



NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 17, 1988

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT NOVEMBER 21, 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 **February 2, 1989**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Neighborhood Preservation Balanced Housing Program

Eligible Applicants

Proposed Amendment: N.J.A.C. 5:14-1.2

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

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1989-9.

Submit comments by February 2, 1989 to:

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

The agency proposal follows:

Summary

Criteria are established for eligibility for Neighborhood Preservation Balanced Housing Program funding. These criteria were adopted by the Council on Affordable Housing and forwarded to the Department of Community Affairs for promulgation. Until June 30, 1989, all municipalities may apply for funds to aid in the development of low and moderate income housing needed to satisfy an established housing obligation or indigenous need. However, from July 1, 1989 onward, the municipality must have petitioned for or received substantive certification from the Council on Affordable Housing; have entered into a court settlement regarding its fair share obligation, be subject to a court-ordered builder's remedy; have been designated as a receiving municipality pursuant to an approved regional contribution agreement; or be a recipient of State aid pursuant to P.L. 1978, c.14. Municipalities in these categories will receive absolute preference even prior to July 1, 1989.

Social Impact

The proposed amendment will further the goals of the Fair Housing Act, P.L. 1985, c.222, by directing available funds towards projects in municipalities that are actively seeking to be in compliance with that act or that have been previously identified as being particularly in need of State assistance in addressing their social and economic problems.

Economic Impact

Projects in municipalities not falling into one of the listed categories will not be eligible for funding unless and until one of the criteria is satisfied. In most cases, this will involve petitioning the Council on Affordable Housing for substantive certification of a fair share housing plan.

Regulatory Flexibility Statement

This proposed amendment directly concerns municipalities and not small businesses. However, a decision to fund projects only in municipalities that meet certain criteria can have an impact on small businesses that might have an economic interest in a proposed project. Given the purposes of the rule, though, who would be involved in the construction or servicing of a proposed project cannot be considered as a relevant factor.

Full text of the proposal follows (additions indicated in boldface thus).

5:14-1.2 Eligible applicants

(a) Municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program; except that the [municipality] **municipality** may designate other public, private and/or non-profit development entities as part of its application.

(b) **Prior to July 1, 1989, any municipality shall be eligible to apply for funds so long as such funds are to be used to satisfy all or part of the municipality's low and moderate income housing obligation or indigenous need. On or after July 1, 1989, applications shall only be**

accepted from municipalities meeting at least one of the following criteria:

1. The municipality has petitioned the Council on Affordable Housing for substantive certification;
2. The municipality has received substantive certification from the Council on Affordable Housing;
3. The municipality has entered into a judicially-approved compliance agreement to settle its fair share housing obligation;
4. The municipality is subject to a court-ordered builder's remedy;
5. The municipality has been designated as a receiving municipality under a regional contribution agreement and project plan approved by the Council on Affordable Housing; or
6. The municipality is receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

(c) **Prior to July 1, 1989, the Department shall grant absolute funding priority to municipalities meeting one or more of the criteria set forth in (b)1 through 6 above.**

EDUCATION

(b)

STATE BOARD OF EDUCATION

Reporting of Allegations of Child Abuse

Proposed New Rules: N.J.A.C. 6:3-5

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:25-1, 18A:25-6, 18A:36-19 and N.J.S.A. 9:6-3.1, 9:6-8.9, 9:6-8.10, 9:6-8.13, 9:6-8.14, 9:6-8.21, 9:6-8.40, 9:6-8.72a, and N.J.A.C. 10:129-2.1.

Proposal Number: PRN 1989-14.

Submit comments by February 2, 1989 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

On December 24, 1987, P.L. 1987, c.341 was signed into law. This law amends N.J.S.A. 9:6-1 et seq. of the child abuse laws, including clarifying the application of existing child abuse laws in school settings. The amended law requires the Department of Education, in consultation with the Department of Human Services, to adopt rules concerning the relationship, rights, and responsibilities of the Division of Youth and Family Services (DYFS) (in the Department of Human Services) and local school districts in reporting and investigating allegations of child abuse. The proposed new rules fulfill the legislative requirements of P.L. 1987, c.341.

N.J.A.C. 6:3-5.1 establishes the purpose of the subchapter. N.J.A.C. 6:3-5.2 requires district boards of education to adopt and implement policies and procedures for reporting and cooperating with DYFS in investigations of alleged child abuse. In addition, this section sets forth the procedures to be included in district policies, as well as district responsibilities during the investigation of alleged child abuse.

Social Impact

The Department anticipates a positive social impact to be associated with the proposed new rules, since these rules would provide a clear understanding of the procedures and responsibilities for reporting and investigating allegations of child abuse in the school setting.

Economic Impact

The proposed new rules will have no new or additional economic impact because school districts are already required to adhere to the Departments of Education and Human Services standards for reporting allegations and cooperating in investigations of child abuse in the schools. No additional costs are necessary to implement or maintain these rules.

Regulatory Flexibility Statement

The proposed new rules will have no reporting, recording, or compliance requirements for small businesses. The rules impact only upon New Jersey school districts and possibly the Department of Human Services.

Full text of the proposal follows:

SUBCHAPTER 5. REPORTING OF ALLEGATIONS OF CHILD ABUSE**6:3-5.1 Purpose**

The purpose of this subchapter is to establish uniform Statewide policies and procedures for public school personnel to report allegations of child abuse to the Division of Youth and Family Services (DYFS) and to cooperate with the investigation of such allegations.

6:3-5.2 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures for the reporting and the cooperation with the Division of Youth and Family Services (DYFS) in investigations of child abuse. District policies and procedures developed pursuant to this subchapter shall be reviewed and approved by the county superintendent. These policies and procedures shall not be limited to the following, but shall:

1. Include provisions requiring school personnel, compensated and uncompensated (volunteer), to immediately report to DYFS incidents of child abuse and to inform the school principal or his or her designee of the report. However, notice to the principal or his or her designee need not be given when the person believes that such notice would be likely to endanger the referrer or child(ren) involved or when the person believes that such disclosure would be likely to result in retaliation against the child or in discrimination against the referrer with respect to his or her employment.

i. School personnel having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse as defined under N.J.S.A. 9:6-8.9 shall immediately report to DYFS (see N.J.S.A. 9:6-8.10). When referring cases to DYFS, the school referrer shall provide, when possible, the following information:

- (1) The name of the child;
- (2) The age and grade of the child;
- (3) The name and address of the child's parent or guardian or other person having custody and control (for example, foster parent);
- (4) A description of the child's condition, including any available information concerning current or previous injuries, abuse, or maltreatment and including any evidence of previous injuries;
- (5) The nature and possible extent of the child's injuries, abuse, or maltreatment; and
- (6) Any other pertinent information that the referrer believes may be relevant with respect to the child abuse and/or to the identity of the alleged perpetrator;

2. Include a statement indicating the importance of early identification of child abuse;

3. Provide assurances that no school personnel will be discharged from employment or in any manner discriminated against as a result of making in good faith a report or causing to be reported an allegation of child abuse (see N.J.S.A. 9:6-8.13);

4. Require procedures for the following:

i. District cooperation with DYFS in investigations of child abuse that has occurred at any time outside or within the confines of the school or during a school-related function;

ii. District action as defined in N.J.S.A. 9:6-3.1 in response to the findings at each stage of the investigation process as it affects the child(ren) and the school personnel;

iii. Release of the child(ren) from the school; and

iv. Transfer of the child(ren) between schools;

5. Provide for the establishment of a liaison to DYFS from the district board of education.

i. The function of the liaison is to:

(1) Facilitate communication and cooperation between the district and DYFS; and

(2) Act as the primary contact person between the schools and DYFS with regard to general information sharing and the development of mutual training and other cooperative efforts;

6. Include provisions for the delivery of information and in-service training programs to school personnel concerning child abuse, instructional methods and techniques relative to issues of child abuse in the local curriculum, and personnel responsibilities pursuant to N.J.S.A. 9:6-8.10 et seq.;

7. Detail the responsibilities of the district board of education as follows:

i. Permit the DYFS investigator to interview the child(ren) in the presence of the school principal or his or her designee. If the child(ren) is intimidated by the presence of that school representative, the child(ren) shall name a staff member, whom he or she feels will be supportive, who will be allowed to accompany the child during the interview. The purpose of including a school representative is to provide comfort and support to the child, not to participate in the investigation;

ii. Cooperate with DYFS in scheduling interviews with any school personnel who may have information relevant to the investigation;

iii. Release, in accordance with N.J.S.A. 18A:36-19 and N.J.A.C. 6:3-2, all pupil records of the child(ren) under investigation that are deemed to be relevant to the assessment or treatment of child abuse (see N.J.S.A. 9:6-8.40);

iv. Maintain and secure all confidential information about child abuse cases in accordance with N.J.S.A. 18A:36-19 and N.J.A.C. 6:3-2;

v. Permit DYFS to physically remove pupils from school during the course of a school day when it is necessary to protect the child or take the child to a service provider. Such removal shall take place once the principal or his or her designee has been provided, either in advance or at the time removal is sought, with appropriate authorization from the DYFS district office;

vi. Cooperate with DYFS when it is necessary to remove the child(ren) from his or her home for proper care and protection and when such removal results in the transfer of the child to a school other than the one in which he or she is enrolled; and

vii. Provide due process rights to school personnel who have been reassigned or suspended in accordance with N.J.S.A. 18A:6-10 et seq., 18A:25-1, 18A:25-6, and N.J.S.A. 9:6-3.1. Temporary reassignment or suspension of school personnel alleged to have committed an act of child abuse shall occur if there is reasonable cause to believe that the life or health of the alleged victim or other children is in imminent danger due to continued contact between the school personnel and a child (see N.J.S.A. 18A:6-10 et seq. and N.J.S.A. 9:6-3.1).

ENVIRONMENTAL PROTECTION**(a)****DIVISION OF COASTAL RESOURCES****Coastal Permit Program Rules and Waterfront Development****Proposed Amendment: N.J.A.C. 7:7-2.3.**

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

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:9A-1 et seq.,
13:19-1 et seq., and 12:5-1 et seq.

DEP Docket Number: 047-88-12.

Proposal Number: PRN 1989-29.

Public hearings concerning the proposed amendment will be held on
January 19, 1989 at 10:00 A.M.

Old County Courthouse

Main Street (Route 9)

Cape May Courthouse, New Jersey

January 20, 1989 at 10:00 A.M.
 Belmar Municipal Complex
 Borough Courtroom
 601 Main Street
 Belmar, New Jersey

Submit written comments by February 2, 1989 to:

Michael P. Marotta, Esq.
 Division of Regulatory Affairs
 Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Waterfront Development Act of 1914, N.J.S.A. 12:5-1 et seq. (Act), is one of three coastal construction permit laws administered by the Department of Environmental Protection. Prior to 1980, the Act was generally applied to development only in the water. From September of 1980 through October 3, 1988, the Act's implementing rules provided for Department regulation of an upland area adjacent to all tidal waters outside of the areas subject to the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. ("CAFRA"), and the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 et seq., and provided for regulation of projects at or below the mean high water line. On October 3, 1988, the Department adopted amendments to the rules on waterfront development, N.J.A.C. 7:7-2.3, by emergency proceedings, that expanded the area of Department regulation under the Act in the CAFRA waterfront area. Concurrently, the Department proposed the same amendment by ordinary proceedings in order to continue the effect of these amendments beyond 60 days. In addition to a public hearing attended by more than 250 people, the Department offered several workshops and received over 800 letters and 1,200 postcards commenting on the proposal. The concurrent proposal was adopted without change on December 2, 1988 to prevent any lapse in regulation, (see adoption notice in this issue of the New Jersey Register). This adopted amendment provides for a regulated waterfront area extending from tidal water through the most inland beach, dune or wetland to the inland limit of the first property that involves a permanent building.

As a result of the comments received, the Department is now proposing further amendments to N.J.A.C. 7:7-2.3. N.J.A.C. 7:7-2.3(a)2 is proposed for amendment to limit the inland scope of the regulated waterfront area to 1000 feet from the most inland beach, dune, wetland or other water area. N.J.A.C. 7:7-2.3(d)4 also is proposed for amendment to clarify that expansions of bulkheads or other shore protection structures shall not be included in the calculation of the 1500 square foot exception. A new exception has also been added at N.J.A.C. 7:7-2.3(d)8 to except from the permit requirement single family dwelling units for which all necessary municipal approvals and permits had been issued on or before October 3, 1988. Another exception has been added at N.J.A.C. 7:7-2.3(d)9 to allow reconstruction of existing single-family residential dwellings in cases where the dwelling has been voluntarily demolished. Exceptions at N.J.A.C. 7:7-2.3(d)3 and (d)9 may be used with the exception at N.J.A.C. 7:7-2.3(d)4 to except from the permit requirement both reconstruction and expansion or enlargement, of 1500 square feet or less, of the destroyed building (in the case of N.J.A.C. 7:7-2.3(d)3) or of the destroyed single family residential dwelling unit (in the case of N.J.A.C. 7:7-2.3(d)9). A cross reference has been corrected in N.J.A.C. 7:7-2.3(f). Finally, N.J.A.C. 7:7-2.3(g) is proposed for amendment to clarify the meanings of "in progress" and "construction, excluding site preparation."

Social Impact

This amendment will result in a positive social impact by addressing certain concerns expressed during the comment period for the rule proposed in November 7, 1988 New Jersey Register (DEP Docket No. 038-88-10). Those projects greater than 1,000 feet inland from the baseline for measurement of the waterfront areas those involving expansion or enlargement of existing shore protection structures, those consisting of one single-family dwelling unit with all local approvals and permits prior to October 3, 1988 and those involving voluntary replacement of demolished single family dwelling units will no longer be subject to the permitting requirements. The amendment will ease the regulatory burden on and will focus government resources on implementation and enforcement of waterfront rules in that portion of the coastal area where development is most likely to affect sensitive ecological features and water resources.

Economic Impact

The proposed amendment reduces the number of projects subject to the Coastal Program Rules, N.J.A.C. 7:7, through a reduction of geographic scope, non-inclusion of shore protection structures in the 1500-foot expansion or enlargement exception calculation, the exception of developments consisting of one single-family dwelling unit for which all necessary municipal approvals and permits had been issued on or before October 3, 1988 and exception for reconstruction of voluntarily demolished single family dwelling units. Those directly affected by these proposed provisions would not be subject to costs associated with the permit program.

Environmental Impact

The Department believes that the proposed 1,000 foot limit and the exception will not have a significant adverse environmental impact.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-19, the Department has determined that this proposed amendment would not impose reporting, recordkeeping, or other compliance requirements on small businesses. Instead, it will reduce the number of businesses, small and large, subject to Department regulation.

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

7:7-2.3 Waterfront Development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. (No change.)
2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall consist of the area described in (a)1 above, and extend inland to include an adjacent upland area measured from the most inland beach, dune, wetland or other water area, as these terms are defined in N.J.A.C. 7:7E, to the [greater] **lesser** of:
 - i. One [hundred] **thousand** feet; or
 - ii. The inland limit of the first property associated with residential, commercial or industrial use that involves a permanent building based on property lines existing on October 3, 1988; provided, however, should the Division issue a Waterfront Development Permit after October 3, 1988 for a use involving a permanent building, upon project completion the inland limit for purposes of this subparagraph shall be the inland property boundary associated with this permit; **and further provided that if the inland limit of the property is closer to the baseline than 100 feet, the waterfront area boundary shall be 100 feet inland from the baseline.**

3. (No change.)
- (b)-(c) (No change.)
- (d) A permit shall be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area with the exceptions listed below:

- 1.-3. (No change.)
4. In the area defined at (a)2 above, the expansion or enlargement of any existing structure, conducted in one or more phases on or after October 3, 1988, such that the total area of all phases of expansion or enlargement is [less than] 1500 square feet or less; **provided, however, the construction or the reconstruction of a bulkhead or other shore protection structure shall not be included in the calculation of expansion or enlargement area;**

- 5.-7. (No change.)
8. **In the area defined at (a)2 above, development consisting of one single-family residential dwelling unit for which all necessary municipal approvals and permits had been issued on or before October 3, 1988;**
9. **In the area defined at (a)2 above, reconstruction of a single family residential dwelling unit which replaces or reconstructs a voluntarily demolished unit which existed on or before October 3, 1988, as long as such reconstruction or replacement does not result in a footprint or total area greater than that of the replaced dwelling unit.**

- (e) (No change.)
- (f) A permit is required for the additional filling of any lands formerly flowed by the tide, if any filling took place after 1914

without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in paragraph [(a)2] (a)3 above.

1. (No change.)

(g) The subchapter shall not apply to any development or activity in the upland area defined in (a)3 above and in man-made waterways and lagoons for which on-site construction, including site preparation, was in progress on or prior to September 26, 1980 or to any development or activity in the upland area defined in (a)2 above for which on-site construction, excluding site preparation, was in progress on or prior to October 3, 1988. **For the purpose of this section, "construction, excluding site preparation" encompasses improvements which include, but are not limited to, paved roads, curbs, and storm drains. In order for such improvements to be considered "in progress" on or before October 3, 1988, materials must have been brought to the site and partially installed on or before that date. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures.**

1.-2. (No change in text.)

HEALTH

(a)

HEALTH PLANNING AND RESOURCES DEVELOPMENT

Health Maintenance Organizations

Vision Care Services by Licensed Optometrists

Proposed Amendments: N.J.A.C. 8:38-1.1 and 1.4.

Authorized By: Molly Joel Coye, M.P.H., Commissioner,
Department of Health.

Authority: N.J.S.A. 26:2J-1 et seq., specifically 26:2J-21.

Proposal Number: PRN 1989-6.

Submit comments by February 2, 1989 to:

Charlotte Kitler
Director of Legal Services
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The current rules at N.J.A.C. 8:38 require health maintenance organizations ("HMOs"), whether organized as a group practice or an individual practice association, to provide eye examinations for children as part of their package of basic health care benefits. Additional vision care services for children and for adults may also be offered, at the discretion of the HMO, as supplemental health care benefits. While the rules specify several types of health care professionals whose services must be made available by the HMO (for example, physicians, medical specialists, licensed nurses and nutritionists), they do not mention any type of ocular practitioners.

In February 1988, the New Jersey Optometric Association filed a petition with the Department seeking a declaratory ruling that a number of HMOs, which were based on the individual practice association (IPA) model, were unlawfully discriminating against licensed optometrists in arranging for the professional services of ocular practitioners. During the course of reviewing this petition, the Department obtained information indicating that the services of licensed optometrists already were provided by many HMOs or could be provided without any significant inconvenience. With the petitioner's consent, the petition for declaratory ruling was converted into a petition for the Department to promulgate rules on the provision of the services of licensed optometrists by HMOs.

The Department finds substantial merit in the petition for rulemaking. Accordingly, it is proposing amendments to the rules governing HMOs, to require all HMOs to offer the services of licensed optometrists to their enrollees. Under the terms of these proposed amendments, an HMO must

arrange to have a sufficient number of professional practitioners so that services which are within the scope of practice of optometry will be provided, at the HMO enrollee's choice, by either a licensed optometrist or other licensed ocular practitioner, unless the primary care physician determines that referral to an ophthalmologist is medically required for a service which is outside the scope of the practice of an optometrist.

This requirement would apply to all vision care services offered by HMOs, whether part of the basic or the supplemental health care benefits, and to all HMOs, whether organized as a group practice or an independent practice association (IPA). There is no intent, however, to require HMOs using the IPA model or closed panels of practitioners to create open panels for optometric services. An HMO may select the particular licensed optometrists whose services will be engaged or recognized by the HMO, just as the HMO may continue to select the other health care professionals whose services it makes available to HMO enrollees.

Social Impact

Many HMOs already have arrangements to offer the services of licensed optometrists to provide vision care services to their enrollees. The proposed amendments will require all HMOs to offer the availability of licensed optometrists for the vision care services which the HMOs provide.

As applied to all HMOs, the proposed amendments should increase the range and number of health care professionals who can deliver care to HMO enrollees. In expanding these options, the HMO subscribers should also enjoy increased convenience in the delivery of vision care services without any diminution in the quality of their health care.

Economic Impact

It is expected that the proposed amendments will have minimal economic impact upon the costs of HMO operations, as the new regulatory requirement calls for no additional health care services and no increase in the number of procedures, merely an increase in the type of health care professional who can deliver vision care services at the per-procedure rate recognized by the HMO. There is no requirement, nor any inherent compunction, for HMOs to increase the amount which they will reimburse to ocular practitioners for the health care services they perform. Indeed, it is possible for HMOs to realize cost savings if the per-procedure rate which they negotiate with licensed optometrists is lower than the rate for the same services offered by ophthalmologists.

The proposed amendments will have no economic impact upon HMO enrollees. They will have the services of licensed optometrists made available to them without any change in their pre-paid subscription fees.

Regulatory Flexibility Statement

There are approximately 24 HMOs approved to operate in New Jersey, some of which might be considered to be small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will apply uniformly to all HMOs, without distinction as to the type of organization on which the HMO is modeled. However, it is believed that those HMOs organized as staff or group practices, as well as several HMOs engaging independent practice associations (IPA), already provide the services of licensed optometrists to their enrollees. Accordingly, the primary impact of the proposed amendments will be upon those HMOs operated on the IPA model which have no actual current arrangements to recognize the services of licensed optometrists. These HMOs will be required to activate arrangements to offer the services of licensed optometrists to their enrollees.

The proposed amendments do not impose any additional recordkeeping or reporting requirements, as HMOs are already required to maintain adequate documentation of their compliance with regulatory standards. The amendments also do not create any capital costs.

Costs of compliance will be minimal, will affect only those HMOs which do not currently have arrangements to recognize the services of licensed optometrists, and should consist only of administrative costs for those HMOs to negotiate arrangements with licensed optometrists. There should be no change in any HMO's costs for providing vision care services, as HMOs typically reimburse providers on a rate per procedure. The proposed amendments require no increase in services and no increases in the number of health care procedures provided by HMOs.

Because the purpose of these amendments is to avoid any discrimination against licensed optometrists in the vision care services offered by HMOs, the proposed amendments will apply uniformly to all HMOs. The Department will not exempt any HMOs from the requirements in these amendments.

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

8:38-1.1 Health care services

(a) (No change.)

(b) In addition to basic health services, a health maintenance organization (either "group practice HMO" or "individual practice association") may provide any supplemental health care services which are in conformity with applicable laws and regulations.

8:38-1.4 [Regulations for the establishment] **Establishment** and operation of an HMO

(a) To establish and operate a health maintenance organization, the following [regulations must] **conditions shall** be met:

1.-3. (No change.)

4. Evidence of compliance with the following requirements must be furnished to the [commissioner] **Commissioner of the Department of Health** on request:

i. There must be sufficient licensed primary care physicians, [and] medical specialists and licensed optometrists associated with or available to the HMO to provide basic health care services. The number of [physicians] **providers** is contingent upon enrollment size and prevailing standards;

ii.-vi. (No change.)

vii. **Basic eye care services and supplemental vision care services shall be provided by licensed optometrists as well as by ophthalmologists, as medically appropriate. There shall be sufficient licensed optometrists associated with or available to the HMO to assure that, unless referral to an ophthalmologist is determined by the primary care physician to be medically required and outside the scope of practice of an optometrist, the enrollee can choose to have vision care services provided by a licensed optometrist.**

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Readoption: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-1(a).

Proposal Number: PRN 1989-1.

Submit written comments by February 2, 1989 to:

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

The agency proposal follows:

Summary

In 1977, N.J.S.A. 24:6E-6 et seq. directed establishment of the Drug Utilization Review Council (Council), whose duty it was to prepare a list of generic drug products which could be safely substituted for brand name prescription products, thus saving money for consumers.

N.J.S.A. 24:6E-1(a) authorized the Council to prepare a list of interchangeable drug products. The list was to contain the names of drug manufacturers whose products were judged by the Council to be therapeutically equivalent to brand name prescription drugs.

The intent of the legislation was to dictate circumstances under which one of the therapeutically equivalent generic products would be substituted for the brand name drug which a prescriber had ordered, thus saving money for consumers. N.J.A.C. 8:71 lists all of the branded medications which are to be substituted for, under specified conditions, and also lists all of the acceptable manufacturers of their generic substitutes. This list serves as a guide to pharmacists and to consumers as to acceptable generic manufacturers; without the list, implementation of N.J.S.A. 24:6E-1 et seq. would be impossible.

The List of Interchangeable Drug Products has been effective in saving money for consumers as outlined under the Economic Impact Statement, below.

The Drug Utilization Review Council (the Council), in the Department of Health, proposes to readopt N.J.A.C. 8:71 without change. The Council has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purposes for which they were originally promulgated. Public comment is invited so that the Council can make a fully informed decision as to whether these rules should be readopted before their expiration date, pursuant to Executive Order No. 66(1978), on April 2, 1989.

Social Impact

The Council believes that this readoption will continue the positive social impact that these rules have had in the past: the elderly, those persons with limited incomes, and any interested citizen will continue to be assured of reasonable priced generic substitutes for brand name drugs.

Health Department studies have shown that, although over 40 percent of prescribers disallow generic substitution, fewer than five percent of consumers disallow such substitution, thus demonstrating consumer acceptance.

An increased impact of generic substitution is expected in the future based on three factors: an increased number of elderly, who use a disproportionate number of medicines, in the population; more brand name drugs coming out from under patent protection; and an increased emphasis on generics based on Medicare's new Catastrophic Health Care Plan, which will begin to cover prescription drugs within the next several years.

In the last five years, generic substitution has increased, from approximately five million New Jersey prescriptions substituted in 1984, to an estimated 7.5 million in 1989. If the List of Interchangeable Drug Products were not to be readopted, generic substitution would falter, resulting in lessened access to generic medicines for all New Jersey consumers.

Economic Impact

The Council believes that readoption of the List of Interchangeable Drug Products will serve to continue to exert a positive economic impact, not only on these groups mentioned under the Social Impact Statement above, but on several State programs that pay for medications, such as the PAAD Program, the Medicaid Program, and the prescription insurance program available to all State employees.

A 1987 Drug Utilization Review Council survey of 10,000 prescriptions from 100 randomly-selected pharmacies has estimated that the Statewide total of all savings due to the use of generic substitutes approximates at least \$35 million annually, based on savings averaging \$5.00 each for an estimated seven million substituted prescriptions.

Regulatory Flexibility Statement

The readopted List of Interchangeable Drug Products will continue to impact several dozen generic drug manufacturers which employ fewer than 100 employees. However, their limited record-keeping requirements or other paperwork to be completed under these rules are more than offset by expanded sales made possible thereunder. Therefore, the Department will not exempt any business from compliance with these rules.

Full text if the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:71.

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Voluntary Restricted Payments

Proposed Amendment: N.J.A.C. 10:81-4.5

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

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 234.60.

Proposal Number: PRN 1988-4.

Submit comments by February 2, 1989 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10:81-4.5 expands the provision governing voluntary restricted payments in the Aid to Families with Dependent Children (AFDC) Program to include meeting obligations for rent, mortgage, or utility expenses, in addition to payments for child care and transportation. It also authorizes that payments for those services be made in the form of two-party payments, that is, checks drawn jointly to the order of the recipient and provider of goods or services.

Voluntary restricted payments shall only be made at the written request of the recipient and limited to payment for services stated above.

The terms and conditions under which such restricted payments are made and the portion of the AFDC grant of assistance that is authorized to be in the form of a voluntary vendor or two-party payment for shelter or utility costs, shall be designated by the recipient in consultation with the county welfare agency (CWA).

The proposed amendment also provides that the restricted payment may be discontinued at the request of the recipient.

Social Impact

The proposed amendment would have a positive impact on recipients of AFDC, since it would provide for more flexibility in the recipients' use of public assistance funds to meet their obligations in the purchase of goods or services. This is especially true in those situations where housing would not be available unless the lessor and/or utility supplier required some assurance of payment other than the verbal commitment of the recipient. The proposed amendment should also lessen situations where threats of eviction exist.

Economic Impact

Little or no economic impact is expected, since the proposed amendment does not alter the level of payment that would otherwise be authorized to an AFDC family on the basis of a particular case circumstance. A small increase in administrative expenses is anticipated. The population taking advantage of this voluntary way of managing its public assistance grant is expected to be minimal.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., effective December 4, 1986. This rulemaking 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]).

10:81-4.5 Payees in AFDC

(a) (No change.)

(b) [Vendor payments] **Payments may be made [directly] to a person or facility as compensation for providing goods and services to or for the client [representing payment for such goods or services]. [Vendor payments] Payments may be in the form of vendor payments or two-party payments, that is, checks which are drawn jointly to the order of the recipient and the provider of the services. Payments are limited to the following situations only:**

1. Emergency assistance [is provided in N.J.A.C. 10:81-4.22]. See N.J.A.C. 10:82-5.10 for policy and procedures relative to authorization and issuance of vendor payments in emergency assistance.

2. [Payments directly to day care providers or providers of transportation incident to authorized training or education when requested by the client as a voluntary restricted payment (see (c) below.) **Payments for the following services are subject to the provisions of (c) below:**

- i. Child care;
- ii. Transportation expense; and
- iii. Rent, mortgage or utility payments.

(c) Voluntary restricted payments may be made in the form of a vendor or two party payment [, at the request of the recipient, to day care providers and transportation providers only]. [Such vendor] **Vendor payments or two-party payments shall not be extended to any other providers of goods or services and shall only be made at the request of the recipient.**

1. (No change.)

2. The restricted payment will be discontinued promptly upon completion and submittal [by recipient who initiated such payment,] of Form PA-59B, Request to Discontinue Voluntary Restricted Payment, [which must be retained in the case file] **by the recipient who initiated such payment. The request must be retained in the case file.**

3. **Recipients who request a voluntary vendor or two-party payment for shelter or utility costs, shall designate the portion of the assistance payment for rental, mortgage or utility expenses and set the terms and conditions under which such restricted payment is made, in consultation with the county welfare agency.**

DEVELOPMENTAL DISABILITIES COUNCIL

(a)

Charity Racing Days for the Developmentally Disabled

Distribution of Proceeds

Proposed Readoption with Amendments: N.J.A.C. 10:141

Authorized By: Developmental Disabilities Council,

Catherine Rowan, Executive Director.

Authority: N.J.S.A. 5:5-44.2 through 44.6 and 30:1AA-7.

Proposal Number: PRN 1989-15.

Submit comments by February 2, 1989 to:

Susan Richmond, Research Specialist

New Jersey Developmental Disabilities Council

108-110 North Broad Street, CN 700

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:141 expires on February 21, 1989. The New Jersey Developmental Disabilities Council has reviewed the rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Pursuant to P.L. 1977, c.200, Charity Racing Days for the Developmentally Disabled, a portion of the proceeds from three days of horse racing at various tracks in New Jersey, are distributed to eligible organizations which provide services to persons with developmental disabilities. The Developmental Disabilities Council (DDC) determines annually which organizations are eligible.

Eligible organizations complete service forms which are used, with a formula, to determine fiscal awards. Upon receipt of notification of the award figure, the New Jersey Racing Commission forwards the Charity Racing Days monies to the recipients. Annual reports on the distribution of Charity Racing Days proceeds are submitted by the Developmental Disabilities Council to the State legislature.

Currently, 46 eligible organizations are recipients of Charity Racing Days proceeds. Examples include the New Jersey Association for Retarded Citizens, United Cerebral Palsy of New Jersey, and the New Jersey Chapter Epilepsy Foundation of America. The recipient organizations have received annual monies ranging from several hundred to several thousand dollars, depending on the level of services and types of disabilities of the clients served.

The proposed readoption and amendments define relevant terms such as developmental disabilities, eligible services, eligible organizations, and explain the Charity Racing Days award procedures. The proposed amendments will modify, refine, and clarify definitions of eligible services to be more consistent with current terminology and practice in the field. In addition, new services, areas that were either not in existence or considered previously, will be added to the list of eligible services. Methods for allocation of funds, requirements for participation and accountability of Charity Racing Days monies are also included in the rules.

Social Impact

The proposed readoption with amendments will have a positive impact, as the Charity Racing Days proceeds permit the continuation or expansion of necessary programs serving persons with developmental disabilities.

Economic Impact

The proposed readoption and amendments will have a positive impact as the Charity Racing Days proceeds contribute to the financial sustenance of eligible organizations for administrative and direct costs.

Regulatory Flexibility Statement

The proposed readoption does not impose any reporting, recordkeeping, or compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore a regulatory flexibility analysis is not required. The rules apply only to non-profit organizations, which the Council does not consider small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:141.

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

10:141-1.4 Eligible Services

(a) Eligible direct services shall include evaluation services, diagnostic services, treatment, day care, training and education, sheltered employment, recreation, [special living arrangements] **long and short term living arrangements**, counseling, [and] information and referral, **protection and advocacy, supported employment, transportation, and rehabilitation technology**. Such services may be funded directly by an organization from contributions, by grants, or by purchase contracts with public agencies. [Explanation] **An explanation of eligible direct services, based on Federal definitions and as published in the 1978 [developmental disabilities] Developmental Disabilities State Plan, follows:**

1. Diagnostic services are the provision of coordinated services, including, but not limited to, medical, psychological, social or other services necessary to identify the presence, cause and extent of a developmental disability. **Diagnostic services are distinctly different from evaluation services, as it is usually only provided once, per client, and is probably done by a physician or other highly credentialed professional. This service is typically provided upon admission to a program and thereafter only if needed.**

2. Evaluation is the systematic appraisal of physical, psychological, vocational, educational, cultural, social, economic or other characteristics of the individual to determine: [The] the extent to which the disability limits or can be expected to limit his or her daily living and work activities; the extent to which the disability can be minimized through the provision of services; the nature and scope of services needed; and objectives which are commensurate with the individual's needs, interests and capacities. **All four components of the preceding definition shall be documented. Updates of a client's progress in a service are not considered evaluation, but are simply monitoring of a client's progress in a particular service.**

3. Information and referral is the provision of a current and complete listing of all appropriate resources which are available and accessible to the developmentally disabled person, **his or her family and professionals serving the developmentally disabled. Information and referral shall be provided directly to the developmentally disabled client or a parent or professional who calls specifically for a developmentally disabled person, because the person is unable to call for him or herself. Information and referral shall be a distinct and formal service; not the giving of casual, informal information.**

4. Counseling is the provision of professional guidance made on the basis of evaluation in order to achieve goals which are mutually agreeable to counselor and client. **Counseling must be a distinct, structured service, probably regularly scheduled for the client and may include groups. It must be given to the client directly by specifically trained professionals (for example, social workers, psychologists, psychiatrists, etc.).**

5. **Protection and [Advocacy] advocacy** services are the provision of a system of social, legal and other services to help developmentally disabled individuals exercise their rights as citizens and to assist those who are unable to protect themselves from neglect, exploitation or other hazardous situations. **These services are provided under a contract and have a distinctly legal orientation. Services should only be given to the disabled individual, not parents.**

6. Treatment services are **medically related** interventions designed to halt, control or reverse conditions which cause or complicate developmental disabilities. Such interventions may include: [Surgery.] **surgery** provision of prosthetic devices, dental treatment,

physical therapy, occupational therapy, speech and hearing therapy, and other medical and medically oriented treatments needed by the individual. **Each of the treatment services must be provided by professional staff that are specifically credentialed to provide that service and are paid by the Charity Racing Days agency. Consultants are acceptable.**

7. Recreational services provide for planned and supervised activities designed to[Help] **help** meet the individual's therapeutic needs for self-expression, social interaction and entertainment and develop skills and interests leading to constructive and enjoyable use of leisure time. **Year round, regularly scheduled programs and day camps are included.**

8. [Special] **Long and short term** living arrangements are settings for the provision of living quarters for developmentally disabled persons who need some degree of supervision, but who do not require the more intensive services provided by domiciliary care. [(Short term living arrangements refers to temporary residential care, [e.g.] for example, camps, in and out of home respite care, etc.)] (Long term living arrangements refers to permanent residential care, [e.g.] **for example, group homes, skill development homes, etc.[]**)

9. Day care services are the provision of comprehensive and coordinated activities providing personal care and other services to pre-school, school age and adult developmentally disabled individuals. The services are provided outside of the residence for a portion of the 24-hour day. Services include creative, educational, social, physical and learning activities designed to provide at least training, counseling, personal care and recreation services. Day care services for pre-school age and school age children are likely to emphasize recreation activities and maturation of the children in order to supplement service being provided by parents or guardians. Day care for adults is likely to emphasize the development of occupational and/or social skills to make the individual as independent as possible. **Early intervention services are not considered day care, but are counted under education and training.**

10. Education services are the provision of structured learning experiences based on appropriate evaluations and taking place within the least restrictive environment. Curriculum should be designed to develop ability to learn and acquire useful knowledge and basic skills, and to improve the ability to apply them to everyday living. Education services are to be provided to every age group and **include infant stimulation, early intervention and adult activities programs, among others.** Training services are the provision of a planned and systematic sequence in instruction to: [Develop] **develop** skills for daily living, including self-help, motor skills [for daily living, including self-help, motor skills], and communication; enhance emotional, personal, and social development; and provide experiences for gaining occupational and pre-vocational skills. Training services should be based upon appropriate evaluation of the individual and objectives designed to meet the needs of the individual. **Education and training must be Department of Human Service or Department of Education contracted.**

11. Sheltered employment services are the provision of activities involving work evaluation, occupational skills, training and paid employment for those who cannot be absorbed into the general labor market because of their disability.

12. **Supported employment services are the provision of support services including job placement; careful work/job compatibility analysis; training; advocacy with parents, employers, and residential facility operators; mobility training; ongoing assessment and evaluation of worker; and follow up as needed, to an individual involved in paid work in a variety of integrated settings with preference to normalized business settings.**

13. **Transportation service is the provision of distinct and separate transporting services that is not a usual adjunct to another service, (that is, transportation to a day program), that is provided on an ongoing or as needed basis.**

14. **Rehabilitation technology services are the provision of systematic application of technologies, engineering methodologies or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation.**

CORRECTIONS

THE COMMISSIONER

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by February 2, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

(a)

Security and Control Collection, Storage and Analysis of Urine Samples Proposed Amendment: N.J.A.C. 10A:3-5.10

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

Proposal Number: PRN 1989-2.

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:3-5.10 to require a staff member to close, label and seal the specimen bottle in the presence of the inmate who gave the urine sample.

Social Impact

The proposed amendment will reduce the number of complaints made by inmates that their urine samples were switched, mislabeled or tampered with.

Economic Impact

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory 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).

10A:3-5.10 Collection, storage and analysis of urine samples

(a) (No change.)

(b) Urine samples taken from inmates shall be voided directly into an approved specimen bottle in the presence of at least one correction officer or staff member of the same sex as the inmate.

1. The specimen bottle shall immediately be closed, labeled and sealed in the presence of the inmate by the correction officer or staff member.

2. (No change.)

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

(b)

Inmate Discipline Chronic Violator—Vroom Readjustment Unit, the Administrative Close Supervision Unit, and the Female Inmates at the Edna Mahan Correctional Facility for Women

Proposed Amendments: N.J.A.C. 10A:4-6.1, 6.3 and 6.4

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 30:1-7.

Proposal Number: PRN 1989-5.

The agency proposal follows:

Summary

The proposed amendments specify the Administrative Close Supervision Unit at East Jersey State Prison as an additional unit to which chronic violators may be assigned. As per N.J.S.A. 30:1-7, effective November 30, 1988, the proposed amendments also change all references

to the Correctional Institution for Women, Clinton, to its newly acquired name, the Edna Mahan Correctional Facility for Women.

Social Impact

The proposed amendment, which specifies the Administrative Close Supervision Unit at East Jersey State Prison, provides the Department of Corrections with an additional administrative unit to which chronic violators may be assigned. The proposed amendment changing the name "Correctional Institution for Women, Clinton", to "Edna Mahan Correctional Facility for Women" provides the appropriate name of the facility effective November 30, 1988.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined by 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]).

