing for its review and approval prior to implementation of the change.

2. Changes that require Board review and approval are:

i. Changes in philosophy, organizational framework, purposes or objectives used in curriculum;

ii. Major reorganization of the content structure;

iii. Changes in the use of clinical resources constituting a change in the agreement;

iv. Major changes in course content.

3. Written notification to the Board shall include:

i. A description of the current curriculum;

ii. A description of the contemplated change, including all revisions, deletions, additions or structural alterations proposed.]

4. (No change.)

(l) No major change in a nursing program shall be implemented without the prior approval of the Board. Major program changes include:

1. Changes of administrative control. When a change or transfer of administrative control is contemplated, nursing program officials shall submit to the Board the following information in writing:

i. An application made pursuant to N.J.A.C. 13:37-1.1 for initial approval of a nursing program under the auspices of the new sponsoring institution;

ii. A study/analysis substantiating the need for the change;

iii. The anticipated plan of administrative and organizational control;

iv. The anticipated effect of the change on students, faculty and resources;

2. Organizational/structural changes or changes of the administrator of the program;

3. Major changes in curriculum or alterations of the present curriculum. Major curriculum changes include:

i. Changes in philosophy or objectives which alter the present curriculum;

ii. An increase or decrease in the length of the program; or

iii. Reorganization of the curriculum.

4. When a major change in curriculum is contemplated, nursing program officials shall submit to the Board the following information in writing:

i. Rationale for the proposed changes, including its anticipated effect on faculty, students, resources and facilities;

ii. Presentation of the differences between the current curriculum and the proposed curriculum changes;

iii. A timetable for implementation of the change;

iv. Methods of evaluation which will be used to determine the effect of the change.

(m) (No change.)

(n) [Clinical affiliates shall be subject to the following] **Every clinical affiliate shall be approved or disapproved on the basis of the following**:

1. Resources for training in clinical practice shall [be provided by a clinical affiliate. Every clinical affiliate utilized in a nursing program shall be approved by the Board of Nursing and by the appropriate accrediting authority of the facility prior to the assignment of students.] **implement the nursing process and shall reflect adequate and safe patient care.**

2. Accreditation by the appropriate authority prior to the assignment of students.

[2.]**3.** There shall be a written agreement between the nursing program and the clinical affiliate. The agreement shall be signed by the parties and shall include but not be limited to provision for the following:

i. Periodic review of the terms of the written agreement.

ii. Adequate notice of termination of the agreement by either party.

iii. Control of student education by the faculty of the nursing program.

iv. Continuous educational planning for students assigned to the clinical affiliate.

v. Joint annual evaluation of the effectiveness of the clinical experience.

vi. Student-faculty ratio of not more than ten students to one faculty member.

[3.]**4.** A clinical affiliate located outside of New Jersey shall meet the requirements of 1 and 2 above and shall be approved as a qualified institution for providing clinical experience in nursing by the Board of Nursing of the state in which it is located.

[4.]**5.** Whenever a change in the clinical facilities is contemplated, the Board shall be notified of the proposed change in writing for its review and approval prior to the implementation of the change.

(o)-(t) (No change.)

(u) Current information about the school shall be distributed to students, applicants for admission and the Board of Nursing. The bulletin shall include the following items:

1. General description of the program.

[2. Philosophy and objectives of the program and its sponsoring institution.]

[3.]**2.** Accreditation.

[4.]**3.** Admission, retention, promotion and graduation requirements.

[5.]**4.** Curriculum plan and course descriptions.

[6.]**5.** Statement of tuition fees and refund policies.

(v)-(x) (No change.)

(y) Within 10 days of the official date of closure, the date on which the last student is properly transferred or completes the program, the administrative officer shall notify the Board of the same in writing.

[1. Governing bodies shall notify the Board in writing in cases involving change of control, said notification containing their intentions with respect to the school of nursing. If the intent is to continue the operation of the school, notification shall be made of the name under which the school will operate and statements of assurance that requirements will continue to be met shall be included.]

[2.] The institution shall be responsible for the safekeeping of the records and, at termination, shall notify the Board of the future custody of such records.

DIVISION OF CONSUMER AFFAIRS

(a)

BOARD OF PHARMACY

Board of Pharmacy Rules

Reproposed Repeal and New Rules: N.J.A.C. 13:39

Authorized By: New Jersey State Board of Pharmacy,
H. Lee Gladstein, President.
Authority: N.J.S.A. 45:14-1 et seq.
Proposal Number: PRN 1988-338.

Submit comments by August 17, 1988 to:
William Van Blarcom, Acting Executive Director
State Board of Pharmacy
Room 325
1100 Raymond Boulevard
Newark, New Jersey 07102

A **public hearing** is scheduled to take place on August 17, 1988, beginning at 9:00 A.M. at the following location:
New Jersey State Bureau of Securities
Two Gateway Center, 8th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

On November 2, 1987, the New Jersey State Board of Pharmacy proposed to repeal its existing rules and establish new rules. This proposal appeared in the New Jersey Register at 19 N.J.R. 1952(a). During the comment period, which ran from November 2 to February 18, 1988, 54 comments were received. The Board carefully considered each of these comments and found many of the suggestions useful. As a result, changes have been made in the original proposal. Now the Board is reproposing these new rules. Many of the changes made are technical corrections, but some are more substantive requiring additional public notice.

N.J.A.C. 13:39, embodying the Board of Pharmacy rules, was originally adopted by the State Board of Pharmacy, Department of Law and Public Safety, pursuant to authority contained in N.J.S.A. 45:14-1 et seq. and was effective prior to September 1, 1969. Since the original rules were first promulgated, various changes have been made through amendments of a minor nature, satisfying the need to increase various fees, requirements of internship and externship, etc., and the requirements and criteria of Executive Order No. 66(1978).

The State Board of Pharmacy recognized that the constant changes in the nation's system of health care delivery, the new and sophisticated changes in the treatment of disease and the concurrent changes in the methodologies of dispensing drugs warranted a complete review of the existing rules. This review resulted in recognition that a "band aid" approach of amending existing rules was not sufficient or satisfactory in controlling the practice of pharmacy to the end that the health of the public be fully protected. Accordingly, a complete repeal of the existing rules, and promulgation of new rules is proposed. The proposed new rules consist of 11 subchapters as follows; subchapter 1, General Provisions; subchapter 2, Applicant Qualifications and Examinations Requirements; subchapter 3, Registration of Pharmacists; subchapter 4, Pharmacy Permits; subchapter 5, Prescriptions; subchapter 6, Dispensing and Advertising Drugs; subchapter 7, Pharmacy Facility and Records; subchapter 8, Internships; Externships; Approved Training Pharmacy; subchapter 9, Pharmaceutical Services Within Health Care Facilities; subchapter 10, Intravenous Admixture Services, and subchapter 11, Nuclear Pharmacies.

These reproposed new rules, as well as those originally proposed, represent a complete overhaul of the Board's existing rules. Some of the changes from the existing rules include: (1) expansion of the scope and detail of institutional pharmacy rules; (2) requiring "satellite pharmacies" in institutions to meet the requirements for institutional pharmacies; (3) free standing clinics in which dispensing is done would be licensed as institutions; (4) the Board would have specific authority to issue a specialized pharmacy permit; (5) detailed rules are proposed to govern enteral/parenteral pharmacy operations to ensure that intravenous medicines and nutritions are prepared using specialized equipment and an appropriate environment so as to maintain proper sterility in preparation and delivery; (6) all pharmacies will be required to post a sign on the exterior of the building or otherwise visible from a public roadway to conspicuously identify the existence of a pharmacy located on the premises; (7) advertising shall be predominantly informational and shall not be misleading, confusing, false or demeaning to the profession; (8) inquiries would have to be made by pharmacists of their patients as to prescription drugs currently being used by the patient; and (9) prescriptions for either controlled dangerous substances or prescription legend drugs may only be dispensed under the direct personal supervision of a registered pharmacist, and direct personal supervision includes observation by the pharmacist of all functions pertinent to dispensing.

In reproposing these new rules, the Board seeks to accomplish four basic objectives which should aid in the protection of the health, safety, and welfare of the citizens of New Jersey. First, these rules will ensure greater accountability of dispensing pharmacists. Second, they will work to maintain the highest level of patient safety. Third, the reproposed rules

will guarantee easy retrievability of patient information for professional consultation, as well as law enforcement and regulatory purposes. Finally, these new rules will assure that Board records of licensees are kept up to date in the most reasonable means possible.

Social Impact

The advent of rapid changes in health care delivery such as intravenous medicating and feeding of patients in a home environment as well as the establishment of new types of nursing homes, health maintenance organizations, and others have brought about needed changes in the control of dispensing and preparation of medication. These changes have also brought about the necessity for clear rules to govern such operations and rules which authorize the Board to grant limited permits to enable special-purpose pharmacies to operate as such. It is expected that the proposed rules will enhance the protection and safeguarding of public health. It is also anticipated that as a result of the new rules, direct communication and interaction between pharmacist and patient will be enhanced, which will clearly benefit the public health and welfare inasmuch as it is the pharmacist who often protects the consumer in the event of adverse drug interactions of which his or her physician may not be aware.

Economic Impact

Generally, the reproposed new rules are not expected to bring about any additional public or private costs. However, specialized pharmacies will be expected to spend what is necessary to bring their operations into line with the new rules. This cost may be incurred by the patient by way of pass through to the patient. Institutional pharmacies may incur some increased costs because of the necessity of upgrading their "satellite pharmacies".

Regulatory Flexibility Statement

These reproposed new rules will have an impact on small businesses as defined by the Regulatory Flexibility Act. Whether it is within a health care institution or it is a community pharmacy, whether owned by a sole proprietor or by a chain, and whether free-standing or a department in a larger store, pharmacies are by their nature almost always within the statutory definition of a small business.

In the fiscal year ending June 30, 1986, there were 1,703 pharmacy permits renewed and 56 new pharmacies licensed, for a total of 1,759. The vast majority of these were free-standing community pharmacies or pharmacy departments.

There are few, if any, recordkeeping or reporting requirements contained in the reproposed new rules which differ materially from those presently in force. Pharmacy permits must still be renewed each year; the Board must be notified when there is a change in over 10 percent of the ownership, in the hours the pharmacy is open for business or when there is a change of the pharmacist-in-charge of the pharmacy. Also, prescriptions must be maintained and appropriately numbered and filed for five years (N.J.S.A. 45:14-15); records of refills must be made; each prescription must be initialed by the pharmacist who dispensed it; patient profile records must be maintained for each patient by individual or family, and computerized recordkeeping is permitted provided that certain requirements are met. Pharmacies are also subject to the recordkeeping requirements mandated by the Federal government and the State Department of Health with respect to controlled dangerous substances ("CDS") (21 U.S.C. §822-843; 21 C.F.R. §1300-1316; N.J.S.A. 24:21-1 et seq., N.J.A.C. 8:65).

An estimate of the "cost" of compliance with these new rules is impossible, but it is not expected that any professional services other than those of the owner or pharmacist-in-charge of the pharmacy would be needed. Naturally, the amount would vary based on the prescription volume of the pharmacy and the scope of the pharmacy's practice. For example, some pharmacies are temporarily or permanently barred by other government agencies such as the Drug Enforcement Administration, the New Jersey Department of Health or the New Jersey Department of Human Services (Medicaid) from dispensing controlled dangerous substances or accepting reimbursement from Medicaid or the Pharmaceutical Assistance to the Aged and Disabled Program.

There is one reproposed section which may impose new costs of compliance on licensees. N.J.A.C. 13:39-9.18 would require that all institutional decentralized pharmacies, commonly known as "satellite pharmacies", be upgraded to meet a specific set of requirements. This could potentially affect all 150 institutional licensees. These requirements include, among other things, a sink with hot and cold running water in the satellite pharmacy, counting devices, a refrigerator used only for medicines, a minimum reference library, a permanent patient profile system and prescription filing device, and a secure storage place for Schedule II Controlled Dangerous Substances.

Costs of compliance might include capital construction and plumbing, acquisition of many sets of reference books, acquisition of many refrigerators, and installation of a separate prescription filing system and patient profile system for each decentralized pharmacy. The larger the institution and the greater the number of these satellites, the greater the outlay to be required. It should be noted that the requirements for the satellites are less than those for the main pharmacy (the "original institutional permit location"). Reproposed N.J.A.C. 13:39-9.18 sets forth what the Board views as the minimum requirements for safeguarding the health, safety, and welfare of patients with respect to the storage, compounding and dispensing of drugs. An exemption for particular institutions, based on "small business" status is thus neither feasible nor desirable.

The purpose of the reproposed new rules as noted in the Summary is to ensure pharmacist accountability, patient safety, retrievability of information and maintenance of Board records. It is not the Board's intention to burden pharmacies with recordkeeping requirements. Any "adverse economic consequences" caused by the necessity of maintaining patient profile records and taking the time to be sure that all prescriptions are initialed and all refills recorded cannot be avoided.

The recordkeeping obligations imposed by these rules are an integral part of safe pharmacy practice; most of these requirements have been considered part of the practice for years. The Patient Profile Record System, for example, was instituted in 1972.

Modifying the rules in any way for small businesses is not feasible. Doing so would only serve to frustrate the intended purposes of the reproposal as well as the Pharmacy Act itself.

Summary of changes made in the reproposal from the proposal. (Additions to the original proposal are indicated in boldface **thus**; and deletions are indicated in brackets [thus].)

As noted earlier, many of the changes made in the reproposal are minor or merely clarifications; others, however, are more substantive and require additional public notice. The majority of these changes have been made in response to the comments received during the original proposal's comment period. Listed below are the reproposal changes:

In Subchapter 3, which deals with the registration of pharmacists, the wording of section 13:39-3.18 in the original proposal has been deleted because the nature of contemporary practice renders impractical the prohibition against reproducing a renewal certificate; many pharmacists now move from site to site within the course of the work week. The Board believes that removing the prohibition will pose no danger to the public.

[13:39-3.18 Reproduction of renewal certificate prohibited

A renewal certificate of registration issued by the Board to any registered pharmacist shall not be reprinted, photographed, photostated, duplicated or copied by any other means either in whole or in part, without the express written authorization of the Board.]

Section 3.19 is now recodified as 3.18.

Section 13:39-4.15(b)1 which deals with the necessary security precautions taken in a pharmacy was changed to lessen the burden on the licensee. Under the new language of the reproposal the entrance to the barrier or partition of pharmacy department or area must only be capable of being locked and must also be connected to a security device.

13:39-4.15 Retail Permit; prescription department or pharmacy department

(a) (No change.)

(b) (No change.)

1. The Prescription or Pharmacy Department shall be constructed so as to enable the closing off and securing of the department from the remainder of the store area. The department shall be separated from the store area by a [permanent] secured barrier or partition extending from the floor or fixed counter to the ceiling of either the department or the main and attached thereto. The entrance to the barrier or partition, door or doors and the Prescription or Pharmacy Department shall be capable of being locked and [wired to a local sounding, motion detection] connected to a security device **or other Board approved security system**.

2.-12. (No change.)

In response to comments received, section 5.3 of subchapter 5 concerning the recording of prescription refills was changed to reflect the use of electronic data recording systems. This change should also increase public safety by reducing the possibility of mistakes in refills.

13:39-5.3 Record of prescription refills

If a prescription is refilled, a record of the date on which the prescription is refilled shall appear on [at least one of the following:] the original prescription. [the permanent prescription record book, the patient profile record system, or an electronic data system.] **In an electronic data system, a record of the refill shall be recorded on the original prescription for at least the first two refills.**

[In addition,] Section 5.6(d) was eliminated to alleviate the problems raised by [several] commenters.

Section 5.7(e) was changed to require only that a record identifying any initials used in the course of business be maintained with the signature, name and address of the pharmacist, intern or extern who filled the prescription for a period of five years after the termination of employment of such pharmacist, intern or extern. This change was made to avoid unnecessary confusion among the Board's licensees.

The additional requirement of including the patient profile records in the documents to be transferred upon the termination of a pharmacy was added to section 13:39-5.8 to provide greater public safety as well as to ensure that a complete patient profile is available wherever the records are transferred.

The aisle space requirement in section 13:39-7.5 was deleted because the Board decided that the requirement had no significance to the practice of pharmacy; remaining provisions have been recodified.

Section 13:39-7.8 concerning the minimum equipment required in a pharmacy has been changed to reflect the Board's willingness to try to reduce the impact of the new rules on the licensees. These changes should reduce the cost to the licensee and, ultimately, the consumer.

In Section 13:39-9.1, Health Maintenance Organizations were removed from the definition of health care facilities. The Board decided their inclusion in this list was inappropriate because HMOs are not strictly health care facilities in that they lack the distinguishing characteristic: in-patients cared for under a common roof. Also, the definition of "medication order" in this section was amended to allow institutional computer generated medication orders using a physician's electronic signature to meet legal requirements.

These sentences were added to the end of the originally proposed definition:

Computer generated medication orders within an institutional setting, utilizing a physician's electronic signature, will meet legal requirements for a physician's original handwritten signature on medication orders. Computerized signatures will be accepted provided that the facility has adequate safeguards which assure the confidentiality of each electronic signature and which prohibit the improper or unauthorized use of computer generated signatures.

The Board made changes in section 13:39-9.3(b) to help increase the quality of patient care as well as decrease the cost to their licensees. These new changes allow health care facilities which do not have a pharmacy to contract with any pharmacy, retail or institutional. This freedom will allow these health care facilities to provide pharmacy services at a reduced cost to both the facility and the patient.

In Section 13:39-9.4 regarding the needs to which health care facility pharmaceutical services must be responsive, the words "and the educational and research needs of the facility" have been deleted because those needs are not within the purview of the Board of Pharmacy.

Section 9.9 dealing with access to institutional pharmacies was completely revamped to provide better service to institutional patients without destroying the security necessary in all pharmacies.

13:39-9.9 Access to the institutional pharmacy

(a) Only a pharmacist shall have access to the pharmacy stock of controlled dangerous substances in schedules II thru IV.

(b) Only a pharmacist shall have access to the pharmacy stock of drugs except that in a pharmacist's absence from an institution, a registered nurse designated by the institution, may obtain from the hospital pharmacy's stock of drugs as needed in an emergency, not available as floor stock. Only one registered professional nurse in any given eight-hour shift shall have access to the pharmacy stock of drugs.

(c) A nurse may remove from the pharmacy stock of drugs:

1. A drug in its original container or a drug pre-packaged by a pharmacist for use in the institution;

2. A single dose of drug from the original container for a specific patient.

(d) A nurse shall leave in the pharmacy on a suitable form a record of any drugs removed showing:

1. The name of the drug;

2. The name of its manufacturer;

3. The dosage size;

4. The amount taken;

5. The date;

6. The patient's name and station;

7. The signature of the nurse.

(e) The nurse shall also leave with the record the container from which the single dose was taken for drug administration purposes in order that it may be properly checked by a pharmacist.

(f) All records shall be kept for three years.

In section 13:39-9.18(a) the Board has taken great care to improve the definition of "satellite pharmacies" and thereby increase patient safety. In addition, section 13:39-9.18(d) which establishes the minimum equipment required for a "satellite pharmacy" was redone to more realistically reflect the needs of such a pharmacy.

Changes have been made in the wording of Section 9.11 to reflect the fact that the specific composition and activities of a Pharmacy and Therapeutics Committee are determined by the health care facility, not the Board:

13:39-9.11 Pharmacy and Therapeutics Committee.

In all health care facilities providing pharmaceutical services to patients, an active standing committee of the medical staff entitled the "Pharmacy and Therapeutics Committee" or other appropriate name shall be established. A Pharmacy and Therapeutics Committee shall be [composed of at least one physician, the administrator or representative, the director of nursing services or representative, and the pharmacist. The committee shall meet at least quarterly and shall report to the medical staff by written report.] **multidisciplinary and include a pharmacist.**

The last major change in the reproposal was the addition of a entirely new subchapter. Subchapter 11 deals with the needs and special regulatory concerns of nuclear pharmacies.

Full text of the rules proposed to be repealed may be found in the New Jersey Administrative Code at N.J.A.C. 13:39.

Full text of the reproposed new rules follows:

CHAPTER 39
STATE BOARD OF PHARMACY

SUBCHAPTER 1. GENERAL PROVISIONS

13:39-1.1 Purpose and scope

(a) This chapter is promulgated by the New Jersey State Board of Pharmacy. The rules contained in this chapter implement the provisions of the Pharmacy Act, N.J.S.A. 45:14-1 et seq. and regulate the practice of pharmacy within the State of New Jersey.

(b) This chapter shall apply to all registered pharmacists, pharmacist applicants, interns, externs, supportive personnel and anyone within the jurisdiction of the Board of Pharmacy.

13:39-1.2 Definitions

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

"Board" means the New Jersey State Board of Pharmacy.

"Compounding" means the act of preparing pharmaceutical components into medications, pursuant to a licensed practitioner's prescription or medication order, including, but not limited to prescription compounding, bulk compounding and intravenous admixture preparation.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under Federal or State law to be prescribed by a licensed practitioner and dispensed by a pharmacist, in the usual scope of pharmacy practice.

"Direct personal supervision" means the observation by a registered pharmacist of all functions of the process of preparation or compounding and dispensing of drugs, including the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

"Dispense or dispensing" means the procedure entailing the interpretation of a licensed practitioner's prescription order for a drug or device, and pursuant to that order, the proper selection, measuring, labeling, and packing in a proper container, and the issuance of the drug or device to a patient or other individual entitled to receive the drug or device. The act of dispensing shall include, if necessary, a pharmacist's, extern's or intern's consultation with the prescribing physician and/or the patient or individual administering the drug to assure proper preparation, use and administration of medication.

"Drug or medicine" means:

1. Articles recognized in the official United States Pharmacopoeia/National Formulary, official Homeopathic Pharmacopoeia of the United States, or any official supplement to any of them;

2. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

3. Articles (other than food) intended to affect the structure of any function of the body of human beings or animals; and

4. Articles intended for use as a component of any article specified in 1, 2 or 3 above, but does not include devices or their components, parts or accessories. Articles, such as sugar or starch, which may be components of any articles in 1, 2, or 3 above, are not considered drugs or medicines when sold as food.

"Legend drug or device" means any drug or pharmaceutical that:

1. Bears the statement, "Caution: Federal law prohibits dispensing without a prescription" or words of similar import; or

2. Requires a prescription or order by a licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders.

"Licensed practitioner" means a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders.

"Pharmaceutical" means any drug as defined above and all other adjunct substances or materials required in the preparation of the drug for use.

"Pharmaceutical services" means all services provided by or under the direct supervision of a registered pharmacist. These services shall be concerned with, but not limited to: interpreting the prescription or medication order; selecting, preparing, compounding, packaging, labelling, distributing and dispensing prescribed drugs; the proper and safe storage of drugs; the monitoring of drug therapy; the reporting and recording of adverse drug reactions and the provision of appropriate drug information; teaching and counselling on the proper and safe use of drugs and medications.

"Poison" means:

1. Any drug, chemical, substance or preparation which according to standard works on medicine, materia medica or toxicology is liable to be destructive of adult human life in doses of 60 grains or metric equivalent or less;

2. Any substance recognized by standard authorities on medicine, materia medica or toxicology as poisonous;

3. Any item enumerated in Schedule A of N.J.S.A. 45:14-19 or any item enumerated in Schedule B of N.J.S.A. 45:14-20; and

4. Any drug, chemical, substance or preparation which is labeled "poison".

"Prescription" means any order for drugs and related items as defined in N.J.S.A. 45:14-14.

"Professional judgment" means judiciousness and discretion based upon thorough knowledge and sound application of the specialized body of knowledge peculiar to the practice of pharmacy, and an understanding of the relationship of this knowledge and its application to the well-being of the patient and to the judgment of the prescriber.

"Registered pharmacist" or "pharmacist" means a person holding an unsuspended and unrevoked license as a pharmacist issued by the Board whose certificate is in good standing by virtue of a renewal certificate having been obtained for the current registration period.

13:39-1.3 Fee schedule

(a) The following fees shall be charged by the Board:

1. For pharmacists as follows:

i. Examination: $50.00 plus the cost of the National Association of Boards of Pharmacy Licensing Examination (NABPLEX).

(1) Repeat of law examination only: $25.00.

ii. Reciprocal registration: $125.00.

iii. Reinstatement of licensure: $42.50 per year up to 5 years.

iv. Duplicate registration: $10.00.

v. Certification fee: $5.00.

vi. Biennial registration: $85.00.

vii. Duplicate renewal: $5.00.

viii. Transfer of grades: $50.00.

2. For pharmacies as follows:

i. Duplicate permit: $5.00.

ii. Pharmacy permits:

(1) New: $200.00.

(2) Change of ownership: $200.00.

(3) Change of location: $200.00.

13:39-1.4 Payment of penalties

(a) Any penalties levied by the Board must be paid within 30 calendar days of the receipt of a penalty letter or final order of the Board unless otherwise prescribed by statute or terms of a final order.

(b) Failure to comply with this rule will result in action by the Board according to the provisions of N.J.S.A. 45:1-24.

13:39-1.5 Hearings

(a) Any time the Board seeks to impose a disciplinary sanction upon a licensee, the licensee may request a hearing.

(b) Any hearings held shall be conducted 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.

SUBCHAPTER 2. APPLICANT QUALIFICATIONS AND EXAMINATIONS REQUIREMENTS

13:39-2.1 Education requirements

(a) An applicant for the written examination shall have been duly granted or have fully completed all the requirements for graduation of a minimum five-year pharmacy course leading to a degree of Bachelor of Science in pharmacy or Doctor of Pharmacy given in a school or college of pharmacy approved by the Board.

(b) Before being admitted to the examination, either a transcript of the applicant's record or a certificate by the registrar of the school or college of pharmacy attended must be supplied stating that the applicant has either graduated or has completed all of the requirements for graduation. If the transcript or certificate does not state that the applicant has graduated or has completed all the graduation requirements, the Board may require other forms of proof to be supplied by the applicant.

13:39-2.2 Application to be filed

An applicant for the written examination must file an application for such examination at least 60 days prior to the date of the examination unless this requirement is waived by the Board because of extenuating circumstances. The required fees as prescribed in N.J.A.C. 13:39-1.3 must also be submitted.

13:39-2.3 Birth certificate

An applicant for the written examination who was born in the United States shall submit the original or a certified copy of his or her birth certificate which will be retained by the Board. The birth certificate must bear the name under which the application for the examination is being made. In those instances where there has been a legal name change, documentation attesting to the legal name change must be submitted along with the birth certificate.

13:39-2.4 Proof of citizenship

(a) An applicant for the written examination who was born outside of the United States but is a citizen of the United States must present either citizenship papers or derivative citizenship papers. If the applicant is not a citizen, he or she must first present proof of intention to become a citizen.

(b) An applicant who presents citizenship papers of his or her parents which list the applicant's name as a minor child or who presents other proof of citizenship from the United States Immigration and Naturalization Bureau may be admitted to the written examination pending the submission of derivative citizenship papers.

13:39-2.5 Language comprehension requirement

All applicants for licensure who earned their undergraduate pharmacy degree in countries wherein the primary language is other than English, prior to being granted licensure, shall comply with the requirements of N.J.A.C. 13:39-3.11.

13:39-2.6 Age requirement

An applicant who is not of legal age, that is, the age of majority in the State of New Jersey, but who has otherwise met the application requirements, with the exception of the internship requirement, may be admitted to the written examination; however, the applicant shall not be eligible for licensure until attaining legal age.

13:39-2.7 Proof of character

(a) An applicant for the written examination shall submit, in advance, an application containing evidence of good moral character and evidence that he or she:

1. Is not a chronic or persistent inebriate;
2. Is not addicted to the use of any controlled dangerous substance or other habit-forming drug;
3. Has not been convicted of violating any law of this State or any other state of the United States relating to controlled dangerous substances or other habit-forming drugs;
4. Has not been convicted of violating the provisions of any law relating to the sale of liquors;
5. Has not been convicted of violating any law relating to the practice of pharmacy;
6. Has not been convicted of a crime involving moral turpitude; and
7. Has not had his or her license or, if a permit holder, his or her permit, suspended or revoked in the last five years as a result of any administrative or disciplinary proceedings in this or any other jurisdiction which proved the applicant to be in violation of any laws, rules or regulations pertaining to the practice of pharmacy, and that the applicant is not currently under suspension or revocation.

13:39-2.8 Proof of identity of applicant

An applicant for the written examination must submit to the Board 60 days in advance of the date of the written examination a bust photograph mounted on a document to be supplied by the Board requesting certain identification information.

13:39-2.9 Alleged violations of Pharmacy Act

If an applicant for any Board examination is involved in any alleged violation of the Pharmacy Act, N.J.S.A. 45:14-1 et seq., the Board in its discretion may deny the applicant the opportunity to take the examination.

13:39-2.10 Written examinations; grades

(a) The written examination shall be that of the National Association of Boards of Pharmacy (NABPLEX). An applicant shall attain a passing grade of not less than 75. If an applicant fails the examination, he or she will be required to repeat the examination.

(b) The applicant shall also pass a written examination on the laws governing the practice of pharmacy in the State of New Jersey. A passing grade of not less than 75 shall be attained. If an applicant fails the examination, he or she will be required to repeat the examination.

(c) If the applicant should fail either the NABPLEX or the law examination three times, the applicant shall be required to take review courses as approved by the Board prior to retaking the failed examination(s).

SUBCHAPTER 3. REGISTRATION OF PHARMACISTS

13:39-3.1 Certificate of registration

An applicant who has successfully passed all Board examinations shall receive an authorization signed by the Secretary of the Board granting the applicant the right to practice pharmacy in the State of New Jersey until such time as an original certificate of registration may be issued.

13:39-3.2 Duplicate certificate of registration

A duplicate certificate of registration may be issued by the Board upon payment of a fee as prescribed in N.J.A.C. 13:39-1.3 and upon submission of proof of the applicant's identity and reasonable proof of the loss or destruction of the original certificate of registration or upon return of the damaged original certificate to the Board.

13:39-3.3 Change of name

If a registered pharmacist legally changes his or her name, the name change shall be recorded in the Board's records. The registered pharmacist shall submit original proof of the change of name or a certified copy of the court order or marriage certificate which will be retained by the Board. When a duplicate certificate is issued, the original certificate must be returned for cancellation along with the required fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-3.4 Change of employment or address

(a) A registered pharmacist shall notify the Board in writing of any change in his or her home address within 30 days.

(b) A registered pharmacist shall notify the Board in writing within 30 days of any change in his or her place of employment and the number of hours to be worked each week.

13:39-3.5 Certification of records

Upon payment of the required fee as prescribed in N.J.A.C. 13:39-1.3, a certification of any of the information on file in the Board records concerning an application for registration of a registered pharmacist will be supplied.

13:39-3.6 Reproduction of original certificate of registration prohibited

The original certificate of registration issued by the Board to any pharmacist shall not be reprinted, photographed, photostated, duplicated or reproduced by any other means either in whole or in part, without the express written authorization of the Board.

13:39-3.7 Limitation or reciprocal registration

(a) Reciprocal registration of out-of-state pharmacists shall be limited to those pharmacists who have been duly licensed in mutually reciprocating states.

(b) Applicants who have graduated from pharmacy schools which have not been accredited by the American Council on Pharmaceutical Education but who have been licensed by the District of Columbia, a reciprocating state or a United States territory shall be eligible for transfer of licensure if the Board is satisfied that the licensing procedures applicable to graduates of non-accredited schools in the state of original licensure provide for an adequate evaluation of the applicant's education, training and experience.

13:39-3.8 Basic requirement for transfer of licensure

An application for reciprocal registration to the State of New Jersey shall fully meet all of the requirements in effect in this State as of the date of his or her registration in the state of original licensure, or in any other state of licensure by examination, including the district of Columbia and territories of the United States.

13:39-3.9 Out of state practice requirement for transfer of licensure from a mutually reciprocating state

An applicant for reciprocal registration to the State of New Jersey must have practiced in a pharmacy for at least 2000 hours within the one year immediately prior to application and be in good standing with that state and any other state in which the applicant is licensed.

13:39-3.10 Clear record of law observance

Eligibility for reciprocal registration shall be denied any person against whom there is pending any formal charges for any alleged violations of the laws governing the practice of pharmacy or the dispensing of narcotics, alcohol or other regulated drugs, or who has been convicted of any crime within the past five years. All applicants for transfer of licensure must meet the character requirements outlined in N.J.A.C. 13:39-2.7.

13:39-3.11 TOEFL examination

(a) All pharmacist applicants from countries where the primary language is other than English, prior to being granted licensure as professional pharmacists in this State, shall submit to the Board evidence that they have successfully completed the Test of English as a Foreign Language (TOEFL) Examination and have attained a minimum passing score. This test shall be taken within two years of application for licensure in this State.

(b) A request for waiver of the TOEFL examination shall be made to the Board in the applicant's own handwriting and must delineate good cause for the waiver request. The Board may, after due consideration and within its own discretion, waive the TOEFL examination.

13:39-3.12 Physical and mental fitness of reciprocal registrants

(a) An applicant for reciprocal registration shall be physically and mentally fit to perform all the duties normally required of a registered pharmacist.

(b) The Board, at its discretion, may require proof of the applicant's physical and mental fitness to practice pharmacy in this State.

13:39-3.13 Preliminary application

A preliminary application obtained from the Board for reciprocal registration shall be submitted to the National Association of Boards of Pharmacy.

13:39-3.14 New Jersey pharmacy law examination: reciprocal registration

(a) The applicant for reciprocal registration shall pass a written test on the laws governing the practice of pharmacy in this State. A passing grade of not less than 75 shall be attained. If an applicant fails the examination, he or she will be required to repeat the examination.

(b) If the applicant for reciprocal registration fails the examination three times, the applicant shall be required to take review courses as approved by the Board prior to retaking the law examination.

13:39-3.15 Biennial registration renewal

(a) Every registered pharmacist, on or before April 30 of each odd-numbered year, shall renew his or her certificate of registration through the payment of a registration renewal fee as prescribed by N.J.A.C. 13:39-1.3 and the filing of a renewal application to be obtained from the Board.

(b) The renewal application shall list the name, home address, original certificate of registration number, date of issuance of original certificate of registration, places and hours of employment, continuing education credits, and other information as requested by the Board.

(c) The renewal application shall be signed by the applicant.

13:39-3.16 Duplicate renewal certificate of registration

If a renewal certificate of registration is lost or destroyed, a duplicate renewal certificate may be obtained upon payment of a fee as prescribed in N.J.A.C. 13:39-1.3. Proof of the applicant's identity and proof of loss or destruction of the applicant's renewal certificate originally issued must be submitted.

13:39-3.17 Reinstatement in good standing

(a) If a registered pharmacist permits his or her registration to lapse for a period of less than five years through a failure to renew his or her certificate of registration, the registration may be brought into good standing through payment of the current renewal fee and upon submission of proof of identity and the filing of an application to be obtained from the Board.

(b) If the registration has lapsed for a period of five years or longer, the applicant for such reinstatement must pass the New Jersey pharmacy law examination. Copies of excerpts of the laws governing the practice of pharmacy in the State of New Jersey will be supplied to the applicant by the Board beforehand for study purposes. The applicant shall also submit payment of the current renewal fee and proof of identity along with an application to be obtained from the Board.

(c) Every applicant for reinstatement must submit evidence of satisfactory completion of the continuing education requirements which are 15 credits per year up to a maximum of five years or 75 credits.

13:39-3.18 Pharmacist-in-charge

(a) A registered pharmacist shall not assume the responsibilities of a registered pharmacist-in-charge of more than one pharmacy or pharmacy department simultaneously.

(b) There shall not be more than one registered pharmacist-in-charge of any one pharmacy or pharmacy department.

(c) Whenever there is a change of a pharmacist-in-charge of a pharmacy or other Board-licensed establishment, the incoming and outgoing pharmacists-in-charge shall jointly take an inventory of all controlled dangerous substances as defined in N.J.S.A. 24:21-5 through 24:21-8.

(d) Whenever a registered pharmacist assumes the duties of a pharmacist-in-charge of a pharmacy or other Board-licensed establishment, he or she shall so advise the Board in writing within 30 days by completing a form provided by the Board.

(e) A registered pharmacist-in-charge shall be physically present in the pharmacy or pharmacy department for a sufficient amount of time to ensure the fulfilling of the following responsibilities:

1. Employment and supervising personnel in a prescription department or pharmacy department;
2. Maintaining accurate records of all prescription medication received and dispensed;
3. Ensuring that medication dispensed conforms with the prescription received;
4. Maintaining the security of the prescription area and its contents;
5. Ensuring that only pharmacists, interns or externs provide professional consultation with patients and physicians;
6. Ensuring that only pharmacists, interns or externs accept telephone prescriptions and renewal authorizations;
7. Ensuring that all dispensed medication is properly labeled;
8. Ensuring the use of prescription labels naming the pharmacist-in-charge;
9. Ensuring the posting of the name of the pharmacist-in-charge on the entrance to the pharmacy or pharmacy department in such a way as to be visible to the public;
10. Prohibiting the presence of misbranded, deteriorated or outdated drugs in the active stock in the pharmacy;
11. Operating the prescription area in an orderly and sanitary manner;
12. Ensuring the delivery of a complete service to the community by a retail pharmacy;
13. Ensuring that the pharmacy area is operated in conformance with good pharmaceutical practices;
14. Notifying the Board in writing within 10 days when his or her duties as pharmacist-in-charge terminate at a specific location; and
15. Ensuring compliance with all statutes, rules and regulations governing the practice of pharmacy.

SUBCHAPTER 4. PHARMACY PERMITS

13:39-4.1 Issuance of permits

All permits shall be issued by the Board in the name of the pharmacy or other licensed establishment for the operation of which the permit is issued.

13:39-4.2 Display of permits

A permit issued by the Board for the operation of a pharmacy or other licensed establishment shall be conspicuously displayed.

13:39-4.3 Death of owner or partner

In the case of death of an individual owner or a partner, the permit issued to the deceased owner or to the partnership becomes null and void. If the operation of the pharmacy is to be continued, the estate or heirs of the deceased partner and the remaining partners shall apply immediately for a new permit on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.4 Change of ownership

Whenever there is any change in ownership of more than 10 percent of the stock of a partnership or sole proprietorship, the new ownership shall apply for a new permit 30 days in advance of the change of ownership on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.5 Change of corporate officers or stockholders, non-public companies

If there is a change of registered agents or officers or a change of stock ownership involving 10 percent or more of the outstanding stock, the corporation shall file an affidavit with the Board within 30 days indicating the changes that have taken place and any other information requested by the Board.

13:39-4.6 Change of location

(a) Change of location is defined as a physical move of a pharmacy by the same owners to a new location that is within a five mile radius of the original location. Any move beyond a five mile radius is considered to be the opening of a new pharmacy and is subject to the requirements of N.J.A.C. 13:39-4.7.

(b) Whenever a pharmacy or licensed establishment changes location, the pharmacy or licensed establishment shall apply for a new permit on a form prescribed and furnished by the Board at least 30 days in advance of the proposed date of opening at the new location. The pharmacy or licensed establishment shall pay a fee for the new permit pursuant to N.J.A.C. 13:39-1.3.

(c) Prior to the remodeling of a pharmacy, pharmacy department or licensed establishment, where such remodeling entails a physical change of location of the prescription area within the premises or a change of the physical specifications of the licensed premises or the compounding area, it shall be necessary to notify the Board at least 30 days in advance on a form prescribed by the Board.

13:39-4.7 New pharmacies eligibility and application

(a) A permit application shall be submitted to the Board by every person or corporation desiring to operate a new pharmacy. Such application shall be made on a form furnished by the Board.

(b) The permit application shall indicate the exact intended location and plan or physical arrangement of the proposed pharmacy area and shall indicate any premises contiguous to but not necessarily a part of the pharmacy.

(c) The permit application shall bear the exact trade name, if any; the corporate name, if any; the name and addresses of the owners and operators, if a sole proprietorship or partnership; the names and addresses of the officers and principal stockholders holding 10 percent or more stock, if the pharmacy is a non-publicly held corporation; and the names and addresses of the officers, if a publicly held corporation.

(d) The permit application shall include the name of the pharmacist-in-charge who shall be a registered pharmacist in good standing in the State of New Jersey.

(e) No person or other business entity shall be eligible for a permit who is not of high moral character or against whom there is pending any indictment or any alleged violation of local, state or Federal law pertaining to the practice of pharmacy or the dispensing of controlled dangerous substances or any drug under N.J.S.A. 24:21-2.

(f) A person submitting an application may be interviewed by the Board to review his or her qualifications and eligibility.

(g) Upon approval of the permit application, the Board shall issue a permit number that will allow the applicant to place prescription legend drugs in stock.

13:39-4.8 Discontinued pharmacies

(a) Whenever a pharmacy is terminated by suspension, retirement or death of the owner, sale or other cause including insolvency, all drugs signs shall be removed from both the inside and outside of the discontinued pharmacy, and the permit shall be returned to the Board for cancellation within 30 days of the closing. Prescription records and other information may be requested by the Board as outlined in N.J.A.C. 13:39-5.8.

(b) Whenever a pharmacy is to be discontinued, it shall be the responsibility of the permit holder to immediately notify by telephone the State Board of Pharmacy, the Drug Control Program in the State Department of Health and the Drug Enforcement Administration of the proposed closing at least 15 days beforehand, followed by a letter in writing to those agencies. All medication (both prescription legend and controlled drugs) shall remain on the licensed pharmacy premises with all licenses and registrations in effect until such medications are disposed of in the manner prescribed by the above agencies.

13:39-4.9 Change of business hours

If any changes are made in the opening or closing hours of a pharmacy or other Board-licensed establishment, the Board office shall be notified in writing of these changes within 30 days.

13:39-4.10 Duplicate permit

A duplicate permit may be issued by the Board upon payment of a fee pursuant to N.J.A.C. 13:39-1.3 and submission of an affidavit describing the loss or destruction of the permit originally issued, or upon return of the damaged permit.

13:39-4.11 Change of name

(a) A change in the name of a pharmacy or other Board-licensed establishment shall be made upon the submission to the Board for approval of the new name and of prescription labels bearing the new name.

(b) An amended permit bearing the new name may be obtained upon return of the original permit to the Board for cancellation and payment of the permit fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-4.12 Reproduction of permits

Any permit issued by the Board for the operation of a pharmacy or other board-licensed establishment shall not be printed, photographed, photostated, duplicated or reproduced by any other means either in whole or in part, without the express written authorization of the Board.

13:39-4.13 Certification of records

A certification of any of the information not obtained by the Board on a confidential basis, which appears in the Board records and concerns the ownership or registration of a pharmacy or other Board-licensed establishment, will be supplied only upon written request and payment of a certification fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-4.14 Contract pharmaceutical services

An institutional permit is required of any institution serviced by an outside vendor that performs pharmaceutical services as defined in N.J.A.C. 13:39-1.1 in an area where drugs are stored, manufactured or compounded.

13:39-4.15 Retail permit; prescription department or pharmacy department

(a) If the area for which a pharmacy permit is sought is less than the total store area of the enterprise, the area subject to permit shall be known as the "Prescription Department" or "Pharmacy Department".

(b) The holder of a permit to operate a prescription or pharmacy department and the registered pharmacist-in-charge of the department shall be subject to the following additional requirements:

1. The prescription or pharmacy department shall be constructed so as to enable the closing off and securing of the department from the remainder of the store area. The department shall be separated from the store area by a secured barrier or partition extending from the floor or fixed counter to the ceiling of either the department or main store and attached thereto. The entrance to the barrier or partition, door or doors and the prescription or pharmacy department shall be capable of being locked and connected to a security device or other Board approved security system.

2. The registered pharmacist on duty shall be responsible for keeping the prescription department secure and locked and the alarm system turned on at all times when he or she does not have full vision or control of the department or when he or she is not present within the department. Only the registered pharmacist(s) shall maintain possession of the keys to the department.

3. No unauthorized person shall be permitted in the department while a registered pharmacist is not present.

4. No prescription shall be accepted or medication delivered to anyone during the period that a registered pharmacist is not present within the department.

5. All medications requiring supervision of a pharmacist, including dispensed medication, shall remain within the confines of the department when the pharmacist is not in the prescription department.

6. The hours that the department is open shall be posted in plain view at the entrance to the department and at the public entrance to the enterprise containing the department.

7. When the enterprise in which the department is located maintains different store hours from the pharmacy or prescription department, all advertising, announcements, signs or statements indicating store hours and the presence of the pharmacy or prescription department shall clearly and distinctly indicate the hours that the department is open.

8. Any advertising, announcements, signs or statements relating to the business enterprise and containing the words "pharmacy", "prescription", "drugs", or other like terms shall include the word "department" and shall in no way indicate that the entire business enterprise is a drugstore, pharmacy, or apothecary.

9. The prescription department shall have a published telephone number different from that of the establishment in which the department is located. No extensions of this phone shall be located outside the department.

10. The name of the pharmacist-in-charge shall be posted so as to be visible from outside of the department. The telephone number of the pharmacist-in-charge shall be available in the office of the manager of the establishment.

11. There shall be provided a secure area for the receiving of prescription drugs from suppliers. No prescription drug shall be accepted from any supplier during the hours the prescription or pharmacy department is closed unless adequate security for the storage of department shipments has been provided and approved by the Board.

12. If a drop-off area is utilized for prescriptions it shall be of a one-way, irretrievable design.

13:39-4.16 Permits; specialized, limited use

(a) The Board may issue a special or limited-use permit, wherein the type of service is of a limited nature. The permit so issued, being based on special conditions of use imposed by the Board, may necessitate the waiver of certain rule requirements.

(b) Specialized or limited-use permits shall pertain to pharmacies providing miscellaneous services that are not expressly provided for within the Act. An applicant for any specialized pharmacy permit shall provide the Board with an application and a policy and procedure manual which sets forth a detailed description of the type of specialized pharmacy services to be provided within the pharmacy practice. The policy and procedure manual shall also contain detailed provisions which ensure the protection of the public welfare as determined by the Board.

13:39-4.17 Steering prohibited

It shall be unlawful for a pharmacist or a pharmacy permit holder to enter into an arrangement with a health care practitioner who is licensed to issue prescriptions, for the purpose of directing or diverting patients to or from a specified pharmacy or restraining in any way a patient's freedom of choice to select a pharmacy.

13:39-4.18 Responsibilities of pharmacists and permit holders

(a) All pharmacists and all permit holders are responsible for compliance with all the rules, regulations and laws governing the practice of pharmacy.

(b) Any pharmacist and any permit holder may be held liable for violations of the Act and these rules and may be subject to disciplinary action.

SUBCHAPTER 5. PRESCRIPTIONS

13:39-5.1 Imprinted prescription blanks

No prescriber's prescription blanks shall bear the imprint of the name of any pharmacy or other licensed premises or bear the name and address of any person registered under N.J.S.A. 45:14-1 et seq.

13:39-5.2 Lack of directions on original prescription

(a) If the prescriber fails to include on the original prescription directions to the patient for use of the medication, the registered pharmacist shall indicate on the label the words "use as directed" or "as ordered by the physician" or similar words to the same effect.

(b) When, in the judgment of the pharmacist, directions to the patient or cautionary messages are necessary, either for clarification or to ensure proper administration of the medication, the pharmacist may add such directions or cautionary messages to those indicated by the prescriber on the original prescription.

13:39-5.3 Record of prescription refills

If a prescription is refilled, a record of the date on which the prescription is refilled shall appear on the original prescription. In an electronic data system, a record of the refill shall be recorded on the original prescription for at least the first two refills.

13:39-5.4 Authorization for renewal of prescriptions

(a) A prescription for medication or devices which pursuant to State or Federal law may be sold, dispensed or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber, and the prescription may not be refilled after one year from the date of original prescription.

1. Prescriptions marked "PRN" or other letters or words meaning refill as needed shall not be renewed beyond one year past the date of original prescription.

(b) When the renewals listed on the original prescription have been depleted, no additional renewals may be added to the original prescription. For additional dispensing, a new prescription must be authorized by the prescribing physician as provided in N.J.S.A. 45:14-14, which must be reduced to writing by the pharmacist and entered into either a manual or into the electronic data processing system as a new prescription. A new prescription shall be generated and the original prescription shall remain in the prescription file in chronological order.

13:39-5.5 Approval of FDA necessary

No drug or medicine other than a compounded prescription order shall be sold or dispensed in any pharmacy within the State of New Jersey until such drug or medicine has received an approved NDA, ANDA or INDA from the Federal Food and Drug Administration for a "new drug clearance order".

13:39-5.6 Copies of prescriptions; transfers

(a) Copies of prescriptions issued directly to the patient by the pharmacy where the medication was dispensed, pursuant to the receipt of the prescription, shall state in letters at least equal in size to those describing the medication dispensed, the underlined statement: "COPY—FOR INFORMATION ONLY".

(b) Presentation of a prescription label or a prescription marked "COPY—FOR INFORMATION ONLY" shall be for information purposes only and have no legal status as a valid prescription order. The recipient pharmacist of such copy or prescription label shall contact the prescribing practitioner or transferor pharmacy and obtain all information required by (c)2 below for authorization to dispense the prescription, which is the same as obtaining an original prescription order.

(c) A copy of a prescription may be transferred by telephone by pharmacists between pharmacies for the purpose of refill dispensing provided that:

1. The transferor pharmacist invalidates the prescription on file as of the date the copy is transferred by writing "VOID" on its face, and records on the back of the invalidated prescription order that a copy has been issued, to whom, the date of issuance of such copy, and the initials of the pharmacist issuing the transferred prescription order.

2. The transferee pharmacist, upon receiving such prescription directly from another pharmacist, records the following:

i. The name, address and original prescription number of the pharmacy from which the prescription was transferred;

ii. The name of the transferor pharmacist;

iii. All information constituting a prescription order, including the following:

(1) Date of issuance of original prescription;

(2) Original number of refills authorized on original prescription;

(3) Complete refill record from original prescription;

(4) Date of original dispensing;

(5) Number of valid refills remaining.

3. The transferee pharmacist informs the patient that the original prescription has been cancelled at the pharmacy from which it was obtained.

(d) When a copy of a prescription is issued in writing or by telephone, refill authorizations shall be cancelled on the original prescription and the fact that a copy has been issued shall be noted on the original prescription along with the date the copy was issued.

13:39-5.7 Record of pharmacist filling prescription

(a) A registered pharmacist who fills or compounds a prescription or who supervises the filling or compounding of a prescription by an intern or extern shall place his or her signature or readily identifiable initials on the face of the original prescription. In using an electronic data processing system, the initials of the pharmacist responsible for the filled prescription shall also be recorded.

(b) A registered pharmacist who refills a prescription shall place his or her signature or readily identifiable initials on the reverse side of the original prescription next to the date of the refill and the amount dispensed in refilling the prescription if it is different from the original amount prescribed. In using an electronic data processing system, the identical refill information shall also be recorded.

(c) An intern or extern who fills or compounds a prescription under the direct supervision of a registered pharmacist shall place his or her signature or readily identifiable initials on the face of the original prescription. In using an electronic data processing system, the initials of the intern or extern responsible for the filling of the prescription shall also be recorded.

(d) An intern who refills a prescription under the direct supervision of a registered pharmacist shall place his or her signature or readily identifiable initials on the reverse side of the original prescription next to the date of the refill and the amount dispensed in refilling the prescription if different from the original amount prescribed. In using an electronic data processing system, this information shall also be recorded.

(e) A record identifying such initials with the signature, name and address of the pharmacist, intern or extern shall be maintained for a period of five years after the termination of employment of said pharmacist, intern or extern.

(f) If an electronic data processing system is utilized in connection with the dispensing of medication and the required recording of prescription information, a means acceptable to the Board shall be utilized to identify the pharmacist or intern or extern dispensing the medication.

(g) In using an electronic data processing system, the pharmacist in charge shall maintain a document log in which each pharmacist shall sign a statement on the pharmacist's next working day attesting to the fact that the prescription information he or she entered in the electronic data processing system on the previous working day is accurate and complete and that the identifying designations are correct. The document log shall be maintained at the pharmacy for a period of five years after the date of the last entry. The five years of record information shall be kept in such a manner as to be sight-readable within two weeks. The most recent one year of record information shall be immediately retrievable.

(h) In using an electronic data processing system, the system shall have the capability of producing sight-readable documents of all original and refilled prescription data, and, in addition, the number of refills authorized by the prescribing physician for a period of not less than five years. Five years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of record information shall be immediately retrievable. The term "sight-readable", as it appears in all rules of the Board, shall mean that the Board or Attorney General shall be able to examine and read the record of information. During the course of an on-site inspection, the record may be read from a cathode ray tube (CRT), microfiche, microfilm, hard copy printout or other acceptable method. For the purpose of administrative proceedings before the Board, records shall be provided in a paper printout form.

(i) Initials of the dispensing pharmacist and intern or extern, if applicable, shall be entered into the system each time a prescription is filled or refilled. Computer programs which automatically generate pharmacist's initials without requiring a direct entry by the dispensing pharmacist at the time of dispensing are prohibited.

13:39-5.8 Availability of records upon termination of business

(a) Where a pharmacy ceases operation as the result of a suspension, retirement or death of the owner, sale or other cause including insolvency, the licensee, or the one responsible for supervising the disposition of the practice, shall make every effort to notify patrons of their right to retrieve currently valid prescriptions and the location of the prescriptions and profile records for a six-month period following notice, using all of the following methods:

1. Notification in writing to the Board;

2. Publication, once weekly for two successive weeks in a newspaper whose circulation encompasses the major area of the licensee's former practice, of a notice advising patrons of the right to retrieve their prescriptions and the location of the prescriptions for a six-month period following publication; and

3. A sign placed in the pharmacy location informing the patrons of the right to retrieve their prescriptions and the location of the prescriptions.

SUBCHAPTER 6. DISPENSING AND ADVERTISING DRUGS

13:39-6.1 Professional judgment in dispensing drugs

(a) The pharmacist shall have the right to refuse to fill a prescription if, in his or her professional judgment, the prescription is outside the scope of practice of the prescriber; or if the pharmacist has sufficient reason to question the validity of the prescription; or to protect the health and welfare of the patient.

(b) A pharmacist may dispense an emergency supply (no more than a 72-hour quantity) of a chronic maintenance drug (except controlled dangerous substances) or device in the absence of a current valid prescription, if, in his or her professional judgment, refusal would endanger the health or welfare of the patient.

1. The pharmacist must first ascertain to the best of his or her ability, by direct communication with the patient, that such a medication or device was prescribed for that patient by order of a licensed practitioner.

2. The pharmacist shall document the communication and require the patient to provide suitable identification and sign a statement attesting to the need before dispensing.

3. A patient's signature is not required for emergency refilling of a previously valid prescription.

13:39-6.2 Prescription prepared, compounded or dispensed by pharmacy externs or interns

A pharmacy intern or extern may prepare, compound or dispense prescriptions only under the direct personal supervision of a registered pharmacist of this State.

13:39-6.3 Sale of controlled dangerous substances and prescription legend drugs by other than a registered pharmacist in a Board-licensed establishment

A non-registered person shall only sell or furnish a controlled dangerous substance or prescription legend drug under the direct personal supervision of a registered pharmacist.

13:39-6.4 Direct personal supervision of dispensing and compounding

The registered pharmacist supervising the activities of a non-registered individual must be physically present in the compounding/dispensing area and must be personally responsible for the accuracy of the filled prescription.

13:39-6.5 Restriction on display of prescription legend drugs and controlled dangerous substances

Prescription legend drugs and controlled dangerous substances may not be displayed in the licensed establishment in such a manner that they can be accessible to the public.

13:39-6.6 Foreign prescriptions

Prescriptions written or signed by other than a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions in the United States, District of Columbia, or any territory of the United States are not considered valid prescription orders and shall not be honored.

13:39-6.7 Supportive personnel

(a) Supportive personnel may assist the registered pharmacist in a clerical manner such as the retrieving of prescription files, profile cards, and other such records, the typing of labels and the completing of prescription receipts and other such forms.

(b) Supportive personnel shall not interpret a prescription order or professionally consult with a patient or physician or the agent of the physician or weigh, measure or otherwise compound or dispense a prescription. Supportive personnel may, however, count or pour prescription medication under the direct personal supervision of the registered pharmacist as long as the contents and finished-product are verified by a registered pharmacist.

(c) There shall be no more than two supportive personnel being supervised by one pharmacist at any given time.

13:39-6.8 Advertising and sale of prescription drugs

(a) "Advertisement" means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services or goods from a Board licensee.

(b) Price quotations for prescription drugs appearing in any advertisement shall stipulate the strength and quantity required to be purchased for the offered cost. Price quotations shall include the usual and customary prescription cost. All services including, but not limited to, delivery charges rendered by the pharmacy which will add additional costs to the price quoted, must be set forth in the advertisement.

(c) Any reference in any form of advertisement to the quality of a drug or its beneficial use is prohibited.

(d) Price quotations for drugs appearing in any advertisement shall stipulate the effective period of price quotation.

(e) Upon request by any consumer, the pharmacist shall be required to give price information over the telephone and shall stipulate the effective period of the price quotation.

(f) All advertisements shall be predominantly informational and shall not be misleading, confusing or false. Any advertisement demeaning the quality of professional services rendered by another licensee or permittee shall be prohibited. No advertisement shall rely in any way on techniques to obtain attention that demonstrate a clear and intentional lack of relevance to the selection of professional services.

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

13:39-7.1 Retail pharmacy access and egress

Retail pharmacies shall be required to maintain entrances which are easily and safely accessible to the general public. Access to and egress from the pharmacy shall not be such that the public must traverse or traffic through any enterprise in which prescriptions are generated.

13:39-7.2 Retail pharmacy signs

Retail pharmacies shall be required to post a sign on the exterior of the building or a sign which is otherwise visible from a public roadway, conspicuously identifying the existence of a pharmacy on the premises.

13:39-7.3 Spatial requirement of a retail pharmacy prescription area

(a) For pharmacies in operation prior to July 1, 1963, the space devoted to the prescription area and laboratory shall not be less than 10 percent of the main floor area of the pharmacy or drugstore, and in no instance shall it be less than 50 square feet. If the main floor area of such pharmacy exceeds 1,200 square feet, the 10 percent requirement does not apply and the minimum requirement for the prescription area shall not be less than 120 square feet.

(b) For all other retail pharmacies including pharmacies subject to the provisions of (a) above which are moving to a new location, the prescription area must occupy exclusively a minimum of 150 square feet.

13:39-7.4 Prescription counter

There shall be a prescription counter on which to work, and the working surface must be kept clear at all times for the compounding of prescriptions and for other pharmaceutical manufacturing, commensurate with the scope of practice.

13:39-7.5 Prescription area sink

An adequate sink with hot and cold running water shall be provided in the prescription area of retail and institutional pharmacies, easily accessible to the prescription counter. A similarly equipped sink must be provided in institutional satellite pharmacies as well as institutional and retail pharmacy intravenous admixture rooms.

13:39-7.6 Storage and adequate stock

There shall be sufficient shelf, drawer or cabinet space within the prescription area for proper storage of a representative stock of prescription labels, and assorted stock of prescription containers, an adequate stock of prescription drugs and chemicals and the required equipment.

13:39-7.7 Minimum equipment and facilities

(a) The following minimum amount of equipment and facilities shall be required to be in every prescription area, and this equipment shall be stored so as to be readily accessible and shall be kept in a clean condition:

1. The current USP/DI and supplements and suitable reference texts including at least the current edition on pharmacology, the general practice of pharmacy, drug interactions and drug product composition;
2. Poison record book;
3. Over the counter Schedule V Record Book
4. Permanent prescription filing device and patient profile record system;
5. Properly safeguarded storage place for Schedule II controlled substances if not dispersed;
6. Class A prescription balance;
7. Set of metric weights;
8. Devices capable of measuring 0.3 ml to 500 ml
9. Mortars and pestles:

i. Wedgewood: approximately 4 oz. and 24 oz. or the metric equivalent thereof.

ii. Glass: 4 oz. and 8 oz. or the metric equivalent thereof.

10. Glass funnels: 1 oz., 4 oz. and 8 oz. or the metric equivalent thereof;
11. Stirring rods;
12. A small, medium and large steel spatula and a spatula of rubber or composition;
13. Ointment tile or parchment paper;
14. Refrigerator;
15. Filter papers and powder papers;
16. Suitable counting trays or approved counting device;
17. Labels, upon dispensing to contain the name of the registered pharmacist-in-charge, address and telephone number and the Drug Enforcement Administration (D.E.A.) number of pharmacy;
18. Poison labels containing name of the registered pharmacist-in-charge, address and telephone number of pharmacy;
19. Suppository mold; and
20. Two Drug Utilization Review Council Placards.

13:39-7.8 Cleanliness, orderliness and sanitation

The entire prescription area shall at all times be kept in a clean, orderly and sanitary condition.

13:39-7.9 Television in prescription area prohibited

No commercial television, other than for security measures, may be operated in a prescription area or in any location outside of a prescription area such that its operation may be viewed from the prescription area.

13:39-7.10 Return of prescription medication

No prescription medication shall be placed in stock for reuse or resale which has been returned after leaving the pharmacy, except as provided in N.J.A.C. 13:39-9.

13:39-7.11 Prescription balances, scales, weights and automatic counting devices

All pharmacies shall prove to the satisfaction of the Board that all balances, scales, weights and automatic counting devices have been currently inspected by the Department of Weights and Measures of the municipality or county in which such pharmacy, drugstore, or other Board-licensed establishment is located, and that such balances, scales, weights and automatic counting devices have been properly sealed by the applicable authority.

13:39-7.12 Disposal of unwanted drugs

Unwanted drugs shall be disposed of in a manner that does not cause them to become a health hazard, and in accordance with all local, State, and Federal codes.

13:39-7.13 Outdated drugs or drugs marked "sample"

No outdated, misbranded, deteriorated or adulterated drugs, or any drugs marked "sample" or with any like designation or meaning shall be placed or maintained in active stock for use or sale.

13:39-7.14 Patient profile record system

(a) A patient profile system must be maintained by all pharmacies for persons for whom prescriptions are dispensed. The Patient Profile Record System (PPRS) shall be devised so as to enable the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile record may be maintained for members of a family living at the same address and possessing the same family name.

(b) The following information shall be recorded in the PPRS:

1. The family name and the first name of the person for whom the medication is intended (the patient);

2. The address of the patient;

3. Indication of the patient's age, birth date or age group (infant, child, adult);

4. The original date the medication is dispensed pursuant to the receipt of the physician's prescription;

5. The number or designation identifying the prescription;

6. The prescriber's name;

7. The name, strength and quantity of the drug dispensed; and

8. The initials of the dispensing pharmacist, and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the back of the original prescription.

(c) The pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic conditions which may relate to drug utilization, as communicated to the pharmacist by the patient.

1. If there are no patient allergies, idiosyncrasies or chronic conditions which may relate to drug utilization, the pharmacist shall so indicate on the patient profile record system.

(d) The pharmacist shall use professional judgment to review and monitor the patient profile, determine if there should be any adjustment in the original patient information and so indicate the appropriate change in the patient profile record.

(e) Upon receipt of a new or refill prescription, a pharmacist shall examine the patient's profile record either in a manual or electronic data processing system before dispensing the medication, to determine the possibility of a harmful drug interaction, reaction or misutilization of the prescription. Upon determining a harmful drug interaction, reaction or misutilization, the pharmacist shall take the appropriate action to avoid or minimize the problem, which shall, if necessary, include consultation with the patient and/or the physician.

1. Upon receipt of a new prescription for a drug which has not been previously dispensed to a patient, the pharmacist shall determine if the patient requires additional information or consultation to support the prescriber's instructions, and if so, proceed appropriately.

2. Upon receipt of a refill prescription, a pharmacist shall determine if a substantial time, as is appropriate for that drug in the pharmacist's professional judgement, has elapsed from the last filling, and the pharmacist shall consult with the prescriber and/or the patient to assure himself or herself that continued use is appropriate.

3. When patient profile records indicate sporadic, erratic or irrational use of medication by a patient, the pharmacist shall consult with the patient and/or the prescriber to determine if continued use is appropriate.

4. All prescription patients who patronize a pharmacy shall have a profile record card as specified by this section, and the pharmacist shall inquire as to whether other prescription drugs are being concomitantly utilized in order to establish a current drug history for the patient.

5. All of the foregoing assumes the patient is willing and capable of participating in his or her own plan of care.

(f) A patient profile record must be maintained for a period of not less than five years from the date of the last entry in the profile record. The oldest four years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of a record information must be immediately retrievable.

(g) If the pharmacy uses an electronic data processing system, an auxiliary recordkeeping system shall be established when the electronic data processing system is inoperative for any reason. When the electronic data processing system is restored to operation, the patient profile information and number of refills authorized during the time the electronic system was inoperative shall be entered into the electronic data processing system within 72 hours.

(h) If an electronic data processing system is used, the system shall provide adequate safeguards against manipulation and alteration of records and to protect confidentiality of the information contained in the data bank.

(i) The holder of the pharmacy permit shall make arrangements with the supplier of data processing services or materials to ensure that the pharmacy will continue to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason.

(j) Failure to comply with this section shall subject the pharmacist to disciplinary sanctions.

SUBCHAPTER 8. INTERNSHIPS; EXTERNSHIPS; APPROVED TRAINING PHARMACY

13:39-8.1 Definitions

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

"Approved training pharmacy" means a pharmacy or pharmacy department approved by the Board to provide accredited practical experience to pharmacy interns or externs.

"Certified preceptor" means a pharmacist registered in this State who assumes the responsibility to supervise and tutor a pharmacy intern or extern as outlined in N.J.A.C. 13:39-8.2.

"Pharmacy intern" means any person who has graduated from an accredited school or college of pharmacy approved by the Board, or if a foreign pharmacy graduate, any person who has met all of the requirements of the National Association of Boards of Pharmacy Foreign Pharmacy Graduate Examination Commission in order to qualify to take the National Association of Boards of Pharmacy Licensing Examination (NABPLEX), who is employed in an approved training pharmacy for the purpose of acquiring accredited practical experience and who has first registered for said purposes with the Board.

"Pharmacy extern" means any person who is in the fifth or sixth college year (or third or fourth professional year) at an accredited school or college of pharmacy approved by the Board who is assigned to an approved training pharmacy for the purpose of acquiring accredited practical experience under the supervision of the school or college at which he or she is enrolled.

"Pharmacy internship or externship" shall mean the program of acquiring practical experience by a pharmacy intern or extern respectively.

13:39-8.2 Preceptor certification application; procedures; responsibilities

(a) A registered pharmacist who wishes to be a certified preceptor shall make application to the Board upon such form as shall be prescribed and shall furnish evidence satisfactory to the Board that he or she:

1. Has been registered and employed as a pharmacist on a full-time basis for at least two years in the State of New Jersey;

2. Has been engaged in the compounding and dispensing of pharmaceutical preparations and prescriptions and the supplying of drug products in a registered pharmacy for a period of at least two years, one year of which must have been immediately prior to the beginning of any pharmacy internship he or she is to supervise;

3. Has a record of law observance deemed satisfactory by the Board; and

4. Has attended professional meetings or preceptor training conferences as may be designated by the Board.

(b) The Board shall assign a certified preceptor to each pharmacy intern. At no time may one certified preceptor supervise the training of more than one pharmacy intern. The Board reserves the right to determine the suitability of pharmacists to serve as preceptors.

(c) The certified preceptor in an approved training pharmacy must indicate a willingness to cooperate with the Board in developing pharmacy intern or extern training and shall report to the Board from time to time as requested by the Board on the progress and aptitude of any pharmacy intern or extern under his or her supervision.

(d) The compounding and dispensing of all prescriptions and drugs by the pharmacy intern or extern must be done under the direct supervision of a registered pharmacist.

(e) The certified preceptor is charged with the responsibility for the following:

1. Supervising the activities of the pharmacy intern or extern and ensuring that the intern or extern will keep abreast of developments in pharmacy by reading current professional literature and journals and by attending seminars and meetings of professional and scientific organizations;

2. Providing the pharmacy intern or extern with experiences that will make the intern or extern proficient in compounding and dispensing of pharmaceutical preparations, drug products, health aids and related items;

3. Providing the pharmacy intern or extern with instruction and guidance in:

i. Procedure for opening and closing a pharmacy;

ii. General pharmacy operation;

iii. Ordering drugs and checking drug orders;

iv. Over the counter preparation, including their composition and consultation with consumers;

v. Drug Enforcement Administration inventory and preparation of Drug Enforcement Administration orders;

vi. Sale of Drug Enforcement Administration Schedule V preparations and sale of poisons;

vii. Third-party prescriptions programs;

viii. Telephone procedure with physicians and patients;

ix. Consulting with physicians and patients; and

x. Usage of reference books in the pharmacy and reference material from other sources;

4. Arranging an interview with a physician for the intern or extern; and

5. Preparing the intern or extern in any other area of pharmacy important to good management and professional practice.

13:39-8.3 Training pharmacy approval

(a) To be approved as a training pharmacy for interns and externs, a pharmacy shall meet the following requirements:

1. Have a satisfactory record of observance of Federal, state and municipal laws and ordinances governing the activity in which it is or has been engaged.

2. Have a total number of prescriptions or medication orders filled annually, including renewals, of at least 10,000, with no more than one pharmacy intern or extern in training for each 10,000 prescriptions filled in the pharmacy.

3. Establish and maintain as part of the service it renders, a medication recordkeeping system for its patients that is approved by the Board.

4. Have available an adequate reference library for use by the pharmacy intern or extern.

13:39-8.4 Internship and externship practical experience

(a) The minimum accredited internship and externship practical experience requirement shall be the equivalent of 1,000 hours as follows:

1. One thousand hours for completion of a structured internship conducted after graduation from an accredited college of pharmacy and consisting of no less than 24 weeks supervised by a certified preceptor. Each week of practical experience shall consist of no less than 35 hours and no more than 45 hours of actual service per week. If the intern is a foreign pharmacy graduate, he or she must have met all of the requirements of the National Association of Boards of Pharmacy Foreign Pharmacy Graduate Examination Commission.

2. In lieu of the requirements set forth in (a)1 above, an applicant may obtain up to 1,000 hours practical experience by completion of a structured, college-credited externship and clinical pharmacy clerkship program of an accredited college of pharmacy. Such programs shall first be approved by the Board.

3. In cases of a structured, college-credited externship and clinical pharmacy clerkship program, where less than 1,000 hours are accepted and approved by the Board, the balance of hours to make a total of 1,000 must be gained through completion of a structured internship, conducted after graduation from an accredited college of pharmacy and supervised by a certified preceptor with each week of practical experience consisting of no less than 35 hours and no more than 45 hours of actual service per week.

(b) A Board-approved college of pharmacy externship program shall provide that no less than 75 percent of the hours credited toward the practical experience requirement of the Board be gained in settings in which there is direct involvement with consumers or patients, registered pharmacists, and other licensed health care practitioners such as physicians, dentists and nurses. No less than 50 percent of the hours credited toward the practical experience requirement of the Board shall be acquired in an approved training pharmacy under the supervision of a certified preceptor. Not more than 40 hours of Board-accredited experience shall be acquired per week.

(c) Credit for college externships or other experience programs shall not be allowed for experience gained prior to the fifth college year (or third professional year) in the college of pharmacy program.

(d) The preceptor and the pharmacy intern shall keep accurate records of the time spent by the pharmacy intern for credit toward the requirements of (a)1 above. The Board shall provide appropriate forms to be submitted to the Board for approval of postgraduate practical experience.

(e) The pharmacy college shall certify that the requirements of (a)2 above have been met. The Board shall provide appropriate forms for such certification.

13:39-8.5 Change in intern status

(a) A pharmacy intern applying for registration as a pharmacist in the State of New Jersey shall notify the Board within 10 days of:

1. The beginning of a term of internship;

2. The termination of an internship;

3. Change in number of hours of employment;

4. Change in the scheduled hours of employment;

5. Change of preceptor; and/or

6. Change in employing pharmacy.

(b) Each certified preceptor shall file reports quarterly or whenever requested by the Board.

13:39-8.6 Committee on Pharmacy Internship and Externship

(a) A Committee on Pharmacy Internship and Externship shall be established which shall consist of:

1. Two members of the Board of Pharmacy;

2. Two faculty members of the College of Pharmacy of Rutgers, the State University of New Jersey;

3. Two fifth or sixth year pharmacy students from the College of Pharmacy of Rutgers, the State University of New Jersey; and

4. Four approved pharmacy preceptors, one of whom shall be a practicing pharmacist in an independent community pharmacy, one of whom shall be a practicing pharmacist in a chain community pharmacy, one of whom shall be a practicing pharmacist in a hospital, and one of whom shall be a registered pharmacist whose primary employment is in the pharmaceutical industry.

(b) The Committee is established to advise and assist the Board in all matters relating to the pharmacy internship/externship program.

(c) All meetings of the Committee shall be held in a public place and shall be open to attendance by members of the public.

(d) All members of the Committee shall be approved by the Board. The President of the Board shall designate a member of the Board to be the chairperson of the Committee.

13:39-8.7 Pharmacist intern log

(a) Pharmacist interns shall maintain a log for the internship period which meets the following requirements:

1. The log shall consist of an 8 by 11 inch looseleaf notebook.

2. Entries shall be made in the log weekly and shall contain:

i. The total number of prescriptions filled in the pharmacy and the number filled by the intern;

ii. A brief summary of all new prescription drug products (new generic entities only) dispensed, such as physical-chemical characteristics, dosage, forms, and usage; and

iii. One example of each of the following professional responsibilities:

(1) The use of the patient profile record requiring contact with patient, physician or hospital to resolve potential problems;

(2) Consultation with the patient, physician or nurse concerning special instructions regarding the use of medications;

(3) Consultation with the patient concerning over the counter medication.

(b) The log shall be submitted to the Board at the completion of the internship period.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES WITHIN HEALTH CARE FACILITIES

13:39-9.1 Definitions

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

"Authorized prescriber" means a practitioner licensed to write prescriptions and/or any other person legally authorized to write medication orders under the supervision of a licensed practitioner.

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

"Formulary" means a continually revised compilation of pharmaceuticals available in the pharmacy for use in the facility developed by the Pharmacy and Therapeutics Committee.

"Health care facility" means:

1. A place where the sick and injured are cared for under a common roof; that is, hospitals (proprietary and non-proprietary); long term care facilities; homes for the aged;

2. Intermediate care facilities for the mentally retarded; or

3. Government institutions (regardless of classification) including Federal, State and local prisons and jails, and other institutions of custodial care where pharmaceuticals are stored, manufactured, compounded and dispensed.

"Institutional pharmacy" means the area in the health care facility licensed by the Board as a pharmacy that maintains an institutional permit. This area shall include, but is not limited to, other areas of the health care facility where pharmaceuticals are stored, manufactured, compounded and dispensed.

"Medication order" means a written request for medication originated by a licensed practitioner or authorized prescriber or by a certified nurse midwife acting pursuant to and within the scope of the regulations of the Board of Medical Examiners, N.J.A.C. 13:35-2.12, and intended for patient use in the health care facility, and not for use of the institution's employees or their dependents or outpatients of the facility's clinics. A valid medication order contains the date ordered, the patient's name and location within the facility, the name, dose, route, and frequency of administration of the medication, and any additional instructions. Computer-generated medication orders within an institutional setting, utilizing a physician's electronic signature, will meet legal requirements for a physician's original handwritten signature on medication orders. Computerized signatures will be accepted provided that the facility has adequate safeguards which assure the confidentiality of each electronic signature and which prohibit the improper or unauthorized use of computer generated signatures.

"Pharmacy and Therapeutics Committee" means the active standing committee of the institution or health care facility which is the organizational line of communication and liaison between the medical and pharmacy staff and which acts to review and promote rational drug therapy and utilization in the facility. Its organization and function are described under N.J.A.C. 13:39-9.11.

"Unit dose drug distribution system" means a system of dispensing drugs and biologicals to be administered to patients of the facility whereby the medications are delivered daily (or more frequently) by the pharmacy to the patient care units in amounts equal to a 24-hour supply or less and are prepared, whenever possible, in single unit use packaging.

13:39-9.2 Licensure of institutional pharmacies

Any institutional pharmacy as defined under N.J.A.C. 13:39-9.1 shall be registered with and possess an institutional permit issued by the Board. The permit shall be conspicuously displayed in the facility's pharmacy. The institutional pharmacy is subject to and shall be conducted in accordance with all existing State and Federal rules and regulations.

13:39-9.3 Control of institutional pharmaceutical services

(a) The pharmaceutical services of the health care facility shall be the responsibility of and under the control, supervision, and direction of the pharmacist-in-charge.

(b) If a health care facility does not have an institutional pharmacy on its premises, it may enter into an agreement with a pharmacy licensed by the Board. The pharmacist-in-charge of the pharmacy and the designated pharmacist of the institution shall direct, control, supervise and be responsible for the pharmaceutical services provided to the facility.

(c) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall develop written policies and procedures as needed to provide the pharmaceutical services of the facility. The written policies and procedures shall be available to the Board.

13:39-9.4 Pharmaceutical services

The pharmaceutical services shall be provided in accordance with accepted professional principles and appropriate Federal, State and local laws. These services shall be responsive to the medication needs of the patient and shall include a program for the control and accountability of all drug products throughout the facility.

13:39-9.5 Pharmaceuticals

(a) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall be responsible for determining the specifications for drugs, chemicals, pharmaceutical preparations and biological products and accessories used in the treatment of patients of the facility as to quality, quantity and source of supply. An authorized purchasing agent and/or materials manager and/or pharmacy buyer of the facility may perform the actual procurement. In such a case, the purchase shall be approved by the pharmacist-in-charge or his or her designee, who shall be a pharmacist.

(b) Drugs approved by the Pharmacy and Therapeutics Committee for use in the facility shall be of an amount sufficient to compound or dispense all medication orders and prescriptions which may reasonably be expected to be compounded or dispensed by the pharmacist.

(c) The institutional pharmacy shall have an adequate inventory of drugs and biologicals to assure timely initiation of routine, emergency and disaster drug therapy.

(d) The storage and dispensing of all Investigational New Drugs shall be a pharmaceutical service provided in cooperation with, and in support of the principal investigator. Under these parameters the dispensing of these drugs shall not be construed to be a violation of N.J.A.C. 13:39-5.5.

(e) The pharmacist-in-charge, in cooperation with the Pharmacy and Therapeutics Committee, shall establish a system of control for all drugs dispensed for use in the drug therapy of patients of the facility. Inspections shall be conducted by a pharmacist of all medication areas located in the facility or any other service of the facility. These inspections shall be fully documented. Written inspection reports shall be prepared and signed by the inspecting pharmacist. Procedures for the review of these reports shall be developed and instituted by the pharmacist-in-charge and can be incorporated into the overall quality assurance program of the hospital.

13:39-9.6 Drug disbursement

(a) The pharmacist-in-charge shall develop and implement policies and procedures for the following activities to ensure a safe and effective drug disbursement system with adequate controls:

1. The pharmacist shall review the prescriber's original order, a direct copy thereof, or an electro-mechanical facsimile before any initial dose of medication is dispensed, except as provided for in (a) 5 below. Drugs not specifically limited as to time or number of doses when ordered shall be controlled by the automatic stop order procedure or other methods in accordance with written policies of the facility. Orders involving abbreviations and chemical symbols shall be carried out only if the abbreviations and symbols are included on a standard list that has been approved by the medical staff. When appropriate, the pharmacist shall make necessary clarifying entries into the patient medical record relative to drug use after consultation with the prescriber.

2. Physicians' oral orders for drugs may be given to another licensed practitioner, a pharmacist, a registered nurse or an authorized prescriber. Such orders shall be immediately recorded and signed by the person receiving the order on the physician's order sheet or into the electronic data processing system. Oral orders for Schedule II controlled substances shall be permitted only in the case of a bona fide emergency situation. Oral orders shall be countersigned by the prescriber as required by the Code of Federal Regulations 20:3-405.1024(g) (6) and 405.1123(h).

3. Compounding of individual medication orders or prescriptions, the formulation of special drug needs and all bulk compounding (sterile or non-sterile) shall be done by or under the direct supervision of a pharmacist. Aseptic control procedures shall be maintained for the preparation of intravenous admixtures, the reconstitution of other sterile parenteral preparations, and the compounding and sterilization of other pharmaceutical products as needed.

4. All prepackaging and labeling of drugs shall be done by or under the direct supervision of a pharmacist. Procedures shall be established for maintaining the integrity and manufacturer's control identity of prepackaged material. The prepackaging records shall be initialed by the supervising pharmacist.

5. The pharmacist shall be responsible for monitoring drug therapy of patients in the facility. This shall include, but is not limited to, maintaining and reviewing the patient medication profile prior to the dispensing of medications. When the pharmacy is closed, and in instances involving the issuance and administration of STAT orders (orders requiring immediate attention) these drugs shall be documented on the patient's medication profile immediately after the pharmacy is reopened.

6. The pharmacist shall be responsible for providing medication in a form that requires little or no further alterations, preparation, reconstitution, dilution or labeling by other licensed personnel. The pharmacist shall provide adequate instructions for those products that are not dispensed in finished form.

i. Whenever drugs are added to intravenous solutions, supplementary labeling shall be affixed to the container indicated the names and amounts of all ingredients, the name and location of the patient, the date and time of expiration and the initials of the supervising or dispensing pharmacist.

ii. Labeling of medications, other than intravenous solutions, shall be in conformance with written policies and procedures controlling the drug distribution system in use within the facility and in accord with current acceptable standards of pharmaceutical practice. Dispensing and labeling of outpatient prescriptions shall conform to N.J.S.A. 45:14-14.

7. Written policies and procedures that govern the safe administration of drugs shall be developed by the Pharmacy and Therapeutics Committee.

8. No drugs shall be administered to a patient except those provided through the pharmacy. Any exception to this rule must be governed by written policies and procedures developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee and the medical staff.

i. Although the use of patient's own medications may be warranted in certain situations, it should be discouraged as a general or routine practice. If a patient's previously acquired medication is to be used, a written order to this effect shall be signed and dated by the patient's physician. Such medications shall be given to the pharmacist for identification of contents and dispensing origin. Also, these medications shall be documented as part of the pharmacy's patient profile record system.

ii. Investigational drugs shall be properly labeled and stored in the pharmacy until dispensed. Essential information on the investigational drug shall be maintained in the pharmacy. The investigational drug may be administered only after basic chemical, pharmaceutical and pharmacological information has been made available to all concerned and all the requirements of the Federal Food and Drug Administration and the facility are satisfied.

9. There shall be procedures established to assure the immediate and efficient removal of all outdated and recalled drugs from patient care areas and from the active stock of the pharmacy. These drugs shall be either returned to the manufacturer or safely destroyed. The pharmacist-in-charge shall develop written policies and procedures governing the removal from the facility of outdated or recalled drugs.

10. Limited quantities of emergency drugs shall be placed under controlled conditions in locations within the facility to assure immediate access by authorized licensed health care personnel for use in an emergency situation. Written policies and procedures for the maintenance, content, control and accountability of emergency drugs supplied and located throughout the facility shall be developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee.

11. Controlled dangerous substances shall be purchased, received, stored, dispensed, administered, recorded and controlled in accordance with State and Federal laws and regulations. Written policies and procedures concerning control, use and accountability of controlled drugs shall be maintained by the pharmacist-in-charge. Administration records shall include name, dose, route of administration, and dosage form for the drug, the date and time, the patient's name and location, the prescribing physician's name, and the signature of the administering licensed individual.

12. Where the use of a drug-dispensing device is approved as an integral part of the drug distribution system by the facility, the pharmacist-in-charge and the Pharmacy and Therapeutics Committee, the device may be used when the pharmacist is not on duty (absent during either the day or night), provided that any absence of the pharmacist does not exceed 24 hours, or when the pharmacist is on duty, provided that proper review of the use of the drug-

dispensing device can be ascertained. The drug-dispensing device shall be checked for accuracy and cleanliness every 24 hours by a pharmacist when on duty and so documented.

i. Packaging and labeling of medication for drug-dispensing devices, when done in the facility, shall be performed under the direct supervision of a pharmacist in the employ of or under contract to the facility. Records shall be maintained in accordance with (a)4 above.

ii. Stocking of the drug-dispensing devices with prepackaged medications shall be performed by or under the direct supervision of a pharmacist. Only a pharmacist shall have access to that area of the drug-dispensing device where drugs are stored.

iii. At least every 24 hours, a pharmacist shall check medications withdrawn from the drug-dispensing device. Other than a pharmacist, only authorized registered nurse(s) shall have access to the withdrawal of medication from each drug-dispensing device during authorized times of use. A record of all withdrawals, including the identity of the registered nurse making the withdrawal, shall be recorded and available to the pharmacist.

iv. A pharmacist shall check the record of all medications withdrawn from the drug-dispensing device against the order as written by the licensed practitioner or authorized prescriber. This check shall be performed and documented within 24 hours from the time of the original order and so noted on the pharmacy's patient medication profile.

v. When there is no licensed pharmacy on the premises and when the drug-dispensing devices are an integral part of the approved drug distribution system of the facility, the devices shall be controlled by the pharmacist-in-charge who is responsible for the pharmaceutical services of the institution. Under these circumstances, the time between medication order checks shall not exceed 24 hours. The drugs stored in these drug-dispensing devices shall be selected by the pharmacist-in-charge with the approval of the Pharmacy and Therapeutics Committee.

vi. The pharmacist shall be responsible for checking the drugs in the drug-dispensing devices at least monthly for expiration date, misbranding, physical integrity, security and accountability.

13. Written policies and procedures governing unused medications shall be established and implemented by the pharmacist-in-charge and shall comply with the following requirements:

i. All unused medications in open containers, where the seal of the container is broken or where the drug source, control number or expiration date are missing, shall be sent to the pharmacy for a final disposition as required.

ii. If a unit dose packaged medication has been stored in a medication room or secure area in the institution and the medication seal and control number are intact, the medication may be recycled and redispensed.

iii. Any and all medication returned by out-patients of the facility shall not be redispensed.

iv. The record of disposal of unused or non-administered controlled dangerous substances expended or wasted either by accident or intent shall be signed and witnessed by a licensed nurse, physician or pharmacist and returned to the pharmacy with a written explanation.

(b) Prescriptions written for employees of the institution or their dependents, or for outpatients of the facility's clinic, shall conform to the prescription requirements of N.J.S.A. 45:14-14.

13:39-9.7 Records and reports

(a) Records of the pharmaceutical services of the facility shall be the responsibility of the pharmacist-in-charge. These records shall be maintained and made available to persons authorized to inspect them under State and Federal law.

(b) The institutional pharmacy shall maintain a patient profile record for each patient receiving drug therapy in accordance with N.J.A.C. 13:39-7.15 and as follows:

1. The profile records for inpatients shall contain: the date of each entry; the name; sex; age or birthdate; location of the patient; the drug name, dose, route of administration and quantity dispensed; the initials of the pharmacist performing the dispensing or supervising; the reported diagnosis of the patient, and reported allergies and chronic condition(s) of the patient.

2. All notations made on the inpatients' profile records by supportive personnel shall be verified and countersigned by the supervising pharmacist.

3. The inpatient profile record shall become a permanent part of the patient medical record and filed as such.

(c) All outpatient prescriptions dispensed and outpatient profile records in the institutional pharmacy shall be signed or initialed by the dispensing pharmacist, dated, filed and kept for not less than five years from the last dispensing record date.

(d) Records for receipt, use and final disposition of controlled dangerous substances shall be maintained by the institutional pharmacy in compliance with the requirements of Federal and State controlled dangerous substances laws and regulations. Nursing administration of and audit for controlled dangerous substances records shall be available for review by the pharmacy.

(e) Records of the receipt, dispensing and disposal of investigational drugs shall be maintained by the institutional pharmacy in compliance with Federal and State laws and regulations. Unused drugs shall be returned to the principal investigator or destroyed at the end of the clinical study.

(f) The pharmacist-in-charge shall be responsible for maintaining a system by which all reported adverse drug reactions are recorded and reviewed by the Pharmacy and Therapeutics Committee. This information shall be made available to the Federal Food and Drug Administration or other appropriate agencies upon request.

13:39-9.8 Drug information and education

(a) The pharmacist-in-charge shall be responsible for maintaining drug standards, references and sources of drug information current and adequate to meet the needs of the pharmacists, physicians, nurses, other health care personnel, and patients of the facility. Reference texts shall include, but not be limited to, those required by the Board under N.J.A.C. 13:39-7.8.

(b) On each patient care unit, the pharmacist shall maintain the following:

1. A metric-apothecary conversion table;
2. A copy of the current institutional formulary;
3. A reference drug compendium which will give basic information concerning drugs approved by the Pharmacy and Therapeutics Committee; and
4. The telephone number of either the local or regional poison control center.

(c) The pharmacist shall participate in the drug education programs of the facility.

13:39-9.9 Access to the institutional pharmacy

(a) Only a pharmacist shall have access to the pharmacy stock of controlled dangerous substances in Schedules II thru IV.

(b) Only a pharmacist shall have access to the pharmacy stock of drugs except that in a pharmacist's absence from an institution, a registered nurse designated by the institution, may obtain from the hospital pharmacy's stock of drugs as needed in an emergency, not available as floor stock. Only one registered professional nurse in any given eight-hour shift shall have access to the pharmacy stock of drugs.

(c) A nurse may remove the following from the pharmacy stock of drugs:

1. A drug in its original container or a drug pre-packaged by a pharmacist for use in the institution;
2. A single dose of a drug from the original container for a specific patient.

(d) A nurse shall leave in the pharmacy on a suitable form a record of any drugs removed showing the following:

1. The name of the drug;
2. The name of its manufacturer;
3. The dosage size;
4. The amount taken;
5. The date;
6. The patient's name and station;
7. The signature of the nurse.

(e) The nurse shall leave with the record in (d) above the container from which the single dose was taken for drug administration purposes in order that it may be properly checked by a pharmacist.

(f) All records in (d) above shall be kept by the pharmacy for three years.

13:39-9.10 Advisory committees

The pharmacist-in-charge, or designee, shall be an actively participating member on any committees of the facility that may be concerned with drugs and their utilization.

13:39-9.11 Pharmacy and Therapeutics Committee

In all health care facilities providing pharmaceutical services to patients, an active standing committee of the institution entitled the Pharmacy and Therapeutics Committee or other appropriate name shall be established. A Pharmacy and Therapeutics Committee shall be multidisciplinary and include a pharmacist.

13:39-9.12 Institutional pharmacy staff

The institutional pharmacy shall be staffed by sufficient, competent personnel in keeping with the size, scope and complexity of the pharmaceutical services provided.

13:39-9.13 Pharmacist staff

(a) The institutional pharmacist staff shall include the following:

1. A pharmacist-in-charge, who shall direct the institutional pharmacy service and be responsible to the Administration of the facility.

2. Pharmacists who shall assist the pharmacist-in-charge as required depending on the size, scope and complexity of the service.

3. Any pharmacy interns, externs, and students, who shall function in accordance with the Board's rules and under qualified preceptor(s).

13:39-9.14 Non-pharmacist staffing

Non-pharmacist personnel in the institutional pharmacy shall work under the direct supervision and control of a registered pharmacist as provided in N.J.A.C. 13:39-6.4 and 6.7.

13:39-9.15 Pharmacy facilities; space

(a) Adequate facilities (space, lighting, equipment, temperature control and supplies) shall be provided for the control of the professional, technical and administrative functions of the institutional pharmacy as needed for the effective and efficient assurance of patient safety through proper purchasing, receipt, storage, dispensing, administration and control of drugs.

(b) The facilities shall include, but are not limited to, those requirements provided in N.J.A.C. 13:39-7.3.

(c) The space provided for the institutional pharmacy shall be in accord with the size of the facility and the scope and complexity of the pharmaceutical services.

13:39-9.16 Storage and security

(a) Provisions shall be made for adequate safe storage of drugs and biologicals wherever they are stored in the health care facility.

1. All drugs shall be secured for safe use and protected against illicit diversion. Controlled dangerous substances in the institutional pharmacy and throughout the facility shall be stored and protected in conformance with State and Federal laws and regulations.

2. Supplies of external preparations stored in patient care areas shall be kept separate from internal medications.

3. The pharmacist-in-charge shall be responsible for all the medications in the facility, that is, the drugs in the pharmacy service area, drugs in transit, and the drugs in the patient care areas.

4. The drugs throughout the facility shall be maintained under adequate storage conditions including proper lighting, ventilation and temperature control as required by the United States Pharmacopoeia/National Formulary.

5. Adequate storage for pharmacy records shall be provided. Records not currently in use need not be stored in the pharmacy, but the storage facilities must be secure, and the records shall be readily retrievable by the pharmacy staff and authorized inspectors. Patient records shall be kept confidential.

13:39-9.17 Equipment

(a) Adequate equipment shall be provided for the compounding, packaging, labeling, refrigeration, sterilization, testing and safe distribution of drugs and biologicals, and other functions. The equipment shall be sufficient to process drugs required by the facility to maintain a continuing source of medications necessary to supply the patients on a routine basis.

(b) In an institutional pharmacy, equipment shall be provided for the compounding and dispensing of intravenous solutions, and admixtures thereof, and other parenteral and nonparenteral sterile preparations.

13:39-9.18 Institutional decentralized pharmacies

(a) Institutional decentralized pharmacies, that is, "satellite pharmacies", means areas within the health care institution other than the original institutional permit location, where the preparation dispensing and compounding of medications are performed by a pharmacist. The institutional decentralized pharmacy may only function with a pharmacist present.

(b) Institutions utilizing or desiring to utilize institutional decentralized pharmacies shall file a remodeling application to the Board to conduct a decentralized pharmacy.

(c) Institutional decentralized pharmacies will be subject to normal Board inspections.

(d) The minimum equipment requirement for an institutional decentralized pharmacy shall be the following:

1. The current USP/DI and supplements and suitable reference texts including at least the current edition of texts on pharmacology, the general practice of pharmacy, drug interactions and drug product composition;

2. Patient profile record system;

3. Properly safeguarded storage place if necessary for Schedule II controlled dangerous substances if not disbursed;

4. A refrigerator if necessary for the exclusive storage of biologicals and other medicinal products requiring refrigeration;

5. Labels;

6. Poison labels; and

7. A sink with hot and cold running water.

(e) The Board may also require any other equipment and/or special specifications that the Board deems necessary for the institutional decentralized pharmacy.

SUBCHAPTER 10. STERILE ADMIXTURE SERVICES

13:39-10.1 Sterile admixture services defined

A sterile admixture service is one involving the dispensing and specializing in the compounding and distribution of sterile parenteral, irrigation and enteral nutrition products intended for administration to patients in the home or in or out of an institutional setting.

13:39-10.2 Compliance

A pharmacy which intends to compound and dispense sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements contained in this subchapter.

13:39-10.3 General requirements

(a) A pharmacy presently supplying or intending to supply a sterile admixture service shall notify the Board.

(b) A pharmacy which is limited to providing sterile admixture service only shall conspicuously post a sign at the entrance to the premises notifying the public of this limitation.

13:39-10.4 Pharmacist's responsibilities

(a) A pharmacy which provides a sterile admixture service shall be under the direct supervision of a pharmacist licensed to practice in this State who should have practical or academic training in sterile product compounding, clean room technology, laminar flow technology, and quality assurance techniques. The registered pharmacist should have an adequate pharmacy background in clinical application of intravenous drug therapy either through experience or academic training.

(b) In addition to those responsibilities described in N.J.A.C. 13:39-3.19, this pharmacist shall have the responsibility for, at a minimum, the following:

1. Preparation of sterile admixtures compounded within the pharmacy;

2. Storage of all materials pertinent to the preparation of sterile admixtures, including drugs, chemicals and biologicals, and the establishment of specifications for procurement of the materials;

3. Labeling of all containers of sterile admixture preparations;

4. Recording all transactions of the pharmacy as may be applicable to State, Federal and local laws and rules, as may be necessary to maintain accurate control over, and accountability for, all pharmaceutical materials; and

5. Assuring that only licensed pharmacists meeting the requirements of (a) above or supportive personnel under direct supervision of a pharmacist prepare, compound, and dispense the sterile admixture preparations.

13:39-10.5 Handling, packaging and delivery

(a) The pharmacy shall provide special handling and packaging of compounded parenteral preparations for delivery from the pharmacy to the patient in order to assure and maintain sterility and stability of these preparations. The dispensed container shall bear a permanently affixed label with at least the following information:

1. Date dispensed;
2. Name of physician, except for institutional inpatients;
3. Name of the patient;
4. Directions for use;
5. Name and amount of drug(s) added;
6. Name of the basic solution;
7. Name or identifying code of the pharmacist who prepared the admixture;
8. The expiration date of the sterile preparation, which shall be the manufacturer's recommended expiration date or 24 hours, unless otherwise stated by the manufacturer, or an extended time may be substantiated with adequate documentation. This date shall appear on the label;
9. Name, address and telephone number of the pharmacy, except for institutional inpatients; and
10. Any ancillary and cautionary instructions as needed.

(b) Delivery of compounded parenteral preparations from the pharmacy to the patient shall be made within a reasonable time in order to ensure integrity and efficacy.

13:39-10.6 Patient records

A patient profile record shall be maintained and monitored for each patient. The patient profile record must contain available medical information consistent with prevailing pharmacy standards, and the complete record of the formulations of the sterile products which were dispensed.

13:39-10.7 Policy and procedure manual

(a) A policy and procedure manual shall be maintained at each pharmacy and be available for inspection by authorized agents of the Board. The policy and procedure manual shall set forth, in detail, the objectives and operational guidelines of the permit holder. The policy and procedure manual shall be maintained in current status. The Manual shall contain written documentation of such objectives and operational guidelines, including:

1. Microbiological evaluation, consistent with current standards for preparation of total parenteral nutrition, antineoplastic agents, antibiotics, large and small volume parenterals or other parenteral therapy;
2. Security;
3. Equipment;
4. Sanitation;
5. Reference materials;
6. Drug storage;
7. Drug dispensing;
8. Drug labeling;
9. Drug destruction and returns;
10. Delivery of drugs;
11. Recordkeeping;
12. Investigational new drugs; and
13. A quality assurance program which monitors personnel qualifications, training, performance, equipment, facilities, and such others as may be specified by the Board.

13:39-10.8 Pharmacy environment

(a) The compounding and dispensing of sterile admixture preparations shall be conducted in a pharmacy environment subject to the pharmacy permit laws of this State and in accordance with those requirements for the safe handling of drugs.

(b) The environment for this practice shall be set apart and designed and equipped to provide controlled aseptic conditions. Aseptic technique shall prevail in this environment to minimize the possibility of microbial contamination.

13:39-10.9 Minimum requirements for space

(a) The area for preparing sterile admixtures as provided for in these rules shall be referred to as the sterile admixture area and shall be set apart from general work and storage areas. This area shall be adequately air conditioned to maintain a temperature of 59 to 86 degrees Fahrenheit. This separated area is to be used solely for the aseptic compounding of sterile admixture products.

(b) The sterile admixture area shall provide space for a minimum of one class 100 air flow cabinet. The area shall be of adequate size to accommodate other equipment as provided in these rules and sufficient space to allow the pharmacist and other personnel in the sterile admixture area to adequately, safely, and accurately fulfill their duties related to sterile compounding.

(c) For the compounding and dispensing of antineoplastic agents, there shall be sufficient additional space to accommodate a class 100 air containment cabinet (vertical laminar flow hood).

(d) The sterile admixture area shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs, and additional space as needed, depending on the size and scope of pharmaceutical services.

(e) The sterile admixture area shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

13:39-10.10 Minimum requirements for equipment

(a) The sterile admixture area shall contain the following equipment:

1. A Class 100 cabinet or environment;
2. A sink with hot and cold running water exclusive of restroom facilities, shall be easily accessible to the personnal preparing sterile admixtures. This sink shall be maintained in a sanitary condition at all times.
3. A refrigerator as required by U.S.P. standards.
4. Appropriate waste containers for:
i. Used needles and syringes; and
ii. All waste including disposal of apparel used in preparation of antineoplastics.

13:39-10.11 Supplies

(a) The sterile admixture area should maintain the following supplies;

1. Gloves, masks, and gowns (when compounding antineoplastics), etc. as needed;
2. Needles and syringes of various sizes;
3. Disinfectant cleaning agents;
4. Clean towels;
5. Handwashing materials, including antimicrobial skin cleaner; and
6. Any and all supplies necessary for the aseptic preparation of sterile admixture products.

13:39-10.12 Library references

In addition to the minimum reference library mandated in N.J.A.C. 13:39-7.8, each sterile admixture service shall contain references pertinent to this specialized practice.

13:39-10.13 Compounding requirements

(a) All sterile admixture compounding shall be performed within a certified air flow environment. Air flow cabinet(s) and/or environments shall be certified and so documented at least annually.

(b) Proper aseptic procedures must be used at all times to prevent bacterial contamination of the product.

13:39-10.14 Disposal of drugs and materials

All unused drugs and materials used in the preparation of sterile admixture solutions, including antineoplastic agents, must be disposed of properly in accordance with accepted professional standards and applicable laws. Unused drugs and materials shall be disposed of in a manner so as not to endanger the public health.

13:39-10.15 Security

The sterile admixture area and its contents and other areas where drugs are stored shall be secured, so as to prevent access by unauthorized personnel.

SUBCHAPTER 11. NUCLEAR PHARMACIES

13:39-11.1 Definitions

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

"Authentication of product history" includes, but is not limited to, identifying the purchase source, the ultimate use or disposition and any intermediate handling of any components of a radiopharmaceutical.

"Authorized practitioner" means a practitioner duly authorized by applicable Federal and State law to possess, use and administer radiopharmaceuticals.

"Designated agent" means an individual under the direct supervision of a practitioner authorized to communicate the practitioner's instructions to the nuclear pharmacy.

"Direct supervision" means that the supervising licensed nuclear pharmacist shall be physically present in the general area or location where the supportive personnel are performing supportive duties and shall conduct in-process and final checks.

"Internal test assessment" includes, but is not limited to, conducting those tests necessary to insure the integrity of the test.

"Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any such drug which is intended to be made radioactive. This definition includes non-radioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

"Radiopharmaceutical quality assurance" includes, but is not limited to, the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history and the keeping of proper records.

"Radiopharmaceutical service" includes, but is not limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; and the offering of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a nuclear pharmacy.

13:39-11.2 General requirements for pharmacies providing radiopharmaceutical service

(a) The application for a specialized retail permit to operate a pharmacy providing radiopharmaceutical services shall only be issued to a qualified nuclear pharmacist. All personnel performing tasks in the preparing and distribution of drugs shall be under the direct supervision of the nuclear pharmacist who shall be responsible for all operations of the licensed area and shall be in personal attendance at all times when the nuclear pharmacy is open for business.

(b) Nuclear pharmacies shall have adequate space, commensurate with the scope of services required and provided, meeting minimal United States Nuclear Regulatory Commission requirements established for all pharmacies in the State. The nuclear pharmacy shall be separate from the pharmacy areas for non-radioactive drugs and shall be inaccessible to all unauthorized personnel. All pharmacies handling radiopharmaceuticals shall be provided with a radioactive storage and decay area. A nuclear pharmacy dispensing radioactive drugs may be exempted from the general space requirements for pharmacies.

(c) The process used for handling radioactive materials by any license holder must involve appropriate procedures for the purchase, receipt, storage, manipulation, compounding, distribution, and disposal of radioactive materials. In order to ensure the public health, safety, and welfare, a nuclear pharmacy shall first meet the following general requirements:

1. The environment where the handling of radioactive materials takes place shall be properly ventilated so that radioactive materials cannot be airborne from that environment to other non-occupationally unrestricted areas;

2. The environment shall be properly located so that the receipt and dispersal of radioactive materials does not result in inadvertent and undesired contamination of other non-occupationally labeled areas; and

3. The area shall be designed in such a manner that radioactive materials can be contained in given areas to ensure adequate safety and protection to personnel working in or near them and to insure proper operation of the corresponding assay equipment.

(d) Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with rules and regulations of the United States Nuclear Regulatory Commission.

(e) The immediate outer container of a radioactive drug to be dispensed shall be labeled with the following:

1. The standard radiation symbol;
2. The words, "CAUTION—RADIOACTIVE MATERIAL";
3. The radionuclide;
4. The chemical form;
5. The amount of radioactive material contained in millicuries or microcuries;
6. If a liquid, the volume in cubic centimeters;
7. The requested calibration time for the radioactivity contained;
8. The name, address, and telephone number of the nuclear pharmacy;
9. The prescription number; and
10. The date and patient's name.

(f) The immediate container shall be labeled with the following:

1. The standard radiation symbol;
2. The words, "CAUTION—RADIOACTIVE MATERIAL";
3. The name of the nuclear pharmacy;
4. The prescription number; and
5. The name of the radiopharmaceutical.

(g) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

(h) A nuclear pharmacist may transfer to authorized persons and United States Nuclear Regulatory Commission licensed medical practitioners radioactive materials not intended for drug use, in accordance with the regulations of the United States Nuclear Regulatory Commission. A nuclear pharmacy may furnish radiopharmaceuticals to these practitioners for individual patient use.

(i) Nuclear pharmacies shall comply with all applicable laws and regulations of Federal and State agencies including those laws and regulations governing non-radioactive drugs. For nuclear pharmacies handling radiopharmaceuticals exclusively, the Board of Pharmacy may waive rules pertaining to pharmacy permits for nonradiopharmaceuticals which requirements do not pertain to the practice of nuclear pharmacy.

(j) Radioactive drugs are to be dispensed only upon a non-refillable prescription order from a United States Nuclear Regulatory Commission licensed medical practitioner (or the designated agent) authorized to possess, use and administer radiopharmaceuticals.

(k) Prescription orders for delivery of radioactive drugs for use in the medical practice of a United States Nuclear Regulatory Commission licensed medical practitioner may be placed on a telephone answering and recording device, only if the practitioner (or the designated agent) is identified in such a manner that is clearly recognized by the nuclear pharmacist dispensing the radioactive drug.

(l) A pharmacist-in-charge of a nuclear pharmacy shall have the authority to delegate to any qualified and properly trained person or persons, acting under his or her direct supervision, any nuclear pharmacy act which a reasonable and prudent pharmacist would find is within the scope of sound pharmaceutical judgment to delegate. Such delegation may only occur if, in the professional opinion of the delegating pharmacist-in-charge, the act may be properly and safely performed by the person to whom the pharmacy act is delegated. The delegated act may only be performed in its customary manner, not in violation of other statutes. The person to whom a nuclear pharmacy act is delegated shall not hold himself or herself out to the public as being authorized to practice pharmacy.

13:39-11.3 General requirements for a nuclear pharmacist

(a) A qualified nuclear pharamcist shall meet the following requirements:

1. He or she is a pharmacist licensed to practice in the State of New Jersey; and

2. He or she meets minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the United States Nuclear Regulatory Commission.

13:39-11.4 Minimum requirements for space, equipment, supplies, and library

(a) Each nuclear pharmacy must meet the following requirements for space:

1. The area for the storage, compounding and dispensing of radioactive drugs shall be completely separate from pharmacy areas for non-radioactive drugs;

2. Hot lab and storage area shall be a minimum of 120 square feet; and

3. The compounding and dispensing area shall be a minimum of 300 square feet.

(b) Each nuclear pharmacy shall be equipped with at least the following items of equipment:

1. Dose calibrator;
2. Refrigerator;
3. Drawing station;
4. Well scintillation counter;
5. Microscope;
6. Chromatographic apparatus or comparable means of effectively assuring tagging efficiency;
7. Portable radiation survey meter capable of detecting 0.005 microcuries of activity of any radionuclides utilized; and
8. Other equipment deemed necessary for radiopharmaceutical quality control for products compounded or dispensed as may be determined by the United States Nuclear Regulatory Commission and/or by the Board of Pharmacy.

(c) Each nuclear pharmacy shall have on the premises the following reference books. All books must be current editions or revisions:

1. United States Pharmacopoeia-National Formulary with supplements;
2. State statutes and rules relating to pharmacy;
3. State and Federal regulations governing the use of applicable radioactive materials; and
4. Text relating to the practice of nuclear pharmacy and radiation safety.

13:39-11.5 Quality control

The holder of a nuclear pharmacy permit shall be responsible for the radioactive quality control of all drugs, including biologicals, dispensed or manufactured. Radioactive pharmaceutical quality controls include, but are not limited to, the carrying out and interpretation of data resulting from chemical, biological and physical tests on potentially radioactive pharmaceuticals to determine the suitability for use in humans and other animals, including internal test assessment and authentication of product history.

(a)

BOARD OF SHORTHAND REPORTERS

Board of Shorthand Reporters Rules

Proposed Readoption: N.J.A.C. 13:43

Proposed Amendments: N.J.A.C. 13:43-2.1, 2.2, 2.7, 2.8, 2.9, 2.13

Proposed Repeals: N.J.A.C. 13:43-2.10, 2.11, 2.12, 2.14, 2.20

Authorized By: Board of Shorthand Reporters, Joseph Albanese, Jr., Chairman.

Authority: N.J.S.A. 45:15A-1.

Proposal Number: PRN 1988-345.

Submit comments by August 17, 1988 to:
John J. Meade, Executive Director
Board of Shorthand Reporters, Room 507-A
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:43 is scheduled to expire on September 8, 1988. The current rules in N.J.A.C. 13:43 were adopted pursuant to N.J.S.A. 45:15A-1 et seq. and became effective prior to September 1, 1969. The rules were amended effective March 23, 1977 and June 17, 1985. The current rules have been reviewed pursuant to the Executive Order and the Board has found them to continue to be reasonable, necessary and effective for the purposes for which they were originally promulgated. The Board, as a committee, has been reviewing, modifying and updating the rules and expects to propose amendments to this readoption some time in the future. The amendments and repeals proposed at this time serve to clarify the contested case hearing process of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the shorthand reporter profession by enabling the Board to have in place procedures which serve and protect the public's best interests. The Chapter contains four Subchapters: Subchapter 1 describes the make-up of the Board and its method of operation; Subchapter 2 describes the Board's administrative hearing procedures; Subchapter 3 contains rules concerning certification, examination, unprofessional conduct, disclosure of title and license number, conditional credit and changes of address; Subchapter 4 contains a schedule which outlines Board fees.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations and the conduct of examinations in order to ensure that truly qualified individuals are certified to practice as shorthand reporters. The fees contained in N.J.A.C. 13:43-4.1 are reasonable and have produced no objections by applicants or licensees.

The best interests of the public, the courts, the legal profession, and municipal, county and other governmental agencies have been well served through the efforts of the Board to maintain the highest level of professionalism available.

Economic Impact

The readoption of the rules will have no unfavorable economic impact upon candidates or licensees because it does not impose an unreasonable financial burden in any way. The examination fees have been in effect for a number of years and biennial registrations became effective in 1985. Since funding of the Board operation is partially attained by the fee structure now in place, failure to readopt would place the Board's operation in jeopardy.

Regulatory Flexibility Statement

The Board of Shorthand Reporters currently licenses 1095 individuals. The specific number of small businesses is impossible to determine, since the Board licenses individuals and not entities. The proposed readoption does not contain any new reporting, recordkeeping or other compliance requirements upon small businesses. No additional professional services will be required to maintain the rules nor will there be any new costs of compliance.

Full text of the proposed readoption and proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:43.

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

13:43-2.1 Definitions

...

["Hearing examiner" means any person designated by the board to conduct any hearing.]

...

13:43-2.2 Scope

The following rules shall constitute the practice and procedure and shall govern [all contested cases, as defined by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-2(b), before the board where a violation of N.J.S.A. 45:15A-1 et seq. is alleged.] **the filing and processing of all complaints and violations before the Board.**

13:43-2.7 Notice of [hearing and] complaint

(a) Whenever it shall appear to the board that a violation of the act has occurred, is occurring or may occur and that the matter warrants a formal administrative hearing to effectuate the policies underlying said act, it may cause to be issued a notice of [hearing and] complaint seeking any relief authorized by the act.

(b) The complaint shall be returnable in not less than 30 days nor more than 60 days from the date of service thereof.

(c) The complaint shall be directed to the respondent and shall be served in accordance with these rules.

[(d) The notice of hearing shall contain:

1. A statement of the time and place of the hearing;

2. A statement of the legal authority and jurisdiction under which the hearing is to be held;

3. A statement that the respondent may present evidence in defense to the charges contained in the complaint either through an attorney or personally;

4. A statement that should the respondent fail to appear, a default will be entered and the complainant will proceed with his proofs in support of the relief demanded;

5. A statement that adjournments will not be granted except on timely written application to the secretary of the board and for good cause shown. Said statements shall also contain notice that in the event an adjournment is granted, any expenses incurred by the board as a result thereof may be taxed to the respondent as a condition for granting the adjournment.]

[(e)](**d**) A complaint issued by the board shall contain:

1. A reference to the particular sections of the statute or rule alleged to have been violated;

2. A short and plain statement of the facts giving rise to the alleged statutory or rule violation;

3. A statement of the relief sought by the complainant.

13:43-2.8 Service of notice of [hearing and] complaint

(a) Service of notice of [hearing and] complaint shall be made as follows:

1.-4. (No change.)

5. Affidavit of service, general appearance, acknowledgement of service:

i. The service herein provided for shall be made by the board's director, or Attorney General's agent or employee by showing the respondent the original notice of [hearing and] complaint and delivering a copy thereof to the respondent. The agent or employee shall evidence such service by appending to the original order to show cause, his affidavit of service;

ii. A general appearance or an acceptance of the service of a summons, signed by defendant's attorney or signed and acknowledged by the defendant (other than an infant or incompetent), shall have the same effect as if the defendant had been properly served.

13:43-2.9 Hearing to conform to law

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. [54:14B-1 et seq.] **52:14B-1 et seq., 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

13:43-2.10 [Hearing examiner] **(Reserved)**

[(a) All hearings shall be conducted before the board or a designee of the board.

(b) The hearing examiner shall have authority and discretion to control the order of proceedings, to administer oaths to witnesses, to rule on any procedural or evidential motions or objections, to order witnesses to produce evidence in accordance with the act and/or these rules, and to make such rulings as may be necessary to conduct a fair and orderly hearing and to render a final decision on any matter brought pursuant to the act.

(c) The hearing examiner shall receive all evidence relevant to the matter before him without regard to the strict rules of admissibility, and may in his discretion examine witnesses.

(d) The hearing examiner may permit the submission of written memoranda of law or briefs.]

13:43-2.11 [Time and place of hearing] **(Reserved)**

[(a) Hearings shall be held at a time and place designated by the board, having due regard for the convenience of the parties and witnesses.

(b) The board in its discretion or upon application made at least five days prior to the date of the hearing on behalf of any party may adjourn any hearing.

(c) Additionally, a motion to adjourn a hearing may be made during said hearing to the hearing examiner.

(d) Upon granting any adjournment, the board or hearing examiner shall notify all interested parties and may on notice reschedule the hearing at any time thereafter.

(e) In the event an adjournment is granted as provided herein, the board may, where appropriate, tax any costs or expenses, including but not limited to recording fees and hearing examiner's fees.]

13:43-2.12 [Appearances and attorneys] **(Reserved)**

[(a) The complainant in any hearing held hereunder shall first present the evidence in support of the alleged violation of the act.

(b) Thereafter, the respondent may cross-examine any witness giving testimony and present evidence either through his attorney or pro se.]

13:43-2.13 Pleadings

(a) A respondent may file an answer to an order to show cause, setting forth any factual or legal defenses he may have to the allegations contained in the complaint.

(b) Where appropriate, the board may require the respondent to file an answer to the complaint.

(c) Filing of an answer shall be made by forwarding an original and two copies to the secretary of the board.

(d) The failure to file an answer, except when ordered to do so, shall not be deemed a default.

[(e) A complaint or an answer may be amended at any time prior to the hearing.

(f) Any pleading may be amended during or after a hearing with leave of the board or hearing examiner.]

13:43-2.14 [Failure to appear] **(Reserved)**

[If the respondent without good cause fails to appear on the date set for a hearing, the board or hearing officer may hear the evidence presented by the complainant and render his decision forthwith.]

13:43-2.15 [Transcript] **(Reserved)**

[(a) The proceedings before the board or hearing examiner may be stenographically recorded at the request and expense of the respondent.

(b) If the proceedings are transcribed at the respondent's request, the respondent shall serve copy of the transcript upon the board or hearing examiner and the attorney for the division.

(c) If the proceedings are stenographically recorded at the board's request, respondent shall upon written request be afforded access to a copy of the same.]

13:43-2.16 Board's decision

[(a) The board shall render its decision not later than 60 days following the final day of hearings or receipt of the same transcript, whichever is later. In those instances in which a hearing examiner is appointed, the board's decision shall be rendered within 60 days of receipt of the hearing examiner's report or 60 days following the presentment of exceptions or additional arguments, whichever is later.

(b) In any contested case, the respondent may, not later than ten days following the final day of hearing, submit proposed findings of fact and conclusions of law to the board, provided notice of intention to submit such findings is given to the board prior to the close of the hearing. In the event that a respondent elects to file proposed findings of fact and conclusions of law, a copy of same shall be served upon the attorney for the division who may within ten days after service thereof file a response thereto.

(c) If the case has been heard by a hearing examiner, his recommended report and decision shall contain recommended findings of fact and conclusions of law, which shall be part of the record of the case. The hearing examiner's report shall be filed with the board and delivered or mailed to all parties of record, and an opportunity shall be afforded each party of record to file exceptions, objections and replies thereto within ten days of the issuance of the report, either orally or in writing, as the board may order. The board shall adopt, reject or modify the recommended report and decision.

(d) The board's decision shall include findings of fact and conclusion of law, separately stated. In those cases where an unlawful practice has been found, the decision shall specifically state the violation in terms of the statutory language found to be violated.

(e) A concise and explicit statement of the underlying facts supporting a finding of an unlawful practice shall be set forth.

(f) In any case where a respondent has submitted proposed findings of fact and conclusions of law, the decision shall include a ruling on each proposed finding.

(g) In any case where a stenographic recording is not secured, the board's decision shall be in writing.]

[(h)](**a**) In those cases where a stenographic recording is made of the proceeding, the board may in its discretion and consistent with the within rules and the Administrative Procedure Act, N.J.S.A. 45:14B-1 et seq., render its decision orally on the record.

[(i)](**b**) Review thereof shall be solely by appeal to the Appellate Division of the Superior Court in accordance with the Rules Governing the Courts of the State of New Jersey.

[(j)](**c**) No review of the board's decision shall be available in any collection or enforcement action initiated pursuant to the act.

13:43-2.20 [Reopening of proceedings] **(Reserved)**

[(a) The board may upon its own motion, or upon motion of the respondent or the attorney for the division, reopen any stage of the proceeding; provided, however, that any motion to reopen shall be timely and for demonstrated good cause.

(b) A motion to reopen proceedings shall not be deemed a matter of right but rather a matter of discretion.]

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Discontinuance of Residential Service to Tenants; Notice

Proposed Amendment: N.J.A.C. 14:3-7.14

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: 0X8806-0738.
Proposal Number: PRN 1988-342.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment is designed to prevent potential health and safety hazards resulting from the discontinuance of electric, gas, water and sewer utility service to a multiple family premises. The proposed amendment will require affected utilities to notify a local health department or official in writing of a pending discontinuance of service to a multiple family premises, to post a notice of intent to discontinue service in or at the premises and to give individual notice to tenants 14 days in advance of discontinuance, and to maintain records of same. The amendment will also permit the utility to charge a customer responsible for causing the issuance of such notices,that is, a landlord or his agent, $25.00, and to increase the deposit of such customer.

Social Impact

The proposed amendment will give tenants of a multiple family premises who are not customers of a utility greater protection against the loss of utility service caused by the failure of their landlord to pay for such service. The additional notice time provided by the amendment will give tenants a greater opportunity, whether directly or through local officials, to organize and prevent discontinuance of service by causing their landlord to pay a delinquent utility bill or obtaining the transfer of the utility account into the name of one of the tenants, thus allowing tenant control of the payments.

Economic Impact

The proposed amendment will have a slight economic impact upon affected utilities as they will now be required to notify municipal officials, as well as tenants, of a pending discontinuance of service to a multiple family premises and to maintain records of such notification. On the other hand, affected utilities will be able to recover at least part of the costs incurred in making the notifications.

Regulatory Flexibility Statement

The proposed amendment will apply to electric, gas, water and sewer utilities which the Board regulates within the State. The furnishing of notice to municipal officials and the maintenance of a record of such notice and of notice to tenants are new requirements. No professional service will be needed to comply with the requirements. The initial capital costs and annual cost of compliance with the proposed amendment should be minimal. The proposed amendment merely expands upon the existing rule and therefore, there should be little adverse economic impact upon affected utilities, whether they be large or small businesses.

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

14:3-7.14 Discontinuance of Residential Service to Tenants

(a) Electric, gas, water and sewer public utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at residential premises being serviced. If such a relationship is known to exist, discontinuance of residential service is prohibited unless the utility has posted [notice of discontinuance] **notification of intent to discontinue service of at least 14 days** in the common areas of **and/or at access points to** multiple family premises and has given individual notice to occupants of single and two-family dwellings and has offered the tenants continued service to be billed to the tenants, unless the utility demonstrates that such billing is not feasible. **In addition, the utility shall notify the local municipal health department or, if no municipal health department, shall notify the municipal department or official responsible for the function of a health department, in writing, of a pending discontinuance of service to a multiple family premises. Such notification shall be made at the time the notice of intention to discontinue service is mailed. Such posted notice and individual notice shall be at least 14 days in advance of any discontinuance of service. The utility shall maintain records of such notices of intent to discontinue distributed to tenants and municipalities.** The continuation of service to a tenant shall not be conditioned upon payment by the tenant of any outstanding bills due upon the account of any other person. The utility shall not be held to the requirements of this provision if the existance of a landlord-tenant relationship could not be reasonably ascertained.

(b) A utility which has given the notice required by (a) above may:

1. Charge the customer responsible for causing the issuance of the notice the sum of $25.00; and

2. Require the customer to furnish a deposit or increase an existing deposit in an amount sufficient to be equal to the customer's estimated average bill for a billing period increased by two months' estimated average bills, the provisions of N.J.A.C. 14:3-7.2 to the contrary notwithstanding.

(a)

Solid Waste
Filing Contracts for Service at Rates Different than those in Filed Tariff
Pre-Proposed New Rule: N.J.A.C. 14:3-9.6

Authorized By: The Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13, 48:13A-4 and 48:13A-11.
BPU Docket Number: SX 8801-0272.
Pre-Proposal Number: PPR 1988-10.

Take notice that the Board of Public Utilities invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering the amendment of N.J.A.C. 14:3-9.6 (Rates; difference from filed tariffs) by adding thereto additional requirements applicable only to solid waste collection and disposal utilities which enter into a contract or agreement with a customer for the sale of service at rates different from those contained in the utility's filed tariff.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows (additions indicated in boldface **thus**):

14:39-9.6 Rates; difference from filed tariffs

(a) In every instance where a utility, subject to the jurisdiction of the Board, enters into a contract or agreement with a customer for the sale of its service at rates different from those provided in the existing tariffs of the utility on file with the Board, it shall file four copies of such contract or agreement, with amendments and supplements, if any, not less than 30 days prior to the effective date thereof.

(b) The filing is to be accompanied by a detailed statement as to the:

1. Type of agreement; for example, firm or interruptible service;
2. Detail costs to the company associated with delivery and sale of the service;
3. Rates and other charges to the customer.

(c) In addition to the requirements of (a) and (b) above, all solid waste collection and disposal utilities shall be subject to the following requirements:

1. Unless for good cause shown, the Board determines otherwise, no contract or agreement shall be deemed valid unless it is filed with the Board not less than 30 days prior to the effective date thereof;

2. If the contract or agreement provides for the sale of a service at a rate different from a filed tariff, the subject utility shall have the burden of substantiating the reasons for the tariff variance and must provide to the Board a detailed statement explaining the special circumstances affecting the inconvenience and expense to the company for providing the service or furnishing the facilities, or an outline of the substantial differences in the character of the service rendered justifying the different rate;

3. If the contract or agreement provides for the sale of a service not included in the utility's tariff on file with the Board, or if the serviced location lies outside of the utility's authorized tariff area, a petition for the imposition of an initial rate for the new service, or for an expansion of the tariff area pursuant to N.J.S.A. 14:1-6.15, shall accompany the filing of contracts, unless for good cause shown, the Board determines that no petition is necessary;

4. Upon the filing of the contract, the Board may, pursuant to N.J.S.A. 48:13A-7, conduct a hearing concerning the contract charges. Upon a finding by the Board that the contract is unjust, unreasonable, unduly discriminatory or preferential, the Board may order the utility to modify or adjust the contract rates, or void the contract, after notice to the utility in writing of the reasons for such action; and

5. The Board may, upon motion, permit the proposed contract rate to go into effect pending the outcome of the hearings on the charges. Upon completion of the hearing and decision, the Board may order the utility to refund with interest, the portion of such rates or charges found not justified.

(b)

Solid Waste
Contracts, Subcontracts or Other Agreements with Other Solid Waste Utilities or with Individuals
Pre-Proposed New Rule: N.J.A.C. 14:3-10.22

Authorized By: The Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13, 48:13A-4 and 48:13A-11.
BPU Docket Number: SX 8801-0273.
Pre-Proposal Number: PPR 1988-11.

Take notice that the Board of Public Utilities invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering approval by the Board of contracts, subcontracts or other agreements by solid waste collection or disposal utilities with other solid waste collection or disposal utilities or persons engaging in solid waste collection or disposal for the management or provision of solid waste collection or disposal services.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows:

14:3-10.22 Contracts, subcontracts, or other agreements with other utilities or persons

(a) No solid waste collection or disposal utility shall enter into or effectuate any contract, subcontract, or other agreement of or pertaining to the management or provision of solid waste collection or disposal services; the use of vehicles or other equipment; or customer accounts, with another solid waste collection or disposal utility or person engaging in the business of solid waste collection or disposal unless such contract, subcontract or agreement is in writing and has been approved by the Board. This section shall not apply to contracts or agreements contemplated by N.J.S.A. 48:3-7.1.

(b) Unless for good cause shown, the Board determines otherwise, a petition requesting approval pursuant to (a) above shall be filed not less than 30 days prior to the effective date thereof.

(c) Any contract, subcontract or other agreement entered into prior to the effective date of this rule shall be exempt from the requirements imposed by (b) above provided the subject utility files a petition requesting the Board's approval within 30 days of such date.

(c)

Solid Waste
Out-of-State Solid Waste Collectors Who Dispose of solid waste in New Jersey
Pre-Proposed Amendments: N.J.A.C. 14:3-10.3, 10.5 and 10.15.

Authorized By: The Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13 and 48:13A-4.
BPU Docket Number: SX 8801-0267.
Pre-Proposal Number: PPR 1988-5.

Take notice that the Board of Public Utilities invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering application, authorization, monitoring and reports by or of persons engaged in the solid waste collection or disposal business whose business is located and/or registered outside the State of New Jersey and whose operations within this State are limited to the disposal of solid waste generated and collected outside of this State.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows (additions indicated in boldface **thus**):

14:3-10.3 Certification

(a) No person shall engage in the business of solid waste collection or solid waste disposal as defined by statute unless he is the holder of a certificate of public convenience and necessity issued by the Board.

(b) No person may bid for a solid waste collection contract or solid waste disposal contract with a municipality or other political subdivision or commercial or industrial entity unless he is the holder of a certificate of public convenience and necessity issued by the Board.

(c) No person engaged in the business of solid waste collection or disposal whose business is located and/or registered outside the State of New Jersey, and whose operations within the State are limited to the disposal of waste generated and collected out-of-state, may dispose of such waste unless the Board, by order, has authorized the disposal activities. The monitoring of such operations shall be deemed to be in the public interest and for a public purpose.

14:3-10.5 Application for a certificate

(a) Each applicant for a certificate shall file an application with the Board and furnish, among other things, the following:

1. The names and addresses of all persons who have either financially or operationally a legal or beneficial interest in the applicant's business;

2. A statement of his experience, training or education in the solid waste collection and/or solid waste disposal industry together with all supporting data in order to enable the Board to determine his qualifications to engage in such business;

3. Proof of financial responsibility including with each application a statement of financial condition;

4. A copy of the schedule of rates charged for the collection and/or disposal of solid waste including copies of contracts in force for said service. New utilities shall furnish a schedule of proposed rates and charges for the character of service proposed to be rendered;

5. A copy of the certificate of registration issued by the State Department of Environmental Protection.

6. Such other information as the Board may deem necessary for its determination of the qualifications of the applicant to engage in the business of solid waste collection and/or disposal.

(b) Each applicant for authority to dispose of waste collected out-of-state in New Jersey shall file an application with the Board and furnish, among other items, all information cited in (a)1, 2, 5 and 6 above.

14:3-10.15 Filing of annual reports

(a) Every utility engaged in solid waste collection and solid waste disposal shall file an annual report on forms to be prescribed by the Board for filing, showing its financial condition on a calendar year basis. Such reports shall also contain a statement of income and expenses for a calendar year period.

(b) All persons authorized to dispose of out-of-state waste pursuant to N.J.A.C. 14:3-10.3(c) shall file an informational report to be due on March 31 of each year, on forms prescribed by the Board, containing the following information:

1. Any changes in the information supplied to the Board on the original application for the authority to dispose of out-of-state waste in New Jersey. If there are no changes, the entity shall so indicate;

2. A general description of the type or content of waste disposed of in New Jersey and the total volume of such waste;

3. Photocopies of current DEP registration, vehicle registrations, and proof of insurance; and

4. An accounting of all moneys paid during the preceding calendar year on account of the following taxes and surcharges;

i. The Recycling Act, (N.J.S.A. 13:1E-92 et al) and the Landfill Closure and Contingency Fund Act, (N.J.S.A. 13:1E-100 et seq.);

ii. County Health Department Enforcement Activities, (N.J.S.A. 13:1E-9 and 9.1);

iii. Solid Waste Service Tax, Resource Recovery Investment Tax, and the Solid Waste Importation Tax. (N.J.S.A. 13:1E-136 et al); and

iv. Host Community Benefit (N.J.S.A. 13:1E-28).

(a)

Solid Waste
Itemized Billing
Pre-Proposed New Rule: N.J.A.C. 14:3-10.20

Authorized By: The Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13 and 48:13A-4.
BPU Docket Number: SX 8801-0269.
Pre-Proposal Number: PPR 1988-7.

Take Notice that the Board of Public Utilities invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering itemized bills for solid waste collection and disposal services.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows:

14:3-10.20 Itemized billing

(a) In addition to the requirements of N.J.A.C. 14:3-7, all bills issued for the provision of solid waste collection or disposal service shall show the following:

1. Type of service (residential, commercial, industrial);
2. Frequency of service;
3. Tariff rate applied;
4. Number and size of containers, where applicable;
5. Total quantity of waste collected during billing period;
6. A separate line item showing, if applicable, the surcharge applied to:

i. The Recycling Act (N.J.S.A. 13:1E-92 et al.) and the Sanitary Landfill Closure and Contingency Fund Act (N.J.S.A. 13:1E-100 et seq);

ii. County Health Department enforcement activities (N.J.S.A. 13:1E-9 and 9.1);

iii. Solid Waste Service Tax, Resource Recovery Investment Tax and the Solid Waste Importation Tax (N.J.S.A. 13:1E-136 et al.); and

iv. Host Community Benefit (N.J.S.A. 13:1E-28).

(b)

Solid Waste
Violations; Penalties
Pre-Proposed New Rule: N.J.A.C. 14:3-10.21

Authorized By: The Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13, 48:13A-4 and 48:13A-12.
BPU Docket Number: SX 8801-0271.
Pre-Proposal Number: PPR 1988-9.

Take notice that the Board of Public Utilities invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering penalties for violations of N.J.S.A. 48:13A-12.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows:

14:3-10.21 Violations; penalties

(a) Penalties for violations issued pursuant to N.J.S.A. 48:13A-12 shall be computed as follows:

1. Each day of operation in the solid waste collection or disposal business without holding a valid Certificate of Public Convenience and Necessity shall constitute a separate offense.

2. Each transaction or incident which violates a provision of N.J.S.A. 48:13A-1 et seq., or any administrative order, rule or regulation promulgated thereunder shall constitute a separate offense.

(b) For purposes of this section, a second or subsequent offense shall not be deemed to exist unless notice has been sent to companies concerning a prior, separate and independent transaction or incident. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.

(a)

Solid Waste
Decals for Vehicles Used in the Business of Solid Waste Collection or Solid Waste Disposal
Pre-Proposal New Rule: N.J.A.C. 14:9-4.3

Authorized By: The Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13 and 48:13A-4.
BPU Docket Number: SX 8801-0268.
Pre-Proposal Number: PPR 1988-6.

Take notice that the Board of Public Utilities, invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering the requirement of, requests for and the display, transfer and surrender of decals displayed or to be displayed upon vehicles used in the business of solid waste collection or solid waste disposal.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows:

14:9-4.3 Posting of decals

(a) All vehicles used in the business of solid waste collection or solid waste disposal shall properly and conspicuously display a valid Board of Public Utilities, Division of Solid Waste Decal on the driver's door in order to clarify that the vehicle is properly registered and is owned, leased or financed in compliance with N.J.S.A. 48:3-7 and N.J.A.C. 14:9-4.2.

(b) Decals previously issued, or issued pursuant to (a) above are valid for the subject vehicle only. Any transferring, reproducing or copying of these decals is prohibited.

(c) Every solid waste collection or disposal utility shall surrender to the Board of Public Utilities any decal issued to a vehicle which has been sold, transferred or otherwise disposed of, within 10 days of such action. Any loss or destruction of a decal shall be immediately reported to the Board in writing.

(d) All requests for decals pursuant to (a) above shall be accompanied by copies of the following for each vehicle:

1. The motor vehicle registration;
2. Proof of ownership, or proof of Board approval for leasing or financing pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:9-4.2;
3. Department of Environmental Protection (DEP) registration; and
4. Proof of insurance.

(e) For the first year this section is implemented, every solid waste collection and disposal utility shall attach as an addendum to the annual report due March 31 of each year a complete vehicle list, supplying for each vehicle the information required by (d) above for the issuance of decals. For every year subsequent to the initial year of implementation, such utilities shall, in the same manner, update the vehicle list, or indicate that the previous year's vehicle list is unchanged.

(b)

Solid Waste
Container Identification
Pre-Proposed New Rule: N.J.A.C. 14:9-4.4

Authorized By: The Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13 and 48:13A-4.
BPU Docket Number: SX 8801-0270.
Pre-Proposal Number: PPR 1988-8.

Take Notice that the Board of Public Utilities invites preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering the display of certain information on containers used in the solid waste collection or disposal business.

Submit comments by August 17, 1988 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Full text of the pre-proposal follows:

14:9-4.4 Container identification

(a) All utility owned or leased containers used in the business of solid waste collection or disposal shall properly and conspicuously display with letters and numbers at least three inches in height, on at least two sides of the container, the following information:

1. Name of utility;
2. Telephone number of business office; and
3. Capacity of container in cubic yards.

(b) For purposes of this section, "container" means any portable device in which a material is stored, transported, disposed of, or otherwise handled.

AGRICULTURE

(c)

DIVISION OF REGULATORY SERVICES
Commercial Feeding Stuffs
Association Standards
Proposed Readoption with Amendments: N.J.A.C. 2:68-1.

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:4-20.10.
Proposal Number: PRN 1988-359.

Submit comments by August 17, 1988 to:
Robert C. Fringer, Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

N.J.A.C. 2:68 is scheduled to expire on August 1, 1988. The chapter has been reviewed by the Department of Agriculture in compliance with Executive Order No. 66(1978) and was found reasonable, adequate and necessary for the purposes for which it was originally promulgated, however, several technical changes have been made for purposes of clarification.

N.J.A.C. 2:68 adopts and incorporates by reference as standards for New Jersey Commercial Feed Testing, the standards of the Association of American Feed Control Officials, Inc. The Association standards are recognized by the industry as the most comprehensive and current. They are accepted throughout most of the United States.

Social Impact

Both consumers and manufacturers are affected by the testing of commercial foods. The purpose is to assure adequate and accurate labeling information. The labeling allows the purchase of a product with a known quality and the easy comparison of the product with other similar products on the market.

Economic Impact

Consumers will realize economic savings through the accurate labeling. Manufacturers will be able to compete on an equal basis through the use of the same standards in formulating their labels. Economy of scale will be realized by the opening up of all markets in the United States to any commercial feed manufacturer through one uniform labeling system. The savings of these economies of scale will then be able to be passed on to the consumer. There is no increased cost on the Department of Agriculture by use of these standards.

Regulatory Flexibility Statement

Some commercial feed manufacturers and distributors are small businesses, as defined in the Regulatory Flexibility Act. The rules proposed for readoption will have an economic impact on such businesses, though the Department knows of no less restrictive system than expressed in the standards. No additional recordkeeping or reporting requirements are required under the rules.

The Association Standards are the most universal and accepted rules and provided a "level playing field" for all manufacturers. This should enable small businesses to compete against the larger businesses' advertising budgets on the basis of the quality of the products.