SUBCHAPTER 6. CHRONIC VIOLATOR—VROOM READJUSTMENT UNIT [AND FEMALE INMATES AT THE CORRECTIONAL INSTITUTION FOR WOMEN AT CLINTON], THE ADMINISTRATIVE CLOSE SUPERVISION UNIT, AND THE FEMALE INMATES AT THE EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN

10A:4-6.1 Scope

The rules in this subchapter apply to all male inmates assigned to adult institutions and female inmates serving prison sentences assigned to the [Correctional Institution for Women at Clinton] **Edna Mahan Correctional Facility for Women**.

10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time he[/] or she is currently serving a 30 day term for other disciplinary violations shall be given directly to the Vroom Readjustment Unit (VRU) Director, **the Superintendent of the Administrative Close Supervision Unit (ACSU) at East Jersey State Prison** or the Superintendent of [Clinton Correctional Institution for Women (CIW)] **the Edna Mahan Correctional Facility for Women**. A copy of each charge shall be given to the inmate within 48 hours unless there are exceptional circumstances.

(b) The VRU Director, **the ACSU Superintendent** or [CIW] **the Edna Mahan Correctional Facility for Women Superintendent** shall be responsible for ordering that each charge be investigated. He[/] or she shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff [as] **that** is deemed necessary to clarify facts or circumstances, the VRU Director, **the ACSU Superintendent** or [CIW] **the Edna Mahan Correctional Facility for Women Superintendent** concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from lockup, he[/] or she shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

(d)-(f) (No change.)

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer/Adjustment Committee concludes that the inmate cannot safely be released from lockup at the expiration of his[/] or her 30 day term, the inmate shall be designated a chronic violator. At VRU, the Disciplinary Hearing Officer's decision shall be referred to the Unit's Special Classification Committee for review and approval. [In the case of Clinton Correctional Institute for Women] **At ACSU and at the Edna Mahan Correctional Facility for Women**, the Disciplinary Hearing Officer's decision shall be referred

to the Institution Classification Committee (I.C.C.) for review and approval. The inmate shall remain in Disciplinary Detention until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that he[/] or she will control his[/] or her behavior and will refrain from repetitive acts of assault or destruction of property.

(h)-(i) (No change.)

10A:4-6.4 Appeal procedure

(a) (No change.)

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner shall confer with the VRU Director, the ACSU Superintendent, or [CIW] the Edna Mahan Correctional Facility for Women Superintendent concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the Assistant Commissioner's decision and the reasons therefor within five working days.

(a)

Inmate Access to Courts Amendment of Institutional Records Proposed Amendment: N.J.A.C. 10A:6-3.2.

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

Proposal Number: PRN 1989-17.

The agency proposal follows:

Summary

The proposed amendment removes the Commissioner from the list of persons and administrative units the Superintendent is required to notify after an inmate has legally changed his or her name. The proposed amendment also changes the reference to the Youth Reception and Correction Center, Yardville, to its newly acquired name, the Garden State Reception and Youth Correctional Facility, which was effective November 30, 1988, in accordance with N.J.S.A. 30:1-7.

Social Impact

The proposed amendment reduces the number of notifications the superintendent is required to forward to persons and administrative units when an inmate changes his or her name. The proposed amendment also provides the appropriate name of the facility which was effective November 30, 1988.

Economic Impact

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory 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:6-3.2 Amendment of institutional records

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

(c) The Superintendent shall also notify the following of the inmate's name change:

- [1. The Commissioners;]
- [2.]1. The Central Office Senior Classification Officer;
- [3.]2. The Bureau of Correctional Information and Classification Services; and
- [4.]3. In the case of male inmates, the Reception Unit at the [Youth Reception and Correction Center, Yardville] **Garden State Reception and Youth Correctional Facility.**

LAW AND PUBLIC SAFETY

(b)

DIVISION ON CIVIL RIGHTS

Multiple Dwelling Reports

Proposed Readoption: N.J.A.C. 13:10

Authorized By: Division on Civil Rights, Ollie H. Hawkins, Acting Director.

Authority: N.J.S.A. 10:5-6; N.J.S.A. 10:5-8(g), (h); N.J.S.A. 10:5-12(g), (h), (k).

Proposal Number: PRN 1989-13.

Submit comments by February 2, 1989 to:

Ollie H. Hawkins, Acting Director
Division on Civil Rights
1100 Raymond Boulevard
Room 400
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:10 expires on May 27, 1989. The Division on Civil Rights has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change.

The Multiple Dwelling Reports rules, N.J.A.C. 13:10, require all owners of multiple apartment developments with 25 units or more to file an annual report with the Division on Civil Rights which shall supply information regarding the racial designation of applicants and tenants, rental turnovers, rental recruiting techniques, and the size and rental rates of the apartments (see N.J.A.C. 13:10-2.2 and 13:10-2.3). Under the rules, "racial designation" is defined to mean Caucasian, Black, or Spanish surname (see N.J.A.C. 13:10-1.1). One copy of the report shall be filed with the Division on Civil Rights on a yearly basis, due on October 15 (see N.J.A.C. 13:10-2.4). Owners of multiple apartment developments are required to maintain records of the racial designation of applicants and tenants for two years, pursuant to N.J.A.C. 13:10-2.5.

The Multiple Dwelling Reports rules were initially proposed by the Division on Civil Rights in the New Jersey Register of April 9, 1970, at 2 N.J.R. 36(a). The rules were designed to assist the agency to more effectively enforce the State law against housing discrimination. Data generated by the reports was intended to identify those multiple dwellings whose racial composition may warrant investigation, and to alert owners of multiple dwellings to the composition of those dwellings. It was anticipated that the rules would help the agency monitor housing trends State-wide, and provide important information regarding investigations of charges of discrimination. The rules, after hearing and with modification, were adopted on September 21, 1970.

The legal validity of the rules has been challenged by the New Jersey Builders, Owners, and Management Association, which contended that the rules' reporting requirements offend the Law Against Discrimination, the very statute they seek to enforce. The New Jersey Supreme Court upheld the validity of the rules on the basis that assembling and evaluating these pertinent data was a rational approach toward satisfying the mandate with which the Division on Civil Rights has been charged (see *New Jersey Builders, Owners, and Management Association v. Blair*, 60 N.J. 330, 337 (1972)).

Presently, the Division on Civil Rights receives and monitors compliance of multiple dwelling reports from over 2,500 apartment complexes throughout the State. The reporting requirements alert complex owners as to the composition of their applicants and tenants as well as the agency's attempt to monitor that composition.

The reports generated by the rules are also utilized in the development of affirmative marketing techniques in housing. The Division on Civil Rights in conjunction with Community Housing Resource Boards throughout the State, has endeavored through voluntary affirmative marketing agreements to promote institutional change in housing on an areawide basis. The Division cannot expect effective equal housing opportunity until the real estate and building industries, apartment house association members, financial institutions and local governments demonstrate their acceptance of all applicants and affirmatively promote open communities. The data generated from the rules assists in achieving the

above objective by assuring compliance with affirmative action commitments as well as targeting the responsibility for discriminatory practices.

To summarize, the Multiple Dwelling Reports rules are necessary to enable the Division on Civil Rights to systematically acquire information regarding the racial composition of apartment complexes throughout the State. The data generated from the reports serve to ensure the promotion of equal housing opportunity and are used to investigate possible violations and seek compliance with the Law Against Discrimination. Upon internal review of these rules, the Division on Civil Rights has found them adequate, reasonable, understandable and necessary for the purpose for which they were promulgated. Therefore, the Division on Civil Rights is seeking to preserve the benefits to the public by readopting the rules in their present form.

Social Impact

The Multiple Dwelling Reports rules as initially adopted contribute to the public's awareness of fair housing laws by requiring complex owners to focus on the racial composition of their applicants and tenants as well as by emphasizing the responsibility of the Division on Civil Rights to monitor that composition. The data gathered from the reporting rules is also used to target, investigate and resolve complaints of housing discrimination. The proposed re adoption will enable the Division to continue its efforts to prevent the emergence of segregated housing developments and to open urban and suburban apartments to minorities, and thus assure equal housing opportunities in this State.

Economic Impact

Readoption of the Multiple Dwelling Reports rules will continue to have a minimal economic impact on owners of apartments of 25 units or more by requiring the compilation of annual reports reflecting the racial composition of tenants and applicants, and the maintenance of these records for two years.

Regulatory Flexibility Statement

The Multiple Dwelling Reports rules apply to owners of complexes comprised of 25 or more units. Owners of apartment complexes which have less than 25 units are exempt. There are approximately 2,500 multiple dwellings to which the rules apply. The cost of compliance for these owners is minimal since the rules merely require the annual completion and filing of a form which reflects the racial composition of leaseholders and applicants, the number of rental turnovers, apartment rental recruiting techniques, and apartment sizes and rental rates. These requirements have not been shown to be financially or administratively burdensome for covered complex owners during the effective period of the rules.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:10.

(a)

DIVISION OF CONSUMER AFFAIRS

BUREAU OF SECURITIES

Performance Fee Compensation

Proposed New Rule: N.J.A.C. 13:47A-2.10

Authorized By: James McLelland Smith, Chief, Bureau of Securities.

Authority: N.J.S.A. 49:3-53(b)(1) and 49:3-67.

Proposal Number: PRN 1989-8.

Submit comments by February 2, 1989 to:

James McLelland Smith, Chief
Bureau of Securities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 13:47A-2.10 is a new rule being proposed for adoption, promulgated pursuant to N.J.S.A. 49:3-53(b)(1). The proposed new rule establishes standards which allow investment advisors registered pursuant to N.J.S.A. 49:3-56(a) to enter into, perform, extend or renew an investment advisory contract which provides for compensation to the investment advisor based on a share of capital gains on or capital appreciation of the funds or any portion of the funds of a client. Such compensation is commonly referred to as "performance fee compensation".

Social Impact

The major social impact of the proposed new rule will be to benefit investment advisors registered in New Jersey by allowing such investment advisors to obtain clients who may pay compensation based on performance. Public investors will be afforded an additional choice in selecting the method of investment advisory compensation.

Economic Impact

The proposed new rule is expected to minimize the current competitive advantage that investment advisors registered in other states may have with respect to the allowance of performance fee compensation. Increased administrative costs are anticipated by the Bureau of Securities, which is required by law to administer the Uniform Securities Law (1967), N.J.S.A. 49:3-47 et seq. ("Law"), and the rules promulgated under the Law.

Regulatory Flexibility Statement

The proposed new rule will allow performance fee compensation for registered investment advisors, which had formerly been prohibited by law. As such, the proposed new rule does not affect, impact or impose additional or amended reporting, recordkeeping or other compliance requirements on "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rule follows:

13:47A-2.10 Performance fee compensation

(a) The provisions of N.J.S.A. 49:3-53(b)(1) shall not prohibit any investment advisor registered as an investment advisor pursuant to N.J.S.A. 49:3-56(a) from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the conditions of this section are met and all conditions of Rule 205-3 (17 CFR 275.205-3) under the Investment Advisors Act of 1940 15 U.S.C. 80b-1 et seq., which are not in conflict with the conditions set forth in this section are satisfied.

(b) The client entering into the contract subject to this regulation must be a natural person or a company as defined in Rule 205-3, who immediately after entering into the contract has at least \$500,000 under the management of the investment advisor; and who the registered investment advisor (and any person acting on the investment advisor's behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company as defined in Rule 205-3, whose net worth at the time the contract is entered into exceeds \$1,000,000. The net worth of a natural person may include assets held jointly with such person's spouse but shall not include home, farm, car and furnishings.

(c) Nothing in this section shall prevent the renegotiation, for the purposes of changing the method of compensation in compliance with this section, of an investment advisory contract between a registered investment advisor and the client of such investment advisor provided both parties agree to the new or additional terms.

(d) Nothing in this section relieves a client's independent agent from any of the obligations under N.J.S.A. 49:3-47 et seq. including, but not limited to, the obligation to register with the Bureau pursuant to N.J.S.A. 49:3-56(a) and the obligation to comply with N.J.S.A. 49:3-52 and 49:3-53.

TRANSPORTATION

DIVISION OF RIGHT OF WAY

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by February 2, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(a)**Acquisitions****Property Appraisal; Payments****Proposed Amendments: N.J.A.C. 16:5-2.2 and 3.1**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-22, 27:7-44.6 and 20:3-1 to 3-50.

Proposal Number: PRN 1989-7.

The agency proposal follows:

Summary

The proposed amendments will effect minor language changes in the acquisition of property in the negotiation of right of ways, especially in property appraisal and advance of down payment, N.J.A.C. 16:5-2.2 and 3.1.

The rules were reviewed by the staff of the Department's Right of Way Division, which recommended the language changes.

N.J.A.C. 16:5-2.2, as proposed for amendment, requires the review of the fair market value and appraisal of the property in question.

The proposed amendment to N.J.A.C. 16:5-3.1 provides for advance down payment on improvements made on properties and taken by the Department, provided payment does not exceed 25 percent of the purchase price.

Social Impact

The proposed amendments will effect minor language changes in the acquisition of property in right of way negotiations and update the present practices.

Economic Impact

The proposed amendments will not have any economical impact on those with whom the Department is negotiating in the acquisition of rights of ways.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily effect procedural changes.

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

16:5-2.2 Property appraisal

Prior to the institution of negotiation and any price discussions, all properties will be appraised by appraisal specialists who are separate and independent of negotiations responsibilities. Review appraisers will review the completed appraisals and establish the estimate of fair market value which, together with the appraisals, are reviewed and ["registered"] at the Department of Transportation headquarters before transmitting the appraisal to the [Acquisition Bureau] District Office for institution of negotiations.

16:5-3.1 Advance down payments

Owners of improved properties where agreement is reached and improvements are taken may, upon acceptance and approval of the amount by the Commissioner, be eligible for advance down payments up to 25 percent of the purchase price, provided the amount of down payment does not exceed 75 percent of their equity in the property.

(b)**Property Management
Public Auctions****Proposed Amendment: N.J.A.C. 16:7-1.3.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:12-1.

Proposal Number: PRN 1989-12.

The agency proposal follows:

Summary

The proposed amendment will increase the percentage of deposit required by the successful bidder in public auctions. In addition, subsection (i) in N.J.A.C. 16:7-1.3, is proposed for deletion, since a substantial

percentage of public auctions are to adjoining property owners, who may have the only access to a landlocked parcel, thus, not requiring more than one bid.

The rule was reviewed by the staff of the Department's Division of Right of Way who recommended the impendent changes to reflect current procedures.

Social Impact

The proposed amendment will reflect changes in procedure concerning the sale of buildings or excess land parcels at public auctions and updating the rule to implement current practices. Additionally, the amendment indicates the Department's ongoing rule review process as a means of providing the public with current information.

Economic Impact

The proposed amendment will effect an increase in the percentage, thus the amount, required to be deposited by the successful bidder in public auctions.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily effects a change in the percentage of deposit of bid price.

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

16:7-1.3 Public auctions

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

(h) The cashier shall require the successful bidder to make a deposit in cash or by certified check in the amount of at least [ten] 25 percent of the bid price and to sign the applicable Departmental bid acceptance forms, a copy of which shall be furnished the bidder as a receipt.

[(i) If only one bid is received, it shall be announced that the item is being withdrawn from the sale.]

Recodify existing (j) and (k) as (i) and (j) (No change in text.)

(c)**NEW JERSEY TRANSIT CORPORATION****Use or Occupancy of NJ TRANSIT-Owned Property****Proposed Amendments: N.J.A.C. 16:77-1.1, 1.4 and 1.5**

Authorized By: New Jersey Transit Corporation,
Jerome C. Premo, Executive Director.

Authority: N.J.S.A. 27:25-5(e), (h), (k) and 27:25-7(b).

Proposal Number: PRN 1989-16.

Submit comments by February 2, 1989 to:

Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation (NJ TRANSIT)
P.O. Box 10009
Market Street and McCarter Highway
Newark, New Jersey 07101

The agency proposal follows:

Summary

The proposed amendments are designed to give NJ TRANSIT the discretion to waive or reduce, where appropriate, the permit fees charged municipalities. Administrative fees for municipalities will be limited to \$100.00 per permit and the actual costs associated with the NJ TRANSIT engineering review and project inspection for each permit. These changes, if adopted, will be applicable only to new permits issued after the effective date of these amendments.

Social Impact

There will be no social impact other than the reduction of administrative and permit fees paid by certain municipalities in the future.

Economic Impact

NJ TRANSIT's permit and administrative fees will be reduced in the future by an insignificant amount. The same fees for certain municipalities will be reduced in the future.

Regulatory Flexibility Statement

No small businesses will be impacted by the proposed amendments as the changes apply only to municipalities on their own behalf and not on behalf of any other agency, authority, company or individual.

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

16:77-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

... **"Municipality" means a local governing body such as a borough township, city, town or village.**

...

16:77-1.4 Administrative fees

(a) Administrative fees will be charged as follows:

1.-4. (No change.)

5. Any application for any type of permit by a municipality . . . \$100.00.

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

16:77-1.5 Permit fees: general conditions

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

(h) NJ TRANSIT may negotiate lower permit fees when requested to do so by any municipal applicant acting on its own behalf.

TREASURY-TAXATION**DIVISION OF TAXATION**

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

Submit comments by February 2, 1989 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
Trenton, NJ 08646

(a)**Corporation Business Tax****Proposed Readoption: N.J.A.C. 18:7**

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1989-20.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:7 expires on April 2, 1989. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change.

In New Jersey, franchise taxation of miscellaneous business corporations dates back to 1884. In that year (P.L. 1884, p.232), a tax was imposed on all corporations organized under the laws of New Jersey, for the privilege of doing business in the corporate form. Then, as now, the mere possession of the privilege gave rise to the liability for the tax, it being immaterial to what extent such privilege was exercised or whether such privilege was exercised at all. Under the 1884 law and down to January 1, 1946, the franchise tax was based upon the par value of the number of shares of capital stock issued by the taxpayer and outstanding as of January 1 in each year.

From 1884 to 1936 there was no franchise tax on foreign corporations qualified to do business or actually doing business in New Jersey. Chapter 264, Laws of 1936 provided for an annual franchise tax on foreign corporations. This law was repealed and superseded by Chapter 25, Laws of 1937, which imposed a tax on foreign corporations measured by the total capital stock issued and outstanding as of January 1 in each year.

A corporation engaged in multi-state activities was permitted to allocate its total capital stock only on the basis of the ratio of the gross income from the business done in the State to the total gross income from its entire business.

Chapter 162, Laws of 1945, effective January 1, 1946, repealed the then existing corporation franchise taxes and enacted a new franchise tax law to be known as the Corporation Business Tax Act (1945) (N.J.S.A. 54:10A-1 et seq.). This is the basic corporation franchise tax law presently in effect. It is applicable to both domestic and foreign corporations and, as originally enacted, was measured by allocable net worth.

Chapter 88, Laws of 1954, effective January 1, 1955, increased the basic tax rate from 8/10 of a mill per dollar to two mills per dollar.

Chapter 63, Laws of 1958, added to the tax based upon allocated net worth a tax based upon allocable net income at the rate of 1.75 percent.

The 1958 amendment also changed the privilege period of the tax from a fixed calendar year period for all corporations alike, to a privilege period which, for each taxpayer, coincided with its accounting period.

Chapter 162, Laws of 1959, effective September 17, 1959, reduced the net income tax base, for companies entitled and electing to file as regulated investment companies, from 15 percent to four percent of entire net income.

Chapter 190, Laws of 1959, beginning in 1959, provided for a tax on the net worth base according to a short tax table based on total assets only, for companies having less than \$150,000 of total assets and electing to file under said table in lieu of the portion of the tax based on net worth.

Chapter 134, Laws of 1966, effective June 17, 1966, revised the Act as follows:

First: Increased tax rate based on net income from 1¼ percent to 3¼ percent, effective January 1, 1967.

Second: For tax determined by the assets allocation factor, the change eliminated, with respect to a domestic corporation, the statutory allocation to New Jersey of 40 percent of intangible assets having a business situs outside this State.

Third: For domestic corporations only, the amendment added an alternative minimum to the portion of the tax based on net worth, which is based on the number of authorized shares of capital stock.

Fourth: For purposes of computing the business allocation factor, the Act changed the allocation of all receipts from sales of tangible personal property to New Jersey on a destination basis (receipts being allocable to New Jersey if shipment is made from taxpayer to its customer in New Jersey).

Fifth: Changed the due date of all returns and payments to the fifteenth day of the fourth month following the close of the taxpayer's accounting period.

Chapters 112 and 250, Laws of 1968, effected several changes in the law, the most significant of which were: an increase in the tax rate based on net income from 3¼ percent to 4¼ percent effective January 1, 1968 a partial reduction from net worth by reason of subsidiary investment and a deduction from net worth for subsidiaries subject to the Act; an exclusion of dividends received from subsidiaries in computing the net income tax base; elimination of the asset allocation factor; the elimination of intangible personal property in computing the minimum tax based on assets located in New Jersey; and provisions for prepayment of the tax.

Chapter 93, Laws of 1970, added another alternative minimum net worth tax for domestic corporations only, based on 11/100 of a mill per dollar of total assets. It also provided for a subsidiary deduction (in addition to that already allowed) for subsidiaries which are taxed in New Jersey under laws other than the Corporation Business Tax Act.

Chapter 91, Laws of 1971, effective April 8, 1971, increased the fee for issuance of a tax lien certificate from \$1.00 to \$5.00.

Chapter 25, Laws of 1972, increased the portion of the tax measured by net income to 5½ percent for periods ending after December 31, 1971.

Chapter 89, Laws of 1972, exempted real estate investment trusts from the financial business tax and brought them under the corporation business tax, and extended to a real estate investment trust the option to elect to apportion four percent of its entire net income and 15 percent of its entire net worth all on and after December 31, 1971.

Chapter 211, Laws of 1972, limited the liability of corporations which operate authorized regular route autobus service within this State to the portion of the tax measured by net income effective December 31, 1972.

Chapter 95, Laws of 1973, effective April 25, 1973, provided that share of bank stock held by a corporation are not exempt from the bank stock tax where the bank has revoked an election to pay the tax for its share holders. The bank stock tax was repealed by Chapter 170, Laws of 1975 effective August 4, 1975.

Chapter 275, Laws of 1973, effective November 29, 1973, exempted from the corporation business tax nonprofit domestic corporations where the primary purpose is to provide housing for its shareholders or members in a retirement community as defined in the Retirement Community Full Disclosure Act.

Chapter 367, Laws of 1973, effective January 7, 1974, removed sections dealing with liquidations, mergers, withdrawals and similar actions from the Corporation Business Tax Act and placed them in the State Tax Uniform Procedure Law and Title 14A to provide comparable requirements to all State taxes. In addition, the law no longer required a tax clearance certificate in certain cases where domestic corporations, or foreign corporations authorized to do business in New Jersey, are the survivors in mergers or undertake the payment of taxes of dissolved or liquidated corporations. In addition, the liability of corporate officers and directors for unpaid taxes was extended when general provisions are violated or when a false certification is made in connection with an undertaking to pay taxes. See N.J.S.A. 54:50-18, 14A:6-12 and 14A:12-19.

Chapter 21, Laws of 1975, increased the percentage of tax prepayment from 50 percent to 60 percent, effective February 28, 1975.

Chapter 28, Laws of 1975, for accounting periods ending after June 30, 1976, revised the definition of "subsidiary" to provide that the parent company must own 80 percent of the subsidiary's voting stock and 80 percent of the total number of shares of all classes of non-voting stock, except that stock which is limited and preferred as to dividends. Previously, the parent was required to own 80 percent of the subsidiary's voting stock and 80 percent of the total number of shares of all classes of stock.

Chapter 162, Laws of 1975, increased the rate applicable to net income from 5½ percent to 7½ percent for privilege periods or parts thereof ending after December 31, 1974.

Chapter 170, Laws of 1975, beginning with the calendar year 1976, the Bank Stock Tax Act was repealed and banks were placed under the Corporation Business Tax Act. To prevent a reduction in State revenue, a "save harmless" provision was adopted requiring a bank to pay the larger of its liability under the corporation business tax and business personal property tax or the bank stock tax actually paid in 1975. This was a three year "save harmless" provision applying to the years 1976, 1977 and 1978. Chapter 40, Laws of 1978, extended this "save harmless" provision through 1979. Banks also became subject to the business personal property tax with respect to property owned on October 1, 1975.

Chapter 171, Laws of 1975, excluded incorporated financial businesses from the financial business tax and subjected them to the corporation business tax. The law provided that each financial business corporation must pay the greater of the amount it paid under the financial business tax in 1975 or the total tax payable under the Corporation Business Tax Act for each of the years 1976 through 1978, which special tax provision was extended to 1979 by Chapter 40, Laws of 1978. This act further provided that an "investment company" does not include a banking corporation or a financial business corporation and subjected incorporated financial businesses to the business personal property tax relating to property owned on October 1, 1975.

Chapter 177, Laws of 1975, amended the Corporation Business Tax Act and 15 other tax laws to delete all specific penalty and interest provisions. The State Tax Uniform Procedure Law provided for the imposition of penalties and interest for the failure to file and pay State taxes and specified penalties on deficiency assessments. Interest rates were increased applicable to returns and taxes due on and after October 1, 1975.

Chapter 142, Laws of 1977, changed from June 10 to July 10 the date on which the State must distribute revenue collected from the Corporation Business Tax Act.

Chapter 76, Laws of 1979 revised the definition of "net worth" and "entire net income" as they apply to financial business corporations which are funded through debt from affiliated corporations to exclude from the definition of "net worth" the debt owed to the affiliated corporation and to permit deduction of interest on that debt in arriving at "entire net income" provided the interest rate does not exceed the prime rate by more than two percent. This statute is applicable to taxpayers whose accounting periods end on or after December 31, 1978.

Chapter 280, Laws of 1979 increased the rate applicable to net income from 7½ percent to nine percent for privilege periods or parts thereof ending after December 31, 1979.

Chapter 86, Laws of 1979 made a technical amendment to the definition of "entire net income". Chapter 388, Laws of 1979 restored provisions which were inadvertently omitted by that law.

Chapter 184, Laws of 1981, for years beginning after 1980, provided that a corporation shall make estimated tax payments in lieu of the mandatory 60 percent prepayment on account of its subsequent year's tax. The statute provided for a schedule of payments during a transition period, and then, for any accounting period beginning after December 31, 1984, it provided for four equal payments of estimated tax on the fifteenth day of the fourth, sixth, ninth and twelfth months of the current tax year. A taxpayer with a tax liability of less than \$500.00 may elect to pay 50 percent (60 percent for tax years ending before December 31, 1981) of that tax on account of its subsequent year's tax in lieu of making installment payments. Certain relief provisions were provided relating to the amount of installment payments for taxpayers in bankruptcy or receivership; taxpayers who have realized a nonrecurring extraordinary gain which would distort the amount of their installment payment; or where a taxpayer estimates that it will conduct its business at a loss for the current year. Subject to certain exceptions, there is imposed interest as an addition to the tax in the case of underpayments of estimated tax and interest and penalties are provided where any portion of the tax is unpaid during an extension of time to file a final return. These interest and penalty provisions are not governed by the State Tax Uniform Procedure Law and all are mandatory.

Chapter 259, Laws of 1981, for accounting periods commencing on or after January 1, 1981, redefined "net worth" to exclude indebtedness of bona fide financing of motor vehicle inventories held for sale to customers when the financing is provided by a taxpayer who customarily and routinely provides this type of financing. "Entire net income" is redefined to permit deduction of all interest relating to such indebtedness.

Chapter 467, Laws of 1981, for accounting periods ending on or after December 11, 1981, redefined "net worth" to exclude indebtedness of a banking corporation which is an affiliate of a bank holding company which is funded through debt from such affiliated bank holding company. "Entire net income" is redefined to permit the deduction of interest on such indebtedness owing to a bank holding company where the banking corporation is a subsidiary of that bank holding company.

Chapter 50, Laws of 1982, for years ending after 1981 and for property placed in service after 1981, enacted certain provisions disallowing as a deduction in arriving at entire net income the excess of depreciation claimed on the Federal return over depreciation allowable under the Internal Revenue Code at December 31, 1980.

Chapter 55, Laws of 1982, eliminated the alternatives to the portion of the tax measured by net worth, redefined net worth to exclude any reference to indebtedness, and phased out the portion of the tax measured by net worth based upon the following timetable.

Where the tax years begin after March 31, 1983:

1. The alternatives to the portion of the franchise tax measured by net worth are deleted from the act. A domestic corporation is subject to a minimum tax of \$25.00, a foreign corporation \$50.00, and an investment, regulated investment company or real estate investment trust, \$250.00.

2. Taxpayers only pay 75 percent of the tax measured by net worth.

Where tax years begin after June 30, 1984:

1. Net worth is redefined to exclude any reference to indebtedness, and

2. Taxpayers only pay 50 percent of the tax measured by net worth.

Where tax years begin after June 30, 1985, taxpayers only pay 25 percent of the tax measured by net worth.

Where tax years begin after June 30, 1986, no part of the tax is measured by net worth.

Chapter 39, Laws of 1982, amended the act to exclude from the numerator of the receipts fraction certain receipts from sales of gas and electricity which were made to New Jersey public utilities for resale by them to their ratepayers after June 15, 1982.

Chapter 75, Laws of 1983, amended the act to provide that for qualifying regulated investment companies the franchise tax would be \$250.00.

Chapter 303, P.L. 1983 (N.J.S. 52:27H-60 et seq.), the Urban Enterprise Zones Act, provided for tax credits and benefits for corporations doing business in qualified Urban Enterprise Zones.

Chapter 422, P.L. 1983, amended the Corporation Business Tax Act to create a tax abatement for New Jersey banks that create an international bank facility. These amendments were phased in over a five year period to 1986.

Chapter 143, P.L. 1985, amended the Corporation Business Tax Act to provide for a net operating loss carryover for seven years following the year of the loss, for taxable years ending after June 30, 1984.

Chapter 227, P.L. 1985 (N.J.S.A. 55:19-1 et seq.), the New Jersey Urban Development Corporation Act, provided for certain tax credits

for subject corporations actively engaged in the conduct of business at a location with a project as defined in the Act.

Chapter 468, P.L. 1985, provided an exclusion from taxation for a debt of a banking corporation to a bank holding company of which the banking corporation is a subsidiary or of a debt of a banking corporation to another banking corporation with respect to certain Federal Funds Transactions when both banking corporations are subsidiaries of the same bank holding company.

Chapter 102, P.L. 1987, provided a tax credit for the cost of purchase of certain qualifying recycling equipment. The rules proposed for re-adoption are promulgated under authority of N.J.S.A. 54:10A-27.

Social Impact

These rules are being readopted to provide taxpayers and their attorneys and accountants guidance and assistance in the administration of the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. These rules are intended as guidelines to assist taxpayers in preparing the Corporation Business Tax Return Form, CBT-100, other forms, and reports.

Economic Impact

For fiscal year 1986, general business corporations paid \$996,135,078, and for fiscal year 1987, the figure was \$1,129,229,561. Banking corporations paid \$66,212,562 in 1986 and \$72,702,945 in 1987, and financial corporations paid \$4,057,467 in 1986 and \$6,235,893 in 1987. Revenues are deposited in the State Treasury for general State use. Revenues collected from banking and financial corporations are distributed as follows: 25 percent to counties; 25 percent to municipalities; and 50 percent to the State. The rules are intended to facilitate taxpayer compliance with their statutory requirements and hence to lower the resources necessary to be expended in the course of complying with the Act.

Regulatory Flexibility Statement

The rules apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:7.

(a)

Financial Business Tax

Proposed Re-adoption: N.J.A.C. 18:8

Authority: N.J.S.A. 54:10B-22.

Proposal Number: PRN 1989-19.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:8 expires on April 2, 1989. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change.

Taxation of financial businesses in New Jersey commenced in 1946. The Financial Business Tax Law, N.J.S.A. 54:10B-1, et seq. (P.L. 1946, c.174) was enacted following the recommendations of the First Report of the Commission on State Tax Policy. This legislation was enacted because New Jersey was taxing national banks under N.J.S.A. 54:9-1 et seq. but no other entities or persons conducting a financial business in New Jersey, thereby creating a problem under the United States Constitution as well as Federal law, R.S. 5219 (12 U.S.C.A. 548).

By legislation, a corporation which did a financial business became subject to the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. Individuals, partnerships, etc. doing a financial business continued to be taxed by the Financial Business Tax Law.

The Financial Business Tax Law is administered by the Director of The Division of Taxation, Department of Treasury, State of New Jersey. The Division prepares and audits the returns and collects the tax. Revenue from the tax collected from each taxpayer is distributed one-half to the State, one-quarter to the county and one-quarter to the municipality in which taxpayer does a financial business.

The rate of tax is one and one-half percent (.015) upon a financial business's net worth less deductions. There is a minimum tax of \$25.00.

Subchapter 1 delineates the taxpayers subject to tax, subchapter 2 the

computation of tax, and subchapter 3 deals with allocation of net worth. Returns, payments and penalties are provided for in subchapter 4. Protests and appeals comprise subchapter 5. Subchapter 6 covers refunds, lien of tax and injunction. Subchapters 7 and 8 are reserved for future rules. Dissolution or liquidation of the taxpayer is covered in subchapter 9.

Social Impact

Individuals and partnerships are regulated by these rules. Their business activity is taxed because they are in a financial business. Due to the nature of the entities subject, this taxing law is the vehicle under which the Legislature desired them to be taxed when the taxation of banks was legislated under the Corporation Business Tax Act by P.L. 1975, c.171. This tax is a net worth tax at one and one-half percent (.015) upon taxable net worth. There is no tax on taxpayers' net income.

Economic Impact

During the fiscal year 1987, all financial businesses paid a total of \$35,456 and in fiscal year 1986 paid \$24,424. This re-adoption is necessary to continue the orderly collection of this revenue source.

Regulatory Flexibility Statement

The rules proposed for re-adoption apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Law are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:8.

(b)

Homestead Tax Rebate

Extension of Time to File Homestead Rebate Claim

Proposed Amendments: N.J.A.C. 18:12-7.1 and 7.12.

Authority: N.J.S.A. 54:4-3.80 and 54:50-1.

Proposal Number: PRN 1989-10.

The agency proposal follows:

Summary

N.J.A.C. 18:12-7.12 is proposed for amendment to ensure that property owners be given additional time to file an application for homestead rebate applicable to the 1988 pretax year and payable in 1989. The additional time is given to people who for some reason did not file the application prior to December 1, 1988. There are approximately 200,000 persons who did not meet the December 1, 1988 filing deadline and would forfeit their right to a homestead rebate without the adoption of this amendment. N.J.A.C. 18:12-7.12 also provides that extension of time to file for the homestead rebate payable in years subsequent to 1989 is hereafter controlled by N.J.A.C. 18:12-7.1(c)3.

The amendment to N.J.A.C. 18:12-7.1(c)3 is intended to retain the statutory filing date of December 1 of the pretax year but, in recognition of the problems some property owners may have in meeting this deadline, provides for an automatic extension to March 1 of the tax year. If March 1 of any year falls on a Saturday or Sunday, the filing deadline would be the first business day thereafter.

Social Impact

The proposed amendments would affect, on an immediate basis, approximately 200,000 property owners who failed to file a homestead rebate application by December 1, 1988. The Division's records indicate that annually between 200,000 and 850,000 property owners fail to file a timely application for a homestead rebate. The adoption of these rules will ensure that the great majority of these property owners will be able to receive a homestead rebate.

Economic Impact

The economic impact upon the general treasury of the State of New Jersey represented by approximately 200,000 property owners who failed to file for their homestead rebate by the December 1 filing deadline but will file by the March 1 extended deadline is about \$39 million for the 1989 tax year. Similar amounts can be expected in subsequent years.

Regulatory Flexibility Statement

The proposed amendments do not affect small businesses because they

do not impose reporting, recordkeeping or other requirements on small businesses, as that term is defined under 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]):

18:12-7.1 General provisions; homestead tax rebate

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

(c) In order to assure accuracy and efficiency in processing each application, and to aid in expediting the homestead tax rebate due each claimant, the following procedure should be followed.

1.-2. (No change.)

3. An application for a homestead tax rebate shall be filed on or before December 1 of the pretax year and shall reflect the prerequisites for the rebates as of October 1 of the pretax year. (For example, a claimant should file an application on or before December 1, [1978] **1988**, which should reflect the prerequisites for the rebate as of October 1, [1978] **1988**, in order to qualify for the rebate to be received in [1979] **1989**. **For property owners who fail to file by December 1 of the pretax year, the time for filing is extended to March 1 of the tax year or, if March 1 falls on a Saturday or Sunday, on the first business day thereafter.**

(d) (No change.)

18:12-7.12 Extension of filing date

(a)-(l) (No change.)

(m) **The time for property owners to file their applications for a homestead rebate payable in 1989 pursuant to P.L. 1976, c.72, including applications by shareholders in cooperative associations and those residing in properties of certain mutual housing corporations, has been extended to March 1, 1989. For homestead rebates payable in 1990 and thereafter, see N.J.A.C. 18:12-7.1(c)3.**

(a)

Public Utilities

Proposed Readoption with Amendment: N.J.A.C. 18:22.

Authority: N.J.S.A. 54:30-16 through 29 and N.J.S.A. 54:30A-49 through 67 and N.J.S.A. 54:50-1.

Proposal Number: PRN 1989-11.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:22 expires on April 2, 1989. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated as required by the Executive Order.

The first general tax act specifically taxing public utilities was enacted on April 18, 1884. Since that time, the tax rate and classification of property have been the subject of many statutory amendments. In 1940, the basic structure for the present tax law was adopted and the previous statutes repealed. The new law provided for both a Franchise Tax for the use of the public streets, highways, roads or other public places, and a gross receipts tax in lieu of a local tax on personal property. The Franchise Tax is measured by such portion of the taxpayer's gross receipts as the length of the lines or mains that are along, in or over any public street, highway, road or other public place bears to the whole length of its lines. The gross receipts tax on certain corporations is in lieu of a local personal property tax; land and buildings are assessed and taxed locally. Chapters 4 and 5 of the Laws of 1940 substituted a uniform tax on public utilities which is administered by the State but all of the revenue, except the expenses of the State incurred in administering the taxes, is apportioned and paid directly to the municipalities.

The sharing of State-administered taxes with local governmental jurisdictions is a significant feature of State and local fiscal relations.

The Act for which these rules are promulgated is known as the Taxation of Certain Public Utilities Laws of 1940.

Subchapter 1 deals with definitions and general provisions. The definition of "gross receipts" has been amended, and a definition of "cogenerator" added, to take into account recent statutory changes made

by the Legislature. Returns by telephone, telegraph, messenger systems and certain interstate transmission systems are dealt with in Subchapter 2. In Subchapter 3 are rules governing the excise tax payable to the State by telephone, telegraph and messenger systems. The rules relating franchise tax payable to municipalities by telephone, telegraph and messenger systems are set forth under Subchapter 4. Rules relating to apportionment of tax revenues from telephone, telegraph and messenger systems to municipalities are found in Subchapter 5. Subchapter 6 deals with payment and collection of taxes payable to municipalities by telephone, telegraph and messenger systems. Subchapter 7 deals with gross receipts taxes imposed on sewerage, water, gas and electric light, heat and power corporations. Returns, reports and statements and audit of returns of sewerage, water, gas and electric light, heat and power corporations are contained in Subchapter 8. The excise tax payable to the State by sewerage, water, gas and electric light, heat and power corporations is covered in Subchapter 9. Computation of taxes payable to municipalities by street railway, traction, sewerage, water, gas and electric light, heat and power corporations is covered in Subchapter 10. Subchapter 11 deals with apportionment to municipalities of tax revenues from street railway, traction, sewerage, water, gas and electric light, heat and power corporations. Subchapter 12 deals with payment and collection of taxes payable to municipalities by street railway, traction, sewerage, water, gas and electric light, heat and power corporations. Subchapter 13 deals with water corporations and matters related to them. Appendix I deals with unit value to be applied against scheduled property and Appendix II contains a calendar of tax events.