Further, there is no way to protect the consumers of these products without a method of guaranteeing compliance with label claims. It is important that consumers be able to rely upon labeling which provides comparable information. It is not possible to exempt small businesses from compliance with these rules, due to an overriding concern for the public welfare. These standards are the most universally recognized, have been used by the Department for over 21 years, and provide the least costly and best protection available.

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

CHAPTER 68
COMMERCIAL FEEDING STUFFS

SUBCHAPTER 1. ASSOCIATION STANDARDS

2:68-1.1 General rules and regulations

(a) **The Department of Agriculture adopts and incorporates by reference the general** [General] rules and regulations [are] set forth in the current edition of the official publication of the Association of American Feed Control Officials, Inc.[1]

1.[(b)] Definitions and Terms.
2.[(c)] Label Format.
3.[(d)] Brand and product names.
4.[(e)] Expression of Guarantees.
5.[(f)] Ingredients.
6.[(g)] Directions for use and precautionary statements.
7.[(h)] Non-Protein Nitrogen.
8.[(i)] Drug a Feed Additives.
9.[(j)] Adulterants.
10.[(k)] Good Manufacturing Practices.

[[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.]

2:68-1.2 Uniform interpretation and policy

The Department of Agriculture adopts and incorporates by reference the uniform [Uniform] interpretation and policy [is] as set forth in the current edition of the official publication of the Association of American Feed Control Officials, Inc.[1]

[[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.]

2:68-1.3 Glossary; Official feed terms

The Department of Agriculture adopts and incorporates by reference the glossary of official [The Glossary: Official] feed term [is] as set forth in the current edition of the Official Publication of the Association of American Feed Control Officials, Inc.[1]

[[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.]

2:68-1.4 Medicated feeds

The Department of Agriculture adopts and incorporates by reference the standards for medicated feeds [Medicated feeds are] as set forth in the current edition of the official publication of the Association of American Feed Control Officials, Inc.[1]

[[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.]

2:68-1.5 Definitions of feed ingredients

The definitions of feed ingredients are as set forth in the current edition of the Association of American Feed Control Officials, Inc.[1]

[[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.]

2:68-1.6 Sampling and analysis

Sampling and analysis shall be conducted in accordance with methods published in current edition of the official methods of analysis of the Association of Official Analytical Chemist[[1]] **2** or in accordance with other recognized official methods.

[[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be obtained by writing to David MacLean, AOAC, 111 No. 19th St., Suite 210, Arlington, VA 22209.]

2:68-1.7 Other rules and regulations

In addition to the definitions of feed ingredients and feed terms previously adopted, the Department of Agriculture adopts the official pet food regulations, the statement of uniform interpretation and policy, and lists of new animal drugs, certifiable antibiotics and warning statements associated therewith, the permitted analytical variations and the pet food protocols and affidavits as contained in the current edition of the official publication of the Association of American Feed Control Officials.

[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.

[2]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be obtained by writing to David MacLean, AOAC, 111 No. 19th St., Suite 210, Arlington, VA 22209.

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizers and Soil Conditioners Commercial Values

Proposed Readoption: N.J.A.C. 2:69

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:9-15.33.

Proposal Number: PRN 1988-346.

Submit comments by August 17, 1988 to:
Robert C. Fringer, Director
New Jersey Department of Agriculture
Division of Regulatory Services
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5575

Summary

N.J.A.C. 2:69 is scheduled to expire on October 3, 1988. The chapter was reviewed by the Department in February 1988 in compliance with Executive Order No. 66(1978) and was found to be reasonable, adequate and necessary for the purposes for which it was originally promulgated.

These rules provide for the standards and methods of testing fertilizers and soil conditioners, and they implement the Fertilizer and Soil Conditioner Law, N.J.S.A. 4:9-15.1 et seq.

Social Impact

This chapter implements N.J.S.A. 4:9-15 which, although having been altered by revisions, has been substantially the same since 1874. The original law was in response to the growing use and availability of commercial fertilizers to farmers in the 1850's, who faced many products of doubtful value. The law and rules are designed to provide accurate verifiable information so the proper amount and type of fertilizer is used on any particular crop and soil. If a deficiency is found, the values of the nutrients in the rules are then used in the formula to produce a figure which is compared to the cost of the product by deficiency in the guaranteed analysis. The guaranteed figures are then subtracted and the resulting figure is multiplied by three to find the amount due to the customer or customers, which is then distributed pro rata. If no customer can be identified, the money goes to the State Treasury.

Economic Impact

In 1986, 847 fertilizer samples were analyzed and 20 percent were found to be in violation. The penalties collected totaled $22,334, of which $13,050 was turned over to the Treasury and $9,284 was refunded to consumers.

Regulatory Flexibility Statement

The Department of Agriculture has registered 371 firms dealing in commercial feeds, fertilizers and liming materials. Many of these are small businesses. However, all farmers in New Jersey are small businesses, by virtue of that term's definition in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Further, many consumers use fertilizers.

The Regulatory Flexibility Act makes no explicit provision for weighing the harm of a rule against one group of small businesses and comparing it to the benefits given to others. But the intent of the Act seems to be that the regulatory agency is required to quantify in its analysis the good and harm that is to be done by a rule to all small businesses. The question of consumer interest is not addressed in the Regulatory Flexibility Act; however, the legislative history of the original and subsequent Fertilizer Acts makes manifestly clear there is an intent to protect the end user of the commodity. The drafting of the fertilizer law itself makes clear the benefits which are bestowed by it are to be applied to that end.

The burdens the law and rules place upon the fertilizer manufacturers are the costs of registration, the cost of complying with the guaranteed analysis, such monitoring of production which this might require, and the cost of reporting this information to the consumer via either printing on the bag or supplying the information in written form with bulk deliveries. The rules also provide to the consumer information which is accurate, useful and necessary to apply fertilizers on the basis of nutrients needed by the crop, without the necessity of relying upon brand names, which may or may not in themselves be reliable. There is nothing in the rules which prohibits anyone from selling the grade of fertilizer he or she wishes, but it could not be mislabeled or claims made for it that are untrue. The manner of adulterants is not in question here and no product tested has been found to contain them in the 1986 year.

The cost of compliance varies with the number of blends and types of fertilizer placed on the market. This cost is solely in the hands of the manufacturer and is solely one that a manufacturer makes to meet the demands of the market.

The law and rules are designed to provide the freest form of safe, honest and understandable competition. They are based on the accepted standards of the Association of American Plant and Food Control Officers, Inc., whose standards are the basis for the laws and rules of most other states. If the burden on the manufacturer or distributor were lifted, New Jersey manufacturers would be left with a New Jersey market and would be given no chance to compete in other states or countries. Further, every bag of fertilizer load would have to be tested by every user to determine if it was desirable for use on each and every area to be covered. Competition in the fertilizer field would soon become based not on results but on brand loyalty, which would further deprive the small manufacturer of the opportunity to compete on merit, requiring them to match the advertising budget of the large manufacturer, which no small manufacturer could do.

Further, the rules and deficiency formula provide a rather economic way to settle disputes on the quality of the product purchased. Otherwise, an action would have to be commenced in court, possibly a class action, with expert testimony and trial costs, which would be disadvantageous to the plaintiff who has a small business and the small business defendant to whom the cost of defending and prosecuting such actions would be disproportionate to the amount that could be recovered.

It is the analysis of the Department that the rules provide more benefits to more small businesses by complying with these rules and law, than are hurt by them. They are the minimum necessary to ensure the honest, understandable trade in the commodity based on the important results deliverable by the product, not upon brand loyalty. It is, as a result, more economically advantageous for small business manufacturers to enter and compete in the market in both New Jersey and the rest of the world.

Lastly, fertilizer is one of the key ingredients of modern agriculture and a source of great consumer pleasure in landscaping and gardening. The overwhelming cost saved in purchasing these products for the results desired provides a sound basis for economical farming and gardening based on science and not chance.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:69.

COMMUNITY AFFAIRS

(b)

COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Credits; Review By County Planning Board Or Other Designated Agency; Amount and Duration Of Contribution; Impact of Foreclosure on Resale; and Accessory Apartments

Proposed Amendments: N.J.A.C. 5:92-6.1, 11.4, 11.5 and 12.9.

Proposed New Rules: N.J.A.C. 5:92-16.6 and Technical Appendix F.

Authorized By: New Jersey Council on Affordable Housing,
James L. Logue, III, Chairman
Authority: N.J.S.A. 52:27D-301 et seq.
Proposal Number: PRN 1988-344.

Submit comments by August 17, 1988 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 Council on Affordable Housing (Council) has found it necessary to propose a series of additions and amendments to its substantive rules as follows:

1. The Council is proposing N.J.A.C. 5:92-6.1(c) to establish a time frame for determining when housing activity is considered as a credit and when it is considered as part of the housing element and fair share plan addressing the constitutional obligation. This distinction is necessary in determining among other things, a municipality's rental component.

2. The Council is amending N.J.A.C. 5:92-11.4(a) to allow county planning boards or agencies more time to review regional contribution agreements. This additional time was necessitated by the complexity of the review. At the same time, the Council has amended the County Review Checklist of regional contribution agreements to streamline the review process.

3. The Council is proposing N.J.A.C. 5:92-11.5(e) to require that all scattered site rehabilitation programs that are part of a regional contribution agreement be structured for completion within five years. This is because these projects involve marketing a rehabilitation program, finding specific units that qualify for rehabilitation and encouraging property owners to participate in the program. To increase the Council's comfort that these programs represent a realistic opportunity, the Council will monitor the program during the five year program and use the sixth year to complete the rehabilitation program, if necessary.

4. N.J.A.C. 5:92-12.9 has been revised to clarify that a judgment of foreclosure by a lender on the secondary mortgage market extinguishes controls on affordability. Failure of the financial institution to provide notice to the entity administering controls shall not negate any of its rights during foreclosure.

5. The Council is proposing to limit the applicability of its accessory apartment rules (N.J.A.C. 5:92-16) to communities that petition prior to the adoption of N.J.A.C. 5:92-16.6 so as to preclude communities from utilizing accessory apartments in addressing their fair share obligations. The Council is concerned that communities may be placing too great an emphasis on accessory apartments and would like to monitor the housing elements and fair share plans they have approved to determine how realistic they are in addressing the constitutional obligation.

Social Impact

N.J.A.C. 5:92-11.5(e) and N.J.A.C. 5:92-16.6 should benefit low and moderate income households since they are designed to increase the realistic opportunity represented by scattered site rehabilitation in a regional contribution agreement and determine the viability of accessory apartments prior to permitting their continued use. The other proposed amendments should have no social impact.

Economic Impact

The proposed amendments and new rule establishing a time frame for credits, providing more time for county planning board review, and clarifying the impact of foreclosure should have no economic impact. N.J.A.C. 5:92-11.5(e) will require sending communities to accelerate transferred funds to receiving communities as part of a scattered site rehabilitation regional contribution agreement. Proposed new rule N.J.A.C. 5:92-16.6, which in effect creates a moratorium on accessory apartments, should result in the production of more new units. This should benefit the construction industry.

Regulatory Flexibility Statement

Some small businesses will be affected by the proposed amendments and new rule. N.J.A.C. 5:92-11.5(e) should benefit small rehabilitation contractors because it will accelerate the transfer of funds necessary to promote the rehabilitation of low and moderate income units. This will allow more units to be rehabilitated within a shorter time frame. N.J.A.C. 5:92-16.6 should benefit small contractors involved in new construction because it should result in the production of more new housing units.

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

5:92-6.1 Credits

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

(c) A municipality may receive credit for all qualified newly constructed units receiving certificates of occupancy and for all qualified rehabilitated units receiving final inspections as of the date of publication of the petition for substantive certification.

5:92-11.4 Review by county planning board or other county designated agency

(a) RCAs shall be reviewed by the County Planning Board or other county designated agency in which the receiving municipality is located, as set forth in N.J.A.C. 5:91-12.2. Such review shall be completed within [30]**45** days after the agreement has been referred to the county planning board or other county designated agency. The Council may grant a timely request for an extension of this time period not to exceed 15 days.

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

5:92-11.5 Amount and duration of contributions

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

(e) All RCAs that include a scattered site rehabilitation program shall be structured so that the final transfer payment occurs within five years of the approval of the regional contribution agreement. All rehabilitation activity shall occur within the sending community's period of substantive certification. Rehabilitation schedules shall be structured for completion within five years of the approval of a regional contribution agreement. Rehabilitation schedules shall be subject to Council approval and shall not be structured to require a disproportionate share of rehabilitation during the latter portion of the five year period. This rule shall apply to regional contribution agreements proposed by municipalities through executed memoranda of understanding subsequent to October 1, 1988.

5:92-12.9 Impact of foreclosure on resale

A judgment of foreclosure or a deed in lieu of foreclosure by a financial institution regulated by State and/or Federal law **or by a lender on the secondary mortgage market (including but not limited to the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf)** shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:92-12.10. Notice of foreclosure shall allow the municipal entity **administering controls on affordability** to purchase the affordable housing unit at the maximum permitted sales price. Failure of the municipal entity to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation. **Failure of the financial institution to provide notice of a foreclosure action to the municipal entity administering controls on affordability shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.**

5:92-16.6 Applicability of subchapter

(a) The provisions of this subchapter shall be effective for those municipalities that have petitioned for certification prior to (the effective date of this rule).

(b) Municipalities that petition for certification subsequent to (the effective date of this rule) shall not utilize accessory apartments in addressing their fair share obligations.

APPENDIX F
COUNTY REVIEW CHECKLIST

The Act allows a municipality to transfer up to 50 percent of its low and moderate income housing obligation to a willing receiving municipality. The terms of this transfer are determined by the individual negotiations between willing sending and receiving municipalities within the same housing region as adopted by the Council.

Recognizing the need for sound regional comprehensive planning, the Act permits the county of the receiving municipality to review the proposed RCA and submit its comments and recommendations to the Council. The Act indicates that this review shall be performed by the county planning board or other designated agency and that in its review, the county "shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan and the State Development Redevelopment Plan".

The Act permits the Council to establish time limits for county review and since the Council views expedient review of RCAs as crucial, it shall impose a [30]**45** day limit for the county to complete its review. The Council may provide a 15 day extension if the county requests such an extension for legitimate reasons. If the county is unable to complete its review within the allotted time, or if there is no county planning board or designated county agency, the Council shall perform the required review.

To facilitate county review, the Council has developed a four section checklist. This checklist is to be completed as part of the county review process.

OAL NOTE: **Full text** of the County Review Checklist proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:92 Appendix F. **Full text** of the proposed new County Review Checklist follows.

COUNTY REVIEW CHECKLIST

SECTION I: ACCESS TO EMPLOYMENT OPPORTUNITIES

A. Does the proposed agreement provide realistic housing opportunities within convenient access to employment opportunities?

Housing Site(s) Proposed:

	Location	Site #		Yes	No
1. Receiving Munic.	______	______	**A.**	______	______
	______	______	**B.**	______	______
	______	______	**C.**	______	______
	Location	**Site #**			
2. Sending Munic.	______	______	**A.**	______	______
	______	______	**B.**	______	______
	______	______	**C.**	______	______

BRIEFLY EXPLAIN ACCESS FOR EACH SITE ON SEPARATE SHEET INCLUDE SITE #

B. Is the proposed housing served by available transit?

Housing Site(s) Proposed:
If yes, check type(s) of service

1. Receiving Munic. Location	#		Yes	Munic	County	Inter-Municipal Inter-Co	No
______	______	**A.**	______	______	______	______	______
______	______	**B.**	______	______	______	______	______
______	______	**C.**	______	______	______	______	______
2. Sending Munic. Location	**#**						
______	______	**A.**	______	______	______	______	______
______	______	**B.**	______	______	______	______	______
______	______	**C.**	______	______	______	______	______

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

SECTION II: CURRENTLY ADOPTED AND/OR OFFICIAL LAND USE ELEMENT CONSISTENCY REVIEW (ATTACH RELEVANT PAGES OF DOCUMENTS CITED BELOW)

	Check One: Complies In Whole	Part (Explain)	Conflicts In Whole
A.1. Receiving Munic. **(a) Master Plan Of:** ______ ; **Adopted:**	______	______	______

Brief Explanation (attach additional sheets as necessary)

______
______
______

(b) Zoning Ordinance

	Complies In Whole	Part (Explain)	Conflicts In Whole
Of: ________; Adopted: ____________________	______	____________	____________

Brief Explanation (attach additional sheets as necessary)

____

____

____

2. Sending Munic.
(a) Master Plan Of:

	Complies In Whole	Part (Explain)	Conflicts In Whole
__________; Adopted: ____________________	______	____________	____________

Brief Explanation (attach additional sheets as necessary)

____

____

____

(b) Zoning Ordinance

	Complies In Whole	Part (Explain)	Conflicts In Whole
Of: ________; Adopted: ____________________	______	____________	____________

Brief Explanation (attach additional sheets as necessary)

____

____

____

C. Are there any future plans to serve the proposed housing with transit?

		Yes	No
1. Receiving Munic.	A.	______	______
	B.	______	______
	C.	______	______
2. Sending Munic.	A.	______	______
	B.	______	______
	C.	______	______

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

Check One

	Complies In Whole	Part (Explain)	Conflicts In Whole
B.1. Receiving County Land Use Element Of: __________ County; Adopted: ____________	______	____________	____________

Brief Explanation (attach additional sheets as necessary)

____

____

____

	Complies In Whole	Part (Explain)	Conflict In Whole
C.1. Other Regional Plan Land Use Element(s)* Affecting; (a) Receiving Munic. __________; Adopted: ____________________	______	____________	____________

Brief Explanation (attach additional sheets as necessary)

____

____

____

	Complies In Whole	Part (Explain)	Conflicts In Whole
D.1. State Development Redevelopment Plan (S.D.R.P.)**			
(a) Receiving Munic.	______	______	______
(b) Sending Munic.	______	______	______

Brief Explanation (attach additional sheets as necessary)

______

______

______

*For example, is site(s) consistent with Hackensack Meadowlands Development Commission's Adopted Land Use Element
**Use official State Development Guide Plan unitl S.D.R.P. is adopted.

SECTION III: CURRENTLY ADOPTED TRANSPORTATION PLAN AND/OR PROGRAM ELEMENT CONSISTENCY REVIEW

1. Are there transportation or transit plans at any level of government which would positively or negatively affect the proposed housing and/or the proposed housing sites?

1. Within Sending Munic.

______

______

______

2. Within Receiving Munic.

______

______

______

CERTIFICATION: There are currently no transportation plans to build roadway that may invalidate sites.

SECTION IV: CURRENTLY ADOPTED WATER QUALITY MANAGEMENT PLAN (208) (ATTACH RELEVANT PAGES OF DOCUMENT)

A. Is the proposed housing consistent with the 208 plan?

Housing Site(s) Proposed:

	Location	Site #	Check One Yes	No
1. Within	______	A.	______	______
Receiving	______	B.	______	______
Munic.	______	C.	______	______

ATTACH ADDITIONAL SHEETS IF NECESSARY TO COMPLETE ABOVE QUESTION

This review is certified by the undersigned as representing a true and accurate statement of fact.

Based on this review, it is found that the following sites are:

1. Within Receiving Munic.

Housing Site(s) Proposed Location	Site #	In Keeping With Sound Regional Comprehensive Planning	Not in Keeping With Sound Regional Comprehensive Planning
______	A.	______	______
______	B.	______	______
______	C.	______	______

2. Within Sending Munic.

Location	Site #		
______	A.	______	______
______	B.	______	______
______	C.	______	______

CERTIFIED BY: ______________________

DATED: ______________________

TYPE NAME: ______________________

TITLE: ______________________

REPRESENTING ______________________

PROFESSIONAL LICENSE #: (as applicable) ______________________

EDUCATION

(a)

STATE BOARD OF EDUCATION

Marie H. Katzenbach School for the Deaf

Proposed Amendments: N.J.A.C. 6:78-1.1 and 1.3

Proposed Repeal and New Rule: N.J.A.C. 6:78-1.2

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-10 et seq., 18A:39-1, 18A:46-1 et seq., 18A:60-2 to 60-3, and 18A:61-1 et seq.

Proposal Number: PRN 1988-341.

Submit comments by August 17, 1988 to:
Irene Nigro
Rules Analyst
New Jersey Department of Education
225 West State Street
CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments and new rules are designed to comply with federal and State statutes and rules that have been implemented since the last revision of these rules in 1974. The proposed amendments and new rules clarify high school graduation requirements, restructure the admissions process and criteria, clarify the procedures for transportation of residential pupils, and establish the eligibility of out-of-State pupils. The proposal also specifies that residential placements will no longer be restricted by geographic locations of pupil residence.

Social Impact

The proposed admission process will reduce restrictions of degree and nature of secondary handicapping conditions and broadens the eligibility of auditorily handicapped pupils with secondary handicapped conditions. Pupil eligibility will also be favorably affected by eliminating geographic restrictions for residential placement.

Economic Impact

Amendments affecting transportation will have no economic impact since they reflect an existing policy of reimbursing districts with State transportation aid.

Acceptance of pupils residing out of State will have a positive impact on the State since out-of-State tuition will support related services currently provided to New Jersey pupils.

Regulatory Flexibility Statement

The proposed amendments will have no reporting, recordkeeping or compliance requirements for small businesses. The proposal impacts directly and only upon New Jersey public school districts.

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

6:78-1.1 Function **of the Marie H. Katzenbach School**

(a) The [school's] **function of the Marie H. Katzenbach School for the Deaf** is to provide tuition-free residential and day education facilities and instruction for [deaf] **auditorily handicapped** children **from birth through 21 years of age** in the following areas:

[1. Preschool;
2. Nursery;
3. Elementary;
4. Junior high school;
5. Senior high school;
6. Vocational-technical; and
7. Post secondary education.]

1. Early intervention;
2. Preschool through high school; and
3. Post-secondary education.

[(b) Appropriate certificates and diplomas shall be awarded upon the completion of approved courses of study.]

(b) An enrolled pupil who exits the high school program shall meet the high school graduation requirements according to N.J.A.C. 6:28-4.4, 6:8-7.1 and 6:39-1.5, unless exempted in his or her individualized education program. Fulfillment of the individualized education program requirements would qualify the pupil for a State-endorsed diploma. The pupil shall have the choice of receiving the State endorsed diploma of the Marie H. Katzenbach School for the Deaf or the school district of residence.

6:78-1.2 Admission **requirements**

(a) [Application for admission shall be made directly to the school through a written request from the parent or legal guardian with or without assistance from the child study team of the applicant's local school district. The letter should be directed to the senior school officer or the director of admissions clearly stating its purpose and stating legal residency of the applicant, applicant's full name, birth date and present educational placement.]

Application for admission shall be made to the Marie H. Katzenbach School for the Deaf through the pupil's district board of education in accordance with the admission procedures established by the school.

(b) [All applications received will be considered in view of entrance during the month of September of the next school year. As individual appropriate vacancies occur, applicants will be considered from available lists. The deadline for filing applications shall be December 15 of each year. Applicants evaluated prior to March 15 of each school year will receive notification of the disposition of the application by June 15 of the same year. Applications received and processed after December 15 each year will be considered in order of receipt without guaranty of admission for the following school year. Those applicants whose applications are so received and not able to be acted upon by June 30 of each year by the school staff shall be so notified and requested to reapply for the following school year.]

All applications will be processed by the admissions office. A completed application form must be accompanied by:

1. Classification conference report;
2. Individualized education program;
3. Psychological assessment;
4. Educational assessment;
5. Social assessment;
6. Comprehensive health appraisal and record of immunizations;
7. Audiological evaluation;
8. Hearing aid evaluation;
9. Specialists' evaluations as appropriate;
10. Speech and language evaluation; and
11. Achievement test scores.

(c) [The child study department of the school, under direction of the senior school officer, shall review the application, arrange an interview for the proposed pupil and parent or legal guardian, request and review additional information from other sources, test the proposed pupil for amount of hearing loss and capacity for instruction. Under direction of the senior school officer, the admissions committee shall then meet to evaluate the material gathered through the above procedure to determine eligibility for admittance. The admissions committee shall consist of, but is not limited to:

1. The assistant superintendent;
2. Director of educational services;
3. Director of admissions;
4. The school psychologist;
5. The school audiologist; and
6. According to the applicant's age, the appropriate school principal and supervising house parent.]

An on-site screening will be conducted by the admissions committee which shall be comprised of the following Katzenbach school personnel: director of admissions; learning disabilities teacher-consultant; school psychologist; school audiologist; school social worker; program administrator; and others when deemed necessary.

(d) The admissions committee shall review the application and prepare a recommendation to the superintendent. The superintendent shall review the application and shall notify the parent/guardian and district board of education regarding the disposition of the pupil's application within 30 calendar days of receipt of the application by the admissions office.

[(d) All applicants must be deaf persons of suitable age and capacity of instruction, legal residents of this State, not over 21 years of age and meet the following criteria:

1. Residential school placement:

i. All applicants must have a residence other than the school. As the school operates on a five day week schedule and is closed on weekends, holidays and other prescribed vacation periods there are no provisions for permanent residence;

ii. All applicants must be classified as "auditorily handicapped" (deaf) in accordance with N.J.S.A. 18:46-1 et seq. and as defined in the New Jersey Administrative Code 6:28-2.1. The classification shall have been completed within the year of application;

iii. All applicants must be physically and emotionally capable of adapting to residential and educational requirements of the program. Such adaptability shall include, but not be limited to the following requirements:

(1) Must be ambulatory to negotiate flights of stairs without assistance.

(2) Must be physically able to care for self in keeping with developmental expectations including toilet training, both bowel and bladder control.

(3) Must have visual acuity to such a degree as to utilize standard visual educational materials and techniques used in the educational program for the hearing impaired.

(4) Must not be so emotionally handicapped or socially maladjusted to present a danger to self and others in the educational and living environments.

iv. The intellectual and educational functioning of all applicants must be evidence cognitive capability above the mentally retarded range.

v. All applicants under the age of 14 years must either be too remote from another approved program for the deaf for commuting purposes or be classified as capable of benefiting from a limited residential placement due to extenuating circumstances. The classification referred to in the latter part of the first sentence of this subparagraph shall be made by the school's admissions committee.

vi. All applicants between the ages of 12 and 14 years must not have available to them on a daily basis an approved program.

2. Day school placement:

i. Applicants must meet criteria under N.J.A.C. 6:78-1.2(d)1i through iv;

ii. The legal residence of applicants under the age of 21 years from the county of Mercer and portions of Burlington, Hunterdon, Monmouth, Middlesex and Somerset counties must be within a closer proximity to the Katzenbach School than to another approved program.

(e) In addition to the criteria contained in N.J.A.C. 6:78-1.2(d), parents or legal guardians of deaf children between the ages of 12 and 14 years may request residential placement at Katzenbach as an alternative to the approved program in their areas. These students will be considered only after all other applicants admissible under N.J.A.C. 6:78-1.2(d)1v and vi, 1.2(d)2ii and 6:78-1.2(f) have been admitted and vacancies still remain.

(f) Parents or legal guardians of deaf children over the age of 14 years entering the secondary educational program may request this alternative to the approved program serving their area.

(g) When applicants exist with multiple handicaps but whose major educational handicap is deafness, special programs, facilities and specialized personnel may be added in accordance with N.J.S.A. 18A:46-15 and 61-2, to accommodate selective applicants.

(h) When the number of applicants eligible within the above criteria outnumber the places available at the school, the number admitted shall be apportioned so that each county is represented therein in the ratio of its deaf population to the total deaf population of the State.

(i) An applicant who is refused admission after following the admission procedures outlined above, may appeal such decision in writing to the Commissioner of Education. Such appeal shall be processed by the Department in conformity with the procedures contained in N.J.A.C. 6:24-1.1 et seq.]

(e) All applicants of suitable age and capacity for instruction and legal residents of the State shall be eligible for admission. The following criteria shall be utilized for admission:

1. All applicants must be classified as auditorily handicapped or multiply handicapped with an auditory deficit, in accordance with N.J.S.A. 18A:46-1 et seq. and as defined in N.J.A.C. 6:28-3.5.

2. Suitable capacity for instruction for each applicant shall be determined by the admissions committee assessing the applicant's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, health status, language proficiency, communication style, physical education and recreation needs, and prevocational, vocational and self-help skills. This determination shall be made upon review of the completed application, the results of the on-site screening and the ability of the school program to fulfill the requirements of the applicant's individualized education program.

3. Applicants must have a residence other than the school. The residential program operates on a five-day weekly schedule. The school closes on weekends, holidays and other prescribed vacation periods. There are no provisions for permanent residence.

(f) If an applicant has a multiple handicapping condition, but his or her major educational handicap is auditory impairment, special programs, facilities and specialized personnel may be added in accordance with N.J.S.A. 18A:46-15 and 61-2 to accommodate such applicant.

(g) If the number of eligible applicants exceeds the placements available at the school, the number admitted shall be apportioned so that each county is represented by the ratio of its auditorily handicapped pupil population to the total pupil population of the State.

(h) An applicant who is refused admission after following the admission procedures may appeal such decision in writing to the Commissioner of Education. Such appeal shall be processed by the Department of Education in conformity with the procedures contained in N.J.A.C. 6:24-1.

(i) If the number of placements available at the school are not filled by State residents, then out-of-State applicants may be considered for placement. Tuition charged to out-of-State applicants, subject to the approval of the Commissioner, will be calculated by dividing the approved operational budget by the projected enrollment for the year of student attendance. Such tuition shall be calculated separately for the regular program and the deaf/blind program and differentiated for day and residential placements. No eligible New Jersey resident shall be denied admission due to the enrollment of out-of-State pupils.

6:78-1.3 Transportation

(a) A **district** board of education shall be required to furnish necessary daily transportation Monday through Friday to and from the **Katzenbach** [school] **School** for nonboarding pupils when such transportation is approved by the county superintendent of schools in accordance with such rules and regulations as the State Board shall promulgate for such transportation.

(b) The residential portion of the Katzenbach program operates on [a limited or] a five-day week. All pupils are required to be the responsibility of the parents or legal guardian each weekend throughout the school year and those other times designated as holidays by the school calendar. [The school shall provide by contract or otherwise, all necessary transportation for pupils maintained at the school.]

(c) [The school shall determine the most appropriate plan of transportation for each student, which may include the establishment of bus routes and the reimbursement at prevailing State rates of parents or legal guardians for transporting of students in private automobiles. It is the responsibility of the parents or legal guardians or someone designated by the parents or legal guardians to meet the buses at the specified time.]

The Katzenbach School shall develop a general plan of transportation for residential pupils which includes the following:

1. Determination of regional pick-up and drop-off sites and times;

2. Transportation of pupils between the school and the established regional sites; and

3. The assignment of an adult monitor to each bus.

[(d) An adult monitor whose responsibilities shall be designated by the school shall be assigned to each bus.]

(d) District boards of education are responsible for the transportation of residential pupils between established regional sites and the pupil's home in accordance with N.J.A.C. 6:28-3.7(a)5. Such transportation is eligible for State transportation aid.

[(e) Charter buses under State contract shall be used.]

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Notice of Public Hearing
Accounting and Internal Controls
Gaming Equipment
Proposed Amendments: N.J.A.C. 19:45-1.14, 1.36, 1.39 and 1.45; N.J.A.C. 19:46-1.19
Proposed New Rule: N.J.A.C. 19:45-1.40B

Take notice that the Casino Control Commission will hold a **public hearing** concerning amendments to N.J.A.C. 19:45-1.14 (armored car bays), 1.36 (machine and progressive entry authorization logs), 1.39 (rate of progression or incrementation of a progressive slot machine) and 1.45 (signature requirements); N.J.A.C. 19:46-1.19 (dealing shoes); and new rule N.J.A.C. 19:45-1.40B (jackpot verification) as proposed in the May 16, 1988, New Jersey Register at 20 N.J.R. 1069(a). The hearing will be held on August 10, 1988, during the regularly scheduled public meeting at the Commission's offices at 3131 Princeton Pike Office Park, Building No. 5, Lawrenceville, New Jersey. The meeting shall begin at 10:30 A.M.

Interested persons are invited to participate through oral argument and are requested to notify the Commission by August 5, 1988, of their intent to do so by contacting:

David C. Missimer
Senior Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625
(609) 530-4966

(b)

ATLANTIC COUNTY TRANSPORTATION AUTHORITY

Rules of Operation
Proposed Readoption with Amendments: N.J.A.C. 19:75

Authorized By: Atlantic County Transportation Authority, Gerald DelRosso, Acting Executive Director.
Authority: N.J.S.A. 40:35B-15(h) and (x) and 40:35B-15.1.
Proposal Number: PRN 1988-352.

A **public hearing** will be held on August 10, 1988 from 3:00 P.M. to 6:00 P.M. at:

Atlantic County Transportation Authority
1625 Atlantic Avenue, Fourth Floor
Atlantic City, New Jersey 08401

Submit comments by August 17, 1988 to:

Gerald DelRosso, Acting Executive Director
Atlantic County Transportation Authority
1625 Atlantic Avenue, Fourth Floor
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

With the advent of casino gaming in Atlantic City beginning in 1978, Atlantic County has experienced a substantial influx of motorized traffic. A major component of this growth is derived from the large volume of daily visitors that arrive by bus. In 1987 approximately 31 million visitors came to Atlantic City. Of this number, 42 percent arrived by bus. Bus traffic in Atlantic City has increased from 7,500 buses in 1978 and 340,243 in 1983 to 457,895 in 1987.

On December 23, 1983, the Atlantic County Transportation Authority, pursuant to N.J.S.A. 40:35B-15x and 40:35B-15.1, adopted rules designed to alleviate the traffic congestion and related problems in Atlantic City/Atlantic County resulting from the increased motorized traffic, primarily buses, caused by the advent of casino gaming. These rules are codified in N.J.A.C. 19:75.

Pursuant to the requirements and criteria of Executive Order 66(1978), these rules expire on January 17, 1989. In order to provide for a continuing increase in bus traffic and a significant increase in the amount of activity centers as defined by N.J.A.C. 19:75-1.1, it is necessary to readopt with amendments N.J.A.C. 19:75, entitled Rules of the Atlantic County Transportation Authority (the Authority).

Subchapter 1 contains the definitions used in the rules. Subchapter 2 describes approved routes for bus travel in Atlantic County. Subchapter 3 establishes the procedure for intercepting buses destined for locations in Atlantic City. Subchapter 4 delineates procedures to be followed in the discharging and loading of bus passengers, and establishes on-site bus capacity and peak period bus volume numbers for casino and other major destinations. Subchapter 5 sets forth bus operation requirements, including engine idling and waste disposal requirements. Subchapter 6 sets standards for bus parking lots and establishes the procedure for obtaining bus parking lot approvals. Subchapter 7 sets forth the requirement of payment of a $1.00 bus management fee and the methods for collection of same. Subchapter 8 sets out violation and penalty provisions. Subchapter 9 establishes procedures for seeking variances from strict compliance with the rules and hearing procedures. Subchapter 10 addresses severability.

The readoption is intended to continue in place of the regulatory provisions on bus traffic and operation; disposal and evidence of radio licenses where required were added by this proposed amendment.

N.J.A.C. 19:75-7.2—Clarification of procedures for payment of the bus management fee is provided by this proposed amendment.

N.J.A.C. 19:75-8.1—Specific violations with mandatory minimum penalties are expanded to include six offenses generated by the proposed amendments. These specific offenses are: operating bus for driver convenience, failure to file combination bus itinerary, combination bus travelling in violation of itinerary, failure to notify Authority of anticipated excess bus volume, exceeding established bus volume without approval, and violation of engine idling standards. This proposed amendment also equalizes the minimum mandatory penalty for first time violations of the specifically enumerated offenses.

All other amendments are strictly technical in nature and do not affect the substance of any rule.

Social Impact

During the period from 1978 (the opening of the first casino in Atlantic City) until the adoption of the rules of the Authority in 1983, the enormous proliferation of bus volumes in Atlantic City created grave environmental consequences. Buses travelled continually through residential areas. Bus parking was scattered throughout Atlantic City and neighboring communities. Uncontrolled arrivals and departures of buses, to and from casino sites, caused lengthy traffic tie-ups of the major arteries in Atlantic City, which, in combination with other vehicular traffic, contributed to unhealthy and unacceptable levels of air and noise pollution. Small homes in residential areas adjacent to the primary area of casino development experience vibrations from the constant passage of bus traffic.

The rules of the Authority established procedures for the orderly flow of bus traffic, minimizing the negative effect of ever increasing bus volumes. Specifically, the rules provide for designated bus routes throughout Atlantic City and Atlantic County. To the extent possible, buses are routed away from residential streets. Each casino, and other popular destinations designated "activity centers" by the rules, have been assigned, by the Authority, a given number of buses which may be on site at any one time. The bus intercept program established by the rules insures that buses do not proceed to an activity center unless there is space available at that destination. Idling of bus engines, particularly with respect to travel to and from casinos in Atlantic City, which provisions have significantly improved traffic, environmental and neighborhood conditions as compared to the pre-regulatory period. The proposed amendments accomplish the following:

N.J.A.C. 19:75-1.1—Additions to the definitions section include engaging in "motor bus regular route in the nature of special operations or casino bus operation" to the definition of "bus" (to reflect amendments to N.J.S.A. 48:4-1); modification of the definition of "intercept" to include procedures which do not require physical detention of buses at intercept facilities; and the provision of narrative description of "secondary access routes" which are depicted on Authority route maps.

N.J.A.C. 19:75-1.2—Requires that combination buses shall travel in a prescribed direction which is to be set forth in the combination bus itinerary. The itinerary is to be in the possession of the bus driver at all times.

N.J.A.C. 19:75-2.1—The proposed amendments merely clarify certain route designations in Atlantic County.

N.J.A.C. 19:75-2.3—Routes to and from the Atlantic City Convention Center and the Rail Terminal are included by this proposed amendment. The remaining changes variously reflect changes in ownership of casino destinations, the inclusion of routes for new casinos (Showboat and Taj Mahal) and the formal language changes.

N.J.A.C. 19:75-3.2—Intercept procedures may, by this proposed amendment, include intercepting away from off-street facilities. Casinos may be required to greet bus passengers at intercept facilities.

N.J.A.C. 19:75-4.2—The Authority may establish for each casino the number of buses which may arrive and depart from the site during peak traffic periods (4 P.M. to 7 P.M.). This proposed amendment establishes procedures to be followed by the casinos when peak period bus volumes are exceeded. This amendment is designed to reduce peak traffic period congestion.

N.J.A.C. 19:75-5.3—The Authority, by this proposed amendment, adopts the bus engine idling standards promulgated by the New Jersey Department of Environmental Protection, N.J.A.C. 7:27-14.3.

N.J.A.C. 19:75-6.2—Additional requirements for bus lot approvals, including provisions for bus lavatory waste previously limited to five minutes, except when loading or discharging passengers or when undergoing repairs, will now comport with the rules of the New Jersey Department of Environmental Protection regarding bus idling. New parking lots, since the adoption of the rules, have been limited to a zone within five miles of Atlantic Avenue in Atlantic City and are specifically excluded from residential zones. In addition, buses must park at an approved lot between discharge and pick up of passengers, and are not permitted to be used for the driver's convenience during that interval. Authority bus management personnel, in concert with local police, enforce these rules and prosecute violators in the local municipal courts.

The cumulative effect of the rules is manifold. Traffic tie-ups have been greatly reduced from the period prior to the adoption of the rules, despite the continued growth in bus volume. Residential areas are largely free of bus traffic and bus parking lots. Air and noise pollution have been decreased.

Without readoption of the rules, Atlantic City and Atlantic County would return to a situation of uncontrolled bus operations. Residential areas would again be gravely impacted. The road network, which could not accommodate unregulated bus volumes generated prior to 1983, would be in a state of almost constant congestion and breakdown. The proliferation of small, scattered bus parking lots would make voluntary intercept impossible, and would bring bus parking back to residential neighborhoods. Noise and air pollution would certainly increase sharply, which would, in particular, degrade intercity residential areas. One-third of all bus arrivals and departures in Atlantic City take place during the hours of 4 P.M. and 7 P.M. This concentration of bus traffic coincides with the heaviest concentration of other vehicular traffic, thereby exacerbating the highest level of daily traffic congestion. These substantive amendments, particularly those affecting combination buses and peak period bus operations, are intended to address transportation problems which have continued under the rules since their original promulgation.

Since the implementation of the rules in 1983, the Authority has enjoyed considerable community and public support of its stewardship of this crucial activity regarding traffic circulation in Atlantic City and Atlantic County. In an effort to acquaint the local community with the program and elicit support, the Authority has maintained a very active participation in community groups. The Authority meets regularly with casino properties, bus operators and community organizations. Although the rules have developed a wide acceptance from these diverse interests, it is clear that the rules must remain in force and effect in order to achieve the overall benefits which bus rules have achieved in Atlantic City and Atlantic County. Readoption, therefore, is compelled.

Economic Impact

The readoption of the rules with amendments will continue to provide a bus management fee of $1.00 charged to the owner or operator to meet the costs of the program. Likewise, the Authority will continue to accept voluntary private and public aid, donations or contributions for program implementation. Travel time in Atlantic City will be improved. Improving activity center bus management allows casinos and other businesses, such as hotels, to handle an increasing number of people by bus and also benefits the bus operators and related businesses. The fee permits the publication of Bus Management Handbooks, route maps and the presence of investigators to assist residents, visitors and businesses.

Without the readoption of the rules and the continuation of the $1.00 charge per bus operating into Atlantic City, the Authority would no longer be able to provide these services. Business would find increased congestion, a probable decrease in the number of visitors coming to Atlantic City and a decrease in the residential desirability of Atlantic City.

In the calendar year 1987, the Authority achieved approximately an 88 percent compliance rate regarding payment of the bus management fee. Revenues generated by the bus management fee for that same period totaled $406,959. These funds are used exclusively to administer and enforce the bus management plan. Authority expenses covered by the fee revenues include personnel costs for (1) enforcement of Authority bus rules (traffic investigator), (2) management and accounting directly related to bus management operations, (3) development review of bus parking lots, casino properties and other activity centers, (4) processing requests for variances from travel on approved routes, (5) operational planning and on-site assistance to accommodate special events which generate extraordinarily high bus volumes, (6) informational meetings with casino, bus industry, community and other interested organizations, (7) public information activities through press and radio, and (8) court appearances necessary to enforce bus management rules.

In addition, the bus management fee revenues provide for (1) printing and dissemination of bus management permits, (2) the publication and distribution of bus operator handbooks with route maps, (3) preparation and distribution of materials to bus carriers serving Atlantic City and County, (4) postage for all materials disseminated, (5) vehicle acquisition and operational expenses for traffic investigator and other bus management personnel, (6) radio communication equipment, and (7) uniforms.

Regulatory Flexibility Statement

The rules proposed for readoption by the Authority apply to two identifiable types of small businesses. The first type is privately owned and operated bus parking lots. There are three such businesses covered by the rules. The second type of business is privately owned and operated motor bus carriers. The Authority has not heretofore gathered information on the size, based on number of employees, of bus carriers serving Atlantic City and Atlantic County. Reviews of industry directories, however, indicate that the vast majority of such carriers are small businesses as defined by N.J.S.A. 52:14B-17.

The only reporting requirements for bus parking lots are submission of weekly reports setting forth the number of buses parked. No professional services are required for such reports. Although an initial application for approval would require professional planning services for the preparation of the required impact statements, such requirements do not apply to the three small business bus lots, inasmuch as those lots were in existence prior to the original adoption of the Authority's rules. The Authority does not require that they submit a full impact statement for renewal of the approval.

With respect to small business bus carriers, the items of compliance are payment of the $1.00 bus management fee; participation in the bus intercept procedure; parking in approved lots; travelling on approved routes only; limitations on the bus engine idling times; and regulation of excessive peak hour bus volumes. No reporting or recordkeeping is required and no professional services are necessary.

The rules as proposed for readoption do not impose an initial capital cost for the small business parking lots or bus carriers to which the rules apply. The only requirement of the rules which generates an annual cost in addition to the normal costs of operation is the use of two-way radio or telephone equipment sufficient to participate in bus intercept and dispatch procedures.

For small business bus carriers, the payment of the $1.00 bus management fee is the only item which generates an annual cost of compliance. The fee is charged to each bus entering Atlantic City and is the same for all bus companies.

Of the three small business bus parking lots, which were specifically authorized to continue in operation without Authority approval until July 1, 1986, two are located on routes which would not otherwise have been approved routes for bus travel. The rules for readoption provide for approved route access to these lots for the express purpose of keeping them in operation. Further, the rules provide a procedure for seeking variances from strict compliance with rules requirements.

With respect to small business bus carriers, items of compliance such as approved route travel, intercept, engine idling limitation and payment of the bus management fee have an economic impact on operations. Those requirements, however, directly address problems affecting the health, welfare and safety of the residents of Atlantic City and County. Thus, compliance must be uniformly required.

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

CHAPTER 75
RULES OF THE ATLANTIC COUNTY TRANSPORTATION AUTHORITY (ACTA)

SUBCHAPTER 1. GENERAL PROVISIONS

19:75-1.1 Definitions

The following terms shall have the following meanings, unless the context clearly indicates otherwise.

"Activity [C]center" means all such land uses, other than the Atlantic City Municipal Bus Terminal, whose activities generate bus traffic [from outside Atlantic County] and at whose site bus passengers are loaded or discharged.

...

"Bus" means all multi-passenger vehicles engaged in motorbus regular route service, [and] motorbus charter service **and motorbus regular route in the nature of special operation or casino bus operation** as defined by N.J.S.A. 40:35B-3(h) and (j) **and N.J.S.A. 48:4-1 et seq.,** respectively, which vehicles include but are not limited to vehicles known as buses, minibuses and vans.

...

"Intercept" means the procedure of **either** temporarily holding buses at off-street facilities **or employing some other approved method** for the purpose of regulating the flow of bus traffic to activity centers.

"Manifest" means a record of daily bus arrivals by an activity center, which includes, at a minimum, bus company names, bus numbers, arrival and departure times, **origin, destination points** and the [presence of ACTA] **Authority** permit **number**.

"Permit" means the receipt issued by [ACTA] **the Authority** confirming proof of payment of the Bus Management fee.

"Secondary access routes" means all such streets, roads and/or routes depicted on Diagram B which shall be utilized only for bus access to bus parking lots as described by N.J.A.C. 19:75-6.1(a), Authority operated or approved bus intercept facilities, non-casino hotel activity centers and alternate access to activity centers when same is authorized by the Authority.

19:75-1.2 Bus itinerary

(a) The owners or operators of all regular route motorbuses, charter **motorbuses regular route in the nature of special motorbuses** entering or operating in Atlantic County, unless specifically exempted elsewhere in this Chapter, may be required within seven days of the date of written demand by the Authority, to file with the Authority a notice indicating proposed routes of travel and destination or destinations within the county and the bus parking lot at which such buses shall park. All such proposed routes, destinations and bus parking lots shall be in conformance with this Chapter.

(b) The owners or operators of all combination buses shall file the notice provided in (a) above prior to the operation of any combination buses in Atlantic County. **Combination buses shall proceed in one direction only, either east to west or west to east, and shall travel on the most direct authorized route, from initial passenger discharge to final passenger discharge at the activity centers on its itinerary following entry into the City of Atlantic City. Combination buses shall proceed in the same manner when picking up passengers just prior to exiting the City of Atlantic City.**

(c) A copy of the combination bus itinerary shall be maintained in the possession of the driver of any combination bus, and shall be produced by the driver upon request by intercept personnel.

19:75-1.3 Exempt buses

The provisions of this Chapter shall apply to all motorbus charter services, motorbus regular route in the nature of special services, and motorbus regular route services in Atlantic County except those services operated under "The New Jersey Public Transportation Act of 1979", including, but not limited to, New Jersey Transit buses which operate solely from municipal bus [terminals] **termini** approved by the Authority[, and buses operated by the Atlantic City Transportation Company] and such other services specifically exempted herefrom by the New Jersey Department of Transportation. A schedule of such exempted motorbus services shall be forwarded to the Authority, which shall thereafter serve such schedules on the police departments of the several municipalities in Atlantic County.

SUBCHAPTER 2. ROUTES OF TRAVEL

19:75-2.1 Routes of travel; generally

(a) (No change.)

(b) Except for **the City of** Atlantic City, bus routes in Atlantic County are US Route 30, US Route 40/322 and the Atlantic City Expressway. All other routes are considered to be feeder routes to these major access roadways. The major access roadway is designed to enable the bus to enter the City of Atlantic City in the zone where its destination is located.

1. US Route 206/54 is to be used as a feeder route in the western area of [the country] **Atlantic County**.

2. The Garden State Parkway is to be used as a feeder route in the eastern area of [the country] **Atlantic County**.

3. All other county roadway networks approved for bus travel are for local feeder purposes and are as described as follows:

i. US Route 9: [For certificated buses authorized to use this roadway, and for travel] **Access** to and from Smithville via [New Jersey] **N.J.** Route 157 between US Route 30 and connection with US Route 9:

ii. (No change.)

iii. County Road 561/Jimmy Leeds Road: Access from Route 30 at Pomona **for travel** to and from US Route 9.

iv. Delilah Road (County Route 646) from US Route 40/322 to US Route 30: To be used by traffic transferring from one major access roadway to another and for transfer of airport-destined traffic.

[v. Airport access to Atlantic City Expressway: Via Tilton Road to Cardiff Circle (US 40/322) to Washington Avenue to Garden State Parkway entrance to Exit 37 Atlantic City Expressway.]

[vi.]**v. Tilton Road** (County Route 563) from Egg Harbor City [U.S.] **US** Route 30 to Renault Winery.

[vii.]**vi.** Route 52 McArthur Boulevard/Laurel Drive from the Atlantic County boundary to the Garden State Parkway at Interchange 30N and Mays Landing-Somers Point Road between [U.S.] **US** Route 9 and Shore Road and [U.S.] **US** Route 9 between Mays Landing-Somers Point Road and Garden State Parkway at Interchange 29S.

[viii. New York Avenue from Route 30/Absecon Boulevard to Huron Avenue.

ix. Chelsea Avenue from the Atlantic City Boardwalk to Atlantic Avenue.

x. Huron Avenue from Route 30/Absecon Boulevard to its eastward termination.]

[xi.]**vii.** Egg Harbor Road (**County Road 561**) from Route 54 to Route 30.

[xii. Pacific Avenue from Kentucky Avenue to South Carolina Avenue.]

19:75-2.2 Atlantic City access routes

(a) For the purpose of designating routes for bus entry thereinto and exit therefrom, the City of Atlantic City is hereby divided into four zones as shown on Diagram "B" below.

(b) All buses entering or exiting the City of Atlantic City shall do so either on routes prescribed for the zone in which the bus destination is located or at the point for departure of such buses, as the case may be, as set forth below:

Zones	Entry/Exit Route
Zone 1	Route 40
Zone 2	Atlantic City Expressway
Zone 3	Route 30[1]
Zone 4	Route 30

[1]Buses entering or leaving Zone 3 may use the Atlantic City Expressway via Atlantic Avenue.

(c) All combination buses entering or exiting the City of Atlantic City shall do so only on routes prescribed for the zone in which is located the initial destination of such bus, and shall exit only on such routes prescribed for the zone in which is located the final point of departure.

19:75-2.3 Routes of travel to and from casino hotels**, Atlantic City Convention Center and Atlantic City Rail Terminal**

(a) [Golden Nugget]**Routes to and from Bally's Grand**:

1. Arrival: via Albany Avenue to Pacific Avenue to Providence or Boston Avenues and entry to the [Golden Nugget] **Bally's Grand** Garage.

2. Departure: [From] **via** the [Golden Nugget] **Bally's Grand** Garage to Providence or Boston Avenues to Captain O'Donnell Parkway/Atlantic Avenue to Albany Avenue.

(b) **Routes to and from** Tropicana:

1. Arrival: via Albany Avenue to Atlantic Avenue to [Morris] **Brighton** Avenue to the [Casino] **Transportation Center**.

2. Departure: via [Brighton] **Morris** Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Atlantic Avenue.

(c) **Routes to and from** Atlantis:

1. Arrival: via **Albany Avenue to** Atlantic Avenue to Missouri Avenue to Pacific Avenue to the [Atlantis site or] Convention Hall **entrance opposite Georgia Avenue or to Florida Avenue to the casino** . [In the event that traffic conditions make inbound Missouri Avenue and Pacific Avenue unavailable for bus travel to Atlantis, the alternate route will be Albany Avenue to Atlantic Avenue to Iowa Avenue to Pacific Avenue to Florida Avenue to Casino. This alternate route will only be available to Atlantis buses when, in the opinion of ACTA and appropriate representatives of the Atlantic City Police Department, there exists a traffic condition on the primary route that constitutes an imminent threat to public safety.]

2. Departure [from casino]: via **Convention Hall West exit or** Florida Avenue to Pacific Avenue to Mississippi Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Albany Avenue.

(d) **Routes to and from** Caesar's:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to casino bus parking lot.

2. Departure: [from the casino] via Arkansas Avenue to the Atlantic City Expressway.

(e) **Routes to and from** [Harrah's] Trump **Plaza** [Hotel Casino]:

1. Arrival: via **the** Atlantic City Expressway to Missouri Avenue to casino bus lot.

2. Departure: [from the casino] via Mississippi Avenue to Atlantic Avenue to Arkansas Avenue to **the** Atlantic City Expressway.

[(f) Brighton Park Casinos (Bally, Claridge and Sands):

1. Arrival: Atlantic City Expressway to Missouri Avenue to Atlantic Avenue (buses arriving at Bally and Claridge use Ohio Avenue, and buses arriving at Sands use Illinois Avenue).

2. Departure: via Indiana Avenue for buses departing from Bally and Sands. All Claridge buses turn right from Park Place onto Pop Lloyd Boulevard and thereafter proceed north on Michigan Avenue, left turn onto Atlantic Avenue to the Atlantic City Expressway. Claridge buses may alternatively continue south on Park Place around Brighton Park and exit via Indiana Avenue, to Atlantic Avenue to the Atlantic City Expressway.]

(f) Routes to and from Bally's:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Ohio Avenue to Pop Lloyd Boulevard to Park Place to the casino.

2. Departure: via Park Place around Brighton Park to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(g) Routes to and from Claridge:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Ohio Avenue to the casino Transportation Center.

2. Departure: via Park Place to Pop Lloyd Boulevard to Michigan Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway. Alternate route: via Park Place around Brighton Park to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(h) Routes to and from Sands:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Dr. Martin Luther King, Jr. Boulevard to Pop Lloyd Boulevard to the casino.

2. Departure: via Pop Lloyd Boulevard to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

[(g)](**i**) **Routes to and from** Resorts:

1. Arrival: **via** Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue [to New Jersey Avenue for intercept to Atlantic Avenue] to Pennsylvania Avenue **to the casino**.

2. Departure: [U-turn] **via** Pennsylvania Avenue to **Route 30/** Absecon Boulevard [(Route 30)]. [When constructed: Pennsylvania Avenue into tunnel to New Roadway to Atlantic Avenue to Pennsylvania Avenue to Route 30:] [a]Alternate **route: via Pennsylvania Avenue** to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

[(h)](**j**) **Routes to and from** Harrah's:

1. Arrival: via **Route 30**/Absecon Boulevard to Huron Avenue to Brigantine Boulevard, over the Brigantine Bridge to the casino, via the turnaround on the Brigantine side of the Bridge.

2. Departure: [from the casino] via Brigantine Boulevard to Huron Avenue to **Route 30**/Absecon Boulevard.

[(i)](**k**) **Routes to and from** Trump's Castle:

1. Arrival: via Absecon Boulevard to Huron Avenue to [Casino] **the casino**.

2. Departure: [from the Casino] via Huron Avenue to **Route 30/** Absecon Boulevard.

(l) Routes to and from Showboat:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Maryland Avenue to Pacific Avenue to the Transportation Center.

2. Departure: via Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route: via Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(m) Routes to and from Taj Mahal:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to the Transportation Center. Alternate route (garage berths): via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Pennsylvania Avenue to garage.

2. Departure: via tunnel connection to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route (garage berths): via Pennsylvania Avenue to tunnel connection to Virginia Avenue to Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route from tunnel connection or garage berths: proceed to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(n) Routes to and from Atlantic City Convention Center:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Pacific Avenue to Mississippi Avenue to tunnel.

2. Departure: via tunnel exit to Pacific Avenue to Arkansas Avenue to the Atlantic City Expressway.

(o) Routes to and from Atlantic City Rail Terminal:

i. Arrival: via the Atlantic City Expressway to Missouri Avenue to Arctic Avenue to Michigan Avenue to the Atlantic City Rail Terminal.

2. Departure: via the Atlantic City Expressway. Alternate route: via Kirkman Boulevard to Michigan Avenue to Atlantic Avenue.

SUBCHAPTER 3. BUS INTERCEPT

19:75-3.1 (No change.)

19:75-3.2 Intercept procedure

(a) Buses subject to intercept **at off-street facilities** and **when** so notified by the activity center and/or the Authority, shall proceed to the approved intercept facility designated by the activity center and/or the Authority, and shall be dispatched as and when on-site capacity permits, or as otherwise directed by the Authority. Intercept and dispatch by other than Authority personnel shall be subject to review and modification by the Authority.

(b) Any intercept procedure that does not require the physical interception of buses at an off-street facility shall be subject to prior approval by the Authority.

(c) Upon 30 days written notice from the Authority, all activity centers providing gratuities, incentives or premiums to bus passengers shall provide adequate personnel at approved intercept facilities to greet such passengers and dispense all such gratuities, incentives or premiums at the intercept facility.

SUBCHAPTER 4. DISCHARGE AND LOADING OF PASSENGERS

19:75-4.1 (No change.)

19:75-4.2 On-site bus capacity; designated discharging and loading areas; certificate **of on-site capacity; established bus volumes; certificate of established bus volume; notice to exceed established bus volume**

(a) The Authority, on its own **initiative** or upon application by an activity center or proposed activity center, may designate the number of buses which may be present at any given time at each activity center, which number shall constitute the "on-site bus capacity" for the [several] activity centers. The Authority may also designate the specific area or areas on-site where buses may discharge and load passengers at the activity centers. Where appropriate or necessary, on-site capacity and designated areas may be allocated by the Authority between buses carrying:

1. Passengers arriving and leaving on the same day (day buses)[,]; and
2. Passengers remaining overnight or longer (overnight bus).

(b) The Authority shall issue to each activity center a certificate setting forth its on-site bus capacity and designating all day bus and overnight bus discharging and loading areas, a copy of which shall be filed with the police department of the municipality in which such activity center is located. Certificates shall be effective for a period of one (1) year unless earlier modified by the Authority pursuant to N.J.A.C. 19:75-4.3.

(c) No activity center shall:

1. Exceed its specific on-site capacity;
2. Permit any buses to be present on-site other than in designated discharging and loading areas; or
3. Utilize overnight bus areas for day bus discharging and loading.

(d) The Authority may, in consultation with any casino activity center, designate the number of buses which may be present at any casino activity center between the hours of 4:00 P.M. to 7:00 P.M. This number shall constitute the "established bus volume" for such casino activity center.

(e) The Authority shall issue to any casino activity center for which a bus volume has been established pursuant to (d) above a certificate setting forth the "established bus volume". The certificate shall be effective for a period of one year unless earlier modified by the Authority pursuant to N.J.A.C. 19:75-4.3.

(f) Each casino activity center shall give no less than 48 hours notice to the Authority whenever its bus volume is anticipated to exceed 120 percent of its established bus volume. Such notice shall include a plan by the casino activity center, to be approved by the Authority, for the management of such excess bus volume. The plan may include, but shall not be limited to, provisions for additional staffing, reduction of the time such buses shall remain on site, greeting of passengers at intercept facilities and rescheduling of bus arrivals and departures. In the event such plan shall not be approved by the Authority, or if the affected casino activity center shall fail or refuse to comply with any amendment or amendments to the plan by the Authority, such casino activity center shall not be permitted to receive buses in excess of its established bus volume on the date for which notice has been given. A violation of this subchapter shall subject the affected casino activity center to penalties as provided for in N.J.A.C. 19:75-8.1.

19:75-4.3 Modification of authorized on-site capacity **or established bus volume**; emergency procedures

(a) The Authority shall regularly monitor all bus operations at activity centers. When, in the opinion of the Authority, traffic conditions in **the city of** Atlantic City and Atlantic County require, the Authority shall notify any activity center of its intention to reduce or otherwise modify the on-site bus capacity **and/or the established bus volume of such** activity center or alter its discharging and loading areas.

1.-2. (No change.)

3. The activity center may request a hearing [before the Board of the Authority] to oppose the [intended] **proposed** action, which request must be in writing and must be served on the Authority within five business days of receipt by the activity center of the Authority's notice of intention to reduce or modify.

4. If requested, the hearing shall be [held at the next regularly scheduled board meeting of the Authority or at a meeting duly called for that purpose and shall be] conducted [under] **in accordance with** the procedures set forth in N.J.A.C. 19:75-9.4(a)3.

5. The proposed action by the Authority shall not take effect until such hearing is concluded and a **final** determination rendered therein.

6. Failure to make timely written request for such hearing shall result in the proposed action taking effect on the date set forth in the notice of intention to reduce or modify, and the Authority shall issue a new certificate setting forth the specific reductions and/or modifications pursuant to N.J.A.C. 19:75-4.2(b) **and/or (e)**.

(b) When, in the opinion of the Executive Director of the Authority, extraordinary traffic volumes or other circumstances create an imminent peril to the health, safety and welfare of the residents of **the city of** Atlantic City and Atlantic County, which peril may be reduced or avoided by the limitation of on-site bus operations at the activity centers, the Executive Director of the Authority may issue an emergency order reducing on-site capacity**, establishing bus volume** and/or modifying discharging and loading areas for any or all of the activity centers.

1. Such emergency orders shall be in writing, setting forth the specific reasons for such orders and shall become effective immediately upon service of the emergency order upon the affected activity center or centers, and the police department of the municipality in which the affected activity centers are located.
2. Such emergency orders shall continue in effect until the imminent peril to health, safety and welfare has ceased, or for a period of seven days, whichever is shorter, unless extended by the Board of the Authority at a duly scheduled hearing.
3. Written notice of such hearing shall be served upon the affected activity centers and the police departments of the municipalities in which the affected activity centers are located.
4. Such hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 19:75-9.4(a)(3).
5. During the effective period of any emergency order, the Authority shall endeavor, by means of bus intercept or other procedures, to minimize the impact of the emergency orders on bus operations at the activity centers.

19:75-4.4 Additional site approval; requests by activity centers to increase or modify on-site bus capacity or discharging or loading areas

(a) Additional sites may be approved as activity centers with on-site bus capacities and designated discharging and loading areas by the Authority upon written application, containing, without limitation, the following:

1. Location, dimensions and legal description of the proposed location;
2. Number of buses proposed to be on site at any one time;
3. Security measures and traffic control to be provided;
4. Evidence of on-site radio/telecommunication equipment;
5. A traffic impact statement where required by the Authority; and
6. Drawing to scale, with dimension in feet, showing discharging/loading site.

(b) All applications shall be submitted with an original and eight (8) copies. One additional copy of the application shall be served upon the police department of the municipality in which the proposed site is located and proof of such service by way of affidavit or certified mail return receipt shall be filed with the Authority. Upon filing with the Authority, the application shall be acted upon in the manner and in accordance with the procedure set forth in N.J.A.C. 19:75-9.4, and thereafter the Authority shall issue a certificate, pursuant to N.J.A.C. 19:75-4.2(b).

(c) In making a determination, the Authority shall consider, among other things, the availability of other sites, anticipated traffic conditions, the impact of the request on the traffic flow, the necessity to the applicant for the additional site, and compatibility with designated routes as provided herein.

(d) As a condition of approval, all discharge/loading sites shall have:

1. Dimensions no less than 45 feet by 12 feet for each bus;
2. Supervisory personnel on site during discharging/loading of passengers;
3. Radio or telecommunication equipment for the purpose of intercept and dispatch procedures.

(e) No discharging/loading sites located in the traffic or curb lanes of Pacific Avenue in the City of Atlantic City will be approved.

(f) All activity centers in Atlantic County constructed subsequent to the effective date of this Chapter shall obtain the approval of the Authority for bus discharging and loading site capacity.

(g) Any existing activity center may apply to the Authority for additional on-site bus capacity or modified discharging and loading areas in the manner set forth in (a) through (e) above which request shall constitute a request for a major variance governed by N.J.A.C. 19:75-9.

SUBCHAPTER 5. BUS OPERATIONS

19:75-5.1 Procedure following discharge of passengers

Upon discharging of all passengers, buses shall forthwith proceed to an approved bus parking lot on the most direct approved route. Buses shall not be operated solely for the convenience of the driver between discharge and loading of passengers.

19:75-5.2 Speed limit in parking lots

Operating speeds in parking lots will not exceed 5 miles per hour.

19:75-5.3 Engine [running] **idling** requirements

[(a)] No buses shall be stopped with their engines running [in excess of five minutes, except to load or discharge passengers at a designated loading and/or discharging site or Authority intercept lot, or when undergoing necessary repairs or maintenance, or as otherwise provided herein. At such time as the bus reaches a bus parking lot, the engine shall be shut off] **except as** otherwise provided herein. At such time as the bus reaches a bus parking lot, the engine shall be shut off] **except as is specifically permitted by the New Jersey Department of Environmental Protection idle standard set forth in N.J.A.C. 7:27-14.3**.

19:75-5.4 Dumping of waste

Buses shall dump waste only at locations and into receptacles approved by [ACTA] **the Authority**.

SUBCHAPTER 6. PARKING

19:75-6.1 Approved parking lots: exceptions

[(a) The following bus parking lots have been and are hereby approved for the parking of buses:

1. Authority lots located at:

i. Missouri Avenue in the City of Atlantic City;

ii. Albany Avenue in the City of Atlantic City (Two Guys site);

iii. Huron Avenue in the City of Atlantic City.]

[(b)](**a**) All buses subject to the provisions of this Chapter shall park in lots approved by the Authority with the [following exceptions:] **exception that**

[1. Until July 1, 1986, buses may park in any lot licensed by a municipality as a bus parking lot and operating as such prior to February 1, 1983, whether or not such lot has been approved by the Authority; or

2. Privately] **privately** owned bus parking lots in existence as of February 1, 1983 which exclusively accommodate motorbuses owned by the owner of any such parking lot and are not rented or leased to any other motorbus may continue in operation whether or not approved by the Authority.

[(c)](**b**) The requirement of Authority approval for bus parking lots shall nevertheless apply to the exceptions contained in this subchapter in the event that the licensed parking capacity of such exempted bus parking lot shall increase after February 1, 1983, or if the license for such exempted bus parking lot shall be transferred after February 1, 1983.

[(d)](**c**) A list of [Authority operated and] approved bus parking lots is available from the Authority upon request.

19:75-6.2 Bus parking lot approvals

(a) All proposed bus parking lots or bus parking lots commencing operation subsequent to February 1, 1983, in addition to any and all other required municipal, county, State or Federal approvals, shall obtain approval from the Authority. Approval by the Authority shall be granted only if the proposed lot:

1. Is within a one-way driving distance of five miles of that portion of Atlantic Avenue between Maine and Albany Avenues within the corporate limits of the City of Atlantic City;
2. Has a minimum of 50 bus parking spaces, all of which have minimum dimensions of 45 feet by 12 feet;
3. Segregates bus and car parking, which shall require at a minimum separate exits and entrances and a physical barrier separation;
4. Has lighting and is attended during all hours of operation;
5. Contains signs conforming to the standards of the municipality in which the lot is located;
6. Is located on bus routes approved by the Authority;
7. Possesses two-way radio or telephone equipment sufficient to participate in bus intercept and dispatch activity;
8. Does not materially impair the intent and purpose of these regulations; and
9. Has filed an impact statement acceptable to the Authority, which includes, without limitation, air quality, traffic circulation and neighborhood impact analysis.

(b) Applicants for approval of the Authority of any proposed bus parking lot shall submit original and eight copies of the application on forms approved by the Authority, including any maps, plats or drawings required by the Authority which shall contain, and without limitation, the following:

1. Location, dimensions and legal description of proposed lot;
2. Hours of operation;
3. Security measures to be provided;
4. Provision for lavatory dumping facilities;
[4.]**5.** Evidence of on-site radio/telecommunications equipment **and valid licenses, if required, for the same;** and
[5.]**6.** Impact statement as defined in subchapter N.J.A.C. 19:75-1.1(g).

(c) One additional copy of the application shall be served upon the police department of the municipality in which the proposed bus parking lot is located and proof of such service by way of affidavit or certified mail return receipt shall be filed with the Authority. Upon filing with the Authority, the application shall be acted upon in the manner and in accordance with the provisions set forth in N.J.A.C. 19:75-9.4.