Social Impact

Public utilities have been taxed since 1884. The nature of their business affects every member of the public who uses the services and products of the utility. The nature of their products and services are fundamental and necessary for human life. The utilities use the public streets, highways, roads or public places. Their lines or mains are along, in or over any public street, highway, road or other public place. There is a uniform tax on public utilities which is administered by the State. These tax revenues are shared with local government jurisdictions. The taxation of these utilities is administered by the Division of Taxation through the Local Property and Public Utility Branch.

Economic Impact

The Public Utility Franchise Tax (For Municipal Use) collected for fiscal year 1986 was \$334,857,983 and for fiscal year 1987 was \$342,243,264. The Public Utility Gross Receipts Tax (For Municipal Use) collected for fiscal year 1986 was \$547,120,744 and for fiscal year 1987 was \$551,690,839. The Public Utility Excise Tax (For State Use) collected for fiscal year 1986 was \$120,082,610 and for fiscal year 1987 was \$121,692,770. The proposed readoption will permit the orderly continuance of the important sources of revenue.

Regulatory Flexibility Statement

The rules proposed for readoption apply to small businesses, as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act must apply uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:22.

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

18:22-1.3 Definitions

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

"Cogenerator" means a person or business entity which owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes; and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978", Pub.L. 95-617.

... "Gross receipts" means all receipts from the taxpayer's business over, on, in, through or from the whole of its lines or mains, excluding only the following:

1.-3. (No change.)

4. Any sum or sums of money received by the taxpayer from a cogenerator in payment for cogenerated electrical energy resold by the taxpayer to the producing cogenerator where produced or any sum or sums of money received by the taxpayer from a cogenerator in payment for natural gas sold by the taxpayer to the cogenerator and separately metered for use at the cogeneration facility.

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

6. In the case of a water purveyor, the amount equal to any sum or sums of money paid in accordance with the water tax imposed by section 11 of P.L. 1983, c.443 (N.J.S.A. 58:12A-21) and which is included in the tariff altered pursuant to section 6 of P.L. 1983, c.443 (N.J.S.A. 58:12A-17).

...

(a)

Railroad Property Tax

Proposed Readoption: N.J.A.C. 18:23

Authority: N.J.S.A. 54:29A-6.

Proposal Number: PRN 1989-18.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:23 expires on April 2, 1989. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The Division proposes to readopt these rules without change.

The first general New Jersey Railroad Tax Law dates back to 1884 when railroad property was assessed both by the State and local governments. Since that time, the tax rate and classification of property have been the subject of many statutory amendments. In 1941, the basic structure for the present tax law was adopted and the previous statutes repealed. The new law provided for both a property tax and a franchise tax, based on net railway operating income allocated to New Jersey on the basis of a trackage formula. The franchise tax is not a tax on earnings but a franchise tax measured by net operating income allocated to New Jersey. In 1948, the tax was extensively amended so as to adopt the present system of classifying railroad property and the current franchise rate of 10 per cent of net railway operating income. Again, in 1964 and 1966, the law was amended to exclude main stem and facilities used in passenger service. Furthermore, the 1966 amendment eliminated local rates of taxation of property used for railroad purposes and substituted a uniform tax, collected by the State of New Jersey. The revenues collected are appropriated for payment to municipalities, in lieu of railroad property tax, plus additional sums appropriated as are required for replacement revenues to certain municipalities in which railroad property is located, in accordance with a formula, known as State Aid, established by the New Jersey Legislature.

The Act for which these rules are promulgated is the Railroad Tax Law of 1948. These rules are issued pursuant to N.J.S.A. 54:29A-6.

Subchapter 1 deals with definitions. In subchapter 2 are rules indicating what property is not subject to New Jersey Railroad Property Tax. Property subject to New Jersey Railroad property tax is found in Subchapter 3. Subchapter 4 deals with, in general, the Railroad Franchise Tax. Assessment and disposition of the Railroad Property and Franchise Taxes are dealt with in Subchapter 5. Subchapter 6 deals with reassessment and omitted property. Rules for appeal and review are found in Subchapter 7. Returns, payments and refunds are covered in Subchapter 8. Subchapter 9 contains provisions regarding penalties and interest. Collection of delinquent taxes is covered in Subchapter 10. Subchapter 11 deals with administration and procedures. Appendix I contains the calendar of tax events.

Social Impact

Railroad property first became subject to railroad tax in 1884. The public and businesses gradually became more involved in the transportation by railroads of persons and property. Revenues from these taxes were income to municipalities. Railroad property is present in many

municipalities. Some of this property has been abandoned and then converted to other use.

Economic Impact

For fiscal year 1986 railroad property tax collection was \$39,561 and in fiscal year 1987 \$40,368. The railroad franchise tax resulted in collections of \$50,251 in fiscal year 1986 and \$2,504,206 in fiscal year 1987. This readoption is necessary to continue the orderly collection of this revenue source.

Regulatory Flexibility Statement

The rules proposed for readoption apply to small businesses, as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act must apply uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:23.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Equal Employment Opportunity Procedures For Alleged Violations Of Affirmative Action Programs

Proposed Repeal: N.J.A.C. 19:53-1.16.

Authorized by: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 5:12-134 and 5:12-135.

Proposal Number: PRN 1989-3.

Submit comments by February 2, 1989 to:

Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Commission proposes to repeal its rule concerning the procedures for dealing with alleged violations of affirmative action rules and affirmative action programs. Many of the procedures outlined in the rule are inconsistent with the requirements of the Casino Control Act and the Administrative Procedure Act. The Commission has not attempted to use these procedures, and is not likely to do so in the future. The procedures established in the Casino Control Act for bringing complaints (N.J.S.A. 5:12-108) and seeking emergency orders (N.J.S.A. 5:12-109) are sufficient to enforce the Commission's rules concerning affirmative action and equal employment opportunity. Therefore, no purpose is served by retaining N.J.A.C. 19:53-1.16.

Social Impact

Because N.J.A.C. 19:53-1.16 has not been used by the Commission, its repeal is not anticipated to have a significant social impact. However, the repeal may help to foster and maintain respect for the Commission's rules by eliminating a rule which is of doubtful authority. To the extent that this occurs, the repeal would be beneficial.

Economic Impact

The proposed repeal is not anticipated to have any significant economic impact.

Regulatory Flexibility Statement

The proposed repeal does not impose any reporting or compliance requirements upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:53-1.16.

RULE ADOPTIONS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Sick Leave; Leave Without Pay

Adopted Amendment: N.J.A.C. 4A:6-1.10

Proposed Amendment Not Adopted: N.J.A.C. 4A:6-1.3

Proposed: January 19, 1988 at 20 N.J.R. 133(a).

Adopted: December 6, 1988 by the Merit System Board, Eugene J. McCaffrey, Sr., Commissioner, Department of Personnel.

Filed: December 12, 1988 as R.1989 d.29, with technical changes in proposed amendment to N.J.A.C. 4A:6-1.10 but not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:2-6(d), 11A:6-1, 11A:6-5.

Effective Date: January 3, 1989.

Expiration Date: January 4, 1993.

The Merit System Board has, after due consideration, determined not to adopt the proposed amendment to N.J.A.C. 4A:6-1.3, which was published in the January 19, 1988 issue of the New Jersey Register at 20 N.J.R. 133(a).

Summary of Public Comments and Agency Responses with respect to the proposed amendment to N.J.A.C. 4A:6-1.10:

COMMENT: Comments supporting the proposed amendment to N.J.A.C. 4A:6-1.10 were submitted by representatives of CWA Local 1031, the State Department of Human Services, and Morris County. The area director of CWA also expressed support for the proposed amendment; however, he suggested that it be extended to cover employees in local service and that one year extensions of leave for nonpermanent employees should be allowed rather than six months as proposed. The executive director of AFSCME, Council 1, joined in the comments of the CWA area director.

RESPONSE: While leaves longer than six pay periods are sometimes justified for nonpermanent employees, a distinction should be retained between the leave provisions applicable to permanent and nonpermanent employees. In view of the greater degree of job security applicable to permanent employees, the Board believes it is appropriate to limit leave extensions for nonpermanent employees to six months.

With regard to local service, it must be noted that the issue of leaves for nonpermanent employees in local service is not addressed in this rule nor in the predecessor rule, N.J.A.C. 4:1-17.6. As a result of this long-standing deferral from regulation, different leave procedures have been adopted by the counties and municipalities subject to Title 11A. With these varying provisions on leaves without pay in local service, it would be confusing to add new rules in this area.

Therefore, the Board decided to adopt the amendments to N.J.A.C. 4A:6-1.10 as proposed, with a technical change which clarifies that leave for union office may be for periods longer than those specified for either permanent or nonpermanent employees.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*).

4A:6-1.10 Leave without pay: State service

(a) In State service, an appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Department of Personnel.

1. An appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to nonpermanent career service State employees for exceptional situations. Such leaves shall not exceed six biweekly pay-periods, or the equivalent, and shall not continue beyond termination of the appointment. Such leaves

may be extended up to an additional six months, upon request of the appointing authority and written approval by the Department of Personnel, in cases of personal illness or disability. Leave without pay for nonpermanent employees may be terminated at any time.

2. Leave for union office for permanent and nonpermanent employees, pursuant to N.J.A.C. 4A:6-1.16, may be for periods longer than those specified in *(a) and* (a)1 above, as provided in the negotiated agreement.

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

EDUCATION

(b)

STATE BOARD OF EDUCATION

School Districts

Notice of Correction

Notice of Administrative Correction

N.J.A.C. 6:3-1.10, 1.12, 1.14, 1.18, 1.21, 1.22 and 3.1

Take notice that the State Board of Education has discovered errors in the current text of N.J.A.C. 6:3-1.12, 1.14, 1.21, 1.22 and 3.1 arising from the readoption with amendments of the chapter, published in the August 1, 1988 New Jersey Register at 20 N.J.R. 1879(b). These errors are either typographical in nature or reflect differences between the rules as proposed and adopted and as published in the August 15, 1988 update to the New Jersey Administrative Code.

In addition, the Board is making administrative corrections to the text of N.J.A.C. 6:3-1.20 and 1.18 pursuant to N.J.A.C. 1:30-2.7(a)3.

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

6:3-1.10 Standards for determining seniority

(a)-(k) (No change.)

(l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:

1.-14. (No change.)

15. [Alternate] **Alternative** school vice-principal or assistant principal;

16.-21. (No change.)

(m) (No change.)

6:3-1.12 Duties of district superintendent of schools; chief school administrator

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

(c) He or she shall exercise such educational and administrative leadership, supervision, and guidance as may be necessary for producing **the best possible educational conditions and outcome.**

(d)-(f) (No change.)

(g) It shall also be his or her duty to recommend and prepare for the district board(s) of education a list of textbooks and reference and library books, materials of instruction, instructional equipment and school supplies for approval by the district board(s) of education[, but it is not the duty of the superintendent to purchase or distribute them].

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

6:3-1.14 Eye protection in public schools

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

(d) The following types of eye protective devices shall be used to fit the designated activities or processes:

Potential Eye Hazard Eye Protective Device(s)

1. Caustic or explosive materials	Goggle, flexible fitting, hooded ventilation; add plastic window face shield for severe [exposure] exposure ;
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2.-13. (No change.)

(e) Each district board of education shall establish and implement a specific eye protective policy and program to assure that:

1.-6. (No change.)

7. The use of contact lenses [use] shall be restricted in learning environments which entail exposure to chemical fumes, vapors or splashes, intense heat, molten metals, or highly particulate atmospheres. Contact lenses, when permitted, shall only be worn in conjunction with appropriate eye protective devices and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments.

8.-9. (No change.)

6:3-1.18 School business administrator

(a) (No change.)

(b) School district with more than 25 teachers:

1. (No change.)

2. The following are major areas of the duties and responsibilities which may be considered by the district board of education as functions of the school business administrator in cooperation with other members of the staff having related administrative responsibilities:

i.-iii. (No change.)

iv. School community relation. In cooperation with administrators and the district board of education, helps interpret the budget and other applicable major areas mentioned in these rules.

v.-xi. (No change.)

3.-6. (No change.)

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

6:3-1.21 Evaluation of tenured teaching staff members

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

(h) For the purposes of this section:

1.-8. (No change.)

9. "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this section but shall instead be evaluated pursuant to N.J.A.C. 6:3-1.22.

6:3-1.22 Evaluation of tenured and nontenured chief school administrators

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

(c) Such policy and procedures shall be developed by each district board of education after consultation with the [tenured] chief school administrator and shall include, but not be limited to:

1.-5. (No change.)

(d)-(g) (No change.)

(h) These provisions are the minimum requirements for the evaluation of [tenured] chief school administrators.

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

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

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

1.-5. (No change.)

(b) (No change.)

HUMAN SERVICES

DIVISION OF PUBLIC WELFARE

(a)

General Assistance Manual Unearned Income

Adopted Amendment: N.J.A.C. 10:85-3.3

Proposed: September 6, 1988 at 20 N.J.R. 2238(a).

Adopted: December 1, 1988 by Drew Altman, Commissioner,
Department of Human Services.

Filed: December 2, 1988 as R.1989 d.7, 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. 44:8-111(d).

Effective Date: January 3, 1989.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Between Proposal and Adoption:

Upon further review of the proposed amendments, the following changes were made, for purposes of clarification.

At N.J.A.C. 10:85-3.3(e)4, redundant language was eliminated and new language added emphasizing that cash contributions made to or for clients are treated as countable income unless exempt under income exclusions at N.J.A.C. 10:85-3.3(e)5.

At N.J.A.C. 10:85-3.3(e)4ii, language was revised to clarify that when grants are continued under provisions for shelter continuity, grant adjustments commence after the person's inpatient hospitalization of 30 days. This concept is in keeping with text at N.J.A.C. 10:82-1.6(b), governing grant adjustments for AFDC families in similar situations, and is applicable pursuant to the subparagraph's reference to N.J.A.C. 10:85-3.3(f)5.

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

10:85-3.3 Financial eligibility

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

(e) Rules concerning unearned income are as follows:

1.-3. (No change.)

4. Income-in-kind: Income or benefits received in the form of goods, services or via third party payments, rather than cash, are to be treated in accordance with the provisions below. Cash contributions, however, made ***to or*** for ***[or on behalf of]*** a client, are to be treated as countable unearned income, except those income items specifically identified in (e)5 below.

i. Shelter/utilities: When shelter and/or utilities are provided without charge or to a third party by an individual who is under an obligation to make the contribution, it shall be recognized as income-in-kind. Deduct 25 percent of the applicable allowance standard for shelter only and 30 percent when utilities are included. When shelter and/or utilities are provided without charge or to a third party by an agency or organization or by an individual who is not under an obligation to make contribution, the value of such shelter and/or utilities shall not be considered in the determination of eligibility or in the calculation of grants of assistance.

ii. Hospital services: When grants are being continued under the provisions for shelter continuity (see (f)5 below), an ***[in-kind income item for hospital services shall be used]*** ***adjustment*** in grant computations ***shall be used*** to accommodate for the absence of the individual from his or her home ***if inpatient hospital services continued for more than 30 days***. The amount for employable persons is \$17.00 monthly; for unemployable persons, \$25.00 monthly.

iii. Other items: No deductions will be made for other income items, except for wages as described in (c) above and contributions by an LRR in accordance with N.J.A.C. 10:85-9.5.

5. (No change.)

ADOPTIONS

(f) Assistance allowance standards are as follows:

1.-4. (No change.)

5. Shelter continuity: When a person who had been living alone and is otherwise eligible for General Assistance is hospitalized for more than 30 days, grants of assistance may be continued for up to 60 additional days for the purpose of retaining shelter to which the person can return.

(g) (No change.)

(a)

Food Stamp Program

Increased Income Deductions, Maximum Coupon Allotments and Maximum Income Eligibility Limits

Adopted Concurrent Amendments: N.J.A.C.

10:87-12.1, 12.2, 12.3, 12.4, and 12.7

Proposed: October 17, 1988 at 20 N.J.R. 2592(a).

Adopted: November 29, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: November 29, 1988 as R.1989 d.1, **without change**.

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of 1977 as amended; 7 CFR 273.9(a) and 273.9(d)(6), (7) and (8); and 7 CFR 273.10(e)(4).

Effective Date: November 29, 1988.

Expiration Date: March 1, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:87-12.1 Income deduction table

TABLE I
Income Deductions

Standard Deduction	\$106.00
Shelter Deduction	\$170.00
Dependent Care Deduction	\$160.00
Uniform Telephone Allowance	\$ 18.00
Standard Utility Allowance	\$101.00
Heating Utility Allowance	\$163.00

10:87-12.2 Maximum coupon allotment table

TABLE II
Maximum Coupon Allotment (MCA)

Household Size	MCA
1	\$ 90
2	165
3	236
4	300
5	356
6	427
7	472
8	540
9	608
10	676
Each Additional Member	+68

10:87-12.3 Maximum allowable net income standards

TABLE III
Maximum Allowable Net Income

Household Size	Maximum Allowable Income
1	\$ 481
2	645
3	808
4	971
5	1135

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6	1298
7	1461
8	1625
9	1789
10	1953
Each Additional Member	+164

10:87-12.4 Maximum allowable gross income standards

TABLE IV
Maximum Allowable Gross Income

Household Size	Maximum Allowable Income
1	\$ 626
2	838
3	1050
4	1263
5	1475
6	1687
7	1900
8	2112
9	2325
10	2538
Each Additional Member	+213

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

TABLE VII
165 Percent of Poverty Level

Household Size	Maximum Allowable Income
1	\$ 794
2	1063
3	1333
4	1602
5	1872
6	2141
7	2411
8	2680
9	2950
10	3220
Each Additional Member	+270

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(b)

DIVISION OF WORKPLACE STANDARDS

Debarment from Contracting for Public Works and EDA Projects

Adopted New Rules: N.J.A.C. 12:60-8

Proposed: October 17, 1988 at 20 N.J.R. 2520(a).

Adopted: December 9, 1988 by Charles Serraino, Commissioner, Department of Labor.

Filed: December 9, 1988 as R.1989 d.23, **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. 34:1-20; 34:1A-3(e); 34:11-56.37, and the Governor's Executive Order Number 34 (1976).

Effective Date: January 3, 1989.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

The Department of Labor received two public comments during the comment period in response to proposed new rules N.J.A.C. 12:60-8 concerning Debarment for Public Works and EDA Projects.

One commenter expressed its support for the proposed rules, stating that their adoption will help eliminate violations of the Prevailing Wage Act and end discrimination against workers in the State.

Another commenter had several comments with regard to the proposed rules.

COMMENT: The Prevailing Wage Act provides that contractors may be debarred only for failure to pay the prevailing wage. Other sanctions, such as fines and imprisonment, are available for other violations. The Department, therefore, has exceeded its authority in proposing to debar contractors for violating "prevailing wage standards." The commenter suggests that this language be deleted from the proposed regulation.

RESPONSE: The Department agrees with the commenter, and the appropriate amendments have been made.

COMMENT: The commenter states that "pending cases" should not be a factor for consideration in whether to debar an individual, since debarment can be instituted only upon actual final determinations of failure to pay, not just alleged violations. The commenter further states that the rules should be changed to provide that a contractor will not be debarred until a final determination, including all appeals, has been made proving that the contractor has failed to pay the prevailing wage.

RESPONSE: The Department agrees partially with the commenter, and has incorporated some language changes which reflect the commenter's suggestion concerning "pending cases". The Department did not intend to debar a person during the time that the debarment is being contested at the administrative level. However, the Department has added language pursuant to Executive Order Number 34, that permits the Department to suspend a person from contracting for future public works and EDA projects pending debarment action.

COMMENT: The commenter states that the Commissioner does not have the authority to limit the rights of a party subject to debarment to seek an injunction of the commissioner's debarment decision. The commenter feels that the Department should not debar a party who is appealing a prevailing wage determination. Finally, the commenter states that if a party loses a prevailing wage challenge in the courts this event should not be used as a factor in reaching a decision on whether to debar.

RESPONSE: The Department agrees in part with the commenter. The Department has no authority to affect injunctive relief.

The Department believes, however, that the Department may suspend a contractor pending debarment action. If, during the suspension, a debarment hearing is held, which upholds the Department's decision to debar, or if the contractor fails to request a hearing, the contractor may be immediately debarred and shall remain debarred until an Appellate Court reverses the debarment.

On its own initiative, the Department has provided for a different method of calculating the period during which a hearing can be requested, from 20 days of receipt of the notice of intent to debar, to 25 days after the date of such notice. This change was made to facilitate computation of the period, and provides essentially the same, if not a greater, time period.

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 8. DEBARMENT FROM CONTRACTING

12:60-8.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the conditions which constitute grounds for debarment from public works and Economic Development Authority (EDA) contracts, and to notify individuals of the departmental policies and procedures concerning debarment.

(b) The provisions of this subchapter shall be applicable to all contractors, subcontractors, and other persons who perform public works for any public body and EDA projects in New Jersey.

12:60-8.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Labor or his or her designee.

"Contractor" means a person who undertakes to perform a job or piece of a public works project or EDA project and who retains control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

"Debarment" means the inclusion on a Statewide list of persons who are prohibited from performing public works or EDA projects, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

"Department" means the New Jersey Department of Labor.

"Person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in public works or EDA projects.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means constructions, reconstruction, demolition, alteration, or repair work or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

"Suspension" means an exclusion from contracting for future public works or EDA projects for a temporary period of time, pending the completion of debarment proceedings.*

12:60-8.3 Conditions of debarment

(a) Debarment from public works or EDA contracts shall be made only with the approval of the Commissioner, except as otherwise provided by law.

(b) The Commissioner may debar a person, after an investigation *[or]* ***and*** determination that the person has*[:

1. Violated prevailing wage standards; or

2. F]***ailed or refused to pay the prevailing wage rate.

(c) A violation as listed in (b) above shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law. The Commissioner may consider the following factors as material in each decision to debar:

1. The record of previous violations by the person with the Office of Wage and Hour Compliance;

2. Previous cases of debarment by the Commissioner;

3. The frequency of violations by the person discovered in previous *[or still pending]* cases;

4. The significance or scale of the violations, consisting of short-falls in wages or fringe benefits computed in audits;

5. The existence of outstanding audit(s) or failure(s) to pay;

6. Failure to respond to a request to produce records, forms, documents, or proof of payments; and

7. Submission of falsified or altered records, forms, documents, or proof of payment.

(d) *[A violation of the prevailing wage standards shall be determined by the Commissioner. In the event an appeal taken from such determination results in a reversal, the debarment shall be removed unless the Commissioner determines that another cause for debarment exists.]* ***The Commissioner may, upon the approval of the Attorney General, suspend a person pending debarment action.**

1. When the Commissioner suspends a person from contracting, the person suspended shall be furnished with a written notice stating:

i. That suspension has been imposed and its effective date;

ii. The reasons for the suspension, to the extent that the Attorney General determines that such reasons may be properly disclosed; and

iii. That the suspension is for a temporary period, but that whenever debarment action has been initiated, the suspension may continue until the legal proceedings are completed.*

12:60-8.4 Notification of debarment

(a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:

1. That debarment is being considered;

2. The provisions of N.J.S.A. 34:11-56.37 and 34:11-56.38;

3. The specific details of the violations referring to employees involved by name, job classifications, dates of violations and any amount found due;

4. The public work or EDA project involved during which performance of the violations cited occurred; and

5. That the person shall have ***the*** right to a hearing upon written notification to the Commissioner requesting such a hearing within ***[20]* *25*** days of ***[receipt]* *the date*** of the notice of intent to debar.

(b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.

(c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not requested a hearing to contest the debarment, the person shall ***[be deemed to have forfeited the right to apply for injunctive relief in the Superior Court against the listing]* *be listed*** as a debarred person.

(d) All hearings pursuant to this section shall be conducted in accordance with the provisions 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. Where any other State department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(e) ***[In the event that an appeal taken from a judgment results in a reversal, the debarment shall be removed.]**

(f) ***Debarment shall be for a period of three years.**

12:60-8.5 Lists

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

(a)

DIVISION OF WORKERS' COMPENSATION

Practice and Procedure before the Division of Workers' Compensation

Conduct of Judges of Compensation

Adopted Repeals: N.J.A.C. 12:235-3.11 through 3.18

Adopted New Rules: N.J.A.C. 12:235-3.11 through 3.23

Proposed: October 3, 1988 at 20 N.J.R. 2442(c).

Filed: December 9, 1988 as R.1989 d.24, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12 and 34:15-1 et seq., specifically 34:15-64.

Effective Date: January 3, 1989.

Expiration Date: May 5, 1991.

Summary of Public Comments and Agency Responses:

The Department of Labor received one comment during the comment period in response to proposed new rules N.J.A.C. 12:235-3.11 through 3.23 concerning practice and procedure before the Division of Workers' Compensation and conduct of judges of compensation.

COMMENT: The commenter states that the Department did not comply with the proposal procedure established by the Administrative Procedure Act, as the Department allowed only a 30 day comment period, held no public hearing, and accepted comments only in writing.

RESPONSE: The Department is in compliance with all aspects of the Administration Procedure Act. The standard comment period for any proposed rule is 30 days. A public hearing was not requested by any agency or other entity, and, therefore, is not required to be held. Finally, the Department accepts written comments only because they can be answered more thoroughly, and because a file of such comments can be maintained.

COMMENT: The commenter states that the Department did not adequately inform those persons most likely to be affected by or interested in the intended action, pursuant to N.J.S.A. 52:14D-4.

RESPONSE: The Department is not required to notify each affected person directly. The Department believed that the most effective notice for the judges of compensation would be the one that appeared in the New Jersey Register. Additionally, all of the supervising judges were

verbally informed of the proposal, and the commenter himself admits that he received notice of the rule directly from a judge well in advance of the comment deadline.

COMMENT: The judges of compensation should have been involved in the promulgation of the proposed new rules pursuant to N.J.S.A. 34:15-64. The commenter believes that this statute grants rule-making authority jointly to the Director of the Division of Workers' Compensation and the judges.

RESPONSE: N.J.S.A. 34:15-64 provides "The commissioner, director and the judges of compensation may make such rules and regulations for the conduct of the hearing not inconsistent with the provisions of this chapter as may, in the commissioner's judgment, be necessary."

This statute provides rulemaking authority to all three entities: the commissioner, the director, and the judges. It does not state that rules must be promulgated by all three entities jointly. Additionally, the statute provides rulemaking authority to judges with regard to hearings, but not for regulating their own conduct. To propose rules concerning the judges' conduct, the Department relied on the general rulemaking authority of the commissioner. The commenter admitted that a rules committee did submit a report concerning the discipline of judges, but stated that the rules as proposed contain different information.

COMMENT: The proposed rules require a judge to consult with the employee advisory board and to abide by their recommendations; if a judge does not do so, he or she could be terminated. The commenter states that the mandatory provision violates the rules governing the Employee Advisory Services and that any information obtained in a counseling session must be kept confidential.

RESPONSE: Classified civil service employees cannot be forced to go to the Employee Advisory Service. However, judges of compensation are not in this category of employee, and no requirement exists which prohibits the Department from compelling judges' attendance. The Employee Advisory Systems is operated independently by the Department of Personnel, and its records are confidential and are not released to employers. Therefore, the Department does not feel that it is inappropriate to require judges to avail themselves of this type of assistance.

COMMENT: The Director does not have the authority to evaluate a judge, and interim reviews should not be considered in deciding whether to remove a judge.

RESPONSE: The Department believes that a system of review is necessary to evaluate judges, and thus has established the current review procedure which elicits input from supervising judges and attorneys practicing before the court to help evaluate the performance of the judges. Interim evaluations are used not only to inform a judge of his or her current standing, but to help the Director decide whether a judge's performance is improving or declining from final evaluation to final evaluation. Thus interim evaluations are deemed to be necessary in considering whether to remove a judge.

N.J.S.A. 34:1A-12 provides:

... The Director of the Division of Worker's Compensation shall, subject to the supervision and direction of the Commissioner of Labor and Industry:

(a) Be the administrative head of the division;

(c) Direct and supervise the activities of all members of the division;

(e) Perform such other functions of the department as the commissioner may prescribe.

It is evident that the Director has the authority pursuant to N.J.S.A. 34:1A-12(c) to supervise the activities of a judge. A necessary part of supervision is evaluation of performance, and so the Director is authorized to evaluate judges.

COMMENT: The Commissioner should not be able to suspend a judge without pay prior to the resolution of proceedings for removal, especially since there are no standards for determining when a suspension can be made and since there is no opportunity for notice or hearing before the imposition of such a suspension.

RESPONSE: The Department disagrees with the commenter's suggestion. As employees of the Department, judges, as well as any other employee, may be suspended without pay as a disciplinary action. The hearing for such action must be held within 30 days, pursuant to N.J.A.C. 12:235-3.18 (proposed new rule N.J.A.C. 12:235-3.19), and such hearings must be tried on a continuous basis to a conclusion. Thus, a judge will not be without pay during an indeterminate period of suspension.

COMMENT: Proposed new rule N.J.A.C. 12:235-3.22 provides that all personnel proceedings concerning judges shall be confidential, but that the Director shall, in his or her sole discretion, have the responsibility for releasing information concerning personnel matters. The commenter

sees this confidentiality provision as a method to silence judges concerning personnel proceedings.

RESPONSE: The Department disagrees. The intent of the provision is to protect the judge from having confidential information released without justification, and without a determination of what is in the best interest of the judge, the complainant and the Division. It is anticipated that no disclosure will be made until discipline has been ordered. However, the director may advise the public of the status of any case if he or she feels it is appropriate.

COMMENT: Proposed new rule N.J.A.C. 12:235-3.14(a)(5) would permit termination of a judge for two unsatisfactory ratings within a five-year period, and the commenter states that the provision violates N.J.S.A. 34:15-49 which grants judges tenure "during good behavior." According to the commenter, justification to terminate someone who serves "during good behavior" requires criminal or other seriously immoral conduct, not for lack of efficiency generally. Additionally, the rating system employed by the Division is vague.

RESPONSE: The Department disagrees with the commenter. The evaluation system used by the Division is fair, and its methods are explained to and understood by the judges. The position that judges should not be able to be terminated unless they commit a "criminal or other seriously immoral" act is not well-founded. Few, if any, judges would be able to be fairly evaluated if only these standards applied. The Department believes that a judge's work product, as well as his or her demeanor and writing skills, are essential elements to consider when rating a judge's performance.

COMMENT: The proposed new rules provide that a hearing seeking the suspension, removal or other serious discipline of a judge may be held by the "commissioner or his representative." The commenter does not feel that the Director, as the Commissioner's representative, should be able to conduct the hearings and make the decision as to whether to suspend or remove. The commenter suggests that if the Commissioner is to be the basic authority having power to terminate a judge, a provision should be made that the hearing and a recommended decision should be made by an Administrative Law Judge.

RESPONSE: Proposed new rule N.J.A.C. 12:235-3.19(a) provides, "... A formal hearing shall be conducted at the request of the Director before the Commissioner or a representative designated by the Commissioner.

The Director is the individual who is to request a hearing, and file charges. He is not by rule, designated to be the hearing officer as well. The Department feels that the Office of Administrative Law is not a proper forum for these types of cases.

COMMENT: The commenter states that it is questionable as to whether the Commissioner should be the person having the power to terminate a judge, since the Commissioner, as the custodian of the Second Injury Fund, is in essence a litigant in the Workers' Compensation Court. The commenter feels that if the Commissioner has the power to terminate a judge, this would have a chilling effect on a judge's independence in deciding issues involving the Second Injury Fund.

RESPONSE: The Department does not agree with the commenter's statement. The Commissioner is responsible for collecting sums due the Second Injury Fund, and for issuing warrants to pay (N.J.S.A. 34:15-95), but the Commissioner is not personally in charge of such funds. Payments from these funds are subject to strict statutory governance, and the Commissioner cannot, on a whim, deny payment. It is not the case that the Commissioner is "a litigant" in all Workers' Compensation cases merely because he is the administrative authority responsible for the fund.

COMMENT: The commenter states that the rules should address the time schedule for hearings.

RESPONSE: The proposed rules were not intended to address this subject. N.J.A.C. 12:235-5 addresses hearings, and this subchapter is not affected by the proposed new rules.

Full text of the adoption follows.

12:235-3.11 Commission of Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of seven members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be judges of compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed

by the Director, and shall serve at the pleasure of the Director. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of four members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefor, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of a judge of compensation, such recommendation shall be made only on the affirmative vote of four members of the Commission who have considered the record and at least two of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a judge of compensation may be suffering from a mental or physical disability which is disabling him or her and may continue to disable him or her indefinitely or permanently from the performance of his or her duties, or is guilty of:

1. Misconduct in office;
2. Willful failure to perform his or her duties;
3. Incompetence;
4. Habitual intemperance;
5. Violations of any law, rule, regulation, policy or procedure of the Division, the Department of Labor or the State of New Jersey; or

6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(c) The Commission may make a preliminary investigation of any judge of compensation on its own motion without receiving a statement, criticism or complaint as set forth in (b) above.

(d) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the judge of compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's finding and action;

2. If the judge has not been made aware of the statement, criticism or complaint, the Commission in the exercise of its discretion in the particular circumstances may furnish information to him or her or withhold information from him or her as to the action taken.

(e) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the judge unless the circumstances render it unnecessary;

2. Notify the judge of the nature of the charge, the name of the person making it, and that the judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the judge does make a statement before the Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device, in the discretion of the Chairman.

i. The notice to the judge referred to in (e)2 above shall specify in ordinary and concise language the charges against him or her and the alleged facts upon which they are based.

ADOPTIONS

(f) All Division personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director or Chief Judge.

(g) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a judge is publicly charged with having engaged in grievous reprehensible conduct or having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

3. Request the judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal.

i. Conferences may be recorded, in the discretion of the Chairman, by a qualified reporter or by a sound recording device and a transcribed record, if made, and all the papers in the proceeding shall be filed with the Commission.

(h) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director of the Division of Worker's Compensation. The Commission shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

(i) After the Director has received reports and recommendations from the Commission, the Director shall take such action as is deemed appropriate.

12:235-3.12 Physical capacity to preside

(a) Judges of compensation shall necessarily be in good health to execute the rigorous duties of their office.

(b) When judges of compensation are unable to carry out the duties of their office for an indefinite period of severe incapacitating disease or severe, incapacitating injury, the Commissioner may grant an indefinite leave, with or without pay, until the afflicted individuals are capable of resuming their duties.

(c) The Director may, upon recommendation of the Commission or for good cause, require a judge to submit to a medical examination.

12:235-3.13 Mental competency to preside

(a) Judges of compensation shall be of sound mind in order to execute the duties of their office.

(b) In the event that a complaint alleging mental incompetency to perform the duties of the office is made by affidavit and filed with the Division, or on the recommendation of the Commission or for good cause, the Director shall have the power to:

1. Require the judge in question to consult with the Employee Advisory Services, and abide by their recommendations; or

2. Order the judge in question to submit to a psychiatric examination.

i. The examination shall be by two psychiatrists selected by the Commissioner; and

ii. The psychiatric examination shall be for the purpose of determining whether or not the judge is afflicted with any mental illness that would impair that individual from performing the duties of office.

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12:235-3.14 Removal from office

(a) Judges of compensation may be removed from office if it is found by clear and convincing proof that:

1. They have violated any provision of this subchapter;

2. They have been convicted for the commission of any indictable offense;

3. They have been found to be incompetent or incapable of executing the duties of their office;

4. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office; or

5. They have accumulated two or more unsatisfactory, or the equivalent, evaluations from the Director, within a five year period, including evaluations from both interim or annual reviews pursuant to the merit evaluation system established by the Division or the Department of Labor.

12:235-3.15 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

12:235-3.16 Prosecution of removal proceeding

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

12:235-3.17 Suspension pending resolution of the proceeding

(a) The Commissioner may suspend judges of compensation from office or from performing his or her regular duties, with or without pay, prior to the resolution of the proceeding.

(b) If judges accused of misconduct are reinstated to the prior position held, and have been denied salary during suspension, then restitution for the period of the suspension, which exceeded the period of the penalty, shall be made.

12:235-3.18 Right to counsel

The accused in a hearing for removal shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

12:235-3.19 Formal hearing for suspension or removal

(a) A formal hearing shall be conducted at the request of the Director before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the filing of such a complaint and shall be tried on a continuous basis to conclusion.

12:235-3.20 Minor discipline

(a) Any action other than an action for removal in which the penalty sought will result in suspension of judges for more than five days will be processed in the same fashion as a cause for removal.

(b) Any action in which the penalty sought will not result in a suspension of more than five days shall be heard by the Commissioner or a designated representative who may be the Director, Chief Judge or any other individual designated by the Commissioner and shall be conducted in a summary manner after the accused has been given formal notification of the charges, and afforded an opportunity to be heard. The decision of the Commissioner or his or her designated representative shall be final.

12:235-3.21 Forms of discipline

(a) The Commissioner or a designated representative may dispense the following discipline after any informal or formal hearing;

1. Removal from office;

2. Suspension;

3. Fine;

4. Written reprimand; or

5. Verbal reprimand.

12:235-3.22 Confidentiality

All personnel proceedings concerning judges of compensation shall be conducted in a confidential manner. The Director shall, in his or her discretion, have the sole responsibility for releasing information concerning personnel matters.

12:235-3.23 Separability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

THE COMMISSIONER

Local Development Financing Fund

Adopted New Rule: N.J.A.C. 12A:12-2.10

Proposed: October 17, 1988 at 20 N.J.R. 2524(a).

Adopted: November 28, 1988 by Borden R. Putnam,
Commissioner, Department of Commerce, Energy and
Economic Development.

Filed: December 2, 1988 as R.1989 d.6, **without change**.

Authority: N.J.S.A. 52:27H-6f and 34:1B-36.

Effective Date: January 3, 1989.

Expiration Date: September 21, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

12A:12-2.10 Information confidentiality

(a) All information and documents submitted to the Department as part of a Local Development Financing Fund loan application relating to the financial status of a loan applicant or which is given to the Department with the expressed and implicit expectation of confidentiality shall only be disclosed with the permission of the loan applicant or at the discretion of the Director.

(b) Information and documents provided to the Department may be shared with assignees and/or agents of the Department for purposes of analysis of the credit worthiness of the applicant to receive a Local Development Financing Fund loan.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Licensing Service

Central Title and Registration Service

Adopted Amendment: N.J.A.C. 13:21-11.13

Proposed: January 19, 1988 at 20 N.J.R. 176(a).

Adopted: December 7, 1988, Glenn R. Paulsen, Director,
Division of Motor Vehicles.

Filed: December 9, 1988 as R.1989 d.22, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:10-4, 39:3-4 and 39:3-4c.

Effective Date: January 3, 1989.

Expiration Date: December 16, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: The Division's proposed amendment of N.J.A.C. 13:21-11.13 regarding temporary registrations is appropriate. The Division should adopt and implement the proposed amendment.

RESPONSE: The Division concurs that the amendment of N.J.A.C. 13:21-11.13 is appropriate, and has therefore adopted the proposed amendment.

The Division has effected a technical change in the language of N.J.A.C. 13:21-11.13(a) for clarification purposes and to insert this amendment's effective date.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

13:21-11.13 Expiration date of temporary initial and transfer registration

(a) All temporary initial and transfer registrations issued to residents of this State shall expire at the end of 20 days or as soon as the permanent registration and plates have been received from the Division of Motor Vehicles, whichever occurs first. The temporary plates must be destroyed at the time of expiration. The validity of temporary registrations issued to residents of this State pursuant to this subsection prior to ***January 3, 1989*** (the effective date of the amendment of this subsection) ***[which reduced the period of temporary registrations from 60 days to 20 days]*** shall not be affected or impaired by that amendment.