(d) The requirement of Authority approval for bus parking lots shall nevertheless apply to the exceptions contained in this subchapter in the event that the licensed parking capacity of such exempted bus parking lot shall increase after February 1, 1983, or if the license for such exempted bus parking lot shall be transferred after February 1, 1983.

(e) All approvals shall be conditioned upon compliance with the following:

1. Municipal zoning or planning board approval;

2. Maintenance of the bus parking lot in the condition set forth in the application or any amended application approved by the Authority;

3. On-site posting in a conspicuous place of Authority-approved bus routes and regulations; and

4. Submission of weekly reports on forms supplied by the Authority, setting forth, at a minimum, the number of buses parked.

(f) The Authority retains the right to enter upon and inspect all approved bus parking lots during hours of operation for the purpose of verifying compliance with the provisions of this Chapter. In the event that the owner and/or operator of any bus parking lot shall fail to comply with any provision of this subchapter, the Authority shall notify such owner and/or operator of the specific violation thereof. The Authority, in addition to any other violation provided for herein, shall revoke approval of such bus parking lot unless the enumerated violations have been corrected within 15 days of notification to the owner and/or operator.

(g) All approvals granted by the Authority pursuant to this subchapter shall be for an effective period of one year. Any renewal or extension of any approval shall only be granted pursuant to the provisions of (h) below. Such approval may be earlier terminated by the Authority in the event that:

1. The use of the property as a bus parking lot is terminated within such one year period; or

2. The approval by the Authority is withdrawn pursuant to (f) above.

(h) Renewals: 120 days prior to the expiration of the approval period provided for herein, the owner of a bus parking lot shall file with the Authority a written request for a one year renewal of the approval. Such written request shall contain certification by the owner that the bus parking lot complies with all the terms and conditions set forth in this subchapter governing the granting of bus parking lot approval, including any amendments to this subchapter taking effect prior to the expiration of the term of the original approval. The request for renewal shall be processed by the Authority pursuant to the provision of N.J.A.C. 19:75-9.4. Failure to apply for renewal of a bus parking lot approval within the time provided for herein shall result in the expiration of such approval at the end of one year from the date of issuance. The owner whose bus parking lot approval has expired may file a new application for approval pursuant to the provisions of (a) through (g) above at any time.

(i) The Authority is specifically empowered to consider the application of any amendment to this subchapter which will take effect prior to the expiration of a bus parking lot approval when determining whether to grant or deny renewal thereof.

SUBCHAPTER 7. BUS MANAGEMENT FEE

19:75-7.1 Mandatory payment of fees; proof of payment

(a) The owner and/or operator of any bus subject to the provisions of this Chapter shall:

1. Pay a bus management fee to the Authority in the amount of $1.00 for each bus which it owns or operates and which enters a municipality within the district in which casino gambling is authorized pursuant to N.J.S.A. 9:12-1 et seq. Payment of the aforesaid fee shall be for each such entry by any bus; and

2. Exhibit proof of such fee payment in the door right side window.

19:75-7.2 Modes of payment

(a) **All** [Bus] **bus** operators or owners required to pay the fee provided for in this subchapter shall do so in accordance with the following:

1. Payment of a fee [may] **shall** be made in advance by sending a check or money order payable to the **Atlantic County Transportation** Authority at Atlantic County Transportation Authority, [19 South New York] **1625 Atlantic** Avenue, **Fourth Floor**, Atlantic City, NJ 08401[, and enclosing a self-addressed stamped envelope]. Such advance payment **including costs for postage and handling** must be received no less than two weeks prior to the scheduled arrival date of any bus subject to this subchapter.

2. Payment of the fee shall be made [prior to the discharge of any passengers] **in advance or** at the following [Authority] locations **prior to the discharge of any passengers at any activity center:**

i. Albany Avenue (Two Guys) [bus parking and] intercept lot;

ii. Missouri Avenue bus parking and intercept lot (Missouri Avenue and Baltic Avenue);

iii. Huron Avenue bus parking and intercept lot [and such other locations as the Authority shall designate]**;**

iv. All approved private bus parking facilities;

v. Such other locations as the authority shall designate.

19:75-7.3 and 7.4 (No change.)

SUBCHAPTER 8. VIOLATION AND PENALTIES

19:75-8.1 Specific offenses

For any violation of the following provisions of this [Chapter] **chapter**, the violator [will]**shall** be subject to minimum penalties as set forth below:

		Fine	
	1st Offense	2nd Offense	3rd Offense
Traveling on unapproved routes Subchapter 2.	$75.00	$200.00	$400.00
Illegal bus parking Subchapter 6.	75.00	200.00	400.00
Non-payment of bus management fee Subchapter 7.	[50.00]**75.00**	200.00	400.00
Failure to intercept when required Subchapter 3.	[50.00]**75.00**	200.00	400.00
Failure to possess variance if required Subchapter 9.	[50.00]**75.00**	200.00	400.00
Discharge/load passengers at non-approved location Subchapter 4.	[50.00]**75.00**	200.00	400.00
Activity center exceeding capacity Subchapter 4.	75.00	200.00	400.00
Operating bus for driver's convenience Subchapter 5.	**75.00**	**200.00**	**400.00**
Failure to file combination bus itinerary Subchapter 1.	**75.00**	**200.00**	**400.00**
Combination bus traveling in violation of bus itinerary Subchapter 1.	**75.00**	**200.00**	**400.00**

Failure to notify Authority of anticipated excess bus volume			
Subchapter 4.	**75.00**	**200.00**	**400.00**
Exceeding Established Bus Volume without Authority Approval			
Subchapter 4.	**75.00**	**200.00**	**400.00**
Excessive Engine Idling			
Subchapter 5.	**75.00**	**200.00**	**400.00**

19:75—8.2 and 8.3 (No change.)

SUBCHAPTER 9. VARIANCES; PROCEDURE

19:75-9.1 Variance; minor and major

(a) In particular cases and for special reasons, the Authority may grant a variance from the strict application of the provisions of this [Chapter]**chapter**. Such variances shall be designated as minor variances and major variances.

1. A minor variance, if granted, shall permit a one-time deviation without penalty from the provisions regarding designated routes, sites and site capacity for loading and discharging passengers, parking and/or intercept. A minor variance shall be granted for a specified date. The procedure for application for and determination of a minor variance are as set forth in N.J.A.C. 19:75-[7.2]**9.2** below.

2. (No change.)

19:75-9.2 Application for minor variance; determination by Executive Director; appeal to board

(a) (No change.)

(b) All applications **for a minor variance shall** [must] be filed [in duplicate] with the Executive Director of the Authority [and an additional copy with the police department of the municipality or municipalities affected by the variance,] no later than three business days prior to the date for which the variance is requested. [Proof of service of the application on the affected police departments must be filed with the Authority by way of affidavit or certified mail return receipt requested prior to a determination on the application.]

(c) The Executive Director or designee shall review all applications for minor variances. [and shall grant such variance] **The application shall be approved** upon a showing of special reasons and only if the variance can be granted without substantial detriment to the public good [and will not substantially impair] **nor substantial impairment to** the intent and purpose of the provisions of this [Chapter]**chapter**;

(d) If the Executive Director shall grant any minor variance, he or she shall forthwith notify the applicant and the police department or departments affected in writing. Such notice must be in possession of the applicant [or]**and** bus operator[, as the case may be,] and displayed to any enforcement official upon request. Failure to possess and display the aforesaid notice of variance may result in the imposition of penalties under [subchapter 8] **N.J.A.C. 19:75-8** notwithstanding the grant of a minor variance.

(e) If the Executive Director shall deny any minor variance, he or she shall forthwith notify the applicant [and the police department or departments affected] in writing, setting forth the specific reasons for such denial, and advising the applicant that it may appear before the Board of the Authority at its next scheduled meeting and present testimony or other evidence on behalf of its application. At such board meeting, the Board of the Authority may affirm, reverse, or modify the decision of the Executive Director.

[(f) All determinations on minor variances shall be immediately forwarded to the police department or departments affected.]

19:75-9.3 Application for major variance

(a) An application for a major variance shall be in writing [setting] **and set** forth the following:

1. Name and address of applicant;

2. Narrative statement describing exact nature of variance requested, the special reasons why such variance should be granted, and the impact such variance, if granted, will have on the neighborhood and traffic conditions;

3. Citation of specific subchapters from which variance is sought;

4. Period for which variance is requested, if not permanent; and

5. Legal description and scale drawing of property for which variance is requested, if applicable.

(b) All applications [must]**shall** be filed in [eight]**original and eight (8)** copies with the Board of the authority, and an additional copy with the police department of the municipality or municipalities affected by the variance. Proof of service of the application on the police department or departments so affected shall be filed with the Authority by way of affidavit or certified mail return receipt requested prior to a determination on the application.

19:75-9.4 Hearing procedure for major variances, bus parking lot approvals, additional activity center on-site approvals, and other hearings

(a) All applications for major variances (N.J.A.C. 19:75-9.1(b) and 9.3), bus parking lot approvals (N.J.A.C. 19:75-6.2) and additional site approvals (N.J.A.C. 19:75-4.3) shall be reviewed by the Development Division of the Authority.

1. Within 30 days following receipt of application, the Authority, through the Development Division, shall notify the applicant in writing by certified mail regarding the completeness of the filing. The Authority may declare the application to be complete for filing or shall notify the applicant of specific deficiencies. The Authority shall, within 15 days following the receipt of additional information to correct filing deficiencies, [shall] notify the applicant of the completeness of the amended [applications] filing, or shall specify the unaddressed deficiencies. An application shall not be considered duly filed until it has been declared complete by the Authority.

2. The Development Division of the Authority shall recommend approval or disapproval of all completed applications to the Executive Director who shall grant or deny the application within 15 days of the recommendation of the Development Division. The determination of the Executive Director, setting forth the reasons for the grant or denial of the [applicant] **application**, shall be forwarded forthwith to the applicant by certified mail, return receipt requested.

3.-7. (No change.)

(b) All approvals shall be [considered] **conditioned** where applicable upon compliance with the following:

1. Municipal zoning or planning board approval;

2. Maintenance of the affected property, if any, in the condition set forth in the application or any amended application approved by the Authority;

3. On-site posting in a conspicuous place of Authority-approved bus routes and regulations;

4. Submission of reports on forms supplied by the Authority, at the Authority's request.

(c) (No change.)

SUBCHAPTER 10. SEVERABILITY

19:75-10.1 (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: Diagrams A, Bus Routes for Casinos Entering and Departing Atlantic County, and B, Bus Routes for Casinos entering and departing Atlantic City, filed by the Authority for publication in this proposal, are not reproducible in the New Jersey Register. Copies of the Diagrams may be obtained from the authority at the address set forth for proposal comments, or from the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 301, Trenton, New Jersey 08625.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY
Gypsy Moth
Voluntary Suppression Program
Adopted New Rules: N.J.A.C. 2:23

Proposed: April 18, 1988 at 20 N.J.R. 845(a).
Adopted: June 14, 1988 by Arthur R. Brown, Jr., Secretary, State Board of Agriculture.
Filed: June 20, 1988 as R.1988 d.323, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 4:7-36 through 4:7-40.
Effective Date: July 18, 1988.
Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:
One comment was received concerning N.J.A.C. 2:23-1.3(a)5. from the Department of Environmental Protection to mesh the wording of their rule and the Agriculture rule concerning the transportation of school children. This change will provide the maximum clarity to the rules of both agencies. The rules deal with the same people at the same time, doing the same things. The Department of Agriculture deems this a technical change which implements a long-standing practice of this Department to accommodate the school districts in an area designated for spraying.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:23.

Full text of the adopted amendments to the readoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

2:23-1.3 Local government participation
(a) Spraying will only be done on a voluntary basis with local governments that agree to fully accept the following conditions for participation in their aerial spray program.
1. Request in writing an egg mass survey to determine status of the gypsy moth infestations in residential and recreational forests.
2. Arrange for financing the total cost of any treatments recommended and make contractual agreement with the spray vendor, either provided by the State or obtained by local bidding.
3. Assist in the administration and coordination of the spray programs, providing a town coordinator and all necessary labor to mark spray block boundaries.
4. Adopt a resolution declaring the gypsy moth a "Public Nuisance." The public must be notified in advance, pursuant to the Open Public Meetings Act For Proposed Municipal Action (N.J.S.A. 10:4-9), of the date, time and place that the gypsy moth resolution will be discussed. A copy of this notice must be sent to the Department of Agriculture.
5. Notify the occupants by a properly served notification of the intent of the spray program. Spraying will only be done between the hours of 5:30 A.M. to 12:00 Noon, and 5:00 P.M. to 8:00 P.M. Notwithstanding any provisions of this subchapter, no community or area-wide pesticide application for gypsy moth control may take place *[between 7:30 A.M. and 8:30 A.M.,]* ***during normal student commuting times, not to exceed one hour, as determined by the local school district,*** within two miles of a school housing grades kindergarten through eighth grades or within 2½ miles of schools housing grades nine through 12.
6. A "contact" person(s) shall be selected by the municipality so that residents may call to obtain the latest information on the aerial spray application, especially if spraying is postponed. The telephone number of the "contact" person shall be made known to the town residents.
7. In addition to the resolution, a responsible municipal official shall certify to the Department of Agriculture that these notices have been served as outlined in the guidelines. No work will begin until certification is filed with the Department of Agriculture.
8. To give, on behalf of the Department of Agriculture, the notices required by N.J.S.A. 4:7-39.

COMMUNITY AFFAIRS

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
Housing Affordability Controls
Adopted Amendment: N.J.A.C. 5:80-26.1, 26.2, 26.3, 26.11, 26.16 and 26.21

Proposed: April 18, 1988 at 20 N.J.R. 862(a).
Adopted: June 22, 1988 by New Jersey Housing and Mortgage Finance Agency, James L. Logue, III, Executive Director/Secretary.
Filed: June 23, 1988 as R.1988 d.331, **without change.**
Authority: N.J.S.A. 52:27D-321 and 324, N.J.S.A. 55:14K-5g.
Effective Date: July 18, 1988.
Expiration Date: May 20, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

5:80-26.1 Purpose and applicability
(a) The rules within this subchapter are promulgated to establish requirements and controls to ensure that housing assisted under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) remains affordable to low and moderate income households for time periods established herein by the Agency, in consultation with the Council on Affordable Housing. The rules also establish procedures for the administration of affordability controls by the Agency for housing which has not been assisted under the Act.
(b) The rules in this subchapter shall not apply to housing which is located in urban target areas.

5:80-26.2 Definitions
. . .
"Owner-Occupied Unit" means a building containing one, two, three or four family housing units in which one of the units is occupied by the owner of the building.
. . .
"Urban target area" means those geographical areas of the State which are designated by the Agency as an area of chronic economic distress in accordance with Section 143(j) of the Internal Revenue Code of 1986, as amended, and any regulations adopted thereunder.

5:80-26.3 Length of controls on affordability
(a)-(b) (No change.)
(c) The affordability control periods established in (a) above shall begin as follows:
1. For owner-occupied units, on the date a Certificate of Occupancy is issued.
2. For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Agency or municipality administering controls.
3. For single-family housing which is rented, on the date the unit is first occupied.
(d) For all owner-occupied units and vacant rental units, the resale and rent restrictions shall expire at the end of the sixth, tenth, or

twentieth year from the date the initial restrictions encumbered the unit, as set forth in (a)1, 2, 3 and 4 above, unless a lesser or greater period of time has been approved by the Agency as set forth herein. For rental units which are occupied by households with a gross household income less than 80 percent of median income, as defined herein, at the end of the sixth, tenth or twentieth year from the date the initial restrictions encumbered the unit, the controls shall continue to remain in effect and shall only expire at the time the then current tenant vacates the unit.

Recodify existing (d) and (e) as (e) and (f) (No change in text.)

5:80-26.11 Lease or rental of owner-occupied units

(a) The owner of an owner-occupied two, three or four family housing unit may lease or rent the non-owner-occupied units subject to the lease/rental provisions of N.J.A.C. 5:80-26.12 through 20.

(b) The owner of a single family housing unit may lease or rent the unit, unless the owner finances the unit with a mortgage loan from the Agency or lease/rental of the unit is prohibited by the terms of any contractual documents entered into by the owner or prohibited by other applicable controls. The owner of a two, three or four family housing unit may lease or rent the unit in which he or she resides unless any of the aforesaid lease/rental prohibitions apply. Such units may be leased or rented by the owner subject to the lease/rental provisions of N.J.A.C. 5:80-26.12 through 20.

5:80-26.16 Rent adjustments

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

(c) The rent controls established in (a) and (b) above shall begin on the date the first rental unit is occupied.

5:80-26.21 Foreclosure: owner-occupied and rental units

(a) A judgment of foreclosure by a first money mortgagee on any restricted owner-occupied unit will result in a termination of resale controls, unless otherwise ordered by the court. The affordability controls of this subchapter shall remain in effect in the event of judgments of foreclosure on rental units (except for rental units contained in owner-occupied units).

(b) Notice of foreclosure shall allow the municipality to purchase the unit at the maximum approved price and hold, rent or convey the unit to an eligible household, provided the municipality purchases the unit prior to the judgment of foreclosure.

(c) (No change.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules: Developer Agreements

Adopted Amendment: N.J.A.C. 5:92-8.4

Proposed: April 18, 1988 at 20 N.J.R. 865(a).

Adopted: June 20, 1988 by James L. Logue, Chairman, New Jersey Council on Affordable Housing.

Filed: June 24, 1988 as R.1988 d.335, **without change.**

Authority: N.J.S.A. 52:27D-301, et seq.

Effective Date: July 18, 1988.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The proposed rule regarding developer agreements should be applied prospectively and should not be used to question previously negotiated agreements.

RESPONSE: Prior to this proposal concerning developer agreements, the Council already had in place rules presumptively requiring minimum densities and maximum set asides for sale and rental units. The Council always required that those densities and set asides be respected and will continue to expect so. This proposal is intended to provide standards and insight as to when the Council may vary these presumptive requirements in sanctioning waivers.

COMMENT: The proposed amendment to N.J.A.C. 5:92-8.4 should apply only to increases in set asides and decreases in density, as opposed to variations from the Council's presumptive requirements.

RESPONSE: One purpose of the rule is to ensure the financial feasibility of inclusionary developments. Thus, it would be variations that decrease density and increase set asides that would be closely scrutinized.

COMMENT: N.J.A.C. 5:92-8.4(d)4 seems to place an unfair burden of proof upon the municipality to demonstrate the experience and financial ability of a developer.

RESPONSE: The Council is responsible for granting or denying the municipality's plan. If the municipality chooses to deviate from the Council's presumptive requirements for sale and rental housing, it must convince the Council that the negotiated agreements meet the test of this rule.

COMMENT: The amendments to N.J.A.C. 5:92-8.4 provide guidance on developments where all the market units are single family dwellings and where all market units are multi-family dwellings. The amendments should also provide guidance to situations where there is a mix.

RESPONSE: The rule provides principles for communities that choose to vary from the Council's presumptive density and set-aside requirements. However, any agreement will require Council review and will require the Council to make decisions. It is not possible to develop rules for every situation.

COMMENT: The proposed rule is an unwarranted interference with voluntary processes which are necessary to implement the Fair Housing Act.

RESPONSE: The rule is necessary to ensure that voluntary agreements continue to provide the requisite realistic opportunity and the agreements do not unduly burden the market units within inclusionary developments.

COMMENT: N.J.A.C. 5:92-8.4 is unconstitutional because it prohibits multi-family developers from making voluntary contributions.

RESPONSE: The rule does not preclude multi-family developers from making a voluntary contribution. It requires the municipality to provide an off-setting incentive.

COMMENT: N.J.A.C. 5:92-8.4 should not apply when developers have not objected to a petition for substantive certification and are willing to enter into developer agreements.

RESPONSE: The rule applies to all developments that are contributing low and moderate income units, money, land, etc. that is required to implement the plan.

COMMENT: N.J.A.C. 5:92-8.4(f)5. refers to a voluntary developer fee, but is the first reference to such a fee in regard to multi-family developments. It does not provide as much guidance as subsection (e) that deals with voluntary fees in single family developments.

RESPONSE: More guidance was necessary related to single family developments because the Council has no presumptive requirements for single family housing. The Council does have presumptive requirements for multi-family housing; and communities that stray from these requirements in a manner that renders development less realistic must provide some incentive to the developer.

Full text of the adoption follows.

5:92-8.4 Vacant sites

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

(d) All agreements, including those contemplated in (e) and (f) below, that vary from the presumptive requirements of a 20 percent set-aside and a gross density of six units per acre, as set forth in (c) above, must satisfy the following conditions:

1. The agreement must continue to provide the requisite realistic opportunity for creation of the low and moderate income units, giving consideration to market conditions;

2. The agreement must not impose an excessive burden on the market units, giving due consideration to the due process and equal protection clauses of the Constitutions of both New Jersey and the United States, as well as fundamental fairness in the exercise of governmental power; and

3. The developer must have the experience and financial ability to perform its obligations under the agreement.

4. The burden of meeting the test in (d)1.—3. above shall be upon the municipality proposing the agreement. Deviation from the presumptive requirements will not permit a municipality to lessen the standards required to meet its obligation to provide a realistic opportunity for its fair share of low and moderate income housing.

(e) All agreements where the market units are single family detached dwellings may provide that, in exchange for an increase over existing density, the developer either: construct low and moderate income units as part of an inclusionary development; or pay a voluntary fee to be utilized by the municipality for an RCA or municipally constructed low and moderate income housing. The developer's expense in either case must bear a reasonable relationship to the increase in density, such that the agreement does not violate the test in (d)1.—3. above.

(f) Agreements where the market units are multi-family dwellings may permit deviations from the presumptive requirements of a 20 percent set-aside:

1. Where there is also an increase over existing density. For example, in cases where the allowable density exceeds the presumptive minimum density requirement (for example, 10 to 16 units per acre on a multi-family development) it may be reasonable to have a set-aside higher than 20 percent.

2. Where the developer builds a higher proportion of moderate to low income units; or

3. Where the agreement contains a comparable incentive.

4. Absent such incentives, a deviation from the presumptive requirement is not permitted. For example, an ordinance which requires a set-aside higher than 20 percent or a 20 percent set-aside plus additional fees, and which permits only the minimum six units per acre and an equal split of low to moderate income units without any additional bonus densities or without other significant cost reductions or other incentives to the developer would not meet the test of (d) above since it results in a significant reduction of the realistic opportunity.

5. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) Services

Adopted Amendments: N.J.A.C. 8:33B-1.3

Proposed: April 18, 1988 at 20 N.J.R. 869(b).

Adopted: June 13, 1988 by Thomas A. Burke, Ph.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 17, 1988 as R.1988 d.322, **without change.**

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

Effective Date: July 18, 1988.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:

Comments were received during the comment period from the following:

The Stone Center/University Lithotripsy Affiliates, Inc. in Newark.
The Mid-Atlantic Kidney Stone Center, in Marlton.
Robert Wood Johnson University Hospital in New Brunswick.

COMMENT: All three commenters emphasized the fact that two of the three approved ESWL sites have been operational a relatively short period of time and that additional statewide experience is necessary to properly assess the actual need for this therapeutic modality throughout the State. These three commenters were in agreement that the six month extension being requested at this time was insufficient to gain sufficient statewide data on the modality to establish rational statewide policy. Both the Stone Center and Robert Wood Johnson propose a one year extension, to conclude in March, 1989. The Mid-Atlantic Kidney Stone Center suggests a two year extension, to conclude in March, 1990.

RESPONSE: The Department is largely in agreement with the commenters, since the original proposal presented before the Health Care Administration Board (HCAB) at their March 10, 1988 meeting sought a two year extension. While the HCAB was sympathetic with the Department's request, the Board expressed a concern over the fact that this proposed extension would restrict "health care facilities", but would not necessarily restrict private practitioners from providing this service under the "private practice" exclusion from Department of Health regulatory authority. The Department of Health is of the opinion that the approval of three certificate of need ESWL providers in the State, combined with the ideal geographic location of these sites in the north, central, and southern portions of the State, are more than sufficient to meet present and future need for this service. The introduction of additional "private" ESWL services, whether they be located at a fixed site or of the mobile variety, cannot be operated cost effectively and would of necessity require the cooperation of "health care facilities" for a portion of its caseload.

It should be emphasized that by the end of this six-month extension (September 26, 1988), the Department will have only nine months of limited data from the Central Jersey Health Care Corporation unit located in New Brunswick and slightly less than one year's utilization at the University Lithotripsy Affiliates (The Stone Center) unit in Newark. In order to appropriately revise the review standards for ESWL services, the Department believes it needs to be able to analyze at least one year's worth of data from each site. After reviewing the adequacy of data from the existing providers, the Department may find it necessary to return to the HCAB and request an additional extension of at least six months.

Full text of the adoption follows:

8:33B-1.3 Demonstrations

(a) (No change.)

(b) The Statewide demonstration period will begin with the date of initial operation of the first approved unit and will continue for a period of two years and six months. However, the demonstration period can be shortened by the Commissioner of Health upon the recommendation of the Statewide Health Coordinating Council. The applicant will be required to identify in its application the anticipated date of initial operation.

(c) Once the demonstration approvals, three units Statewide, are issued, the Department of Health shall not process any other applications for lithotripters until the conclusion of the demonstration period, not to exceed two years and six months, beginning with the date of operation of the first lithotripter demonstration.

(d)-(f) (No change.)

(b)

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

Certificate of Need: Cardiac Diagnostic Facilities, Cardiac Surgery Centers, Complex Electrophysiology Studies

Adopted Amendments: N.J.A.C. 8:33E-1.1 and 1.2, 2.2, 2.3 and 2.4.

Proposed: March 7, 1988 at 20 N.J.R. 467(a) and 468(a).

Adopted: June 13, 1988, by Thomas A. Burke, Ph.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administrative Board).

Filed: June 17, 1988 as R.1988 d.320 and 321, **without change.**

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

Effective Date: July 18, 1988.

Expiration Date: June 23, 1992.

OAL NOTE: This adoption notice combines PRN 1988-91 and 92, since the comments to both proposals, and their responses, were the same.

Summary of Public Comments and Agency Responses:

Comments were received during the comment period from the following:

Stanley S. Bergen, Jr., M.D., President, UMDNJ
Mountainside Hospital
Jersey City Medical Center
Ronald I. Rubinstein, M.D., Jersey Shore Medical Center
Richard A. Daniels, M.D., Jersey Shore Medical Center
Mark Rosenbloom, M.D., Jersey Shore Medical Center
Daniel S. Goldman, M.D., Jersey City Medical Center
Mark J. Soffer, M.D., Saint Francis Medical Center
Jack H. Dworkin, M.D.

COMMENT: All of the commenters raised concern over the proposal to limit the performance of "complex" EPS to cardiac surgery centers in the State's proposed rules for invasive cardiac diagnostic services at N.J.A.C. 8:33E-1.2(g)1, as well as similar language in the State's rule for cardiac surgery services at N.J.A.C. 8:33E-2.3(e)3. Dr. Stanley Bergen questioned the wisdom of this policy, since it would "disallow 'complex' EPS in some medical school training programs" that "would have a serious impact on medical education provided in this state".

RESPONSE: The "complex" EPS policy being proposed is not intended to "disallow" complex EPS experience to New Jersey's medical school students. The intention is to provide an optimal setting for the performance of these complex procedures for both the patients who require EPS, as well as medical students who are seeking to gain sufficient experience with the procedure. Relatively high volumes of such studies are of particular importance for medical education purposes, since consistent exposure to patients requiring EPS will enhance the students ability to recognize the indications for the procedure and the full range of therapeutic interventions for these patients; and to provide an appropriate volume of EPS patients to qualify professionals and support personnel to perform these procedures and maintain their proficiency. The medical school's students currently are able to receive such training at the State's largest EPS program at Newark Beth Israel Medical Center. Cooper Hospital/University Medical Center, a core UMDNJ teaching hospital, is also a major EPS provider in the State. In short, access to EPS training, whether it be "complex" or non-complex, is not being jeopardized by this proposed policy.

In addition, the volume of procedures required as suitable training for a physician directing the EPS procedure (participation in 100 complex EPS) that is proposed by the Department in the cardiac surgery center rule, as well as the minimum annual physician and facility volumes also being proposed, are consistent with the most recent requirements of the American College of Cardiology.

COMMENT: Mountainside Hospital (MH) criticized the original Cardiac Task Force recommendations regarding EPS, mistakenly characterizing the Task Force rationale as based on the fact that EPS was "fundamentally too dangerous to be performed at hospitals without open heart surgery (OHS) backup", and emphasizing the relative safety of EPS. MH cited, and attached numerous letters in support of, this position from state and national electrophysiologists. MH also took issue with the subsequent restudy of this issue performed by the Commissioner's Cardiac Services Committee (CCSC) and its position that EPS is becoming increasingly reliant on surgical procedures and therefore should properly be limited to cardiac surgery centers. MH cited statistics from Deborah Heart and Lung Center, which has a dedicated EPS laboratory performing the second highest number of EPS statewide, indicating the relatively small percentage of EPS patients at Deborah receiving surgical interventions for the treatment of their arrhythmias.

RESPONSE: The Department proposal to limit the performance of EPS procedures to cardiac surgery centers is consistent with the recommendations of the New Jersey Cardiac Services Task Force (NJCSTF), the ongoing Commissioner's Cardiac Services Committee (CCSC), and the Statewide Health Coordinating Council following their independent deliberations in this matter. The NJCSTF did not characterize or emphasize the performance of EPS as "dangerous". The specific language of the Task Force report's discussion of "complex" EPS is as follows:

The Task Force believes that there is a particular merit in restricting the availability of EPS services to a limited number of medical centers at this time. EPS remains basically an elective procedure, therefore, patients may safely be transferred reasonable distances to a facility providing this service without being subjected to increased health risks. EPS is a relatively new field. Indicators for EPS are still being defined and techniques are still developing. There may be particular benefit in limiting the performance of EPS to those institutions and groups which may be able to contribute further to our understanding of the indications, technique, and efficacy of the procedure.

The basis for the recommendations of the NJCSTF, the ongoing CCSC, and the SHCC in this matter, which are consistent with the Department's proposal for "complex" EPS procedures that are contained in this proposal, is clearly the optimal setting that can be provided for the relatively limited number of patients in the State who can be expected to require these elective procedures. As stated in the impact statements that accompanied this proposal, less than 5 percent of invasive cardiac diagnostic procedures during 1986 were EPS. The vast majority of these procedures (1069 out of 1091 or 98 percent) were performed at 8 of the State's 9 adult cardiac surgery centers. The thrust of the clinical changes taking place in this field, which was discussed by the proponents of this proposed policy when initial publication before the Health Care Administration Board took place on January 14, 1988, is now directed toward a number of treatment alternatives (for example, catheter ablation, device implantation, endocardial resection) that require cardiac surgery backup.

There are currently sufficient EPS resources within the State's existing cardiac surgery centers to provide EPS to the relatively small number of patients requiring these studies statewide. This is the rationale that was endorsed by the NJCSTF, the CCSC, and the SHCC.

COMMENT: The comments of several physicians (Drs. Dworkin, Daniels, Rosenbloom, Rubinstein, and Soffer), as well as comments from the Jersey City Medical Center, essentially criticize the State's proposal to limit complex EPS to surgery centers as an unreasonable and unnecessary restriction that will result in patient inconvenience, treatment delays, increased patient transfers, and increased use of out-of-state EPS centers.

RESPONSE: As indicated in previous responses, the purpose of this proposal is to provide EPS of the highest quality to all residents of the State who are in need of these services. Admittedly, the Department's emphasis is directed at providing an optimal setting for this rapidly evolving discipline rather than that of providing convenient locations for patients to receive these services. There is a considerable investment in EPS resources at a number of cardiac surgery centers in the State. These centers are fully capable of providing these services to all patients who are in need of these services statewide. No evidence has been presented that indicates that patients are currently being subjected to long treatment delays in obtaining EPS services at the established EPS programs at the State's cardiac surgery centers (where the vast majority of EPS patients in the State currently receive their care).

It should also be emphasized that the Department has increased the number of adult cardiac surgery centers in the State from 9 to 11, thus increasing the number of sites that may serve as an appropriate setting for these procedures.

COMMENT: Among the comments made by Jersey City Medical Center (JCMC) is the concern with the review and comment process in this matter. Assertions are made that "no written recommendations or summaries from the public meetings of the Sub-Committee on EPS were shared with the participants or were considered in the publication of this regulation". It was also stated that oral assurances were given that "the Sub-Committee would recommend that EPS could be performed at non-surgical surgical centers".

RESPONSE: While the meetings of the CCSC and their numerous subcommittees are not public meetings, the minutes and/or recommendations of these recommending bodies have been made available to those "participants" who have requested these materials. The Department is aware of only one request for these documents, that of representatives of Jersey Shore Medical Center, and these documents were expeditiously provided. The recommendations of these advisory committees and subcommittees have certainly been incorporated in the Department's proposal and statements to this effect appear in the impact statements that were published with the rule proposal. No oral assurances were given by Department representatives regarding any recommendations of the EPS subcommittee.

Full text of the adoption follows.

8:33E-1.1 Scope

(a) The cardiac diagnostic facility specializes in the detection and diagnosis of cardiac disorders. Unlike the cardiac surgery center in which both diagnostic and therapeutic services are colocated, the cardiac diagnostic facility does not provide cardiac surgery but rather on the basis of diagnostic studies refers patients, where appropriate, to facilities offering cardiac surgery and other advanced cardiac diagnostic and treatment modalities, such as percutaneous transluminal coronary angioplasty (PTCA) and complex electrophysiology studies (EPS).

1. For the purposes of this subchapter the following definitions shall apply:

i. "Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in a coronary artery and the inflation of the balloon to reduce the obstruction.

ii. "Complex electrophysiology study" (EPS) means the more complex variety of electrophysiology procedure (such as ventricular or atrial tachystimulation, catheter mapping, ablation techniques, antitachycardia device implants and surgical procedures) and not the His bundle recording procedures or sinus node recovery time procedures.

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

8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

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

(g) The following shall apply to invasive cardiac diagnostic facilities providing or seeking to provide complex electrophysiology studies (EPS):

1. Complex electrophysiology studies must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

8:33E-2.2 Definitions

(a) For the purposes of this subchapter the following definitions shall apply:

...

"Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in a coronary artery and the inflation of the balloon to reduce the obstruction.

"Complex electrophysiology study" (EPS) means the more complex variety of electrophysiology study (such as ventricular and atrial tachystimulation, catheter mapping, ablation techniques, device implants and surgical procedures) and not the His bundle recording procedures or sinus node recovery time procedures.

...

8:33E-2.3 Utilization of cardiac surgical centers

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

(c) The following shall apply to adult cardiac diagnostic services located within the cardiac surgery center:

1. (No change.)

2. Surgical centers seeking to expand existing invasive cardiac diagnostic laboratory services must indicate conformance with all standards and criteria contained in this subchapter and document a minimum volume of 1,000 cardiac catheterization procedures or 1,000 cardiac catheterization equivalents (CEs) in the existing laboratory (or in each existing laboratory). A CE is considered to equal the average time required to perform a cardiac catheterization procedure. A percutaneous transluminal coronary angioplasty procedure will be considered as 2.5 CEs. An initial complex electrophysiology study will be 3.0 CEs and a repeat complex electrophysiology study will be 2.0 CEs.

(d) (No change.)

(e) The following shall apply to adult cardiac surgery centers providing or seeking to provide complex electrophysiology studies (EPS):

1. An applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide complex EPS or an existing cardiac surgery center seeking to initiate complex electrophysiology services must provide written documentation that the center will perform a minimum of 50 initial complex electrophysiology studies per year. These new complex electrophysiology services must achieve this minimum utilization level within three years of service implementation.

2. A regional cardiac surgery center shall continue to perform a minimum of 50 initial complex EPS annually in order to assure acceptable institutional quality. Existing cardiac surgery centers providing complex EPS must comply with this utilization standard within one year of the effective date of this subchapter and maintain this standard on an annual basis thereafter.

3. Complex electrophysiology studies must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

4. Each complex EPS service should establish a minimum number of complex EPS for each physician with electrophysiology laboratory privileges. The Commissioner's Cardiac Services Committee recommends that each physician seeking to continue to perform complex EPS should participate in a minimum of 50 complex EPS per year as the primary operator, with at least 25 as initial studies.

8:33E-2.4 Cardiac surgery center personnel

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

(f) The following shall apply to invasive cardiac diagnostic services located in cardiac surgery centers that seek to perform complex electrophysiology studies (EPS):

1. Each invasive cardiac diagnostic service must be minimally staffed by the following personnel during a complex electrophysiology study (EPS):

i. The physician directing the procedure must be a board certified cardiologist trained in routine cardiac catheterization who has obtained at least one additional year of specialized training in complex EPS and cardiac arrhythmias, including participation in 100 complex EPS procedures.

ii. An assisting physician must be present during complex EPS procedures.

iii. A registered nurse trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/EPS shall be present during the procedure.

iv. A technician trained and experienced in cardiac catheterization/EPS shall be present during the procedure.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Drug Treatment Facilities
Standards for Licensure

Adopted Repeal and New Rules: N.J.A.C. 8:42B

Proposed: March 21, 1988 at 20 N.J.R. 598(a).

Adopted: June 13, 1988 by Thomas A. Burke, Ph.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 17, 1988 as R.1988 d.319, **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. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: July 18, 1988.

Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:

The Department received one letter of comment in response to the proposed standards for licensure of drug treatment facilities. The president of Integrity, Inc., a licensed drug treatment facility, recommended that the current N.J.A.C. 8:42B-6.2(c)17i be retained by adding it to the proposed rules. The current N.J.A.C. 8:42B-6.2(c)17i requires that patients under 16 years of age be admitted "only to an area within the facility approved for such occupancy by the Department." The recommendation was based upon the commenter's belief that particular 16 and 17-year-old patients would benefit from being treated together with the adult population. After reevaluation of the current N.J.A.C. 8:42B-6.2(c)17i, the Department amended N.J.A.C. 8:42B-6.3 to add provisions similar to the current rule, but referring to patients under 18 years of age rather than to patients under 16 years of age. The Department maintains that the added rule shares the intent of the current rule to protect the welfare of young patients. Moreover, N.J.A.C. 8:42B-6.3(f) is consistent with the Manual of Standards for Residential Child Care Facilities, N.J.A.C. 10:127, of the Division of Youth and Family Services, which defines "child" as any person who is under the age of 18.

As a result of further Departmental review of the proposed rules, technical and editorial changes have been made. These changes are intended to clarify the rules and to render them technically precise and accurate. None of the changes will jeopardize patient safety or require additional public notice. The following is a description of these technical and editorial changes.

A definition of "nursing unit" has been added to N.J.A.C. 8:42B-1.3. This definition is equivalent to the definition of "nursing area" which appears in the current rules and which was inadvertently omitted from the proposed rules.

The proposed N.J.A.C. 8:42B-1.11, qualifications of the medical director, has been deleted because it is duplicative of N.J.A.C. 8:42B-7.2(a). The proposed N.J.A.C. 8:42B-1.12 and 1.13 have been renumbered accordingly. For editorial reasons, the proposed N.J.A.C. 8:42B-1.16 has been renumbered as N.J.A.C. 8:42B-1.13, and the proposed N.J.A.C. 8:42B-1.17 has been renumbered as N.J.A.C. 8:42B-1.16. Since the term "social worker" is not used in this chapter, the proposed N.J.A.C. 8:42B-1.18 has been deleted.

A technical change has been made in N.J.A.C. 8:42B-2.3(a). The mailing address of Health Facilities Construction Services has been updated.

N.J.A.C. 8:42B-3.4(e) and N.J.A.C. 8:42B-3.11 have been rewritten in the interest of clarity. The proposed N.J.A.C. 8:42B-3.4(e) could have been interpreted as requiring that a person trained in cardiopulmonary resuscitation be in each nursing unit regardless of whether or not any patients are present. The rewritten rule, which refers to "all patient areas when patients are present," shares the intent of the proposed rule to protect patient safety. N.J.A.C. 8:42B-3.11, as rewritten, more completely preserves the sense of the current N.J.A.C. 8:42B-19.1(c), which requires that the facility provide statistical data as required by the Department.

Editorial changes have been made in N.J.A.C. 8:42B-3.4(c), N.J.A.C. 8:42B-3.8(a)5, N.J.A.C. 8:42B-3.10(a)1vi, and N.J.A.C. 8:42B-5.1(c).

As a consequence of the addition of an amendment on adoption at N.J.A.C. 8:42B-6.3(f), as discussed above, the proposed N.J.A.C. 8:42B-6.3(f) through 6.3(h) have been renumbered as N.J.A.C. 8:42B-6.3(g) through 6.3(i), respectively.

The term "psychological assessment" has been deleted from N.J.A.C. 8:42B-9.1(a)1ii. The proposed rule could have been misinterpreted as meaning that the assessment of each patient's psychological needs shall be performed by a psychologist.

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

CHAPTER 42B
MANUAL OF STANDARDS FOR LICENSURE OF DRUG TREATMENT FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:42B-1.1 Scope

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

8:42B-1.2 Purpose

Drug treatment facilities provide specialized, integrated care to chemically dependent or drug-addicted individuals in order to assist these individuals in reaching the maximum functional levels of which they are capable as well as to protect their health and safety. The aim of this chapter is to establish minimum rules to which a drug treatment facility must adhere in order to obtain a license to operate in New Jersey.

8:42B-1.3 Definitions

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

"Acute medical detoxification" means a treatment, prescribed by a physician and conducted under medical supervision, to reduce a patient's chemical dependency, as defined below, which includes observation, monitoring, assessment, treatment, and counseling.

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

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

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

"Chemical dependency" means a dependence upon, or, by reason of repeated use, the imminent danger of dependence upon, any kind of controlled substance, narcotic drug, or other type of drug as defined in any law of the State of New Jersey or of the United States, including, but not limited to, any drug of either of the following groups:

1. Opium, heroin, morphine, cocaine, or any derivative of such drugs, or

2. Any barbiturate, central nervous system stimulant, tranquilizer or other depressant, hallucinogenic drug or derivative, any other psychotropic drug, or any other drug.

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

"Clinical note" means a written, signed, and dated notation made by a health care professional who renders a service to the patient. Clinical notes are written into the patient's medical record the day service is rendered.

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

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

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

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

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

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

"Daily census" means the number of patients residing in the facility on a given day.

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

"Discharge plan" means a written plan initiated at the time of the patient's admission. The plan for each patient includes an evaluation of the patient's needs, the development of goals for discharge, and referrals to community agencies and resources for aftercare services. The discharge plan of each service is part of the patient treatment plan.

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

"Documented" means written, signed, and dated.

"Drug addiction" means a chemical dependency which, by reason of repeated use, has resulted in a tolerance requiring increased quantity or frequency of dosage, or both, as well as evidencing a predictable syndrome whenever the user undergoes abstinence.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the presriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

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

"Drug treatment facility" means a facility or a distinct part of a facility which is licensed by the New Jersey State Department of Health to provide health care for the prevention and treatment of drug addiction and drug abuse under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing authority or its members by marriage, blood, or adoption.

1. The drug treatment facility may be a designated unit of a licensed health care facility providing any or all of the services specified in these rules.

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

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

"Formulary" means a list of all drugs approved for use in the facility. It may also list drugs which are considered appropriate for treating specific illnesses, or may list substitutions of chemically or therapeutically equivalent drugs for trade name prescription drugs.

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

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

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

"Hospital" means a health care facility as defined in the Manual of Standards for Hospital Facilities, N.J.A.C. 8:43B.

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

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

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

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

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

"Multidisciplinary team" means those persons, representing different professions, disciplines, and services, who work together to provide care to the patient.

"New Jersey Problem Oriented Treatment System" (POTS) means the instrument developed by the Department for documenting observations and information regarding the patient's health, drug abuse, legal, employment/vocational, educational, and psychosocial status.

"Nursing unit" means a continuous area on one floor, approved by the Department, which includes rooms housing patients.

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

"Patient" means any person admitted to a drug treatment facility pursuant to N.J.S.A. 26:2G-21 et seq.

"Patient treatment plan" means a written plan of patient care which contains documentation of joint planning by the multidisciplinary team. The plan is based upon the patient assessments of all services participating in the patient's care and includes care and treatment to be provided and a discharge plan. Each service that the patient receives develops its own portion of the treatment plan.

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

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

"Reasonable hour" means any time between the hours of 8 A.M. and 8 P.M. daily.

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

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed, labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

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

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

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

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

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

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

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

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

8:42B-1.4 Qualifications of the administrator of the drug treatment facility

The administrator shall have a baccalaureate degree in administration, a social science, or a related field and two years of full-time, or full-time equivalent, administrative or supervisory experience in the field of substance abuse/chemical dependency. Two years of full-time, or full-time equivalent, administrative or supervisory experience in the field of substance abuse/chemical dependency may be substituted for each year of the four-year degree requirement. Eight years of such administrative or supervisory experience may be used to satisfy the entire degree requirement.

8:42B-1.5 Qualifications of dietitians

(a) Each dietitian shall:

1. Be registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association; or

2. Have a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and have completed a dietetic internship accredited by the American Dietetic Association or a dietetic traineeship approved by the American Dietetic Association or have one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility; or

3. Have a master's degree plus six months of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility.

8:42B-1.6 Qualifications of the director of drug counseling services

The director of drug counseling services shall have a master's degree in social work, psychology, guidance and counseling, or a related field and one year of full-time, or full-time equivalent, supervisory experience in the provision of counseling services.

8:42B-1.7 Qualifications of the director of nursing services

The director of nursing services shall be a registered professional nurse and shall have at least one year of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a health care facility.

8:42B-1.8 Qualifications of drug counselors

Each drug counselor shall be certified by the New Jersey Substance Abuse Counselor Certification Board as a Certified Substance Abuse Counselor; or shall have a baccalaureate degree in a social science and one year of full-time, or full-time equivalent, counseling experience.

8:42B-1.9 Qualifications of food service supervisors

(a) Each food service supervisor shall:

1. Be a dietitian; or

2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association; or

3. Be a graduate of a course, approved by the New Jersey State Department of Education, providing 90 or more hours of classroom instruction in food service supervision and have one year of full-time, or full-time equivalent, experience as food service supervisor in a health care facility, with consultation from a dietitian; or

4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in 2. or 3. above.

8:42B-1.10 Qualifications of licensed practical nurses

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

*[8:42B-1.11 Qualifications of the medical director

The medical director shall be a physician, as defined in N.J.A.C. 8:42B-1.16.]*

8:42B-*[1.12]***1.11** Qualifications of medical record practitioners

(a) Each medical record practitioner shall:

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

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

8:42B-*[1.13]***1.12** Qualification of pharmacists

Each pharmacist shall be so registered, as defined in N.J.A.C. 13:39-1.1, by the New Jersey State Board of Pharmacy.

8:42B-1.13 Qualifications of physicians

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

8:42B-1.14 Qualifications of psychiatrists

Each psychiatrist shall be a physician who is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc., or the American Osteopathic Board of Neurology and Psychiatry, or who has been granted privileges by the facility to provide services equal to or higher than those provided by a Board-certified or Board-eligible physician.

8:42B-1.15 Qualifications of psychologists

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

8:42B-1.16 Qualifications of physicians

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

*[8:42B-17.]***8:42B-1.17** Qualifications of registered professional nurses

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

8:42B-1.18 Qualifications of social workers

Each social worker shall have a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:42B-2.1 Certificate of Need

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

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

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

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

8:42B-2.2 Application for licensure

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

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

(b) The Department shall charge a nonrefundable fee of $500.00, plus $3.00 per bed, for the filing of an application for licensure of a drug treatment facility and for the annual renewal of the license. If drug treatment services are offered by a licensed hospital as a separate service, the hospital shall be charged $150.00 for the filing of an application for licensure of the service and $150.00 for the annual renewal of the license.

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

Division of Narcotic and Drug Abuse Control
New Jersey State Department of Health
CN 362
Trenton, New Jersey 08625

8:42B-2.3 Newly constructed or expanded facilities

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

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN *[360]* ***367***
Trenton, New Jersey 08625

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

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

8:42B-2.4 Surveys and temporary license

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

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

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

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:42B-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the fa-

cility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

5. Professional personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:42B-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:42B-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:42B-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:42B-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary license and facilities with a full license.

8:42B-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42B-3.1 Services provided

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients in accordance with the rules in this chapter.

(b) The facility shall provide at least medical, nursing, and drug counseling services directly in the facility.

(c) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(d) If a hospital facility licensed by the Department provides drug treatment services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the Manual of Standards for Hospital Facilities, N.J.A.C. 8:43B.

8:42B-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:42B-3.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing, Certification and Standards Program of the Department.

8:42B-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing *[patterns]* ***schedules***. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing *[patterns]* ***schedules*** shall be implemented to ensure continuity of care and the provision of services consistent with the patients' rehabilitation goals.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training.

1. All personnel shall receive orientation at the time of employment and continuing in-service education regarding emergency plans and procedures, discharge planning, and the infection prevention and control program.

(e) At least one person trained in cardiopulmonary resuscitation in an approved course, as defined in the facility's policy and procedure manual, shall be in each nursing unit at all times and in all patient areas when patients are present.

(f) The facility shall have awake and on duty at all times in each building at least two staff members, as defined in the facility's policies and procedures, for 50 or fewer patients, and at least one additional staff member for each additional 50 or fewer patients, based on the daily census.

8:42B-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's treatment philosophy, mission, and objectives, which shall include at least the following:

i. Methods for providing patients with a foundation for recovery and rehabilitation, based on personal responsibility;

ii. The concept of drug dependency having multiple causes and effects; and

iii. Provision of services for the management of physical and mental signs and symptons of withdrawal from drugs;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility;

3. A description of the modalities of treatment provided, including a listing of services and procedures which may and may not be performed in the facility;

4. A description of the quality assurance program for patient care and staff performance;

5. Specification of business hours and visiting hours;

6. Policies and procedures for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.†, including, but not limited to, the following:

i. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect, recording the notification to the Division of Youth and Family Services on the medical record, and serving as a liaison between the facility and the Division of Youth and Family Services;

ii. The development of written protocols for the identification and treatment of abused and/or neglected children; and

iii. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis;

7. Policies and procedures for the maintenance of confidential personnel records for each employee, including at least his or her name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance;

8. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct patient care services through contractual arrangements or written agreement. Such policies and procedures shall ensure that:

i. Each employee who cannot document the result of a previous rubella screening test shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test approved by the Department. Each new employee who cannot document the result of a previous rubella screening test shall be given the rubella screening test upon employment. An employee who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine shall not be required to have a rubella screening test;

(1) Each employee tested shall be informed in writing by the facility of the results of his or her rubella screening test;

(2) Each employee's personnel record shall contain documentation of all tests performed and the results; and

(3) A list shall be maintained of all employees who are seronegative and unvaccinated, to be used in the event that an employee is exposed to rubella and a determination is needed as to whether or not the employee may continue to work;

9. A written plan for outreach services, including, but not limited to, the following:

i. Methods of informing persons in need of drug treatment services, the public, and health care providers of the availability of the facility's services;

ii. Methods of assisting persons in making use of the facility's services; and

iii. Designation of staff responsible for outreach services; and

10. Policies and procedures for making information about drug use and misuse available to the public.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

8:42B-3.6 Patient transportation

The facility shall develop and implement a method of patient transportation for services provided outside the facility which shall include plans for security and accountability for the patient and his or her personal possessions, as well as transfer of patient information to and from the provider of the service.

8:42B-3.7 Written agreements

The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered and require that services be provided in accordance with the rules in this chapter.

8:42B-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7725 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department in accordance with federal laws regarding confidentiality *[(42 CFR §2.1)]* ***(42 CFR Part 2)***.

(b) All patients admitted to the facility pursuant to N.J.S.A. 26:2G-21 et seq. shall be reported to the Division of Narcotic and Drug Abuse Control of the Department on the Client Oriented Data Acquisition Process (CODAP) form.

(c) In the event that children of patients remain in the facility as boarders, the facility shall notify the Licensing, Certification and Standards Program of the Department and adhere to the criteria established by the Division of Narcotic and Drug Abuse Control.

†Copies of the law can be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, New Jersey 08625.

8:42B-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility between 8:00 A.M. and 8:00 P.M. daily to patients and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times; and

5. The names and addresses of the members of the governing authority.

8:42B-3.10 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing, on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment or award. Forms shall be submitted to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. (Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; ***and***

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

8:42B-3.11 Maintenance of records

*[(a) The following records shall be maintained by the facility:

1. A]***(a) The facility shall maintain a*** chronological listing of patients admitted and discharged, including the destination of patients who are discharged*[; and]**.*

*[2. Statistical]***(b) The facility shall maintain and submit to the Department statistical*** data as required by the Department.

8:42B-3.12 Financial reports

(a) Upon development of a uniform cost reporting system approved by the Health Care Administration Board, the facility shall adopt and maintain the uniform system of cost reporting from which reports will be prepared to meet the requirements of the Commissioner as stated in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b) An annual financial report shall be submitted to the Department and shall include a statement of income and expenditure by unit of service.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:42B-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;

2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;

3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;

4. Appointment, reappointment, assignment of privileges, and curtailment of privileges, and written confirmation of such actions;

5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;

6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, holding such meetings, and documenting them through minutes;

8. Delineation of the duties of the officers of any committees, or their equivalents, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;

9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and

10. Approval of the medical staff bylaws or their equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:42B-5.1 Appointment of administrator

(a) The governing authority shall appoint a full-time administrator who shall be available on the premises of the facility at all times. An alternate shall be designated in writing to act in the absence of the administrator.

(b) If an administrator has both administrative and other functions, written documentation of the administrator's time in the other functions shall be maintained.

(c) The administrator's *[hours]* ***time in administrative functions*** shall not be included in computation of staffing *[ratios]* ***levels*** for nursing or counseling services.

8:42B-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;

2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Participating in the quality assurance program for patient care;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:42B-6.1 Patient care policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures regarding the following:

1. Patient rights;

2. The determination of staffing levels on the basis of patient need;

3. The referral of patients to other health care providers, including medical consultants and specialists, in order to provide a continuum of patient care, and to law enforcement agencies;

4. Emergency care of patients, including notification of the patient's family; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;

5. Obtaining written informed consent and the circumstances under which written informed consent shall be obtained;

6. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;

7. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq.;

8. Discharge, termination by the facility, transfer, and readmission of patients, including criteria for each;

9. The care and control of pets if the facility permits pets in the facility or on its premises;

10. Patients leaving the facility, including delineation of the person(s) who shall accompany the patient and permitted destinations;

11. Provision of clothing suitable for the climate and weather conditions, of proper size, and compatible with that worn by the patient's peers, in the event that clothing is provided by the facility;

12. The housekeeping activities which a patient may perform as part of his or her patient treatment plan, as documented in the patient's medical record; and

13. Care of deceased patients, including, but not limited to, policies and procedures regarding the following:

i. Pronouncement of death. The patient's family shall be notified at the time of death. The deceased shall not be discharged from the facility until pronounced dead and the death documented in the patient's medical record;

ii. Removal of the deceased from rooms occupied by other patients; and

iii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

8:42B-6.2 Financial arrangements

(a) The facility shall:

1. Inform patients of the fees for services and supplies (where a fee is charged);

2. Maintain a written record of all financial arrangements with the patient and/or his or her family, with copies furnished to the patient;

3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

i. Upon written approval and authority of the patient and/or his or her family, who shall be given a copy of the written approval; or

ii. Upon written orders of the patient's physician, stipulating specific services not included in the admission agreement; or

iii. Upon 15 days' prior written notice to the patient and/or his or her family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

iv. In the event of a health emergency involving the patient and requiring immediate, special services or supplies to be furnished during the period of the emergency;

4. Describe for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and

5. Describe sliding fee scales and any special payment plans established by the facility.

8:42B-6.3 Admission and retention of patients

(a) The administrator or his or her designee shall conduct an interview with the patient and his or her family prior to or at the time of the patient's admission. The interview shall include at least orientation of the patient to the facility's policies, business hours, fee schedule, services provided, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record.

(b) Each patient admitted shall be placed under the supervision of a physician.

(c) Each patient, upon admission, shall be certified by a physician to be free of communicable disease, mobile under his or her own power with or without assistive devices, and able to leave the building by himself or herself, except in a facility licensed by the Department to provide acute medical detoxification services.

(d) Unconscious persons shall not be admitted to the facility, unless the facility is licensed by the Department to provide acute medical detoxification services. Such persons who are not admitted shall be immediately transferred to a hospital.

(e) Patients requiring acute medical detoxification shall be admitted only to facilities licensed by the Department to provide acute medical detoxification services.

(f) Patients under 18 years of age shall be admitted only to an area within the facility approved for such occupancy by the Department.

*[(f)]***(g)*** A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained.

*[(g)]***(h)*** If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family shall be given the reason for such denial in writing, signed by the administrator, within 15 days.

*[(h)]***(i)*** Each patient shall be admitted or retained only upon his or her own volition.

8:24B-6.4 Involuntary discharge

(a) Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge the patient from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record.

1. The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal.

8:42B-6.5 Evaluation for drug usage

(a) In facilities dispensing methadone, each patient shall be evaluated for drug usage by monthly urinalysis for opiates, methadone, amphetamines, cocaine, and barbiturates, as well as for other drugs, as indicated.

(b) In facilities which do not dispense methadone, each patient shall be evaluated upon admission and periodically thereafter for drug usage by urine surveillance in accordance with a schedule approved by the Department.

8:42B-6.6 Services and practices

(a) Verbal and telephone orders shall be written into the patient's medical record by the person accepting them and countersigned by the prescriber within 24 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures.

(b) The patient's family shall be notified in the event that the patient sustains any injury requiring medical care, any accident or incident occurs, or the patient expires, in accordance with the facility's policies and procedures. Such notification shall be given and then documented in the patient's medical record, at the time of occurrence.

(c) The facility shall not use any physical, chemical, or other type of restraint, unless the facility is licensed by the Department to provide acute medical detoxification services.

1. If restraints are used, the facility shall develop and implement policies and procedures regarding their use including, as a minimum:

i. Specification of the uses of restraints and types of restraints permitted, specification of the frequency with which a patient placed in restraint shall be monitored and of the personnel responsible for monitoring the patient, and specification of the required documentation;

ii. Prohibition of the use of locked restraints and confinement of a patient in a locked or barricaded room, and prohibition of the use of restraints for punishment or for the convenience of facility personnel;

iii. Specification that restraints be used so as not to cause physical injury or discomfort to the patient. Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two-hour period in which a physical restraint is employed, to ensure opportunity for elimination of body wastes, good body alignment, circulation, and change of position; and

iv. A requirement that a physical restraint be used only when authorized in writing by a physician for a specified period of time except when necessitated by an emergency, in which case it shall be approved by the medical director or the director of nursing services or his or her designee.

(d) All instruments of measurement shall be calibrated in accordance with manufacturers' instructions.

(e) The facility shall provide interpretation services, if the patient population is non-English-speaking, and for patients who are blind or deaf.

SUBCHAPTER 7. MEDICAL SERVICES

8:42B-7.1 Provision of medical services

Medical services shall be available to all patients at all times.

8:42B-7.2 Appointment of medical director

(a) The governing authority shall appoint a physician to serve as medical director.

(b) The medical director or his or her alternate, who shall be a physician, shall be available to patients 24 hours a day, seven days a week. Available, in this instance, means capable of being reached and able to be present at the facility within 30 minutes.

(c) If the facility is licensed to provide acute medical detoxification services, the medical director or his or her alternate shall be on the facility's premises daily, seven days a week.

8:42B-7.3 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;

2. Participating in planning and budgeting for the medical service;

3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Developing, implementing, and reviewing written medical policies in cooperation with the medical staff, including, but not limited to, the following:

i. Medical staff bylaws or their equivalent;

ii. A plan for medical staff meetings and their documentation through minutes; and

iii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care, and the granting, denial, curtailment, suspension, or revocation of medical staff privileges.

8:42B-7.4 Responsibilities of physicians

(a) The physician responsible for providing care to the patient shall document in the patient's medical record:

1. An admission, medical, drug, and alcoholism history and a report of a physical examination upon the patient's admission;

2. Certification that the patient requires the level of care provided by the facility;

3. Orders for laboratory tests including at least the following:

i. Complete blood count and differential;

ii. Serological test for syphilis;

iii. Routine and microscopic urinalysis;

iv. Australian antigen (HbAg testing) as appropriate;

v. Smear and culture for gonorrhea as appropriate; and

vi. A Mantoux tuberculin skin test with five tuberculin units of purified protein derivative;

(1) If the Mantoux tuberculin skin test reaction is less than 10 mm of induration (negative), the test shall be repeated one to three weeks later;

(2) If the first or second Mantoux tuberculin skin test reaction is 10 or more mm of induration (positive), a chest X-ray shall be performed, followed by chemoprophylaxis therapy, when prescribed by a physician;

4. The medical portion of the patient treatment plan;

5. Progress notes; and

6. All initial and subsequent orders for services to be provided to the patient, including frequency and modality of treatment.

(b) The physician shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

8:42B-7.5 Availability of a psychiatrist

A psychiatrist shall be available to the facility.

SUBCHAPTER 8. NURSING SERVICES

8:42B-8.1 Provision of nursing services

(a) Nursing services shall be available to all patients 24 hours a day, seven days a week.

(b) The facility shall have at least one registered professional nurse available at all times. Available in this instance means capable of being reached and able to be present at the facility within 30 minutes. Additional licensed nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

(c) A facility providing acute medical detoxification services shall provide at least one registered professional nurse on each nursing unit 24 hours a day, seven days a week. Additional licensed nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

8:42B-8.2 Appointment of director of nursing services

A registered professional nurse shall be appointed in writing as the director of nursing services. A registered professional nurse shall be designated in writing to act in the director's absence.

8:42B-8.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing services provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;

2. Participating in planning and budgeting for the nursing service;

3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Ensuring that nursing services are provided to the patient as specified in the nursing portion of the patient treatment plan, which shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

8:42B-8.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;

2. Care toward prevention of infection, accident, and injury;

3. Assessing the nursing care needs of the patient, preparing the nursing portion of the patient treatment plan based upon the assessment, providing nursing care services as specified in the nursing portion of the patient treatment plan, reassessing the patient, and revising the nursing portion of the patient treatment plan. The initial assessment shall be performed by a registered professional nurse. Each of these activities shall be documented in the patient's medical record;

4. Teaching, supervising, and counseling the patient, family and staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

6. Writing clinical notes and progress notes.

8:42B-8.5 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. ("Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-1.1.) Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:

i. Registered professional nurses;

ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;

iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and

iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;

2. Vital signs, as defined in the facility's policies and procedures, are measured prior to drug administration;

3. Drugs are not prepoured. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;

4. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;

5. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;

6. All drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The *[refrigeration]* ***refrigerator*** shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements;

7. Drugs for external use are kept separate from drugs for internal use;

8. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

9. Drugs are stored and verified according to the following:

i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be kept on a person who meets the criteria listed in (a)1 above; and

iii. Except in a unit dose drug distribution system, a declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses who shall meet the criteria listed in (a)1 above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

(b) Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing may calculate and administer drug doses in accordance with facility policy, N.J.A.C. 8:42B-13.2(a)3vii, and the rules and policies of the New Jersey State Board of Nursing.

SUBCHAPTER 9. PATIENT ASSESSMENTS AND TREATMENT PLAN

8:42B-9.1 Patient assessment

(a) Each patient shall have a written patient treatment plan. The patient treatment plan shall be developed from the assessments of each service participating in the patient's care and shall be entered in the patient's medical record. Treatment planning shall be initiated upon the patient's admission.

1. The patient assessment shall include, but not be limited to, assessment of the medical, psychological, social, legal, and vocational and educational needs of the patient, including the following:

i. A medical, drug, and alcoholism history, including current physiological dependence on drugs and duration of the addiction or abuse, and a record of a physical examination;

ii. A psychological assessment, including, but not limited to, a history of psychological problems or treatment and a determination of the patient's current psychological status;

iii. A psychiatric assessment, if ordered by a physician;

iv. A social assessment of the patient's family circumstances and relationships and the patient's current living situation;

v. A legal assessment, as indicated by the New Jersey Problem Oriented Treatment System, including at least the following:

(1) Legal history and current legal situation; ***and***

(2) Estimation of the effect which the patient's legal situation will have upon his or her progress in treatment. (Note: No part of this rule is intended to contravene any established laws or rules of court or any principle of ethics related to the practice of law. Where a conflict exists between this rule and the laws or rules of court or ethical principles, said laws, rules, or principles shall prevail.)

vi. A vocational and educational assessment, including assessment of at least the following:

(1) Current work skills and potential for improving those skills or developing new ones;

(2) Educational background;

(3) Aptitudes, interests, and motivation;

(4) Physical abilities and any handicaps or disabilities; and

(5) Relationship with co-workers and supervisors.

2. Health care practitioners in each of the services participating in the patient's care shall develop the portion of the patient treatment plan which pertains to that service. Each portion of the patient treatment plan shall include care to be provided based upon the patient assessment.

3. The patient treatment plan shall be coordinated and maintained by the patient's assigned drug counselor. The patient treatment plan shall include, but not be limited to, the following:

i. Orders for treatment or services, medications, and diet;

ii. The patient's goals for himself or herself;

iii. The specific goals of treatment or services;

iv. The time intervals at which the patient's response to treatment or services will be reviewed;

v. Anticipated time frame(s) for the accomplishment of the rehabilitation goals;

vi. The measures to be used to assess the effects of treatment or services;

vii. Plans for discharge; and

viii. The person(s) responsible for implementation of the plan.

4. The patient and, if indicated, family members shall participate in the development of the patient treatment plan, including the discharge plan. Participation shall be documented in the patient's medical record.

i. If the patient's participation in the development of the patient treatment plan is medically contraindicated, as documented by a physician in the patient's medical record, a designated member of the multidisciplinary team shall review the treatment plan with the patient prior to implementation, and the family shall be informed of the treatment plan.

8:42B-9.2 Implementation of treatment plans

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the patient treatment plan.

(b) Health care practitioners providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient's medical record.

(c) Health care practitioners providing services to the patient shall participate as members of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

1. The multidisciplinary team shall review and revise the patient treatment plan based upon the patient's response to the care provided by each of the participating services and upon the patient's abilities and disabilities. The patient's medical record shall indicate review and revision of the patient treatment plan.

SUBCHAPTER 10. DRUG COUNSELING SERVICES AND SUPPORTIVE SERVICES

8:42B-10.1 Provision of drug counseling and supportive services

(a) Drug counseling services shall be provided on the premises to meet the needs of patients.

(b) Staffing, equipment, and space for the provision of drug counseling and supportive services shall be provided.

(c) Each patient shall be assigned to a drug counselor who shall be responsible for ensuring that drug counseling services and supportive services are provided in accordance with the patient treatment plan.

8:42B-10.2 Staffing

(a) There shall be a ratio of at least one drug counselor for every 12 patients, calculated on the basis of the daily census.

(b) The facility shall provide to each patient at least 10 hours of formalized counseling per week, utilizing individual, family, and group counseling techniques. Formalized counseling may be provided by the director of drug counseling services, drug counselors, nurses, psychologists, or physicians, including psychiatrists.

(c) A facility providing acute medical detoxification services shall provide drug counseling as ordered by a physician, who shall specify in the patient's medical record when to initiate counseling and the frequency of counseling.

8:42B-10.3 Appointment of director of drug counseling services

(a) The facility shall appoint a director of drug counseling services who shall be responsible for the direction, provision, and quality of drug counseling services. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the drug counseling service;

2. Participating in planning and budgeting for the drug counseling service;

3. Ensuring that services are provided as specified in the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for drug counseling personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42B-10.4 Responsibilities of drug counseling personnel

(a) In accordance with written job descriptions, each drug counselor shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the counseling needs of the patient, preparing the counseling portion of the patient treatment plan based on the assessment, providing services as specified in the counseling portion of the patient treatment plan, reassessing the patient, and revising the counseling portion of the patient treatment plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

8:42B-10.5 Supportive services

(a) The following supportive services shall be available to patients:

1. Vocational and educational counseling; and

2. Legal services by an attorney, who practices law pursuant to Article 6, Section 2, and Paragraph 3 of the Constitution of the State of New Jersey, and New Jersey Court Rule 1:21-1 et seq., when such services are related to the patient's treatment, as determined by the legal assessment.

(b) The administrator shall assign responsibility for the coordination and delivery of supportive services to one or more persons, in accordance with written job descriptions, the written organizational plan, and the facility's policies and procedures.

(c) All supportive services shall be provided in accordance with the patient treatment plan.

1. All supportive services shall be documented in the patient's medical record by the person(s) providing the service(s).

(d) Each patient and his or her family shall be informed of the desirability of participating in support groups. The facility shall further ensure that literature and representatives of support groups are available to patients and their families. Patients and their families shall have access to meetings of support groups.

SUBCHAPTER 11. RECREATIONAL SERVICES

8:42B-11.1 Provision of recreational services

(a) A planned, diversified program of recreational activities shall be provided for patients, including individual and/or group activities.

(b) Diverse physical, social, intellectual, religious, cultural, and recreational activities shall be available.

(c) Indoor and outdoor recreational activities shall be provided.

8:42B-11.2 Administrator's responsibilities

(a) The administrator or his or her designee shall be responsible for the direction, provision, and quality of the recreational service. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the recreational service;

2. Ensuring that recreational services are provided as specified in the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient. All recreational services shall be documented in the patient's medical record;

3. Assisting in developing and maintaining written job descriptions for recreational service personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

4. Posting a current weekly recreational activities schedule where it can be read by patients and staff.

SUBCHAPTER 12. LABORATORY AND RADIOLOGICAL SERVICES

8:42B-12.1 Provision of laboratory and radiological services

(a) The facility shall make available laboratory and radiological services directly or through written agreement.

(b) All laboratory services shall be provided by facilities licensed or approved by the Department.

(c) Radiological services shall be provided by facilities licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 13. PHARMACEUTICAL SERVICES

8:42B-13.1 Provision of pharmaceutical services

(a) Pharmaceutical services shall be available to patients at all times. If the facility has an institutional pharmacy, the pharmacy shall be licensed by, and operated in accordance with, the New Jersey State Board of Pharmacy and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts.

(b) If a patient requires medication, as documented by a physician in the patient's medical record, the medication shall be kept in a locked storage area. (The word "medication" is used interchangeably with the word "drug" in this subchapter. "Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-1.1.)

8:42B-13.2 Facilities providing acute medical detoxification services

(a) Facilities providing acute medical detoxification services shall adhere to the following:

1. A pharamacist shall be appointed as director of pharmaceutical services or as consultant pharmacist and shall be responsible for the direction, provision, and quality of pharmaceutical services. He or she shall be responsible for, but not limited to, the following:

i. Together with the Pharmacy and Therapeutics Committee, developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;

ii. Participating in planning and budgeting for the pharmaceutical service;

iii. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;

iv. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions;

v. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

vi. Providing a report at least twice a year to the Pharmacy and Therapeutics Committee of the facility's pharmaceutical service, including at least an analysis of any incident reports relating to drug therapy, and results of the pharmacist's inspection of all areas in the facility where drugs are dispensed, administered, or stored;

vii. Maintaining a means of identifying the signatures of all prescribers authorized to use the pharmaceutical service for prescriptions; and

viii. Maintaining records of the transactions of the pharmaceutical service, as required by Federal, State, and local laws, to ensure control and accountability of all drugs. This shall include a system of controls and records for the requisitioning and dispensing of pharmaceutical supplies to all services of the facility;

2. A multidisciplinary Pharmacy and Therapeutics Committee shall be appointed by, and accountable to, the governing authority. The committee shall meet at least twice a year as specified in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-7.15. The committee shall be responsible for, but not limited to, the following:

i. Development of policies and procedures, approved by the governing authority, and documentation of their review. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients;

ii. Development and at least annual review and approval of a current formulary; and

iii. Approval of the minimal pharmaceutical reference materials to be retained at each nursing unit, those to be kept in the pharmacy and made available to at least nursing personnel and the medical staff, and methods for communicating product information to at least nursing personnel and the medical staff;

3. The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

i. Policies and procedures for the implementation of a unit dose drug distribution system;

(1) The facility shall have a unit dose drug distribution system. At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time;

(2) Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications;

(3) If the facility repackages medications in single unit packages, the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and the manufacturer's or distributor's name; and

(4) Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility;

ii. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

iii. Policies and procedures, approved by the Pharmacy and Therapeutics Committee and in accordance with these rules, regarding emergency kits and emergency carts, include the following:

(1) Approval of their locations and contents;

(2) Determination of the frequency of checking contents, including expiration dates;

(3) Approval of the assignment of responsibility for checking contents; and

(4) A requirement that emergency kits be secure but not be kept under lock and key;

iv. Policies and procedures, approved by the medical staff of the facility, to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

v. Policies and procedures regarding the clarification of drug orders, including a definition of "clarification";

vi. A policy that only a pharmacist, or other pharmacy personnel under the direction and supervision of a pharmacist (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C.

13:39-2.1), shall compound, prepare, label, or dispense drugs, make labeling changes, or transfer drugs to different containers;

vii. Policies and procedures for doses of drugs that may be calculated and administered by licensed practical nurses. A licensed practical nurse may:

(1) Administer drugs orally, subcutaneously, and intramuscularly, according to the unit dosage labeling;

(2) Administer drugs that require uncomplicated calculations. An uncomplicated calculated dose means a drug dose that requires mathematical computation because the amount of drug to be given differs from the dose that has been supplied for administration. The amount of drug prescribed may be: smaller than that supplied, requiring administration of a fractional part of the drug; or larger than that supplied, requiring administration of more than one tablet, milliliter, or other measurement; and

(3) Administer fractional doses that have been precalculated when the dose to be administered is noted on the vial or container:

viii. Policies and procedures for drug administration, including, but not limited to, establishment of the times for administration of drugs prescribed;

ix. If facility policy permits, policies and procedures regarding self-administration of drugs, including, but not limited to, the following:

(1) A requirement that self-administration be permitted only upon a written order of the prescriber;

(2) Storage of drugs;

(3) Labeling of drugs;

(4) Methods for documentation in the patient's medical record of self-administered drugs;

(5) Training and education of patients in self-administration and the safe use of drugs; and

(6) Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

x. If facility policy permits, policies and procedures regarding the previously acquired drugs of patients. A written order signed by the prescriber shall be required for the administration of such drugs. The drugs shall be given to the pharmacist for identification of contents and dispensing origin, and for *[labeling]* ***relabeling*** for use in the facility;

xi. Policies and procedures regarding drugs brought into the facility by a patient and not authorized in writing by the prescriber;

xii. Policies and procedures for documenting and reviewing adverse drug reactions, medication errors, and drug defects;

(1) Allergies shall be documented in the patient's medical record and on its outside front cover; and

(2) Drug product defects shall be reported in accordance with the USP-FDA (United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System;

xiii. Policies and procedures for unused controlled and noncontrolled drugs. Drugs in opened containers, in containers with broken seals, or in containers missing drug source and exact identification (for example, control lot number) shall be returned to the pharmacy to be replaced, disposed of, or immediately destroyed, in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39;

xiv. Policies and procedures for ensuring the immediate delivery of stat. doses. (Stat. (statim) means immediately);

xv. In the event that a pharmacist is not present in the facility, policies and procedures to ensure that drugs are removed as needed from the pharmacy in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-7.12;

xvi. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the Pharmacy and Therapeutics Committee of the facility. A list shall be maintained of floor stock drugs and their amounts stored throughout the facility;

xvii. Policies and procedures for discontinuing drug orders, including, but not limited to, policies and procedures for the following:

(1) The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered, including intravenous infusion solutions; and

(2) Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

xviii. Policies and procedures for the use of intravenous infusion solutions. The facility shall have an intravenous infusion admixture service operated by the pharmaceutical service. If the preparation, sterilization, and labeling of parenteral medications and solutions are performed in the exempt areas within the facility, as specified by facility policy, but not under direct supervision of a pharmacist, the pharmacist shall be responsible for providing written guidelines and for approving the procedures. Policies and procedures for the use of intravenous infusion solutions shall include, but not be limited to, the following:

(1) Safety measures for the preparation, sterilization, and admixture of intravenous infusion solutions. These shall be prepared only by a pharmacist or by pharmacy personnel under the direction and supervision of a pharmacist (in accordance with the New Jersey Board of Pharmacy Rules, N.J.A.C. 13:39-2.1), and under a laminar air flow hood, except in patient care areas specified by facility policy;

(2) Quality control procedures for laminar air flow hoods, including cleaning of the equipment used on each shift, microbiological monitoring as required by the infection prevention and control policies and procedures of the facility, and documented checks at least every 12 months for operational efficiency; and

(3) Policies and procedures for the labeling of intravenous infusion solutions, such that a supplementary label is affixed to the container of any intravenous infusion solution to which drugs are added. The label shall include the patient's first and last name and room number; the name of the solution; the name and amount of the drug(s) added; the date and time of the addition; the date, time, and rate of administration; the name or initials of the pharmacy personnel who prepared the admixture; the name, initials, or identifying code of the pharmacist who prepared or supervised preparation of the admixture; supplemental instructions, including storage requirements; and the expiration date of the solution;

xix. Policies and procedures regarding the use of initials or identifying codes of pharmacy personnel, if any. If facility policy permits the use of initials or identifying codes by pharmacy personnel, a list shall be maintained of these initials or identifying codes and the corresponding printed or typed names and signatures. Each entry shall be retained for a period of at least five years after the date of termination of the person's employment;

xx. If facility policy permits, policies and procedures for drug research and the use of investigational drugs, in accordance with Federal and State rules and regulations, including, but not limited to, the following:

(1) Policies and procedures for the use, storage, control, and distribution of investigational drugs. The pharmacy shall be accountable for drug storage, control, and distribution;

(2) Authorization of personnel who shall administer investigational drugs;

(3) Procedures for notification of personnel who administer investigational drugs, or who have patients receiving them, that the drugs are approved for investigational purposes;

(4) Procedures for the provision of information to personnel concerning investigational drugs, including their side effects, actions, uses, and symptoms of toxicity;

(5) Establishment of a central location, such as the pharmacy, for the maintenance of information on investigational drugs; and

(6) Authorization of personnel who shall have access to information concerning investigational drugs;

xxi. If drug dispensing devices are used in the facility, policies and procedures for their limited and restricted use, in accordance with N.J.A.C. 13:39-7.20 of the New Jersey State Board of Pharmacy Rules;

xxii. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

xxiii. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes, in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

xxiv. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

(1) Provision for a verifiable record system for controlled drugs;

(2) Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and

(3) In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation. A second person shall witness the disposition;

xxv. Policies and procedures for the maintenance of records of prescribers' Drug Enforcement Administration numbers for New Jersey;

xxvi. Policies and procedures to ensure that all drugs are kept in locked storage areas, except intravenous infusion solutions, which shall be stored according to a system of accountability specified in the facility's policies and procedures;

xxvii. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage to be provided in the pharmacy and in each nursing unit. Authoritative, current antidote information and the telephone number of the regional poison control center shall also be provided in the pharmacy and in each nursing unit. Current Federal and State drug law information shall be available to the pharmaceutical service;

xxviii. A list of abbreviations, metric apothecary conversion charts, and chemical symbols, approved by the medical staff, to be kept in each nursing unit; and

xxix. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility. Drug samples shall not be accepted, placed or maintained in stock, distributed, or used in the facility;

4. If the facility operates a decentralized pharmaceutical service, a pharmacist shall be assigned to each satellite pharmacy or separate organizational element during its hours of operation;

5. At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored and shall maintain a record of such inspections;

6. All drugs, except intravenous infusion solutions, shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use;

7. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing unit. All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements; and

8. Drugs for external use shall be kept separate from drugs for internal use.

SUBCHAPTER 14. DIETARY SERVICES

8:42B-14.1 Provision of dietary services

The facility shall provide dietary services to meet the daily nutritional needs of patients.

8:42B-14.2 Appointment of dietitian

(a) The facility shall appoint a dietitian who shall be responsible for the direction, provision, and quality of the dietary service. If a dietitian is appointed on a consultant basis, his or her hours shall be scheduled at different hours of the day for successive visits. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dietary service;

2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided as specified in the dietary portion of the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42B-14.3 Food service supervisor

The facility shall appoint a full-time food service supervisor who functions under the direction of a dietitian. A dietitian and/or food service supervisor shall be on duty seven days a week.

8:42B-14.4 Responsibilities of dietary personnel

(a) In accordance with written job descriptions, dietary personnel shall be responsible for providing dietary care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary portion of the patient treatment plan based on the assessment, providing dietary services to the patient as specified in the dietary portion of the patient treatment plan, reassessing the patient, and revising the dietary portion of the patient treatment plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

8:42B-14.5 Requirements for dietary services

(a) Dietary personnel shall be scheduled for a continuous period of at least 12 hours daily.

(b) The dietary service shall adhere to the provisions of N.J.A.C. 8:24.

(c) A current diet manual shall be available in the dietary service and in each nursing unit.

(d) Meals shall be planned, prepared, and served in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in one week;

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary service for at least 30 days;

4. Diets served shall be consistent with the diet manual and in accordance with physicians' orders;

5. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

6. At least three meals or their equivalent shall be prepared and served daily to patients. At least two meals shall contain three or more menu items, one of which shall be or shall include a high quality protein food such as meat, fish, eggs, or cheese. Each meal shall represent no less than 20 percent of the day's total calories, and at

least 10 percent of the day's total calories shall be provided by protein;

7. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

8. Between-meal nourishments shall be provided and beverages shall be available at all times for each patient, unless medically contraindicated as documented by a physician in the patient's medical record;

9. Substitute foods and beverages of equivalent nutritional value shall be available to all patients;

10. No more than 14 hours shall elapse between an evening meal and breakfast the next morning; and

11. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the patient and the meal refused or missed.

SUBCHAPTER 15. PATIENT RIGHTS

8:42B-15.1 Establishment of policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall be trained to implement policies and procedures regarding patient rights.

(c) The facility shall adhere to all applicable State and Federal statutes and rules concerning patient rights.

8:42B-15.2 Content of patient rights

(a) Patient rights, policies, and procedures shall ensure that, at a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgment prior to or at the time of admission, and receives an explanation, in terms that he or she can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for his or her care, and of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is assured of treatment and medical care in accordance with the patient treatment plan, is informed of the plan for treatment and of his or her condition, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of his or her treatment, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for his or her welfare or that of other patients, upon the written order of a physician, or for nonpayment for the patient's stay (except as prohibited by sources of third-party payment), and such actions are documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility, the patient and his or her family shall be given at least 10 days advance notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of his or her medical record, in accordance with the facility's policies and procedures and with applicable Federal and State laws and rules;

7. Is free from mental and physical abuse and free from the use of chemical and physical restraints, except those restraints authorized by a physician. Drugs and other medications shall not be used for punishment, for convenience of facility personnel, or in quantities that interfere with a patient's rehabilitation or living activities;

8. Is assured confidential treatment of his or her records and disclosures, in accordance with State and Federal statutes and rules;

9. Is treated with courtesy, consideration, respect, and recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for patient safety or assistance;

10. Is not required to perform work for the facility unless the work is part of the patient treatment plan. Such work shall be in accordance with local, State, and Federal laws and rules;

11. May associate and communicate privately with persons of his or her choice, in accordance with the patient treatment plan, may send and receive personal mail, and, upon his or her request, is given assistance in the reading and writing of correspondence;

12. May participate in facility activities and meet with, and participate in activities of, social, religious, and community groups, in accordance with the patient treatment plan. Arrangements shall be made, at the patient's expense, for attendance at religious services of his or her choice, when requested;

13. Is allowed to leave the facility in accordance with the patient treatment plan. A signout sheet shall record the patient's whereabouts at these times;

14. Is assured security in retaining and using personal clothing and possessions as space permits, unless to do so would be unsafe or would infringe upon the rights of other patients. If the patient has property on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility;

15. Is allowed visiting time at reasonable hours in accordance with the patient treatment plan and, if critically ill, is allowed visits from his or her family at any time, unless medically contraindicated (as documented by a physician in the patient's medical record). Members of the clergy shall be notified by the facility at the patient's request and shall be admitted at the request of the patient and/or family at any time;

16. Is allowed to conduct private telephone conversations at a reasonable hour in accordance with the patient treatment plan;

17. Is assured that if restrictions are placed on visitations, telephone calls, and/or other communications, as documented in the patient's medical record, such restrictions shall be evaluated at least every seven days by the director of counseling services, who shall document the evaluation in the patient's medical record;

18. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

19. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may be restricted or prohibited if recommended by a physician in the patient's medical record and consented to by the patient;

20. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

21. Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, may voice grievances on behalf of himself or herself or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal. The administrator shall provide all patients and/or their families with the name, address, and telephone number of the following office where complaints may be lodged:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
Telephone: (800) 792-9770

This telephone number shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:42B-16.1 Emergency plans and procedures

(a) The facility shall have a written emergency plan which shall include plans and procedures to be followed in case of medical emergencies, equipment breakdown, fire, or other disaster.

(b) Emergency medical services shall be provided on the premises at all times to patients requiring these services. The facility shall have a written plan for emergency transportation of patients to another facility for care.

(c) Procedures for emergencies shall specify persons to be notified, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating patients, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(d) The emergency plans and all emergency procedures shall be conspicuously posted throughout the facility. Personnel shall be trained in the location and use of emergency equipment in the facility.

8:42B-16.2 Drills and tests

(a) Simulated drills of emergency plans shall be conducted on each shift at least four times a year (a total of 12 drills) and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills on each shift shall include at least one drill for emergencies due to fire and one drill for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (N.F.P.A.) requirements.

8:42B-16.3 Emergency care policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the provision of emergency care, which shall include, but not be limited to, the following:

1. Criteria for determining a patient's need for emergency care, based upon an assessment of physical, psychological, and social needs;

2. Assignment of responsibility for assessing a patient's need for emergency care and determining the services to be provided; and

3. Criteria, approved by a physician, for determining a patient's need for a medical evaluation in the event of an emergency.

SUBCHAPTER 17. DISCHARGE PLANNING SERVICES

8:42B-17.1 Discharge plan

(a) The facility shall provide discharge planning services to patients.

(b) Each patient shall have a discharge plan. Discharge planning shall be initiated upon admission. Plans for discharge shall be reviewed and revised.

(c) The patient and, if indicated, family members, shall participate in developing the patient discharge plan. Participation shall be documented in the patient medical record.

8:42B-17.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for planning, providing, and/or coordinating discharge planning services;

2. The time period for completing each patient's discharge plan;

3. The time period that may elapse before a reevaluation of each patient's discharge plan is performed;

4. Use of the multidisciplinary team in discharge planning;

5. Criteria for patient discharge;

6. Methods of patient and family involvement in developing the discharge plan; and

7. Criteria for termination of aftercare services.

8:42B-17.3 Patient and family education

(a) Discharge planning services shall include education of the patient and his or her family. The facility shall provide information regarding at least the following:

1. Drug addiction and drug abuse, and the symptoms, effects, and treatment of drug addiction and drug abuse;

2. Implementation of self-care and rehabilitation measures following discharge;

3. Community agencies and resources available for aftercare services, including health care facilities, vocational rehabilitation centers, legal and social agencies, and rehabilitation programs; and

4. Drug abuse support groups and their availability.

SUBCHAPTER 18. MEDICAL RECORDS

8:42B-18.1 Maintenance of medical records

(a) A current medical record shall be maintained for each patient and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.

(c) A unit record system shall be maintained, in which the patient's complete medical record is filed as one unit in one location within the facility.

(d) The facility shall implement and maintain for each patient the New Jersey Problem Oriented Treatment System (POTS).

8:42B-18.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:42B-18.3 Contents of medical records

(a) The patient medical record shall include, but not be limited to, the following:

1. Patient identification data, including name, date of admission, address, date of birth, race and religion (optional), sex, referral source, marital status, and the name, address, and telephone number of the person to be notified in an emergency;

2. A copy of the Client Oriented Data Acquisition Process (CODAP) form;

3. The patient's signed acknowledgment that he or she has been informed of, and given a copy of, patient rights;

4. A summary of the admission interview;

5. Documentation of the medical history and physical examination, signed and dated by the physician;

6. A patient treatment plan, signed and dated by the physician;

7. Clinical notes;

8. Progress notes;

9. Documentation of the patient's participation in the development of his or her treatment plan, or documentation by a physician that the patient's participation is medically contraindicated;

10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;

11. A record of self-administered medications, if the patient self-administers medications, in accordance with the facility's policies and procedures;

12. Documentation of allergies in the medical record and on its outside front cover;

13. The results of laboratory, radiological, diagnostic, and/or screening tests performed;

14. Reports of accidents;

15. A record of referrals to other health care providers;

16. Summaries of consultations;

17. A record of the clothing, personal effects, valuables, funds, and other property deposited by the patient with the facility for safekeeping, signed by the patient or his or her family and substantiated by receipts given to the patient or his or her family;

18. Any signed written informed consent forms;

19. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;

20. Instructions given to the patient and/or his or her family for care following discharge;

21. The discharge plan; and

22. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:42B-18.4 Requirements for entries

(a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber, in accordance with the laws of the State of New Jersey.

(b) All entries in the patient medical record shall be legible and signed and dated by the persons entering them.

(c) The patient medical record shall be completed within 15 days following the patient's discharge.

8:42B-18.5 Medical records policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:

1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information;

2. The transfer of patient information when the patient is transferred to another health care facility, or if the patient becomes an outpatient at the same facility; and

3. The provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical record;

ii. Policies and procedures regarding the patient's access to his or her medical record during business hours;

iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated, as documented by a physician in the patient's medical record, for the patient to have access to or obtain copies of the record; and

iv. Procedures to ensure that a copy of the patient's medical record is provided within 30 calendar days of a written request.

8:42B-18.6 Preservation, storage, and retrieval of medical records

(a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.

(b) If the facility plans to cease operations, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records will be stored and of methods for their retrieval.

SUBCHAPTER 19. INFECTION PREVENTION AND CONTROL

8:42B-19.1 Administrator's responsibility

The administrator shall ensure the development and implementation of an infection prevention and control program.

8:42B-19.2 Infection prevention and control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. A definition of nosocomial infection;

2. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;

3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

4. Surveillance techniques to minimize sources and transmission of infection;

5. Techniques to be used during each patient contact, including handwashing before and after caring for a patient;

6. The prevention of decubitus ulcers;

7. Isolation of patients, including criteria for isolation;

8. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable patient care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

9. The collection, storage, handling, and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling, and disposition of all pathological and infectious wastes to be removed from the facility;

i. Needles and syringes shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto;

ii. Solid, sharp, or rigid items shall be placed in a puncture-resistive container and incinerated or compacted prior to disposal;

iii. In facilities licensed to provide acute medical detoxification services, all solid waste shall be collected in three mil plastic bags or equivalent and disposed of in a sanitary landfill approved by the New Jersey State Department of Environmental Protection; and

iv. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into the sewerage system.

(b) Each service in the facility shall develop written infection prevention and control policies and procedures for that service.

SUBCHAPTER 20. HOUSEKEEPING, SANITATION, AND SAFETY

8:42B-20.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry, and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation, and safety services shall be developed and implemented.

8:42B-20.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of housekeeping and cleaning equipment.

(d) The following housekeeping conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;

2. Nonskid wax shall be used on all waxed floors;

3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

4. All patient areas shall be free of noxious odors;

5. Throw rugs or scatter rugs shall not be used in the facility;

6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

7. All equipment shall have unobstructed space provided for operation;

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Unobstructed aisles shall be provided in storage areas;

14. A program shall be implemented and maintained to keep rodents, insects, vermin, and birds out of the facility;

15. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;

16. Solid or liquid waste, garbage, and trash shall be stored or disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;

17. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

18. Wastebaskets and ashtrays shall be made of noncombustible materials;

19. Latex foam pillows shall be prohibited;

20. The temperature of the hot water supply at each water outlet shall be regulated and shall not exceed 110 degrees Fahrenheit (43 degrees Celsius), except as specified in N.J.A.C. 8:24 for dishwashing purposes; and

21. The temperature in the facility shall be kept at a minimum of 70 degrees Fahrenheit (21 degrees Celsius) during the day and at a minimum of 65 degrees Fahrenheit (18 degrees Celsius) at night. "Day" means the time between sunrise and sunset.

8:42B-20.3 Linen and laundry services

(a) Written policies and procedures shall be established and implemented for linen and laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage, transportation, and laundering of linen and personal laundry. Such policies shall not interfere with the patient's right to personal choice regarding dress;

2. Accessibility of a laundry room which patients may use for washing their clothes;

3. The frequency of laundering linen and personal laundry;

4. The frequency of changing bed linen, towels, and washcloths;

5. Provision of a supply of clean linen, including at least sheets, pillow cases, blankets, towels, and washcloths;

6. Collection of soiled linen and laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean linen and laundry and for transporting soiled linen and laundry;

7. Storage of soiled linen and laundry in a ventilated area separate from any other supplies. Soiled linen and laundry shall not be stored, sorted, rinsed, or laundered in patient rooms, bathrooms, areas of food preparation and/or storage, or areas in which clean linen, material, and/or equipment are stored; and

8. Protection of clean linen from contamination during processing, transporting, and storage.

SUBCHAPTER 21. VOLUNTEER SERVICES

8:42B-21.1 Provision of volunteer services

(a) The facility may provide volunteer services as an integral part of the facility's services.

(b) Volunteers shall not provide services in lieu of staff.

(c) Volunteers shall not administer medications.

(d) Volunteers shall receive orientation at the time of employment and continuing in-service education regarding at least emergency plans and procedures, discharge planning, and the infection prevention and control program.

(e) If volunteers have access to patient medical records, confidentiality shall be maintained, in accordance with the facility's policies and with all applicable laws and regulations.

(f) Volunteers shall not receive gifts or gratuities from patients.

8:42B-21.2 Volunteer policies and procedures

(a) If the facility provides volunteer services, the facility shall establish and implement written policies and procedures including, but not limited to, policies and procedures regarding the following:

1. Acceptance and retention in, and exclusion from, the volunteer service, including at least the following criteria:

i. Minimum age and physical examination requirements for volunteers; and

ii. The minimum period of time during which former substance abusers (alcohol and/or drugs) shall be continuously substance free before serving as volunteers;

2. Methods for obtaining information regarding each volunteer, including at least education, work experience, and arrests or convictions, if any;

3. Assignment of volunteers to patients, including criteria for assignment; and

4. Functions which volunteers may perform. Volunteer services shall be provided under the supervision of staff and in accordance with patient treatment plans, so as to ensure continuity of care.

8:42B-21.3 Administrator's duties

(a) The administrator or his or her designee shall be responsible for the direction, provision, and quality of the volunteer services provided. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the volunteer service;

2. Participating in planning and budgeting for the volunteer service;

3. Coordinating and integrating the volunteer service with other patient care services to provide a continuum of care for the patient; and

4. Assisting in developing and maintaining written job descriptions for all paid staff of the volunteer service and volunteers, and assigning duties based upon education, training, competencies, and job descriptions.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:42B-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient services.

8:42B-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:

1. At least annual review of staff and physician qualifications and credentials;

2. At least annual review of staff orientation and staff education;

3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, discharge planning services, and volunteer services;

4. Evaluation by patients of care and services provided by the facility;

5. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and

6. Establishment of a patient care outcome assessment system for evaluation of the patient care provided by each service.

8:42B-22.3 Measures for corrections and improvements

(a) The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

(b) The administrator shall evaluate written reports of State and local sanitary inspections, including results of cultures taken of food, equipment, and people, and shall take necessary corrective action.

SUBCHAPTER 23. (RESERVED)

DRUG UTILIZATION REVIEW COUNCIL

(a)

Drug Evaluation and Acceptance Criteria
Adopted Amendment: N.J.A.C. 8:70-1.4

Proposed: April 18, 1988 at 20 N.J.R. 870(a).
Adopted: June 17, 1988 by the Drug Utilization Review Council, Robert Kowalski, Secretary.
Filed: June 21, 1988 as R.1988 d.328.
Authority: N.J.S.A. 24:6E-7(g).
Effective Date: July 18, 1988.
Expiration Date: September 17, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

8:70-1.4 Manufacturer and repackager criteria
(a)-(i) (No change.)
(j) The Executive Director shall publish in the New Jersey Register at the earliest possible date a notice of the action taken by the Council on a drug product. The action taken by the Council on a drug product shall be effective on the date the notice of adoption appears in the New Jersey Register. A manufacturer who disagrees with the Council's action must follow the process outlined in (h) and (i) above.

(b)

INTERCHANGEABLE DRUG PRODUCTS
Adopted Amendment: N.J.A.C. 8:71

Proposed: April 18, 1988 at 20 N.J.R. 871(a).
Adopted: June 17, 1988 by the Drug Utilization Review Council, Robert Kowalski, Secretary.
Filed: June 21, 1988 as R.1988 d.329, **with portions of the proposal not adopted and portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 18, 1988 (for all products except Fenoprofen tabs 600 mg) which is adopted effective August 18, 1988).
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
No comments were received on the products adopted or not adopted. Extensive comments were received on some products still pending. Those comments will be stated and the Council's responses given when final action is taken.

The following products and their manufacturers were **adopted**:

Amoxicillin caps 250, 500 mg	**Novopharm**
APAP/codeine tabs 15, 30, 60 mg	**Mutual**
Butalbital/APAP/caffeine tabs	**Halsey**
Cephradine caps 250, 500 mg	**Barr**
Cephradine caps 250, 500 mg	**Vitarine**
Cephalexin for susp 125/5, 250/5 mg	**Vitarine**
Chloramphenicol ophth soln 0.5%	**Americal**
Chlorzoxazone tabs 500 mg	**Barr**
Clorazepate dipot. tabs 3.75, 7.5, 15 mg	**Watson**
Cyproheptadine syrup 2 mg/5 ml	**Naska**
Desipramine tabs 25, 50, 75 mg	**Sidmak**
Desipramine tabs 10, 75, 100, 150 mg	**Vitarine**
Dexamethasone ophth soln 0.1%	**Americal**
Flurazepam caps 15, 30 mg	**Halsey**
Flurazepam caps 15, 30 mg	**W-C**
Fluphenazine tabs 1, 2.5, 5, 10 mg	**Bolar**
Furosemide tabs 80 mg	**Danbury**
Gentamicin ophth soln 0.3%	**Americal**
Haloperidol tabs 5, 10, 20 mg	**Barr**
Hydrocodone/APAP tabs 5/500	**Barr**
Hydroxyzine syrup 10 mg/5 ml	**Naska**
Ibuprofen tabs 300, 400, 600, 800 mg	**Halsey**
Ibuprofen tabs 800 mg	**Mutual**
Ibuprofen tabs 800 mg	**Mylan**
Ibuprofen tabs 800 mg	**PFI**
Ibuprofen tabs 800 mg	**Purepac**
Indomethacin SR caps 75 mg	**Vitarine**
Maprotiline tabs 25, 50, 75 mg	**Amer. Ther.**
Maprotiline tabs 25, 50, 75 mg	**Bolar**
Meperidine tabs 50, 100 mg	**Barr**
Naphazoline ophth soln 0.1%	**Americal**
Nystatin oint 100,000 units/g	**Naska**
Nystatin susp 100,000 U/ml	**Thames**
Oxazepam caps 10, 15, 30 mg	**Chelsea**
Oxazepam caps 10, 15, 30 mg	**Quantum**
Oxycodone/APAP tabs 5/325	**Barr**
Oxycodones/ASA tabs 4.5, 0.38, 325	**Barr**
Phentermine resin E.R. caps 30 mg	**Quantum**
Pilocarpine HCl 0.5, 1, 2, 3, 4, 5, 6%	**Steris**
Poly-Vitamin drops with F, 0.25 & 0.5 mg	**Hi-Tech**
Potassium Cl 10% syrup	**Cenci**
Propoxyphene naps/APAP 50/325, 100/650	**Halsey**
Procainamide SR tabs 1000 mg	**Bolar**
Quinine sulfate tabs 260 mg	**Danbury**
Sulfacetamide/prednisolone ophth soln	**Americal**
Sulfacetamide ophth soln 10%, 15%, 30%	**Americal**
Theophylline elixir 80 mg/30 ml (sic)	**Cenci**
Thiothixene caps 20 mg	**Amer. Ther.**
Thioridazine tabs 150, 200 mg	**Par**
Trazodone tabs 50, 100 mg	**Sidmak**
Trimethoprim tabs 100 mg	**Danbury**
Triamterene/HCTZ tabs 75/50	**Amer. Ther.**
Triamterene/HCTZ tabs 75/50	**Danbury**
Triamterene/HCTZ tabs 75/50	**Vitarine**
Triamterene/HCTZ caps 50/25	**Vitarine**
Tri-Vitamin drops with F; 0.25 & 0.5 mg	**Hi-Tech**

The following product was **adopted** effective August 18, 1988:

Fenoprofen tabs 600 mg	**Purepac**

The following products were **not adopted**:

Allopurinol tabs 300 mg	Cord
Chlorothiazide tabs 500 mg	Mylan
Cyclopentolate ophth soln 1%	Americal
Folic acid tabs 1 mg	T-P
Isoetharine for inhalation 1% Unit Dose	Dey
Isoetharine inhal. .08, .1, .17, .25, 1.0%	Dey
Isoproterenol for inhalation 0.5%	Dey
Metaproterenol inhalation 0.6% (2.5 ml)	Dey
Oxazepam caps 10, 15, 30 mg	Cord
Proparacaine ophth soln 0.5%	Americal
Racepinephrine inhalation 2.25% 0.25 ml	Dey
Tropicamide ophth. soln 1%	Americal
Verapamil tabs 80, 120 mg	Mutual

The following products were **not adopted but are still pending**:

Acetazolamide tabs 125, 250 mg	Mutual
Amiloride/HCTZ tabs 5/50	Barr
Carisoprodol tabs 350 mg	Mutual
Chlordiazepoxide/amitrip 5/12.5, 10/25	PharmBasics
Clofibrate caps 500 mg	Pharmacaps
Cortisone acetate tabs 25 mg	T-P
Diphenhydramine elixir 12.5 mg/5 ml	Cenci
Doxepin caps 75, 100 mg	Barr
Erythromycin estolate caps 250 mg	Barr
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Barr
Hydrochlorothiazide tabs 25, 50, 100 mg	T-P
Metaproterenol tabs 10, 20 mg	PharmBasics
Nitrofurantoin macrocrystals 50, 100 mg	Bolar
Norethindrone/ethinyl est. 1/35 tabs	Schering
Norethindrone/ethinyl est. 0.5/35, 1/35	Watson
Nystatin tabs 500,000 units	Mutual

Perphenazine tabs 2, 4, 8, 16 mg	Cord
Prednisolone acetate ophth soln 1%	Americal
Prednisolone tabs 5 mg	T-P
Prednisone tabs 2.5, 5, 20 mg	T-P
Stuartnatal 1+1(R) substitute	Copley
Stuartnatal 1+1(R) substitute	Amide
Tolazamide tabs 100 mg	PharmBasics
Trazodone tabs 50, 100 mg	Purepac
Trifluoperazine 1, 2, 5, 10 mg	Bolar
Trimethoprim tabs 100 mg	Barr
Verapamil tabs 80, 120 mg	Bolar

(a)

INTERCHANGEABLE DRUG PRODUCTS

Adopted Amendment: N.J.A.C. 8:71

Proposed: August 17, 1987 at 19 N.J.R. 1488(a).
Adopted: June 17, 1988 by the Drug Utilization Review Council, Robert Kowalski, Secretary.
Filed: June 21, 1988 as R.1988 d.325, **with portions of the proposal not adopted and portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 18, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

The following product and its manufacturer was **adopted**:

Amantadine HCl caps 100 mg	**Pharmacaps**

The following product and its manufacturer was **not adopted**:

Procainamide E.R. tabs 750 mg	Copley

The following products were **not adopted but are still pending**:

Allopurinol tabs 100 mg	Interpharm
Amitriptyline/perphenazine 4/10, 4/25, 4/50	Mylan
Amitriptyline/perphenazine 2/10, 2/25	Mylan
Carbamazepine tabs 200 mg	Barr
Carbamazepine tabs 200 mg	Interpharm
Cephalexin caps 250, 500 mg	Purepac
Chlorzoxazone/APAP tabs 250/300	Interpharm
Clorazepate dipot. caps 3.75, 7.5, 15	Mylan
Cyproheptadine tabs 4 mg	Interpharm
Diazepam tabs 2, 5, 10 mg	Ferndale
Dyphylline/guaifenesin syrup	Barre-National
Erythromycin ethylsuccinate 200/5 susp	Barre-National
Furosemide oral solution 10 mg/ml	Barre-National
Haloperidol tabs 2 mg	Lemmon
Indomethacin caps 25, 50 mg	Interpharm
Iodinated glycerol drops 50 mg/ml	Barre-National
Isosorbide dinitrate oral tabs 20 mg	Cord
Lactulose syrup 10 g/15 ml	Barre-National
Metoclopramide tabs 10 mg	Mylan
Minoxidil tabs 2.5, 10 mg	Par
Nystatin oral susp 100,000 U/ml	Lemmon
Oxtriphylline/guaifenesin syrup	Barre-National
Phenylephrine ophth. soln 10%	Steris
Prednisone tabs 5, 10, 20 mg	Amer. Ther.
Prednisone tabs 5, 20 mg	Cord
Propranolol tabs 10, 20, 40, 60, 80, 90	Halsey
Thiothixene caps 20 mg	Cord
Tolazamide tabs 100 mg	Cord
Trazodone tabs 50, 100 mg	Mylan
Verapamil tabs 80, 120 mg	Mylan

OAL NOTE: Related Notices of Adoption may be found at 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a) and 899(b).

(b)

INTERCHANGEABLE DRUG PRODUCTS

Adopted Amendment: N.J.A.C. 8:71

Proposed: January 19, 1988 at 20 N.J.R. 146(a).
Adopted: June 17, 1988 by the Drug Utilization Review Council, Robert Kowalski, Secretary.
Filed: June 21, 1988 as R.1988 d.326, **with portions of the proposal not adopted and portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 18, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

The following products and their manufacturers were **adopted**:

Cephalexin for susp 125/5 ml	**Teva**
Ibuprofen tabs 400, 600, 800 mg	**LuChem**
Oxazepam caps 10, 15, 30 mg	**Amer. Ther.**

The following products were **not adopted but are still pending**:

Cefadroxil caps 500 mg	Biocraft
Cefadroxil for susp 125/5, 250/5, 500/5	Biocraft
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Diphenhydramine liquid 12.5 mg/5 ml	LuChem
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Flurazepam caps 15, 30 mg	Chelsea
Guaifenesin/PPA tabs 400/75	LuChem
Hydromorphone HCl tabs 2, 4 mg	Roxane
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Levorphanol tartrate tabs 2 mg	Roxane
Lorazepam tabs 0.5, 1, 2 mg	Chelsea
Meperidine HCl syrup 50 mg/5 ml	Roxane
Oxazepam caps 10, 15, 30 mg	Barr
Oxtriphylline elixir 100 mg/5 ml	Barre
Propranolol tabs 10 mg	Lemmon
Triamterene/HCTZ tabs 75/50	Cord
Trifluoperazine tabs 1, 2, 5, 10 mg	Cord
Valproic acid caps 250 mg	Chelsea

OAL NOTE: Related Notice of Adoption may be found at 20 N.J.R. 900(a).

(c)

INTERCHANGEABLE DRUG PRODUCTS

Adopted Amendment: N.J.A.C. 8:71

Proposed: October 19, 1987 at 19 N.J.R. 1878(a).
Adopted: June 17, 1988 by the Drug Utilization Review Council, Robert Kowalski, Secretary.
Filed: June 21, 1988 as R.1988 d.327, **with portions of the proposal not adopted and portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 18, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

The following product was **not adopted**:

Chlorthalidone tabs 25, 50 mg	**Sidmak**

The following products were **not adopted but are still pending**:

Flurazepam caps 15, 30 mg	Cord
Lactulose syrup 10 g/15 ml	My-K
Leucovorin calcium tabs 15 mg	Par
Methyldopa susp 250 mg/5 ml	My-K
Prednisone oral solution 5 mg/5 ml	My-K
Propranolol/HCTZ tabs 40/25, 80/25	Schering
SMZ/TMP tabs 400/80, 800/160	PFI
SMZ/TMP tabs 400/80, 800/160 mg	PharmBasics
Theophylline E.R. tabs 200 mg	Inwood
Thiothixene oral solution 5 mg/ml	My-K

OAL NOTE: Related Notices of Adoption may be found at 20 N.J.R. 191(b), 654(b) and 899(a).

HIGHER EDUCATION

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program

Policy Governing Institution Compliance; Corrective Measures

Adopted New Rules: N.J.A.C. 9:9-11

Proposed: April 18, 1988, at 20 N.J.R. 872(a).

Adopted: June 24, 1988, by the New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Filed: June 24, 1988, as R.1988 d.334, **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:72-10.

Effective Date: July 18, 1988.

Expiration Date: October 3, 1988.

Summary of Public Comments and Agency Responses:

The New Jersey Higher Education Assistance Authority received one comment regarding the proposal from Wilfred American Educational Corporation. The specific comments and agency responses thereto follow:

COMMENT: The evaluation review procedures are discriminatory against minority students and the schools that have helped such students. Specifically, it is claimed that schools which have a high proportion of minority students will obviously have higher default rates, withdrawal rates, amounts of student changes, and number of refunds.

RESPONSE: It is agreed that schools with large numbers of economically disadvantaged students are likely to have higher than average loan default rates. However, it is not accepted that since a school serves a disadvantaged population it should be allowed to run an administratively insufficient program. There is no benefit provided to these students by allowing such a situation to exist. Schools which serve student populations with high default risk have an extra responsibility to provide strong student support services, maintain high levels of administrative efficiency in their student aid programs, and to discourage students from incurring unnecessary debt. If instead, these schools are found to have serious deficiencies in the administrative policies and practices adversely affecting GSL students, the students' needs are not being met and the school's eligibility to participate in the loan program should be reconsidered. The proposed rules do not discriminate against any student but, instead, seek to protect the student from poorly administered schools to help ensure that all students receive the educational opportunity for which they are paying.

COMMENT: The proposed rules would have a heavy social and economic impact on students who are shut out of postsecondary educational opportunities and an impact on the state's taxpayer caused by those who are forced to attend state supported institutions rather than obtaining federal guaranteed loans and grants to attend privately funded institutions.

RESPONSE: The proposed rules do not shut students out of educational opportunities nor do they prevent any student from seeking a Guaranteed Student Loan. The impact of the proposed rules is on poorly administered schools. Furthermore, any shift in enrollments from privately funded schools to public institutions of higher education would not impact upon state funding of public higher education as such funding is not provided on the basis of student enrollment numbers.

COMMENT: The review procedures appear to lack definition and are therefore vague and subjective. The definition of the default period; the method of default calculation; withdrawal; and timely notification are all given as examples.

RESPONSE: All of these terms are fully defined by existing federal regulations governing the GSL program which are incorporated by reference into the proposed rules.

COMMENT: Wilfred commented that a failure to refund loan monies is entirely different from a failure to refund in a timely manner. Furthermore, until the school is notified of a student's intention, it would be unfair to refund the student's loan prematurely and deprive students of their educational opportunity.

RESPONSE: The proposed rules are not attempting to equate the seriousness of the implications resulting from failure to return loan monies to those of failure to refund in a timely manner. The legal ramifications are clearly distinguishable. For purposes of evaluating the efficient operation of a school's GSL Program, deficiencies in both of these indicate serious inadequacies in the management of student monies which is one of the categories intended to be measured by the rules. School sanctions under the rules in no way preclude the possibility of criminal action and sanctions being imposed by other entities. Additionally, federal regulations are quite clear as to when refunds of student loan monies are to be made.

COMMENT: The term "inaccurate or missing student files" is extremely vague and subject to arbitrary interpretation.

RESPONSE: The Authority disagrees with the assertion that the term "inaccurate or missing student files" is vague or subject to arbitrary interpretation.

COMMENT: Wilfred suggests that adoption of the proposal be delayed until its impact on needy students can be ascertained through informational meetings.

RESPONSE: In light of the issues which are raised and answered above, the Authority does not believe holding such meetings would be productive.

Agency Initiated Changes

At N.J.A.C. 9:9-11.1(b) and (c), the Department has added language which outlines the records which must be given to auditors in order for them to conduct a program review. The text is not a new substantive provision because it is currently found at N.J.A.C. 9:9-7.2 which is proposed for repeal in another proposal found in this issue of the Register. The provisions of N.J.A.C. 9:9-7.2 have simply been recodified to N.J.A.C. 9:9-11.1(b) and (c) to provide schools notice of the types of records which must be furnished during an audit. Since these provisions have been in effect for several years and schools have had to comply with the audit requirements during a program review, there is no change in effect on the regulated public.

The Department has deleted N.J.A.C. 9:9-11.2(b) and reserved the subsection because it is proposing definitive default rate standards in a proposed amendment to this rule elsewhere in this issue of the Register.

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

SUBCHAPTER 11. POLICY GOVERNING INSTITUTION COMPLIANCE WITH THE GUARANTEED STUDENT LOAN PROGRAM; CORRECTIVE MEASURES

9:9-11.1 Standards

(a) Institutions of higher education participating in the Guaranteed Student Loan Program shall comply with existing Federal and State regulations and standards governing the program.

(b) Individual institutions shall be periodically evaluated by the Authority program review to confirm their program compliance. ***In the performance of this review, 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. A current listing of defaulted student loans;

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 report outlining the findings of the auditors will be provided to the institution for comment. The institution shall respond within a reasonable time and this response will be included in the auditors' final report.*

(d) Institutions determined to be in noncompliance as a result of this review shall be subject to corrective or disciplinary action initiated by the Authority.

9:9-11.2 Evaluation review procedures

(a) Program review findings utilized to ascertain program noncompliance shall include but not be limited to the following areas:

1. The student loan default rate;

2. Student withdrawals before completion of programs or academic year;

3. Failure to provide timely notification to the Authority of student enrollment status changes;

4. Failure to refund loan monies to lenders on behalf of students or refunds not made in a timely manner; and

5. Failure of student files to include information required pursuant to Federal regulations, or inaccurate or missing student files.

(b) *[The Authority shall annually establish and publish the default rate and standards of noncompliance for the categories set forth in (a) above which shall indicate a serious deficiency in institution program administration and shall subject the institution to corrective action by the Authority.]* ***(Reserved)***

(c) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Guaranteed Student Loan Program participation where the program review indicates that the institution is in substantial violation of other Federal or state Guaranteed Student Loan Program 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 number of categories where such violations are present.

1. Institutions with a violation in one of the categories set forth in N.J.A.C. 9:9-11.2 shall be allowed continued participation in the Guaranteed Student Loan Program but shall be required to provide an acceptable plan of corrective action to the Authority within 90 days of formal violation notification.

2. Institutions with violations in two of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to limit their participation in the Guaranteed Student Loan Program to 50 percent of their entering classes for a period of 18 months. Additionally, the institution shall submit to the Authority an acceptable plan of corrective action within 90 days of formal limiting notification.

3. Institutions with violations in three of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to suspend participation in the Guaranteed Student Loan Program for 18 months. The institution shall submit a plan of corrective action which must be approved by the Authority before formal reinstatement will be considered.

4. Institutions with violations in four or more of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with notice of intent to terminate participation in the Guaranteed Student Loan Program.

9:9-11.4 Appeal rights

(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 to the Authority within 20 days of the determination.

(b) To initiate an appeal, the following procedure shall be utilized:

1. The petitioner shall file with the Director the original copy of the petition, together with proof of mailing.

2. The petition must be verified and must state the name and address of the petitioner, and a statement of the essential facts giving rise to the contesting of the Authority imposed sanction.

(c) The Director shall bring the petition before the Authority in a timely manner. 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. The Director shall notify the petitioner of the Authority's decision in the matter.

HUMAN SERVICES

(a)

Legal Assistance for Medicare Patients

Adopted New Rules: N.J.A.C. 10:13

Proposed: April 18, 1988 at N.J.R. 873(a).

Adopted: June 20, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: June 21, 1988 as R.1988 d.330, **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. 30:4H-4, P.L. 1987, c.59.

Effective Date: July 18, 1988.

Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:

The proposed rules for the administration of the Legal Assistance for Medicare Patients Program (LAMP) elicited comments from representatives of Community Health Law Project and the Department of the Public Advocate.

The comments and recommendations received were compiled and individual letters were sent in response to each comment. The listing of the comments received by the Department and the corresponding Departmental responses are on file with the Office of Legal and Regulatory Liaison of the Department of Human Services. Consideration of comments and recommendations received along with further internal review of the proposed rules has led the Department to make substantive and technical changes not requiring re-proposal. Where changes have been made, they are intended to clarify the intent of the rules, to increase technical accuracy, and to clarify to the greatest extent possible the rights and responsibilities of clients, providers and the contractor.

COMMENT: One commenter questioned whether the definition of "denied claim" includes the terms denial of coverage and denial of payment.

RESPONSE: In order to clarify this definition, it has been re-worded. The term "denied claim" is meant to include denials of coverage and denials of payment for the purposes of this chapter.

COMMENT: One commenter questioned the intent to require a denial of claim as a condition for eligibility of service on the ground that this may prevent the contractor from providing assistance to individuals who have either been formally denied services or have been "told" they are ineligible for services.

RESPONSE: In this instance, the Department is bound by the enabling legislation (N.J.S.A. 30:4H-1 et seq., P.L. 1987, c.59), establishing a program to appeal denials of federal Medicare benefits. Eligibility for legal services requires documentation of a notice of denial, or a notice of reduction or termination of Medicare covered services.

COMMENT: Both commenters requested clarification of the client eligibility standards at N.J.A.C. 10:13-2.1(a)-(c).

RESPONSE: The Department of Human Services has considered the request for clarification of client eligibility and has reworded N.J.A.C. 10:13-2.1(a)-(c) to more clearly state the client eligibility standards.

COMMENT: Further concern was expressed about the ability of the contractor to represent the beneficiary's estate in the event of the death of the beneficiary or in the event of incompetence of the beneficiary.

RESPONSE: The Department concurs with this request for clarification and, therefore, has included permission for the contractor to represent the beneficiary's estate or guardian in N.J.A.C. 10:13-2.1(b).

COMMENT: One commenter questioned the need for a determination of client eligibility in order to provide education and outreach services.

RESPONSE: The Department, in this instance, is bound by the enabling legislation (N.J.S.A. 10:13:4H-1 et seq., P.L. 1987, c.59). Since the intent of this program is to provide assistance to Medicare beneficiaries, education and outreach services of the LAMP program should be provided to Medicare beneficiaries. An eligibility determination is not necessary before the provision of education or outreach services. Clarification has been made by an addition to N.J.A.C. 10:13-2.1(c).

COMMENT: In order to provide potential participants with notice of the character of services available at any time during the contract, inclusion of the contract dates was requested under eligible services (N.J.A.C. 10:13-2.2).

RESPONSE: The Department has determined that inclusion of this request is inappropriate in rules of general applicability and has retained the term used in the proposal, that is, "contract year."

COMMENT: A recommendation received requested the Department to more clearly indicate that skilled nursing facility and rehabilitation hospital services are to be fully phased in during the second year of the contract.

RESPONSE: Medicare eligible skilled nursing facility and rehabilitation hospital services are to be phased in between the first and second contract years. It is not the intent of the Department to require completion of this phase of the project within the second year. The Department wishes to retain the flexibility to extend this phase into year three if necessary.

COMMENT: Concern was stated that it may not always be possible to conduct a client interview. The request was made to waive the client interview in certain instances, such as the death or incompetence of the beneficiary.

RESPONSE: The Department has considered this request and agrees with the commenter. Inclusion of a waiver of the client interview has been made in N.J.A.C. 10:13-4.2(b).

COMMENT: A request was made to delete the requirement that the contractor complete a financial status determination if the contractor is representing a provider.

RESPONSE: It is only necessary to complete a financial status determination in those cases in which LAMP Program monies are used to cover the cost of requests for appeals as outlined in N.J.A.C. 10:13-2.4(b). This clarification has been added to N.J.A.C. 10:13-4.2(d).

COMMENT: A request was received to more precisely define the contractor's responsibility in collecting co-payment fees.

RESPONSE: As a result of this comment and in further consideration of the possible difficulty the contractor may encounter in attempting to collect co-payment fees, the Department has defined the parameters for fee collection in N.J.A.C. 10:13-5.2(f).

COMMENT: The difficulty of providing a cost-benefit analysis of all LAMP Program operations was raised by one commenter.

RESPONSE: The Department understands that data may not be available to provide an analysis of all LAMP Program operations. In those areas where such data exists, though, the Department expects the contractor to provide an analysis.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

CHAPTER 13
LEGAL ASSISTANCE FOR MEDICARE PATIENTS (LAMP)

SUBCHAPTER 1 GENERAL PROVISIONS

10:13-1.1 Purpose of this chapter

Pursuant to N.J.S.A. 30:4H-1 et seq. (P.L. 1987, c.59) the purpose of this chapter is to implement the Legal Assistance for Medicare Patients (LAMP) program for legal assistance in New Jersey to Medicare beneficiaries who are denied Medicare coverage for health care services.

10:13-1.2 Scope; applicability

(a) The provisions of this chapter apply to all activities and services related to and persons participating in the LAMP program.

(b) Pursuant to N.J.S.A. 30:4H-1 et seq, the New Jersey LAMP program provides outreach, education and legal services to all Medicare beneficiaries denied Medicare payment for health care services.

10:13-1.3 Definitions

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

"Co-payment" means financial participation in service costs by eligible beneficiaries according to the fee scale established in N.J.A.C. 10:13-5.2(e).

"Denied claim" means a claim for Medicare covered health care services that has been denied as documented by receipt of the actual notice of denial sent to the beneficiary and/or the provider. Denied claim may also include notice of reduction or termination of Medicare covered services. ***Denial of payment and denial of coverage are terms that are used interchangeably with denied claim in these rules unless otherwise specifically defined in the text.***

"Department" means the New Jersey Department of Human Services (DHS).

"Division" means the Division of Medical Assistance and Health Services in the Department of Human Services (DMAHS).

"LAMP contractor" means a non-profit corporation that contracts with the Department to provide LAMP program services authorized by N.J.S.A. 30:4H-1 et seq.

"Medicaid" means the Federal Medical Assistance Program as described in Title XIX of the Social Security Act and N.J.S.A. 30:4D-1 et seq.

"Medicare" means the Federal Medicare Program as described in Title XVIII of the Social Security Act.

"Medicare beneficiary" means any individual eligible for Medicare benefits under the requirements set forth in Title XVIII of the Social Security Act.

"Qualified non-profit organization" means an organization that has sufficient professional staff and resources to meet the requirements and implement the tasks outlined in the enabling legislation, N.J.S.A. 30:4H-1 et seq.

SUBCHAPTER 2. ELIGIBILITY

10:13-2.1 Client eligibility standards

*[(a) Recipients of Medicare benefits who have been denied coverage for eligible health care benefits shall be eligible for services provided under the LAMP program.

(b) Individual Medicare beneficiaries with Part A and/or Part B coverage under Title XVIII of the Social Security Act who have been denied payment for covered health care services as outlined in N.J.A.C. 10:13-2.2 are eligible for LAMP program services.

(c) Dually entitled Medicare beneficiaries with Part A and/or Part B coverage under Title XVIII of the Social Security Act and also Medicaid benefits under Title XIX of the Social Security Act who have been denied payment for Medicare covered health care services as outlined in N.J.A.C. 10:13-2.2 are eligible for LAMP program services.]*

***(a) Participants in the Medicare program (Title XVIII of the Social Security Act) who have been denied coverage or payment for services described in N.J.A.C. 10:13-2.2 are eligible for services provided by the LAMP program. This eligibility for LAMP program services extends both to persons who are dual participants in the Medicaid program (Title XIX of the Social Security Act) and Medicare and those who are participants only in the Medicare program.**

(b) The contractor shall be permitted to represent a beneficiary's estate in the event of death of the beneficiary and a guardian in the event of incompetence of the beneficiary, if the eligibility guidelines in (a) above are met.

(c) A determination of client eligibility is not required in order to provide education and outreach services.*

10:13-2.2 Eligible services

(a) In the first contract year, LAMP program legal services will be provided for the purpose of appealing Medicare denials for eligible home health care services.

(b) LAMP program legal services will continue for home health care services appeals and, in the second contract year, or sooner, with Departmental approval, the LAMP program will be expanded to include *[medicare]* ***Medicare*** eligible skilled nursing facility and rehabilitation hospital services. These services will be phased in between the first and second contract years of the Program.

(c) In the third contract year, LAMP program legal services will continue for home health care, skilled nursing facility and rehabilitation hospital appeals. The Department will identify other Medicare Part A and/or Part B services for inclusion in the LAMP program by means of amendments to these rules.

(d) In addition to the services described in (a), (b), and (c) above, basic outreach and education services shall begin in the first year and continue throughout the contract period.

10:13-2.3 LAMP contractor eligibility

The selected contractor shall be a qualified non-profit organization, as required by N.J.S.A. 30:4H-4.

10:13-2.4 Provider eligibility for LAMP services

(a) Health care providers who have rendered services to Medicare beneficiaries may apply to the LAMP contractor for legal services on their own behalf. Upon mutual agreement of the LAMP contractor and the health care provider, under the terms set forth in these rules, appeals of eligible denials for coverage may be pursued on behalf of the health care provider.

(b) LAMP monies shall not be used to cover the cost of requests for services noted in (a) above, unless the request involves a Medicare beneficiary with dual Medicare/Medicaid coverage or the beneficiary has paid or is liable to pay out-of-pocket expenses for covered services as described in N.J.A.C. 10:13-2.2.

SUBCHAPTER 3. ADMINISTRATIVE ORGANIZATION

10:13-3.1 LAMP program administration

(a) The Department of Human Services is charged with the responsibility for assuring that the contractor operates an efficient and effective program that provides LAMP services statewide. The LAMP Program Project Manager, Division of Medical Assistance and Health Services, 7 Quakerbridge Plaza, Trenton, N.J. will serve as direct liaison between the Department and the LAMP contractor.

(b) The project manager shall supervise LAMP program activities, including:

1. Monitoring the contract between the Department and the selected contractor;
2. Providing technical assistance to the contractor;
3. Approving letters, forms, documents, etc., to be used to carry out the Project; and
4. Compensating the LAMP contractor for work performed pursuant to contract provisions.

SUBCHAPTER 4. PROGRAM ADMINISTRATION

10:13-4.1 Access to services

(a) The LAMP contractor shall insure client access to LAMP program services during normal business hours. Such access may involve:

1. Availability of a 201 and a 609 area code number;
2. Acceptance of collect calls; or
3. Other access that provides eligible beneficiaries with the ability to apply for program services.

(b) Access to services shall also include the availability of office space and staff to insure reasonable access to program services on a statewide basis during normal working hours.

10:13-4.2 Procedures for utilization of services

(a) Upon receipt of an inquiry, the LAMP contractor shall instruct the applicant in the procedures for receiving services. This may be done face-to-face, through telephone contact, through mailings of information and/or through other means that insure accurate and timely transmittal of information regarding the procedures to be followed to receive LAMP program services.

(b) The LAMP contractor staff shall conduct a client interview to obtain the client information necessary to initiate the appeals process. ***The client interview may be waived in certain instances, such as the death or incompetence of the client.***

(c) The LAMP contractor staff shall provide the client with a description of the appeal process in easily understandable language.

(d) The LAMP contractor shall complete a client financial determination utilizing the co-payment fee scale of N.J.A.C. 10:13-5.2(e). ***No financial status determination is necessary for services rendered under N.J.A.C. 10:13-2.4(a).***

(e) The LAMP contractor staff shall insure explanation, review and completion of the following client documents:

1. Representation agreement and authorization for appeal;
2. Authorization for Release of Information;
3. Request for Reconsideration for Part A appeals and/or Request for Review for Part B cases;

(f) In order to preserve confidentiality, records reported, released or accessed to the Department shall not identify client names except as provided for in N.J.S.A. 30:4D-7.1c et seq. The LAMP contractor shall supply a minimum of two arbitrary identifiers for each client for auditing purposes.

(g) The LAMP contractor staff shall review denials of reimbursement for Medicare covered health services by Fiscal Intermediaries of the Health Care Financing Administration to determine whether an appeal of such denials is meritorious.

(h) The LAMP contractor shall follow the procedures for the appeals process for Part A and/or Part B denials as specified in Title XVIII of the Social Security Act.

(i) Upon receipt of a continued determination of denial by Medicare in a given case, the LAMP contractor staff shall, in each instance of loss, determine the merits of the case for further appeal.

10.13-4.3 Appeals

Any controversies arising between the LAMP program contractor and applicants or participants in the Program under the provision of this chapter shall be heard in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rule (N.J.A.C. 1:1).

SUBCHAPTER 5. FEES

10:13-5.1 Payment for services

The Department will reimburse the LAMP contractor for services rendered on a monthly basis upon submission of properly completed billing statements which have been accepted by the Department.

10:13-5.2 Co-payment fee scale

(a) Co-payment fees shall apply to Medicare beneficiaries rendered legal services under the LAMP program in accordance with the co-payment fee scale set forth in (e) below. The co-payment fee scale is based on the most current Federal Poverty Income guidelines (42 U.S.C. 9902(2)), as published annually in the Federal Register.

(b) Co-payment shall be determined based on current income levels and family size.

(c) Income level includes the income of the beneficiary and, if applicable, the income of the spouse of the beneficiary.

(d) Family size includes the beneficiary and, if applicable, the spouse and any dependent children of the beneficiary living in the same household as the beneficiary.

(e) The co-payment fee scale shall be as follows:

Income as a percentage of Federal Poverty Income guidelines	Beneficiary Share of Legal Fees
Below 250 percent	0 percent
251-275 percent	10 percent
276-300 percent	20 percent
301-325 percent	40 percent
326-350 percent	60 percent
351-375 percent	80 percent
376-400 percent	100 percent

(f) The LAMP contractor shall collect all co-payments where applicable. ***Procedures for collection of co-payment fees are as follows:***

1. The mailing of two certified letters with return receipts shall constitute reasonable effort to collect co-payment fees from fee-paying clients in all cases, whether the appeal is successful or unsuccessful. The first letter shall be sent one month after the fee is due and the second letter shall be sent two months after the fee due date.*

SUBCHAPTER 6. REPORTING REQUIREMENTS

10:13-6.1 Monthly progress reports

(a) The LAMP contractor shall submit a report of project status to the Project Manager in writing by the tenth day of the next month following the reporting month.

(b) The monthly report shall include, in narrative form, at least the following information:

1. The number and type of appeals processed at each level, including the success or failure rate of those appeals and the status of unresolved appeals;
2. Delineation *[of]* ***by*** cases of source of referral, noting all dual Medicare/Medicaid cases;
3. Variations, if any, from the formal contract work plan with an explanation of the deviation(s);

4. A cost-benefit analysis of individual cases by source of referral;
5. A list of all completed applications reviewed and the number of hours expended for each review; and
6. The total number of hours expended for each general area of the LAMP program (for example, outreach education, appeals).

10:13-6.2 Quarterly reports

(a) The LAMP contractor staff shall submit a quarterly report of project status to the Project Manager no later than the tenth day following the end of each contract quarter.

(b) The quarterly report shall include, in narrative form, at least the following information:

1. LAMP program progress including tasks accomplished, goals met, problems encountered and solved, methods of solution and recommendations for improvement of the LAMP program;
2. Enumeration with appropriate reason those cases determined to have insufficient merit to request an appeal or further appeal;
3. A financial status report that specifies expenditures made against the authorized budget which shall include:
i. Staff utilized per month, specified by title and level, salary, benefits, and person hours on an accrual basis;
ii. The costs of services rendered other than direct appeals; and
iii. A breakdown of costs incurred and income accrued from direct appeals categorized by appeals on behalf of individual beneficiaries; appeals on behalf of dual Medicare/Medicaid beneficiaries; and appeals on behalf of providers by type of service.

10:13-6.3 Annual reports

(a) The LAMP contractor shall submit an annual report to the Project Manager no later than 30 days after the completion of each year of the contract period.

(b) The annual report shall summarize all information required in monthly reports as well as a cost-benefit analysis of overall LAMP program operations ***where appropriate data are available***.

(c) The annual report shall also include what the LAMP contractor has done or will do to seek additional funding with the intent of financial and program self-sufficiency at the end of the contract period.

10:13-6.4 Additional reports

The Department reserves the right to request additional reports and/or information as it deems necessary.

CORRECTIONS

THE COMMISSIONER

(a)

Classification Process
Intensive Supervision Program
Work Credits for Inmates Housed in County Facilities
Adopted Amendments: N.J.A.C. 10A:9-1.3 and 5.6

Proposed: April 18, 1988 at 20 N.J.R. 879(b).

Adopted: June 23, 1988 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 23, 1988 as R.1988 d.332, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: July 18, 1988.

Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10A:9-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Intensive Supervision Program" means the program which permits certain offenders sentenced to State correctional institutions to be sentenced by a Resentencing Panel of judges to an intermediate form of punishment between incarceration and probation.

. . .

10A:9-5.6 Work credits for inmates housed in county correctional facilities

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

(c) Inmates that are Intensive Supervision Program (I.S.P.) violators, who are in county correctional facilities, will receive work credits after they have been in custody for 15 days.

Recodify existing (c) through (e) as (d) through (f) (No change in text).

(b)

STATE PAROLE BOARD
Parole Board Rules
Adopted Amendments: N.J.A.C. 10A:71-3.2, 3.4, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.25, 3.26, 3.27, 3.28, 3.30, 3.43 and 6.9

Proposed August 3, 1987 at 19 N.J.R. 1396(b).

Adopted: June 23, 1988 by New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Filed: June 24, 1988 as R.1988 d.336, **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. 30:4-123.48(d), 30:4-123.51(g) and 30:4-123.54(d).

Effective Date: July 18, 1988.

Expiration Date: April 15, 1990.

Summary of Public Comments and Agency Responses:

The principal comments received by the Board during the comment period and the Board responses follow:

N.J.A.C. 10A:71-3.4(p)5i

COMMENT: The Commissioner of the Department of Corrections recommended that inmates who have committed the institutional infraction of .101 Escape (from medium or maximum custody only) be precluded from the restoration of time provisions.

RESPONSE: The Board is inclined to accept the Commissioner's recommendation, and will in the near future propose an amendment to the provision to include the institutional infraction of .101 Escape (provided such escape is from a medium or maximum security location).

N.J.A.C. 10A:71-3.4(p)5ii

COMMENT: An inmate group objected to the restoration of time provisions not applying in cases of inmates who have been denied parole prior to the expiration of the specified time periods.

RESPONSE: Upon evaluation of the inmate group's concern, the Board elected to not adopt this section thereby permitting the application of restoration of time provisions to the cases of inmates denied parole.

N.J.A.C. 10A:71-3.4(p)2

COMMENT: An inmate group objected to the provision only affording a restoration of 60 percent of the time period by which an inmate's parole eligibility date was extended and objected to the lack of a provision for any pro-rata restoration of time should an inmate be released on parole prior to the completion of the specified time period. The inmate group suggested that the Board adopt a rule similar to that of the Department of Corrections which provides for 75 percent restoration of lost commutation credit and pro-rata restoration of commutation credit upon parole release of an inmate.

RESPONSE: The Board is of the opinion that the opportunity for an inmate to receive restoration of two-thirds (66 percent) of the time by which his parole eligibility date was extended is sufficient incentive for an inmate to remain infraction free. Regarding the pro-rata restoration of time, the time frame established by the Board is a two year time period rather then a three year time period established by the Department of Corrections. The time period which could be restored is fractionally higher under the Board's rules. The Board has, therefore, determined not to amend the section to provide for pro-rata restoration of time.

N.J.A.C. 10A:71-3.18(a)4

COMMENT: An inmate group objected to the deletion of authority of a Board panel to refer a case to the full Board. The inmate group believed that by mandating a Board panel to render a decision, the objectivity of the panel members would be reduced.

RESPONSE: The Department of Law and Public Safety had advised the Board that the provision was inconsistent with the statutory language of The Parole Act since there is no statutory authority vested in a Board panel to refer a case to the full Board prior to its making a decision to grant or deny parole. The deletion of the provision is in accordance with the agency advice provided by the Department of Law and Public Safety.

N.J.A.C. 10A:71-3.20(o)

COMMENT: The Commissioner of the Department of Corrections suggested that the Board specify the documents or information which are to be provided by the Department or, in the alternative, cross reference with a code section which lists the documents or reports required by the Board.

RESPONSE: The Board has determined to accept the Commissioner's recommendation and has identified a code section, as a cross reference, which identifies the appropriate documents, reports and information which may be required by the Board.

N.J.A.C. 10A:71-3.21

COMMENT: The Chief Counsel, Office of the Governor, the Assistant Commissioner for the Division of Juvenile Services, Department of Corrections, and the Office of the Public Defender submitted various comments in opposition to the proposed increase in the presumptive time goals for juvenile inmates. In general, it was presented that lengthier terms would be detrimental to the rehabilitation and reorientation of juvenile inmates; that juvenile inmates may routinely serve longer time periods than young adult inmates; that additional expenditures would be necessary to provide beds to confine juvenile inmates longer; and that further study is necessary to insure that the proposed increases serve the intended goals.