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

(d) Notwithstanding any other provision of N.J.A.C. 13:21-11.1 et seq. to the contrary, temporary initial and transfer registrations may be issued to residents of this State for passenger and commercial vehicles, laden or unladen, upon payment of the registration fee provided by statute and, if the vehicle is subject to the Federal Heavy Vehicle Use Tax imposed by section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. §4481), upon submission of proof in the form prescribed by the United States Secretary of the Treasury that the tax has been paid.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(c)

Speed Limits

Routes U.S. 40 in Salem County, N.J. 33 in Monmouth County and N.J. 27 in Middlesex County

Adopted Amendments: N.J.A.C. 16:28-1.6, 1.14 and 1.44

Proposed: November 7, 1988 at 20 N.J.R. 2630(a).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.19, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.6 Route U.S. 40

(a) The rate of speed designated for the certain parts of State highway Route U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-iv. (No change.)

v. Zone 5:

(1) 50 miles per hour in Elmer Borough and Upper Pittsgrove Township, Salem County, to 150 feet east of Kresswood Lane; thence

(2) 40 miles per hour in Pilesgrove Township and Woodstown Borough, Salem County, between East Lake Drive and Kresswood Avenue; thence

vi.-xi. (No change.)

ADOPTIONS

16:28-1.14 Route 33 including Old Route 33 and Route 33 Freeway
(a) The rate of speed designated for the certain parts of State highway Route 33 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:
 - i.-xii. (No change.)
 - xiii. Zone 13:
 - (1) In Wall Township, Monmouth County: 50 miles per hour within the corporate limits (mileposts 35.64 to 36.64); thence
 - (2) In Tinton Falls Borough, Monmouth County: 50 miles per hour within the corporate limits (mileposts 36.64 to 38.24); thence
 - xiv. Zone 14:
 - (1) In Neptune Township, Monmouth County:
 - (A) 50 miles per hour between the Tinton Falls Borough-Neptune Township line and Rodgers Drive (mileposts 38.24 to 38.30); thence
 - (B) 40 miles per hour between Rodgers Drive and Jumping Brook Road (mileposts 38.30 to 38.73); thence
 - (C) 45 miles per hour between Jumping Brook Road and Maple Avenue (mileposts 38.73 to 39.83); thence
 - xv. Zone 15: In Neptune Township and Neptune City Borough, Monmouth County, 40 miles per hour between Maple Avenue and Route N.J. 35 (mileposts 39.83 to 41.82).
 - xvi.-xvii. (No change.)
 - (b)-(c) (No change.)

16:28-1.44 Route 27

(a) The rate of speed designated for certain parts of State highway Route 27 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:
 - i.-xi. (No change.)
 - xii. In Highland Park Borough, Middlesex County:
 - (A) 30 miles per hour between the southerly end of the bridge over the Raritan River and Eight Avenue (mileposts 16.71 to 17.61); thence
 - (B) 40 miles per hour between Eight Avenue and the Highland Park Borough-Edison Township line (mileposts 17.61 to 18.08); thence
 - xiii. In Edison Township, Middlesex County: 40 miles per hour between the Highland Park Borough-Edison Township line and the Edison Township-Metuchen Borough line (mileposts 18.08 to 20.83); thence
 - xiv. In Metuchen Borough, Middlesex County:
 - (A) 40 miles per hour between the Edison Township-Metuchen Borough line and Bridge Street (mileposts 20.83 to 20.95); thence
 - (B) 35 miles per hour between Bridge Street and Kentnor Street (mileposts 20.95 to 21.27); thence
 - (C) 30 miles per hour between Kentnor Street and Oak Avenue (mileposts 21.27 to 22.34); thence
 - (D) 35 miles per hour between Oak Avenue and Wakefield Drive (mileposts 22.34 to 22.94); thence
 - (E) 40 miles per hour between Wakefield Drive and the Metuchen Borough-Edison Township line (mileposts 22.94 to 23.25); thence
 - xv. In Edison Township, Middlesex County: 40 miles per hour between the Metuchen Borough-Edison Township line and Frederic Street (mileposts 23.25 to 23.87); thence
- Renumber xvii.-xxi. as xvi.-xx. (No change in text.)

(a)

Speed Limits

Route N.J. 20 in Passaic County

Adopted Amendment: N.J.A.C. 16:28-1.13

Proposed: November 7, 1988 at 20 N.J.R. 2631(a).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.14, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

TRANSPORTATION

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.13 Route 20 including Route 20 Freeway

(a) The rate of speed designated for the certain parts of State highway Route 20 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)
2. In the City of Paterson, Passaic County:
 - i. For northbound traffic:
 - (1)-(3) (No change.)
 - (4) Zone four: 35 miles per hour between 36th Street and 9th Avenue (mileposts 11.54 to 11.94); thence
 - (5) 45 miles per hour between 9th Avenue and Maple Avenue (mileposts 11.94 to 13.07); thence
 - ii. For southbound traffic:
 - (1) Zone one: 25 miles per hour between 24th Street and 25th Street (mileposts 13.00 to 12.94); thence
 - (2) Zone two: 45 miles per hour between 25th Street and 9th Avenue (mileposts 12.94 to 11.94); thence
- Renumber (2)-(5) as (3)-(6) (No change in text.)
- (b) (No change.)

(b)

Speed Limits

Route N.J. 66 in Monmouth County

Adopted Amendment: N.J.A.C. 16:28-1.130

Proposed: November 7, 1988 at 20 N.J.R. 2633(a).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.13, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.130 Route 66

(a) The rate of speed designated for the certain parts of State highway Route 66 described in this section shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic in Monmouth County:
 - i. Eastbound:
 - (1) Borough of Tinton Falls: 50 miles per hour within corporate limits (mileposts 0.00-0.66); thence
 - (2) Neptune Township: 50 miles per hour within corporate limits (mileposts 0.66-3.67); thence
 - ii. Westbound:
 - (1) Ocean Township: 50 miles per hour within corporate limits (mileposts 3.67-2.55); thence
 - (2) Neptune Township: 50 miles per hour within corporate limits (mileposts 2.55-0.62); thence
 - (3) Borough of Tinton Falls: 50 miles per hour within corporate limits.

(a)**Speed Limits****Routes N.J. 49 in Salem County and N.J. 94 in Sussex County****Adopted Amendments: N.J.A.C. 16:28-1.79 and 1.81**

Proposed: November 7, 1988 at 20 N.J.R. 2632(a).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.17, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.79 Route 94

(a) The rate of speed designated for the certain parts of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. In Sussex County:

(1)-(5) (No change.)

(6) Fredon Township:

(A) 35 miles per hour school speed zone in zone 9 within the Fredon Township school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

2.-3. (No change.)

16:28-1.81 Route 49

(a) The rate of speed designated for the certain parts of State highway Route 49 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Salem County:

i. Pennsville Township:

(1) Zone one: 40 miles per hour from the beginning of Route 49 at the New Jersey Turnpike underpass to 850 feet west of Church Landing Road (mileposts 0.0 to 0.7); thence

(2) Zone two: 35 miles per hour between 850 feet west of Church Landing Road and Fort Mott Road (County Road 630), except with 25 miles per hour school speed zones in the Pennsville Memorial High School, Pennsville Christian Elementary School and the Pennsville Junior High School zones during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 0.7 to 3.44); thence

(3) Zone three: 40 miles per hour between Fort Mott Road (County Road 630) and Patterson Avenue (mileposts 3.44 to 4.09); thence

(4) Zone four: 50 miles per hour between Patterson Avenue and the Pennsville Township-Salem City line (bridge over the Salem River) (mileposts 4.09 to 8.26); thence

ii. City of Salem:

(1) Zone one: 30 miles per hour between the Pennsville Township-Salem City line (bridge over the Salem River) and Oak Street (mileposts 8.26 to 8.87); thence

(2) Zone two: 25 miles per hour between Oak Street and Ninth Street (mileposts 8.87 to 9.3); thence

(3) Zone three: 30 miles per hour between Ninth Street and Yorke Street (County Road 658) (mileposts 9.3 to 9.76); thence

(4) Zone four: 35 miles per hour between Yorke Street (County Road 658) and the Salem City-Quinton Township line (Kasby Creek) (mileposts 9.76 to 10.1); thence

iii. Quinton Township:

(1) Zone one: 45 miles per hour between the Salem City-Quinton Township line (Kasby Creek) and 1300 feet east of Sherron Avenue (mileposts 10.1 to 11.0); thence

(2) Zone two: 50 miles per hour between 1300 feet east of Sherron Avenue and 500 feet west of Action Station Road (County Road 653) (mileposts 11.0 to 12.23); thence

(3) Zone three: 35 miles per hour between 500 feet west of Action Station Road (County Road 653) and Jericho Road (County Road 626) except with a 25 miles per hour school speed zone in the Quinton Township Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (mileposts 12.23 to 13.05); thence

(4) Zone four: 50 miles per hour between Jericho Road (County Road 626) and the Salem County-Cumberland County line (mileposts 13.05 to 18.78);

(b) (No change.)

(b)**Restricted Parking and Stopping****Routes U.S. 9 in Ocean County; N.J. 31 in Mercer County; U.S. 46 in Morris County; and N.J. 49 in Salem County****Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.22, 1.32 and 1.34**

Proposed: November 7, 1988 at 20 N.J.R. 2633(b).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.18, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-36. (No change.)

37. Along the northbound (easterly) side in Tuckerton Borough, Ocean County:

i. (No change.)

ii. Mid-block bus stop:

(1) Between Cable Road and Admiral Way: Beginning 550 feet south of the prolongation of the southerly curb line of Cable Road and extending 180 feet southerly therefrom.

iii. Near side bus stop:

(1) Leifried Lane: Beginning at the southerly curb line of Leifried Lane and extending 105 feet southerly therefrom.

38. Along the southbound (westerly) side in Tuckerton Borough, Ocean County:

i. (No change.)

ii. Mid-block bus stop:

(1) Between Cable Road and Admiral Way: Beginning 550 feet south of the southerly curb line of Cable Road and extending 135 feet southerly therefrom.

iii. Far side bus stop:

(1) Leifried Lane: Beginning at the prolongation of the southerly curb line of Leifried Lane and extending 100 feet southerly therefrom.

39.-42. (No change.)

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

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1.-6. (No change.)
7. No stopping or standing in Hopewell Township, Mercer County:

i. Along both sides for the entire length within the corporate limits of the Township of Hopewell including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs are to be posted only in areas where an official township resolution has been submitted.

(b) (No change.)

16:28A-1.32 Route U.S. 46

(a) The certain parts of the State highway Route U.S. 46 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-7. (No change.)

8. No stopping or standing in Mountain Lakes Borough, Morris County:

i. Along both sides:

(1) From the Boulevard to the Borough of Mountain Lakes-Denville Township corporate line.

(2) Within the entire corporate limits of the Borough of Mountain Lakes, including all ramps and connections under the jurisdiction of the Commissioner of Transportation except at approved bus stops.

9.-17. (No change.)

(b) (No change.)

16:28A-1.34 Route 49

(a) The certain parts of State highway Route 49 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-5. (No change.)

6. Within the Township of Pennsville, Salem County:

i.-iv. (No change.)

v. Along both sides:

(1) Within the entire length of the corporate limits of the Township of Pennsville including all ramps and connections under the jurisdiction of the Commissioner of Transportation except at approved designated bus stops. Signs are to be posted only in areas where an official Township Resolution has been submitted.

7. (No change.)

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

(a)

Restricted Parking and Stopping Route N.J. 47 in Gloucester County

Adopted Amendment: N.J.A.C. 16:28A-1.33

Proposed: November 7, 1988 at 20 N.J.R. 2634(a).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.15, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-2. (No change.)

3. No stopping or standing in Franklin Township, Gloucester County:

i.-ii. (No change.)

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iii. Along the eastbound side: Delsea Drive—Between Cloves Mills Road and McArthur Avenue.

4.-10. (No change.)

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

(b)

Mid-Block Crosswalks

Route U.S. 9 in Atlantic County

Adopted New Rule: N.J.A.C. 16:30-10.9

Proposed: November 7, 1988 at 20 N.J.R. 2635(a).

Adopted: December 8, 1988, by John F. Dunn, Director, Division of Traffic Engineering and Local Aid.

Filed: December 8, 1988 as R.1989 d.16, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.

Effective Date: January 3, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:30-10.9 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as mid-block crosswalk.

1. In the Township of Galloway, Atlantic County: From a point 130 feet north of the northerly curb line of Bartlett Avenue to a point 10 feet northerly therefrom, and from a point 220 feet north of the northerly curb line of Bartlett Avenue to a point eight feet northerly therefrom.

(c)

THE COMMISSIONER

102-Inch Standard Trucks

Route N.J. 47 Access

Adopted Amendments: N.J.A.C. 16:32-3.5, 2.6 and Appendix A

Proposed: October 17, 1988 at 20 N.J.R. 2536(b).

Adopted: November 17, 1988, James A. Crawford, Assistant Commissioner for Policy and Planning.

Filed: December 5, 1988 as R.1989 d.9, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:3-84.

Effective Date: January 3, 1989.

Expiration Date: April 15, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:32-3.5 Addition and deletion of through routes

(a) (No change.)

(b) The Department encourages interested parties to submit proposals for additions and deletions to the system. Submissions should be made in writing to the Manager, Bureau of Transportation Data Development, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625. Submissions should be specific as possible in regard to:

1.-3. (No change.)

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

16:32-3.6 Maps

(a) (No change.)

(b) Subject to their availability, maps and graphic depictions of the 102-inch standard truck designated through network may be obtained for a charge of \$5.00 each from the Department. Requests

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should be submitted to the Manager, Bureau of Transportation Data Development, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625. Payments should be made to the New Jersey Department of Transportation.

APPENDIX A

The following State highway routes are not designated as through routes for wide trucks, although some of these routes may be usable by wide trucks under the access provisions of N.J.A.C. 16:32-3.4:

Route	Description	Mileage
US 9 to NJ 45	(No change.)	
NJ 47 between Atlantic Ave. in Wildwood City,		
Cape May Co.		0.00
and Co. 636 in Wildwood City, Cape May Co.		0.75
and between the Maurice River Twp./Millville City		
Corporate Line, Cumberland Co.		36.08
and NJ 55 in Millville City, Cumberland Co.		42.20
and between Park Ave. in Vineland City,		
Cumberland Co.		46.75
and US 40 in Franklin Twp., Gloucester Co.		52.36
and between US 322 in Glassboro Boro.,		
Gloucester Co.		62.29
and Rt. 551 in Westville Boro., Camden Co.		74.75
	Total NJ 47	24.94
NJ 49 to NJ 444	(No change.)	
NJ 495 between the NJ Turnpike in Jersey City,		
Hudson Co.		0.00
and the New York State Line		3.58
	Total NJ 495	3.58
	Total mileage of ineligible sections:	288.21

TREASURY-GENERAL

(a)

OFFICE OF THE STATE TREASURER COMMUNITY AFFAIRS DIVISION OF LOCAL GOVERNMENT SERVICES

Collection of Debts

Debts Owed to New Jersey Higher Education Assistance Authority by State, County, and Municipal Employees

Adopted Amendments: N.J.A.C. 17:25

Proposed: October 17, 1988 at 20 N.J.R. 2537(b).

Adopted: November 30, 1988 by Feather O'Conner, State Treasurer and Barry Skokowski, Director, Division of Local Government Services.

Filed: December 1, 1988 as R.1989 d.2, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72-23, 24, 25 and 25.2; N.J.S.A. 52:18A-30; 52:27BB-8 and 10.

Effective Date: January 3, 1989.

Expiration Date: June 18, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The text of N.J.A.C. 17:25-1.1 contains an error in the spelling of the word "who" which is corrected 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]*).

ADOPTIONS

CHAPTER 25 COLLECTION OF DEBTS

SUBCHAPTER 1. DEBTS OWED TO N.J.H.E.A.A. BY STATE, COUNTY OR MUNICIPAL EMPLOYEES

17:25-1.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby the New Jersey Higher Education Assistance Authority (N.J.H.E.A.A.) in conjunction with the Department of Treasury shall cooperate in identifying State, county or municipal employees *[wo]* *who* are delinquent in payments to the N.J.H.E.A.A. on any note held pursuant to N.J.S.A. 18A:72-16. It is also the intent of this subchapter to establish procedures for deducting from the wages of such State, county or municipal employees the sum of any such debt owed to the New Jersey Higher Education Assistance Authority, pursuant to N.J.S.A. 18A:72-23 and 18A:72-25.2. The procedures contained in this subchapter afford the State, county or municipal employee the opportunity to assert any legal rights he or she may have prior to the deduction from the wages.

17:25-1.2 Definitions

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

"Debtor" means any New Jersey State, county or municipal employee or officer on the State, county or municipal payroll(s) owing money to or having a note or obligation to the Authority in which payments are more than 60 days delinquent, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Financial officer" means the Chief Financial Officer (or equivalent) of the appropriate county or municipal local unit having authority over the county or municipal payroll system(s).

"Net proceeds collected" means gross proceeds collected through total deductions from a debtor's State, county or municipal payroll checks minus any collection fee charged by the Department or local unit to provide for any expenses of the collection effort.

"Payroll check" means the wages received by New Jersey State, county or municipal employees and officers paid by the State, county or municipal payroll in return for services provided to the employee's or officer's respective State, county or municipal agency, department, office or other entity using the State, county or municipal payroll system by which the employee or officer is employed.

17:25-1.3 Procedure for deduction from wages

(a) For State employees, the Authority shall notify the Department in writing and supply the Department with a list of persons currently in default on notes held by the Authority. The Department shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as New Jersey State employees or officers. Upon notification by the Department, and after the liquidated sum due is finally established by Authority records, the Authority shall forward a list to the Department as to those debtors for which the Authority requests deductions to be made.

(b) For county and municipal employees, the Authority shall notify the financial officer in writing and supply the financial officer with a list of persons currently in default on notes held by the Authority. The financial officer shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as county or municipal employees or officers. Upon notification by the financial officer, and after the liquidated sum due is finally established by Authority records, the Authority shall forward a list to the financial officer as to those debtors for which the Authority requests deductions to be made.

17:25-1.5 Notice to debtor

Within 10 days after the notification to the Authority that the employee or officer is receiving wages from the State, county or municipal payroll system, the Authority shall notify the alleged debtor by regular mail of the proposed deduction and inform the alleged

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debtor of the right to make a request to the Authority within 30 days after the date of notice, for a hearing on the alleged debt and the proposed deduction.

17:25-1.6 Authority proceedings

No later than 45 days from the date of the Authority's notice to the alleged debtor of the proposed deduction, the Authority shall notify the Department or financial officer to begin deductions for the repayment of the debt from the payroll check where the debtor has not responded to the notice provided pursuant to N.J.A.C. 17:25-1.5 within 30 days of the notice date.

17:25-1.9 Finalization of deduction by Authority

(a) Upon either final agreement arrived at an administrative resolution or final determination of the debt due and owing the Authority or exhaustion of time in which an appeal may be filed, the Authority shall forthwith certify the finalized debt to the Department or financial officer.

(b) Upon receipt by the Department or financial officer of a certified finalized debt from the Authority, the Department or financial officer shall make the deduction(s) and transfer the net proceeds collected for payment to the Authority.

(c) At regular intervals the Authority shall notify the Department or financial officer of any adjustments to be made in the amount of the finalized debt, due to accrued interest or payments received by the Authority outside of these procedures.

17:25-1.10 Notice to debtor of final determination

Upon the final determination of the debt due and owing, the Authority shall notify the debtor in writing of the action taken along with its intent to begin deductions.

17:25-1.11 Disposition of proceeds collected; collection assistance fees

(a) Upon effecting deductions, the Department or financial officer shall transfer to the Authority, the net proceeds collected on its behalf.

(b) From the gross proceeds collected by the Department or financial officer through deductions, the Department or local unit shall retain one percent, which amount shall be charged to the Authority as a collection assistance fee.

17:25-1.12 Accounting to the Authority; credit to debtor's obligation

(a) Simultaneously with the transmittal of the net proceeds collected to the Authority, the Department or financial officer shall provide the Authority with an accounting of the deductions finalized for which payment is being made.

(b) (No change).

(c) Upon receipt by the Authority of the net proceeds collected on the Authority's behalf by the Department or financial officer and an account of the proceeds as specified under this section, the Authority shall credit the debtor's obligation with the net proceeds collected.

(d) For State employees, under special circumstances and subject to the approval of the Director of the Division of Budget and Accounting, the Department may employ such alternative method of payment and billing as may be agreed upon with the Authority.

(e) For county and municipal employees, under special circumstances and subject to the approval of the appropriate local government official, the financial officer may employ such alternative method of payment as may be agreed upon with the Authority.

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OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations PDC-1 Planned Development Center, Specially Planned Areas

Adopted New Rule: N.J.A.C. 19:4-5.3A

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: September 6, 1988 at 20 N.J.R. 2247(b).

Adopted: December 7, 1988 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Executive Director.

Filed: December 8, 1988 as R.1989 d.21, **without change**.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: January 3, 1989.

Expiration Date: May 26, 1993.

The adopted amendment at N.J.A.C. 19:4-6.28 to the Hackensack Meadowlands District Official Zoning Map and District Zoning Regulations consists of changes in zoning designation as follows:

Changes the zoning designation of Block 128, Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, part of lot 21, part of lot 33, part of lot 34, part of lot 35, part of lot 36, part of lot 38, part of lot 39, in Carlstadt; Block 131.1 (shown as Block 131.0 on the Carlstadt Tax Map), Lots 35, 36, and 67, in Carlstadt; Block 136, Lots 1, 2, 3, 4, 5, 6, and 7, in Carlstadt; Block 137, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, in Carlstadt; Block 135, Lot 1, in Carlstadt; Block 106, Lot 4B (shown as Lot 4.02 on the South Hackensack Tax Map), part of lot 3, part of lot 4A (shown as Lot 4.01 on the South Hackensack Tax Map), in South Hackensack, from IR-4 (Island Residential-4) to PDC-1 (Planned Development Center-1).

Change the zoning designation of Block 106, part of lot 3 and part of lot 4A (shown as Lot 4.01 on the South Hackensack Tax Map), in South Hackensack, from Waterfront Recreation to PDC-1 (Planned Development Center-1).

Change the zoning designation of Block 128, part of lot 21, part of lot 33, part of lot 34, part of lot 35, part of lot 36, part of lot 38, and part of lot 39, in Carlstadt, from Light Industrial and Distribution "A" to PDC-1 (Planned Development Center-1).

Change the zoning designation of Block 128, part of lot 21, part of lot 27, part of lot 33, part of lot 34, part of lot 35, part of lot 36, part of lot 38, and part of lot 39, in Carlstadt, from Light Industrial and Distribution "A" to Light Industrial and Distribution "B".

Summary of Public Comments and Agency Responses:

COMMENT: A written comment was received from James A. Farber, attorney representing the Borough of Little Ferry, requesting the Commission to amend the PDC-1 rezoning to include parcels of land located in Little Ferry along the waterfront. These properties, however, are not adjacent to the proposed PDC-1 Specially Planned Area (SPA), nor do they possess the characteristics of an SPA, such as large contiguous properties.

RESPONSE: Staff responded to this request informing Little Ferry that their request for PDC-1 zoning is inappropriate for the properties they have stipulated. If the town would like to pursue a different rezoning request in the future, they are able to do so.

COMMENT: A written comment was received from Bennett S. Lazare of Empire Ltd., the major property owner in the SPA. Mr. Lazare voiced two concerns with the proposed rezoning. First, he feels that the rezoning of the Light Industrial "A" property to Light Industrial "B" is not appropriate since the HMDC rezoned this same property from Island Residential-4 to Light Industrial "A" several years ago to act as a transition area between the SPA and the Light Industrial "B" Zone. Second, Empire Ltd. feels that the rezoning of the properties in IR-4 north of Bashes Creek would be better zoned to something other than PDC-1 since it is owned primarily by Transcontinental Gas Company and one other minor property owner. The creek physically separates the Empire Ltd. property from the other properties outside of their ownership.

RESPONSE: The original rezoning of the property which Mr. Lazare refers to was in order to create a buffer between IR-4 and the adjacent Light Industrial and Distribution "B" zones. This was intended to buffer the housing from a heavier type of industrial use by allowing Light Industrial "A" type properties as a transition area. The proposed PDC-1 Specially Planned Area, with its mixed-use concept, would contain transition areas directly within its permitted uses thus enabling the Light Industrial "B" zone to be expanded. According to preliminary master plan studies, there appears to be a demand for such facilities as those permitted within the Light Industrial "B" zoning. To address Mr. Lazare's second point on eliminating the 50± acres north of Bashes Creek from the PDC-1 rezoning, it would entail an entirely new publication and public hearing procedure. In speaking with Mr. Lazare subsequent to this request, Empire Ltd. has stated that they are not interested in pursuing this matter further.

COMMENT: The third and final comment was received by the Hackensack Meadowlands Development Commission (HMDC) on October 6, 1988 from a Wyckoff resident (name illegible) stating that as an outdoor enthusiast, the writer wishes the HMDC to take action to preserve the Meadowlands and not to develop it further.

Several people presented oral comments at the PDC-1 public hearings. The following summarizes their comments:

Margaret Schak—Executive Director of the Hackensack Meadowlands Municipal Committee (HMMC) stated that the HMMC took a vote at their August 29, 1988 meeting and approved a resolution for the PDC-1 rezoning. The delegate from Little Ferry questioned why the South Hackensack Waterfront Recreation was included in this rezoning. Little Ferry would like their town rezoned to PDC-1 also. Mrs. Schak said that Mayor Presto of Carlstadt would like to see less residential development; however, he is amenable to this mixed-use concept at the present time. The final comment of the HMMC regarded roadways. Mrs. Schak said that the local roadways need a great deal of improvement.

COMMENT: Margaret Utzinger, President of the Hackensack River Coalition, opposed the PDC-1 rezoning. She noted that traffic created by the additional jobs would be harmful; an exit from the Turnpike would be necessary.

Regarding wetlands mitigation, Ms. Utzinger said that it has not been proven that mitigation works—Hartz Mountain Industries has to use artificial maintenance at their Mill Creek mitigation site at the present time. The Memorandum of Understanding (MOU) between HMDC and the Federal Agencies states that mitigation does not necessarily have to be located within the District. Ms. Utzinger questioned why this proposal is being presented before the Master Plan has not been completed.

RESPONSE: Thomas R. Marturano, HMDC Acting Chief Engineer, responded to Ms. Utzinger stating that this rezoning is being handled in conjunction with the Master Plan efforts of the HMDC and that there may be other PDC's in the future. Additionally, the traffic issue raised here is of major concern to the HMDC. Any project of this magnitude would require special transportation studies, off-site improvements, access to major highways, and mass transit connections. The phasing of any development would depend on the traffic improvements.

COMMENT: Three different parties inquired about the inclusion of cultural facilities within the proposed rezoning concept, including Francis Barsh representing the Meadowlands Arts Council, Inc.

RESPONSE: Public cultural facilities are addressed in the PDC-1 proposal as a permitted use under N.J.A.C. 19:4-5.3A.

COMMENT: Ms. Peggy Valvano of Lyndhurst questioned what type of provisions would be made for controlling and preventing flooding.

RESPONSE: Mr. Marturano noted that features such as flood control are dealt with under the HMDC zoning regulations at the time an actual project application comes under review by this agency.

COMMENT: Mr. Albert Cafiero of Tenafly represented the Transit Committee of Bergen County, a private citizens group. His concern with transportation is that the proposal is very dependent on roads. His group proposes a new rail tunnel and expanded rail lines in the Meadowlands area.

RESPONSE: The HMDC, along with its consultants, and other State and Federal agencies, is looking at transportation in the Meadowlands and its environs as part of the HMDC Master Plan update. At the present time, a major rail expansion proposal is being designed with a hub in Secaucus known as Allied Junction. Also, New Jersey Transit is currently working on a light rail proposal on the Hudson River Waterfront with a connection to the Meadowlands District.

The HMDC staff has reviewed these comments and will take them into consideration during the appropriate stages of the Specially Planned Area

review for each application that is submitted. Based on the comments received, there are no changes to be made to the original PDC-1 rezoning proposal.

Full text of the adoption follows.

19:4-5.3A Planned development center specially planned areas: PDC-1

(a) The PDC-1 specially planned area shall be developed as a planned development center according to a plan as a single entity containing structures with appurtenant common areas.

1. The following principal uses shall be provided:

- i. Office,
- ii. Regional retail,
- iii. Commercial,
- iv. Hotel,
- v. Residential, and
- vi. Neighborhood retail.

2. Accessory uses may include, but are not limited to:

- i. Public facilities,
- ii. Transportation facilities,
- iii. Parking structures, and
- iv. Open space.

(b) Development shall be permitted in PDC-1 only pursuant to an approved general plan for the entire PDC-1, under N.J.A.C. 19:4-5.8, pursuant to an approved development plan for the section to be developed under N.J.A.C. 19:4-5.9, and pursuant to an approved implementation plan for the subsection to be developed under N.J.A.C. 19:4-5.10.

(c) All development in each PDC-1 shall conform to all applicable rules and policies affecting wetlands.

(d) No general plan for any PDC-1 shall be approved under N.J.A.C. 19:4-5.8, no development plan shall be approved under N.J.A.C. 19:4-5.9, and no implementation plan shall be approved under N.J.A.C. 19:4-5.10 unless it contains the following types of uses and percentage of land areas specified in the project component mix below:

1. Project Component Mix: The amount of land area devoted to each of the uses specified below shall be as follows:

PERCENT OF TOTAL SITE		
Use	Minimum	Maximum
Residential†	25	35
Non-Residential†	15	30
Open Space††	45	—

†Includes all internal roads, accessory and adjacent roads within the PDC, and developed open spaces such as lawns, landscaping, parking areas, sidewalks, etc. All common roads that are not accessory or adjacent to the residential or non-residential areas shall be apportioned according to the final mix of uses.

††Does not include developed open spaces within the developed areas of the site.

2. Non-residential uses shall be of the type typically found in a major regional office/commercial center. The principal uses include office, regional retail, commercial, and hotel facilities. Accessory uses in the non-residential area include transportation center, cultural facilities, and any uses listed in (e) below. Non-residential use requirements are as follows:

i. Within the non-residential area of the site, a total Floor Area Ratio of 1.00 shall not be exceeded. Such Floor Area Ratio (F.A.R.) shall be determined by dividing the total floor area of every building or structure by the area of the total non-residential area of the site. The following accessory uses shall be exempt from inclusion in the F.A.R.: (1) Parking facilities (2) Cultural facilities, upon Development Board approval; and (3) Transportation centers.

ii. Maximum building height shall be 20 stories, exclusive of stories devoted completely to air conditioning and utility equipment and exclusive of parking decks within the same non-residential structure. No more than five stories shall be devoted to air conditioning and parking decks.

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3. Residential uses include dwellings, community facilities, neighborhood shopping facilities, day care facilities, public schools, and other uses listed in subsection (e) below. Residential use requirements are as follows:

- i. The gross residential density on that portion of the PDC-1 devoted to residential use shall be 40 dwelling units per acre.
- ii. No less than 4,500 dwelling units shall be required in PDC-1.
- iii. After an initial one million square feet of office, regional retail, or hotel space is constructed, one dwelling unit for each 1,000 square feet of additional non-residential development shall be provided. The Development Board shall insure that the residential component of the general plan is implemented in a manner that balances the residential and non-residential portions of the site development.
- iv. At least five percent but not more than 10 percent of the total number of dwelling units in the PDC-1 shall be in structures three stories or less in height, measured from the ground level, except that if the ground floor is devoted to parking and common area facilities, the structure may be four stories high.
- v. Of the total number of dwelling units in the PDC-1, 10 percent shall be set aside for low-income households, and 10 percent shall be set aside for moderate-income households. In addition, such set aside shall conform to the Council on Affordable Housing regulations as prescribed under N.J.S.A. 52:27D-301 et seq. No more than 20 percent of the total low- and moderate-income dwelling units shall be reserved for senior citizen occupancy.
- vi. Maximum building height shall be 20 stories, exclusive of stories devoted completely to air conditioning and utility equipment and exclusive of parking decks within the same residential structure. No more than five stories shall be devoted to air conditioning and parking decks.

4. Except for any neighborhood shopping facilities, the commercial, office, and hotel facilities shall be of a type suitable for sale or lease to retail and service uses typically found in a regional shopping center and regional office center. The regional center shall be a planned commercial development consisting of not less than two major department stores and coordinated satellite stores whose primary purpose is to draw its business from the surrounding region. Such facility shall contain a minimum of 500,000 square feet of gross retail space with attendant parking facilities. No regional shopping facilities shall be constructed unless at least 500,000 square feet of office space have been constructed or proposed in the same development phase as the regional shopping facilities. If the development is staged or phased, the Development Board shall not approve subsequent phases for construction unless 75 percent of the previous phase has been completed or is substantially under construction.

5. The Development Board, at its discretion, shall also determine the extent and location of any neighborhood shopping facility which the PDC-1 may require. Neighborhood shopping facilities shall be developed for the convenience of the residential and employment population of the PDC-1, and construction of these facilities shall be coordinated with construction of the residential and office uses, based on a schedule established by the Development Board. A neighborhood shopping facility shall consist of a group of commercial establishments planned, developed, and managed as a unit for, primarily, the sale of convenience goods and personal services, including appropriate off-street parking pursuant to N.J.A.C. 19:4-6.18. Each such facility shall contain between 30,000 and 60,000 square feet of retail space. The primary uses, consisting of a supermarket or food store and a drug store, shall be vital components of the neighborhood center and shall be designed to draw its business from the surrounding residential development.

6. The roadway and transportation system requirements PDC-1 are as follows:

- i. Upon a finding by the Development Board, at the general plan, development plan, and/or the implementation plan stage, that the existing roadway network and transportation system or facilities are inadequate, the applicant shall either reduce the proposed development, arrange for the appropriate public or private body to provide traffic improvements and mass-transit systems, or the applicant itself shall provide traffic improvements and a mass-transit system suffi-

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cient to meet the transportation needs of the residents and users of the PDC-1, as to both internal movement and, where possible, access to widely used areas in the Meadowlands District and in the Northeast New Jersey-New York metropolitan region. The mass-transit system shall be coordinated with the mass-transit systems of abutting specially planned areas and with the mass-transit system for all or part of the Meadowlands District in general and shall include a mass-transit center within the PDC-1 development.

- ii. Vehicular parking and loading shall be required, as provided in N.J.A.C. 19:4-6.18, with the exception of shared off-street parking. Shared off-street parking facilities may be provided for uses with varying peak hour traffic generation. Such shared parking arrangements must be approved by the Development Board, based on a submitted and approved comprehensive parking and traffic plan.

7. The requirements for open areas are as follows:

- i. In the PDC-1, not less than 45 percent of the total land area shall be set aside as undeveloped open areas. These open areas may be utilized for wetland mitigation purposes. In any case, no use in the undeveloped open areas shall be operated, conducted, or maintained that may impair the quality of the undeveloped open areas. Within the boundaries of the marshland open areas, no use shall be permitted that significantly discourages or interferes with the use of the marshland open area as a natural habitat for waterfowl and other forms of marsh life.

- ii. Wetland buffer strips shall be provided in accordance with N.J.A.C. 19:4-6.16. Wetland buffer strips shall not be applicable to tributaries for which Federal and/or State permits have been obtained for fill.

- iii. In the non-residential portion of the PDC-1, 15 percent of the land area shall be established as open space. In the residential portion of the PDC-1, 30 percent of the land area shall be established as open space.

- iv. Residential open space shall consist of landscaped areas, pedestrian pathways, recreational areas, malls and bicycle paths within each neighborhood. Open space may also be used to connect proposed or developed neighborhoods. The composition and design of the open space shall be determined by the Development Board based upon recommendation of the HMDC staff.

- v. Open space in the neighborhood shopping areas and non-residential areas shall be provided to serve the needs of the users. Such open space may contain plazas and malls, pedestrian paths and landscaped areas.

- vi. Should the Development Board find that the PDC-1 development creates visual or aesthetic adverse impacts to other zones and/or properties, it may require a buffer area along said property or zone line up to a maximum of 100 feet.

- vii. The Development Board, after consulting with the Environmental Design Committee, may publish detailed open space design guidelines.

- viii. All common open areas and space, facilities and structures thereon shall either be dedicated to the public with the approval and subject to the terms of the Hackensack Meadowlands Development Commission, or maintained in accordance with the requirements of N.J.A.C. 19:4-5.14.

8. The applicant shall comply with all applicable rules and policies affecting wetlands.

9. The applicant shall provide for or make arrangements to insure that the appropriate governmental agency or private individual or group provides physical and mental health care facilities sufficient to meet the health care needs of the residents and occupants of the PDC-1 not otherwise provided for. A fee may be charged for such uses.

10. The applicant shall provide for or make arrangements to insure that the appropriate governmental agency or private individual or group provides group day care centers and nursery schools sufficient to serve the needs of the residents and occupants of the PDC-1. A fee may be charged for such uses.

11. The applicant shall provide facilities for community meetings and activities sufficient to serve the needs of the residents and occupants of the PDC-1.

12. The public schools requirements for PDC-I are as follows:

i. The applicant shall demonstrate that land or facilities are available in the residential area for providing primary and secondary education for the children who reside in the PDC-I in accordance with standards for school size and location as promulgated by the New Jersey Department of Education, except insofar as adequate capacity is determined to be available in the existing school system.

ii. The applicant shall demonstrate that he or she has consulted with the school district or districts having jurisdiction regarding a schedule for the construction of schools that will meet the otherwise unmet needs of the residents of the PDC-I.

13. The applicant shall demonstrate that he has consulted with the appropriate officials having authority over library development regarding a schedule for the construction of library facilities in the residential area that will meet the needs of the residents of the PDC-I or that adequate existing facilities are available.

14. The requirements for public improvements and utilities are as follows:

i. Public improvements must be provided in accordance with N.J.A.C. 19:4-5.13.

ii. The applicant shall demonstrate that he has consulted with the electric, gas and telephone utilities having jurisdiction and that they have agreed upon a schedule for the installation of utilities that will meet the needs of the residents and users of the PDC-I.

(e) The general, development, and implementation plans may also include other uses which will benefit the users and residents of the PDC-I.

1. Such other uses include but are not limited to:

i. Chapels, churches, synagogues and temples;

ii. Private schools;

iii. Senior citizen housing;

iv. Charitable and social services;

v. Public cultural facilities;

vi. Governmental uses;

vii. Light public utility uses;

viii. Medical facilities and nursing homes; and

ix. Recreational facilities.

2. If any of the uses listed in (e)1 above are located in the non-residential area of the PDC-I, the building area shall be excluded from F.A.R. calculations. If such uses are located in the residential area of the PDC-I, the land area allocated to these uses shall be included when calculating the required number of dwelling units.

(f) The architectural design standards are as follows:

1. Structures and open spaces shall be laid out in a manner that best serves the users and residents of the PDC-I. Site design shall maximize aesthetic values and shall comply with the following:

i. All dwelling units shall have easy access to common open space, including recreational facilities;

ii. Buildings shall be placed so as to permit ready access of emergency vehicles; and

iii. Buildings and screening shall be arranged and designed so as to enhance the visual and acoustical privacy of all dwelling units.

2. The design of structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.

3. All open space areas shall be designed to conform with acceptable planning and landscape architectural principles. The Hackensack Meadowlands Development Commission's open space map should be consulted in the allocation, design and configuration of the open space portion of the PDC-I.