RESPONSE: The Board has determined not to adopt the proposed revision to the presumptive time goal schedule for juvenile inmates at the present time. All other proposed revisions to the section have been adopted.

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

10A:71-3.2 Calculation of parole eligibility terms

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

(g) Credits shall reduce parole eligibility terms as follows:

1.-3. (No change.)

4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.19, 3.44 and 7.16.

(h) (No change.)

10A:71-3.4 Institutional infractions; adult inmates

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

(d) Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1. (No change.)

2. Infraction Category B shall consist of .101, Escape (provided such escape is from a medium or maximum security location); .007, Hostage taking; .201, Possession or Introduction of an explosive, incendiary device or any ammunition; .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife or unauthorized tool (provided such weapon is a gun or other firearm); and .251, Rioting.

3.-7. (No change.)

(e)-(o) (No change.)

(p) Except as provided herein, the following procedures for the restoration of time by which an inmate's parole eligibility date was increased by a Board panel or designated hearing officer pursuant to this section shall apply to all inmates presently incarcerated.

1. Up to two-thirds of the time period by which an inmate's parole eligibility date was increased shall be restored to the inmate over the two year period immediately following the commission of the infraction which resulted in the increase to the parole eligibility date. The two year period must run consecutively and shall be calculated commencing from the date of the commission of the infraction. Time shall be restored at the rate of one-third for each year an inmate remains infraction free.

i. If an inmate completes the first year infraction free, the inmate shall have restored one-third of the time period by which the parole eligibility date was increased. In the case of an adult inmate, an appropriate adjustment in the amount of commutation credit applied in the computation of the increased parole eligibility date shall be made as a result of the restoration of time.

ii. If an inmate completes the second year infraction free, the inmate shall have restored one-third of the time period by which the parole eligibility date was increased. In the case of an adult inmate, an appropriate adjustment in the amount of commutation credit applied *[on]* ***in*** the computation of the increased parole eligibility date shall be made as a result of the restoration of time.

2. In no case shall an inmate be restored greater than two-thirds of the time period by which the parole eligibility date was increased.

3. It shall be the responsibility of the staff of the Board at each institution to periodically review the progress of inmates whose parole eligibility dates have been increased pursuant to this section.

4. Upon confirmation by the senior Board representative at the institution that an inmate has remained infraction free for the specified time periods, the senior Board representative shall insure that the staff of the Board:

i. Automatically restores the designated time period;

ii. Amends the inmate's records accordingly;

iii. Recomputes the inmate's parole eligibility date; and

iv. Notifies the inmate of the time period restored and the amended parole eligibility date.

5. The provisions of this subsection shall not apply in the following cases:

i. Inmates who have committed the following institutional infractions:

(1) .001—Killing;

(2) .002—Assaulting any person (only those cases where a person has suffered physical injury);

(3) .003—Assaulting any person with a weapon;

(4) .007—Hostage taking;

(5) .151—Setting a fire;

(6) .201—Possession or introduction of an explosive, incendiary device or any ammunition;

(7) .202—Possession or introduction of a gun, firearm, weapon, sharpened instrument or knife;

(8) .251—Rioting.

[ii. Inmates who have been denied parole pursuant to N.J.A.C. 10A:71-3.18.]

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1.-3. (No change).

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

10A:71-3.19 Board panel action; schedule of future parole eligibility dates for adult inmates

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

(e) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from that required by the provisions of (a) and (c) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled within 18 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1.-6. (No change.)

(f)-(i) (No change.)

10A:71-3.20 Notice of tentative parole release dates; juvenile inmates

(a) Upon the admission of a juvenile inmate to a State correctional facility, it shall be the responsibility of the chief executive officer of such facility to promptly notify the Board and provide to the Board such documents and information ***as specified in N.J.A.C. 10A:71-3.36*** as ***may be*** required by the Board in order to establish a tentative parole release date.

(b) Upon such notification and within 90 days of admission to a State correctional facility, each juvenile inmate shall be informed in writing of his or her tentative parole release date.

(c) Upon establishment of the tentative parole release date pursuant to N.J.A.C. 10A:71-3.21, the juvenile Board panel shall notify in writing the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee of the tentative parole release date established. The chief executive officer or designee may further distribute notice of the tentative parole release date as deemed appropriate.

10A:71-3.21 Establishment of tentative parole release dates; juvenile inmates

(a) Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a) (1) or (2))	100	80-120
Murder (N.J.S.A. 2C:11-3(a)(3))	50	40-60
Crime of First Degree (except Murder)	20	16-24
Crime of Second Degree	16	12-18
Sale or Distribution of Controlled Dangerous Substance, or Possession of Controlled Dangerous Substance with Intent to Distribute	12	10-14
Crime of Third Degree or Possession of Controlled Dangerous Substance	10	8-12
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

(b) If a juvenile inmate has been committed for several acts of delinquency, the act of delinquency which represents the most serious act of delinquency shall be considered in determining the tentative parole release date.

(c) The hearing officer, the juvenile Board panel member or the juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the tentative parole release date from the presumptive term established pursuant to (a) above:

1.-2. (No change.)

(d) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the tentative release date, a date within the range contained in the provisions of (a) above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior records of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

2. The hearing officer, juvenile Board panel member or the juvenile Board panel shall, at least 14 days prior to the Board panel's determination of the tentative release date, notify the juvenile inmate in writing that a tentative parole release date pursuant to (a) above has not been established and the reasons therefor.

3. The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any tentative parole release date which is outside the range contained in the provisions of (a) above.

(e) Pursuant to R.3:21-8, credit for time served in a county detention facility prior to the date of sentence shall reduce the tentative parole release date established pursuant to this section.

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

10A:71-3.22 Alteration of tentative parole release dates; juvenile inmates

(a) At the time of a quarterly review, any previously established tentative parole release date may be altered pursuant to N.J.A.C. 10A:71-3.28 or 3.30.

(b) If the juvenile inmate has participated satisfactorily in institutional programs or demonstrated good institutional adjustment, the tentative parole release date may be reduced.

1. If such inmate's level of institutional adjustment or program participation is above average, the reduction may be at the rate of 15 days for every month of the tentative parole release term.

2. If such inmate's level of institutional adjustment or program participation is average, the reduction may be at the rate of 10 days for every month of the tentative parole release term.

3. If such inmate's level of institutional adjustment or program participation is below average, the reduction may be at the rate of 5 days for every month of the tentative parole release term.

4. (No change.)

(c) The juvenile Board panel or a juvenile Board panel member may reduce a tentative parole release date outside of the schedule contained in the provisions of this section when deemed appropriate in view of the juvenile inmate's participation in institutional programs or the juvenile inmate's institutional adjustment.

(d) If a juvenile inmate has committed serious and/or persistent institutionl infractions or, has demonstrated poor institutional adjustment, the tentative parole release date may be increased. The adjusted tentative parole release date shall not be established at a date which exceeds 12 months from the previous tentative parole release date.

10A:71-3.23 Scheduling of quarterly reviews; juvenile inmates

(a) Except as provided herein, each juvenile inmate shall be scheduled for a quarterly review during the third month following the establishment of the tentative parole release date and during each third month thereafter; provided, however, that the juvenile Board panel may direct that a quarterly review be conducted prior to a quarterly review otherwise required pursuant to this section.

1.-4. (No change.)

5. It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer, the juvenile Board panel member or the juvenile Board panel, in writing, of the effort expended to produce the juvenile inmate and the reason(s) for the failure of the juvenile inmate to appear at a scheduled quarterly review.

10A:71-3.25 Quarterly review procedures; juvenile inmates

(a) (No change.)

(b) The purpose of the quarterly review shall be to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine whether the tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c), or to determine whether the tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.22(d).

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

10A:71-3.26 Preparation of progress reports; juvenile inmate

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

(c) The reviewing juvenile Board panel member(s) shall submit such progress report and any other documents deemed relevant or necessary with the notification of reduction in the tentative parole release date or certification of parole release to the sentencing court in those cases in which court approval is required. Additional information or documents shall be submitted to the sentencing court upon the request of the sentencing court.

10A:71-3.27 Quarterly review notice of decision; juvenile inmates

(a) At the conclusion of the quarterly review conducted by a hearing officer, the hearing officer shall:

1.-3. (No change.)

4. Recommend a decrease in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.22(a), (b) or (c); or

5. Recommend an increase in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.22(d); or

6. (No change.)

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

10A:71-3.28 Board member review; juvenile inmates

(a) Upon review of the recommendation of the hearing officer, the assigned member of the juvenile Board panel shall render the following determination(s):

1. A certification of:

i. A parole release date;

ii.-iii. (No change.)

2. (No change.)

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c);

4. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.22(d); or

5. (No change.)

6. Continue the case until the next quarterly review.

(b) (No change.)

(c) If the assigned member of the juvenile Board panel certifies a reduction in the tentative parole release date and/or certifies parole releases on a specific date prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the tentative parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(d) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required:

1. The assigned member of the juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the tentative parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and any other document deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel member whether the reduction in the tentative parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the tentative parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.

4. If the sentencing court does not approve the reduction in the tentative parole release date, the tentative parole release date shall not be reduced.

5.-6. (No change.)

7. If the sentencing court does not approve the parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8.-9. (No change.)

10A:71-3.30 Juvenile board panel case reviews

(a) Each juvenile inmate shall be scheduled for a comprehensive case review by the juvenile Board panel during the twelfth month following the establishment of the tentative parole release date and yearly thereafter instead of the quarterly review otherwise required pursuant to N.J.A.C. 10A:71-3.23(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.23(a).

(b) The purpose of such case review shall be to monitor the cumulative progress of the juvenile inmate, to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine the reasons for the continued confinement of the juvenile inmate, to determine whether the previously established tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c) and to determine whether the previously established tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.22(d).

(c) At the conclusion of the case review, the juvenile Board panel shall render the following determination(s):

1. A certification of:

i. A parole release date;

ii.-iii. (No change.)

2. (No change.)

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c);

4. Certify an additional reduction in the tentative parole release date in an amount deemed appropriate;

5. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.22(d); or

6. Continue the case until the next quarterly review.

(d) (No change.)

(e) If the juvenile Board panel certifies a reduction in the tentative parole release date or certifies parole release on a specific date prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the tentative parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(f) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required:

1. The juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the tentative parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and other documents deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel whether the reduction in the tentative parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the tentative parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10A:71-3.28 of this section.

4. If the sentencing court does not approve the reduction in the tentative parole release date, the tentative parole release date shall not be reduced.

5.-6. (No change.)

7. If the sentencing court does not approve the parole of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled

for a quarterly review pursuant to N.J.A.C. 10A:71-3.23. The purpose of the quarterly review shall to be determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8.-9. (No change.)

10A:71-3.43 Board panel hearing; notice of decision for county inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1.-3. (No change.)

10A:71-6.9 Discharge from parole

(a) (No change.)

(b) The Board panel will consider requests for discharge after the following periods of parole supervision have been completed:

1.-2. (No change.)

3. In the case of county parole absconders, after a period of *[24 months]* ***two years*** from the expiration date of the original maximum sentence, provided the parolee has no known arrests.

4. (No change in text.)

5. In the case of adult parole absconders, after a period of 10 years from the date the parolee became an absconder or after a period of five years from the expiration of the original maximum sentence, provided the parolee has no known arrests.

6. (No change in text.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Cancellation and Nonrenewal of Commercial Insurance Policies

Prohibition of Certain Cancellation and Nonrenewal Activity

Readoptions: N.J.A.C. 11:1-20 and 22

Proposed: May 16, 1988 at 20 N.J.R. 1061(a).

Adopted: June 24, 1988 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: June 24, 1988 as R.1988 d.341, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14(a)1, 2 and 3, 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-4 and 17:29C-1 et seq.

Effective Date: June 24, 1988.

Expiration Date: June 24, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Insurance is readopting N.J.A.C. 11:1-20 and N.J.A.C. 11:1-22 because the Department finds that the rules continue to be necessary to provide procedural and substantive requirements relating to the cancellation and nonrenewal of many commercial lines insurance policies. These readoptions were proposed on May 16, 1988 at 20 N.J.R. 1061(a). The Department received written comment from one person. Following is a summary of the comment along with the Department's response.

COMMENT: The only commenter requested that the proposed readoption be amended to establish an appeal procedure to review mid-term cancellations that occur due to an "increase in the hazard." The commenter stated that such an appeal procedure would protect the insurance buying public by assuring the consumer that such cancellation did in fact result from an increase in the hazard and was not merely a fiction for an otherwise unlawful mid-term cancellation.

RESPONSE: The Department believes that the proposed readoptions already address the concern for protecting insurance consumers which the commenter raises. In fact, the current Department approach addresses more complaint situations than those raised by the commenter. Pursuant to N.J.A.C. 11:1-20.1, 11:1-20.2(g) and (h), 11:1-20.4(d) and (i), and 11:1-22.1, the Department already receives and handles written complaints made by insureds concerning cancellation and nonrenewal. The current Department approach of receiving written complaints from insureds works well and the Department has received no indication from insureds that the current Department approach is inadequate.

In addition to being unnecessary at this time, creation of any new appeal procedure would be a substantive change to the current rules and would require reproposal of the rules. The Department will monitor the situation under the readoptions and will consider the commenter's recommendation as a future amendment to the rules if and when such amendment becomes necessary.

The Department readopts without change N.J.A.C. 11:1-20 and 11:1-22.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:1-20 and 11:1-22.

(b)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Fraud Prevention: Verification and Claim Form Statement

Adopted Amendments: N.J.A.C. 11:16-1.1 and 1.5

Adopted Repeal: N.J.A.C. 11:16-1.2 through 1.4 and Appendices A and B.

Proposed: May 16, 1988 at 20 N.J.R. 1062(a).

Adopted: June 24, 1988 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: June 24, 1988 as R.1988 d.342, **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. 17:1C-6(e), 17:33A-6 and P.L. 1987, c.342.

Effective Date: July 18, 1988.

Expiration Date: February 3, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The Department received one (late) comment concerning this proposal. The American Insurance Association (AIA) recommended that N.J.A.C. 11:16-1.5, which is recodified as section 1.2 in the proposal, be amended to allow the statement of liability for fraud to be "attached" to the claim form as an alternative to being placed "on" the form itself. AIA argues that this alternative form of notice is "more cost effective" and "more prominent." AIA also states that the alternative form of notice "has been followed by insurers in the past."

RESPONSE: Although the comment was not timely received, the Department notes that the requested amendment is purely procedural and mechanical in nature and does not affect the substantive requirement of the rule requiring that insurers warn claimants against the commission of fraud in the filing of claims. The Department agrees with the position taken by the AIA and with the reasons therefor. Accordingly, the Department has made the requested change upon adoption.

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

SUBCHAPTER 1. CLAIM FORM STATEMENTS

11:16-1.1 Scope; definitions

(a) This subchapter applies to all insurers in the State of New Jersey.

(b) (No change.)

11:16-1.2 Statement of liability for fraud on claim forms

Insurers *[must place the following warning on all claim forms]* ***shall either place on or attach to all claim forms the following warning***:

"Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties."

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival Amusement Rides

Readoption with Amendments: N.J.A.C. 12:195

Proposed: May 16, 1988 at N.J.R. 1072(a).
Adopted: June 24, 1988 by Charles Serraino, Commissioner, Department of Labor.
Filed: June 24, 1988 as R.1988 d.333, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 5:3-31 et seq., specifically 5:3-36.

Effective Date of Readoption: June 24, 1988.
Effective Date of Amendments: July 18, 1988.
Expiration Date: June 24, 1993.

Summary of Public Comments and Agency Responses:

The Department of Labor received one public comment from the Department of Community Affairs (DCA) on the proposed readoption concerning Carnival-Amusement rides.

COMMENT: The DCA stated that the proposal contained outdated references to various model codes, specifically, the fire codes and construction codes. DCA suggested that the Department update these references upon adoption.

RESPONSE: The Department agrees with the suggestions offered by DCA, and has amended the rules to update the code references. The amendments include the deletion of N.J.A.C. 12:195-4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11 and 4.12 and replacing a reference at N.J.A.C. 12:195-4.3 to the State Uniform Fire Code (N.J.A.C. 5:18). The amendment at N.J.A.C. 12:195-4.2 deletes the current text and replaces it with a reference to the U.C.C. (N.J.A.C. 5:23).

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:195.

Full text of the changes between proposal and adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

12:195-1.4 Documents referred to by reference

(a) (No change from proposal.)

(b) The standards listed below have been utilized in the development of this rule, where appropriate:

1. ASTM F698-1983, Physical Information to be provided for Amusement Rides and Devices;
2. ASTM F747-*[1982,]* ***1986,*** Definitions of Terms Relating to Amusement Rides and Devices;
3. ASTM F77-*[1983,]* ***1982, Practice for*** Operations Procedures For Amusement Rides and Devices;
4. ASTM F846-*[1983,]* ***1986, Guide for*** Testing Performance of Amusement Rides and Devices;
5. ASTM F853-*[1983,]* ***1986, Practice for*** Maintenance Procedures For Amusement Rides and Devices; and
6. ASTM F893-*[1984,]* ***1987, Guide for*** Inspection of Amusement Rides and Devices.

12:195-3.9 Passenger tramways

(a) Aerial Passenger Tramways, ANSI 13.77.1-1982 ***and B77.1b-1988*** is incorporated herein by reference with the modifications as indicated in (b) below.

(b) The following are modifications to the standards as referenced in (a) above:

1. Sections 1.1 through 1.3 and Section 8 are deleted.
2. Any standards relating to administration or reporting are deleted.

(c) Each owner engaged in passenger tramway operations shall protect the public by complying with the standards as referenced in (a) above.

(d) Where any conflict occurs between the standards referenced in (a) above and any other rule in this chapter, the latter shall prevail.

12:195-3.10 Electrical equipment

(a) The National Electrical Code, NFPA No. 70-*[1984]* ***1987*** is incorporated by reference.

(b) Permanent wiring shall be subject to the following requirements:

1. All electrical wiring and equipment used for amusement rides or for lighting shall be installed and maintained in accordance with the code as referenced in (a) above.

2.-6. (No change.)

(c) 1.-4. (No change.)

5. Grounding which does not have a resistance to ground of 25 ohms or less shall be augmented by one additional electrode of any of the types specified in section 250-83 of the code referenced in (a) above.

6. (No change.)

(d) (No change.)

12:195-3.11 Air compressors

(a) (No change.)

(b) Air compressor tanks and other receivers used in connection with air compressors shall comply with the provisions set forth at N.J.A.C. 12:90, concerning boilers, pressure vessels and refrigeration.

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

12:195-4.2 Construction

*[(a) The BOCA Basic Building Code—1981 is incorporated herein by reference.

(b) The following are modifications to the code referenced in (a) above.

1.-2. (No change.)

(c) All buildings and structures shall be constructed to conform to the requirements of the code referenced in (a) above governing use and occupancy as regulated by 214, Fire Resistance Ratings of Structural Elements and Table 305, Height and Area Limitations of Buildings and in compliance with the fire limit restrictions of N.J.A.C. 12:195-4.8, 4.9 and 4.10, except as may be specifically required in N.J.A.C. 12:195-4.3, 4.4 and 4.5.]* ***Buildings and structures that are a functional part of an amusement ride shall be constructed to conform to the State Uniform Construction Code, N.J.A.C. 5:23.***

12:195-4.3 *[Height]* ***Fire Safety***

[The maximum height of an amusement device in which passengers are transported shall not exceed forty feet in frame (Type 4) construction; one hundred feet in unprotected noncombustible (Type 2C) and heavy timber mill (Type 3A) construction; and shall not be limited in fireproof (Type 1) construction.]

Buildings and structures that are a functional part of an amusement ride shall be maintained for fire safety as provided in the State Uniform Fire Code, N.J.A.C. 5:18.

12:195-4.4 *[Fire resistance]* ***(Reserved)***

[All enclosed amusement park buildings over one story in height shall be constructed or protected to furnish not less than one hour fire resistance rating; except where roof framing and decking are specifically permitted to be of noncombustible or mill type construction under the provisions of the code referenced in N.J.A.C. 12:195-4.2(a).]

12:195-4.5 *[Proximity to lot lines]* ***(Reserved)***

[All structures located within twenty feet of lot lines or within twenty feet of other structures on the same lot shall be of protected noncombustible (Type 2B) or protected masonry enclosed (Type 3A or 3B) construction or better.]

12:195-4.6 *[Walkways and ramps]* ***(Reserved)***

*[(a) (No change.)

(b) Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI A17.1-1978, is incorporated herein by reference.

(c) (No change.)]*

12:195-4.7 *[Fire protection]* ***(Reserved)***

*[In addition to the fire extinguisher and fire fighting equipment required by the use and occupancy of each building and structure under the provisions of the code referenced in N.J.A.C. 12:195-4.2(a),

every amusement ride building or structure, when required by the Commissioner, shall be provided with a system of fire hydrants and fire lines with the required water supply complying with Article 12 of the code referenced in N.J.A.C. 12:195-4.2(a).]*

12:195-4.8 *[Fire limits]* ***(Reserved)***

*[(a) The fire limits shall comprise the areas containing congested business, commercial manufacturing and industrial uses or in which such uses are developing.

(b) All other areas not included in the fire limits shall be designated as outside fire limits.]*

12:195-4.9 *[Restrictions within the fire limits]* ***(Reserved)***

*[(a) All buildings and structures, and all additions to existing buildings and structures, hereafter erected within the boundaries of the fire limits shall be of fireproof (Type 1), protected noncombustible (Type 2A and 2B), heavy timber (Type 3A), or ordinary protected (Type 3B), construction and regulated in Table 214 of the code referenced in N.J.A.C. 12:195-4.2(a); and shall be constructed within the height and area limitations of Table 305 of the code referenced in N.J.A.C. 12:195-4.2(a) except as herein provided.

(b) Type 2C, 3C and 4A construction permitted:

1. Buildings and structures, and additions to existing buildings and structures, hereafter erected within the fire limits may be of unprotected noncombustible (Type 2C), ordinary unprotected (Type 3C), or protected frame (Type 4A) construction and shall be regulated in Tables 214 and 305 of the code referenced in N.J.A.C. 12:195-4.2(a) when constructed and located in accordance with one of the following methods described in (b)1i through iii below or an approved combination thereof.

i.-iii. (No change.)

2. (No change.)

(c)-(e) (No change.)]*

12:195-4.10 *[Restrictions outside fire limits]* ***(Reserved)***

*[(a) General: Outside the fire limits, all types of construction except as herein specifically prohibited, shall be permitted within the height and area limitations of Table 305 of the code referenced in N.J.A.C. 12:195-4.2(a).

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

12:195-4.11 *[Existing buildings]* ***(Reserved)***

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

(d) Increase in height and area: It shall be unlawful to increase the height or area of an existing building or structure, unless it is of a type of construction permitted for new buildings of the increased height and area, and of a use group within the fire limit in which it is located and as regulated by Table 305 of the code referenced in N.J.A.C. 12:195-4.2(a).]*

12:195-4.12 *[General area and height limitations]* ***(Reserved)***

*[(a) General: The areas and heights of all buildings and structures between exterior walls, or between exterior walls and fire walls, shall be governed by the type of construction and shall not exceed the limits fixed in Table 305 of the code referenced in N.J.A.C. 12:195-4.2(a) except as these may be specifically modified by other provisions of the code referenced in N.J.A.C. 12:195-4.2(a).

(b) Area limit: The area limitations specified in Table 305 of the code referenced in N.J.A.C. 12:195-4.2(a) shall apply to all buildings fronting on a street, or public space not less than thirty feet in width accessible to a public street.

(c) Height limit: The height in feet and number of stories specified in Table 305 of the code referenced in N.J.A.C. 12:195-4.2(a) shall apply to all buildings and to all separate parts of a building enclosed within lawful fire walls and complying with the provisions of fire resistive construction in N.J.A.C. 12:195-4.2.]*

12:195-6.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter is as follows:

[1. ANSI A17.1-1978, Elevators, Dumbwaiters, Escalators and Moving Walks;]

[2.] ***1.*** ANSI B77.1-1982 ***and B77.1b-1988***, Aerial Passenger Tramways;

[3.] ***2.*** ASTM F698-1983, Physical Information to be provided for Amusement Rides and Devices;

[4.] ***3.*** ASTM F747-*[1982]* ***1986***, Definitions of Terms Relating to Amusement Rides and Devices;

[5.] ***4.*** ASTM F770-*[1983,]* ***1982, Practice for*** Operations Procedures for Amusement Rides and Devices;

[6.] ***5.*** ASTM F846-*[1983,]* ***1986, Guide for*** Testing Performance of Amusement Rides and Devices;

[7.] ***6.*** ASTM F853-*[1983,]* ***1986, Practice for*** Maintenance Procedures For Amusement Rides and Devices;

*[8.]****7.*** ASTM F893-*[1984,]* ***1987, Guide for*** Inspection of Amusement Rides and Devices;

[9. BOCA-1981, Basic Building Code;]

*[10.]****8.*** NFPA No. 70-*[1984,]* ***1987,*** National Electrical Code;

*[11.]****9.*** N.J.A.C. 12:90, Boilers, Pressure Vessels and Refrigeration;

*[12.]****10.*** N.J.A.C. 5:23, Uniform Construction Code;

*[13.]****11.*** N.J.S.A. 5:3-31 et seq., Carnival-Amusement Rides Safety Act;

*[14.]****12.*** N.J.S.A. 17:22 et seq., Surplus Lines Law;

*[15.]****13.*** N.J.S.A. 34:6-47-1 et seq., High Voltage Proximity Act; ***and***

14. N.J.A.C. 5:18, Uniform Fire Code.*

12:195-6.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
*[Station Plaza—Building 4
East State Street and South Clinton Avenue]*
Third Floor, Station Plaza 4
South Clinton and Yard—CN 386*
Trenton, New Jersey ***08625-0386***

12:195-6.3 Availability of documents from issuing organization

Copies of the referred to standards and publications in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:195-6.1.

ANSI—American National Standards Institute
1430 Broadway
New York, New York, 10018

ASTM—American Society for Testing and Materials
1916 Race Street
Philadelphia, Pa. 19103

*[BOCA—Building Officials and Code Administrators
4051 West Flossmoor Road
Country Club Hills, Illinois 60477-5795]*

NFPA—National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

NJAC 12:90—New Jersey Administrative Code
Copies available from:
Office of Boiler and Pressure Vessel Compliance
New Jersey Department of Labor
CN 392
Trenton, N.J. 08625-0392

***NJAC 5:18—New Jersey Administrative Code**
Copies available from:
Bureau of Fire Safety
Department of Community Affairs
CN 809
Trenton, N.J. 08625-0809*

NJAC 5:23—New Jersey Administrative Code
Copies available from:
Construction Code Enforcement Bureau
Department of Community Affairs

Central Services/Publications
CN 805
Trenton, N.J. 08625-0805
NJSA—New Jersey Statutes Annotated
Copies available from:
Office of Safety Compliance
New Jersey Department of Labor
CN 386
Trenton, N.J. 08625-0386

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF COSMETOLOGY AND HAIRSTYLING

Fee Schedule

Adopted New Rule: N.J.A.C. 13:28-5.1

Proposed: April 18, 1988 at 20 N.J.R. 886(a).
Adopted: June 8, 1988, by Board of Cosmetology and Hairstyling, Frances Gray, chairperson.
Filed: June 24, 1988 as R.1988, d.343, **without change.**

Authority: N.J.S.A. 45:5B-6.

Effective Date: July 18, 1988.
Expiration Date: May 16, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received during the 30-day comment period. The commenter requested that the Board reconsider the proposed increase, which was described as "outrageous".

RESPONSE: The Board has attempted to minimize any adverse economic impact on licensees, while carrying out its statutorily mandated duties. Inasmuch as fees have remained unchanged since December 1985, adoption of the proposed fee schedule is imperative in order to meet present costs.

Full text of the adoption follows.

SUBCHAPTER 5. FEES

13:28-5.1 Fee Schedule

(a) The following fees will be charged by the Board:

1. Initial shop license (one year):	$ 50.00
2. Biennial shop license—renewal:	$ 70.00
3. Examination fee for practicing and teacher licenses:	$ 30.00
4. Biennial barber license—renewal:	$ 30.00
5. Biennial beautician license—renewal:	$ 30.00
6. Biennial cosmetologist hairstylist license—renewal:	$ 30.00
7. Biennial manicurist license—renewal:	$ 30.00
8. Biennial teacher license—renewal:	$ 30.00
9. Restoration fee for lapsed practicing and teaching licenses:	$ 40.00 plus license fee
10. Duplicate license:	$ 10.00
11. Initial school license (one year):	$150.00
12. Biennial school license—renewal:	$150.00
13. Endorsement:	$ 50.00 plus license fee
14. Student registration card:	$ 3.00
15. Student permit:	$ 3.00
16. Temporary permit:	$ 20.00

(b)

Practice of Audiology and Speech-Language Pathology

Adopted Repeal: N.J.A.C. 13:44C
Adopted New Rules: N.J.A.C. 13:44C

Proposed: February 1, 1988 at 20 N.J.R. 244(b).
Adopted: June 13, 1988 by James J. Barry, Jr., Director, New Jersey Division of Consumer Affairs.
Filed: June 24, 1988 as R.1988 d.344, **with substantive and technical changes not requiring additional notice and comment.**

Authority: N.J.S.A. 45:3B-24.

Effective Date: July 18, 1988.
Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:

1. COMMENT: The proposed rule, which provides a three-year (36 month) limit for the completion of the clinical internship N.J.A.C. 13:44C-3.2(a)3.v., should be revised to be 18 months to conform to the statutory amendment of P.L. 1983, c.420, as amended by P.L. 1987 c.332.

RESPONSE: The adopted version of N.J.A.C. 13:44C-3.2(a)3.v. has been revised to read "18 consecutive months" in compliance with statutory language.

2. COMMENT: The selection of a score of 600 or the 16th or greater percentile on the National Teachers' Examination (N.J.A.C. 13:44C-3.2(a)4) is questioned.

RESPONSE: In order to allay fears that the Committee could, at its discretion, select either a score of 600 or a higher score within the 16th or greater percentile the adopted version of N.J.A.C. 13:44C-3.2(a)4 has been reworded to read, ". . . a score of 600 or a lower score within the 16th or greater percentile on the National Teachers' Examination . . ."

3. COMMENT: N.J.A.C. 13:44C-5.2 should be reworded to reflect the two types of temporary licensure specified in P.L. 1983, c.420, as amended by P.L. 1987 c.332. (N.J.S.A. 45:3B-14)

RESPONSE: N.J.A.C. 13:44C-5.2 has been revised to set forth requirements for temporary licensure in two areas: recent residents and clinical internships.

4. COMMENT: It is suggested that N.J.A.C. 13:44C-5.3 be reworded to reflect an 18 month limitation for clinical internships.

RESPONSE: The adopted version of N.J.A.C. 13:44C-5.3, relating to temporary licensure, has been revised to designate a one year non-renewable time limit for recent residents and an 18 month non-renewable time limit for clinical internships.

5. COMMENT: Clarification is sought of use of the term "new graduate course" in N.J.A.C. 13:44C-6.2(b)2., relating to credit for Continuing Professional Education.

RESPONSE: The term "new" in N.J.A.C. 13:44C-6.2(b)2. has been defined in the adopted version as, ". . . new to the person teaching it; a course which the licensee has never taught before in any educational setting."

6. COMMENT: It was noted that the reference to 36 months in N.J.A.C. 13:44C-7.2(a)6 is incorrect.

RESPONSE: N.J.A.C. 13:44C-7.2(a)6 has been revised in the adopted version to read "18 months", in compliance with statutory language.

7. COMMENT: A recommendation was made to eliminate or rename Subchapter 8 which is proposed as "Unlawful Practices".

RESPONSE: The adopted version of Subchapter 8 has been entitled "Unprofessional Conduct". N.J.A.C. 13:44C-8.1 now addresses unprofessional conduct in business practices and N.J.A.C. 13:44C-8.2 now addresses professional practices.

8. COMMENT: Clarification is sought regarding how the "Unlawful Practices" of N.J.A.C. 13:44C-8 are to be determined and enforced.

RESPONSE: The Committee would initially like to note that N.J.A.C. 13:44C-8 will be entitled "Unprofessional Conduct" in the adopted version of the rules. The provisions of this subchapter have been patterned after those of other licensing boards which have been operating successfully. The Committee believes these provisions are reasonable and clear. Licensees are furnished with adequate notice of the standards, which the Committee deems to be in the best interest of the public.

9. COMMENT: Concern is expressed relating to patient records and a patient's right to confidentiality.

RESPONSE: The Committee would like to assuage any concern with regard to the issue of confidentiality. All patient names, to the best of the Committee's ability, will be kept confidential and, if possible, shall not appear in any document of public record.

10. COMMENT: It is suggested that calibration standards, alternative to "ANSI-1969, and all subsequent revisions", be permitted.

RESPONSE: The Committee notes that the "ANSI-1969, and all subsequent revisions" calibration standard is the sole recognized national standard in the field. Therefore, no change has been made.

11. COMMENT: Procedural clarity is sought regarding the filing of a complaint and subsequent actions to be taken under N.J.A.C. 13:44C-10, Disciplinary Actions.

RESPONSE: Consistent with the handling of disciplinary actions by other licensing entities, the Committee will adhere to the procedures set forth in 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).

12. COMMENT: Additional verification procedures are requested to review the content and quality of workshops and seminars to be accepted for Continuing Professional Education credit.

RESPONSE: This issue has been previously addressed by the Committee. Many alternatives were reviewed and found to be too cumbersome. Responsibility is therefore placed on the licensee. The Committee would like to note that appropriate "out-of-state" workshops and seminars will be accepted for Continuing Professional Education credit.

13. COMMENT: The provision referencing a specialty in the field (N.J.A.C. 13:44C-8.1(a)11.vi.) is questioned since there is no vehicle for formal recognition of a specialty in the field.

RESPONSE: The Committee confirms that there is presently no vehicle for formal recognition of a specialty in the field. However, this rule prohibits a licensee from stating or implying that he or she is a specialist in any aspect of the practice of audiology or speech-language pathology. Therefore, no change has been made.

14. COMMENT: A suggestion was made to reword N.J.A.C. 13:44C-9.1(a)1. to read "offering for a fee".

RESPONSE: In compliance with statutory language (N.J.S.A. 45:3B-15), N.J.A.C. 13:44C-9.1(a)1. makes it unlawful for an individual who is not licensed in the practice of audiology or speech-language pathology to offer any services in that field, whether or not for a fee. Therefore, no change has been made.

15. COMMENT: Clarification is sought for the term "moral" used in N.J.A.C. 13:44C-10.1(a)6.

RESPONSE: The term "moral", as used in the phrase "moral turpitude", is a legal term of art. Determination of application of this section will be consistent with the procedures of other licensing boards.

16. COMMENT: Inquiry is made, referring to N.J.A.C. 13:44C-10.1(a)8., as to who will decide incapability; how will it be determined; and what type of information will be presented?

RESPONSE: Determination of incapability will be made by the Director and the Committee based on competent evidence, pursuant to established legal standards.

17. COMMENT: It was noted that the two-year licensure fee does not provide for prorated fees.

RESPONSE: The committee cannot revise this provision unless the State's Central Licensing Department endorses a prorating schedule.

18. COMMENT: It was suggested that the phrase "on site" be added to N.J.A.C. 13:44C-7.2(a)2., requiring the direct supervision of a physician, where services are provided by an employee who is not a fully licensed audiologist or speech-language pathologist.

RESPONSE: This suggestion has been previously addressed by the Committee. It continues to be the Committee's opinion that the phrase "direct supervision" is adequate in this instance.

19. COMMENT: Clarification is requested pertaining to N.J.A.C. 13:44C-10.1(a)8., to avoid suspension or revocation of a license from a professional who is not practicing during the time that his or her medical condition is being questioned.

RESPONSE: The Committee points out that the wording of the rule states a license ". . . may be suspended or revoked . . . upon a finding by the director . . ." Legal conclusions and factual findings will be determined on a case by case basis.

20. COMMENT: Clarification is sought relating to procedures to be implemented for the suspension and revocation of licenses (N.J.A.C. 13:44C-10).

RESPONSE: It should initially be noted that the word "hearing" was inadvertently omitted in the second sentence of this paragraph. The adopted version will read, "The hearing will be 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".

All actions relating to the suspension and revocation of licenses will be pursuant to the procedures set forth in N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

21. COMMENT: It is improper for an individual to gain Continuing Professional Education credit if the seminar, lecture or in-service workshop is part of the individual's major source of income or activity.

RESPONSE: Both N.J.A.C. 13:44C-6.2(b)1. and 2. have been revised in the adopted version of the rules to limit any credit earned to "new" seminars, lectures, in-service workshops, or graduate courses. "New" is defined as new to the licensee; one which the licensee has never presented or taught in any setting.

The encouragement of licensees to earn Continuing Professional Education credit(s) continues to be the only intention of the Committee, with regard to these provisions.

22. COMMENT: The wisdom of the provision in N.J.A.C. 13:44C-6.2(b)6., which grants one credit per contact hour is questioned.

RESPONSE: The Committee's goal is to encourage licensees to earn Continuing Professional Education credits which are graduate courses in the field beyond those required for licensure. The Committee believes that the one credit per contact hour provision will achieve this goal.

23. COMMENT: The Committee should not be involved in the preparation of the insurance forms referred to in N.J.A.C. 13:44C-8.1(a)5.

RESPONSE: The Committee has modeled these rules after those of other licensing boards which have been operating successfully. This provision is deemed to be in the best interest of the public.

24. COMMENT: A request was made to delete the term "nationally recognized" as it is used in N.J.A.C. 13:44C-6.2(b)5., to allow inclusion of international professional organizations.

RESPONSE: The Committee has determined that it is unnecessary to delete the term "nationally recognized," since an international professional organization would be included in those deemed "nationally recognized."

25. COMMENT: The necessity of including a reinstatement fee in the schedule of fees is questioned since there is no other reference to reinstatement fee in the text of the rules.

RESPONSE: The Committee has determined that the reinstatement fee should remain in the schedule of fees. It is important to note that this reference applies to the statutory provision which allows a fee to be charged for reinstatement one year after the revocation of a license, as well as to other situations, such as the expiration of a license.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

CHAPTER 44C
AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE

SUBCHAPTER 1. GENERAL REQUIREMENTS

13:44C-1.1 Change of Address or Telephone

Every licensed audiologist and speech-language pathologist shall notify the director of the Division of Consumer Affairs ("director") in writing within 60 days of any change in office address or office telephone number.

SUBCHAPTER 2. ADMINISTRATION; FEES

13:44C-2.1 Election of officers

The membership of the New Jersey Audiology and Speech-Language-Pathology Advisory Committee shall once each year elect a chairman, and a secretary-treasurer. The chairman shall have the responsibility to conduct all meetings unless, in his or her discretion, a delegation of that responsibility is made. In the absence of the chairman or an express delegation of responsibility, the secretary-treasurer shall assume all duties of the chairman.

13:44C-2.2 Fees and charges

(a) The following fees shall be charged by the Advisory Committee:

1. Application fee	$10.00
2. License fee for two years	$100.00
3. Temporary license fee for one year	$50.00
4. Reinstatement fee	$10.00
5. Certification of licensure to other states	$25.00
6. Duplicate license or wall certificate	$10.00
7. Replacement of license or wall certificate on account of name change	$25.00

SUBCHAPTER 3. REQUIREMENTS FOR LICENSURE AS AUDIOLOGIST OR SPEECH-LANGUAGE PATHOLOGIST

13:44C-3.1 Application forms

(a) Applications for licensure may be obtained at the office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey, 07102.

(b) All applications for licensure shall be accompanied by the fee as set forth in N.J.A.C. 13:44C-2.2.

13:44C-3.2 Requirements for licensure

(a) An applicant for licensure shall submit the following to the Advisory Committee:

1. Satisfactory proof of graduation from a master's degree program or its equivalent in the area of audiology, speech-language pathology, or both, at an accredited college or university acceptable to the New Jersey Department of Higher Education.

i. "Equivalency of a master's degree" means holding a bachelor's degree from an accredited college or university and at least 42 post-baccalaureate semester hours acceptable toward a master's degree, of which at least 30 semester hours shall be in the areas of speech-language pathology or audiology. At least 21 of these 42 semester hours shall have been obtained from a single college or university. No more than six semester hours may be in the courses that provide credit for clinical practice obtained during academic training.

2. Transcripts from one or more accredited educational institutions evidencing the completion of a total of 60 semester hours of academic credit that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication, development and disorders thereof and clinical techniques for evaluation and management of such disorders, as follows:

i. Twelve of the 60 semester hours shall be obtained in courses that provide information that pertains to normal development and normal functions of speech, language and hearing processes.

ii. Thirty of the 60 semester hours shall be in courses that provide information relative to communication disorders and information about, and training in, evaluation and management of speech, language and hearing disorders. At least 24 of these 30 semester hours shall be in courses in the professional area (audiology or speech-language pathology) for which the license is requested, and at least six semester hours must be in audiology for the license in speech-language pathology, or in speech-language pathology for the license in audiology. No more than six semester hours may be in courses that provide credit for clinical practice obtained during academic training.

iii. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of audiology or speech-language pathology may also apply toward the 60 total semester hours.

iv. Thirty of the total 60 semester hours that are required for a license shall be in courses that are acceptable toward a graduate degree by the college or university in which they are taken. Moreover, 21 of those 30 semester hours shall be within the 24 semester hours required in the professional area (audiology or speech-language pathology) for which the license is requested or within the six semester hours required in the other area.

v. A minimum of 300 clock hours of supervised clinical experience with individuals who present a variety of communication disorders, and this experience must have been obtained within the training institution or in one of its cooperating programs.

3. Satisfactory proof of completion of a clinical internship in the professional area for which the license is sought. Clinical internship shall be under the direct supervision of a person licensed to practice audiology or speech-language pathology, as appropriate, by this State or another state which has standards substantially equivalent to those of this State; ***or if practicing in an exempt setting or in a State without licensure or comparable requirements,*** or a person who holds a Certificate of Clinical Competence (C.C.C.) by the American Speech-Language-Hearing Association (ASHA) or its equivalent. The clinical internship shall comprise no less than nine months of full-time professional employment.

i. "Professional employment" means direct clinical work with patients, consultations, record keeping, and any other duties relevant to a bona fide program of clinical work.

ii. At least half of the clinical experience shall be in direct clinical contact with persons who have communication disorders. Time spent in supervision of students, academic teaching and research, as well as administrative activity that does not deal directly with management programs of specific patients or clients will not be counted as professional employment in this context.

iii. Full-time employment is defined as a minimum of 30 clock hours of work per week. This requirement also may be fulfilled by part-time employment as follows:

(1) Work of 15-19 hours per week over 18 months;

(2) Work of 20-24 hours per week over 15 months;

(3) Work of 25-29 hours per week over 12 months.

iv. In the event that part-time employment is used to fulfill a part of the clinical internship, 100 percent of the minimum hours of the weekly part-time work requirement must be spent in direct professional employment as defined in i. above.

v. The clinical internship must be completed within a maximum period of *[36]* ***18*** consecutive months. Professional employment of less than 15 hours per week will not fulfill any part of this requirement.

4. Satisfactory proof of having achieved a score of 600 ***a lower score within*** or the 16th or greater percentile on the National Teachers' Examinations in audiology or speech-language pathology, as appropriate, administered ***and set*** by the Educational Testing Service in Princeton, New Jersey. An applicant may substitute a current and valid license to practice audiology or speech-language pathology, as is appropriate, issued by another state with substantially equivalent requirements for licensure, as satisfactory proof of having passed the examination.

13:44C-3.3 Waiver

The director may waive provisions of this subchapter for good cause shown.

SUBCHAPTER 4. PROVISIONAL LICENSURE AS AUDIOLOGIST OR SPEECH-LANGUAGE PATHOLOGIST

13:44C-4.1 Applications

(a) Applications for provisional licensure may be obtained at the office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(b) All applications for provisional licensure shall be accompanied by the fee set forth in N.J.A.C. 13:44C-2.2.

13:44C-4.2 Requirements for provisional licensure

(a) Applicants for provisional licensure shall submit satisfactory proof of the following to the Advisory Committee:

1. Graduation from a bachelor's degree program from an accredited college or university acceptable to the New Jersey Department of Higher Education;

2. Having been actively engaged in the practice of audiology or speech-language pathology or both in New Jersey for three of the last five years immediately preceding January 5, 1984;

3. Working toward fulfillment of the requirements for licensure as an audiologist or speech-language pathologist;

4. The name and credentials of the supervisor and the applicant's place of employment; and

5. A plan of provisional licensee supervision which meets the requirements of 13:44C-4.5.

13:44C-4.3 Supervision plan; forms

The applicant's supervisor must document the supervision plan on a form provided by the director.

13:44C-4.4 Application deadline; renewal

For applicants who applied for a license prior to February 12, 1987 and were found eligible for provisional licensure, the provisional license shall be in effect for a period of two years and may be renewed once. No provisional licenses shall be issued after February 12, 1989.

13:44C-4.5 Supervision

(a) A holder of a provisional license may work only under the supervision of a licensed audiologist or speech-language pathologist, as appropriate, who shall be responsible for the actions of the provisional licensee.

(b) Supervision shall consist of no less than one hour of on-site direct supervision per 20 hours of direct, face-to-face evaluation or therapeutic services and shall take place not less than once a month.

SUBCHAPTER 5. APPLICANTS FOR TEMPORARY LICENSURE AS AUDIOLOGIST OR SPEECH-LANGUAGE PATHOLOGIST

13:44C-5.1 Applications

(a) Applications for temporary licensure may be obtained at the Office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(b) All applications for temporary licensure shall be accompanied by the fee set forth in N.J.A.C. 13:44C-2.2.

13:44C-5.2 Requirements for temporary licensure

(a) An applicant for temporary licensure ***as a recent resident*** shall submit the following to the Advisory Committee:

1. A notarized statement by the applicant that the applicant has become a resident of New Jersey within the preceding six months; ***and***

2. Proof that the applicant holds a current and valid license to practice audiology and/or speech-language pathology in another state.

***(b) An applicant for temporary licensure during a clinical internship shall submit the following to the Advisory Committee:**

1. A notarized statement by the applicant relating to participation in a clinical internship;

2. A notarized statement by applicant's supervisor relating to applicant's participation in a clinical internship;

3. A clinical internship plan signed by the applicant and supervisor in compliance with N.J.A.C. 13:44C-3.2(a)3;

4. Proof of a master's degree in audiology or speech-language pathology from an accredited college or university acceptable to the Department of Higher Education; and

5. Transcripts documenting completion of specific requirements to be determined by the director in consultation with the Committee and the Department of Higher Education.*

13:44C-5.3 *[One year limit]* ***Limits*** on temporary *[license]* ***licensure***

(a) A temporary license ***for a recent resident*** is valid for one year and cannot be renewed.

(b) A temporary license for individuals participating in a clinical internship is valid for 18 months and cannot be renewed.

SUBCHAPTER 6. CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

13:44C-6.1 License renewal

No license renewal shall be issued by the director until the applicant submits satisfactory proof to the Advisory Committee that during the two calendar years preceding application for renewal he or she has participated in courses of Continuing Professional Education of the types and number of credits hereinafter specified. Such continuing education is a mandatory requirement for license renewal.

13:44C-6.2 Allocation of credit

(a) Evidence of 20 documented hours of Continuing Professional Education shall be required biennially of each applicant for renewal.

(b) Credit for all Continuing Professional Education will be granted as follows for each two-year period:

1. Giving a ***new*** seminar or lecture or in-service workshop: One hour per contact hour up to a maximum of 10 hours.

i. ***"New" means new to the person presenting a seminar, lecture or in-service workshop; a seminar, lecture or in-service workshop which the licensee has never presented before in any setting.***

*[i.]****ii.*** "Contact hour" means one hour of actual presence in or participation in a course of study.

2. Teaching a new graduate course: six hours for each new course up to a maximum of 12 hours.

i. "New" means new to the person teaching it; a course which the licensee has never taught before in any educational setting.

3. Publication in a national journal of a copyrighted article in audiology or speech-language pathology: three hours per publication to a maximum of six hours.

4. Attendance at seminars and conferences: one hour per contact hour.

5. Self-Assessment Home Study courses accompanied by examination and sponsored by a nationally-recognized professional organization in audiology or speech-language pathology: maximum of 10 hours.

6. Successful completion of graduate course work taken beyond that required for professional license: one hour per contact hour.

(c) "Documented" means that the applicant obtains a certificate of participation, a signed document by the instructor indicating attendance or an official transcript from an accredited college or university.

13:44C-6.3 Excess hours not credited to subsequent renewal period

In the event that a candidate for license renewal shall complete in two years a number of hours in excess of the number required in N.J.A.C. 13:44C-4.1, the documented hours in excess of those required shall not be credited toward license renewal requirements for subsequent years.

13:44C-6.4 Waiver of requirements; appearance

The director may, at his or her discretion, or upon the recommendation of the Advisory Committee, waive any of the requirements of this subchapter for due cause. An appearance before the Advisory Committee may be required.

13:44C-6.5 Subjects; sponsors

(a) Acceptable Continuing Professional Education shall be in any of the following areas: human physiology; human anatomy; human development; human communication; identification, prevention, diagnosis and treatment of communication disorders; acoustical or electrical science relative to communication disorders; health administration relative to communication disorders*[, and initial preparation of a relevant course of study acceptable to the Department of Higher Education]*.

(b) The Continuing Professional Education hours must be accredited by the New Jersey Department of Higher Education, or accredited or sponsored by a local, state or national audiology and speech-language pathology professional organization, local, state or federal education or health agency, or a local, state or national medical, psychological, dental or similar professional organization. Courses accepted for credit by the National Registry on Continuing Education or by the American Speech-Language-Hearing Association will be given credit by the Committee as set forth in N.J.A.C. 13:44C-6.2.

SUBCHAPTER 7. AUTHORIZED PRACTICE

13:44C-7.1 Business interest of unlicensed persons

(a) An unlicensed individual may have a business interest in a corporation, partnership, trust, association or other like organization that provides audiology or speech-language pathology services or both, if the provision of direct clinical services is done by licensed audiologists or speech-language pathologists, as appropriate. Nothing in this section shall be construed to mean that such unlicensed person may provide direct clinical services.

(b) Such unlicensed person shall file a statement with the director on a form approved by the director.

13:44C-7.2 Exemptions

(a) The following are exempt from the provisions of this chapter, pursuant to N.J.S.A. 45:3B-17:

1. Any person currently licensed to practice medicine and surgery by this State, provided such a person is not referred to as an audiologist or speech-language pathologist or other similar title.

2. Persons employed by and under the direct supervision of a physician, provided such person is not referred to as an audiologist or speech-language pathologist or other similar title.

3. Persons employed part-time or full-time by the United States government or any agency thereof where the terms and conditions of employment, the standards and practice of audiology or speech-language pathology or the everyday operations and decision-making of the agency are established, supervised and funded by the federal government.

i. The fact that all or part of an agency's funding is derived from federal sources shall not suffice in and of itself to make an agency a "federal agency" for purposes of this exemption.

ii. This exemption applies provided that audiology or speech-language pathology services are being performed as part of the duties of the person's office or position with that agency.

4. Any person certified as a speech-language correctionist by the State Department of Education. However, such person is not exempt under this section for that portion of his or her time spent as a private practitioner or providing services for which a fee may be paid by a recipient of the service.

5. Students and trainees in audiology or speech-language pathology matriculated in an accredited college or university, provided that their services constitute part of their course of study and on-site supervision by a licensee is provided in the appropriate professional field.

[6. Persons fulfilling their clinical internship, provided a supervision plan is submitted to and approved by the Audiology and Speech-Language Pathology Advisory Committee, and provided further that such person affirmatively represents himself or herself to patients as an intern and not as a licensee. Persons exempt under this section shall be exempt for no more than 36 months from the date of filing of their Clinical Internship plan.]

*[7.]***6.** Persons whose services and activities constitute part of an occupation for which they are regulated by their own State registration, certification or license, and who do not refer to themselves as audiologists or speech-langauge pathologists.

*[8.]***7.** Persons licensed by this State as a hearing aid dispenser pursuant to P.L. 1973, c. 19 (N.J.S.A. 45:9A-1 et seq.) who are engaged in activities and services within the scope of practice of a hearing aid dispenser, provided that such person does not refer to himself or herself as an audiologist or speech-language pathologist.

SUBCHAPTER 8. *[UNLAWFUL PRACTICES]* *UNPROFESSIONAL CONDUCT*

13:44C-8.1 Business practices

(a) The following acts or business practices shall be deemed to be unprofessional conduct:

1. Patient records: Failure to maintain written, contemporaneous patient records for seven years from date of last entry for patients who have attained the age of majority, and for patients who are minors, for two years beyond the patient's attainment of the age of majority. The records shall include:

i. Findings upon initial examination including the patient's significant past history and results of appropriate tests and measures.

ii. A written plan of care indicating the goals of the treatment program, the type of treatment, and the frequency and expected duration of treatment for audiology and speech-language pathology services.

iii. Dated and signed documentation of each treatment rendered.

iv. Dated and signed progress notes.

v. Documentation of any changes in the treatment program.

vi. Documentation of any contact with other health professionals relative to the patient's care.

vii. A discharge summary which includes the reason for discharge and the outcome of services rendered.

viii. Any pertinent legal document such as patient release forms or chart access sheets.

2. Recordkeeping—calibration log: Failure to document that all ***audiometric test*** audiological equipment is calibrated on a timely basis and meets nationally recognized standards (ANSI, 1969 and all subsequent revisions).

3. Record release: Failure to provide, without charge, copies of a patient's record of testing or treatment within 15 days of a written request by the patient or any person whom the patient has designated to receive such records. However, nothing herein should be construed to prohibit a licensed speech-language pathologist or audiologist from charging a reasonable fee to the patient for the cost of reproduction of a record.

4. Preparation of written reports: Failure to prepare within 30 days, upon written request by the patient or any person whom the patient has designated to receive such, a written report embodying information set forth in (a)i-vii above, except that nothing herein shall preclude a licensee from charging a reasonable fee for the preparation of a written report.

5. Preparation of insurance forms: Requiring a patient or a third party payor to pay a separate fee for the preparation of an insurance claim form.

6. Charges for interest on unpaid accounts: Requiring a patient or a third party payor to pay interest on an unpaid account unless the patient has been notified of this policy in writing prior to the initiation of audiology or speech-language pathology treatment.

7. Charges for unkept appointments: Requiring a patient or a third party payor to pay a full or partial fee for unkept appointments unless the patient has been notified of this policy in writing prior to the initiation of audiology or speech-language pathology treatment.

8. Charges for unrecorded treatment: Requiring a patient or a third party payor to pay for any evaluation, testing, treatment or other services not documented in a patient chart.

9. Disclosure of fees: Failure to make available a written fee schedule which describes charges for each service offered to any interested person upon request.

10. Posting of license: Failure to post in a conspicuous place a copy of a licensee's biennial renewal certificate.

11. Advertising: Use or participation in the use of any form of public communication regarding professional services, via print, electronic media or in-person solicitation, which contains a false, fraudulent, misleading or deceptive statement or claim. A false, fraudulent, misleading or deceptive statement includes but is not limited to any statement or claim which:

i. Contains a misrepresentation of fact;

ii. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

iii. Contains any personal testimonial or laudatory statement, attesting to the technical quality or technical competence of any service or treatment offered by a licensee;

iv. Is intended or is likely to create a false or unjustified expectation of favorable results, for example, advertising percentages of success;

v. Implies educational attainments or licensing recognition not supported in fact;

vi. States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of audiology or speech-language pathology if this is not the case;

vii. Represents that the professional services can or will be competently performed for a stated fee when this is not the case, or makes a representation with respect to fees for professional services that does not disclose all variables affecting the fees that will in fact be charged;

viii. Uses techniques of communication which in light of the setting and circumstances appear to intimidate or exert undue influence or undue pressure over a prospective patient;

ix. Contains offers of discounts for services without stating the advertiser's usual and customary fee on which the discount will be taken, or the availability of a schedule of the licensee's usual and customary fees, and the period of time during which the offer can be accepted by a prospective patient. If no time limit is specified, such offer shall be deemed to apply for 30 days, or

x. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to be misled or be deceived.

12. In-person solicitation: Engaging in uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. This paragraph

shall not prohibit the offering of services by a licensee to any bona fide representative of prospective patients including but not limited to employers, labor union representatives or insurance carriers.

13. Excessive fees: Charging a fee to a patient or a third party payor which is excessive when considered in light of the following factors:

i. The novelty and difficulty of the professional treatment;

ii. The skill and equipment required to perform the treatment properly;

iii. Any requirements or conditions imposed by the patient or by the circumstances;

iv. The nature and length of the professional relationship with the patient;

v. The experience, reputation and ability of the licensee performing the services; and

vi. The nature and the circumstances under which the services were provided (for example, emergency; home visit).

14. Charges for unnecessary services: Charging a fee to a patient or a third party payor for audiology or speech-language pathology services which are unwarranted and unnecessary.

15. Failure to electronically calibrate *[audiological]* ***audiometric*** test*[ing]* equipment at least annually *[and to document same]*.

13:44C-8.2 Professional practices

(a) The following acts or professional practices shall be deemed to be unprofessional conduct:

1. Offering, agreeing to provide or providing any payment or any other form of remuneration to any person or entity authorized to direct the initiation of speech-language pathology or audiology services for a referral of any specific patient or any number of patients.

2. Accepting any payment or other form of remuneration from any person or entity authorized to direct the initiation of audiology or speech-language pathology services for the referral of any specific patient or any number of patients.

3. Receiving from any person, firm, partnership or corporation a fee, commission, salary, rebate, gift or other form of remuneration for the prescribing, recommending, ordering or promotion of the sale of a device, appliance or other item or service, unless such interest is made known in writing to the person for whom the device or appliance is being ordered, prescribed or recommended, except that nothing herein shall preclude a licensed speech-language pathologist or audiologist from accepting a product or commodity which can be used as a sample by patients, provided that the speech-language pathologist or audiologist does not charge patients for items so obtained.

4. Knowingly using ***audiometric test*** equipment that is not calibrated or has not been calibrated according to the nationally recognized standards *[(A.N.S.I., 1969)]* ***(ANSI, 1969 and all subsequent revisions)***.

5. Undertaking to render treatment or to conduct testing which in light of the patient's history and findings is unwarranted and unnecessary.

13:44C-8.3 Scope of practice

The representation of a speech-language pathologist or audiologist as a physician rendering medical opinion or medical services shall be deemed to be outside the scope of speech-language pathology and audiology and, upon proof that a licensee is engaging in such conduct, he or she may be subject to disciplinary action.

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44C-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of audiology or speech-language pathology and may warrant the director's initiation of an action in Superior Court for such appropriate injunctive relief as may be authorized by N.J.S.A. 45:3B-15:

1. Offering of any speech-language pathology or audiology services by any person who does not hold the applicable license as a speech-language pathologist or audiologist or is not exempt from licensure as defined in N.J.A.C. 13:44C-7.2;

2. The use of the words speech-language therapy, speech therapy, audiology, speech pathologist, audiologist or such similar words or their related abbreviations in connection with the offering of certain agents and measures which are utilized in the rendition of speech-language pathology and audiology services by any person who does not hold the appropriate license in speech-language pathology or audiology; or

3. Billing any patient or third party payor for "speech-language pathology evaluation" or "speech-language pathology therapy" or "audiologic evaluation" or "audiologic services" or services described by similar words if the individual providing the service does not hold the appropriate license to practice audiology or speech-language pathology or is not a licensed physician.

13:44C-9.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person in engaging in any of the acts identified in N.J.A.C. 13:44C-9.1.

SUBCHAPTER 10. DISCIPLINARY ACTIONS

13:44C-10.1 Suspension and revocation of license

(a) The license of any person licensed under the provisions of this chapter may be suspended or revoked, or a civil penalty may be assessed or a reprimand may be issued by the director, upon a finding by the director that the licensee:

1. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;

2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

3. Has engaged in gross negligence, gross malpractice or gross incompetence;

4. Has engaged in repeated acts of negligence, malpractice or incompetence;

5. Has engaged in professional or occupational misconduct as may be determined by the director;

6. Has been convicted of any crime involving moral turpitude or any crime relating adversely to the practice of audiology or speech-language pathology. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

7. Has had his authority to engage in the practice of audiology or speech-language pathology revoked or suspended by any other state, agency or authority for reasons consistent with this section;

8. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

9. Has violated or failed to comply with any of the provisions of N.J.S.A. 45:3B-1 et seq. or N.J.A.C. 13:44C-1.1 et seq.

(b) The Notice of Proposed Suspension or Revocation shall inform the licensed individual of the right to request a hearing within 10 days. The shall be 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. 1:1-1 et seq.

13:44C-10.2 Reinstatement

The Director, in consultation with the Advisory Committee, may restore a license after one year from the date of its revocation following submission of a new application and a hearing before the Advisory Committee at which the applicant shall demonstrate fitness for reinstatement.

TRANSPORTATION

(a)

DIVISION OF DESIGN

Soil Erosion and Sediment Control Vegetative and Engineering Standards

Adopted New Rules: N.J.A.C. 16:25A

Proposed: November 16, 1987 at 19 N.J.R. 2126(a).
Adopted: June 8, 1988 by Kenneth C. Afferton, Assistant Commissioner for Design and Right of Way
Filed: June 16, 1988 as R.1988 d.318, **with substantive changes** not requiring additional public notice (See N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 4:24-39 et seq., "Soil Erosion and Sediment Control Act, P.L. 1975, Chapter 251.", amended by P.L. 1979, C.459.
Effective Date: July 18, 1988.
Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:

As part of the Department's internal review process, and in accordance with the provisions of N.J.S.A. 52:14B-4, comments were received from the New Jersey Department of Agriculture and the Chief, Bureau of Landscape Architecture, Department of Transportation, and are as follows:

COMMENT: The District II Design office has been relocated to **Route 72 & Daniels' Way, Freehold, N.J. 07728, (201) 308-4025.**

RESPONSE: This change has been made upon adoption.

COMMENT: The Department of Agriculture recommended in the introduction section that the Department of Transportation also indicate the 1979 amendments to the Soil Erosion and Sediment Control Act mandated soil erosion and sediment control on projects constructed by DOT. The Department of Agriculture also recommended that the statement should indicate that a DOT certified plan will be filed with the appropriate soil conservation district.

RESPONSE: The Department of Transportation will include the 1979 Amendments to the Soil Erosion and Sediment Control Act mandated soil erosion and sediment control on projects constructed by DOT.

The filing of a plan with the appropriate soil conservation district will be handled on a procedural level within the DOT.

COMMENT: The Department of Agriculture stated that the engineering standards designated 2.1.0 through 2.20.0 are the same as the structural standards 4.1.1 through 4.20.1 in the Standards promulgated by the State Soil Conservation Committee and published April 1987. This should be documented to avoid any confusion and to credit the source. This would also apply to any of the appendices published in the SSCC document.

RESPONSE: The standards 2.1.0 through 2.20.0 have been cross-referenced and credited to the source.

COMMENT: The Department of Agriculture stated that, to avoid possible confusion, it would be appropriate to indicate that all vegetative standards and engineering standards from 2.21.0 through 2.34.0 are specifically applicable to NJDOT projects and are in addition to SSCC standards.

Perhaps a generic definition of DOT projects should be included to further clarify the applicability of DOT standards, which are different than Agriculture Department standards. The Department of Agriculture anticipates that SSCC standards will be used for all other land disturbance projects, including transportation projects, by entities other than DOT.

RESPONSE: The N.J.D.O.T. Standards are applicable only to projects contracted by the Department or done within N.J.D.O.T. Right-of-Way. This will be stated in the introduction of the N.J.D.O.T. Standards.

Technical Standards Content

COMMENT: The Department of Agriculture noted that there are two standards for Sediment Basins—2.4.0 and 2.34.0; four standards detailing with bale barriers—2.13.0, 2.25.0, 2.26.0 and 2.27.0; and four standards dealing with the inlet protection—2.6.0, 2.27.0, 2.28.0 and 2.29.0, and questioned whether this would result in confusion as to which applies to a specific situation.

RESPONSE: Standard 2.34.0, "Sediment Basins", has been deleted. The detailed "Baled Hay Erosion Checks", part of Standard 2.25.0, page 121, has been added to Standard 2.13.0. Standard 2.25.0 "Sediment Barrier (Hay Bales)" has been deleted. The "Placement and Anchoring Detail", part of Standard 2.26.0, page 125, has been deleted; however, a note referring to the "Embedding" detail in Standard 2.13.0 will be included on the "Baled Hay Erosion Checks" detail of Standard 2.26.0, on page 124.

COMMENT: The Department of Agriculture commented that Standard 2.21.0, "Channel Liner", appears to be similar to 2.12.0 riprap and questioned whether standards should be combined.

RESPONSE: Standard 2.21.0, "Channel Liner", has been deleted. The detail of Standard 2.21.0, "Channel Liner", on page 113, has been added to Standard 2.12.0 "RipRap".

COMMENT: The Department of Agriculture commented on Standard 2.23.0, "Temporary Dams", noting that the use of this standard may be limited in that hay bales cannot handle concentrated flows, and questioned whether specific design criteria which establishes a limit or condition beyond which the hay bale dams may not be utilized.

RESPONSE: The wording in the purpose of Standard 2.23.0 "Temporary Dams" has been changed to read that this standard is intended for swales and ditches only.

COMMENT: The Agriculture Department commented on Standard 2.24.0, "Water Course Check Dam", stating that the conditions where the practice applies indicate this is used where a steep channel may result in high water velocity, and that a series of check dams could be required, and suggesting that the Department of Transportation include in the design criteria a definition of "steep slope", how far apart these structures should be located, and the limit beyond which this practice should not be utilized. The experience of the Department of Agriculture has shown that, on some soils, check dams may result in greater erosion problems, as a result of turbulence.

RESPONSE: Standard 2.24.0, "Water Course Check Dam", has been deleted.

COMMENT: The Department of Agriculture commented on Standard 2.30.0, "Level Spreader", noting that their experience shows that these structures do not work in the field because it is very difficult to construct and maintain a "level surface". The Department of Agriculture also noted that water normally reconcentrates and causes erosion and questioned whether the use of these structures on DOT projects had been evaluated for effectiveness.

RESPONSE: Standard 2.30.0, "Level Spreader", has been deleted.

COMMENT: The Department of Agriculture commented on Standard 2.31.0, "Temporary Slope Drain", noting that the standard appears to duplicate the Standard for Slope Protection Structures (2.5.0), except that the typical detail may be useful, and suggested that the standards be combined.

RESPONSE: Standard 2.31.0 "Temporary Slope Drain" has been deleted. The detail for "Treatment for Temporary Berms and Slope Drains", in Standard 2.31.0, page 136, will be added to Standard 2.5.0 "Slope Protection Structures", which will have the effect of combining the standards.

COMMENT: The Department of Agriculture commented on Standard 2.34.0, "Sediment Basin", noting that the standard refers the design to the designer criteria in Standard for Sediment Basin 2.4.0; however, the typical detail shown on page 142 (Sediment Basin 2.34.0) does not show a riser at the basin outlet which is required in Standard 2.4.0, and suggesting that existing detail show a riser and that the two standards be combined.

RESPONSE: Standard 2.34.0 "Sediment Basin" has been deleted.

COMMENT: The Department of Agriculture commented that page 143, on Chronology, probably should be deleted since it appears to duplicate page 144.

RESPONSE: Page 143, on Chronology, has been deleted.

COMMENT: The Department of Agriculture noted that the list of Appendices contains Appendix A1 followed by A6 and A7, and suggested that these be renumbered consecutively.

RESPONSE: The appendices have been renumbered consecutively.

COMMENT: The Department of Agriculture noted that the dates listed in the chronology on Page 144 may be misleading, and suggested that, since this is the first DOT publication of standards, perhaps the dates should conform to the DOT publication date or reference that the dates shown are for the SSCC Standards publication dates.

RESPONSE: The dates on page 144 will be changed to conform with the publication of the D.O.T. Soil Erosion and Sediment Control Manual.

Full text of the adoption follows (additions shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[thus]*).

CHAPTER 25A
SOIL EROSION AND SEDIMENT CONTROL STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

16:25A-1.1 Purpose

This chapter implements P.L. 1975, chapter 251, Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., to establish soil erosion and sediment control standards for Department of Transportation certification of its projects to the soil conservation districts.

16:25A-1.2 Definitions

All definitions in chapter 251 Laws of 1975, are incorporated by reference into these rules.