(g) All uses in the PDC-I shall comply with all Category A environmental performance standards and water quality requirements of N.J.A.C. 19:4-6.1 to 19:4-6.16.

(h) The applicant shall follow the environmental/socio-economic impact guidelines of N.J.A.C. 19:3B-1.1 to 19:3B-1.9. The Development Board shall not approve any general, development or implementation plan unless the Development Board finds that, to the extent reasonably feasible, the impacts of the development proposed by the plan will be within the carrying capacity of each natural and man-made system to be impacted.

19:4-6.28 Official zoning map

The Hackensack Meadowlands District official zoning map dated November 8, 1972, is hereby made a part of these rules and regulations of the Hackensack Meadowlands Development Commission.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza

Lyndhurst, New Jersey, 07071

Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules and Waterfront Development

Adoption of Concurrent Proposed Amendment: N.J.A.C. 7:7-2.3

Proposed: October 3, 1988 at 20 N.J.R. 2815(a).

Adopted: December 2, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 2, 1988 as R.1989 d.8, **without change**.

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq.

DEP Docket Number: 038-88-10.

Effective Date: December 2, 1988.

Expiration Date: May 7, 1989.

Summary of Public Comments and Agency Responses:

Notice of the Adopted Emergency Amendment and Concurrent Proposal was published on November 7, 1988 in the New Jersey Register at 20 N.J.R. 2815(a). The notice advised the public that a public hearing concerning the concurrent proposal was to be held on November 22, 1988 at the Dover Township Municipal Building in Toms River, New Jersey. The notice further advised that written comments concerning the concurrent proposal could be submitted on or before December 7, 1988. In addition, notice of the emergency rule and concurrent proposal, the public hearing and the comment period was advertised through a press release and a direct mailing to mayors and local construction officials.

Further, copies of the Notice of the Adopted Emergency Amendment and Concurrent Proposal were mailed on or about October 6, 1988 to municipal and county clerks, construction officials, and planning boards.

This concurrent rule proposal, which is designed to restrict the detrimental impact on the ecologically sensitive and fragile coastal area that results from continued haphazard development, is hereby adopted December 2, 1988. This adoption is based upon the Department's review and evaluation of all comments received through the close of the business day on December 1, 1988 and is subject to the further consideration and review of all comments received by the Department prior to the close of the business day on December 7, 1988 at which time any appropriate further actions will be taken concerning this rule. Based on the comments submitted to date, the Department is persuaded that it is in the best interests of the State that the adoption of the concurrent proposal in its present form is necessary to safeguard the public's health, safety, welfare and the environment of the State.

The Department is adopting this concurrent proposal on December 2, 1988 subject to the consideration and review of additional comments received after December 1, 1988 and before December 8, 1988 in order to assure the continued effect of the rule herein initially adopted by emergency proceedings effective October 3, 1988 and which expires on December 3, 1988. Adoption of the concurrent proposal effective December 2, 1988, which was proposed simultaneously with the adoption of the emergency rule on October 3, 1988, bridges any facial gap in the reach of the rules artificially created by the publication schedule of the New

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Jersey Register. If not adopted December 2, 1988, there would be a technical gap in the rule since the normal comment period on regulations is generally 30 days.

The procedure employed in this case to adopt the concurrent proposal December 2, 1988 is in substantial compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (hereinafter "APA" or "Act"), and insures that the technical publication requirements of the New Jersey Register do not mindlessly trigger a lapse in the effectiveness of this rule which is vital to protecting the extraordinarily environmentally sensitive coastal areas of our State. The adoption of the concurrent proposal is subject to the review of any additional comments submitted to the Department carefully balances the requirements of the Act and the need to guard against further adverse environmental consequences in our State's coastal areas.

The history of this particular rule promulgation demonstrates the significant efforts that have been taken to meet the Act's requirement of substantial compliance in adopting the rule. See N.J.S.A. 52:14B-4(d). First, the adoption of the emergency rule on October 3, 1988 provided substantial actual notice of the concurrent proposal adopted December 2, 1988 well in excess of the 30 day notice period provided for by the APA. In addition, the filing of the emergency rule proposal was attended by widespread public notice and comment in the popular media in this State in a manner which may fairly be said to be more broad-based than the regular audience of the New Jersey Register.

Furthermore, the Department of Environmental Protection made substantial efforts to publicize the concurrent rule proposal. For example, the Department issued press releases to advise the public of the rule proposal. The Department also mailed the concurrent proposal to three key land use officials (the municipal clerk, the chair of the local municipal planning board and the local construction code official) in each of the 130 municipalities within the geographical areas of the State affected by this concurrent proposal resulting in a mailing reaching nearly 400 responsible and knowledgeable local governmental officials. Further, the Department made copies of the concurrent proposal available to interested parties in its Regional Office in Toms River and provided public notice of that availability. In addition, the Department, in response to individual requests, mailed hundreds of copies of the concurrent rule proposal to interested citizens.

Not content to rely solely on written comments, the Department held a public hearing on November 22, 1988, announced in the November 7, 1988 edition of the New Jersey Register, which was attended by approximately 250 people and took testimony from 29 individuals who sought to speak on this issue. The Department also held four other regional meetings with citizens co-sponsored by the affected county planning boards. Furthermore, the Department has received 300 letters and 1,033 individually-submitted postcards as of December 1, 1988. Moreover, the Department received over 2,000 telephone requests for information about the concurrent proposal and in the course of those conversations received comments about the concurrent proposal.

The above record demonstrates the substantial efforts made by the Department in satisfaction of the Administrative Procedure Act's requirement that all interested persons be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing, and to solicit those views in a manner calculated by the Department to inform those persons most likely to be affected or interested in the intended actions.

The reasonableness of the Department's action to secure the views of all interested parties in this case and to give full consideration to those views must be evaluated in the context of the purpose and effect of the emergency rule adoption and the simultaneous filing of the concurrent proposal. The emergency rule adoption was intended to impose upon the delicately balanced natural environmental coastal area a comprehensive system of State land use regulation by permit to prevent an imminent environmental peril and safeguard that area against the degradation that follows from uncoordinated, unrestricted development. The present adoption of the concurrent proposal on December 2, 1988 is warranted to prevent a lapse in the coverage provided by the emergency rule that would otherwise result through the happenstance of the publication schedule of the New Jersey Register. Plainly, the peculiar publishing requirements of the New Jersey Register should not be permitted to create the bizarre result of a gap in the continued effect of these important environmental regulations. This is especially so when these factors are evaluated as a whole: the emergency rule adoption has provided nearly 60 days of public notice of the actual contents of the concurrent proposal; the emergency rule was not limited to a discrete problem but gave notice of the intended long-term application of the permitting system in the affected coastal

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areas; substantial public notice was provided in the popular media regarding the proposal; significant efforts were made by the Department to solicit from interested parties comments regarding the concurrent proposal; the receipt by the Department of a wealth of detailed written and oral submissions respecting the proposed rule; and the fact that the concurrent proposal is effective as of October 3, 1988. See N.J.A.C. 7:7-2.3(g).

For these reasons, the Department, having fully considered all the comments received to date and in light of its intention to fully evaluate any comments regarding the current proposal received prior to December 8, 1988, believes ample and substantial notice has been provided to interested parties and that this concurrent proposal adoption on December 2, 1988 is in substantial compliance with the requirements of the Administrative Procedure Act.

In general, the comments received thus far were directed at the "imminent peril" finding, the validity of applying the emergency rulemaking process in this case, the authority of the Waterfront Development Act, the inadequacy of the rule to comprehensively address coastal problems, and the need for regulatory alternatives that foster a State/local partnership. Many commenters, acknowledging the likelihood of adoption of the concurrent proposal, advocated additional exemptions and suggested changes in the method for delimiting the "waterfront area" and changes in the permit application and review process. Several commenters expressed concern that the Department was not adequately staffed to implement or enforce the expanded regulatory program. Although not adopted at this time, many of the comments contained suggestions for revisions that merit consideration for future rulemaking.

The comments received by the Department thus far are summarized and responded to below.

COMMENT: The Department finding of "imminent peril" and the affirmation of imminent peril by the Governor are contrived. No state of emergency exists.

RESPONSE: The Department has conducted, commissioned or received a number of studies on the effects of intense development on New Jersey's coastal area, including the Blue Ribbon Panel Report, dated May 1988, which found that "the rate and type of construction and land use as one of the most critical issues facing New Jersey"; the Governor's 14 point action plan to preserve New Jersey's oceans and beaches; the Pollution Control Implementation Plan for the Navesink River; the New Jersey Draft 1988 Surface Water Quality Inventory Report; the Draft Stormwater Management Manual for the New Jersey Coastal Zone dated October 1988; and the Edwin B. Forsythe Roundtable on Land-Based Sources of Marine Pollution dated March 1985. The information in these documents indicates that intensifying development pressures along the entire New Jersey coast are causing very serious adverse impacts to coastal resources throughout the region. These impacts take the form of nonpoint source pollution, loss of important natural resources, development in high hazard areas, conversion of development along the water's edge from water dependent to non-water dependent development, and reduced opportunity for public access to the water, as guaranteed by the public trust doctrine.

The Department's assessment of the threat posed by continued waterfront development without additional safeguards is reinforced by recent legislative findings at both the State and Federal levels of government. In a bill concerning development in and around Barnegat Bay, which was signed into law on January 13, 1988, the New Jersey Legislature found that the "innumerable recreational, economic and other benefits important to the welfare of the citizens of the State . . . [are] strongly dependent upon the water quality of Barnegat Bay and the general vitality of the Barnegat Bay ecosystem; and that the Barnegat Bay area is currently experiencing intense development pressure which is adversely affecting its water quality and ecology." P.L. 1987, c. 397, sec.1. Similarly, Congress, in approving the Clean Water Act, 33 U.S.C. §§1251 et seq., explicitly acknowledged the magnitude of the nonpoint source pollution problem and declared that "it is the national policy that programs be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint source pollution."

Significant portions of the coastal area have suffered severe and, in some cases, irreversible damage from countless incidents of waterfront construction not covered by CAFRA. This piecemeal construction has been pursued with no regard for its cumulative impacts on the fragile and precious coastal environment. As a result, water quality problems from nonpoint source pollution, and damage to beaches, dunes, and wildlife habitat have occurred.

There is no sign that, without this rule, such construction will diminish. The coastal area is one of the fastest developing regions of the State. Development and redevelopment pressures on this area are intensifying and over half of current waterfront development involves projects with less than 25 units.

Based on the foregoing data and findings, and the absence of additional legislative remedies for coastal land use problems, it is both necessary and appropriate for the Department to use its full administrative powers under existing statutes to effect supplementary land use controls in the coastal area. The emergency is, unfortunately, all too real.

COMMENT: The adoption of the subject rule by emergency proceedings is inconsistent with the New Jersey Constitution because the matter should be addressed legislatively, not through rulemaking.

RESPONSE: Adoption of rules through emergency proceedings is specifically provided for in the Administrative Procedure Act at N.J.S.A. 52:14B-4. This provision has been used numerous times by this and other agencies; no reviewing court has ever found this provision to be unconstitutional.

COMMENT: The rule does not address such coastal pollution issues as ocean dumping, illegal disposal of medical waste, pollution from New York, sewage from Northern New Jersey, industrial waste, and floatables in general. These issues which affect the viability and economy of the New Jersey shore are a more important source of imminent peril that should be addressed prior to the Department implementing regulation of new construction. New construction is not the problem.

RESPONSE: This rule is not directed at resolving the ocean pollution problem caused by "floatables," that is, solid wastes, including medical wastes, that float or remain suspended in the water. The Department acknowledges that the impacts of sizeable floatables that wash ashore can be severe and that existing Federal prohibitions have not been effective in controlling this problem. Significant advances, however, have been made in the form of cradle-to-grave manifest systems, a timetable for cessation of ocean dumping, and strong civil and criminal penalties in both State and Federal legislation.

However, because of their imminent peril associated with construction, this rule is focused on impacts to coastal resources associated with new coastal development, such as bacterial and other nonpoint source degradation of the State's tidal rivers and back bays, contamination of shellfish resources, increased numbers of beach closings associated with storm events and elevated levels of bacteria. The rule is designed to address heavy development pressures on such environmentally sensitive natural features as beaches, dunes, wetlands and critical wildlife habitat; dwindling open space for aesthetic and recreational enjoyment of the ocean and coastal area; and shoreline erosion.

COMMENT: The Department does not have sufficient staff to effectively administer existing statutes and rules nor to answer the questions of the individuals who are most affected by the rule. The new rule will not be properly administered and will add to the Department's burden.

RESPONSE: The Department's New Jersey Coastal Management Program staff in the Division of Coastal Resources consists of 60 persons distributed among two bureaus—the Bureau of Coastal Project Review and the Bureau of Coastal Enforcement and Field Services. Both bureaus have a demonstrated record of making timely permitting decisions and enforcing the requirements of the Waterfront Development Act, the Wetlands Act of 1970 and the Coastal Area Facility Review Act, in accordance with the 90 Day Law, N.J.S.A. 13:1D-29 et seq. The Department is also taking steps to increase staff size to reflect the additional workload. Short term measures the Department has taken to improve responsiveness to the public include:

1. A series of meetings directed at construction officials and other municipal and county representatives which were held in Toms River, Ocean County on October 12, 1988; in Cape May Court House, Cape May County on October 13, 1988; in Northfield, Atlantic County on October 14, 1988 and in Freehold, Monmouth County on October 18, 1988; and

2. The appointment of a task force of six permit reviewers to work solely on issues related to this rule. These individuals answer questions about the rule, conduct pre-application meetings and expedite permit applications. During the period from October 3 through November 18, 1988, 126 applications were received by the task force, of which 10 percent have already been acted on. Similarly, 2,000 telephone inquiries were handled during the period from October 3 through October 28, 1988, as compared to a working level of approximately 250 applicability determinations per month prior to adoption of this rule by emergency proceedings.

COMMENT: The imposition of requirements for State approval will adversely affect the small property owner who has less time and money to comply with the extra level of regulation.

RESPONSE: The Department acknowledges that this rule will have economic consequences on some property owners in the coastal area, including small property owners. However, the cumulative environmental degradation caused by multiple development projects, including impacts from small projects, illustrates the need for increased environmental controls.

COMMENT: If the intent of the rule is to provide an extra level of protection against nonpoint source pollution and more consistent application of controls, then the Department should explore more narrow and focused alternatives to address the problem, such as amending the State Uniform Construction Code, N.J.A.C. 5:23, upgrading municipal stormwater management ordinances, or implementing recent legislation authorizing county health departments to review stormwater management plans.

RESPONSE: Nonpoint source pollution is a problem of such magnitude that it warrants multiple regulatory mechanisms. In addition to this rule, the Department, through the Stormwater Management Act, N.J.S.A. 13:10-1 et seq., and the County Environmental Health Act, N.J.S.A. 26:3A2-21, is working with interested municipalities to develop state-of-the-art stormwater management ordinances and programs. These coordination efforts are, however, longer term measures that will not effect immediate, detailed oversight of individual development proposals proximate to tidal water. Furthermore, although one of the express goals of the regulatory oversight provided by the rule is more effective control of nonpoint source pollution, the rule is also designed to afford additional protection to critical natural resources.

COMMENT: Many people affected by the rule were caught unaware because of the emergency nature of the proceedings. This has created a situation of real financial hardship for many individuals. The Department in adopting the concurrent proposal should take this into consideration by exempting projects which have investments of "soft costs" projects with local approvals pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and projects that constitute "infill" situations where all necessary infrastructure is already in place.

RESPONSE: The "grandparent" provisions of the rule at N.J.A.C. 7:7-2.3(g) received more comment than any other aspect of the rule. The Department recognizes that the emergency nature of the proceeding does subject many projects that have local approvals or "soft cost" investment in project design to additional permitting standards. The permitting policies and performance standards in the Rules on Coastal Resources and Development, N.J.A.C. 7:7E, ensure that project design is environmentally sensitive and incorporates state-of-the-art pollution controls while allowing, in most cases, for permit approval. The Department is considering the recommendations of these commenters for possible inclusion in future rulemaking.

COMMENT: The finding of "imminent peril" based in part on water quality considerations is not consistent with recent press releases stating that coastal water quality is better today than 10 or 20 years ago.

RESPONSE: Although substantial water quality improvements have been made in the last 10 to 20 years in the area of wastewater treatment and, in fact, water quality is better today, the Department's goals as expressed in its Surface Water Quality Management Plan and Surface Water Quality Standards, N.J.A.C. 7:9-4.1 et seq., are to maintain and protect designated beneficial uses such as shellfish harvesting, primary and secondary contact recreation, and any other reasonable uses. Although control of point source pollution has been the focus of the Department's activities to date and has resulted in improved coastal water quality, control of point source pollution alone is not sufficient to meet these goals. Nonpoint source problems continue, however. A case in point is the Navesink River. Despite the fact that point sources of pollution are regulated, this 95 acre watershed has been closed to the direct harvesting of shellfish since 1974 because of pollution. Further, closure of back bay beaches to swimming is often attributable to high bacteria counts associated with storm events and runoff from developed land. Pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Department has a mandate to address both point and nonpoint source pollution and to continue to effect improved water quality in the State.

COMMENT: The rule is not readily understandable by the regulated public. The "first substantial land use" focus of the rule at N.J.A.C. 7:7-2.3(a)2 results in a variable boundary which is not logical or equitable. The Department should establish some fixed distance and/or physical or cultural feature to more clearly delimit the waterfront area.

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RESPONSE: The use of the "first substantial land use" criteria reflects the legislative intent of the Waterfront Development Act to regulate all potentially damaging activities proximate to the waterfront. However, the Department will consider the establishment of a fixed limit of jurisdiction relative to tidal waters for future rulemaking.

COMMENT: The rules should be consistent with the non-CAFRA area inland limit of regulated area and with the activities regulated in the non-CAFRA area. The Department, in adopting the concurrent proposal, should loosen the regulatory criteria within the CAFRA area to make them more closely comport with the requirements of the non-CAFRA area.

RESPONSE: The Department, although not adopting this suggestion at this time, will consider it for future rulemaking. It should be noted, however, that more stringent regulation is justified because of the greater environmental sensitivity of the CAFRA area.

COMMENT: The Department should rescind the emergency rule and defer to legislative remedies for coastal development issues.

RESPONSE: Immediate measures to minimize the severe environmental degradation of the coast are necessary and the authority to promulgate such measures has already been granted to the Department by existing statutes. The Department, with the concurrence of the Governor, determined that the rule is necessary to prevent irreversible harm.

COMMENT: The Department should develop an acquisition program to acquire land in order to complement this regulatory initiative.

RESPONSE: The Department has an acquisition plan administered through the Green Acres program. Sites identified for possible acquisition are ranked on a priority basis. The ranking is weighted to reflect the importance of waterfront sites and the recreational and natural benefits they provide. The Department is also actively seeking the approval of legislation to establish a Natural Resources Trust Fund, as well as additional Green Acres funding.

COMMENT: If the rule is made permanent, the Department should make a concerted effort to make the application process less onerous, do away with certain notice requirements, and streamline application requirements.

RESPONSE: The Department has already implemented an expedited procedure to process applications of one to three residential units. Performance data to date indicate the review time from application receipt to decision for such units will average between 30 and 60 days. The Department will use its best efforts to streamline procedures to the extent possible.

COMMENT: The Department, prior to adopting a permanent rule, should explain the scientific data on the sources of nonpoint pollution to tidal waters. How much is attributable to development inside versus outside the waterfront area? What is the basis for the funding of "imminent peril" in 1988 instead of sooner?

RESPONSE: Nonpoint source pollution includes any pollution which comes from diffuse sources, rather than from a specific source such as an outfall pipe or discharge point. Urban/suburban stormwater runoff and agricultural runoff are examples of nonpoint source pollution. Nonpoint source pollution can include sediment, nutrients, pesticides, salts, fecal bacteria, ammonia, hazardous substances, organic chemicals, metals, oil and grease, and other contaminants. These pollutants can adversely impact water supplies, endanger swimmers and contaminate shellfish.

Detailed data concerning the extent amount and source of nonpoint source pollutants is lacking but data which is available indicates that the sources of nonpoint source pollution vary in different portions of the coastal environment. Consequently, many sources and causes should be addressed to prevent coastal water pollution. This rule is just one mechanism to control the problem.

The finding of imminent peril is based on the fact that the cumulative impact of years of development in the waterfront area has reached crisis proportions for the environment.

COMMENT: The Department initiative to regulate more development in the waterfront area should be supplemented by comprehensive regional planning to guide future development adjacent to tidal waters.

RESPONSE: The Department agrees. The Department is considering updates and revisions to the New Jersey Coastal Management Program both to address intensifying land use management problems and to integrate coastal planning into the State Development and Redevelopment Plan that is currently going through a State-local cross acceptance process. In addition, the Legislature has recognized the need for a comprehensive Shore Master Plan, with components concerning shore protec-

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tion, water quality, land use and conservation of natural resources, in the pending legislation (A-122) to establish a Coastal Commission.

COMMENT: The emergency rule has resulted in chaos and significant loss of revenue for the coastal community. The rule has potentially severe implications for the economy of the New Jersey shoreline, both to the owners of houses and to the entire construction industry. In some cases, the rule may render a lot undevelopable. These factors were not addressed in the economic impact statement and should be carefully examined as to the economic impact on the region.

RESPONSE: Workshops to explain the rule have been convened, explanatory material has been developed and distributed, and many pre-application meetings have been held. It is now generally understood that the rule is not a moratorium, that application fees are \$250.00, and that private environmental consultant and attorney services are discretionary and often unnecessary. The Department has balanced the possibility that project costs may be increased or profits reduced against the need for design requirements to avoid environmentally sensitive areas, to incorporate buffers or to upgrade design specification. In most cases, construction projects will be approved, with conditions, so that home owners and the construction industry will suffer minimal adverse economic impact.

COMMENT: The Department should hold more than one public hearing to solicit comments from the members of the regulated public who could not appear in Toms River on November 22, 1988.

RESPONSE: Although only one public hearing was held, all members of the public were given the opportunity to submit written comments. Approximately 250 people attended the public hearing, 29 of whom testified. Over 300 letters and 1,033 postcards have been received thus far, reflecting widespread public participation.

COMMENT: The Governor's moratorium that immediately preceded the enactment of the Freshwater Wetlands Protection Act provided an avenue of relief for property owners in cases where the Executive Order presented financial hardship. A similar appeal process should be incorporated as part of the adopted rule.

RESPONSE: This rule does not impose a moratorium and does not prohibit building. Instead, it requires a Waterfront Development Permit for non-exempted projects. The permitting process, like most permit programs, provides appeal procedures.

COMMENT: The rule should not apply to a property owner with a vacant lot who wants to build a single family dwelling in an already developed coastal area where infrastructure is in place.

RESPONSE: The Department process for reviewing permit applications, as set forth in the Rules on Coastal Resources and Development, N.J.A.C. 7:7E, involves three steps: (1) an assessment regarding specific environmentally sensitive areas; (2) assessment of the development potential of the site (that is, infill, sewer and road status); and (3) assessment of proposed development in terms of its effects on various resources of the human-made and natural environment. If a project site involves no environmentally sensitive areas, has adequate supporting infrastructure and is designed to minimize impact on the environment, the review will be straightforward, and a permit approval is likely to be issued.

COMMENT: The cumulative impact of numerous "under 25 unit" developments strung out along the shore line has resulted in demonstrable losses to coastal resources. It is imperative that all coastal development come under a uniform State review process and that such a rule be strengthened to include provisions for regional planning.

RESPONSE: This rule is a step towards such a uniform State review process. Further progress towards this goal must await the enactment of the legislation to establish the Coastal Commission.

COMMENT: The new rule creates a severe negative impact upon thousands of property owners who have committed time, effort and savings toward projects that in no way relate to or impact the coastal area.

RESPONSE: If a project is in the area encompassed by the rule, there is a potential for impact on the coastal area. If the project is such that it will not cause environmental problems, it is likely that a permit can be obtained.

COMMENT: The Coastal Area Facility Review Act threshold of 25 units is a development loophole that threatens the integrity of natural resources along the coast. The number of sub-CAFRA projects in the coastal area is evidence that towns, left to themselves, usually opt for growth and development. The practice of allowing growth to be managed at the local level should be curtailed before more damage is done.

RESPONSE: The Department acknowledges that the 24 unit threshold is a problem. The rule is intended to preserve and maintain the waterfront

area and minimize environmental degradation thereto through additional State land use controls.

COMMENT: The rules obviously will not solve all of the State's ocean pollution problems. They do, however, show a concern and commitment to strong coastal management and enhance the Department's protection of the State's precious coastline. The rules enable the Department to regulate development to insure that new or expanded developments employ proper management practices for stormwater runoff and nonpoint pollution. The rules give the agency the authority to require that ocean-front development be set back sufficiently to avoid excessive erosion and to protect dunes and beaches. The rules will allow the Department to exercise regulatory oversight to control chipping away of open space and habitat in the coastal area. Lastly, the rules allow the Department to ensure that new coastal development does not unreasonably limit public access to waterfront.

RESPONSE: The Department acknowledges this comment in support of this rule.

COMMENT: The rule constitutes an inadequate remedy to a problem far beyond the scope of the Governor's executive powers. The problem of attaining a clean ocean can only be attacked by identifying and addressing the source of the pollution and working toward a resolution of the problem.

RESPONSE: The rule, promulgated pursuant to and in accordance with existing statutory authority, is a step toward that goal in that it addresses some of the sources of marine and estuarine pollution.

COMMENT: Several commenters expressed support for the rulemaking action because development on property in the coastal zone adjacent to tidal waters has caused environmental degradation and has the potential to further harm the environment.

RESPONSE: The Department acknowledges these comments in support of the rule.

COMMENT: The rule should exempt one and two family homes.

RESPONSE: The Department will consider this comment for inclusion in future rulemaking.

COMMENT: If the State, the Governor and the Department feel compelled to protect waterfront lands by appropriating them without due compensation, then their motives can only be seen as totalitarian. If the State wants to stop or control development, the best method is to make the cost of development, ownership and use reflect the true costs (including anti-pollution costs) given reasonable standards of water quality.

RESPONSE: The rule establishes a permit procedure that will impose construction constraints in some cases and performance requirements in most cases. It is anticipated that this process will make the cost of development reflect true environmental costs. The rule does not so deprive property owners of the use of their land such that compensation is required.

COMMENT: It is imperative that property owners be allowed to retain their property rights on Long Beach Island.

RESPONSE: The Waterfront Development Act, N.J.S.A. 12:5-1 et seq., allows the Department to regulate certain activities in order to protect the waterfront area. The rule will affect the ability of property owners to develop their land as they choose. Development decisions will have to take into consideration environmental impact concerns. There is no basis for treating Long Beach Island differently from other portions of the environmentally sensitive coastal area.

COMMENT: Who determines the inland limits of dunes, beaches and overwash areas?

RESPONSE: The Department's rules on Coastal Resources and Development at N.J.A.C. 7:7E set forth the definitions of these terms.

COMMENT: Can the Department demonstrate the negative impact of a particular project on the ecosystem?

RESPONSE: By applying the specific standards and guidelines in the Rules on Coastal Resources and Development, N.J.A.C. 7:7E, to each project covered by the rule the impact of a particular project can be assessed.

COMMENT: One commenter expressed concern that projects subject to this rule will be reviewed using aesthetic standards and questioned how that determination will be made.

RESPONSE: Aesthetic considerations in the form of massing, height and bulk of structures and their effect on views of the natural and/or built environment will be an element of permit review in only a small number of cases, most of which are large projects.

COMMENT: The rule is taking land from people without compensation. The State should compensate people at market value who cannot build on their land because of rules like this. What funds are available

to fully compensate a person who has been denied the use of a property under this rule?

RESPONSE: The rule does not so deprive property owners of the use of their land such that compensation is required.

COMMENT: How does the Department deal with curvilinear wetlands lines in determining affected properties?

RESPONSE: The "waterfront area," the area subject to the rule, is determined for the most part by the inland limit of the property with the first permanent building on it, rather than by the limit of wetlands. In other cases, the limit of the "waterfront area" may be 100 feet inland of a wetland, and, where curvilinear wetlands exist, the waterfront area would be bounded by a curve. The limit of wetlands would be an element of permit review and may involve a field verification visit by Department staff.

COMMENT: If improvements such as roads, curbs and storm drains have already been constructed, does a subdivision still come under the jurisdiction of the rule?

RESPONSE: The Department acknowledges that considerable confusion exists concerning this aspect of the rule. Accordingly, the Department wishes to clarify that the activities described in this comment would serve to exempt that subdivision from the rule, provided that those activities were in progress prior to October 3, 1988.

COMMENT: This rule will help prevent damage to fragile coastal areas from development and storms. The rule needs to be revised to cover land to the first existing structure or 500 feet, whichever is greater. The rulemaking process should include scientific data and extensive public dialogue.

RESPONSE: Although not adopted at this time, this recommendation will be considered for possible inclusion in future rulemaking.

COMMENT: New Jersey is becoming too expensive for our children to live in, or for businesses to move to. Municipalities and the State cannot provide needed infrastructure because of the increased costs of protecting wildlife.

RESPONSE: The Waterfront Development Act strikes a balance between economic development and protection of the waterfront area. While this law may affect development costs, the developability of sites, and the State and local economies as a whole, it is necessary to protect the coastal environment.

COMMENT: The rule should not apply beyond 100 feet from the mean high water line, to comport with the Waterfront Development Act.

RESPONSE: The provisions of N.J.A.C. 7:7-2.3(a)2 are not inconsistent with the Waterfront Development Act.

COMMENT: The Department should provide training for local officials (including construction officials) and inspectors to alleviate confusion and delays at the local level. The training session that was held for local construction officials was not sufficient; such training should be conducted in consultation with the Department of Community Affairs and should include mandatory attendance, an explanation of the rule and its applicability, and a Department contact for questions.

RESPONSE: Since October 3, 1988, the Department has conducted four workshops for local officials and made several presentations to the affected public in a variety of forums. The Department intends to continue this educational program to assist in public understanding of the requirements of this rule. Questions concerning this rule can be discussed with the Department by telephoning 609-292-0060 or 609-633-2289.

COMMENT: Construction along the inland waterways of Atlantic County should not be regulated because it does not pollute the seashore.

RESPONSE: The rule is designed to protect the back bays and tidal waters of Atlantic County and other coastal counties.

COMMENT: The Department needs to do a better job of communicating with the affected public. The Department should have representatives in every town to deal with individual problems and address the many misconceptions associated with the rule like this.

RESPONSE: The Department's Bureau of Coastal Enforcement and Field Services, with offices in Toms River, Pomona, and Trenton, communicates on a daily basis with local officials and the affected public regarding rule applicability. Department staff are available to conduct pre-application conferences upon request. The Department has communicated the substance of the rule to the regulated community through a variety of forums.

COMMENT: One commenter challenged the Department's statutory authority for the rule and claimed that the rule exceeds the scope of the Waterfront Development Act as interpreted in a 1980 Attorney General opinion.

RESPONSE: As stated above, the Department's authority to promulgate this rule can be found in N.J.S.A. 13:1B-3, 13:1D-1 et seq.,

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13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq. It would not be appropriate to respond further at this time due to pending litigation on this issue.

COMMENT: The Department should concern itself with developing regulations and spending the \$33.5 million recently authorized by the Legislature and enacted by the Governor to correct overflow pipes rather than with expensive land use regulation.

RESPONSE: The Department is attempting to address natural resource protection issues on many fronts. The recent legislation is currently being implemented.

COMMENT: The suggestion that nonpoint source pollution (storm-water runoff) is caused by single family land owners is absolutely false.

RESPONSE: There is substantial documentation of the cumulative impacts from single family homes, including pollutant runoff from non-point source pollution impacts. These impacts include lawn fertilizers, pet waste, and oil and grease from cars.

COMMENT: Does the State of New Jersey provide pump-out stations for boats in State-owned marinas?

RESPONSE: The State has acquired pump-out facilities for each of its State-operated marina facilities and has established a schedule to install and operate them as soon as possible.

COMMENT: Change the rule to allow additions to homes.

RESPONSE: Additions of up to 1500 square feet to existing structures, do not require a waterfront development permit. See N.J.A.C. 7:7-2.3(d)4.

COMMENT: There are numerous examples of the Department allowing municipalities to ignore and violate the standards of their wastewater permits in anticipation of the time when they would be disconnecting from their primary plants and reconnecting to regional sewage authorities. Did the Department attempt to study the additional degradation of the environment associated with this practice?

RESPONSE: Through its water monitoring program, the Department has generated and reviewed data detailing the water quality impact resulting from permit violations as well as other discharge sources. Violations of permit standards are, and will continue to be, addressed by the Department's enforcement program.

COMMENT: What is the justification for imposing these rules in just the coastal zone, when there is concern for point and nonpoint pollution along all of our bays and estuaries and the littoral drift along our coastline is from the north to the south?

RESPONSE: Prior to 1980, the Waterfront Development Act was applied generally to developments in the waterfront area. Since 1980, the Department has regulated the upland area adjacent to all tidal waters outside the CAFRA area, but only to projects at or below the mean high water line within the CAFRA area. This rule is necessary due to the particular sensitivity of the coastal area, as well as the cumulative adverse impacts which have occurred in that area. The direction of the littoral drift does not prevent these adverse impacts.

COMMENT: This rule violates home rule.

RESPONSE: The rule is within the scope of the Department's existing statutory authority and is designed to add necessary State controls to the local controls already in place in order to adequately protect the sensitive coastal area environment.

COMMENT: The rule will hurt even those persons who can get permits because it will subject them to the Federal Emergency Management Agency (FEMA).

RESPONSE: FEMA will not be involved in the review of projects under this rule. However, the criteria used by the Department in reviewing permit applications includes vulnerability to storm damage which is often best demonstrated by maps prepared by FEMA.

COMMENT: The rule's effective date should be delayed to allow people to prepare for the rule's effects.

RESPONSE: Because delay of the effective date of the rule would exacerbate an already-critical problem, the Department cannot amend the effective date of the rule.

COMMENT: The Department's estimate that a consultant may cost \$5,000 is too low. The application process will cost more.

RESPONSE: It is the Department's estimate that the average cost of preparing an application will range from \$1,000 to \$5,000. This will vary depending on the type of project, upon whether a consultant is needed, and upon which consultant is retained. In most cases, all of the application information required under the rule is also required for local approvals of these projects. Therefore, no additional consultant services should be added by this rule.

COMMENT: Construction in the "V-zone" invites repeat destruction. The commenter supported the concept of denying permit applications in this high hazard zone.

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RESPONSE: "V" zones are areas subject to the force of wave energy during significant storm events. The Department has regulatory standards that strictly regulate residential uses in these areas.

COMMENT: There is a limit to the effectiveness of the rule because it would not regulate development proximate to tidal waters if there is an existing structure in between. The rule is limited in its ability to meaningfully solve nonpoint source pollution problems because of the limited scope of jurisdiction in most instances. For example, it is possible to build 24 units not subject to the State review requirements at a distance less than 200 feet from the water if a building stands between the development and the water.

RESPONSE: Although the Department agrees that management of nonpoint source pollution requires a coordinated, comprehensive watershed approach, such as would be established by the proposed Coastal Commission legislation now pending before the Legislature, this rule is limited by the jurisdiction of the statutes which authorize it. Other programs under other statutes complement the Department's efforts to address nonpoint source pollution problems.

COMMENT: The Department should change the rule such that, if the permit is denied, the permit fee is returned.

RESPONSE: Permit fees are not returned as a result of the denial of a permit because the same Department resources are expended in review of an application, whether or not it is granted or denied.

COMMENT: This is a good rule. It should be made permanent, with no exceptions, even for projects already approved at the local level.

RESPONSE: The Department acknowledges this comment in support of the rule.

COMMENT: In the New Jersey Coastal Management Program, Final EIS, August 1980, the Department stated that CAFRA "constitute(s) the State's land use priorities within the coastal area, and should therefore, apply to the Waterfront Development Act as administered in that area". How can the Department take upon itself the authority to create new law? Obviously, in its August 1980 statement, the DEP acknowledged that the 1914 Waterfront and Harbor Facilities Act is subordinate to CAFRA.

RESPONSE: Knowledge and public perceptions of New Jersey's coast and its environmental and land use problems have changed radically since 1980, and have made it appropriate to reexamine the authority granted by the Waterfront Development Act. The New Jersey Coastal Management Program referred to in the comment also contained the Attorney General's opinion on the upland authority of the Act. This opinion did not indicate that the upland authority did not exist in the area governed by CAFRA. The Department's decision not to adopt an upland jurisdiction in the CAFRA area in 1980 was based on administrative and policy reasons, rather than any legal limitation.

COMMENT: N.J.A.C. 7:7-2.3 now prescribes three different standards for the same physiographic features depending on where it is located in the State. The application of rules pursuant to the Waterfront Development Act which utilizes different standards for these same features creates significant confusion to both the building community and the general public. What justification is there for these differing standards? It is recommended that landward boundaries of this rule be no more than 100 feet landward of the mean high water line.

RESPONSE: Different upland limits are necessary in recognition of the differences between, for example, urban waterfronts and the ocean shore. The Department has tried, and will continue to try, to explain these differences through meetings and graphic publications. The 100 foot maximum recommended in the comment would not even regulate the entire beach in many locations and would, therefore, clearly be inadequate to control most significant types of development.

COMMENT: The Social Impact Statement of the rule proposal states, "Significant portions of the coastal area are now suffering serious adverse environmental effects resulting from countless incidents of waterfront construction to which the provisions of the CAFRA do not apply." Please identify the "countless incidents" where construction activities have affected "significant portions" of the CAFRA area.

RESPONSE: The "countless incidents" refer to the many 24 units or fewer properties built in most shore municipalities. The most dramatic incidents have been the beach closings that have generated national headlines and scared tourists and residents away from the shore. Other incidents of note include the closing of shellfish beds, the destruction of sand dunes to build beachfront houses, the construction of buildings on top of vulnerable seawalls, the increasing unavailability of waterfront sites for marinas, dredge spoil disposal, and other water dependent activities, and the increasing difficulty of gaining adequate, enjoyable public access to the ocean and other waterfronts.

COMMENT: Utilities should not be covered by the rule.

RESPONSE: Utilities can cause negative environmental impacts if they are not properly located and designed. They can also have severe secondary impacts by altering the accessibility of adjacent sites for development. In reviewing applications for utilities, the Department recognizes that an expedited review is often in the public interest.

COMMENT: The rule is excellent and long overdue. It responds to the findings of the Blue Ribbon Panel on Ocean Incidents and will benefit the fishing and tourism industries. The rule is well within the intent and authority of the Waterfront Development Act. The rule should be amended, however, to require a 1,000 foot buffer between any development and mean high tide.

RESPONSE: The Department acknowledges this comment in support of the rule. The Department may consider these suggestions in future rulemaking proceedings.

COMMENT: If a road or highway stands between a property and the water, the property should not be subject to the rule.

RESPONSE: The Department has received various suggestions for delimiting the inland scope of this rule, such as this one. The Department will consider these recommendations for future rulemaking.

COMMENT: Specific development guidelines should be established and then only these projects which do not meet those guidelines should be required to obtain a permit.

RESPONSE: These guidelines are not currently available; accordingly, it is necessary to perform a case-by-case review pursuant to the Rules on Coastal Resources and Development to ensure protection of the environmentally sensitive coastal area.

COMMENT: Only new developments should be subject to the rule, not current homeowners.

RESPONSE: Development activities performed by current homeowners are no less environmentally damaging than new development activities.

Summary of Public Comments Received December 2, 1988 through December 7, 1988, and Agency Responses:

On October 3, 1988, the Department, with the concurrence of the Governor, adopted an emergency rule concerning waterfront development. The text of the emergency rule, as well as notice of the concurrent proposal, appeared in the November 7, 1988 New Jersey Register (20 N.J.R. 2815(a)). A public hearing concerning the concurrent proposal was held on November 22, 1988. The comment period closed on December 7, 1988.

The concurrent rule proposal was adopted on December 2, 1988 subject to the consideration and review of additional comments received by the Department after December 1, 1988 and before December 8, 1988. Those comments included 567 letters, 259 postcards and several petitions bearing multiple signatures. Several of the comments did not address the proposal, but rather discussed the Coastal Commission legislation (ACS-122) currently before the State Legislature.

Having reviewed the comments received from December 2, 1988 through December 7, 1988, the Department has determined that no further action on this rule adoption will be taken at this time. However, in this issue of the New Jersey Register, the Department is proposing changes to N.J.A.C. 7:7-2.3, which changes are responsive to many of the comments received regarding this rule adoption.

The comments received by the Department from December 2, 1988 to December 7, 1988 are summarized and responded to below.

COMMENT: The rule should regulate all counties which contribute to nonpoint source pollution including Union, Hudson, Camden, Gloucester, Salem, and Cumberland counties as well as the coastal region.

RESPONSE: The provisions of N.J.A.C. 7:7-2.3 apply to upland waterfront land use in all New Jersey counties that contain tidal water. In Union, Hudson, Camden, Gloucester counties and parts of Salem County, this authority has been exercised since 1980. With the October 3, 1988 adoption by emergency proceedings and the adoption of the concurrent proposal on December 2, 1988, this rule has been expanded to also encompass the waterfront within the Coastal Area Facility Review Act (CAFRA) area.

COMMENT: Instead of this rule, new CAFRA guidelines should be written and CAFRA should be changed to regulate less than 25 units. This would better address the problem.

RESPONSE: The Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. (CAFRA), defines those facilities regulated and includes "[n]ew housing developments of 25 or more dwelling units or equivalent," N.J.S.A. 13:19-3c(5). Any amendment to this statute requires action by the Legislature and the Governor.

COMMENT: The Department should license and certify all builders, developers and marine contractors that perform construction requiring waterfront development permits.

RESPONSE: At this time, the Department has no plans to create a licensing and certification program for builders, developers and marine contractors. Such a procedure would divert limited Department dollars and personnel from the environmental protection goals which are the mandated duties of the Department and is clearly beyond the scope of the proposal.

COMMENT: An emergency rule should be issued to close the Ciba-Geigy outfall pipe and all outfalls into the Hudson and Raritan rivers or into tidal waters in the State of New Jersey.

RESPONSE: The Department currently has detailed and stringent regulatory programs in place that are designed to address wastewater outfalls of all types. These include the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program, the Discharge Allocation Certificate program and the Surface Water Quality Management program.

COMMENT: The fee requirements should be bifurcated by having a basic application fee and an additional fee for permit approvals. This will reduce the financial burden on applicants who do not get a permit.

RESPONSE: Permit fees are not returned as a result of the denial of a permit because the same Department resources are expended in review of an application whether it is granted or denied. Fees serve to cover the costs of application review and are not intended to serve as a tax on projects approved for development.

COMMENT: The permit process should be handled by local municipal regulatory officers.

RESPONSE: The Coastal Permit Program regulatory review process involves a detailed three step screening process: (1) assessment regarding specific environmentally sensitive areas; (2) assessment of the development potential of the site (that is, infill, sewer and road status); and (3) assessment of proposed development in terms of its effect on various resources of the artificial and natural environment. Until the local framework for making regulatory decisions is substantially changed, as is currently being contemplated in Coastal Commission legislation, it would not be appropriate to shift responsibilities for administering these detailed standards from the Department to local municipal regulatory officers.

COMMENT: The rule should not be changed to exempt one-and-two family homes nor to exempt projects approved before October 3, 1988. The rule is needed "as is" to protect the coastal environment and to prevent ocean pollution.

RESPONSE: The Department acknowledges this comment. However, see proposed changes to the rule in this issue of the New Jersey Register.

COMMENT: Permit issuance should never take more than a week, and inspectors' salaries should be increased to encourage competent people to stay. Homeowners should be able to rebuild their homes under any circumstances.

RESPONSE: A one week permit application review process is insufficient time to properly review each application. The salaries of Department inspectors are established relative to all other State employees and all State positions have threshold requirements that must be met before hiring. With respect to completely exempting the rebuilding of any home, the Department will consider this exemption in future rulemaking.

COMMENT: The rule uses a subordinate rule (the Waterfront Development rules) to alter a statute, that is, CAFRA.

RESPONSE: The rule does not alter CAFRA, but merely adds further controls on development in the shore area under the authority of a separate, not subordinate, statute, the Waterfront Development Act, N.J.S.A. 12:5-1 et seq.

COMMENT: We should be able to rebuild our homes in case of fire or flood. It will be too hard to determine what amount of damage to a home is 51 percent destroyed.

RESPONSE: N.J.A.C. 7:7-2.3(d)3 specifically exempts from permit requirements those structures damaged or destroyed, in whole or part, by fire, storms, natural hazards or other act of God.

COMMENT: Notice requirements included in the application for the waterfront development permit are improper because they are not in the waterfront development rules.

RESPONSE: Notice requirements for waterfront development permit applications are specifically provided in the Coastal Permit Program Rules at N.J.A.C. 7:7-4.2.

COMMENT: This rule is necessary because we are destroying the New Jersey shore. No other state allows such unregulated and destructive development on their coast as we do.

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RESPONSE: The Department acknowledges this comment in support of the rule.

COMMENT: The rule should have a hardship exemption for people who are in the application process but have not received formal approvals. Hardships should be considered on a case by case basis and should consider financial hardship to the applicants.

RESPONSE: If approvals have not yet been issued, severe economic hardship is not likely to result from the October 4, 1988 effective date of the emergency rule.

COMMENT: This rule will prohibit me from siding my house because the cost of the permit will be too high.

RESPONSE: The rule, at N.J.A.C. 7:7-2.3(d)4, exempts expansions and enlargements of existing structures up to 1500 square feet. Therefore, siding a house does not require a waterfront development permit.

COMMENT: This rule will prevent a small backyard aquaculture operation which uses only temporary structures, yet the Department of Agriculture is encouraging these operations. The State agencies are contradicting each other.

RESPONSE: The Department's permitting standards at N.J.A.C. 7:7E-4.11(b) specifically encourage aquaculture. Although subject to permitting requirements, temporary structures to support an aquaculture operation would likely be approved.

COMMENT: The pollution problem should not be addressed in this way; it should be put before the citizens by referendum.

RESPONSE: The danger of irreparable damage to the fragile coastal environment required immediate protective action on an emergency basis. A referendum on such a complex issue would have been extremely time consuming. The authority to promulgate N.J.A.C. 7:7-2.3 has already been granted to the Department by existing statutes.

COMMENT: Landowners who have owned their land for many years should be exempt.

RESPONSE: The environmental damage caused by development is the same regardless of the length of time a property has been owned by a single person.

COMMENT: Permit application costs of \$1800 to \$15,000 are unreasonable.

RESPONSE: The Department does not expect permit costs to be this high, but rather believes that the costs associated with obtaining a permit would range from \$1,000 to \$5,000. The permit fee itself is \$250.00. Additional costs, if any, would probably stem from consultants' fees. Since the Department, through its Division of Coastal Resources, offers pre-application services at no charge, many applicants will not need the assistance of consultants.

COMMENT: What should an applicant provide to the Department to obtain a determination that a project is exempt from the rule?

RESPONSE: To obtain information on exemptions or applications, call one of the following Department offices: Toms River—(201) 286-6428; Pomona—(609) 652-0004; or Trenton—(609) 292-8203.

COMMENT: The Department's information regarding the rule states that the Department in making its permit determination will consider what use the site is best suited for. What if the municipality and the State disagree on the best use for a site?

RESPONSE: The Department's information package concerning the rule indicates that the permit review process involves analyzing a proposed project with reference to location, use, and resource policies. The Department does not dictate to the applicant what is the best use of the site. Rather, the Department responds to a proposed use on a site and makes an acceptability determination using the specific regulatory standards set forth at N.J.A.C. 7:7E.

COMMENT: Will a new single home be disapproved even if the lot is the only vacant lot in a developed area?

RESPONSE: Depending on the specific facts, the new single family home will be subject to the permit requirements of the rule. However, it is likely that a permit would be granted.

COMMENT: Permits should only be required for filling and construction, not for the broad categories in the rule.

RESPONSE: Other activities besides filling and construction must be regulated because they can be equally damaging to the environmentally sensitive coastal environment.

COMMENT: The permit process should be streamlined by deleting the requirement of a statement of compliance.

RESPONSE: The compliance statement requirement actually helps speed application review by prompting an applicant to assess project impacts and design specifications as well as by optimizing limited State staff resources. The result is better, more environmentally sensitive project

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design prior to application submittal and a concomitantly shorter review time for the permit application.

COMMENT: To be consistent with due process requirements, exemption provisions should be added to the rule that match those outside the coastal area.

RESPONSE: The differences in scope of regulation of the waterfront between the CAFRA and non-CAFRA areas reflects differing environmental and resource protection concerns.

COMMENT: The construction of single family homes along substantially developed internal lagoons should be exempted.

RESPONSE: If a project is in the geographical area covered by the rule, there is a potential for impact on the coastal area. It is the purpose of permit review, in part, to assess the impact. If a project site involves no environmentally sensitive area, has adequate infrastructure and is designed to minimize impact on the environment, the review will be straightforward and a permit is likely to be issued.

COMMENT: It is not clear from the rule how residential subdivisions will be treated.

RESPONSE: Subdivision which involves only the dividing of a lot, tract or parcel of land into two or more lots, tracts or parcels would not be subject to the rule because it does not involve a regulated construction activity. Only those activities listed at N.J.A.C. 7:7-2.3(d) are subject to the rule.

COMMENT: Where a project is exempt from CAFRA and has a long permit history with waterfront development, riparian and wetlands approvals, it should be exempt from this rule.

RESPONSE: One of the principal objectives of the rule is to control haphazard development in the waterfront area which is not subject to other coastal statutes. There is no basis to exempt projects exempted under CAFRA or projects which were permitted under other statutes.

COMMENT: We urgently need greater protection for our air, water and remaining open space so vital to the endangered health of our ecosystem.

RESPONSE: The Department acknowledges this comment in support of the rule.

COMMENT: No permit should be required for expansion or enlargement of any existing single family dwelling provided all phases of expansion or enlargement meet local zoning requirements and that no phase of such expansion or enlargement is nearer to the shore line than the existing structure.

RESPONSE: Although any expansion may have an adverse environmental impact, the Department has provided a 1500 square foot exception for expansion of existing homes. The Department will continue to require a permit for such expansion if it exceeds 1500 square feet. This requirement is necessary because of the environmentally sensitive nature of the coastal area. Zoning restrictions and the suggested shore line limit are insufficient to adequately protect against construction impacts.

COMMENT: The commenter supported allocation of additional funding for the Division of Coastal Resources to carry out the permitting process expeditiously and to capably enforce current and future violations.

RESPONSE: The Department is taking steps to increase staff size to reflect the additional workload.

COMMENT: The rule is too broad and general and creates many instances of individual hardship while doing nothing to protect the environment.

RESPONSE: The Department acknowledges that this rule will have economic consequences on some property owners in the coastal area, including small property owners. However, the cumulative environmental degradation caused by multiple development projects, including impacts from small projects, illustrates the need for increased environmental controls.

COMMENT: All lands with an unobstructed view of tidal water and within a distance of one mile should be preserved.

RESPONSE: The rule establishes authority within the waterfront area to review and approve development activities. Its purpose is to ensure that waterfront development in the coastal area incorporates adequate safeguards to protect public health, safety, welfare and the environment, not to preserve all land within some fixed distance of tidal water.

COMMENT: Development in the CAFRA area must be more prudently managed. Permanent adoption of the waterfront rule is an important step in that direction.

RESPONSE: The Department acknowledges this support for a permanent rule.

COMMENT: The Department should identify critical littoral and open space areas that warrant preservation in this natural state. To support this objective, the Department should champion all avenues, including appropriations, bond issues, voluntary dedication and cooperation with foundations to acquire these areas as soon as possible.

RESPONSE: The Department has and will continue to inventory critical lands, identify acquisition areas and lobby for natural resource preservation funds. Examples of inventories include: a mapping of shorebird, colonial waterbird, and endangered species habitat in the coastal zone; a \$4 million inventory of freshwater wetlands throughout the State to be completed over the next three to four years; the existing mapping of 250-300,000 acres of tidal wetlands at a scale of 1:2400; and map and inventory information concerning submerged vegetation in estuarine environments of the State. The Department also has an acquisition plan administered through the Green Acres program and is actively supporting legislation to establish a Natural resources Trust Fund, as well as additional Green Acres Funding.

Full text of the adoption follows. N.J.A.C. 7:7-2.3 has been printed below in its entirety for the convenience of the public.

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowlands Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:19-4), the regulated waterfront area shall consist of the area described in (a)1 above, and extend inland to include an adjacent upland area measured from the most inland beach, dune, wetland or other water area, as these terms are defined in N.J.A.C. 7:7E, to the greater of:

- i. One hundred feet; or
- ii. The inland limit of the first property associated with residential, commercial or industrial use that involves a permanent building based on property lines existing on October 3, 1988; provided, however, should the Division issue a Waterfront Development Permit after October 3, 1988 for a use involving a permanent building, upon project completion the inland limit for purposes of this subparagraph shall be the inland property boundary associated with this permit.

3. In all other areas of the State (that is, in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall consist of the area as described in (a)1 above, and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 (the effective date of these rules) generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

(b) This subchapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The following development activities will require a permit in that portion of the waterfront area at or below mean high tide:

1. The removal or deposition of sub-aqueous materials (for example, dredging or filling);
2. The construction or alteration of a dock, wharf, pier, bulkhead, breakwater, groin, jetty, seawall, bridge, piling, mooring, dolphin, pipeline, cable, or other similar structure;
3. The mooring of a floating home for more than 30 consecutive days. Floating homes in use within the waters of this State prior to June 1, 1984 shall not require a permit (See N.J.A.C. 7:7-2.1(b) for a definition of a floating home.);
4. Dredging, the installation of aids-to-navigation, or other similar activities directly related to navigation will not require a permit when conducted by an agency of the United States Government, nor will the installation of temporary aids to navigation by any person, provided that it is in place for no more than seven days;
5. The repair, replacement or renovation of an existing dock, wharf, pier, floating dock or similar structure will not require a

permit, provided that the repair, replacement or renovation does not increase the size or dimension of the structure, and that the structure is used solely for residential purposes, or for the docking or servicing of pleasure vessels. For the purposes of this section, "repair, replacement or renovation" means the replacement of any component of a structure intended to restore it to a sound state or to the condition in which it originally existed.

(d) A permit shall be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filing of any area with the exceptions listed below:

1. In the waterfront area defined in a(3) above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet inland from the mean high water line;

2. In the waterfront area defined in a(3) above, the reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet inland from the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5000 square feet;

3. In the area defined at (a)2 above, in the event of damage or destruction, in whole or part, by fire, storms, natural hazards, or other acts of God, reconstruction of any existing building not resulting in a greater footprint or total area than that of the damaged or destroyed building;

4. In the area defined at (a)2 above, the expansion or enlargement of any existing structure, conducted in one or more phases on or after October 3, 1988, such that the total area of all phases of expansion or enlargement is less than 1500 square feet;

5. Minor additions to or changes in existing structures or manufacturing operations, where such changes or additions do not result in a change in the present land use of the site;

6. The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

7. The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed facility does not require a permit under (d) above.

1. The requesting party shall provide the Division with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and a project description. When the applicability determination request is based on a proposed facility's location in accordance with paragraphs (a)2 and 3 above, the map shall depict that property line as it is depicted on the official tax map as of September 26, 1980, for the area defined in (a)3 above, and October 3, 1988, for the area defined in (a)2 above, shall delineate the mean high water line, and shall graphically depict the proposed project.

2. The Division shall, within 30 days of receipt, return the map to the requesting party, indicating on the map the waterfront area boundary and its relationship to the project site.

(f) A permit is required for the additional filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)2 above.

1. A permit application submitted under this subsection must be submitted in conjunction with an application for a Tidelands grant, lease or license.

(g) This subchapter shall not apply to any development or activity in the upland area defined in (a)3 above and in man-made waterways and lagoons for which on-site construction, including site preparation, was in progress on or prior to September 26, 1980 or to any development or activity in the upland area defined in (a)2 above for which on-site construction, excluding site preparation, was in progress on or prior to October 3, 1988.

1. Any person who believes that a proposed facility is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Division.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Division to determine that the physical work specified in (g) above necessary to begin the construction of the proposed facility was actually performed prior to September 26, 1980, for the area defined in (a)3 above, and prior to October 3, 1988, for the area defined in (a)2 above, the effective dates of these provisions.

i. Any interruption in the process of construction and completion of the facility in excess of one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Division.

ii. A finding that a proposed facility is exempt from the requirements of this subchapter shall apply only to the facility as conceived and designed prior to September 26, 1980, for the area defined in (a)3 above, and prior to October 3, 1988, for the area defined in (a)2 above. Any modification which expands or substantially changes the exempted facility, and which would not be classified as a minor modification under N.J.A.C. 7:7-4.10, shall require a permit.

DIVISION OF WATER RESOURCES

(a)

Safe Drinking Water Program Fee Schedule

Adopted Amendments: N.J.A.C. 7:10-10.2 and 11.2 Adopted New Rules: N.J.A.C. 7:10-15

Proposed: January 19, 1988 at 20 N.J.R. 142(a).

Adopted: December 8, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 9, 1988 as R.1989 d.28, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:12A-1 et seq., specifically 58:12A-9, and N.J.S.A. 58:1A-1 et seq.

DEP Docket Number: 068-87-12.

Effective Date: January 3, 1989.

Expiration Date: September 4, 1989.

AGENCY NOTE: On August 3, 1987, the New Jersey Department of Environmental Protection ("Department") proposed rules for a Safe Drinking Water Fee Schedule (see 19 N.J.R. 1381(a)). A public hearing on the original rule proposal was held on August 26, 1987, at which three people testified. Nine written comments were received by the Department by the close of the public comment period on September 2, 1987. On January 19, 1988, the Department repropose these rules in order to add new language which clarifies the procedure by which the Department charges fees for the Safe Drinking Water Program. Three additional comments were received by the Department by the close of the public comment period on February 18, 1988. No additional public hearings were scheduled. The comments to the original proposal and reproposal are set forth below:

Summary of Public Comments and Agency Responses:

COMMENT: One commenter stated that the rule will not have a positive social impact.

RESPONSE: As is more fully set forth in the notice proposal, a positive social impact will result from the adoption of the proposed rules. Through the fee schedule mechanism, the rules provide funding which will enable the Department to carry out its Safe Drinking Water Program Management functions. New Jersey is a densely populated state, and its economic development requires substantial water supply systems. It is of critical

importance to future State development that the quality, distribution, and use of its water systems be effectively regulated.

COMMENT: One commenter inquired as to how the Department estimated that fees for permits for construction of new facilities would be approximately \$241,000.

RESPONSE: The amount was based upon an estimate of the number of construction projects which the Department anticipates will be submitted to it for review under the new fee program during its first year of operation.

COMMENT: One commenter suggested that entry level or trainee personnel implement the program in order to save money. Individual salaries and "indirect costs" should be set forth. Costs for purchasing and renting vehicles should be explained.

RESPONSE: The evaluation of public water supplies is too vital and complex to be performed by trainee or entry level personnel. Salaries are commensurate with those for other, comparable State positions. Individual salaries will depend upon the qualifications and experience of individual staff members. All the costs of the program are set forth in the Economic Impact Statement of the notice of proposal. Vehicles are necessary because program activities require extensive travel to water purveyors and water suppliers throughout the State.

COMMENT: One commenter requested that the Department provide a definition of "physical connection".

RESPONSE: A definition of the term was proposed in N.J.A.C. 7:10-15.3. The definition is being adopted without change.

COMMENT: Two commenters requested that the Department explain how the annual operation fee would be assessed for a small municipally operated water department that is comprised of several independent and non-integrated water systems.

RESPONSE: Water departments that are comprised of several independent and non-integrated water systems will be assessed an annual operation fee based upon the population served by each independent system and whether or not the independent system provides water treatment. Investor-owned utilities which operate multiple independent non-integrated systems shall be assessed fees in a similar manner.

COMMENT: One commenter requested that the Department explain how fees will be assessed to public community water systems that bulk purchase some but not all of the water delivered to consumers.

RESPONSE: The public community water system will be assessed an annual operation fee based upon the population served by the system and whether or not the system provides water treatment.

COMMENT: One commenter stated that the cost of the annual operation fee and water treatment fee imposed on public community water systems be automatically passed on to consumers without a petition to the Board of Public Utilities for a rate increase, a process which is expensive and time-consuming. The commenter referred to the amendments to the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., commonly known as the "A-280 amendments", which contain a specific provision allowing for a water tax that is automatically passed on to a customer based upon the volume of water used, as an example of a "pass-along" that should be incorporated into the rules.

RESPONSE: Approval of a "pass-along" of the annual operation fee requires a legislative amendment to the Safe Drinking Water Act as in the case of the A-280 amendments.

COMMENT: Several commenters requested clarification of how the Department will assess construction fees and fees for holders of physical connection permits. These commenters stated that the Department's Safe Drinking Water Program is placing an unnecessary financial burden on municipalities in terms of the bureaucratic involvement now required to initiate any essential capital project.

RESPONSE: Construction fees shall be assessed in accordance with N.J.A.C. 7:10-15.7. At the present time, significant additions, alterations and modifications to existing public community water systems require a permit issued by the Department. A similar permit is also required when constructing an entirely new public community water system, in accordance with N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems. Owners or operators of public community water systems shall pay a permit application fee based upon the project construction costs at the time of application for approval by the Department.

N.J.A.C. 7:10-10.2 provides background and general information concerning physical connections. The purpose of a physical connection is to protect a public community water system from the backflow of a water supply which may be contaminated, of questionable quality, or over which the water purveyor has little or no control. With respect to fees,

the applicant for a physical connection permit shall pay the initial fee for the physical connection permit upon application in accordance with N.J.A.C. 7:10-15.8. The initial physical connection permit fee shall be \$150.00 per connection, and the annual physical connection fee shall be \$200.00 per connection. N.J.A.C. 7:10-15.7(b) sets forth how public community water systems are classified according to population, and it is on this basis that annual operation fees are assessed. Annual operation fees range from \$60.00 for small water systems (serving less than 1,000 people) to \$3,280 for the largest water systems (serving 50,000 or more people). The Summary statement set forth before the text of the proposed amendments and rules provide the background for the rules and explains the Department's responsibilities for administering a regulatory program that ensures that the water supply systems of the State are managed in a way that will protect delivered water quality, volume, and pressure and provide the people of the State with high quality potable water. The economic impact of the Department's actions is less than \$1.00 per consumer per year.

COMMENT: One commenter who owns and operates a small mobile home park objected to any additional increase in the cost of operating that mobile home park water system. The owner and operator suggests that systems serving less than 1,000 consumers be exempt from all fees, and that systems which do not have treatment facilities be likewise exempted from treatment fees.

RESPONSE: There are approximately 250 public community water systems serving less than 1,000 consumers throughout the State, and they serve a small fraction of the total population who receive their water from public community water systems. Revenues from fees assessed to these systems account revenues for less than 10 percent of the total projected and reflects careful consideration of the ability of small purveyors to assume additional operational expenses. The Department considers the annual operation fee assessment to all water systems to be fair and equitable. Note that small water systems that do not provide treatment facilities (less than 100 service connections) are not required to pay an annual operation treatment fee. All others are required to pay a fee.

COMMENT: Two commenters inquired concerning the classifications of their water system.

RESPONSE: The Department will review these requests by reclassification and respond by letter.

COMMENT: One commenter inquired concerning where the sanitary engineering features discussed in the proposed rules are set forth.

RESPONSE: The sanitary engineering features are set forth in N.J.A.C. 7:19-6 of the Water Supply Management rules.

COMMENT: One commenter stated that the proposed rules did not consider varying water pressures found throughout the State.

RESPONSE: Water pressure requirements and restrictions based upon geographical considerations are not addressed by the rules. Normal variations in water pressure range from 20 to 100 pounds per square inch. Service to consumers is not affected by whether water pressure is in the lower or higher part of the range. Moreover, individual water supply systems will experience variations in water supply pressures. The fees in the rules were based upon construction costs and system size. Thus, variations in water pressure were not considered as criteria for determining fees. The rules set forth fee procedures which fund the Department's monitoring of water supply facility construction. Water pressure requirements and geographical considerations are addressed in the design phase of water supply construction project. These issues are addressed in N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems.

COMMENT: One commenter inquired as to the Department's goals concerning safe yields and water conservation.

RESPONSE: The Department is currently developing programs in these areas, and intends to establish a safe yield capacity for all class 2 and class 3 water purveyors which will ensure system ability to meet normal demand requirements during a period of drought. Additionally, the Department is actively engaged in increasing public awareness of the need for water conservation practices, and is requiring water purveyors to submit comprehensive water conservation plans for review and approval.

COMMENT: One commenter suggested that the fee program be audited annually in order to determine if the level of funding is appropriate to support the program, if collection efforts are adequate, and if revenues collected are adequate.

RESPONSE: The fees collected pursuant to the adopted rules will be used to accomplish the stated objectives of the Safe Drinking Water Act. All accounting and billing procedures will be in accord with present State procedures and the requirements of N.J.A.C. 7:10-15.5.

COMMENT: One commenter inquired how surplus funds produced by the program will be utilized.

RESPONSE: The Department does not anticipate that the program will produce a surplus.

COMMENT: Several commenters submitted comments concerning the legislative authority to initiate a fee schedule. They contended that additional program activities of the Bureau of Safe Drinking Water are mandated by the Water Supply Management Act and should be funded pursuant to that statute. Alternatively, the cost of implementing the fee program should be drawn from the General State Fund rather than from fees. Other sources of funding should be considered.

RESPONSE: The Legislature enacted the New Jersey Safe Drinking Water Act and the Water Supply Management Act to improve water supply availability and to ensure adequate water quality. In order to accomplish some of the goals of the Water Supply Management Act, the Bureau of Safe Drinking Water was reorganized. This was achieved by adding a section of personnel experienced in water supply activities. The section was assigned the responsibility for implementing the Water Supply Management Act through activities associated with the interconnection, safe yield analysis, unaccounted for water data, water conservation, systems rehabilitations, systems pressure and storage programs. These activities will improve the general reliability of public community water systems. The anticipated cost of the Safe Drinking Water program will exceed anticipated revenues from the current sources of funding (General State funds, Federal Safe Drinking Water Act Grant Funds, and the State Safe Drinking Water Fund), by \$700,000 for the fiscal year beginning July, 1989. The Department believes that the assessment of reasonable fees provided for by N.J.S.A. 58:12A-9 is the most appropriate method of eliminating the projected budget deficit.

COMMENT: Several commenters stated that the rules allow the Department to augment the gallonage-based tax imposed by the Safe Drinking Water amendments. This would in effect furnish the Department with the power to tax. The customer will pay the cost of the fees, and information concerning the total amount due and collected of the "A-280" tax for the entire State should be supplied. However, one commenter suggested that additional fees should not supplement the "A-280" revenues, as budget overruns anticipated after the enactment of the "A-280" amendments in 1983 should not be permitted. Rather, water taxes paid to the Safe Drinking Water Fund should be increased commensurate with population growth and business activities.

RESPONSE: The adopted fee program does not supplement the gallonage-based tax which was approved by the Legislature as part of the 1983 "A-280" amendments to the Safe Drinking Water Act. Revenues collected pursuant to the "A-280" tax are to be used for water monitoring. The adopted rules set forth an independent fee program which will fund other program requirements and goals, which include system interconnection, safe yield analysis, systems rehabilitation, unaccounted for water data, systems pressure, and water conservation.

COMMENT: One commenter contended that the proposed fees should not apply to the United States Army installation at Fort Dix, and that the monies in question constituted a tax rather than a fee.

RESPONSE: The Fort Dix facility is subject to the Federal Safe Drinking Water Act, 42 U.S.C. §300(f) et seq., and the New Jersey Safe Drinking Water Act, N.J.S.A. 58:10A-1 et seq.

The Federal Safe Drinking Water Act requires Federal agencies to comply with State regulations. 42 U.S.C. §300(j-6) provides that each Federal agency having jurisdiction over any Federally owned or maintained public water system:

shall be subject to, and comply with, all Federal, State, and local requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water . . . in the same manner, and to the same extent, as any nongovernmental entity. The preceding sentence shall apply (A) to any requirements whether substantive or procedural (including any recordkeeping or reporting requirements, any requirement respecting permits, and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process or sanctions, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply, notwithstanding any immunity of such agencies, under any law or rule of law.

The New Jersey Safe Drinking Water Act at N.J.S.A. 58:12A-9(p) provides that the Commissioner is authorized to establish and collect fees, in accordance with a fee schedule for the estimated costs of administering and enforcing State safe drinking water programs. Moreover, the Federal government has delegated primary enforcement for the enforcement of

safe drinking water standards to the State (see the National Primary Drinking Water Implementation Regulations at 40 C.F.R. Part 142). Pursuant to this regulation, Federal agencies are required to comply with New Jersey rules. The payment involved constitutes a fee which is required in order to administer New Jersey's safe drinking water programs.

COMMENT: One commenter contended that the fee program does not relate to the construction permit review process, funds other Departmental activities, and penalizes purveyors for compliance with the Water Supply Management Act. Those small utilities requiring the most oversight and enforcement will pay the smallest share of the fees.

RESPONSE: Construction permit review fees are commensurate with costs associated with the implementation of permit issuance procedures. The fees do not subsidize other Departmental activities, nor do they penalize purveyors for compliance with the Water Supply Management Act.

AGENCY NOTE: The Department has made the following clarifications and corrections to the adopted rule.

N.J.A.C. 7:10-15.3: The words "an original" have been added to the definition of "initial physical connection permit fee" to clarify that the fee is for the original connection permit, and not for a renewal of the permit.

N.J.A.C. 7:10-15.6(b): "Public" has been corrected to "project" construction costs.

N.J.A.C. 7:10-15.6(d): "Original" has been added to clarify that the fee is for the original connection permit, and not for a renewal of the permit.

N.J.A.C. 7:10-15.7(a): A typographical correction of "systems" to "system" has been made.

N.J.A.C. 7:10-15.7(a)2: A typographical correction in the example provided of the formula used for calculation of the fee from \$1,000 to \$1,000,000 has been made, in order to conform to the formula, set forth in the rule at N.J.A.C. 7:10-15.7(a)1.

N.J.A.C. 7:10-15.7(a)3: "Initial construction" has been replaced with "permit application" in order to clarify that the fees are not for new construction, but for additions or modifications to existing structures.

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

7:10-10.2 General

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

(i) All applicants for permits for initial and renewal of physical connections shall pay the fee assessed pursuant to N.J.A.C. 7:10-15.

7:10-11.2 Material to be submitted

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

(h) All public community water systems shall pay the fee assessed pursuant to N.J.A.C. 7:10-15.

SUBCHAPTER 15. FEES

7:10-15.1 Scope and authority

This chapter shall constitute the rules governing the establishment of Safe Drinking Water Program fees as authorized by the Safe Drinking Water Act at N.J.S.A. 58:12A-9. This subchapter shall be operative as of July 1, 1988.

7:10-15.2 Purpose

The purpose of this subchapter is to establish fees for the Safe Drinking Water Program based upon, and not to exceed, the estimated cost of regulating, monitoring, administering and enforcing the Safe Drinking Water Program. The fee schedule will be periodically reviewed with respect to any changes in the costs of conducting, monitoring, administering and enforcing the Safe Drinking Water Program.

7:10-15.3 Definitions

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

"Annual operation fee" means the annual fee assessed to each public community water system including, at a minimum, each holder of a construction approval for public community water systems approved pursuant to N.J.A.C. 7:10-11.

"Annual physical connection fee" means the fee assessed for the annual renewal of a physical connection permit pursuant to N.J.A.C. 7:10-1.

"Bulk distribution system" means a water system that wholesales water in bulk fashion to public community water systems for resale to consumers.

"Distribution system" means all pipes and conveyances from the well or water treatment plant, including storage facilities.

"Initial physical connection permit fee" means the fee assessed for ***[a]* *an original*** physical connection permit.

"Permit application fee" means the application fee assessed for a permit to construct a public community water system or bulk distribution system in accordance with N.J.A.C. 7:10-11.

"Physical connection" means a connection between a public community water system and any unapproved water supply.

"Physical connection permit" means the permit issued pursuant to N.J.A.C. 7:10-10.

"Population served" means the population reported on the Department's annual inspection report required by N.J.A.C. 7:10-1.4.

"Project construction cost" means the total project cost as reported on the application for a permit to construct and operate a public community water system or bulk distribution system under N.J.A.C. 7:10-1.4.

"Project construction cost" means the total project cost as reported on the application for a permit to construct and operate a public community water system or bulk distribution system under N.J.A.C. 7:10-11.

"Safe Drinking Water Program" means the regulatory requirements and activities conducted pursuant to the authority of the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

7:10-15.4 Applicability

This subchapter shall be applicable to all owners of public community water systems as defined in N.J.A.C. 7:10-1.3, to holders of physical connection permits, and to bulk distribution systems.

7:10-15.5 Establishment of fee schedule

(a) The Department shall periodically review the fee schedule set forth in this subchapter.

(b) Upon a determination by the Department that the existing fee schedule does not adequately cover the cost of conducting, monitoring, administering and enforcing the State Drinking Water Program, it shall, after consideration of other funding sources, propose a new fee schedule to adequately cover the actual cost of the Safe Drinking Water Program.

7:10-15.6 Payment of fees

(a) Owners or operators of public community water systems and bulk distribution systems shall pay annual operation fees on or before July 1 of each year in accordance with N.J.A.C. 7:10-15.7.

(b) Owners or operators of public community water systems and bulk distribution systems shall pay the permit application fee based upon the ***[public]* *project*** construction costs at the time of application for approval in accordance with N.J.A.C. 7:10-15.7.

(c) Physical connection permittees shall pay annual physical connection fee for the physical connection permit upon application in accordance with N.J.A.C. 7:10-15.8.

(d) Applicants for a physical connection permit shall pay the initial fee for the ***original*** physical connection permit upon application in accordance with N.J.A.C. 7:10-15.8.

(e) Payment of fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Division of Water Resources
Bureau of Safe Drinking Water
CN-029
Trenton, New Jersey 08625

(f) Each check or money order shall be marked to identify the nature of the fee paid and the owner of the facility.

(g) Failure to pay the fee as required by the Department may subject the violator to the penalty provision set forth in the Safe Drinking Water Act at N.J.S.A. 58:12A-10.

7:10-15.7 Calculation of fees for public community water systems and bulk distribution systems

(a) The permit application fee for the construction of a public community water system*[s]*, bulk distribution system, or additions and alterations to an existing system shall be determined as follows:

1. Step One: Multiply that part of the project construction cost*[s]* that is:

- i. Less than or equal to \$250,000 by 0.9 percent;
- ii. Between \$250,000 and \$1,000,000 by 0.6 percent; and
- iii. More than \$1,000,000 by 0.3 percent.

2. Step Two: Add the figures arrived at by the calculation under (a)1 above to obtain the total. For example, if the project cost is \$1,100,000, the fees will be \$7,050*[.00]*, which is the sum of 0.9 percent (.009) of the first \$250,000, *0*.6 percent (.006) of the next \$750,000, and *0*.3 percent (.003) of the amount greater than *\$[1,000.]* *\$1,000,000.*

$$\begin{array}{rcl} \$250,000 \times .009 & = & \$2,250.00 \\ \$750,000 \times .006 & = & \$4,500.00 \\ \$100,000 \times .003 & = & 300.00 \\ \hline & & \$7,050.00 \end{array}$$

3. The maximum and minimum *[initial construction]* *permit application* fees which the Department will assess shall be \$12,000 and \$100.00 respectively.

(b) For purposes of the annual operation fee, all public community water systems and bulk distribution systems, shall be classified on the basis of population served directly or indirectly on July 1 of each year. Classes shall be established as follows:

1. Class 1: 25 to 999 people;
2. Class 2: 1,000 to 9,999 people;
3. Class 3: 10,000 to 49,999 people; and
4. Class 4: 50,000 or more people.

(c) The annual operation fee for new public community water systems and new bulk distribution systems shall be paid on or before the first day of operation and prorated on a quarterly basis during the initial year of operation as follows:

1. Systems which begin operation between July 1 and September 30 shall pay the total operation fee;
2. Systems which begin operation between October 1 and December 31 shall pay three-quarters of the annual operation fee;
3. Systems which begin operation between January 1 and March 31 shall pay one-half of the annual operation fee; and
4. Systems which begin operation between April 1 and June 30 shall pay one-quarter of the annual operation fee.

(d) The annual operation fee for a permit to operate a public community water system or a bulk distribution system shall be determined as follows:

Class	Fees for Systems with no water treatment	Fees for Systems with water treatment
Class 1	\$ 60.00	\$ 120.00
Class 2	\$ 360.00	\$ 720.00
Class 3	\$ 790.00	\$1,580.00
Class 4	\$1,640.00	\$3,280.00

7:10-15.8 Calculation of fees for Physical Connection Permits

- (a) The initial physical connection permit fee shall be \$150.00.
- (b) The annual physical connection fee shall be \$200.00.

(a)

**Safe Drinking Water Act
Maximum Contaminant Levels for Hazardous
Contaminants**

Adopted New Rules: N.J.A.C. 7:10-16

Proposed: December 7, 1987 at 19 N.J.R. 2228(a).

Adopted: December 5, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 6, 1988 as R.1989 d.12, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4).

Authority: N.J.S.A. 58:12A-1 et seq., as amended by P.L. 1983, c.443.

DEP Docket Number: 056-87-11.

Effective Date: January 3, 1989.

Expiration Date: September 4, 1989.

The New Jersey Department of Environmental Protection ("Department") held three public hearings and one public meeting (the public meeting was requested by State and local officials in the Ocean County area after the public hearings were announced). The public hearings and the public meeting were conducted in order to receive comments on the proposed new rules, N.J.A.C. 7:10-16, Maximum Contaminant Levels ("MCLs") for Hazardous Contaminants, and the pre-proposal of N.J.A.C. 7:10-16.13, 16.14 and 16.15, "Pre-Proposal Issues" (published December 7, 1987 at 19 N.J.R. 2231(a)). The public hearings were held on January 5, 6 and 12, 1988. The public meeting was held on January 13, 1988. Approximately 130 people attended the hearings and the meeting. Of these, 27 individuals offered oral comments. Eight of these individuals also provided written comments either reflecting or supplementing their oral comments, and eight other individuals submitted written comments, for a total of 16 written comments.

AGENCY NOTE: The Department's document, "Maximum Contaminant Levels for Hazardous Contaminants in Drinking Water", was published in March, 1987. It sets forth the Department's research and the recommendations of the Drinking Water Quality Institute ("Institute"). The rule was based upon this research and the Institute's recommendations.

The United States Environmental Protection Agency ("USEPA") published Federal MCLs for eight contaminants on July 8, 1987 (See 52 FR 25,716). These eight contaminants were among those listed in the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. ("Act"), as amended by P.L. 1983 c.443 effective January 9, 1984 (See N.J.S.A. 58:12A-13). Since USEPA published these MCLs after the completion of the Department's MCL document, the Department and the Institute were not able to evaluate USEPA's final health-based numbers, practical quantitation levels ("PQLs"), and monitoring requirements in formulating New Jersey Standards.