SUBCHAPTER 2. VEGETATIVE AND ENGINEERING STANDARDS

16:25A-2.1 Standards for soil erosion and sediment control

(a) The Department of Transportation adopts and hereby incorporates into these rules by reference as standards for soil erosion and sediment control those standards published in the "Soil Erosion and Sediment Control Standards", and *[identified as adopted on , 1987]* ***promulgated on July 18, 1988*** as the technical basis for Department of Transportation certification of soil erosion and sediment control plans for Department of Transportation projects. Specifically these standards include the following:

1. VEGETATIVE STANDARDS

Temporary Vegetative Control for Soil Stabilization	1.1.0
Permanent Vegetative Control for Soil Stabilization	1.2.0
Stabilization with Mulch Only	1.3.0
Permanent Stabilization With Sod	1.4.0
Topsoiling	1.5.0
Selection and Planting of Native and Naturalized Vines, Shrubs and Trees for Critical Area Planting	1.6.0
Tree Protection During Construction	1.7.0
Maintaining Vegetation	1.8.0
Soil Stabilization Matting	1.9.0
Slope Boards	1.10.0
Preparation of Existing Soil	1.11.0

2. ENGINEERING STANDARDS

Land Grading	2.1.0
Diversion	2.2.0
Grassed Waterway	2.3.0
Sediment Basin	2.4.0
Slope Protection Structures ***(Temporary Slope Drain)***	2.5.0
Channel Stabilization	2.6.0
Detention Basin for Control of Downstream Erosion	2.7.0
Subsurface Drainage	2.8.0
Traffic Control	2.9.0
Dust Control	2.10.0
Lined Waterway	2.11.0
Riprap ***(Channel Liner)***	2.12.0
Sediment Barrier ***(Baled Hay Erosion Check)***	2.13.0
Conduit Outlet Protection	2.14.0
Stabilized Construction Entrance	2.15.0
Storm Sewer Inlet Protection	2.16.0
Grade Stabilization Structure	2.17.0
Parking Lot Storage	2.18.0
Rooftop Storage	2.19.0
Underground Tanks	2.20.0
*[Channel Liner (Riprap)	2.21.0]*
Cut to Fill Slope Treatment	2.22.0
[Temporary Dams] ***Swales and Ditches only***	2.23.0
*[Water Course Check Dam	2.24.0]*
*[Sediment Barrier (Hay Bales)	2.25.0]*
Sediment Barrier (Hay Bales)	2.26.0
Inlet Protection—Hay Bale Barrier	2.27.0
Inlet Sediment Trap	2.28.0
Storm Sewer Inlet Protection	2.29.0
*[Level Spreader	2.30.0]*
Temporary Slope Drain	2.31.0
Floating Turbidity Barrier	2.32.0
Staked Turbidity Barrier	2.33.0
*[Sediment Basins	2.34.0]*

3. Copies of the Vegetative and Engineering Standards may be obtained by contacting the following:

N.J. Department of Transportation
Bureau of Landscape Architecture
CN 600
1035 Parkway Ave.
Trenton, NJ 08625
(609) 530-5670

[District] ***Region*** I Design Office
1259 Rt. 46, 2nd Floor
Parsippany, N.J. 07054
(201) 263-5100

[District] ***Region*** II Design Office
Jct. Rt. 1, 9, 21 & 22
Newark, N.J. 07114
(201) 648-3029

[District] ***Region*** III Design Office
[1147 Amboy Ave.] ***Route 72 & Daniel's Way***
[Edison, N.J. 08837] ***Freehold, N.J. 07728***
(201) *[499-5090]* ***308-4025***

[District] ***Region*** IV Design ***Office***
530 Fellowship Road
Mt. Laurel, N.J. 08054
(609) 866-4953

OAL NOTE: A copy of the DOT Standards are on file with and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 301, Trenton, New Jersey, 08625.

(a)

TRANSPORTATION SERVICES AND PLANNING

Rail Freight Program

Readoption with Amendments: N.J.A.C. 16:53C

Proposed: May 2, 1988 at 20 N.J.R. 966(a).

Adopted: June 2, 1988 by James A. Crawford, Assistant Commissioner for Policy and Planning.

Filed: June 16, 1988 as R.1988 d.317, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6.

Effective Date of Readoption: June 16, 1988.

Effective Date of Amendments: July 18, 1988.

Expiration Date: June 16, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found at N.J.A.C. 16:53C.

Full text of the adopted amendments to the readoption follows.

16:53C-3.3 Rehabilitation or improvement assistance

(a) The rail freight properties eligible for rehabilitation assistance are those properties (as defined by the Department), for which a one-time investment of capital assistance will insure the continuation or creation of safe, adequate and efficient rail freight services for a period of not less than five years.

1. For a State-owned line the operation of the freight services or other appropriate party is eligible to receive a grant of up to 100 percent of the total project cost to rehabilitate a rail line to Federal Railroad Administration (FRA), safety standards allowing rail operations at speeds appropriate for this line. On these properties trackage rights fees may be assessed in an amount sufficient to recoup acquisition and/or rehabilitation investments;

2. An operator or other responsible party, providing rail freight services on a rail line not owned by the State which is part of the core rail freight system is eligible to receive a grant not to exceed 70 percent of the total cost of rehabilitating the rail line to FRA safety standards allowing rail operations at speeds appropriate for this line;

3. The operator or other responsible party providing rail freight service, on a rail line which is not an element of the core system is

eligible to receive a grant not to exceed 50 percent of the cost of rehabilitating the line to FRA safety standards allowing rail operations at speeds appropriate for this line;

4. (No change.)

16:53C-3.4 Rail facility construction assistance

In those instances, as defined in the State Rail Plan, where an improvement in the quality and efficiency of rail freight service can be provided through construction of a rail related facility, funding will be provided in an amount not to exceed 50 percent of the total cost of project construction for non-core, 70 percent for core.

16:53C-3.5 Substitute rail service assistance

For industries located on rail segments where the continuation of rail service through acquisition, rehabilitation or rail facility construction assistance is not warranted, a grant not to exceed 50 percent of the total cost of project construction may be made available in order to provide non-rail alternative transportation facilities necessitated by the loss of rail service.

16:53C-8.2 Disbursement

The State share of project costs shall be provided on a cost reimbursement basis upon the submission of properly documented invoices and subject to a retainage of five percent of the invoiced amount pending final audit.

(a)

AERONAUTICS

Licensing of Aeronautical Activities

Readoption: N.J.A.C. 16:55

Adopted Amendment: N.J.A.C. 16:55-1.6

Proposed: May 2, 1988 at 20 N.J.R. 967(a).
Adopted: June 2, 1988 by James A. Crawford, Assistant Commissioner for Policy and Planning.
Filed: June 14, 1988 as R.1988 d.315, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.

Effective Date of Readoption: June 14, 1988.
Effective Date of Amendment: July 18, 1988.
Expiration Date: June 14, 1993.

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. 16:55.

Full text of the adopted amendment to the readoption follows.

16:55-1.6 Liability

(a) Any license issued pursuant to the provisions set forth in this chapter may be modified, suspended or revoked in the interest of public safety, or as a result of established violations of any of the provisions of Title 6 of the New Jersey Statutes Annotated or any of the provisions of this chapter, and may further subject the violator to the penalty provisions of Title 6, N.J.S.A.

(b) Prior to the suspension or revocation of a license, the licensee shall have the right to request a hearing 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.

(b)

Issuance of Summons and Designation of Peace Officer

Readoption with Amendments: N.J.A.C. 16:60

Proposed: May 2, 1988 at 20 N.J.R. 968(a).
Adopted: June 2, 1988 by James A. Crawford, Assistant Commissioner for Policy and Planning.
Filed: June 14, 1988 as R.1988 d.314, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29.

Effective Date of Readoption: June 14, 1988.
Effective Date of Amendments: July 18, 1988.
Expiration Date: June 14, 1993.

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. 16:60.

Full text of the adopted amendment to the readoption follows.

16:60-1.2 Issuance of summons

Designated peace officers of the Division of Aeronautics are hereby vested with the authority to issue a complaint and summons for noncompliance with the provisions of N.J.S.A. Title 6 (Aviation) or noncompliance with any of the provisions contained in this chapter. All proceedings shall be brought before a Magistrate having jurisdiction in the municipality in which it is alleged that the violation occurred. Designated peace officers shall file the complaint and issue a summons for any violation of N.J.S.A. Title 6 (Aviation). The special form of complaint and summons is prescribed by the Administrative Director of the Courts pursuant to Rule 4:70-3 and Part VII, Rules Governing Practice in the Municipal Court.

16:60-1.3 Designation action

(a) (No change.)

(b) Each member designated pursuant to (a) above shall comply with the procedures established by the Administrative Director of the Courts in the issuance of summonses and complaints.

(c) (No change.)

(d) No member designated pursuant to (a) above shall be authorized to carry or use weapons in the execution of assigned responsibilities. Assistance, as required, shall be obtained from appropriate State or local law enforcement officers.

(c)

Aircraft Accidents

Readoption with Amendments: N.J.A.C. 16:61

Proposed: May 2, 1988 at 20 N.J.R. 968(b).
Adopted: June 2, 1988 by James A. Crawford, Assistant Commissioner for Policy and Planning.
Filed: June 14, 1988 as R.1988 d.313, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.

Effective Date of Readoption: June 14, 1988.
Effective Date of Amendments: July 18, 1988.
Expiration Date: June 14, 1993.

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. 16:61.

Full text of the adopted amendment to the readoption follows.

16:61-2.1 Reporting aircraft accidents

(a) During duty hours (9:00 A.M. to 4:30 P.M.) notify the New Jersey Division of Aeronautics by calling 609-530-2900.

(b) After duty hours notify the New Jersey Division of Aeronautics through the New Jersey State Police by calling 609-882-2000.

(c) (No change.)

(d) New Jersey Department of Transportation Form DA-23, "Aircraft Accident Report" is to be completed for an occurrence involving the operation of an aircraft on the ground or in the air which includes the following:

1. (No change.)
2. Emergency landings and aircraft accidents of any kind regardless of the amount, or absence, of damage to aircraft or that occur off the property of a licensed aeronautical facility; or
3. (No change.)

16:61-2.2 Notification of next of kin

Names of pilots or passengers who are seriously or fatally injured shall not be released until after positive notification of next of kin has been accomplished.

16:61-2.3 Preservation of aircraft wreckage, mail, cargo, and records

(a) The operator of an aircraft, or if the operator is incapable, the first law enforcement agent on the scene, is responsible for preserving, to the greatest extent possible, any aircraft wreckage, cargo and mail aboard the aircraft, and all records pertaining to the operation and maintenance of the aircraft and to persons involved in an accident.

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

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Alternate Benefit Program
Transfers: Interest

Adopted Amendments: N.J.A.C. 17:1-2.36

Proposed: May 2, 1988 at 20 N.J.R. 969(a).

Adopted: June 8, 1988 by Douglas R. Forrester, Director, Division of Pensions.

Filed: June 15, 1988 as R.1988 d.316, **without change.**

Authority: N.J.S.A. 18A:66-192.

Effective Date: July 18, 1988.

Expiration Date: May 6, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:1-2.36 Transfers; interest

Pursuant to the provisions of N.J.S.A. 18A:66-173, when payment of the transferred member's reserves in the State-administered retirement system is made more than 30 days after eligibility for the transfer, interest is added to the reserves being transferred from the system to the carriers of the Alternate Benefit Program. The rate of interest is the average rate of return, to the nearest hundredth percent, of the State Cash Management Fund (State accounts) as reported by the Division of Investment for the fiscal year ending June 30 preceding the period for which interest is payable. No interest is payable if amount of interest is less than $10.00.

ENVIRONMENTAL PROTECTION

(b)

ENVIRONMENTAL CLAIMS ADMINISTRATION

Sanitary Landfill Facility Contingency Fund

Adopted Repeal and New Rules: N.J.A.C. 7:11

Proposed: March 7, 1988 at 20 N.J.R. 443(a).

Adopted: June 23, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: June 24, 1988 as R.1988 d.337 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-100 et seq., particularly N.J.S.A. 13:1E-106 and 13:1E-114.

DEP Docket Number: 009-88-02.

Effective Date: July 18, 1988.

Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting new rules, N.J.A.C. 7:11, "Sanitary Landfill Facility Contingency Fund", governing procedures for preparation, submission and review of claims for damages proximately resulting from the operations or closure of a sanitary landfill. The new rules replace the prior Sanitary Landfill Facility Contingency Fund rules, which are repealed as of the effective date of these new rules.

Public hearings on the proposed repeal and new rules were held at the Gloucester County Municipal Building in Laurel Springs, New Jersey on March 28, 1988, at the Highland High School in Blackwood, New Jersey on March 29, 1988 and at the War Memorial Building in Trenton, New Jersey on March 30, 1988. The comment period closed on April 6, 1988. The Department received written comments from 38 people with an additional 70 people presenting comments at the public hearings.

General Comments

COMMENT: One commenter suggested that there be a time limitation on the Department for processing of claims.

RESPONSE: Although this is a valid concern, the Department would have great difficulty in setting a time limitation on the processing of claims. There is too great a variety in the complexities of claims to allow for a practical time estimation which would apply to all claims. However, the Department intends to process all claims as expeditiously as possible.

COMMENT: One commenter questioned the possible use of money from the Sanitary Landfill Facility Contingency Fund by the Department for remedial actions.

RESPONSE: The statutory definition of damages which appears at N.J.S.A. 13:1E-106 provides that the Sanitary Landfill Facility Contingency Fund (Fund) monies may be used to compensate for the costs related to the type of damages specified in N.J.A.C. 7:11-4.3 and 4.5. In most situations, the Department does not believe it is appropriate for claimants to take responsibility for remedial actions and the provisions of N.J.A.C. 7:11-4.3 and 4.5 reflect this belief. The Department does not intend to use Fund monies for remedial actions unless no other funds are available from other sources and there is a need to take action to preclude additional damages to the site.

COMMENT: Two commenters questioned whether monies are supplied to the Fund from State taxes.

RESPONSE: The Sanitary Landfill Facility Contingency Fund is funded by a "tipping fee" charged to disposers of wastes and payable to the State as a tax by landfill owners or operators. The monies are set aside in a Fund specifically for the purposes of claims payments and related administrative cost. No funding is received from the State budget or general State revenues.

COMMENT: Two commenters expressed concern that the Fund is being discontinued or is in financial jeopardy.

RESPONSE: The Fund is mandated by legislation and is not being discontinued. The current Fund balance is approximately 45 million dollars. Concern in this area appears to be related to N.J.A.C. 7:11-6.1(c) which addresses what is to be done in the event that the claims awarded exceed the Fund balance. This section provides an interim method for handling claims in the unlikely event sufficient funds are not available to pay claims.

COMMENT: Two commenters inquired what has been done with Fund monies while the claims settlements were suspended.

RESPONSE: Regardless of whether or not claims settlements were suspended the Fund receives monies from a tax levied on solid waste disposed of in landfills at a rate of $0.15 per cubic yard of solids and $0.002 per gallon of liquids. This money is deposited in an account managed by the New Jersey Department of the Treasury, Division of Investments. All receipts are continually invested and all interest is reinvested.

COMMENT: Several commenters complained that they did not receive direct notice of rule changes.

RESPONSE: While the Department did not notify claimants directly, every effort was made to notify all persons affected by or interested in these rules. In addition to publication of the rule proposal in the New Jersey Register, notices were published in eight major newspapers throughout the State and interested groups were provided copies of the proposal and other information to assure the entire public was informed.

COMMENT: Several commenters stated that property tax breaks should be given.

RESPONSE: Property taxes are not imposed or collected by the State, but by local governments and therefore are not under the State's jurisdiction pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act.

COMMENT: One commenter stated that the rules should provide procedures to protect against fraud, coercion and collusion during the claims settlement process.

RESPONSE: The rules require the production of substantial evidentiary documentation of claimed damages. For instance, N.J.A.C. 7:11-3.3(e)5 and 6 require claimants and their realtor to furnish detailed affidavits regarding their property sales process. These provisions and the State's general statutory authority to penalize fraud, coercion and collusion provide sufficient authority to protect against such actions.

COMMENT: One commenter questioned whether claim settlements will be affected by the scheduled Superfund cleanup of sanitary landfill sites.

RESPONSE: The process of claims investigation will not be impeded or in any way affected by the Superfund clean-up of a landfill. However, it is logical to assume that the award amounts of claims settled after a clean-up is completed will be reduced or in some cases become unnecessary.

COMMENT: Two commenters stated that the Fund should compensate small businesses for lost income or increased costs due to lost use of well water.

RESPONSE: The rules do not preclude small businesses from filing claims for damages caused by landfills. Such claims will be investigated to determine if they are compensable damages.

COMMENT: One commenter suggested that claimants' homes be checked for pollutants to ease the minds of the homeowners.

RESPONSE: The Department performs extensive studies of possible contamination pathways as part of the remedial investigation/feasibility study ("RI/FS") process which it undertakes at all large scale hazardous substance discharge site cleanups.

A review of such study should provide claimants with sufficient information about contamination of their properties. In addition, the Department or the local environmental health entity often performs additional specific pollution testing such as well contamination in areas of concern. The results of these tests are normally furnished to property owners.

An RI/FS has been performed at the Gloucester Environmental Management Services (GEMS) site as well as at a number of other sites in New Jersey. This study may be reviewed by contacting the Bureau of Community Relations, Division of Hazardous Site Mitigation, NJDEP (609-984-3081).

COMMENT: Several commenters questioned what health hazards exist around the GEMS Landfill area and asked if the Department has done any studies.

RESPONSE: There has been a study done by the N.J. Department of Health entitled: "Summary of Health Study Conducted at GEMS Sanitary Landfill in Camden County by the N.J. Department of Health". A copy of this study may be obtained by writing to the New Jersey Department of Health, Division of Environmental Health, Environmental Health Services, CN 360, Trenton, New Jersey 08625.

COMMENT: One commenter stated that the Department should concentrate on the cleanup of GEMS so that the property values in the area can come back up to acceptable levels.

RESPONSE: The Department is in the process of cleaning up the landfill as expeditiously as possible and is planning to award the construction contract in calendar year 1988.

COMMENT: One commenter stated that when the red line designation is used, one side of the line is considered clean and the other contaminated. This is not a realistic delineation of pollution.

RESPONSE: The process of establishing a well restriction area (what the commenter termed "the red line") is a complex decision making process which includes the cooperative efforts of many of the bureaus within the Department's Division of Water Resources. The Department's staff, including geologists, review the data collected from wells in the area of concern and use their knowledge of the underlying geological formations in the area to create a model of the area of known contamination and project where it is going, how far and how fast. Based on this model, they identify an area within which wells should be restricted because the contamination is already present or is expected in a set time period. Therefore, the line separating restricted property is not a representation of the absolute edge of the present area of contamination; rather, it most often is a scientifically logical projected limit indicating where the contamination could spread.

COMMENT: One commenter asked specifically what date the Department began notifying claimants of their claim numbers.

RESPONSE: The Department has always assigned each claim a sequential number as it was received. The Department began notifying claimants of their claim numbers in mid-1987 as additional staff was added to make such a function possible. Claimants can be assured that the processing of their claims was in no way affected by the lack of notification of their number.

COMMENT: Several commenters mentioned that banks tend to refuse second mortgages and home equity loans in landfill areas as evidenced in the vicinity of GEMS.

RESPONSE: The Department has not received any substantiation that this problem has occurred regarding any existing claimants. However, in an effort to alleviate any possible problems in this area before they occur, the Department recently began work on establishing a task force that would distribute information concerning the progress of landfill cleanups to the banking and real estate industry in order to promote a better understanding of the issues. A preliminary meeting was held in February, 1988, and there are plans to continue the task force after the rules are adopted.

COMMENT: It was suggested that a committee be established to work on the development of a new Sanitary Landfill Facility Contingency Fund rule.

RESPONSE: The Department has developed what it believes is an appropriate rule. The Department complies with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which establishes the standard rule making procedures used by the State for rule promulgation and which includes provisions for public participation. For this rule, three public hearings were held and a public comment period was provided for written comments. The Department believes that this process resulted in substantial input of the general public and a full identification of the issues to be addressed in these rules. All comments received were reviewed and carefully considered.

SUBCHAPTER 1 GENERAL PROVISIONS

COMMENT: One commenter stated that N.J.A.C. 7:11-1.4(a)2 should be modified to provide for "prompt and adequate compensation" to agree with the statute at N.J.S.A. 13:1E-101.

RESPONSE: The Department has made this modification to the rule.

COMMENT: One commenter stated that the definition of "filing date" should be amended to mean "the date the claim is received by the Department or the date the claim is postmarked by the United States Postal Service, whichever is earlier." This is the way it was stated in the prior rule.

RESPONSE: The Department has modified the definition to incorporate this suggestion.

COMMENT: One commenter stated that the definition of "sanitary landfill" should not be limited to damage from landfills in operation for a period of six months. This limitation is counter to the legislative intent to compensate individuals for damages from any sanitary landfill.

RESPONSE: The six month limitation was intended to exclude transfer stations and other short term shortage sites from the definition of "sanitary landfill" and to be consistent with the Department's definition of "sanitary landfill" in the Solid Waste Management regulations, N.J.A.C. 7:26. The Department agrees that this wording could cause confusion and has determined that a more appropriate limitation would be those facilities where waste is "permanently" deposited. N.J.A.C. 7:11-1.5 has been modified accordingly.

COMMENT: One commenter stated that the definition of "sanitary landfill" should not be limited to governmentally approved sites.

RESPONSE: The Department has defined "sanitary landfill" as it has for legal and practical reasons. The Department, in its definition of terms, tries to define terms consistently in all its rules. Therefore, this definition of "sanitary landfill" was made as consistent as legally possible with other Departmental definitions of the same term. On a more practical note, almost all sanitary landfills from the biggest multi-purpose interstate landfill to the smallest town sanitary landfill have that one common tie—that they were all in some way regulated by some governmental entity. Finally, the State operates another claims fund, the Spill Compensation Fund, which compensates claimants who have been damaged by hazardous substances from any source of discharge.

COMMENT: One commenter stated that N.J.A.C. 7:11-1.7(b) which states that insurance recoveries are to be subtracted from the award is beyond the scope of legislative authority and should be deleted. Another commenter stated the Legislature did not intend that private settlements should be deducted from the amount of compensation awarded by the Department. Double compensation is only prohibited under the statute where damages are received "pursuant to any other State or Federal law".

RESPONSE: The Department considers that it would not be appropriate, from a fiscal view point, to compensate claimants for damages for which they have already received compensation from another source. Once a claimant has received compensation for damages from another source, that claimant is no longer "damaged" and has been made whole. For the Department to use Fund moneys to pay what constitutes double compensation would be inconsistent with its statutory mandate to use the fund only for compensation of damages and for administrative costs. N.J.S.A. 13:1E-115 provides that "no person who receives compensation for damages pursuant to any other State or Federal law shall be permitted to receive compensation for the same damages or cleanup costs". In the case of insurance settlement, the Department has determined that since insurance companies are regulated by the State, such double compensation should be prohibited.

SUBCHAPTER 2. FILING AND PROCESSING CLAIMS

COMMENT: One commenter did not understand the provision in the rule at N.J.A.C. 7:1I-2.1 which states that a claim must be filed within one year of claimant's discovery of damages or the claimant is precluded from receiving compensation for damages. Claimants should be allowed to file at their convenience.

RESPONSE: The statute provides at N.J.S.A. 13:1E-107, that claims against the Fund shall be filed within one year of the date of discovery of the damage. The date of discovery is the date on which the claimant first becomes aware of the damages. This is a statutory limitation.

COMMENT: One commenter asked what was meant by "extraordinary personal hardship".

RESPONSE: An extraordinary personal hardship is a special circumstance which causes financial hardship to a claimant and requires a claim to be handled as expeditiously as possible. The Department has, in the past reviewed requests for hardship priority in cases such as relocation of a job, illness in the family and death in the family. While the term "extraordinary personal hardship" has been replaced by "extreme hardship, or extreme existing or imminent hazard" in response to one of the comments received, there will be no change in the types of requests reviewed for priority processing status.

COMMENT: One commenter noted that N.J.A.C. 7:1I-2.3 provides that priority can be granted based only on "extraordinary personal hardship" while the Act states that priority of claims shall be based on "extreme hardship or extreme existing or imminent hazard". The rule should be changed to be consistent with the Act.

RESPONSE: N.J.S.A. 13:1E-106b states that the Department may provide for priority for payment of claims based on "extreme hardship or extreme existing or imminent hazard". The scope of the statutory section is limited to the case where the total of claims awarded exceeds the current balance of the Fund. The priority determination made under N.J.A.C. 7:1I-2.3 is for general priority of claims processing. While the requested language is not mandatory as stated, the Department believes that such a change will not undermine its intent and has therefore modified N.J.A.C. 7:1I-2.3 accordingly.

COMMENT: Homes that have been sold should receive payment priority.

RESPONSE: While it is understandable that claimants who have already sold their property would desire priority processing, the Department believes that payment priority should be made on a completely consecutive basis for all claimants who do not establish hardship under N.J.A.C. 7:1I-2.3 in order to maintain fairness in the claims process. Although there were numerous methods the Department could have selected to establish priority (for examples, see following comments), a "first in first processed" system appeared to be the most reasonable, fair and administratively feasible.

COMMENT: Commenters stated that long term residents should be given payment priority.

RESPONSE: The Fund was established to compensate for damages resulting from the operation or closure of sanitary landfills. The Department does not believe that the length of residence directly relates to damages and does not consider this an appropriate criteria for priority status.

COMMENT: One commenter questioned whether existing claims will retain their current priority status when the new rules become effective.

RESPONSE: The new rules will not affect the priority status of any existing claim.

COMMENT: One commenter suggested that payment priority should be based on proximity to landfills—start at the property boundary of the landfill and work out.

RESPONSE: The Department has determined that this system for establishing payment priority would cause an impractical administrative burden since it would require the Department to determine the exact distance from the landfill for each claim before processing any claims. Additionally, the Department does not believe that distance is the only factor which may affect damages and that it would therefore be inappropriate to base priority status on this criterion.

COMMENT: One commenter suggested that priority be given to those claimants whose property is within a half-mile of the sanitary landfill.

RESPONSE: Claims are processed by the Department in the order they are filed. Provision is made for exceptions to this based on extreme hardship or extreme existing or imminent hazard. The Department believes that this system is the most appropriate system for prioritizing claims.

COMMENT: Persons required to move immediately, based on a job change, should be given a high priority.

RESPONSE: The rules provide at N.J.A.C. 7:1I-2.3 that the claimant may request priority in cases where the claimant can demonstrate to the Department's satisfaction that extreme hardship or extreme existing or imminent hazard will otherwise result. The Department will review such requests on a case by case basis. The Department believes the current system is adequate. Should it become apparent that this is a problem, the Department will consider addressing the issue in further rule amendments.

SUBCHAPTER 3. ELIGIBILITY FOR AND PROOF OF DAMAGES

COMMENT: Many commenters stated that changing the rules midstream is discriminatory. They point out that past claims were settled without requiring the sale of the subject properties. One commenter questioned the Department's authority to stop or alter the processing of claims. Most of these commenters suggested that existing claimants should be handled under the rules proposed for repeal by this proposal.

RESPONSE: This statute, at N.J.S.A. 13:1E-114, requires the Department to "adopt such rules and regulations as are necessary to effectuate this supplementary act". Inherent in this legislative directive is the power to revise current rules and underlying policies whenever, as is the case here, the Department finds that current rules and policies are not effectively implementing the purposes of the statute.

In its past experience with GEMS landfill, the largest claims area, the Department determined that claims handling under the repealed rules which did not require sales resulted in claims being filed in a pattern unrelated to the landfill itself. Particularly in the area of property value diminution, this trend indicated the creation of the very condition which the law was established to remedy. Claims were filed for properties at distances over two miles from the landfill. This not only made timely settlement with deserving claimants difficult, but also hurt the community in general by encouraging a trend which artificially lowered property values. Continuation of these practices would not fulfill the Department's statutory duty to efficiently administer the Fund.

The rules which are adopted here establish a system which is intended to reverse the trend toward an increasing perception of damage, benefit the community by stabilizing real estate values at a more appropriate level, and provide for more efficient processing of claims where demonstrable damage has occurred. The Department has determined that the sale method included in these rules is the best method available for determining actual damage.

While the Department cannot continue to settle claims in a manner it finds to be contrary to its statutory duty, it has attempted to accommodate those who filed under the former system by exempting them from certain new provisions, including the half-mile filing limitation and certain proof requirements where sales have already occurred. Additionally, the Department has provided for a suspended claims category for existing claimants who wish to pursue their claims but need additional time. Such claimants may suspend their claim for up to two years.

COMMENT: One commenter suggested that claimants with properties within one-half mile of the sanitary landfill should be offered a settlement which would provide them with compensation similar to that received by claimants under the rules which the Department is proposing to repeal. They should be 'given property value equalization' money no less than 30 percent of their assessed property value regardless of their desire to sell their home or remain there.

RESPONSE: The Department believes that this suggested system of claims handling would perpetuate the negative perceptions fostered under the repealed rules and add to the problems previously cited. In order to best determine the actual damage sustained, the Department has determined the sales method included in the new rule is the most appropriate.

COMMENT: One commenter stated that the Department should compare its contract appraisals with local realtor appraisals.

RESPONSE: Realtors normally calculate the offering price of residential property by the "market analysis" method. This process is to some extent based on the realtor's personal impression about a number of somewhat subjective factors (the school system, shopping access, lot size, zoning, etc.). This method, while satisfactory for most private real estate transactions, does not furnish the objectivity essential for this State program.

The Department's appraisal process is based solely on three factors: purchase price, appreciation and improvements. All three factors are clearly defined in the Department's record of its decision on each offer. Each factor can therefore be clearly examined by claimants before accepting or challenging the Department's decision on the claim.

Past appraisals conducted by the Fund have compared favorably with actual market conditions. Valuation of improvements and protocols used for determining such valuations are important factors in the system used by the Fund. The Department will continue to ensure that Fund appraisals closely approximate actual market conditions. However, there is no need to compare its contract appraisals with local realtor appraisals on a regular basis.

COMMENT: One commenter said that a provision should be made to use the appraisal system to address previously underpaid claims.

RESPONSE: The rules always provided the claimants with the right to request an adjudicatory hearing if the claimant is not satisified that a settlement offer is sufficient. Once a settlement offer has been made and accepted, the claimant is barred from reopening the claim except as specifically provided in the Release/Subrogation Agreement entered into as part of the settlement between the Fund and the claimant.

COMMENT: One commenter suggested that a system should be established in which an appraisal is done to determine the value of the home absent the landfill and the value of a like home in the area. The sale should start at a price 10 percent above the value of a like home in the area. Settlement would then be based on the difference in the appraised value absent the landfill and the actual sale price. Also, it was suggested that a graduated commission be used by the selling realtor to insure that the property is sold at the highest possible price rather than a quick sale.

RESPONSE: While the Department appreciates this suggestion, there are a number of problems with using this proposed system. There is a potential for requiring that the property be listed above the value of the property absent the landfill. As an example, if a home were appraised to be valued at $100,000 absent the landfill, and like homes are selling for $92,000, this system would call for a starting selling price of $101,200. This system allows for a built in diminution which serves to perpetuate the perception of damages. For this reason the Department believes that its new system is fairer to claimants.

COMMENT: Several commenters stated that the rule should provide for claimants who are inhibited from moving because they are too ill or their fixed income prevents them from obtaining a mortgage.

RESPONSE: As the commenters stated, their concern centers on their status inhibiting their moving from the landfill area. These conditions would exist whether the landfill was or was not present and as such has no positive or negative effect on alleged damages of the claimants.

Additionally the Department wishes to emphasize the newly revised rules were not created as a means of promoting or endorsing property sales by claimants, but to provide compensation if claimants decide to move and can provide diminution in property value upon sale. As Department representatives have stated many times with regard to the GEMS Landfill, no present report or data exists that the Department is aware of that suggests that people need to move away from that landfill for environmental or health reasons. Of course, if such a basis for compensation does exist at another landfill in the future, it will be handled under other sections of these rules.

Finally from a practical standpoint the Department does not have any basis to expect that these situations actually exist to an extent which will work as an actual bar to the resolutions of any claims. Nevertheless, the Department intends to closely monitor this issue and will make the appropriate regulatory adjustments if they are required.

COMMENT: Two commenters stated that if a home has physical damages resulting from a landfill, the owners should be allowed to leave the property and the home should not be resold, it should be removed.

RESPONSE: N.J.A.C. 7:11-3.2 provides for compensation for damages to real or personal property. If the physical damage to the property is so severe as to render the home uninhabitable, the Department would consider compensation on that basis.

COMMENT: One commenter questioned whether houses sold after the proposal date but before the adoption date of these rules would be settled based on the former rules or the new rules.

RESPONSE: To account for this class of claimants, the Department has modified N.J.A.C. 7:11-3.3(a)1 and 3.3(e)6iv(1) to provide that settlement for such claimants will be based on the new rules; however, certain requirements will not be applicable.

COMMENT: Two commenters were opposed to the half-mile limitation for new claims. It was noted tht the statute states the Fund shall be liable for "all direct and indirect damages no matter by whom sustained". It was argued that the Legislature intended that anyone damaged be compensated, not merely those within a given geographic area.

RESPONSE: Based on past experience, the Department determined in connection with the GEMS Landfill, its largest claims area to date, that claims were being filed for homes farther and farther away from the landfill and were in a pattern unrelated to the effects of the landfill itself. This trend, in the area of property value diminution, fostered the creation of the very condition which the law intended to remedy. The purpose of the new rules is to avoid this situation by providing a boundary delineation and enabling the Department to more efficiently process claims. In developing the half-mile delineation, the Department utilized an area roughly consistent with that established by the Legislature in the Major Hazardous Waste Facility Siting Act, N.J.S.A. 13:1E-49 et seq., at N.J.S.A. 13:1E-57 as the minimum buffer zone between newly established hazardous waste sites and populated areas. A 2000 foot minimum buffer zone was established by that statute and the Department agrees that any negative impacts from a sanitary landfill will probably occur within 2000 feet of its boundary. However, as a precautionary measure the Department has extended the distance to one half-mile for the purposes of this program.

COMMENT: Commenters requested that the March 7, 1988 "grandfather" date of N.J.A.C. 7:11-3.3(a)1 which exempts existing claimants from certain provisions of the new rules to be extended.

RESPONSE: The "grandfather" concept is intended to lessen the impact of the change in rules on those claimants who filed claims under previously existing rules. The March 7, 1988 date was chosen because it was the date this rule proposal was published in the New Jersey Register. It would be inappropriate and frankly unfair to hold prior claimants to the more stringent requirements, such as the required sales documentation which claimants who sold prior to the rule adopted here would be unable to provide.

COMMENT: Two commenters suggested that the "grandfather" provision of N.J.A.C. 7:11-3.3(a)1 include those who requested an application form prior to March 7, 1988.

RESPONSE: The concept of "grandfathering" is used to ease the impact of change on existing claims and to provide a definitive starting point for the application of the new rules. The Department does not consider the claims process initiated until a completed form is filed. The Department has determined that such an exception would be inappropriate. Additionally, the Department does not keep records which indicate the date on which claim forms were requested.

COMMENT: Commenters stated that an exception should be made to the half-mile delineation when they involve residential developments. Where part of a development falls within the half-mile, the entire development is equally affected and should be included.

RESPONSE: The Department has determined the need for a distance limitation to discourage an escalation of the perception of damages farther and farther from the landfill and has, as a result, delineated the half-mile distance. If an exception were made for developments because of a perceived connection between the area name and the landfill, further exceptions for towns and other residential areas under a common name could be equally open to special consideration. The Department does not believe that the name of an area or a development is appropriate criteria for determining damages.

COMMENT: One commenter stated that the meaning of "sold" in N.J.A.C. 7:11-3.3(a)1 should be clarified to indicate whether it means agreement of sale or transfer of deed.

RESPONSE: The Department's intention was that "sold" means upon execution of a binding agreement of sale. To clarify this intention, language has been added to N.J.A.C. 7:11-3.3(a)1.

COMMENT: Claimants who filed their claim prior to March 7, 1988 should be given the option to proceed with, terminate or suspend their claims. If claimants are permitted to suspend their claim, the suspension period should be limited to five years.

RESPONSE: The Department gave a good deal of consideration to the issue of the appropriate length of this suspension period. The Department agrees with the majority of commenters that some suspension period should be afforded. A suspension period would allow these claimants adequate time to make a very difficult decision. The period should be long enough to permit claimants to clearly evaluate a number of factors ranging from the purely financial ones of market conditions and mortgages to the essentially personal ones of deciding whether to stay or leave friends and neighbors. It should even take into consideration precisely when it's best to change their children's schools.

Balanced against this consideration is the administrative expectation under the Act that claims be processed as promptly as procedurally practical. After considering all these factors, the Department found that a minimum reasonable period for claims suspension would be two years. Allowing suspensions for any longer would not create any better conditions for claimant's decision making and could inhibit accurate substantiation of claims because of the lapse of time.

COMMENT: Claimants who filed under the rule the Department is proposing to repeal should not be required to submit additional paperwork indicating whether they wish to continue their claim under the new rules.

RESPONSE: The Department believes that the changes to the rules are substantial and therefore a number of claimants may reconsider their interest in pursuing their claims. In order that the Department may concentrate on handling the claims of those claimants who are interested in continuing their claims, it is necessary to determine which claimants are no longer interested in pursuing their claims.

COMMENT: One commenter suggested that the Department estimate damages for those properties in the suspended category and set aside such amount in escrow to be used as collateral for home improvement loans.

RESPONSE: The establishment of an escrow account to be used as collateral for home improvement loans is not authorized pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

COMMENT: One commenter stated that a provision should be made in the rules to allow for what they suggest would be the increased time period required to locate and acquire a replacement for a damaged large tract of land.

RESPONSE: The Department is responsible under the Act to assess the value of claimed damages and pay compensation for those damages. It cannot assume the further responsibility of facilitating arrangements for the claimants relocation after sale. Additionally the commenter should understand that claimants usually have ample means of their own to control these matters. In the general course of real estate transactions, the seller may make provisions for delayed closing dates or any other arrangements to which seller and buyer may agree.

COMMENT: Commenters stated that the 45 day time period for listing is too short. Requiring homes to be listed within 45 days of appraisal will cause large numbers of homes to be put up for sale at the same time and cause a further drop in values.

RESPONSE: The Department agrees that this may cause a problem. To deal with this concern, the 45 day time period has been extended to 90 days. See N.J.A.C. 7:1I-3.3(d).

COMMENT: Several commenters stated that the Deprtment should not tell claimants when to sell, for how much and by what procedure.

RESPONSE: In order to responsibly administer the provisions of the Fund, the Department must be able to determine what appropriate damage settlements are. These rules provide standards for such determinations and provide the necessary controls to avoid abuses. Without these provisions the Fund would have no objective basis to decide if, and/or how much of a loss has occurred. For instance, by suggesting a sales price to the claimant, the Fund establishes a bench mark for the loss. A good faith sale at less than that amount makes it possible to measure the loss in an objective manner.

COMMENT: A commenter questioned whether there was an incentive to realtors to show properties that will automatically decrease in price. Is there an incentive to the buyer?

RESPONSE: It is the Department's understanding that, normally, a realtor's commission is based on a percentage of the sale price and therefore there would be no incentive for the realtor to wait for a price decrease. If there was only one buyer, it is true that there would be no incentive to buy until the price decreased. In the usual situation where sellers are actively marketing their property, there are usually numerous potential buyers and an individual will buy when he or she feels the property has reached an appropriate price rather than wait for an even further decrease and possibly risk losing the property to another buyer.

COMMENT: The proposed rules stated that a claimant must offer property for sale at an appraisal price assuming the landfill does not exist. Comments received states this price would be excessive and unrealistic.

RESPONSE: Past claims handling experience has shown that any correlation between property diminution and the presence of the landfill may be highly questionable. In fact, the Department believes that one factor in the development of any past diminution was due to its past settlement practices. To reverse the trend that has developed, the new rules require that properties be marketed at full value absent the landfill, an offering price value which the Department believes would more approximate the property's true value.

COMMENT: Several comments stated there should be a time limitation placed on the Department for supplying an appraisal and if an appraisal is not supplied within this time period, the claimant should be free to list the property at a reasonable price and not be penalized for it.

RESPONSE: The Department does not place time limits on complex processes such as claims investigation and evaluation. Nevertheless, the Department does not believe that this will pose a problem since it has contracted with three firms to supply claims adjuster services and does not foresee a backlog of appraisal requests.

COMMENT: Homeowners should be allowed to use another appraisal company approved by the Department as the official appraiser.

RESPONSE: The Department does not foresee any problems with making the appraisal available on a timely basis. The Department employs contractors with a high degree of professional experience in the field of evaluating and adjusting damage claims. The majority of these firms have a national stature in the industry and are at the forefront of the environmental claims field. According to our estimate of the expected claims processing flow once the rules are implemented, the contractors can provide the Department with sufficient numbers of qualified operatives to promptly and adequately evaluate Fund claims, including furnishing the requisite appraisals. Therefore, there is no practical reason to duplicate the process by a similar effort by the claimant. If such a problem should occur in the future, the Department will consider this recommendation further.

COMMENT: Commenters feel that claimants should have the right to dispute the appraisal.

RESPONSE: The Department provides claimants with their appraisal information upon request. If the claimant disagrees and believes the appraisal is not appropriate, the claimant may request that the Department review the appraisal. If a claimant still believes an offer of settlement is insufficient due to an inappropriate appraisal, the claimant may request an adjudicatory hearing pursuant to N.J.A.C. 7:1I-5.3(d).

COMMENT: One commenter asked how an appraisal can take into account unique property such as lakefront when no equivalent is available?

RESPONSE: Inherently unique property attributes such as lake frontages have always been regarded as special assets to a property and are always part of the value of the property.

The Department's appraisal process is based on essentially three components, one of which is the initial purchase price of the property. Property attributes such as lake frontage should have been accounted for in the initial purchase price. Therefore, the process automatically includes this consideration in the claims evaluation.

COMMENT: One commenter questioned whether buyers would be willing to look at a home "when he or she must sign a form for the DEP" before looking at the house.

RESPONSE: This comment seems to indicate a misunderstanding of the requirement. The requirement found in N.J.A.C. 7:1I-3.3(e)6iv is that the realtor must maintain a record of the people looking at the home and any reactions they had. This information is required as part of an affidavit the realtor provides as an indication that there was a good faith sale. People looking at a home are not required to sign any form either before or after viewing the home.

COMMENT: Two commenters stated that the one year attempted sales period requirement is too long. Another commenter stated that this one year requirement results in lost opportunity costs including higher prices, mortgage rates, etc., and these lost opportunity costs should be compensable.

RESPONSE: It is evident from the written and verbal comments received during the comment period that many people misunderstood the meaning of the one year attempted sales requirement. Claimants must attempt to make a good fatih sale of the property for one year before the Department will provide a non-sales based settlement. The claimant may sell the property anytime within the year once an allowable offer pursuant to the rule is received. The Department believes that listing a property for a one year period is necessary to take into account seasonal effects on the real estate market and does not feel this period is excessive or unreasonable.

Concerning opportunity costs such as higher prices, the appraisal amount used in determining settlement will be adjusted to reflect market conditions at the time of settlement. In this way overall increases in property values are accounted for.

COMMENT: One commenter stated that the references in N.J.A.C. 7:1I-3.5(a)2 and 3 should be to personal or health injuries, not just "health injuries". There may be physical injuries that a person might suffer and these should also be compensable under the Act, particularly since the statutory language refers to "personal injuries".

RESPONSE: While the Department cannot think of any injuries that would be termed personal and not be considered as health injuries the Department did not intend to limit the provisions of the Act in these rules. To clarify this intent, the suggested changes have been made.

SUBCHAPTER 4. AMOUNTS OF DAMAGE AWARDS

COMMENT: Two commenters suggested that N.J.A.C. 7:1I-4.1 through 4.5 be reworded from "may" pay to "will" pay. It is argued that under the statute, the Department "shall be strictly liable" and based on this language, payment is mandatory.

RESPONSE: The Department agrees that this is an appropriate modification for N.J.A.C. 7:1I-4.1, 4.2(b) and 4.4. Changes have been made to reflect this suggestion for those sections. For N.J.A.C. 7:1I-4.3 and 4.5, the Department reserves the right to perform prospective remedial action as necessary. For this reason, use of the word "will" would not be appropriate for these sections.

COMMENT: Commenters stated that the Fund does not account for increased mortgage costs and closing/settlement costs.

RESPONSE: The purpose of the Fund is to compensate injured parties for damages caused by a sanitary landfill. During previous claims processing, the Department learned that for property value diminution claims, sales of properties occur by choice. The Department does not believe mortgage rate increases and closing/settlement costs, which are part of any move by choice, can be considered as damage caused by a landfill. Therefore, these costs are not compensable.

COMMENT: Several commenters stated that the Environmental Claims Administration (ECA) should pay the claim at settlement or, in the alternative, bridge loan costs should be compensable.

RESPONSE: It has always been the policy of the ECA to do as much as possible to help facilitate claimants' particular needs regarding sales transactions. Checks have been expedited, consultations have been made with loan companies, and settlement documents have been hand delivered in emergencies. However, it has been the ECA's experience that such exceptional time constraints have been very few in number. Nevertheless, the ECA is currently considering means of furnishing offers at or near settlement if necessary. Claimants who believe they will require such an expedited procedure should advise the ECA as soon as the need becomes apparent.

COMMENT: Two commenters suggested that there be an independent panel of impartial real estate people established to evaluate the situation and offer recommendations on settlements.

RESPONSE: The appraisals upon which the Department's settlement offers are based are performed by independent contractors hired by the Department. Should a claimant disagree with a settlement offer based on this independent appraisal, the rule provides the opportunity for an adjudicatory hearing. The Department believes that this system is sufficient to make sure that the Department's settlement offers are equitable and appropriate.

COMMENT: A commenter objected to the payback provision of N.J.A.C. 7:1I-4.2(b)1 stating that there would be no incentive to sell at a higher price.

RESPONSE: The payback provision cited only calls for a payback of damages paid on non-sales based settlements should a subsequent sale prove that the initial settlement was overestimated. The claimant would be liable to payback that overestimated portion of the settlement award amount. The claimant may retain any additional funds realized from the sale. If this provision were eliminated, claimants could receive a windfall. The Department does not believe that this is appropriate stewardship of the Fund.

COMMENT: Several commenters expressed concern that the appraisal value does not take into account general real estate appreciation.

RESPONSE: This issue has been provided for by an additional provision in N.J.A.C. 7:1I-4.2(d) which now states that in situations where more than two months have passed between the initial appraisal and the settlement date, the Department will readjust the appraisal.

SUBCHAPTER 5. SETTLEMENT AND INVESTIGATION OF CLAIM

COMMENT: One commenter stated that rules should include a requirement that the Fund be notified of the initiation of settlement discussions so the Fund can take part in negotiations or make sure its interest in proceeding against the wrongdoer is reserved. Alternatively, the Fund should be required to notify the claimant in writing that execution of a release bars recovery against the Fund.

RESPONSE: During the drafting of the new rules, the Department carefully considered the degree of involvement it should have in claimant/operator-owner negotiations. In addition to the issue of personnel allocation, the Department was concerned that direct Departmental intervention in such proceedings might inhibit settlement between parties. It was considered more beneficial to the parties, and in most cases to the Fund, to allow them to explore means of a settlement without the burden of the State as a third party to the discussions until the essential terms of the settlement are worked out. At that point, the required notice to the Fund will give it ample opportunity to safeguard its rights. Additionally, the Department believes that totally barring claimant's Fund recovery after settlement with the owner/operator is unwarranted and unjust to the claimant unless the claimant releases all his or her rights against the owner/operator by that settlement. In that case, a claimant would be legally unable to enter into the release and subrogation agreement that the Fund requires as part of its settlement with the claimant.

The Department believes that private settlements which eliminate or reduce the Fund's direct liability should be encouraged and that the controls on the process contained in the new rules will strike the proper balance between promoting that goal and guaranteeing that the issues important to the Fund are protected.

COMMENT: Two commenters stated that the Department should be required, under N.J.A.C. 7:1I-5.2(c)1, to automatically mail copies of appraisals to the claimants.

REPSPONSE: The Department will mail copies of appraisals upon receipt of either a written or telephone request for them. This should satisfy anyone wishing to review such documents.

COMMENT: One commenter suggested that a provision be added to N.J.A.C. 7:1I-5.2(d) requiring the Department, in cases of lack of cooperation, to suspend the claim, to communicate with the claimant to resolve the reason for the lack of cooperation, and only after this, make a decision whether to lift the suspension or deny the claim.

RESPONSE: After filing their claims application, claimants are responsible under N.J.A.C. 7:1I-5.2 to provide the Department with access to all pertinent claim records. This is the only way claims can be responsibly processed. Considering the number of claims presently requiring resolution, it would also be unfair to the great majority of cooperative claimants to utilize the limited resources of the Department to afford special treatment to uncooperative claimants and thereby delay work on other claims.

COMMENT: One commenter suggested that the Department should be required under N.J.A.C. 7:1I-5.3 to notify the claimant of the opportunity to request an adjudicatory hearing.

RESPONSE: The Department already includes this information in its notices of decision and has modified the rules to reflect this practice.

COMMENT: One commenter requested that the 20 day time limit for requesting an adjudicatory hearing under N.J.A.C. 7:1I-5.4(a) be extended to 25 days.

RESPONSE: The 20 day time limit is consistent with the time period used in other Department rules. The Department believes that this provides adequate time for the claimant to respond.

COMMENT: One commenter stated that N.J.A.C. 7:1I-5.4(a)2iii should be clarified to identify the information the Department is seeking regarding "the legal authority and jurisdiction under which the hearing is to be held:".

RESPONSE: The Department has determined that this information is no longer necessary. Therefore this requirement has been deleted in its entirety.

COMMENT: One commenter stated that in notifying the claimant of the right to request an adjudicatory hearing, the Department should advise the claimant in writing of the obligation to include all information required by N.J.A.C. 7:1I-5.4(a)2 and the serious consequences of a failure to submit all of this information. If a claimant's request is incomplete, an additional period of time should be provided so that the claimant can supply the information rather than immediately denying the request.

RESPONSE: As part of the claim denial package, the Department presently includes an explanation of the claimant's appeal rights as well as a copy of the applicable section of the rules and it will continue to do so in the future. Furthermore, it is the Department's experience that the type of information requested can be readily prepared within the time period allotted in N.J.A.C. 7:1I-5.4. Therefore, no additional time shall be provided in the rule.

COMMENT: One commenter stated that claimants should receive a list of potential responsible parties when the release document is forwarded to the claimant in the event there is a conflict of interest between the claimant and a responsible party.

RESPONSE: The Department does not foresee any situation where this would be a problem since upon execution of a release, the claimant subrogates his or her rights to pursue legal action against the responsible party to the Department.

COMMENT: One commenter suggested that N.J.A.C. 7:1I-6.2(b) be clarified to reflect that liens will be removed after two years.

RESPONSE: The Department agrees with the intent of this suggestion as it relates to liens for non-sale based settlements. Therefore, a clarification has been made to N.J.A.C. 7:1I-6.3(c).

COMMENT: One commenter suggested that the State promulgate a rule that insures that all future buyers of properties near any landfill be made aware of the existence of such a landfill. Another commenter suggested that a rule be promulgated requiring that buyers in new developments and new houses be notified of the existence of a landfill in the area before they buy a home.

RESPONSE: The Department requires, in N.J.A.C. 7:1I-6.2(c), that upon sale of a property which has received a settlement from the Fund a covenant which shall run with the land is to be placed in the deed stating that the claimant has negotiated with the Department for specific enumerated damages and that these damages have been satisfied. Since a covenant running with the land is permanently affixed to the deed regardless of the number of transfers, all future buyers of any property upon which a settlement has been made will be notified of the existence of the landfill. This provision applies whether there is a sale of an existing home or new home. Beyond this requirement, the Department does not appear to have authority to promulgate real estate rules of the sort suggested by the commenters under the Sanitary Landfill Facility Closure and Contingency Fund.

COMMENT: One commenter expressed opposition to the lien provision in N.J.A.C. 7:1I-6.3 and stated that liens will have an adverse impact on loan applications.

RESPONSE: The lien is only applicable to non-sales based settlements for which the property value diminution is necessary based on an estimate. In the event this estimate proves to be incorrect and the property is sold for more than the basis used to determine the original settlement, the lien provides a mechanism for the Department to recover any excess settlement monies.

COMMENT: One commenter stated that repayment under N.J.A.C. 7:1I-6.3 should only be required where the selling price plus the award from the Fund is greater than the appraisal value plus an appreciation value of five percent per year (prorated on a monthly basis) from the claims settlement date.

RESPONSE: The preferred claims settlement method under the rule is sales based settlement. This method measures the market value of the property as evidenced by the sale. N.J.A.C. 7:1I-6.3 provides for an exception to this standard method by allowing for an initial settlement after a claimant has unsuccessfully attempted to sell property in good faith for a period of one year. This non-sales initial settlement is an approximation of damages which may facilitate claimant's goals of moving to another property. If a subsequent sale indicates there was an excess in the initial settlement, that settlement can essentially be considered an interest free loan which should be repaid to the State. Reimbursement of the State will not exceed the initial settlement and final settlement will be based on an adjusted appraisal amount made at the time of sale.

COMMENT: One commenter stated that there should be provisions within the lien so that the lien does not inhibit the ability of the claimant to secure refinancing, or equity or home improvement loans. In other words, the loan company's secured interest in the property should be able to take precedence over the Department's lien.

RESPONSE: To protect the fiscal integrity of the Fund it is necessary that the lien placed on the property pursuant to N.J.A.C. 7:1I-6.3 take precedence over other interests.

DEPARTMENT INITIATED CLARIFICATIONS

As a result of the Department's review of the proposal, the following changes have been made to correct typographical errors, or to clarify the meaning of the rules to avoid misunderstandings.

1. In N.J.A.C. 7:1I-1.7 a typographical error in the proposal identifying this section as N.J.A.C. "8:1I-1.7" has been corrected.
2. In N.J.A.C. 7:1I-1.7(b), the categories of prior compensation which will reduce an award from the fund have been amended to clarify that awards will be reduced by amounts received as court awards for claimed damages.
3. In N.J.A.C. 7:1I-3.3(d), language has been added to clarify that listing must be with a multiple listing service.
4. In N.J.A.C. 7:1I-3.3(e)6iv, language has been added to clarify the types of information which must be submitted to prove potential buyers' reactions.
5. In N.J.A.C. 7:1I-3.5(a)3, "material" has been deleted from "the material health effects" as unnecessary.
6. In N.J.A.C. 7:1I-4.2(b)1, language has been added to clarify that repayment of excess settlements received in non-sales based settlements must be repaid within 10 days.
7. In N.J.A.C. 7:1I-4.2(b)1, a new subparagraph i has been added to clarify that to qualify for any additional payments after an initial non-sales based settlement is received, a claimant may not reduce the asking price by more than 2.5 percent per month as permitted by N.J.A.C. 7:1I-3.3(d).
8. In N.J.A.C. 7:1I-6.1(c), language has been added to clarify the claims payment process in the event the total amount of claims awarded exceeds the current balance of the Fund.
9. In N.J.A.C. 7:1I-6.3(c), the acceptable means for reimbursement of excess settlement has been amended to include certified checks.

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

CHAPTER 1I
SANITARY LANDFILL FACILITY CONTINGENCY FUND

SUBCHAPTER 1. GENERAL PROVISIONS

7:1I-1.1 Scope

This chapter shall constitute the rules governing submission of a claim 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., including Department procedures for review and decision making regarding such claims.

7:1I-1.2 Construction

This chapter shall be liberally construed to allow the Department of Environmental Protection to fulfill the purposes of the act concerning claims for compensation for damages proximately resulting from the operations or closure of a sanitary landfill.

7:1I-1.3 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby.

7:1I-1.4 Purpose

(a) This chapter is promulgated for the following purposes:
1. To implement the purposes and objectives of the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.;
2. To establish rules for administration of the Sanitary Landfill Facility Contingency Fund, established pursuant to the Act, for the purpose of providing ***prompt and*** adequate compensation for damages as defined herein; and
3. To protect and insure that the taxes credited to the Fund are spent in a proper manner and for the intended purposes.

7:1I-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found at N.J.A.C. 7:26-1.4.

"Act" means the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

"Claim" means the request for compensation for damages pursuant to the Act as applied for in the manner prescribed in this chapter.

"Closure" means the construction and implementation of all environmental safeguards required by law or by the sanitary landfill's approved Closure and Post-Closure Plan and the facility's approved engineering design subsequent to the termination of operations at any point of that facility. Closure includes all activities and costs associated with the design, purchase, construction and maintenance of all measures necessary to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfills subsequent to the termination of operations at any portion thereof, including but not necessarily limited to:

1. The costs of placement of acceptable cover;
2. The installation of methane gas monitoring, venting, or evacuation systems; and
3. The installation and monitoring of wells or of leachate collection and control systems at the site or in the vicinity of any sanitary landfill.

"Damages" means and includes, but is not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed, and the diminution in fair market value of any real property;
2. The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed, including any potable water supply;
3. The cost of any personal injuries, including medical expenses, incurred and income lost as a result thereof; and
4. The cost of the design, construction, installation, operation and maintenance of any device or action or other measure deemed necessary by the Department to clean up, remedy, mitigate, monitor or analyze any threat to the environment and public health, safety or welfare of the citizens of this State, including the installation, maintenance, sampling and analysis of methane gas, monitors, vents, evacuation systems, groundwater monitoring wells, leachate collection systems and the restoration or replacement of any public or private potable water supply, or the connection to an alternative water supply.

"Department" means the New Jersey Department of Environmental Protection.

"Filing date" or "filed" means the date the claim is received by the Department ***or the date the claim is postmarked by the United States Postal Service, whichever is earlier***.

"Fund" means the Sanitary Landfill Facility Contingency Fund established pursuant to the Act.

"Improvements" means all structures or buildings now or hereafter located upon claimant's property or on any part thereof, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings.

"Landfill area" means the portion of the sanitary landfill upon which disposal of solid waste (including hazardous waste) actually occurs or has occurred.

"Operations" means the act or acts of accepting, disposing, depositing, or otherwise discarding solid waste in a sanitary landfill, and all activities associated with such act or acts.

"Owner or operator" means and includes, in addition to the usual meanings thereof, every person who operates or operated a sanitary landfill and every agent or representative of such operator, every owner of record of any interest in land whereon a sanitary landfill is or has been located, and any person who owns or owned a majority interest in any other corporation which is the owner or operator of any sanitary landfill.

"Person" means an individual, trust, firm, joint stock company, partnership, corporation (including a government corporation), company, partnership, society, association, state, municipality, commission, political subdivision of a state, the Federal government or Federal agency, or any interstate body.

"Physical intrusion" means the existence of methane gas or leachate on or under a claimant's real property.

"Sanitary landfill" means a facility which is, or at one time was, governmentally approved, at which solid waste (including hazardous waste) is or has been ***permanently*** deposited, disposed or otherwise discarded on or into the land as fill *[for a period of time exceeding six months]*.

7:1I-1.6 Liabilities for damages

(a) Every owner or operator of a sanitary landfill shall be jointly and severally liable for the proper operations and closure of the sanitary landfill as required by law, and for any direct or indirect damages, no matter by whom sustained, proximately resulting from the operations or closure of the sanitary landfill.

(b) The Fund shall be credited with all tax revenues collected from sanitary landfill owners or operators pursuant to the Act and shall be strictly liable for all direct and indirect damages proximately resulting from the operations or closure of any sanitary landfill.

(c) The moneys in the Fund shall be disbursed by the Department for the following purposes and no other:

1. Administrative costs incurred by the Department in administering the Fund pursuant to the Act; and
2. Payment of compensable damages.

*[8:1I-1.7]****7:1I-1.7*** Compensable damages

(a) The Department will pay from the Fund only those claims for damages for which the claimant can produce substantial evidence pursuant to N.J.A.C. 7:1I-3.

(b) In determining the amount of an award, the Department shall reduce the award by the amount of any prior compensation for the claimed damages received by the claimant from any insurance program, ***from any court awards,*** or from any other State or Federal program.

(c) Any costs incurred by the claimant prior to the filing of a claim or during the pendency of a claim shall not prejudice the rights of the Department to evaluate the reasonableness of said costs prior to the granting of any award.

7:1I-1.8 Duty to mitigate damages

The claimant shall exercise reasonable diligence and ordinary care to avoid aggravating his or her injury or increasing his or her damages.

SUBCHAPTER 2. FILING AND PROCESSING OF CLAIMS

7:1I-2.1 Timely filing of claims

(a) Claims shall be filed not later than one year after the date of discovery of damage and in the manner prescribed in N.J.A.C. 7:1I-2.2

(b) The claimant shall be forever barred from recovering against the Fund if he or she failed to file his or her claim with the Department within one year of the date of discovery of the damage.

7:1I-2.2 Filing of claims

(a) All claims shall be filed on forms provided by and available from the Department upon request at the address stated in (b) below.

(b) The claim, once signed and certified under oath, shall be mailed by certified mail, return receipt requested, or delivered by hand to the Sanitary Landfill Facility Contingency Fund, Environmental Claims Administration, New Jersey Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.

(c) The claim shall include:

1. The name and mailing address of the claimant;
2. The mailing address to which the claimant desires notice to be sent;
3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
4. A general description of the damage incurred so far as it may be known at the time of presentation of the claim;
5. The name or names of the owner or operator;
6. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective damage, insofar as it may be known at the time of the presentation of the claim together with the basis of computation of the amount claimed; and
7. The amount received from any other source as compensation for the damage claimed.

(d) Any claimant may obtain from the Department, upon written request therefor, the names and addresses of the owners and operators of the sanitary landfill.

(e) All damages shall be stated in their entirety in a single claim. Damages of which the claimant knew or, through the exercise of reasonable diligence, should have known at the time of filing the claim which are not included in a claim at the time a settlement is concluded shall be deemed waived.

(f) The claim shall be signed by the claimant, except as provided in (f)1 below.

1. Where the claimant is a minor or incompetent, as defined under New Jersey law, or is deceased, the claim may be signed by the claimant's parent, guardian, executor, or court-appointed representative, as the case may be.

(g) No claim by a subrogee or an assignee may be filed with or processed by the Department.

7:1I-2.3 Priority for review of claims

Completed claims shall be processed in the order in which they are filed with the Department, except in cases where the claimant has demonstrated to the Department's satisfaction that *[extraordinary personal]* ***extreme*** hardship ***or extreme existing or imminent hazard*** will otherwise result.

7:1I-2.4 Processing of claims

(a) Upon receipt of a claim, the Department shall review same within a reasonable time and, upon completion of its review, shall notify the claimant in writing whether the application is complete.

1. If incomplete, the Department shall provide the claimant with a list of the information necessary to make the application complete.

i. The Department shall specify a reasonable period of time for submitting the necessary information; and

ii. The claimant shall submit all requested information within the specified period of time or the claim shall be denied, unless the claimant submits a written request to the Department for an additional period of time, which request includes specific reasons why the necessary information was not submitted within the specified period of time, and the Department approves the request.

(b) When, in the opinion of the Department, the claim is complete pursuant to N.J.A.C. 7:1I-1.6, the Department shall notify the owner or operator of the sanitary landfill by mailing a notice of the claim by certified mail, return receipt requested, to such owner or operator. In the case of multiple, related claims (series claims), the Department will notify the owner or operator of the sanitary landfill of the first claim of the series only. This notification will include an estimate of the approximate number of claims expected in that series if known, and will give notice that copies of all further claims must be requested in writing.

SUBCHAPTER 3. ELIGIBILITY FOR AND PROOF OF DAMAGES

7:1I-3.1 Eligibility of claimant

(a) Except as provided in (b) below, any person, except subrogees and assignees, who has incurred any direct or indirect damages as a proximate result of the operations or closure of a sanitary landfill is eligible to file a claim under this chapter.

(b) Any person directly or indirectly responsible for the action upon which a claim is based is not eligible for compensation.

7:1I-3.2 Criteria for claims based on real or personal property damage

(a) The claimant shall submit the following to prove damages to real or personal property involving costs of restoring, repairing, or replacing such property:

1. Evidence that such damages were caused by the operation or closure of a sanitary landfill;

2. Evidence of the existence of and value at time of damage of the real or personal property for which claim is submitted; and

3. Receipts or estimates for costs of restoring, repairing or replacing damaged property.

7:1I-3.3 Criteria for claims based on real property value diminution damage

(a) Claims for real property value diminution as a result of the operation or closure of a sanitary landfill are compensable upon sale of the property. The claimed property must be located within one-half mile of the landfill area except:

1. Claims for property value diminution which were filed prior to March 7, 1988 are not subject to the one-half mile limitation, or to the criteria at (d) below if the damaged property was sold prior to *[March 7,]* ***July 18,*** 1988, but shall meet all other criteria of this section. ***Damaged property shall be considered sold prior to July 18, 1988 if a binding agreement of sale was entered into prior to this date.***

2. Claims for property diminution which include physical intrusion are not subject to the one-half mile limitation but shall meet all other criteria of this section.

(b) All claims filed subsequent to the effective date of this chapter for which the property has been sold prior to receipt of an appraisal of the subject property value from the Department are barred from compensation.

(c) The Department shall notify each claimant who filed a claim before March 7, 1988 of the requirements of this chapter. Such claimants shall then have 60 days from receipt of such notice to inform the Department by certified mail return receipt requested, of their intent to pursue their claim for property value diminution pursuant to this chapter***, immediately, request that the claim be suspended for a period of up to two years,*** or to withdraw that claim for those damages. ***If a claimant requests suspension of their claim, the claimant may at any time during the period of suspension, request reactivation of the claim. At the end of the two year suspension period, the claim will be automatically reactivated, unless the claimant has previously withdrawn the claim. Priority status of reactivated claims will be established based on the date of receipt of the reactivation request.***

(d) The Department will provide a claimant with the Department's appraisal of the value of the subject property absent any landfill effects. Claimant shall, within *[45]* ***90*** days of receipt of such appraisal, offer the property for sale ***with a multiple listing service*** at no less than the Department's appraisal value for at least 60 days and attempt to sell in good faith. The claimant shall submit to the Department a copy of the brokerage agreement. Failure to list the property for sale within *[45]* ***90*** days of receipt of the appraisal will result in denial of the claim. If no offers are received from responsible buyers for that price, the claimant may reduce the price by 2.5 percent per month. Any variation from the above formula allowing for a larger or smaller percent reduction or an accelerated or decelerated time frame for reductions shall be approved in advance by the Department.

(e) Within 60 days after the settlement date for the property or the effective date of this rule, whichever occurs last, the claimant shall submit to the Department, as evidence of the sale and that the sale was a good faith sale, the following:

1. All written offers for the property;

2. The contract of sale for the property;

3. The settlement sheet(s), including the one required by the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C.A. 2601 et seq.;

4. The deed;

5. An affidavit by the claimant stating the total sales price of the property, that no other money or other compensation has been received from any person for the property and that the documents submitted pursuant to (e)1 through 4 above are true copies of the original documents used in the sale transaction; and

6. An affidavit from the claimant's realtor providing the following information:

i. How long the property was up for sale;

ii. What the initial listing price was;

iii. A list of any changes in the listing price;

iv. A record of all inquiries, showings or open houses held for the purpose of selling the claimant's property. This record shall include the names and addresses of all persons who inquired about, were shown or attended open houses held for the purpose of selling the property and will include a ***detailed*** description of the *[reactions]*

specific statements of these persons *[to]* ***concerning*** the property;

(1) Claimants who filed claims ***prior to March 7, 1988*** and sold property prior to *[March 7, 1988]* ***July 18, 1988*** will not be required to submit the names and addresses of the persons who inquired about, were shown or attended open houses held for the purposes of sale of the property; and

v. The number of offers received, the amount of each offer and date received.

(f) Claimants who satisfy the criteria of (a) through (d) above and have been unable to sell the property after one year of continuous good faith attempts to sell, measured from the date of listing, shall be eligible to recover damages calculated in accordance with N.J.A.C. 7:1I-4.2(b). If the property is sold within two years of settlement, claimant shall satisfy all requirements of (e) above, and any paid settlement shall be subject to adjustment pursuant to N.J.A.C. 7:1I-4.2(b)1.

7:1I-3.4 Criteria for damages to natural resources

(a) For damages to any natural resources, including any potable water supply, the claimant shall submit evidence that any such damage was caused by the operation or closure of a sanitary landfill.

(b) No claims for damages to natural resources shall be paid unless the claimant has demonstrated to the Department's satisfaction that the actions taken or to be taken are or were reasonable and appropriate under the circumstances.