Since the release of the New Jersey Drinking Water Quality Institute Support Document for Dichlorobenzenes in March, 1987, new developments regarding the application of some of the p-dichlorobenzene (p-DCB) carcinogenicity data to human health risk have been reviewed. The new data have influenced the carcinogenicity classification of p-DCB. The USEPA and the Department had originally classified p-DCB as B2, probable human carcinogen, based on the statistically significant increase in the incidence of tumors in two species of test animals. As a result of recent scientific evidence and upon advice of its Science Advisory Board, the USEPA has decided that one of those tumor types was not relevant for the assessment of potential human carcinogenicity by p-DCB. Therefore, USEPA has elected to classify p-DCB as C, limited evidence for human carcinogenicity (52 FR 130, 25695, July 8, 1987).

The Department has reviewed the evidence for the possible carcinogenicity of p-DCB, and agrees with the decision made by the USEPA to change the classification of p-DCB. Therefore, the Department is not adopting the proposed MCL for p-DCB which was based on the probable human carcinogenicity of p-DCB. The Department will further evaluate the risk assessment for p-DCB. The Department will utilize the USEPA standard of 75 parts per billion ("ppb") for p-DCB until an MCL is recommended to the Department by the Institute.

In addition, the Department is substituting the word "unreproducible" in place of the word "invalid" at N.J.A.C. 7:10-16.8(c). This term better

describes the Department's policy regarding a particular sample which cannot be verified by repeated check sampling.

Summary of Public Comments and Agency Responses:

The Department has summarized and responded to the comments received concerning the proposed rules according to the following major issues:

- I. Health Effects/Risk Assessment
- II. Practical Quantitation Levels/Method Detection Limits
- III. Treatment and Economic Considerations
- IV. Derivations of the MCLs
- V. Public Notification
- VI. Testing Frequency
- VII. Compliance and Applicability
- VIII. Other Comments
- IX. Specific Language Changes/Miscellaneous
- X. Health Effects/Risk Assessment

I. HEALTH EFFECTS/RISK ASSESSMENT

A total of 18 comments concerned the health effects aspects of the standard-setting process.

COMMENT: Eight commenters suggested that the use of the one in one million lifetime cancer risk to derive the health-based MCLs for carcinogens is an unacceptably high risk.

RESPONSE: The Act was amended by P.L. 1983, c. 443, effective January 9, 1984. The amendment, commonly referred to as "A-280", requires the Department to establish MCLs for certain chemicals based on a specific risk level. Carcinogens, other than those resulting from compounds with public health benefits (N.J.S.A. 58:12A-13), shall be permitted at levels which would be expected to result in cancer in no more than one in one million persons ingesting that chemical for a lifetime. Therefore, the Department utilized this one in one million excess cancer risk level to develop MCLs. The risk assessments for carcinogens were conducted in a manner consistent with the recommendations of the Carcinogen Assessment Group of USEPA (51 FR 185, 33992-34003 September 24, 1986). For those noncarcinogenic A-280 contaminants, the risk assessment criteria were also included in the A-280 amendments at N.J.S.A. 58:12A-13. Standards are to be established so that no adverse physiological effects would be expected to result from ingestion of the contaminants at the MCL. The procedures utilized in the quantitative risk assessment of both carcinogens and noncarcinogens are fully described in the Departmental document "Maximum Contaminant Level Recommendations for Hazardous Contaminants in Drinking Water" (March, 1987).

COMMENT: One commenter suggested that a specific risk level (such as a one in one million lifetime risk) should be utilized to derive the MCLs for noncarcinogens.

RESPONSE: A risk assessment for a noncarcinogenic compound cannot be performed in the manner suggested since noncarcinogenic endpoints are not associated with specific risk levels. Risk levels are utilized for carcinogenic substances in accordance with the widely accepted theory that exposure to any level of a carcinogen may be associated with an incremental increase in risk. For noncarcinogenic substances, it is generally believed that a threshold level exists below which no adverse effects occur.

COMMENT: One commenter emphasized that the numerical value calculated by the Department to represent a one in one million risk is actually less than a one in one million risk, and may even be zero.

RESPONSE: The Department recognizes that the numerical value calculated for carcinogenic health-based MCLs may actually represent a risk of less than one in one million. The Department's document, "Maximum Contaminant Level Recommendations for Hazardous Contaminants in Drinking Water", addressed this point: High to low dose extrapolations for carcinogens were performed in a conservative manner. For carcinogens, the multistage model was chosen for low-dose extrapolation, because it is the model of choice of the USEPA. The multistage model is conservative because it predicts a linear, nonthreshold, dose-response curve at low doses. Further conservatism was incorporated into the carcinogen risk assessment by using the 95 percent lower confidence limit on the dose giving one in one million risk, rather than the maximum likelihood estimate of the dose, for health-based MCL development. Therefore, one in one million is plausible upper limit on risk from lifetime exposure at the health-based MCL. In other words, the risk at the health-based level is likely to actually be less than one in one million.

COMMENT: A question was raised as to whether toxic effects on the fetus were considered in the development of MCLs.

RESPONSE: Both teratogenic and developmental effects were considered in deriving the health-based MCLs. In most cases, other toxic effects were observed at levels lower than those at which teratogenic and developmental effects occurred. However, adequate data on fetal effects were not always available for the calculation of fetal risk. For one compound (xylene), the risk assessment was based on embryonic and developmental toxicity studies conducted in rats.

COMMENT: Two commenters asked why routes of exposure to contaminated potable water other than ingestion, such as skin absorption, were not considered in developing the health-based MCLs.

RESPONSE: A-280 requires development of MCLs based on health effects resulting only from the ingestion of drinking water. However, other sources of exposure were considered; it was assumed for noncarcinogens that 20 percent of the total exposure of an individual came from drinking water and the remaining 80 percent from other sources such as air and food. For carcinogens, the MCL was based on a one in one million risk resulting from lifetime ingestion of drinking water, as required by A-280.

COMMENT: One comment stated that a child would not receive the same protection using a one in one million lifetime carcinogenic risk assessment as an adult, because of the difference in body weights used in deriving the health-based MCL (10 kilograms (kg) for a child vs. 70 kg for an adult).

RESPONSE: It is important to remember that the carcinogenic risk is based on the assumption of 70 years of continuous exposure to the drinking water. Since the majority of a lifetime is spent at the adult weight, this body weight is used as the basis of the lifetime risk assessment for MCL development. However, the Short-Term Action Levels that the Department may propose for an exposure period of less than one year, are based on a 10 kg child's weight in order to protect this subpopulation.

COMMENT: Three comments stated that the Department did not consider synergistic effects when establishing MCLs.

RESPONSE: The Department recognizes that the health effects of mixtures of the hazardous contaminants listed in the Act and other chemicals may be additive, synergistic, or antagonistic. However, the Department was required to derive MCLs for each of the hazardous contaminants listed in the Act based on the guidance specifically stated in the Act. The Department may propose a guidance mechanism in the near future for total unregulated contaminants in drinking water in order to reduce exposure to contaminants whose health effects are not completely understood, either alone or in combination.

COMMENT: One commenter stated that the Department and USEPA inappropriately converted animal data to human data by using the ratio of surface area of the two species for calculating health-based MCLs.

RESPONSE: Risk assessments for carcinogens were conducted in a manner consistent with the recommendations of the USEPA Guidelines for Carcinogenic Risk Assessment (51 FR 33992-34003, September 24, 1986). These guidelines reflect comments from the public and the Science Advisory Board. The USEPA states that extrapolation on the basis of surface area is considered to be appropriate because the magnitude of certain pharmacological effects relates to the relative proportions of the surface areas of the species.

II. PRACTICAL QUANTITATION LEVELS/METHOD DETECTION LIMITS

Nineteen comments were received regarding analytical issues involved in the establishment of the MCLs.

COMMENT: Four commenters recommended that the Department establish MCLs at the method detection limit instead of utilizing practical quantitation levels ("PQLs") in establishing MCLs.

RESPONSE: The lowest concentration level at which a chemical can be measured by an analytical method with confidence that the chemical concentration is greater than zero is commonly called the method detection limit ("MDL"). MDLs for a given analytical method may vary among laboratories and instruments, and also may be different from day to day on the same instrument used by the same operator.

The uncertainty of the data near the limit of detection can often be as large as the reported values (American Chemical Society, Committee Report, Principles of Environmental Analysis, Anal. Chem., 1983, 55 2210-2218; Taylor, J.K. Quality Assurance of Chemical Measurements, Lewis Publishers, Chelsea, Michigan, 1987, pp. 79-82). Therefore it is impossible to have a high degree of confidence in data reported at the limit of detection. The American Chemical Society Committee on En-

vironmental Improvement reported that "quantitative interpretation, decision-making, and regulatory actions should instead be limited to data at or above the limit of quantitation" (American Chemical Society, 1983). For these reasons the Department has determined that it should regulate the A-280 contaminants at the level of quantitation. The PQL concept was developed by the USEPA in an effort to provide a defined level at which the error associated with instrumentation and daily analytical variations is at an acceptable level. The USEPA used the PQL concept in developing its MCLs. The Department also utilized PQLs in developing the A-280 MCLs for New Jersey.

COMMENT: Three commenters recommended the adoption of USEPA PQLs because the USEPA evaluation considered the variability among laboratories performing routine tests.

RESPONSE: The water studies that USEPA utilized to develop the PQLs for eight volatile organic chemicals ("VOC"), (50 FR 46,906, November 13, 1985), were not designed primarily as studies to determine the lowest possible MDL or PQL, but rather to evaluate interlaboratory quality assurance. Therefore, the major limitation of the use of the USEPA PQL data as part of the MCL derivation process in New Jersey is that the lowest concentration analyzed by the laboratories participating in the USEPA study was approximately five parts per billion (ppb). This concentration was substantially higher than many of the health-based MCLs being developed by New Jersey.

Moreover, New Jersey had additional compounds to regulate for which USEPA had no PQL data. The USEPA determined PQLs for eight VOCs. These VOCs were a subset of the compounds that were required to be regulated according to A-280. Results from a recent Department sponsored interlaboratory study (Oxenford, J.L. et al., Determination of PQLs for Organic Compounds in Drinking Water, Proceedings of the Water Quality Technology Conference, American Water Works Ass'n, Baltimore, Maryland, November, 1987) indicated that a level exists above which a certain acceptable precision and accuracy can be achieved and below which the variability is too great to be established as a PQL for A-280. This study involved an evaluation of laboratory performance at five different concentrations ranging from levels approximating the MDL up to concentrations that should be easily quantifiable. Four replicated analyses at each level were also required. By collecting this type of accuracy and precision data, as well as other types of laboratory performance data, the Department was able to establish sound PQLs for laboratories conducting A-280 analyses.

COMMENT: Two comments stated that an insufficient number of laboratories participated in the New Jersey PQL study and, therefore, the study is not valid.

RESPONSE: The data collected from the six laboratories that participated in the PQL study were very extensive and subjected to thorough quality assurance reviews. Additionally, these six laboratories routinely analyze a large percentage of the samples for the A-280 program. Therefore the data set represents a valid source of information for establishing MCLs.

COMMENT: One commenter suggested that the Department use five to 10 times the MDL to calculate the PQLs as was done by USEPA.

RESPONSE: The Institute derived the New Jersey PQLs based on three main sources of data. The major source was the Department sponsored interlaboratory study (Oxenford, J.L. et al., 1987). This study yielded interlaboratory precision data for 11 of the A-280 contaminants. Interlaboratory precision is a good measurement of the performance of an analytical method at low concentrations. The Department did use the method suggested by the commenter as another type of evaluation in the determination of the PQLs. The MDLs from the PQL study, as well as the MDLs determined in surface and ground water matrices for the USEPA 500 series methods, were multiplied by a factor recommended by USEPA (five to 10 times the MDL) and the factor derived from the American Chemical Society (3.3 times the limit of detection). These numbers and the results from USEPA Water Supply Survey #17 (Gomez-Taylor, 1986 Draft Correspondence and Performance of USEPA and State Laboratories in Water Supply Performance Evaluation Study #17, USEPA, Office of Drinking Water, Washington, D.C.), were compared with the levels derived from the precision and accuracy data in the Department sponsored study to derive the New Jersey PQLs.

COMMENT: Three commenters questioned the validity of New Jersey's PQL study, and stated that such low levels cannot be consistently quantitated.

RESPONSE: The PQLs were based on the test results from six New Jersey certified laboratories that routinely perform a large percentage of A-280 analyses in New Jersey. The Department believes that the com-

munity of New Jersey certified laboratories can consistently quantitate for the A-280 contaminants at the MCLs.

COMMENT: Three commenters stated that the accuracy of test results is not important, and that the MCLs should, therefore, be set at the health-based levels.

RESPONSE: The Department disagrees with this viewpoint because of the implications of attempting to enforce standards that cannot be verified. Remediation of A-280 contamination problems may require costly construction and the Department would not be justified in mandating such action based on unreliable test results. In early 1989, the Department may propose a requirement that public community water supplies ("PCWS") institute additional sampling when detectable levels of contaminants are found that are below specified MCLs.

COMMENT: One commenter stated that concentration levels detected by the recently adopted USEPA method 502.1 (52 FR 130, 25714, July 8, 1987), which was studied by Rutgers University and served as one of the information sources for the derivation of the PQLs, compare well with the health-based levels.

RESPONSE: The reason that these levels are comparable is that this study was designed to develop MDLs, which are lower than PQLs, for the USEPA 500 series methods at the time that they were released by the USEPA. This study did not attempt to establish PQLs. The Department has chosen not to utilize MDL data for this regulatory program for the reasons previously described.

COMMENT: One commenter stated that the Department should consider that the MCL has been exceeded only when the analytical data exceed the MCL by at least 40 percent.

RESPONSE: The Department utilized several sources of information to derive PQLs which included the Department sponsored PQL study; Department of Environmental Sciences, Rutgers University method validation study; and USEPA Water Supply Performance Evaluation Study #17. From the data collected as part of the PQL study, individual laboratory precision, interlaboratory accuracy and interlaboratory precision were evaluated and acceptance criteria were chosen.

Other data sources were also evaluated as part of the process for establishing PQLs. Estimated ranges of PQLs were calculated by multiplying the average MDL reported by the laboratories in the Department PQL study and/or the Department of Environmental Science Rutgers University study by various factors. The factor of five to 10 times the MDL came from the USEPA definition of the PQL; the factor of 3.3 times the MDL was derived from the American Chemical Society. The data from the USEPA Water Supply Performance Evaluation Study #17 provided information concerning the number of laboratories that were able to quantitate certain A-280 contaminants at ± 20 percent and ± 40 percent of the true value. The derivation of each PQL is contained in "Maximum Contaminant Level Recommendations for Hazardous Contaminants in Drinking Water" Appendix C (March 1987).

The acceptance criterion for interlaboratory precision from the PQL study was chosen to be less than 40 percent. However, one single PQL value for each A-280 contaminant was established based on other sources of information in addition to the PQL study. A range of values around a PQL or an MCL was not considered to be an option in a regulatory program.

COMMENT: One commenter suggested that "watchdog" citizens and environmental groups should have been involved in the review of the data used to develop the PQLs in New Jersey in order for the public to have greater confidence in the conclusions.

RESPONSE: The Institute is the Departmental advisory body that requested that this study be performed in order to provide them with the necessary information for evaluating the PQL issue. Three members of the Institute are appointed representatives from the public, and provide input for decision making.

III. TREATMENT AND ECONOMIC CONSIDERATIONS

Thirty-four comments were submitted to the Department pertaining to the treatment and economic considerations of the establishment of the MCLs.

COMMENT: Six commenters stated that the Department insufficiently considered the cost of complying with the rule.

RESPONSE: A-280 requires that MCLs for carcinogens be technologically feasible. Technological feasibility includes the ability of analytical instrumentation to reliably detect and quantitate contaminants in water, as was discussed in Section II above, as well as the capability of water treatment processes to remove contaminants to the specified health-based levels. For noncarcinogens, A-280 requires that MCLs be set within limits of practicability and feasibility. The Department, with concurrence from

the Institute, interpreted this to mean that economics should be considered in establishing noncarcinogenic MCLs.

The two main treatment techniques for the removal of the A-280 contaminants from drinking water to levels below the MCLs are granular activated carbon ("GAC") contacting and packed tower aeration (air stripping). The Department reviewed design parameters and capital and operating costs for these types of treatment. The Department used information obtained from the USEPA and from a study performed for the Department by Camp, Dresser and McKee Incorporated on these treatment techniques (Abrams, S. and S. Medlar, 1986 Draft Task V Reports, Technology and Cost Phase II, Special Water Treatment Study). The estimated treatment requirements, the removal efficiencies and plant capacities are representative of problems encountered in New Jersey. All cost estimates indicate that treatment costs for GAC and packed tower aeration are similar to other typical drinking water treatment costs. The Department not only adequately considered treatment costs for noncarcinogens but also included cost estimates for carcinogens, which were not required.

COMMENT: The difficulty of removing each noncarcinogenic A-280 contaminant was not considered in the Department's estimated cost of compliance.

RESPONSE: All the noncarcinogenic A-280 contaminants for which MCLs were proposed can be removed from drinking water by either GAC or packed tower aeration. The Department considered only the cost of removing the noncarcinogenic A-280 contaminant 1,1,1-trichloroethane because this compound was among the most commonly detected in New Jersey water supplies (4.9 to 6.5 percent of samples) according to A-280 monitoring data collected in 1984-85. In nationwide surveys, such as the USEPA Ground Water Supply Survey, 1,1,1-trichloroethane was also among the most commonly detected contaminants appearing in approximately six percent of radom samples (See Westrick, J., J. Mello, and R. Thomas, 1983 Groundwater Supply Survey, Summary of Volatile Organic Contaminant Occurrence Data Technical Support Division, USEPA Cincinnati, Ohio). 1,1,1-Trichloroethane can be removed from drinking water by either packed tower aeration or GAC. In several instances in New Jersey, the controlling factor in the design of treatment equipment has been the concentrations of 1,1,1-trichloroethane that need to be removed. The cost estimates for the removal of 1,1,1-trichloroethane were based on a final concentration of five ppb which is substantially lower than the 26 ppb MCL. Although other noncarcinogens are not as easily removed from drinking water by packed tower aeration, these other compounds would most likely be removed by the use of GAC.

COMMENT: One commenter stated that the estimates of compliance costs are too low because they are based on achieving MCLs that are higher than the MCLs now proposed and are based on air stripping only.

RESPONSE: Cost estimates were based on the removal of benzene and trichloroethylene to 1 ppb and 1,1,1-trichloroethane to five ppb. The MCLs for benzene and trichloroethylene are one and one ppb, respectively, and the MCL for 1,1,1-trichloroethane is 26 ppb. The cost estimates might be too high because of the low level of 1,1,1-trichloroethane that was used in cost estimating. Packed tower aeration was used for cost estimation because the results of the treatment technique can be predicted. Cost estimates reviewed by the Department for facilities which have already been constructed indicate that the cost of GAC and packed tower aeration is similar.

COMMENT: Four commenters stated that cost analyses did not include site-specific considerations, which would increase cost estimates for treatment. One commenter stated that the costs will be so great that bottled water will become a cost-effective replacement for the water supply.

RESPONSE: While it can be stated that site-specific considerations may increase compliance costs, the increase is not considered to be any different than for similar construction projects. The Department used USEPA cost estimates, and these included capital costs marked up by 15 percent for sitework, 15 percent for engineering, 12 percent for contractor overhead and profit, six percent for interest, 2.5 percent for legal and financial, and 15 percent for contingencies (50 FR 219, 46913, November 13, 1985). After these factors were taken into account, the USEPA reported incremental costs for removal of VOCs ranged from \$1.01/1,000 gallons to 4.7¢/1,000 gallons (August 1983 dollars).

COMMENT: Two commenters stated that the estimated per-family cost of filtration systems is reasonable and that the consumer would be willing to pay this expense. A third commenter was concerned that compliance with the MCLs should not pose unreasonable family and societal costs.

RESPONSE: The task of balancing preventative health benefits versus costs is difficult. To achieve this goal, the Department has had to rely upon the Act for guidance. Clearly, the statute directs the Department to place greater emphasis on reduction of contamination of drinking water, and less emphasis on the economic impacts. Nevertheless, the Department did prepare Statewide cost estimates for providing treatment for public community water supply wells ranging from 50 to 70 million dollars. This potential Statewide cost does not seem excessive for the benefit derived.

COMMENT: One commenter stated that if the public and the Legislature understood the economic impact of the proposed MCLs, they would choose less stringent standards that are adequately protective of public health.

RESPONSE: Based on the number of comments inquiring as to why the Department did not set standards at the health-based levels or at the method detection limits, the Department believes that the public and those legislators submitting comments are interested in employing the health-based levels as the analytical technologies improve despite possible increased costs to the consumer. A-280 presently does not permit any exemptions from the requirement that PCWS remediate contamination within one year of discovery. To date, approximately 21 PCWS have taken some type of action to remediate A-280 contamination, and upon adoption of MCLs, other supplies will be required to do so also.

COMMENT: Eight commenters stated that packed tower aeration should use additional treatment for the gases released during the treatment process.

RESPONSE: The Department's Division of Environmental Quality regulates the discharge of toxic pollutants from point sources of discharge including air strippers. Present rules are among the most stringent in the nation, and are determined in part by the application of the one in one million risk levels at the property boundary. The permitted release of toxic volatile organic substances is 0.1 pound per hour per contaminant. The Department has estimated that between two and five of the approximately 630 PCWS will be required to control emissions from packed aeration towers. In those instances, this is projected to nearly double capital costs and substantially increase operating costs. However, only the largest facilities in New Jersey would be affected by these air discharge rules and the costs to individuals are expected to be incrementally small. If the packed tower aeration rules were more stringent so that smaller plants (serving less than 500 people) were affected, then the impact would be more significant.

Air stripping is an effective way of removing volatile organics from water. When the air discharge exceeds the discharge limitations mentioned above, the PCWS may be required to treat the released gases.

COMMENT: Two commenters stated that no contamination should be permitted to remain in air or in water.

RESPONSE: From a strictly theoretical viewpoint, it may be possible to use enough activated carbon on all packed aeration towers to remove contaminants to levels lower than detectability. Although it is the intent of the Department to remove contamination from the air and water, the actual quantification of values below the PQL and below the MDL for drinking water may be difficult. Equipment can be designed such that contaminants are removed to non-detectable levels based on pilot studies and mathematical models. However, the Department does not have the authority to mandate abatement equipment on water treatment plants if the air and/or water quality meets the established levels.

COMMENT: Two commenters questioned the adequacy of available technologies (GAC and packed tower aeration).

RESPONSE: It has been demonstrated that either of these technologies alone or in combination are able to remove the A-280 hazardous contaminants to the levels required by the MCLs (50 FR 219, 46910-46912, November 18, 1985; NJDEP Special Water Treatment Study, May 1988). For the majority of the volatile organics, packed tower aeration is the more effective technology.

GAC can be used but does not readily adsorb low molecular weight nonpolar compounds, such as vinyl chloride. This compound is readily removed from water in a packed aeration tower. These technologies have been used for other treatment purposes in the past; however, the use of these technologies for removal of VOCs in drinking water requires more stringent design considerations than was previously employed.

COMMENT: The Department did not address the economic effects of using the GAC method for vinyl chloride removal.

RESPONSE: The Department did not elect to use vinyl chloride in its assessment of the economic effects of the rules, since this contaminant is rarely found in New Jersey's drinking water. If vinyl chloride were

found, then packed tower aeration would be more cost effective than GAC.

COMMENT: One commenter inquired concerning the disposal of the carbon used in vapor phase adsorption employed in conjunction with packed tower aeration.

RESPONSE: The granular activated carbon used by approximately seven treatment facilities in New Jersey for removing contaminants from drinking water is regenerated by the company distributing the granular activated carbon product. This same type of carbon would be used for vapor phase adsorption. Regeneration means that the carbon is heated to a high temperature so that the chemicals that adsorb on the carbon surface are removed and destroyed. This carbon is not used again in drinking water, but for other purposes. The granular activated carbon used for potable supplies is always new. The facility that regenerates the carbon is not located in New Jersey. There are several facilities in other states that are willing to accept this product.

COMMENT: One commenter stated that the blending of different waters in order to achieve an MCL should not be permitted.

RESPONSE: The Department, as well as USEPA, allows blending if the quality of the water meets the MCLs at the point-of-entry in the distribution system. Extensive monitoring is required if the standard to be met after blending is a primary drinking water standard which will include the MCLs for the A-280 contaminants.

COMMENT: One commenter stated that since the PQLs are limited by precision and accuracy and some of the MCLs were established at the PQLs, those MCLs will not be reproducible but yet will greatly impact the consumers of small public community water systems.

RESPONSE: The Department determined PQLs for the A-280 contaminants to minimize the variability in test results reported to the Department. However, the Department realizes that remediation cannot be mandated based on the results of only one sample. When a MCL is exceeded, the Department requires increased monitoring as a first step to determine the extent of contamination. In this way, the Department ensures that individuals served by water systems will expend the additional resources only where problems actually exist.

COMMENT: One commenter stated that the economic impact on those water supplies that fail to meet the Department's standards but do meet the USEPA standards was not fully evaluated.

RESPONSE: The Statewide cost to the suppliers that exceed State MCLs but not Federal MCLs is not expected to be great, based on data currently available to the Department. However, the Department does recognize that certain specific supplies will fall in this group and therefore will be required to spend additional funds. A-280 does not provide the Department with any latitude to respond to financial concerns of a specific water system.

COMMENT: One comment stated that the Department does not adequately provide municipalities with financial assistance when contamination of drinking water supplies must be remediated.

RESPONSE: Although not essential to the promulgation of these rules and not considered within the framework of A-280, the Department maintains a three-step program to address water system contamination problems. First, the Department aggressively pursues the discovery of the party responsible for the contamination (these A-280 contaminants do not occur naturally), and attempts to collect the cost of remediating the resource from the responsible party. Secondly, low interest loans are available through the Department for municipalities to remediate contamination problems in public community water supplies. Thirdly, the New Jersey Spill Compensation Fund is available in some instances to provide funding for removal of hazardous contaminants in drinking water on a case-by-case basis.

IV. DERIVATION OF THE MCLS

A total of 26 comments were received concerning the manner in which the health-based MCLs, PQLs, and treatment considerations were used to establish the MCLs (19 N.J.R. 2228(a)). The Summary stated that for carcinogenic substances, the MCLs were developed based on the risk level of one in one million for a lifetime of exposure and "... within the limits of medical, scientific, and technological feasibility ..." as required by A-280. Technological feasibility includes the ability of analytical instrumentation to reliably detect and quantitate contaminants in water, as well as the capability of water treatment processes to remove contaminants to the specified health-based levels. For noncarcinogens, the "practicability and feasibility" of an MCL must be taken into consideration. Practicability was interpreted by the Institute to include cost considerations. The Department used health-based levels, PQLs and, in some cases, where permitted by law, cost considerations to derive the MCLs.

COMMENT: One commenter stated that the derivation of the MCLs was based on arbitrary policy decisions.

RESPONSE: The derivation of the MCLs was specifically based on the language of A-280, the enabling legislation. The process of deriving the MCLs is summarized in the preceding paragraph and in the Departmental document, Maximum Contaminant Recommendations for Hazardous Contaminants in Drinking Water.

COMMENT: Two commenters inquired as to the reason that the MCLs proposed by the Department differ from the USEPA standards if the same information and policies were used to derive both sets of standards.

RESPONSE: The USEPA established MCLs for only eight VOCs; New Jersey proposed 17 MCLs. The major reason for the differences between the eight VOC standards and the New Jersey MCLs is that the framework for the development of the MCLs by USEPA and the Department differs. The A-280 legislation requires consideration of the concentration predicted to result in no more than a one in one million excess cancers over a lifetime. In contrast, MCL goals ("MCLGs") developed by the USEPA, which are analogous to the health-based MCLs developed by the Institute, are set at zero for carcinogens. Another difference is that the PQLs established in New Jersey utilized lower concentrations of the analytes than did the studies used by USEPA to derive PQLs. New Jersey was able to derive PQLs that were lower than USEPA's PQLs because of the differences in study design. The exception is vinyl chloride; the Department developed a PQL of 5 ppb which is higher than the Federal MCL of two ppb. USEPA will accept data with less precision and accuracy for this chemical because vinyl chloride is a known human carcinogen of high potency. As is required by the Act (N.J.S.A. 58:12A-13), the Department must adopt the more stringent of the standards proposed by the State or the Federal government and, therefore, the Federal MCL for vinyl chloride is being adopted by New Jersey. In addition, as stated above, costs are not a consideration when establishing MCLs for carcinogens under the State law, but the Federal MCLs take costs into account for carcinogens. Finally, differences in risk assessment procedures, especially for noncarcinogens, and scientific opinion on selection of the most appropriate toxicological study and endpoint accounted for other differences between these two sets of standards.

COMMENT: Eight commenters recommended that the USEPA standards be adopted since the levels set by the USEPA would not increase the level of health risk.

RESPONSE: As stated above, USEPA developed MCLs using a different process in certain respects, than the Department. The USEPA MCLGs were set at zero for carcinogens; USEPA MCLs were established as close as feasible to the MCLGs taking analytical limitations and costs into consideration. For noncarcinogens, the MCLGs were established at a level at which no adverse health effects would be expected to occur and the USEPA MCLs again were established as close as feasible to the MCLGs taking analytical limitations and costs into consideration. New Jersey derived health-based levels for each A-280 contaminant based on the requirements of A-280 either a one in one million lifetime risk or no adverse health effects. Certain New Jersey MCLs were established at these health-based levels, however, others were established at the PQL. New Jersey derived MCLs are lower than the Federal MCLs (with one exception) and represent a greater degree of public health protection.

COMMENT: Eight commenters objected to the establishment of some MCLs above the health-based level because these standards will not be protective of the public health. Four of these commenters recommended that MCLs be set at zero because this would be easier for the public to understand.

RESPONSE: The discussion of the requirements of A-280 described earlier explains why the Department considers it inappropriate to establish MCLs that cannot be measured within a certain degree of precision and accuracy. For these reasons, the MCLs cannot be set at "zero" or at health-based levels which are below reliable quantitation levels. The Department realizes that since eight of the MCLs are greater than the health-based levels, the level of protection is not as great as would occur if all the MCLs were set at the health-based level.

COMMENT: One commenter supported a three year period for reviewing information pertaining to the MCLs.

RESPONSE: The Institute plans to review toxicological, analytical capability, and treatability issues every three years, and to recommend revised MCLs, if necessary, to ensure that the MCLs reflect the most recent advances in scientific knowledge and methodology. This review program was one of the Institute's major recommendations made in the document "Maximum Contaminant Level Recommendations for Hazardous Contaminants in Drinking Water", March, 1987.

ADOPTIONS

COMMENT: One commenter stated that setting the MCLs at the quantitation level for carcinogens, not at the health-based level, will not appreciably decrease the current cancer rate in the United States of one in three individuals (American Cancer Society, 1985).

RESPONSE: The Institute addressed this issue in the document "Maximum Contaminant Level Recommendations For Hazardous Contaminants in Drinking Water" (March, 1987). The one in one million cancer risk represents an extremely small lifetime additional cancer risk, and an increase in incidence of this magnitude is not measurable in a population by current epidemiological techniques. The lifetime risk of one in one million, and even the risk levels that are associated with the MCLs set at the PQLs, will not measurably increase or decrease the cancer rate because of the low risks that are associated with contamination at these levels. Most importantly, the results of the monitoring and MCL setting process of the Department through this rule provide an important mechanism for reducing exposure to toxic substances through drinking water.

COMMENT: One commenter questioned why the MCLs are higher than the numbers set forth by the Department in January 1986 in "Drinking Water Guidance."

RESPONSE: The Department developed "Drinking Water Guidance" to evaluate the monitoring data that was collected beginning in early 1985 as required by A-280, since MCLs had not been established at that time. The Department derived the ranges of guidance values (Level I-IV) based on previously published risk assessment values that did not necessarily reflect the requirements of the A-280 law. In addition, more recent toxicity data were the bases for updated risk assessments used in the MCL derivation for some contaminants. In some instances, the MCLs are higher than the guidance values that precipitated action within a year; however, in other cases the MCLs are lower. This document provided the public and regulated community with a framework for judging the seriousness of contaminated water supplies while the MCLs were being developed. Upon the adoption of these rules, the "Drinking Water Guidance" document will be superseded by the MCLs.

COMMENT: Two commenters expressed the opinion that environmental health risks from other sources are greater than those expected to result from the ingestion of drinking water contaminated with the A-280 compounds, and that the expenditures which would be required to comply with the proposed rules represent a poor allocation of resources. For instance, ambient air pollution may represent a more significant route of exposure for some volatile organics.

RESPONSE: The A-280 legislation requires the establishment of MCLs for specified drinking water contaminants, without comparison to risks from other substances or sources of exposure. The Department has identified the A-280 rules as a cost-effective means of reducing the exposure of the public to these contaminants to the extent mandated by law.

COMMENT: Two commenters supported the MCLs as proposed by the Department.

RESPONSE: The Department appreciates the comments.

V. PUBLIC NOTIFICATION

COMMENT: Twelve commenters discussed the notification procedures for local municipal officials, local health officials, and the general public (N.J.A.C. 7:10-16.10). Eleven of these commenters expressed a need for immediate notification of either the public or local governments when any level of contamination is detected in the drinking water supply. The other commenter stated that notification is not necessary until the test results have been confirmed by three check samples.

RESPONSE: The Department proposed the same public notification provisions as those of the existing Federal and State Safe Drinking Water Act regulations. These regulations specify that PCWS must notify their customers of an MCL violation as well as utilizing the print and electronic media. MCL violations are based on several analyses performed over a period of time, usually 30 days or more. Confirmatory sampling is necessary because of the uncertainties involved in both the variability of the water quality and the difficulty in measuring very low levels of these chemicals, and is appropriate because most MCLs are based on long-term exposure assumptions. Therefore, the notification procedures for MCL violations are being adopted as proposed.

The Department does, however, recognize the concerns raised at the hearings for more timely notifications of the initial discovery of contamination. Therefore, the Department is considering proposing a new notification procedure.

COMMENT: One commenter stated the length of time required for the water supplier to notify the State when a MCL violation occurred

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is too long. This commenter stated that the water supplier should be required to notify the State within 72 hours when an MCL is exceeded.

RESPONSE: N.J.A.C. 7:10-16.8(b)3 states that the Department must be notified within 48 hours by telephone when an MCL is exceeded and in writing within seven days of the receipt of the analysis.

COMMENT: One commenter suggested that the check sampling time frame be reduced to 15 days.

RESPONSE: The 30 day check sampling period has proven acceptable for all existing MCLs based on long-term health effects and the Department is not changing this portion of the rules. In more urgent situations, the Department is considering proposing, in early 1989, a mechanism for evaluating test results that may reveal a threat to public health in a shorter period.

COMMENT: Three commenters requested that water system testing records for each water supply be available locally in a convenient location for public inspection.

RESPONSE: Although the Department has always encouraged water systems to do this, and clearly this information is available to the general public from the Department, this requirement has never been formalized in rules. The Department is considering proposing this requirement in early 1989.

VI. TESTING

COMMENT: Eight commenters suggested increasing the frequency of testing. Two commenters specifically suggested monthly testing.

RESPONSE: A-280 stated that all public community water systems ("PCWS") should be tested semi-annually. The Department is allowed to increase or decrease this frequency on a case-by-case basis. The Department has used this prerogative to increase sampling for approximately 40 of the PCWS that have shown contamination. The Department has required increased monitoring of specific wells or treatment plants to monthly or quarterly bases. The Department has also allowed about 30 small systems (serving less than 500 people) that have shown no detectable levels of contamination for three consecutive monitoring periods and are not located near any known sources of contamination to decrease their monitoring frequency to an annual basis. The USEPA has adopted a similar strategy. For the VOCs, the USEPA has allowed monitoring periods ranging from sampling every two years through four years, depending on the vulnerability of the system to contamination. If detectable levels of VOCs are found, the USEPA regulations require that sampling be increased to a quarterly basis. After three years of reviewing New Jersey A-280 monitoring data, the Department has concluded that the monitoring program provides excellent coverage of the water systems and good protection to the citizens of New Jersey.

COMMENT: Three commenters suggested that the points of sampling be changed to either the point-of-entry into the water distribution system, or to the area in the distribution system most likely to show contamination. A fourth commenter inquired with reference to VOCs whether sampling should be conducted at the well.

RESPONSE: A-280 samples are currently taken from representative locations in each water distribution system for PCWS serving less than 10,000 people, and from the area served by each water treatment plant for PCWS serving more than 10,000 people. Some differences currently exist between the sampling points specified in the Federal and State rules. The Department will modify sampling locations to reflect those specified by the Federal regulations concerning point-of-entry into the water distribution system (see 40 CFR 141.24(g)1, 52 FR 25, 712, July 8, 1987).

COMMENT: Three commenters requested modifications to the check sampling procedures. The specific changes requested were for split sampling between the certified laboratory and the State, weekly sampling by the State, and quicker resampling when excessive levels of contamination are found.

RESPONSE: The Department has established a program to verify contamination found by water systems by conducting independent testing. To conduct weekly testing is excessive and not an effective use of State resources, since the levels of contamination in public water systems seldom change significantly in that short of a time frame. The concept of more prompt resampling when higher levels of contamination are found is being addressed in the Department's forthcoming proposal on Short-Term Action Levels. The Department agrees that quicker resampling is needed in certain instances.

COMMENT: Three commenters wanted analysis for additional chemicals to be conducted under the sampling program.

RESPONSE: Since the passage of the 1986 amendments to the Federal Safe Drinking Water Act (42 U.S.C. 300g-1), USEPA and the Department have adopted additional monitoring requirements for as many as

51 additional chemicals by reference (see N.J.A.C. 7:10-5.1). Furthermore, the Federal program is required (42 U.S.C. 300g-1) to establish MCLs for 83 contaminants by 1989. The Department believes this initiative will address this concern. Furthermore, the Department and the Institute are reviewing additional chemicals not expected to be regulated at the Federal level for an additional list of chemicals to be monitored in New Jersey (the "additional hazardous contaminant" list referred to in A-280).

COMMENT: One commenter inquired concerning whether the rules allow for the fluctuation of levels of the chemicals.

RESPONSE: In order to account for any possible fluctuation, N.J.A.C. 7:10-16.8(b) requires that MCL violations be followed by the three check samples, the results of which are averaged together.

VII. COMPLIANCE AND APPLICABILITY

COMMENT: Eight comments were received stating that one year is too long for a public community water supply to respond when an MCL is exceeded. Two other commenters recommended that immediate action be taken when any MDL is exceeded.

RESPONSE: A-280 explicitly states that PCWS are allowed one year for remediation from the time of discovery (N.J.S.A. 58:12A-15). However, the Department realizes that drinking water containing high concentrations of some of these contaminants for a period of up to one year could potentially be harmful to health. Therefore, the Department is considering proposing, in early 1989, Short-Term Action Levels in order to provide the Department with a mechanism for requiring PCWS to remediate in a time frame of less than one year when appropriate. A small exceedance of an MCL is not considered to be an immediate health threat since the MCLs were developed on the basis of a lifetime of exposure to the chemical.

With reference to the two comments concerning immediate action when an MDL is exceeded, the uncertainty of the data at the MDL can be as large as the reported value. The MDL is not considered to be an appropriate level for regulating drinking water quality. The time frame for remediation of contamination set forth in A-280 applies to concentrations of specific contaminants that exceed the MCL.

COMMENT: Two commenters stated that no extensions should be given to the one year compliance period.

RESPONSE: Despite the fact that the Department strives to have utilities correct their problems in a shorter time frame, and the fact that most utilities can quickly correct their problems once discovered by using alternate sources of water, certain utilities without alternative sources of acceptable water must finance, design and construct acceptable treatment facilities. This process generally takes at least one year. The Department believes that because the MCLs are based on lifetime exposure, solving the problem within one year is a stringent yet realistic goal for water systems and is also protective of the public health. If an extension is necessary because of the reasons cited above, it should be considered after the mandatory public hearing process.