7:1I-3.5 Criteria for personal injuries damage

(a) The claimant, as proof of damages involving the cost of any personal injuries including medical expenses incurred and income lost as a result thereof, shall submit the following:

1. Evidence that such damages were caused by the operation or closure of a sanitary landfill;
2. A specific statement as to the nature of the health injuries;
3. Detailed records substantiating the *[material]* ***personal injuries, the*** health effects or damages suffered by the claimant including any medical records, prognosis statements, and documentation indicating the monetary value of medical attention; and
4. Evidence of income lost as a result of injury such as pay receipts or copies of income tax returns.

7:1I-3.6 Criteria for damages based on threats to the environment and public health, safety or welfare

(a) For damages related to the cost of design, construction, installation operation and maintenance of any device or action deemed necessary by the Department to cleanup, remedy, mitigate, monitor or analyze any threats to the environment and public health, safety or welfare of the citizens of New Jersey, including the installation, maintenance, sampling and analysis of methane gas, monitors, vents, evacuation systems, groundwater monitoring wells, leachate collection systems, and the restoration or replacement of any public or private potable water supply, or the connection to an alternative water supply, the claimant shall submit evidence that any such related damages were or are being caused by the operation or closure of a sanitary landfill.

(b) No claims for damages to natural resources shall be paid unless the claimant has demonstrated to the Department's satisfaction that the actions taken or to be taken are or were reasonable and appropriate under the circumstances.

SUBCHAPTER 4. AMOUNTS OF DAMAGE AWARDS

7:1I-4.1 Real or personal property damage; actual

If the claimant submits all evidence required by N.J.A.C. 7:1I-3.2, and if, after verification of the reasonableness of all estimates and receipts submitted, the Department is satisfied with the evidence submitted, the Department *[may]* ***shall*** pay damages based on the claims submitted.

7:1I-4.2 Real property damages; property value diminution

(a) Upon satisfactory sale of a property pursuant to the requirements of N.J.A.C. 7:1I-3.3, the Department will pay the claimant damages in an amount equal to the Department's appraisal of the property value absent the landfill minus the actual selling price.

(b) In the event that a claimant makes a good faith attempt to sell the property in accordance with the requirements of N.J.A.C. 7:1I-3.3 and cannot do so within one year measured from the date of the initial real estate listing, the Department will, upon verification of the good faith nature of the attempt, appraise the value of the property absent the landfill and survey sales based claims settlements in the area to determine the average percentage diminution for the area. The Department *[may]* ***shall*** pay, as damages, the dollar value arrived at by multiplying the appraised value of the property absent the landfill by the average diminution percentage determined for the area.

1. If a sale occurs within two years after initial settlement with the Fund, upon satisfaction of all requirements of N.J.A.C. 7:1I-3.3(f), a further claim may be awarded based on a comparison of the initial settlement paid with actual diminution. Actual diminution shall be determined by subtracting the sales price received from the appraisal value of the property absent the landfill. The Department may pay the difference between the two figures where the actual diminution is greater then the initial settlement paid. If the initial settlement paid is greater than the actual diminution upon sale, the claimant shall be liable to the Fund for the excess settlement received. ***Payback of excess settlement received must be made within 10 days of property settlement.***

i. In order to qualify for additional payments under this subsection the claimant may not reduce the asking price by more than 2.5 percent per month after initial settlement with the Fund without written permission from the Fund.

(c) The Department will not, in compensating damages claimed under (a) or (b) above, include in its calculation of the appraisal of the value of the damaged property, the values of any improvements to the property made after the date of discovery of damages.

(d) If settlement under this section occurs more than two months after the Department's appraisal, the Department will adjust the appraisal value used in calculating settlement or determining adjustments to initial settlement to reflect appreciation or depreciation of real estate values in the area.

7:1I-4.3 Damages to natural resources

If the claimant submits all evidence required by N.J.A.C. 7:1I-3.4, and if, after verification of the reasonableness of receipts or estimates submitted, the Department is satisfied with the evidence submitted, the Department may pay the amount substantiated by the submitted documents. The Department reserves the right to perform or contract for the performance of any prospective remedial action necessary in lieu of payment to the claimant.

7:1I-4.4 Personal injuries

If the claimant submits all evidence required by N.J.A.C. 7:1I-3.5, and if, after verification of the reasonableness of receipts and opinions supplied, the Department is satisfied with the evidence submitted, the Department *[may]* ***shall*** pay damages based on the documentation submitted.

7:1I-4.5 Threats to the environment and the public health, safety or welfare

If the claimant submits all evidence required by N.J.A.C. 7:1I-3.6 and if, after verification of the reasonableness of the evidence submitted, the Department is satisfied with the evidence submitted, the Department may pay for the costs of the devices or actions or other measures determined by it to be necessary to remedy the threat to public health, safety, welfare or the environment. The Department reserves the right to perform or contract for the performance of any prospective remedial action necessary in lieu of payment to the claimant.

SUBCHAPTER 5. SETTLEMENT AND INVESTIGATION OF CLAIM

7:1I-5.1 Settlement of claim with owner or operator

(a) Prior to any private settlement with the owner or operator concerning the damages, the claimant shall notify the Department by certified mail of the terms of the settlement at least two weeks prior to the private settlement date.

(b) If the claimant privately settles with the owner or operator, any payment the claimant receives as a result of that settlement shall be deducted from the amount of compensation awarded by the Department regarding that claimant's damages; provided, however, that if the settlement terms release the owner or operator from further liability, the settlement shall be an absolute bar to any claim for damages from the Fund.

7:1I-5.2 Investigation of claim

(a) The claimant shall allow the Department to inspect all records relating to his or her claim for damages including, but not limited to, financial, medical, employment and property records, insurance policies and any documents supporting the claimant's proposal to remedy the damages.

(b) In investigating claims for personal injuries, the Department may direct a medical examination of the claimant by an independent physician selected by the Department. The claimant shall present himself or herself to the physician selected at the time and place designated by the physician.

1. A written report of such examination shall be filed by the examining physician with the Department and a copy mailed by the Department to the claimant.

2. If the Department has directed a medical examination by a physician selected by the Department, such physician's fee shall be paid by the Department from the Fund.

(c) The claimant shall allow the Department or its authorized representative to examine all personal and real property related to his or her claim for damages. The Department may require an appraisal of any property for which a claim has been made. This appraisal will be performed by an appraiser selected by the Department.

1. The appraisal shall be filed by the examining appraiser with the Department and a copy mailed by the Department to the claimant upon his or her request.

2. If the Department has required an appraisal by an appraiser selected by the Department, such appraiser's fee shall be paid by the Department from the Fund.

(d) The claimant shall cooperate fully with the investigators, agents or representatives of the Department in the investigation of a claim in order to be eligible for any award. In the event that such cooperation is refused or denied, the Department may deny such claim.

7:1I-5.3 Determination of claims

(a) The Department, after investigation of a claim, shall:

1. Offer a settlement of the claim against the Fund; or

2. Deny the claim.

(b) The Department shall render its decision in writing, and the reasons therefor, and shall forward a copy thereof by certified mail, return receipt requested, to the claimant. ***In such notification, the Department shall inform the claimant of the right to request an adjudicatory hearing pursuant to N.J.A.C. 7:1I-5.4.***

(c) If the claimant accepts the offer of settlement or fails to request an adjudicatory hearing pursuant to N.J.A.C. 7:1I-5.4, the claimant shall be forever barred from filing another claim to recover against the Fund for those damages settled or denied.

(d) Any claimant aggrieved by the Department's offer of settlement or denial of his or her claim may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. 7:1I-5.4.

7:1I-5.4 Adjudicatory hearings

(a) Within 20 calendar days from receipt of a decision by the Department rendered pursuant to N.J.A.C. 7:1I-5.3, the claimant may submit a written request to the Department for an adjudicatory hearing to contest such action.

1. Any request for an adjudicatory hearing shall be based on specific relevant issues raised by the claimant.

2. The claimant shall include the following information in a request for an adjudicatory hearing:

i. The name, address and telephone number of the claimant or his or her authorized representative;

ii. The Department's claim number for the claim;

[iii. A statement of the legal authority and jurisdiction under which the hearing is to be held;]

*[iv.]***iii.** A reference to the particular sections of the statutes and rules involved;

*[v.]***iv.** A short and plain statement of the matters of law and fact asserted;

*[vi.]***v.** The claimant's factual position on each question alleged to be at issue, its relevance to the Department's decision and an estimate of the amount of hearing time necessary to adjudicate all factual issues; and

*[vii.]***vi.** Evidence supporting the claimant's factual position and proposed resolution and copies of other written documents relied upon to support the request for a hearing.

(b) If the claimant fails to include all the information required by (a)2 above, the Department shall deny the request for a hearing and the Department's decision shall constitute final agency action on the matter.

(c) If it grants the hearing request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge 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.

SUBCHAPTER 6. PAYMENT OF CLAIM

7:1I-6.1 Payment of claim

(a) Except as provided in (b) and (c) below, the Department shall make claim payments in a single lump sum payment.

(b) The Department may bifurcate multiple damages filed in a single claim and may make payments separately thereon.

(c) In the event that the total amount of claims awarded exceeds the current balance of the Fund, each award shall be paid on a prorated basis over time without interest until the award is paid in full. ***Claims initially paid on a prorated basis will be satisfied in full before any payments are made on new claims.***

7:1I-6.2 Conditions of payment

(a) No payment of any damages from the Fund shall be made unless the Department acquires, by subrogation, all rights of the claimant to recovery of such damages from an owner or operator of a sanitary landfill.

1. The claimant shall not prejudice such subrogation rights in any manner;

2. The claimant shall cooperate fully with the Department in the preparation of a case for trial and at the trial, should the Department commence a civil action to recover any amount awarded; and

3. The claimant shall allow the Department to join his or her claim with as many claims as the Department may have against an opposing party in any civil action commenced to recover any amounts awarded.

(b) No payment of any damages from the Fund shall be made unless the claimant executes a written release of all damages occurring prior to execution of the release except those damages which could not reasonably have been discovered prior to signing the release. This release shall contain all conditions precedent to payment of the claim required by this chapter. In releases executed for damages for non-sales based real property value diminution, such release shall include an agreement by the claimant that any lien filed pursuant to N.J.A.C. 7:1I-6.3 shall be satisfied at the closing of the sale of the real property by the claimant.

(c) The claimant shall include in the agreement of sale and in the deed a covenant which shall run with the land indicating that the claimant has negotiated with the Department for specific enumerated damages and that these damages have been satisfied. In the case of property value diminution claims, such covenant shall state that further payment from the Fund for similar damage is barred.

7:1I-6.3 Lien for non-sale based settlements

(a) For property diminution claims, the Department may file a lien against real property settled on a non-sales basis in the amount of the Department's settlement with the claimant. ***Such lien will remain**

on the property for a period of two years after initial settlement.* In the event of a sale within two years of settlement, any amount in excess of the Department's appraised value of the property including the effects of landfill shall be reimbursed by the claimant to the Fund. The reimbursement shall not exceed the amount of the initial payment of the claim between the claimant and the Department.

(b) For the purposes of (a) above, the appraised value of the property including the effects of the landfill shall be calculated by subtracting the initial settlement amount from the Department's appraisal of the value of the property absent the landfill ***as adjusted pursuant to N.J.A.C. 7:1I-4.2(d)***.

(c) Liens filed pursuant to this section will be released by the Department ***within two years of initial settlement*** only upon receipt of an affidavit from the claimant setting forth the sale price and, when such price indicates that an excess settlement from the Fund has been paid to the claimant, a cashiers check ***or certified check*** in the amount of any such excess.

(a)

DIVISION OF PARKS AND FORESTRY

State Park Service

Readoption: N.J.A.C. 7:2

Proposed: April 4, 1988 at 20 N.J.R. 714(a).

Adopted: June 22, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: June 24, 1988 as R.1988 d.340, **without change.**

Authority: N.J.S.A. 13:1B-3, 13:1B-15.100 et seq., and 13:1L-1 et seq.

Effective Date: June 24, 1988.

Expiration Date: June 24, 1993.

DEP Docket Number: 013-88-03.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:2.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Lease and License Fees, Shellfish License Revocation, and Penalties

Adopted New Rules: N.J.A.C. 7:25-1

Proposed: December 21, 1987 at N.J.R. 2358(a).

Adopted: June 23, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: June 24, 1988 as R.1988 d.339, **without change.**

Authority: N.J.S.A. 13:1B-23 et seq., 13:1D-9, 23:1-1 et seq., specifically 23:2B-6 and 23:2B-14, and 50:1-5 et seq.

Effective Date: July 18, 1988.

Expiration Date: February 18, 1991.

DEP Docket Number: 062-87-11.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:25-1.7 Penalties

(a) Pursuant to N.J.S.A. 50:2-1, no person shall take or catch any clams without either a recreational or commercial license. Any person violating this provision shall be liable to a penalty of $20.00 for the first offense and $40.00 for each subsequent offense.

(b) Pursuant to N.J.S.A. 50:2-2, no person shall take or catch more than 150 clams a day with only a recreational license or no license. Any person violating this provision shall be liable to a penalty of $40.00 for the first offense and $100.00 for each subsequent offense.

(c) Pursuant to N.J.S.A. 50:2-5, each licensee, while at all times engaged in operating under his license who fails to have his clamming license in his possession or who fails to exhibit his clamming license for inspection upon proper request, shall be liable to a penalty of $10.00 for the first offense and $20.00 for each subsequent offense.

(d) Pursuant to N.J.S.A. 50:3-15.1 and 16.18, no person shall take or possess undersized oysters. Any person violating this provision shall be liable to a penalty of $10.00 for the first offense and not for each oyster and $20.00 for each subsequent offense and not for each oyster.

(e) Pursuant to N.J.S.A. 23:5-35.2, no person shall take or attempt to take crabs without a license. Any person violating this provision shall be liable to a penalty of $10.00 for the first offense and $20.00 for each subsequent offense.

(c)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Correction

Toxic Catastrophe Prevention Act

N.J.A.C. 7:31

Take notice that the Summary of Public Comments and Agency Responses and the text of N.J.A.C. 7:31, the Toxic Catastrophe Prevention Act rules, published in the June 20, 1988 New Jersey Register at 20 N.J.R. 1356(a), contain errors in which the published text differs from the Summary and adopted text as filed with the Office of Administrative Law.

Foremost among these errors is the publication as if adopted of the text of N.J.A.C. 7:31-2.12 and 2.15 as those rules were proposed in the September 21, 1987 New Jersey Register at 19 N.J.R. 1687(a). Those two proposed rules were superseded and replaced by another proposal published in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a). In this adoption, those two section numbers should have been reserved.

In addition, administrative corrections are made, pursuant to N.J.A.C. 1:30-2.7(a)3, to the text of the definition of "acute toxicity concentration" in N.J.A.C. 7:31-1.5, adding an "s" to the word "Hygienist" in the referenced Conference, and to paragraph (a) in N.J.A.C. 7:31-3.7, deleting the incorrect word "including" and replacing it with the proper "include".

Full text of the corrected Summary paragraphs and rules follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*). Summary paragraphs are designated by Register page number and the sequential comment and/or response number on that page.

20 N.J.R. 1374, first comment, fourth paragraph and response, first paragraph:

As an additional alternative, the following definition of SHI is more technically and scientifically correct than the Department's definition of SHI:

$$\text{SHI} = \frac{{}^*[\dfrac{\text{Vapor Pressure (20°C)}}{\text{Total Atmospheric Pressure x } 10^6}}{\text{Acute Toxicity Concentration—ppm}]^*}$$

$$\textbf{SHI} = \frac{{}^*\dfrac{\textbf{Vapor Pressure (20°C)}}{\textbf{Total Atmospheric Pressure x } \mathbf{10^6}}}{\textbf{Acute Toxicity Concentration—ppm}^*}$$

The commenter provided a tabular listing that provided a comparison of the proposed SHI and the Department's calculation. Using the SHI listing, a logical cutoff for the Part II listing is a SHI of 13,385, which corresponds to the lowest SHI for the Part I EHS's excluding toluene-2,4-diisocyanate. Only 59 of the 95 proposed Part II EHS's would qualify using this definition of SHI.

RESPONSE: Regarding the suggestion that for acute inhalation toxicity the lowest human data should be used, the Department has serious reservations about using LC_{LO} human data. Generally, LC_{LO} human datum comes from accident reports developed from autopsy (this level is the amount present in the air when death occurred) and does not represent scientifically valid LC_{LO} information. There is no *[LC_{LO}]* ***LC_{50}*** for humans (by definition). IDLH values include both human and animal results (where both are available). The lowest figure for inhalation is the most conservative figure; i.e. the level that has the potential to cause death in the most sensitive.

20 N.J.R. 1384, fifth response:

RESPONSE: Although the TCPA rules are promulgated, in part, under the authority of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., the TCPA rule and the Bureau of Air Pollution Control rule are entirely separate rules designed for separate purposes. Therefore, an EHS must satisfy the requirements of each *[rule]* ***of these chapters*** separately.

7:31-1.5 Definitions

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

. . .

"Acute toxicity concentration" or "ATC" means a minimum level concentration which is greater than the Threshold Limit Value (TLV) or the Short Term Exposure Limit (STEL), as defined by the American Conference of Governmental Industrial Hygienist***s***, and equivalent to the lowest of the following three categories: one-tenth of the median lethal concentration (LC_{50}); or one times the lowest concentration (LC_{LO}*)* of test data for any mammalian species for test periods up to eight hours; or the Immediately Dangerous to Life and Health (IDLH) concentration. LC_{50}, LC_{LO}, IDLH, TLV, and STEL have been defined by the U.S. Department of Health and Human Services in the "Registry of Toxic Effects of Chemical Substance" (RTECS) and the National Institute of Occupational Safety and Health (NIOSH) "Pocket Guide to Chemical Hazards".

. . .

"Failure mode and effects analysis" or "FMEA" means a specifically designed method to identify the conceivable ways that EHS equipment or its components can fail and effect the failure on the system with respect to an EHS release. The failure and effects are determined in a study of updated piping and instrument diagrams that describe the EHS facility taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The resulting qualitative analysis is translated into a quantitative FMEA when probabilities of the failure of components are assigned *[from which the probability of an EHS release would be estimated]*. The results of the FMEA are reported for a unit or system of an EHS facility on a FMEA table. The results entered on a FMEA table for each equipment item or component studied are as follows: the identification number of the item, the name of the item, entries of failure modes of the item and for each entry of failure mode, the other equipment potentially affected with the equipment identification number and the effect of the failure on that equipment, a classification of the criticality ranking of the failure based on quantity or rate of the potential EHS release, the probability of the failure and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure.

"Fault tree analysis" or "FTA" means the analysis of the logic diagram constructed from a study of the updated piping and instrument diagrams that describe the EHS facility taking into consideration process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, electrical one-line diagrams and other documents. The logic diagram will contain the conceivable human or mechanical event sequences that could result in an EHS accident. The logic diagram is called a fault tree and represents a qualitative analysis of the hazards. Results of the FTA are reported for a unit or system on a table. Entered on the table are the descriptions of the various combinations of equipment or procedural failures that can lead to an EHS release. The combinations are determined by solving *[the fault tree logic diagram for]* the fault tree logic diagram for the minimal cut sets, that is, the smallest combination of equipment or procedural failures, which if all occur, will result in the "top event", that is the EHS release. The table is also entered with a criticality ranking based on the quantity or rate of the potential EHS release, a probability for the respective failures and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure. The analysis of logic diagram includes the identification of "minimal cut sets". When probabilities are assigned to each element of the event sequence, a quantitative fault tree is obtained which gives the probability or frequency of occurrence of the EHS release.

. . .

"Material deficiency" means the failure of a registrant's risk management program to meet each of the requirements of N.J.A.C. 7:31-3.

. . .

["Material deficiency" means the failure of a registrant's risk management program to meet each of the requirements of N.J.A.C. 7:31-3, or the failure of a registrant to use a state of the art risk reduction measure commensurate with the site's environment.]

. . .

"State of the art" means up-to-date technology reflected in equipment or procedures that, when applied at a registrant's EHS facility, will result in a significant reduction of risk. The technology represents an advancement in *[reproduction]* ***reduction*** of risk and shall have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain or otherwise available at reasonable cost commensurate with the reduction of risk achieved.

. . .

7:31-2.12 *[Inspections

(a) The Department shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the act, this chapter, or any order or consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the site, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or noncompliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute, and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators or registrants, and any employees or representatives thereof, shall not hinder or delay, and shall assist, the Department and its representatives in the performance of all aspects of any inspection.

(b) The Department plans to inspect a site at least annually to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan.

(c) Within a reasonable time after an inspection, the registrant or owner or operator shall be furnished with an inspection report which will list any deficiencies found.]* ***(Reserved)***

7:31-2.15 *[Release of information by insurance carriers

(a) After a review of documents and an EHS facility inspection, the Department may determine that a registrant shall authorize the facility's environmental liability or workers compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the facility's EHS management practices.

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;
2. Reports of safety and environmental inspections or audits;
3. Reports of inspections of fire protection equipment;
4. Reports of any additional studies conducted which evaluated the adequacy of the registrant's management of EHS's; and
5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the registrant shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within

30 days of the receipt of the authorization to do so from the registrant.]* ***(Reserved)***

7:31-2.16 Fees

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

(f) The annual fees are assessed on the basis of the *[State's]* calendar year and shall not be prorated or refunded.

(g)-(m) (No change.)

7:31-2.19 Exemptions for non-contiguous EHS equipment

(a) (No change.)

(b) The request for exemption shall include either:

1.-2. (No change.)

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

7:31-3.7 EHS operator training

(a) The training program for EHS operators shall be written and, at a minimum, *[including]* ***include*** the following:

1.-3. (No change.)

(b) The training which EHS operators will receive shall, at a minimum, include:

1. General orientation and initial training of new employees *[beforeassignment]* ***before assignment*** to EHS equipment and EHS procedures which shall include instruction on the general site rules and practices, safety procedures and equipment, and emergency procedures:

2.-4. (No change.)

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

7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

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

(c) Each hazard analysis shall be performed in accordance with the following:

1. (No change.)

2. The hazard analysis team shall:

i. Identify all EHS equipment***,*** potential *[possible]* EHS releases, the points of possible EHS releases, the corresponding approximate quantity or rate of EHS release and corresponding cause of the EHS release;

ii.-v. (No change.)

3.-5. (No change.)

(d) The registrant shall perform a risk assessment on:

1. (No change.)

2. A modification identified by a hazard analysis as having an increase in the potential for an EHS release in an amount which within one hour will be equal to or greater than five times the registration quantity established for that EHS listed in Table I of N.J.A.C. 7:31-2.3 *[or will be twice the potential release that existed before the modification, whichever is smaller]*.

(e)-(k) (No change.)

7:31-3.12 Summary risk management program statement

(a) The summary risk management program statement shall contain:

1. An RMP description which describes in brief each of the eight program elements of the risk management program defined in N.J.A.C. 7:31-3.3(a)***.*** The description of any program element may reference other submittals included in the summary risk management program statement which are applicable to the particular element.

2. The reports of the most recent safety review*[s]* of design of new and existing EHS equipment for each EHS facility meeting the requirements of N.J.A.C. 7:31-3.4 conducted on each EHS facility during the previous two years.

3.-4. (No change.)

APPENDIX I
NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Division of Environmental Quality
CN 027, Trenton, N.J. 08625
"TOXIC CATASTROPHE PREVENTION ACT"
RISK MANAGEMENT PROGRAM CHECKLIST

...

DOCUMENTATION

The following are the questions on supporting documentation (see N.J.A.C. 7:31-3.3)	Yes	No	Comments
1. Is the following updated documentation including appropriate revision dates covering process information maintained at the site and available for inspection by the Department:			
i. and ii. (No change.)			
iii. Reports of hazard analyses, risk assessments, safety *[revies]* ***reviews*** and audits performed during the previous *[five]* ***six*** years?	___	___	______
iv. Accident investigation reports covering accidents at EHS facilities for the past *[five]* ***six*** years?	___	___	______
v.-viii. (No change.)			
2. and 3. (No change.)			

...

RISK ASSESSMENT

The following are the questions for the risk assessment program for specific pieces of EHS equipment or operating alternative (see N.J.A.C. 7:31-3.9):			
1. through 12. (No change.)			
13. Did the persons performing the risk assessment on the *new* EHS facilities or modifications prepare a report of the risk assessment?	___	___	______
i.-iii. (No change.)			
iv. Identifying the features incorporated in the constructed EHS facility that reflect current state of the art and the lowered possible risk *[commensurate with the environment of the site]*.	___	___	______
v. (No change.)			
14. (No change.)			

EMERGENCY RESPONSE

The following are the questions for emergency response planning (see N.J.A.C. 7:31-3.10):			
1.-17. (No change.)			
18. Has the *[onsite]* meteorological station been properly maintained in working condition?	___	___	______
19.-25. (No change.)			

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan and Lower Raritan/Middlesex County Water Quality Management Plans

Public Notice

Take notice that on March 17, 1988 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan and Lower Raritan/Middlesex County Water Quality Management Plans was adopted by the Department. This amendment will allow the expansion of the Middlesex County Utilities Authority sewer service area to include the proposed Glen View Estates development, four existing lots, and one undeveloped lot on Sterling Road in Warren Township, Somerset County.

(b)

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on March 16, 1988 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment will allow new surface water and ground water discharges from the existing Gold Mine Estates Water Supply System in Mount Olive Township, Morris County. The discharges are required for the disposal of filter backwash.

(c)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on March 17, 1988 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will expand the sewer service area of the Waterford Township Municipal Utilities Authority to include the proposed Woodstream Phase IV residential development located in Winslow Township, Camden County.

(d)

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on April 6, 1988 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment allows the adoption of a Wastewater Management Plan for Knowlton Township, Warren County. The Wastewater Management Plan allows for the construction of an on-site groundwater disposal wastewater treatment facility to serve the proposed Knowlton Village Greens project and designates on-site groundwater disposal areas to allow for facilities serving other Planned Residential Recreational Developments. The failing septic system of Truckstops of America will be replaced with a wastewater treatment facility. With the exception of the Department of Transportation treatment facility, all remaining areas of the Township will be served by individual on-site septic systems.

(e)

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the replacement of the existing 0.235 million gallons per day (MGD) Leesburg State Prison Sewage Treatment Plant (STP) located in Maurice River Township, Cumberland County, with a new 0.55 MGD STP which will discharge to Riggins Ditch. The existing STP will be converted to a pump station. There will be no encroachment in wetlands from this project, except for an outfall which will be buried and re-vegetated.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(f)

Amendment to Water Quality Management Plans

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) proposes to amend the Water Quality Management (WQM) Plans for the following areas: Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan. The amendment would add the following statement to each of these WQM Plans:

"Any provisions in this areawide Water Quality Management Plan for protection of freshwater wetlands shall have no regulatory force."

Prior to July 1, 1988, the effective date of the Freshwater Wetlands Protection Act ("The Act"), N.J.S.A. 13:9B-1 et seq., most areawide WQM Plans had been amended to include provisions for the protection of freshwater wetlands, or to include Wastewater Management Plans containing such provisions. As part of the Department's program to simplify regulation of freshwater wetlands and implement the consolidation and preemption required by Sections 5 and 30 of the Act, the Department is proposing to amend all twelve areawide WQM Plans to stipulate that such provisions shall have no regulatory force.

This notice is being given to inform the public that the Department is proposing to amend the Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan WQM Plans. These WQM Plans are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday, at the office of the Department of Environmental Protection, Division of Water Resources, Bureau of Water Quality Planning, located at 401 East State Street, Third Floor, CN 029, Trenton, New Jersey, 08625.

Interested persons may submit written comments on the proposed amendment to George Horzepa, Bureau of Water Quality Planning, at the Department address cited above. All comments must be submitted within 30 days of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the proposed amendment.

Any interested person may request in writing that the Department hold a nonadversarial public hearing on the proposed amendment. This request must state the nature of the issues to be raised at the public hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the Department address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the sewer service area of Wyckoff Township, Bergen County to include the proposed Allison Village Development consisting of 14 residential lots. The development will be served by Northeast Bergen County Utilities Authority.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

NJPDES Fee Schedule and Program Budget For Fiscal Year 1988 and 1989

Public Notice

Take notice that the Department of Environmental Protection will hold a **public hearing** to present the New Jersey Pollutant Discharge Elimination System (NJPDES) Program Budget for Fiscal Years 1988 and 1989. The hearing is held pursuant to N.J.A.C. 7:14A-1.8(b). This hearing will provide the public with supplemental information concerning the NJPDES fee schedule, program budget and the budgeting process that was not made available at the May 24, 1988 public hearing. The hearing will be held on:

August 25, 1988 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Ryders Lane
Rutgers University
New Brunswick, New Jersey

Relevant documents will be available for inspection at the Division of Water Resources, 401 East State Street, Fourth Floor, Trenton, New Jersey during normal working hours beginning July 25, 1988. Contact Debra Hammond, Fees Management Section at (609) 984-4428 for further information.

(c)

DIVISION OF PARKS AND FORESTRY

Management Plan for Liberty Park Natural Area

Public Notice

Take notice that Richard T. Dewling, pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., and N.J.A.C. 7:2-11.8, has adopted the recommendations of the Natural Areas Council regarding the management plan for Liberty Park Natural Area.

The Liberty Park Natural Area is located in Jersey City, Hudson County, on land that is owned by the Department of Environmental Protection and administered by the Division of Parks and Forestry through Liberty State Park. The purpose of the management plan is to identify specific long and short term management techniques which are necessary to achieve the designation objective of the Natural Area. For Liberty Park Natural Area, the designation objective is preservation of a salt marsh in upper New York Bay.

The Natural Areas Council reviewed the staff recommendations and public comments at their meeting on November 5, 1986. By unanimous resolution, the Natural Areas Council adopted recommendations for management and has submitted these recommendations in the form of a management plan to the Commissioner of the Department of Environmental Protection.

Copies of the adopted plan may be obtained from:

Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State St.
Bldg. #5, 2nd Floor
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(d)

Management Plan for Hacklebarney Natural Area

Public Notice

Take notice that Richard T. Dewling, pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., and N.J.A.C. 7:2-11.8, has adopted the recommendations of the Natural Areas Council regarding the management plan for Hacklebarney Natural Area.

The Hacklebarney Natural Area is located in Chester and Washington Townships, Morris County, in Tewksbury Township in Hunterdon County, and in Bedminster Township in Somerset County, on land owned by the Department of Environmental Protection and administered by the Division of Parks and Forestry through Hacklebarney State Park. The purpose of the management plan is to identify specific long and short term management techniques which are necessary to achieve the designation objective of the Natural Area. For Hacklebarney Natural Area, the designation objective is preservation of a river ravine and northern hemlock/mixed hardwood forest, and a rare species habitat.

The Natural Areas Council reviewed the staff recommendations and public comments at their meeting on July 9, 1986. By unanimous resolution, the Natural Areas Council adopted recommendations for management and has submitted these recommendations in the form of a management plan to the Commissioner of the Department of Environmental Protection.

Copies of the adopted plan may be obtained from:

Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State St.
Bldg. #5, 2nd Floor
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

OFFICE OF REGULATORY SERVICES

Regulatory Agenda

Public Notice

Take notice that the Department of Environmental Protection hereby gives notice of its Regulatory Agenda. This agenda, which will be published biannually, provides public notice of major rulemaking activities for the following six months. This advance notice will promote public awareness of the Department's long-range rulemaking activities.

The following items constitute the Department's anticipated significant rulemaking activities likely to occur by the end of December 1988.

TABLE I—RULE PROPOSALS

Description	Division	Cite	Estimated N.J.R. Date	Agency Note
Air Episode Notice	EQ	7:27-20	10/88	New rule
Laboratory Certification	EQ	7:18	10/88	Revision
Underground Storage Tanks	WR	7:14C	10/88	New rule; technical requirements
Subsurface Disposal (Chapter 199)	WR	7:9A	8/88	Revision to existing rules at N.J.A.C. 7:9-2
Water Quality Planning	WR	7:15	9/88	Revision
Surface Water Quality Standards	WR	7:9-4	7/88	Revision
1989-90 Fish Code	FGW	7:25-6	7/88	Revision
Fees for Hazardous Waste Facilities	HW	7:26	8/88	
Fees for Solid Waste Facilities	SW	7:26	8/88	
Rate Relief Fund	SW	7:26	10/88	

TABLE II—RULE ADOPTIONS

Description	Division	Citation	Estimated N.J.R. Date
TCPA-Confidentiality	EQ	7:31-5	8/88
Pesticide Code	EQ	7:30	9/88
Hudson Waterfront	CR	7:7E	8/88
Freshwater Wetlands: General Permits	CR	7:7A	9/88
D&R Canal Commission		7:45	10/88
Sanitary Landfille Claims	ECA	7:11	7/88

This notice is given as a matter of public information.

HUMAN SERVICES

(b)

COMMUNITY BASED SERVICES

Service Credit Exchange Project Availability of Grant Funds

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds.

A. Name of Program: Service Credit Exchange Project.

B. Purpose: The purpose of the Service Credit Exchange Project is to establish four sites in the State to develop volunteer services for the elderly and disabled in non-institutional settings using the service credit exchange model. The services to be provided would include, but not be limited to, light housekeeping, chore service, transportation to medical appointments, shopping and meal preparation.

Service Credit Exchange is a new concept in volunteer services. In this model a volunteer would provide a service for an elderly or disabled person and receive "credit" on an hour-for-hour basis. If the volunteer is elderly or disabled the credit can be redeemed for services the volunteer needs. If the volunteer is not elderly or disabled the volunteer can designate either a person, or an organization to receive the credit. Applicant agencies would develop this service exchange project and track credits earned and redeemed.

C. Amount of money in the program: $300,000 will be available to the Department for the Project, subject to legislative appropriation.

D. Organizations which may apply for funding for this project:

Area Agencies on Aging
County Welfare Agencies
Volunteer Organizations
Other public or private non-profit human service agencies

E. Qualifications needed by an applicant to be considered for the program:

Demonstrated ability to provide and coordinate services to the elderly or disabled.

Demonstrated ability to develop or operate a volunteer program.

F. Procedure for eligible organizations to apply.

Proposal packages can be requested from:

Joe Walsh
Community Based Services Unit
Department of Human Services
222 South Warren St., 5th Floor
CN 700
Trenton, N.J. 08625
Telephone: 609-292-0903

G. Address to which application is to be submitted: Completed proposals should be submitted to Joe Walsh at the address above.

H. Deadline by which proposals must be submitted: Proposals must be submitted by August 12, 1988.

I. Date by which applicants shall be notified of approval or disapproval: Applicants shall receive notice of approval or disapproval of an RFP proposal by September 23, 1988.

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 June 6, 1988 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.1988 d.1 means the first rule adopted in 1988.

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 MAY 16, 1988

NEXT UPDATE: SUPPLEMENT JUNE 20, 1988

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
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987	20 N.J.R. 321 and 434	February 16, 1988
19 N.J.R. 1475 and 1588	August 17, 1987	20 N.J.R. 435 and 570	March 7, 1988
19 N.J.R. 1589 and 1676	September 8, 1987	20 N.J.R. 571 and 692	March 21, 1988
19 N.J.R. 1677 and 1758	September 21, 1987	20 N.J.R. 693 and 842	April 4, 1988
19 N.J.R. 1759 and 1858	October 5, 1987	20 N.J.R. 843 and 950	April 18, 1988
19 N.J.R. 1859 and 1926	October 19, 1987	20 N.J.R. 951 and 1018	May 2, 1988
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987	20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1 and 124	January 4, 1988	20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 125 and 220	January 19, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:30-1.2, 2.8	Agency rulemaking: use of appendices	20 N.J.R. 1021(a)		
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		
Most recent update to Title 1: TRANSMITTAL 1988-2 (supplement March 21, 1988)				
AGRICULTURE—TITLE 2				
2:5-2	Equine infectious anemia control	20 N.J.R. 695(a)		
2:23	Gypsy moth control: voluntary suppression program	20 N.J.R. 845(a)	R.1988 d.323	20 N.J.R. 1688(a)
2:48-3	Sale of milk in new container sizes	20 N.J.R. 1129(a)		
2:69-1.11	Commercial values of primary plant nutrients	20 N.J.R. 696(a)	R.1988 d.284	20 N.J.R. 1343(a)
2:71	Grades and standards	20 N.J.R. 953(a)		
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)		
2:72	Licensing and bonding of buyers of perishable commodities	20 N.J.R. 955(a)		
2:73-2	Eggs: Seal of Quality program	20 N.J.R. 956(a)		
2:74-1	Controlled atmosphere storage for apples	20 N.J.R. 956(b)		
2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16	Farmland preservation: acquisition of development easements	20 N.J.R. 1503(a)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 324(a)		
2:76-6.9, 6.11, 6.14	Farmland preservation: acquisition of development easements	20 N.J.R. 1319(a)		
Most recent update to Title 2: TRANSMITTAL 1988-2 (supplement May 16, 1988)				
BANKING—TITLE 3				
3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units	19 N.J.R. 2089(a)	R.1988 d.282	20 N.J.R. 1343(b)
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)		
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)		
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		
Most recent update to Title 3: TRANSMITTAL 1988-3 (supplement May 16, 1988)				
CIVIL SERVICE—TITLE 4				
4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:1-8, 9, 10.2–10.5, 11, 12, 13, 14, 15, 16.13	Repeal (see 4A:4)	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:2-6.3, 11, 13, 14.1, 15.1	Repeal (see 4A:4)	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4:2-6.4–6.10, 7, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:3-6.4, 11.1, 13.2, 14	Repeal (see 4A:4)	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		

Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)

PERSONNEL—TITLE 4A

4A:1-1.3	Definitions	20 N.J.R. 326(a)	R.1988 d.258	20 N.J.R. 1183(a)
4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)		
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)		
4A:4	Selection and appointmen	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		
4A:8	Layoffs	19 N.J.R. 1363(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-1 (supplement January 19, 1988)

COMMUNITY AFFAIRS—TITLE 5

5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:22-2.1	Definition of multiple dwelling: correction	———	———	20 N.J.R. 1574(b)
5:23-2.5	Uniform Construction Code: increase in structure size	20 N.J.R. 1026(a)		
5:23-2.38, 3.11, 7.2, 7.3, 7.100–7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.6	Uniform Construction Code: manufacturer's recommendations	20 N.J.R. 699(a)	R.1988 d.283	20 N.J.R. 1343(c)
5:23-3.14, 3.20	Uniform Construction Code: 1988 building and mechanical subcodes	20 N.J.R. 575(a)	R.1988 d.270	20 N.J.R. 1344(a)
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)		
5:24-2.5	Senior citizen and disabled protected tenancy: review of determination documents	20 N.J.R. 1026(b)		
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)		
5:23-3.21	Uniform Construction Code: one and two-family dwelling subcode	20 N.J.R. 1130(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:29-2.1, 2.2	Termination of lease by tenant because of disabling illness or accident	20 N.J.R. 1139(a)		
5:30	Local Finance Board rules	20 N.J.R. 1027(a)		
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:80-26.1, 26.2, 26.3, 26.11, 26.16, 26.21	Housing affordability controls	20 N.J.R. 862(a)	R.1988 d.331	20 N.J.R. 1688(b)
5:91-13.4	Council on Affordable Housing: motion procedure	20 N.J.R. 864(a)	R.1988 d.296	20 N.J.R. 1539(a)
5:92-1.3, 17	Council on Affordable Housing: rehabilitation of indigenous need	20 N.J.R. 864(b)	R.1988 d.295	20 N.J.R. 1539(b)
5:92-8.4	Council on Affordable Housing: developer agreements	20 N.J.R. 865(a)	R.1988 d.335	20 N.J.R. 1689(a)
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)		
5:92-12.4	Council on Affordable Housing: initial pricing of rental units	20 N.J.R. 1320(b)		
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		

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DEFENSE—TITLE 5A

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EDUCATION—TITLE 6

6:2-1.21	Issuance of administrative order creating State-operated school district	20 N.J.R. 1505(a)		
6:3	School districts	20 N.J.R. 1027(b)		
6:3-1.23, 1.24	Principal certification	20 N.J.R. 1320(c)		
6:11-3.3	Certification fees	20 N.J.R. 865(b)	R.1988 d.307	20 N.J.R. 1539(c)
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 1320(c)		
6:22-1.2	School site approval	20 N.J.R. 1032(a)		
6:27-1.14	Repeal (see 6:30)	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:28-11.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)		
6:30	Adult education programs	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)		
6:44-2, 3, 4	Repeal (see 6:30)	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:46-2.3, 4.13	Corrections concerning vocational school designation criteria and private school advertising	———	———	20 N.J.R. 1296(b)

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7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1I	Sanitary Landfill Facility Contingency Fund	20 N.J.R. 443(a)	R.1988 d.337	20 N.J.R. 1732(b)
7:2	State Park Service	20 N.J.R. 714(a)	R.1988 d.340	20 N.J.R. 1743(b)
7:2	State Park Service: extenstion of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)	R.1988 d.267	20 N.J.R. 1235(a)
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7A-15, 16	Freshwater Wetlands Protection Act rules: fees, penalties and hearings	20 N.J.R. 576(a)	R.1988 d.312	20 N.J.R. 1553(a)
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	20 N.J.R. 448(a)	R.1988 d.264	20 N.J.R. 1285(a)
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(a)	R.1988 d.265	20 N.J.R. 1286(a)
7:14-8	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:19-6.14	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)	R.1988 d.263	20 N.J.R. 1287(a)
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)	R.1988 d.339	20 N.J.R. 1743(b)
7:25-2.20	Higbee Beach Wildlife Management Area	20 N.J.R. 460(a)	R.1988 d.266	20 N.J.R. 1292(a)
7:25-5	1988-89 Game Code	20 N.J.R. 1035(b)		
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)	R.1988 d.285	20 N.J.R. 1344(a)
7:25-18.5	Gill net seasons; staked gill net fishery: extension of comment period	20 N.J.R. 715(a)		
7:25-18.5	Marine fisheries: bait net license and conditions	20 N.J.R. 866(a)	R.1988 d.286	20 N.J.R. 1345(a)
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8–9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26-12.12	Hazardous waste facilities and public participation in permit process	20 N.J.R. 715(b)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)	R.1988 d.268	20 N.J.R. 1346(a)
7:30	Pesticide Control Code	20 N.J.R. 579(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:31	Toxic Catastrophe Prevention Act rules: correction	________	________	20 N.J.R. 1743(c)
7:31-1, 2, 3, 4, 6	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)	R.1988 d.272	20 N.J.R. 1356(a)
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)		
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22–5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)		

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8:7-1.2	Public Health Licensing and Examination Board	20 N.J.R. 364(a)	R.1988 d.236	20 N.J.R. 1204(a)
8:25	Youth Camp Safety Act standards	20 N.J.R. 463(a)	R.1988 d.269	20 N.J.R. 1428(a)
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical residents	20 N.J.R. 594(a)	R.1988 d.277	20 N.J.R. 1428(b)
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-3.45	Hospital reimbursement: submission of uniform bill-patient summaries	20 N.J.R. 1143(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)	R.1988 d.276	20 N.J.R. 1430(a)
8:33B-1.3	Demonstration of extracorporeal shock wave lithotripsey services	20 N.J.R. 869(b)	R.1988 d.322	20 N.J.R. 1690(a)
8:33E-1.1, 1.2	Cardiac diagnostic facilities: complex electrophysiology studies	20 N.J.R. 467(a)	R.1988 d.321	20 N.J.R. 1690(b)
8:33E-2.2, 2.3, 2.4	Cardiac surgery centers: complex electrophysiology studies	20 N.J.R. 468(a)	R.1988 d.320	20 N.J.R. 1690(b)
8:39	Long-term care licensing standards	20 N.J.R. 469(a)	R.1988 d.280	20 N.J.R. 1432(a)
8:42B	Drug treatment facilities: standards for licensure	20 N.J.R. 598(a)	R.1988 d.319	20 N.J.R. 1692(a)
8:43E-2.4, 2.5, 2.19, 2.20	Adult open acute psychiatric beds: need review	20 N.J.R. 617(a)	R.1988 d.278	20 N.J.R. 1458(a)
8:43E-3.19, 3.20	Inpatient screening psychiatric beds: need review	20 N.J.R. 618(a)	R.1988 d.278	20 N.J.R. 1458(a)
8:43E-5.20	Intermediate adult and special psychiatric beds: need review	20 N.J.R. 619(a)	R.1988 d.278	20 N.J.R. 1458(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:60-5 (12:120-5)	Asbestos worker and supervisor permits	20 N.J.R. 728(a)	R.1988 d.261	20 N.J.R. 1232(b)
8:60-5.3 (12:120-5.3)	Asbestos worker and supervisor permits: correction	________	________	20 N.J.R. 1562(a)
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:65-10.5	Schedule V, Controlled Dangerous Substances	20 N.J.R. 1506(a)		
8:70	Evaluation criteria for interchangeable drug products	20 N.J.R. 1507(a)		
8:70-1.4	Drug Utilization Review Council: notice of action on a drug product	20 N.J.R. 870(a)	R.1988 d.328	20 N.J.R. 1710(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a), 899(b), 1462(a))	19 N.J.R. 1488(a)	R.1988 d.325	20 N.J.R. 1711(a)
8:71	Interchangeable drug products (20 N.J.R. 191(b), 654(b), 899(a), 1462(b))	19 N.J.R. 1878(a)	R.1988 d.327	20 N.J.R. 1711(c)
8:71	Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a))	20 N.J.R. 146(a)	R.1988 d.326	20 N.J.R. 1711(b)
8:71	Interchangeable drug products	20 N.J.R. 871(a)	R.1988 d.329	20 N.J.R. 1710(b)

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9:4-1.5	Chargeback for disability—specific programs at county colleges	20 N.J.R. 1330(a)		
9:7-3.1	Correction to text	________	________	20 N.J.R. 1576(b)
9:7-4	Garden State Scholarship Program	20 N.J.R. 720(a)	R.1988 d.303	20 N.J.R. 1558(a)
9:9-11	Guaranteed Student Loan Program: compliance evaluation of participating institutions	20 N.J.R. 872(a)	R.1988 d.334	20 N.J.R. 1712(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:11-1.5	Educational Opportunity Fund: maximum income levels for undergraduate eligibility	20 N.J.R. 722(a)		
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HUMAN SERVICES—TITLE 10				
10:1-2	Public comment procedure and petitions for rulemaking	20 N.J.R. 1050(a)		
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:13	Legal Assistance for Medicare Patients (LAMP)	20 N.J.R. 873(a)	R.1988 d.330	20 N.J.R. 1713(a)
10:14-1.4, 4.1, 6.3	Statewide Respite Care Program	20 N.J.R. 1051(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)		
10:50-1.1–1.5, 2.3–2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)	R.1988 d.262	20 N.J.R. 1214(a)
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: covered products	20 N.J.R. 875(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:60-2.2	Personal care assistant services: provider reimbursement	20 N.J.R. 1143(b)		
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)		
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)		
10:66-1.3, 3	Mental health services: partial care	20 N.J.R. 1054(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:69	Hearing Aid Assistance for Aged and Disabled (HAAAD)	20 N.J.R. 519(a)	R.1988 d.250	20 N.J.R. 1220(a)
10:81-3.38–3.42, 3.46	PAM: client resources in AFDC program	20 N.J.R. 1056(a)		
10:81-4.5	AFDC program: transportation costs incident to education or training	20 N.J.R. 620(a)	R.1988 d.253	20 N.J.R. 1221(a)
10:81-7.40	AFDC program: fraudulent receipt of assistance	20 N.J.R. 722(b)	R.1988 d.310	20 N.J.R. 1559(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	Child support guidelines: spousal support obligation	20 N.J.R. 1058(a)		
10:82-3.2, 3.6, 3.7	ASH: client resources in AFDC program	20 N.J.R. 1059(a)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:85-3.2, 3.3	GAM: travel costs for job seeking or training	20 N.J.R. 879(a)		
10:85-4.6	Emergency Assistance benefits extension	Emergency (expires 6-30-88)	R.1988 d.291	20 N.J.R. 1484(a)
10:85-5.2	General Assistance: payment of inpatient hospital bills	20 N.J.R. 521(a)	R.1988 d.251	20 N.J.R. 1222(a)
10:85-8.4	GAM: Pharmaceutical Assistance (PAAD) program information	20 N.J.R. 522(a)	R.1988 d.252	20 N.J.R. 1222(b)
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:89-3.5, 3.6, 5.3	Home Energy Assistance program	20 N.J.R. 1060(a)		
10:126	Registration of family day care providers	20 N.J.R. 1508(a)		
10:127	Residential child care facilities	20 N.J.R. 1149(a)		
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10A:1-11	Personal property of inmates	20 N.J.R. 494(a)	R.1988 d.306	20 N.J.R. 1559(b)
10A:3-5.6, 5.7	Pat and strip searches	20 N.J.R. 1331(a)		
10A:4-1.2, 13	Inmate discipline: Boy's Unit at Skillman	20 N.J.R. 496(a)	R.1988 d.239	20 N.J.R. 1224(a)
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:9-1.3, 5.6	Work credits for I.S.P. violators housed in county facilities	20 N.J.R. 879(b)	R.1988 d.332	20 N.J.R. 1716(a)
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:17-2, 5, 6	Social services: Volunteer Service Program; religion; institutional chaplaincy	20 N.J.R. 167(a)	R.1988 d.241	20 N.J.R. 1224(b)
10A:17-5.3, 5.8	Religious services	20 N.J.R. 1332(a)		
10A:18-7	Bedside and funeral visits	20 N.J.R. 1332(a)		
10A:18-8.7	Use of telephone by inmates	20 N.J.R. 496(c)	R.1988 d.238	20 N.J.R. 1229(a)
10A:22-2	Inmate and parolee records	20 N.J.R. 723(a)	R.1988 d.305	20 N.J.R. 1561(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:71-3.2, 3.4, 3.18–3.23, 3.25–3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)	R.1988 d.336	20 N.J.R. 1716(b)

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11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-17.3, 17.10	Replacement parts for damanged automobiles	20 N.J.R. 1159(a)		
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:5-1.13	Control of real estate brokerage files	20 N.J.R. 883(a)		
11:5-1.15	Real estate advertising practices	20 N.J.R. 497(a)	R.1988 d.237	20 N.J.R. 1205(a)
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.23	Real estate services to handicapped	20 N.J.R. 725(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)	R.1988 d.254	20 N.J.R. 1205(b)
11:5-1.27	Educational requirements for real estate licensure	20 N.J.R. 725(b)		
11:5-1.28	Certification as real estate instructor; classroom procedure	20 N.J.R. 1161(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:16-1	Fraud prevention: verification and claim form statements	20 N.J.R. 1062(a)	R.1988 d.342	20 N.J.R. 1720(b)
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		

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LABOR—TITLE 12

12:5-1	Audit resolution procedures concerning awards of Federal money	20 N.J.R. 1520(a)		
12:16-7	Use of surplus unemployment funds by contributing local govermments	20 N.J.R. 1521(a)		
12:16A-11	Unemployment and Disability Insurance group accounts	20 N.J.R. 1071(b)		
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:17-2.6	Noncompliance with quality control reviews of unemployment insurance claims	20 N.J.R. 884(a)		
12:45-49	Vocational rehabilitation	20 N.J.R. 620(a)	R.1988 d.235	20 N.J.R. 1230(a)
12:60-6.1	Recordkeeping by public work project employers	20 N.J.R. 1164(a)		
12:60-7	Apprentice to journeymen ratios for public work projects	20 N.J.R. 1164(b)		
12:100-4.2	Public employee safety and health: exposure to ethylene oxide	20 N.J.R. 1334(a)		
12:100-4.2, 5.2, 6.2	Public employee safety and health	20 N.J.R. 726(a)	R.1988 d.260	20 N.J.R. 1232(a)
12:100-9	Public employee safety and health: work in confined spaces	20 N.J.R. 1523(a)		
12:112	Public Employees' Occupational Safety and Health Review Commission	20 N.J.R. 1165(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
12:120-5 (8:60-5)	Asbestos worker and supervisor permits	20 N.J.R. 728(a)	R.1988 d.261	20 N.J.R. 1232(b)
12:120-5.3 (8:60-5.3)	Asbestos worker and supervisor permits: correction	————	————	20 N.J.R. 1562(a)
12:195	Carnival-amusement rides	20 N.J.R. 1072(a)	R.1988 d.333	20 N.J.R. 1721(a)
12:210-1	Apparel industry registration system	20 N.J.R. 1334(b)		

Most recent update to Title 12: TRANSMITTAL 1988-3 (supplement March 21, 1988)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:12-2.3, 2.7	Local Development Financing Fund: project set-asides	20 N.J.R. 1171(a)		
12A:50-1	Cogeneration: reporting by non-utility generators	19 N.J.R. 2383(a)		
12A:54	Cogeneration equipment and use tax exemption: technical sufficiency standards	20 N.J.R. 1073(a)		
12A:120-1	Urban Enterprise Zone Program	20 N.J.R. 1336(a)		

Most recent update to Title 12A: TRANSMITTAL 1988-3 (supplement May 16, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
LAW AND PUBLIC SAFETY—TITLE 13				
13:1	Police Training Commission rules	20 N.J.R. 622(a)	R.1988 d.309	20 N.J.R. 1563(a)
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice; definitions	19 N.J.R. 1783(b)		
13:27-5.4	Licensure of out-of-state architects	20 N.J.R. 884(b)	R.1988 d.308	20 N.J.R. 1567(a)
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 885(a)		
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	20 N.J.R. 886(a)	R.1988 d.343	20 N.J.R. 1723(a)
13:29-5	Board of Accountancy: Quality Enhancement Program	19 N.J.R. 2240(a)	R.1988 d.294	20 N.J.R. 1567(b)
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:39	Board of Pharmacy rules: extension of comment period	20 N.J.R. 244(a)		
13:40-3.1	Professional engineers and land surveyors: conflict of interest; approval of work	20 N.J.R. 736(a)		
13:44-1.2, 2.1	Licensure and practice of veterinary medicine	20 N.J.R. 1171(b)		
13:44C	Practice of audiology and speech-language pathology	20 N.J.R. 244(b)	R.1988 d.344	20 N.J.R. 1723(b)
13:45A-12.1, 12.2, 12.3	Sale of animals	20 N.J.R. 501(b)	R.1988 d.271	20 N.J.R. 1463(a)
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)		
13:70-1.30	Thoroughbred racing: horsemen associations	20 N.J.R. 1172(a)		
13:70-6.55	Thoroughbred racing: respiratory bleeders	20 N.J.R. 506(a)	R.1988 d.245	20 N.J.R. 1207(a)
13:70-14A.9	Thoroughbred racing: competition by bleeders	20 N.J.R. 506(b)	R.1988 d.244	20 N.J.R. 1207(b)
13:70-29.50	Thoroughbred racing: Daily Triple wagering	20 N.J.R. 1173(a)		
13:71-1.25	Harness racing: horsemen associations	20 N.J.R. 1174(a)		
13:71-6.14	Harness racing: trainers leaving the paddock	20 N.J.R. 1175(a)		
13:71-11.9	Harness racing: respiratory bleeders	20 N.J.R. 507(a)	R.1988 d.246	20 N.J.R. 1207(c)
13:71-27.54	Harness racing: Daily Triple wagering	20 N.J.R. 1175(b)		
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:76	Training requirements for arson investigators	20 N.J.R. 963(a)		
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		

Most recent update to Title 13: TRANSMITTAL 1988-5 (supplement May 16, 1988)

PUBLIC UTILITIES—TITLE 14				
14:3-7.5	Interest on customer deposits	20 N.J.R. 737(a)		
14:3-7.13	Collection activity on disputed charges; interest on overpayments	20 N.J.R. 963(b)		
14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
14:18-3	Cable TV: pre-proposal for telephone service standards	19 N.J.R. 2125(b)		
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		

Most recent update to Title 14: TRANSMITTAL 1988-1 (supplement January 19, 1988)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1988-2 (supplement May 16, 1988)

STATE—TITLE 15				
15:10-6	Voting accessibility for elderly and handicapped	20 N.J.R. 1527(a)		

Most recent update to Title 15: TRANSMITTAL 1988-1 (supplement May 16, 1988)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

TRANSPORTATION—TITLE 16				
16:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
16:25A	Soil erosion and sediment control on DOT projects	19 N.J.R. 2126(a)	R.1988 d.318	20 N.J.R. 1728(a)
16:28	Speed limits on State highway system	20 N.J.R. 887(a)	R.1988 d.290	20 N.J.R. 1569(a)
16:28-1.31	Speed limits along Route 56 in Cumberland and Salem counties	20 N.J.R. 964(a)		
16:28-1.41	Speed limits along U.S. 9 in Cape May County	Emergency (expires 6-24-88)	R.1988 d.225	20 N.J.R. 1113(a)
16:28-1.49	Speed limits along Route 35 in Bay Head	20 N.J.R. 965(a)		
16:28-1.77	Speed limits along Route 29 in Hunterdon County	Emergency (expires 8-20-88)	R.1988 d.324	20 N.J.R. 1573(a)
16:28-1.158	Speed limits along Route 179 in Hunterdon County	20 N.J.R. 1176(a)		
16:28A	Restricted parking and stopping	20 N.J.R. 887(a)	R.1988 d.290	20 N.J.R. 1569(a)
16:28A-1.2, 1.7, 1.15	Bus stop zones along U.S. 1 and 9 in North Bergen, U.S. 9 in Howell, and Route 23 in Wayne	20 N.J.R. 965(b)		
16:28A-1.7	Bus stop zone along U.S. 9 in Marlboro	20 N.J.R. 1533(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.7, 1.46	Stopping restrictions along U.S. 9 in Cape May and U.S. 130 in Mercer County	20 N.J.R. 887(b)	R.1988 d.288	20 N.J.R. 1569(b)
16:28A-1.9, 1.32	Bus stop zones along Route 17 in Lyndhurst and U.S. 46 in Elmwood Park	20 N.J.R. 1177(a)		
16:28A-1.34	Bus stops along Route 49 in Salem and Fairfield	20 N.J.R. 888(a)	R.1988 d.287	20 N.J.R. 1569(c)
16:28A-1.36	Restricted parking on Route 57 in Washington Township, Warren County	Emergency (expires 8-2-88)	R.1988 d.293	20 N.J.R. 1484(b)
16:28A-1.46	No stopping or standing zones along U.S. 130 in Pennsville	20 N.J.R. 1533(b)		
16:28A-1.46, 1.98	Parking restrictions along U.S. 130 in Salem and Burlington counties, and Route 56 in Vineland	20 N.J.R. 1064(a)		
16:28A-1.51	Parking restrictions along Route 168 in Gloucester Township	20 N.J.R. 1065(a)		
16:29	No passing zones	20 N.J.R. 887(a)	R.1988 d.290	20 N.J.R. 1569(a)
16:30	Miscellaneous traffic rules	20 N.J.R. 887(a)	R.1988 d.290	20 N.J.R. 1569(a)
16:30-3	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-4.2	Bicycle restrictions along Route 88 in Point Pleasant	19 N.J.R. 2254(a)		
16:30-10.8	Midblock crosswalk along Route 88 in Point Pleasant	20 N.J.R. 1177(b)		
16:31	No left turns	20 N.J.R. 887(a)	R.1988 d.290	20 N.J.R. 1569(a)
16:31A	Prohibited right turns on red	20 N.J.R. 888(b)	R.1988 d.289	20 N.J.R. 1570(a)
16:41B	Newspaper boxes on State highways	20 N.J.R. 1178(a)		
16:44	Contract administration	20 N.J.R. 889(a)	R.1988 d.279	20 N.J.R. 1467(a)
16:53C	Rail Freight Program	20 N.J.R. 966(a)	R.1988 d.317	20 N.J.R. 1730(a)
16:55	Licensing of aeronautical activities	20 N.J.R. 967(a)	R.1988 d.315	20 N.J.R. 1731(a)
16:60	Aircraft safety: issuance of summons and designation of peace officer	20 N.J.R. 968(a)	R.1988 d.314	20 N.J.R. 1731(b)
16:61	Aircraft accidents	20 N.J.R. 968(b)	R.1988 d.313	20 N.J.R. 1731(c)
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:75	NJ TRANSIT: bus allocation guidelines	20 N.J.R. 635(b)	R.1988 d.249	20 N.J.R. 1207(d)

Most recent update to Title 16: TRANSMITTAL 1988-5 (supplement May 16, 1988)

TREASURY-GENERAL—TITLE 17

17:1	Division of Pensions: general administration	20 N.J.R. 636(a)	R.1988 d.243	20 N.J.R. 1208(a)
17:1-1.10	Pension administration: bad balances in withdrawn accounts	20 N.J.R. 1181(a)		
17:1-2.36	Alternate Benefit Program: transfers and interest	20 N.J.R. 969(a)	R.1988 d.316	20 N.J.R. 1732(a)
17:1-4.37	Applications for disability retirement	20 N.J.R. 510(a)	R.1988 d.231	20 N.J.R. 1208(b)
17:2-2.2	Public Employees' Retirement System: multiple enrollments	20 N.J.R. 969(b)		
17:3	Teachers' Pension and Annuity Fund	20 N.J.R. 1181(b)		
17:5-6.1	State Police Retirement System: transfer of service credit	20 N.J.R. 47(b)	R.1988 d.302	20 N.J.R. 1570(b)
17:9	State Health Benefits Program	20 N.J.R. 1536(a)		
17:9-2.12	State Health Benefits Program: local coverage	20 N.J.R. 1536(b)		
17:9-2.17	State Health Benefits Program: board of education retirees	20 N.J.R. 1537(a)		
17:9-4.2	State Health Benefits Program: full-time employee defined	20 N.J.R. 741(a)		
17:9-6.1	State Health Benefits Program: continuation of coverage into retirement	20 N.J.R. 1182(a)		
17:10	Judicial Retirement System administrative rules	20 N.J.R. 510(b)	R.1988 d.242	20 N.J.R. 1208(c)
17:16-32.12	Common Pension Fund A: permitted investment	20 N.J.R. 741(b)	R.1988 d.248	20 N.J.R. 1208(d)
17:16-36.12	Common Pension Fund B: permitted investment	20 N.J.R. 742(a)	R.1988 d.247	20 N.J.R. 1208(e)
17:19-10.4, 10.5, 10.7, 10.9	Architect engineer selection procedures	20 N.J.R. 180(a)		

Most recent update to Title 17: TRANSMITTAL 1988-4 (supplement May 16, 1988)

TREASURY-TAXATION—TITLE 18

18:2-2	Post tax amnesty	19 N.J.R. 2255(b)		
18:5-1.1, 6.2, 12.5	Sale of tobacco to minors	20 N.J.R. 970(a)		
18:5-12.2	Post tax amnesty	19 N.J.R. 2255(b)		
18:7-3.15, 11.12, 13.1, 13.7, 13.12, 13.13, 14.1, 14.3, 14.7, 14.13–14.17, 14.20	Post tax amnesty	19 N.J.R. 2255(b)		
18:7-3.18	Corporation business tax: recycling equipment credit	20 N.J.R. 48(b)		
18:8-4.5, -8	Post tax amnesty	19 N.J.R. 2255(b)		
18:9	Business Personal Property Tax	20 N.J.R. 511(a)	R.1988 d.297	20 N.J.R. 1570(c)
18:9-8.5–8.7	Post tax amnesty	19 N.J.R. 2255(b)		
18:12-17	Local property taxation	20 N.J.R. 1066(a)		
18:15-2.15	Woodland owners: application for farmland assessment status	20 N.J.R. 1337(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:18-8.11, 12.5, 12.7	Post tax amnesty	19 N.J.R. 2255(b)		
18:22-2.4, 8.4	Post tax amnesty	19 N.J.R. 2255(b)		
18:24	Sales and Use Tax	20 N.J.R. 512(a)	R.1988 d.298	20 N.J.R. 1570(d)
18:26	Transfer inheritance tax and estate tax	20 N.J.R. 637(a)	R.1988 d.300	20 N.J.R. 1571(a)
18:26-8.4, 9.8	Post tax amnesty	19 N.J.R. 2255(b)		
18:35	Gross Income Tax; Setoff of Individual Liability	20 N.J.R. 514(a)	R.1988 d.299	20 N.J.R. 1571(b)
18:35-1.24	Gross income tax: investment fund distributions	20 N.J.R. 742(b)		
18:35-1.9, 1.18, 1.19, 1.20	Post tax amnesty	19 N.J.R. 2255(b)		
18:35-1.21, 1.22, 1.23	Gross Income Tax: employee defined; employer withholding; business expenses	20 N.J.R. 515(a)		
18:37-2.1, 2.2, -3, -4	Post tax amnesty	19 N.J.R. 2255(b)		

Most recent update to Title 18: TRANSMITTAL 1988-2 (supplement March 21, 1988)

TITLE 19—OTHER AGENCIES

19:3, 4, 4A	Hackensack Meadowlands Development Commission rules	20 N.J.R. 743(a)	R.1988 d.281	20 N.J.R. 1467(a)
19:4-6.28	Rezoning in East Rutherford	19 N.J.R. 1975(a)		
19:8	Use and administration of Garden State Parkway	20 N.J.R. 890(a)	R.1988 d.292	20 N.J.R. 1571(c)
19:9	Turnpike Authority rules	20 N.J.R. 1338(a)		
19:9-1.6	Sleeping in parked vehicles	19 N.J.R. 1637(b)		
19:9 Exh. A	Prequalification of bidders for widening contracts	19 N.J.R. 2129(b)		
19:17	Appeal Board rules concerning majority representation fee in lieu of dues	20 N.J.R. 891(a)	R.1988 d.301	20 N.J.R. 1571(d)
19:25-16.4, 16.5, 16.6, 16.10, 16.11, 16.14, 16.18, 16.20, 16.27, 16.33	Public financing of primary election for Governor	20 N.J.R. 1339(a)		
19:25-19.3	Personal financial disclosure: reporting of earned income	19 N.J.R. 1541(a)		
19:25-19.3	Reporting of earned income: withdrawal of proposal	20 N.J.R. 762(a)		

Most recent update to Title 19: TRANSMITTAL 1988-1 (supplement April 18, 1988)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		
19:41	Applications	20 N.J.R. 763(a)	R.1988 d.255	20 N.J.R. 1209(a)
19:41-11.3	Filing of casino service industry applications	20 N.J.R. 1537(b)		
19:42	Hearings	20 N.J.R. 764(a)	R.1988 d.256	20 N.J.R. 1209(b)
19:45-1.1, 1.10, 1.11, 1.12, 1.16, 1.17, 1.32, 1.33, 1.36, 1.37, 1.38, 1.42, 1.44	Slot machine bill changer system	20 N.J.R. 765(a)		
19:45-1.1, 1.10, 1.11, 1.12, 1.16, 1.17, 1.32, 1.33, 1.36, 1.37, 1.38, 1.42, 1.44	Slot machine bill changer system: 90-day implementation	Expires 7-10-88	———	20 N.J.R. 769(a)
19:45-1.14, 1.36, 1.39, 1.40B, 1.45	Internal casino controls	20 N.J.R. 1069(a)		
19:45-1.25	Verification of travelers checks	20 N.J.R. 51(a)	R.1988 d.304	20 N.J.R. 1572(a)
19:45-1.25	Verification of travelers checks: public hearing	20 N.J.R. 1071(a)		
19:45-1.33, 1.42, 1.43	Count times for cash and coin	19 N.J.R. 2265(a)		
19:46	Gaming equipment	20 N.J.R. 638(a)	R.1988 d.232	20 N.J.R. 1209(c)
19:46-1.19	Dealing shoes	20 N.J.R. 1069(a)		
19:46-1.25, 1.26	Slot machine bill changer system	20 N.J.R. 765(a)		
19:46-1.25, 1.26	Slot machine bill changer system: 90-day implementation	Expires 7-10-88	———	20 N.J.R. 769(a)
19:46-1.29	Approval of slot machine modifications	20 N.J.R. 52(a)		
19:47	Rules of the games	20 N.J.R. 639(a)	R.1988 d.233	20 N.J.R. 1209(d)
19:47-1.11	Rules of the games: craps	19 N.J.R. 1542(a)		
19:47-5.3	Roulette and "no more bets" procedure	19 N.J.R. 1638(a)		
19:50	Casino hotel alcoholic beverage control	20 N.J.R. 770(a)	R.1988 d.257	20 N.J.R. 1210(a)
19:53	Equal employment opportunity and affirmative action	20 N.J.R. 640(a)	R.1988 d.234	20 N.J.R. 1214(a)
19:53-1.3, 1.13	Casino licensee's EEO/AA office: reproposal	20 N.J.R. 970(b)		

Most recent update to Title 19K: TRANSMITTAL 1988-3 (supplement May 16, 1988)