COMMENT: Four commenters suggested that the MCLs should apply to all water systems including non-public and public non-community water systems which are not explicitly covered under A-280.

RESPONSE: The present regulatory strategy permits the local health agency having jurisdiction to apply the MCLs to non-public water systems and public non-community water systems.

COMMENT: One commenter stated that each PCWS should be able to decide whether or not to meet the MCLs.

RESPONSE: A-280 specifically states that all PCWS must comply with the MCLs.

VII. OTHER COMMENTS

COMMENT: Several groundwater suppliers in New Jersey have abandoned their groundwater resources on a temporary or permanent basis because of A-280 contamination, and have purchased surface water instead. One of the reasons that the ground water may be abandoned as a permanent drinking water source is that the construction of proper treatment facilities may not be cost-effective. Seven comments concerned the loss of groundwater resources in New Jersey as a result of the promulgation of the MCLs. The commenters made three major arguments concerning the switch from ground water to surface water: the loss of the groundwater as a drinking water resource is undesirable especially in drought periods; the surface water purchased to replace the ground water may contain higher concentrations of trihalomethanes; and the cost of treatment for systems relying upon aquifers will be much higher than for surface water supplies that do not contain A-280 contaminants.

RESPONSE: The Department supports the treatment of ground water to acceptable drinking water standards because the Department recognizes the value of ground water as a supplemental water source especially in times of drought. However, each water supplier must decide what is the most appropriate and cost effective alternative for providing water.

Most municipalities purchasing water are purchasing surface water. Treated surface water has not been found to contain the A-280 hazardous contaminants, the majority of which are volatile and "evaporate" prior to or during the treatment process. However, in general, treated surface water contains higher concentrations of trihalomethanes ("THM") than ground water. Trihalomethanes are disinfection by-products formed when a water source containing precursor molecules, such as those resulting from decaying vegetation (fulvic and humic acids), is chlorinated. There is evidence that justifies classification of one of these by-products, chloroform, as a probable human carcinogen.

The current standard for total THMs (the total of chloroform, bromodichloromethane, chlorodibromomethane, and bromoform) is 100 ppb. USEPA is currently reviewing this standard and also researching other disinfectants and by-products for possible regulation.

The Department must stress the great public health benefit of chlorine disinfection, especially for surface water sources. The decrease of water-borne diseases seen at the beginning of the century corresponds with the use of chlorine as a disinfectant. For this reason, A-280 exempted disinfection by-products from the same risk assessment requirements as the other A-280 hazardous contaminants (N.J.S.A. 58:12A-13). Although chlorine is used by the vast majority of PCWS in New Jersey, one major water supplier will be utilizing ozone treatment in anticipation of a lower standard for THMs in the future. At the time the new THM standards are proposed and possibly lowered, the Department will enforce the new THM standard as well as other disinfection standards for the protection of public health.

COMMENT: Five commenters discussed the role of the Department in preventing environmental contamination. One commenter stated that only pollution abatement, not the establishment of standards, will ensure drinking water quality. Four other commenters stated that the Department is not taking a proactive approach to environmental pollution.

RESPONSE: The Department is required to set standards for drinking water to protect public health, while numerous other environmental programs within the Department are working towards the alleviation of environmental degradation. In the Department, approximately 50 staff people with a \$3,000,000 budget work in the drinking water and water supply programs. On the other hand, approximately 600 staff people with a budget of \$20,000,000 work for the various wastewater and water pollution programs. Clearly, this focus of resources by the Legislature and the Department highlights the great emphasis placed on pollution abatement.

The Department did not have a mechanism for collecting a comprehensive database on the contamination of public community water supplies with A-280 compounds until A-280 was signed into law in 1984. The Department has required several PCWS to remediate contamination that was discovered as a result of this monitoring prior to the adoption of MCLs. Such remediation included purchasing alternative sources of water or construction of treatment facilities. Between 1984, when the A-280 monitoring program began, and the present time, 21 PCWS have constructed 26 facilities to treat water contaminated with A-280 contaminants. As stated above, the Department is also dedicating considerable efforts towards the prevention of environmental degradation.

COMMENT: One commenter stated that the public needs further information concerning drinking water standards and environmental pollution in general.

RESPONSE: The Department concurs that communication with the public concerning these issues is of vital importance. The Department's Division of Science and Research has developed a pamphlet to explain the new MCLs to the public. The pamphlet is available through the Department's Bureau of Safe Drinking Water. The New Jersey Department of Health is also developing a series of pamphlets that answer the questions that a private well owner might have concerning drinking water contaminants.

COMMENT: Two commenters stated that point-of-use or point-of-entry treatment devices should be provided by the Department for private well owners with water contaminated with A-280 contaminants.

RESPONSE: A-280 did not address the provision of these devices by the Department. The Department may, through its contaminated well-fields program under the 1981 Water Supply Bond Act, in certain cases, consider the use of these treatment devices as an interim solution for

private wells; however, there are special problems, such as the monitoring required to assure that the point-of-use treatment device is working properly, that need to be considered. The Department strongly endorses the establishment of centralized water treatment plants. When a central water utility is established, the individual homeowner and/or the local health department no longer has the responsibility for monitoring for filter media "breakthrough". The centralized facility is responsible for the proper operation of the treatment devices and can assure the delivered water quality by proper monitoring of the source at reasonable costs to the consumer.

COMMENT: Two commenters stated that the use of filtration systems is inappropriate and that a shorter time frame for supplying public water when private wells are contaminated is needed.

RESPONSE: As was stated in the response to the above comment, A-280 did not address the provision of these devices by the Department. The Department realizes that the financing, design, and construction of central treatment facilities may take longer than the public desires, despite the Department's best efforts. Therefore, the use of filter units will undoubtedly still be necessary at times. The Department does and will continue to make the provision of public water systems that comply with the MCLs the preferred course of action.

COMMENT: Four comments requested that permanent stable funding sources be provided for the alleviation of private well contamination problems.

RESPONSES: These matters are beyond the scope of these rules but it should be noted that the State of New Jersey has recently adopted legislation that specifically addresses these problems (see P.L. 1988 c.106, effective August 11, 1988).

COMMENT: One commenter opposed the addition of fluoride to PCWS.

RESPONSE: A-280 does not specifically address fluoride and nothing concerning fluoride was presented in the Department's proposal. The Department does not require that PCWS fluoridate drinking water; however, approximately 26 PCWS in New Jersey have chosen to do so. The New Jersey primary drinking water standard is the same as that adopted by USEPA effective October 1987 (51 FR 63, 11396, April 2, 1986). This fluoride standard is four milligrams per liter as a primary standard for those waters with naturally occurring fluoride; a secondary standard of two milligrams per liter is recommended for those PCWS that add fluoride to the drinking water.

COMMENT: Three commenters stated that the polluters rather than the consumer should pay for the water systems that need to be constructed as a result of contamination.

RESPONSE: The Department agrees with this general philosophy. When contamination is detected, the Department initiates an investigation of the potential sources of the contamination. In certain instances, the Department is able to identify the sources of pollution and take appropriate legal action to recover the costs. However, this is a very difficult and lengthy process; this process usually takes longer than providing supply treatment. Unfortunately, the source of pollution observed in the drinking water wells is not always identified.

COMMENT: One commenter suggested that the Department adopt a Statewide ordinance mandating VOC testing for privately owned wells when a new well is drilled or when a home is sold.

RESPONSE: The Department is planning to revise rules concerning the construction of non-public water supplies (private wells). At that time, the Department will seek comments concerning VOC testing of new sources of water.

COMMENT: One comment stated that adopting the MCLs will cause a large increase in chemicals discharged into the environment, and that the Department's environmental evaluation of this issue is deficient.

RESPONSE: The Department is requiring the removal of VOCs from the water that will be directly ingested by consumers. Although not all the water entering a home will be directly consumed, there is a possibility that some will. The removal of chemicals from drinking water is important from a public health standpoint. The contaminants removed from the water will either be discharged into the atmosphere or adsorbed into GAC. The Department's Bureau of Air Pollution applies criteria such as a one in one million risk assessment at the property boundary for toxic volatile organic substances (N.J.A.C. 7:27-8.5(a)4). These criteria are among the most stringent in the nation. Any packed tower aeration facility that does not meet this requirement must utilize vapor phase carbon to control emissions. The Department does not believe that the construction and operation of packed tower aeration facilities will result in significant environmental degradation. The carbon regeneration issue

was discussed above. The chemicals that absorb onto the carbon are destroyed by high temperature treatment at the disposal facility.

COMMENT: One commenter questioned the appropriateness of purchasing water as a long-term solution to contamination problems.

RESPONSE: This alternative is permitted by the adopted rules. While the Department supports treatment of contaminated groundwater as the preferred alternative, each municipality must evaluate its specific needs and choose the most appropriate option.

IX. SPECIFIC LANGUAGE CHANGES/MISCELLANEOUS

The following were received concerning specific changes to the proposal:

COMMENT: Two comments stated with reference to N.J.A.C. 7:10-16.4 that the use of the method detection limit, when no contamination was detected, for the purposes of calculating the average value of a contaminant artificially skews the average upward.

RESPONSE: The Department agrees and has made a change based on the commenters' suggestion. The Department will require the use of 50 percent of the MDL for the purpose of calculating the average.

COMMENT: One comment asked whether the reference in N.J.A.C. 7:10-16.8 to N.J.A.C. 7:10-16.10 should be to N.J.A.C. 7:10-16.9.

RESPONSE: The commenter is correct, and the correct reference, N.J.A.C. 7:10-16.9, has been substituted.

COMMENT: Three comments concerning N.J.A.C. 7:10-16.8(c) were received. One suggested that not all check samples should have to be nondetectable in order for the initial sample to be declared unreproducible. The second stated that very high concentrations that are obviously laboratory errors should also be declared unreproducible. The third suggested that if all three check samples are below detectable limits, the original result should also be declared below detectable limits.

RESPONSE: Although the Department recognizes that there may be instances when the check samples do not provide a consistent pattern for determining MCL violations, detection of any level of the contaminant in the check samples will need to be evaluated. With reference to the third comment, this is the intent of the section; therefore, when a test result has been declared unreproducible, it will not lead to an MCL violation, and the Department will designate the data accordingly.

COMMENT: One commenter suggested additional language to clarify the meaning of N.J.A.C. 7:10-16.8(d).

RESPONSE: The language, a cross-reference to N.J.A.C. 7:10-16.8(b)3, has been added.

COMMENT: One commenter correctly observed that in N.J.A.C. 7:10-16.9(a), the statement pertaining to a New Jersey laboratory should be changed to a New Jersey-certified laboratory.

RESPONSE: The Department agrees and has changed that section accordingly.

COMMENT: Two comments requested clarification of N.J.A.C. 7:10-16.9(c)1.

RESPONSE: The Department has made changes to clarify the meaning of that paragraph. The Department is requiring that any analyte that is part of a laboratory's routine analysis to be reported to the Department, even if that analyte does not have a specific testing or MCL requirement.

COMMENT: One commenter stated that N.J.A.C. 7:10-16.11(c) should provide that the Department "shall" rather than "may", take action, and that (c)2 be deleted.

RESPONSE: The language in (c) is drawn from the Act, and provides the Department with discretion to consider aspects of individual cases. The language at (c)2 has been adopted because the Department requires the option of establishing a program to bring public water systems into compliance. There may be situation in which (c)2 is the only option.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from the proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 16. SAFE DRINKING WATER ACT MAXIMUM CONTAMINANT LEVELS FOR HAZARDOUS CONTAMINANTS

7:10-16.1 Scope and authority

This subchapter shall constitute the rules of the Department of Environmental Protection governing the establishment of Maximum Contaminant Levels as authorized by the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., as amended by P.L. 1983, c.443, commonly known as "the A-280 amendments".

7:10-16.2 Construction

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

7:10-16.3 Applicability

This subchapter shall be applicable to all owners or operators of public community water systems as defined in N.J.A.C. 7:10-1.3.

7:10-16.4 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:10-1.3 and 7:10-14.3, have the following meanings unless the context clearly indicates otherwise:

"Average" means the sum of the results of the sampling analyses divided by the number of analyses. For the purpose of calculating the average of the test results, whenever the result is non-detectable or below the analytical *[MDL]* ***method detection limit (MDL), half of*** the MDL shall be used to represent the sample analysis result for the purpose of calculating the average of the test results.

"Check samples" means additional tests performed in response to a compliance sample that exceeds an MCL.

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

"Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to the free-flowing outlet of the ultimate user of a public water system or other water system to which State primary drinking water rules apply, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

"Method detection limit" or "MDL" means the minimum concentration of a contaminant, determined pursuant to 40 C.F.R. 136 (Appendix B) or N.J.A.C. 7:18-1 et seq., that can be measured and reported with 99 percent confidence to have an analytical concentration greater than zero.

"Polychlorinated biphenyls (PCBs) total" means the sum of all the individual polychlorinated biphenyls as set forth by the appropriate analytical method as provided in N.J.A.C. 7:18-1 et seq.

"State Act" means the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., as amended by P.L. 1983, c.443.

7:10-16.5 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:10-16.6 Penalties

Failure by the owner or operator of a public community water system to comply with any requirement of the State Act or this subchapter may result in the penalties set forth in N.J.S.A. 58:12A-10 and N.J.A.C. 7:10-14.15.

7:10-16.7 Maximum contaminant levels (MCLs) for hazardous contaminants

(a) The maximum contaminant levels for hazardous contaminants applicable to all public community water systems shall be as follows:

Hazardous Contaminant	MCL (in parts per billion)
Benzene	1
Carbon tetrachloride	2
Chlordane	0.5
Chlorobenzene	4
Dichlorobenzene(s)*[†]*	
o-	600
m-	600
p-	*[6]**†
1,2-Dichloroethane	2
1,1-Dichloroethylene	2
1,2-Dichloroethylene (cis & trans)	10

Ethylene Glycol	‡
Formaldehyde	‡
n-Hexane	‡
Kerosene	‡
Methyl ethyl ketone	‡
Methylene chloride	2
Polychlorinated biphenyls (PCBs) (Total)	0.5
Tetrachloroethylene	1
Trichlorobenzene(s) (1,2,4-Trichlorobenzene)	8
1,1,1-Trichloroethane	26
Trichloroethylene	1
Vinyl chloride	2
Xylene(s)	44

[† The separation of isomers will only be required if the presence of dichlorobenzene above six parts per billion is confirmed. Upon confirmation, the isomer(s), whether ortho, meta or para, will be addressed on a case-by-case basis.]

‡ No MCL for these contaminants is established.

7:10-16.8 Compliance requirements and procedures

(a) In accordance with the testing procedures provided in N.J.A.C. 7:10-14 and *[7:10-16.10]* ***7:10-16.9***, the owner or operator of a public community water system shall analyze for each contaminant listed in N.J.A.C. 7:10-16.7 for which there is an MCL.

(b) The owner or operator of a public community water system shall, upon receipt of an analysis that reports an exceedance of the maximum contaminant levels for one or more of the hazardous contaminants set forth in N.J.A.C. 7:10-16.7, take the following actions:

1. Notify the Department in writing of the test result within seven days of receipt of the analysis at the following address:

Bureau of Safe Drinking Water
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625
(609) 292-5550

2. Obtain three additional samples and have them analyzed within 30 calendar days of receipt of the initial analysis in accordance with the testing procedures required under (a) above;

3. If the average of the four tests is above the MCL, report to the Department by telephone (609-292-5550) within 48 hours and in writing within seven days of the receipt of the analysis required pursuant to (b)2 above at the address provided in (b)1 above; and

4. Comply with the public notification requirements of N.J.A.C. 7:10-16.10.

(c) The owner or operator of a public community water system may, where the additional three samples and analyses required pursuant to (b)2 above provide evidence that no hazardous contaminant listed in N.J.A.C. 7:10-16.7 exceeds the method detection limit, request that the Department consider the initial test to be inaccurate and *[invalid]* ***unreproducible***. The Department shall, in considering such requests, base its determination upon the following factors:

1. Previous analytical results;

2. Vulnerability of the water supply to a source of contamination; and

3. The identity and concentration of the contamination initially reported.

(d) The Department may, upon being notified ***in accordance with (b)3 above*** of the exceedance of any MCL, take one or more of the following actions:

1. Require the owner or operator of the public community water system to conduct additional testing and/or sampling to determine the nature and extent of the contamination; and/or

2. Require the owner or operator of the public community water system to investigate alternative sources of water.

7:10-16.9 Laboratory testing

(a) The analysis required by this subchapter shall be conducted at a *[New Jersey]* laboratory, certified in accordance with N.J.A.C. 7:18*-1 et seq.,* and the laboratory shall be certified for the specific method for which the test is conducted.

(b) All analysis shall be conducted by methods and laboratories capable of achieving MDLs below the respective MCL of the contaminant being tested.

(c) The owner or operator of a public community water system shall, when submitting sample analyses to the Department, provide the following:

1. *[The analysis of all the contaminants that are listed on the analytical testing method that is used;]* ***The analytical result of any contaminant monitored for as part of the analytical testing method that is used, including, but not limited to, the specifically regulated analyses;***

2. The values of all analyses above the MDL; and

3. The quality control parameters submitted on the Department's QC Data for Hazardous Contaminant Analysis Form.

7:10-16.10 Public notification

The owner or operator of a public community water system shall provide public notification of any MCL violation in accordance with the most current version of the Federal National Primary Drinking Water regulations (40 CFR 141.32, as amended).

7:10-16.11 Remediation requirements and procedures

(a) Except as provided in (b) below, the owner or operator of a public community water system that exceeds the MCL for any hazardous contaminant listed in N.J.A.C. 7:10-16.7 shall, within one year of receipt of the results of the tests conducted pursuant to N.J.A.C. 7:10-16.8, take any action necessary to bring the water into compliance with the MCL.

(b) The Department may require that the owner or operator take prompt action to remediate upon a determination that such action is necessary to abate an immediate public health threat or may extend the period of compliance (after a public hearing and a determination that the extension will not pose an imminent threat to public health) if new construction is required.

(c) The Department may, upon a failure by the owner or operator to remediate in accordance with the requirements of this section, take one or more of the following actions:

1. Enjoin the water purveyor from continuing to supply water to the public;
2. Establish a program to bring the public community water system into compliance;
3. Provide the customers of the public community water system with an alternate potable water supply; and/or
4. Seek penalties in accordance with N.J.A.C. 7:10-16.6.

7:10-16.12 Recordkeeping

(a) The owner or operator of a public community water system shall retain on its premises all initial and periodic analyses and other relevant documents and information required pursuant to N.J.A.C. 7:10-14.14(a) for a period of not less than 10 years.

(b) In accordance with this section, analyses may be kept or data may be transferred to tabular summaries provided that the following information is included:

1. The date, location (municipality, lot and block number), time of sampling, and the name of the person who conducted the sampling;
2. Identification of the sample, specifically whether the sample was a routine distribution sample, check sample (by number or description), raw sample, process water sample or other special purpose sample;
3. Date of analysis;
4. Laboratory name, including certification number and name of the person responsible for performing the analysis;
5. The analytical technique/method used;
6. Chain of custody information concerning the handling of sample; and
7. The concentration of the hazardous contaminant made known by the analysis.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries

Fee Schedules; Clam Licenses

Adopted Amendment: N.J.A.C. 7:25-1.5

Adopted New Rules: N.J.A.C. 7:25-8

Proposed: November 7, 1988 at 20 N.J.R. 2666(a).

Adopted: December 9, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection (with the approval of the Marine Fisheries Council).

Filed: December 9, 1988 as R.1989 d.26, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-9, 50:1-5, 50:2-1 et seq., and P.L. 1988, c.35.

DEP Docket Number: 042-88-10.

Effective Date: January 3, 1989.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

The amendment and new rules were proposed on November 7, 1988. The Division of Fish, Game and Wildlife received two written comments during the public comment period which closed on December 9, 1988.

COMMENT: The increased commercial license fee imposes hardship on those senior citizen recreational clammers who in the past have bought commercial licenses to protect themselves from arrest in the event their recreational harvest brings in more than 150 clams per day.

RESPONSE: The recreational limit of 150 clams per day has been set by the Legislature, not the Department, at N.J.S.A. 50:2-2. Although N.J.S.A. 50:2-3 specifically prohibits charging a fee for recreational licenses issued to resident persons 62 or more years of age, the Legislature has not made the same distinction for commercial licenses. The Department does not agree that the increase in the commercial license fee imposes undue hardship on senior citizen clammers since (1) 150 clams per day is a reasonable limit for personal consumption and, therefore, for a recreational license, and (2) a senior citizen clammer holding a commercial clam license may sell his or her catch to offset his or her license fee. Language has been added at N.J.A.C. 7:25-8.6(a)2 to express the legislative mandate that no fee be charged for recreational licenses issued to residents 62 or more years of age.

COMMENT: Shellfish lease fees, not clam license fees, should be increased to generate funds for enforcement of clamming laws.

RESPONSE: P.L. 1988, c.35 specifically dedicates clam license fees to the Shellfisheries Law Enforcement Fund. Lease fees are deposited in the State General Fund.

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

7:25-1.5 Fee schedule

(a) The following schedule of fees shall become effective immediately:

1.-4. (No change.)

Renumber existing 7.-11. as 5.-9. (No change in text.)

SUBCHAPTER 8. CLAM LICENSES

7:25-8.1 Scope and authority

This subchapter constitutes the rules governing the issuance and use of recreational resident and non-resident, juvenile and commercial clam licenses pursuant to the authority of N.J.S.A. 13:1D-9, 50:1-5, P.L. 1988 c.35, and N.J.S.A. 50:2-1 et seq.

7:25-8.2 Purpose

The purpose of this subchapter is to establish the fees for recreational resident and non-resident, juvenile and commercial clam licenses, to provide necessary restrictions on the use of these licenses, and to establish the Shellfisheries Enforcement Fund, into which these fees shall be deposited.

7:25-8.3 Construction

This subchapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 13:1D-9, 50:1-5, P.L. 1988 c.35, and N.J.S.A. 50:2-1 et seq.

7:25-8.4 Applicability

This subchapter applies to the harvest of clams from any of the natural clam grounds in the waters of the State.

7:25-8.5 Licenses

(a) Any person engaged in the harvest of clams from any of the natural clam grounds in the waters of the State shall first obtain the appropriate license, as set forth in (b)1 to 3 below, issued by the Division of Fish, Game and Wildlife, Bureau of Shellfisheries, or its designated agents. Licenses to harvest clams shall only be available to natural persons and only licensees may harvest clams from the natural clam grounds of the State.

(b) The following licenses are available for the harvest of clams:

1. Any person harvesting clams not in excess of 150 clams per day shall first obtain either a resident recreational clam license or a nonresident recreational clam license;

2. Any person under 14 years of age harvesting clams not in excess of 150 clams per day shall obtain a juvenile recreational clam license; and

3. Any person of any age harvesting more than 150 clams per day shall first obtain a commercial clam license.

(c) Whenever a person in possession of a commercial clam license in any vessel or vehicle is engaged in any clamming activity, all other persons on or in that vessel or vehicle harvesting clams shall also possess a commercial clam license.

(d) Clams harvested by a person in possession of a recreational clam license shall not be commingled with clams harvested by a person in possession of a commercial clam license.

7:25-8.6 License fees

(a) The license fees for the license described in N.J.A.C. 7:25-8.5 shall be as follows:

1. Resident recreational clam license*, persons under 62 years of age*: \$10.00;
- *2. Resident recreational clam license, persons 62 or more years of age*: No Fee*;
- *[2.]*3.* Nonresident recreational clam license: \$20.00;
- *[3.]*4.* Juvenile clam license: \$2.00; and
- *[4.]*5.* Commercial clam license: \$50.00.

(b) All clam license fees collected pursuant to this subchapter shall be deposited into the Shellfisheries Law Enforcement Fund.

(a)

DIVISION OF WASTE MANAGEMENT

Notice of Correction

Requirements for Hazardous Waste Facilities
General Facility Standards

N.J.A.C. 7:26-9.4

Take notice that the Office of Administrative Law has discovered an error in the text of the New Jersey Administrative Code at N.J.A.C. 7:26-9.4. The text of paragraph (b), duly proposed and adopted by the Department of Environmental Protection and previously appearing in the New Jersey Administrative Code, was inadvertently not reproduced in the Code in the printing of a previous Code update. The paragraph now appearing in the rule as paragraph (b) is actually paragraph (b)1. The paragraph will be included in a near future Code update.

Full text of the corrected rule follows (additions indicated in boldface thus).

7:26-9.4 General facility standards

(a) (No change.)

(b) The owner or operator of a facility shall comply with the waste analysis requirements of this subsection.

1. Before an owner or operator treats, stores, or disposes of any hazardous waste, the owner or operator shall obtain a detailed

chemical and physical analysis of a representative sample of the waste.

i.-v. (No change.)

2.-4. (No change.)

(c)-(o) (No change.)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

(b)

Research, Development, and Demonstration
Permits

Adopted Amendment: N.J.A.C. 7:26-12.9

Proposed: March 7, 1988 at 20 N.J.R. 462(a).

Adopted: December 6, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 6, 1988 as R.1989 d.11, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEP Docket Number: 003-88-02.

Effective Date: January 3, 1989.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

This amendment was proposed on March 7, 1988. Two commenters submitted written comments during the comment period which closed on April 6, 1988. No public hearing was held. Several agency initiated grammatical changes were made.

COMMENT: The Research, Development and Demonstration (RD&D) Permits will not apply to research and testing facilities, which would be exempt from permitting requirements under a rule preproposal published at 20 N.J.R. 460(a) (March 7, 1988). If the permit exemption for research and testing facilities is not eventually promulgated as a final rule, then such facilities would have to obtain RD&D permits.

RESPONSE: The purpose of RD&D permits is different than the purpose of the permit exemption for research and testing facilities that appeared as a preproposal. RD&D permits are intended to encourage the development and demonstration of innovative and experimental hazardous waste treatment technologies by providing a less stringent permitting process while still protecting human health and the environment. The use of RD&D permits is envisioned as encouraging larger-scale operations of treatment technologies so as to develop technologies for commercial use. RD&D permits are limited to a total of three years duration, and are limited as to the amount and types of hazardous waste that a facility may accept. Further, RD&D permits may be unilaterally revoked by the Department if it determines that the permitted operations pose a danger to human health or to the environment.

The research and testing facility permit exemption preproposal will be changed in response to regulations adopted by the United States Environmental Protection Agency (USEPA) on July 19, 1988. New Jersey's proposal will be modified so as to be no less stringent than those USEPA standards. These rules, when adopted, will provide an exemption for hazardous wastes used for certain studies as defined in the rules.

A research and testing facility may be eligible for, but would not be required to obtain, an RD&D permit. If no exemption or alternate permitting scheme is available, a hazardous waste research and testing facility would have to obtain a hazardous waste facility permit under N.J.A.C. 7:26-12, as research and testing facilities are currently required to do.

COMMENT: The time limits for RD&D permits are unduly restrictive. The requirements for annual permit expirations and for a three-year maximum operating period will discourage potential applicants. If the time limits cannot be more flexible and the total time span of three years extended, few individuals or companies will be interested in making capital investments in RD&D permitted activities.

RESPONSE: The Department believes that the three-year period is sufficient to encourage experimental technologies. Treatment facilities may operate for a longer period, but would be required to obtain a full permit under N.J.A.C. 7:26-12.

The proposed rules concerning RD&D permits are based on Federal regulations under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. In order to retain authorization

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pursuant to RCRA, the State of New Jersey must adopt rules at least as stringent as the Federal regulations under this program. Thus, the State cannot set more liberal time limits for permit renewals or extend the total time span beyond three years. The Federal government, in the course of developing the RD&D permit regulations, determined the above time constraints to be both practical and protective of the environment.

COMMENT: The language at N.J.A.C. 7:26-12.9(c)2i to iii would not expedite permit eligibility determinations, because it requires a detailed description of the proposed research and a new application each time a new research method is tested or a new series of related experiments is begun.

RESPONSE: The letter described at N.J.A.C. 7:26-12.9(c)2 may be submitted to the Department on a voluntary basis. The letter would be helpful to the Department in deciding whether or not to issue an RD&D permit, but the letter is not required by the Department.

COMMENT: One commenter expressed his support for the proposed amendment. He believes this proposal recognizes the need for demonstration activities within the permitting process and that it will ensure the appropriate evaluation of new treatment technologies.

RESPONSE: The Department appreciates this evidence of public support for the proposal concerning RD&D permits.

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

7:26-12.9 Short term permits

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

(c) The Department may issue a research, development and demonstration ("RD and D") permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which separate permit standards for such innovative and experimental activity have not been promulgated under N.J.A.C. 7:26-12. In addition to the requirement*s* of (c)1 below, any such permit shall include such terms and conditions as will assure protection of human health and *the* environment.

1. Such permits shall contain the following provisions:

- i. Provision for the construction of such hazardous waste facilities (after permit issuance) as necessary, and for operation of the facility for not longer than one year unless renewed as provided in (c)6 below;
- ii. Provision for the receipt and treatment by such hazardous waste facilities of only those types and quantities of hazardous waste specified in the permit which the Department deems necessary for purposes of determining the effectiveness and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and
- iii. Such requirements as the Department deems necessary to protect human health and the environment including, but not limited to:

- (1) Monitoring;
- (2) Operation;
- (3) Financial responsibility;
- (4) Closure;
- (5) Remedial action;
- (6) Testing; and/or
- (7) Submission of information to the Department with respect to the operation of such hazardous waste facility.

2. To expedite RD and D permit eligibility determinations and to minimize delays in the processing of applications, the permit applicant may, in addition, submit a letter to the Department which briefly describes the RD and D proposal. The letter should provide the following:

- i. The purpose of the research;
- ii. An explanation of why the proposed activity is experimental and innovative including reference to other similar or approved processes or technologies for treating hazardous or non-hazardous waste and an indication of the differences between them and the activities for which the permit is sought; and
- iii. A detailed description of the research.

3. Information submitted by the permit applicant to the Department may be claimed as confidential in accordance with N.J.A.C. 7:26-17.

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4. The Department may, consistent with the protection of human health and the environment, modify or waive the permit requirements under N.J.A.C. 7:26-12 except that there shall be no modification or waiver of requirements regarding financial responsibility (including insurance) as per N.J.A.C. 7:26-9 or of procedures regarding public participation as per N.J.A.C. 7:26-12.

5. The following are causes for which the Department may order an immediate termination of all operations at the facility;

- i. A determination that the permitted activity endangers human health or the environment;
- ii. Noncompliance with any condition of the permit;
- iii. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- iv. A change in ownership or operational control of a permitted hazardous waste facility; or
- v. Any of the reasons for disqualification set forth in N.J.A.C. 7:26-16.8 or 16.9.

6. An RD and D permit may be initially issued for a period not to exceed one year. No less than 60 days prior to expiration of any initial permit issued under this section, a permittee may request the Department to renew said permit for a period not to exceed one year. An RD and D permit may be renewed no more than three times for a maximum duration of one year for each renewal*[*]**, provided, however, that the maximum length of time a hazardous waste treatment facility will be allowed to operate under an RD and D permit is three years from the date of issuance of the initial RD and D permit.

(a)

Environmental Cleanup Responsibility Act Fees Adopted Amendment: N.J.A.C. 7:26B-1.10

Proposed: August 15, 1988 at 20 N.J.R. 2000(a).

Adopted: December 8, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 9, 1988 as R.1989 d.27, **without change**.

Authority: N.J.S.A. 13:1K-6 et seq., specifically 13:1K-10.

DEP Docket Number: 028-88-07.

Effective Date: January 3, 1989.

Expiration Date: December 21, 1992.

Summary of Public Comments and Agency Responses:

This rule was proposed on August 15, 1988. Four commenters submitted written comments during the comment period which closed on September 14, 1988. No public hearing was held.

COMMENT: The present time of 60 days between payment by personal check and issuance of documents, at N.J.A.C. 7:26B-1.9, should be reduced.

RESPONSE: The 60 day period was adopted in the rules which became effective January 1, 1988, and was not proposed for amendment (see N.J.A.C. 7:26B-1.10(b)). Therefore, this comment is beyond the scope of this rulemaking.

COMMENT: The small business fees for a negative declaration and initial notice where there is no contamination on-site are too high.

RESPONSE: In an amendment to the fee schedule effective January 1, 1988, the Department reduced the original small business negative declaration and initial notice fees from a total of \$700.00 to the current \$350.00. The \$350.00 fee did not generate revenues sufficient to cover the costs of these activities, and the Department is now adjusting the fees to more accurately reflect the Department's costs. The Department has reduced the burden of the fees on certain small businesses by eliminating the fee for sampling data review for businesses submitting three or fewer underground tank integrity tests. For example, a common occurrence is that a small business with one underground storage tank has the tank tested and found to be sound. The fee schedule adopted herein exempts such a business from the sampling data review fee, and the final cost to such a business is \$1,000. If the Department continued to include the sampling data review fee the new cost would be \$2,000. Overall, the small business fees for negative declaration and initial notice are approximately 40 percent less than the standard business fees. Consequently, the Department will not change the small business fees upon adoption.

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COMMENT: Regarding the definition of small business at N.J.A.C. 7:26B-1.10(d), the criteria "independently owned and operated" and "not dominant in its field" should be more specifically defined, "resident in this State" should be eliminated as a criteria, and the number of employees should be limited to the employees at the property undergoing ECRA review.

RESPONSE: The current changes to the fee schedule do not address the definition of a small business. The Department does not intend to propose a new definition at this time, but will take the suggestions under advisement.

COMMENT: The fee should be waived in cases of bankruptcy or insolvency.

RESPONSE: Regardless of the transaction which initiates an ECRA review, staff time is involved and the fees reflect time spent on various tasks. If the Department waived the fees for bankrupt businesses, there would be an unfair burden placed on the other businesses proceeding through the ECRA process that would have to be charged to cover these costs associated with bankruptcies.

COMMENT: The fee increases are not sufficiently justified, in particular the 15 percent charge levied by the Department on all fee based programs including ECRA.

RESPONSE: The Department has several large fee-based programs which require administrative support from elements within the Department but outside of the Division of Hazardous Waste Management that are responsible for data processing, accounting, auditing, personnel, and training, in addition to regular administrative support from within the Division. These other elements are funded primarily by general funds, bonds, or grants for non-fee-based programs, and the number of support positions is determined by those funding sources. Fee programs require additional personnel and otherwise burden these elements. They are allocated 15 percent of fee revenues in order to provide the funding that is required to properly administer the ECRA program.

Full text of the adoption follows.

7:26B-1.10 Fee schedule

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

(c) Fees for those Departmental services listed below shall be as follows:

	Standard	Small Business
1. Initial Notice Review		
i. Without Sampling Plan	\$ 2,000	\$ 750.00
ii. With Sampling Plan that includes only underground storage tank analysis without ground water monitoring	3,000	1,500
iii. With Sampling Plan other than ii above or iv below	5,000	3,000
iv. With Sampling Plan that includes any ground water monitoring	7,500	4,500
2. Sampling Data Review	1,000	1,000
3. Negative Declaration Review	500.00	250.00
4. Cleanup Plan Review (based on cost of cleanup)		
i. \$1-\$9,999	1,000	1,000
ii. \$10,000-\$99,999	2,500	2,500
iii. \$100,000-\$499,999	5,000	5,000
iv. \$500,000-\$999,999	8,000	8,000
v. Over \$1,000,000	11,000	11,000
5. Oversight of Clean up Plan Implementation (based on cost of cleanup)		
i. \$1-\$9,999	1,000	1,000
ii. \$10,000-\$99,999	3,000	3,000
iii. \$100,000-\$499,999	7,000	7,000
iv. \$500,000-\$999,999	10,000	10,000
v. Over \$1,000,000	12,000	12,000
6. Applicability Determination	200.00	200.00
7. De minimus Quantity Exemption	300.00	300.00
8. Limited Conveyance Review	500.00	250.00

9. Administrative Consent Order	2,000	2,000
10. ACO Amendment	500.00	500.00
11. Confidentiality Claim	350.00	350.00

(d) (No change.)

(e) The schedule for submission of fees shall be as follow:

1. (No change.)

2. Any sampling data submitted to the Department shall be accompanied by the appropriate fee. Data submitted for no more than three underground storage tank integrity tests, if that is the only sampling data submitted to the Department, shall not be assessed a sampling data review fee.

3. (No change.)

4. Any draft cleanup plan or partial cleanup plan submitted shall be accompanied by the cleanup plan review fee based upon the estimated cleanup cost contained in the draft cleanup plan.

5.-9. (No change.)

HEALTH

(a)

RESEARCH, POLICY AND PLANNING

Uncompensated Care Trust Fund Financial Elements

Adopted Amendment: N.J.A.C. 8:31B-4.37

Proposed: September 6, 1988 at 20 N.J.R. 2219(a).

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

Filed: December 9, 1988 as R.1989 d.25, **without change.**

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

Effective Date: January 3, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: Hackensack Medical Center fully supports the standardization of uncompensated care rules. However, these rules should maintain access to service for the needy and financial viability for providers.

RESPONSE: The Department believes that the rules as currently proposed maintain access to service for the truly needy and the financial viability of providers. However, by increasing the safeguards on the system, the Department is also seeking to maintain the financial viability of the Trust Fund.

COMMENT: (Zurbrugg Memorial Hospital) These amendments could place the hospital at an unfair risk of financial loss. For example, if an "organization" were to bring a patient to the State specifically for purposes of seeking free care, the treating hospital, justifiably, would not be able to qualify the patient for charity care. In addition, as per the proposed amendments, the hospital would be prohibited from declaring these patients as bad debt in the event of default. Since a hospital cannot deny treatment, even if the hospital were aware of the circumstances associated with the patient's residence, the hospital would be forced to provide courtesy care. This is clearly unacceptable.

RESPONSE: It is appropriate to place the risk of this problem on the hospital because of the hospital's control over those who control access to hospitals—the physician. The hospital, through its granting and withholding of privileges, would have some means of deterring physicians from participating with organizations who bring patients from outside the state and ask the citizens of New Jersey to pay for their care.

COMMENT: (Hackensack Medical Center) The revised table appears to further impact the amounts of charges paid by individuals at lower levels of income. Although the hospitals' administrative burden is relieved, a financial burden is placed on those who can afford it the least. For example, in the original proposal, those who would have paid 10, 30, 50 and 70 percent would now have to pay 20, 40, 60 and 80 percent. The only category which benefits would be those who fell in the original 90 percent category, which presumably would be the smallest group because of the higher income. The new table does not add any benefit

to those the rule attempts to serve. Maintaining the original table appears to be the better option.

RESPONSE: The Department disagrees with the hospital's assertion that only patients in the original 90 percent category would benefit from this change. Some patients originally in the 70 percent category would pay 60 percent under this scenario. Moreover, 35 percent of patients would stay in the same category under either regulation.

A substantial number of hospitals commented against the original proposal of nine steps as being administratively burdensome. The majority of hospitals now have no sliding fee scale or a sliding fee scale with four or fewer steps.

COMMENT: (Hackensack Medical Center) Those with limited financial resources would be further disadvantaged by increasing this percentage from 10 to 30 percent. An individual who earned \$12,000 would have paid \$1,200 under the original proposal. However, the revision would now require that individual to be responsible for \$3,600. The assumption that this is feasible from the patient's perspective is unreasonable. The original 10 percent of income maximum should be preserved at least for the lower income levels.

RESPONSE: Increasing the threshold for full charity care from 10 percent to 30 percent may disadvantage some patients, particularly at lower income levels. However, this must be weighed against the potential drain on the system to permit even relatively small inpatient bills to be determined to be eligible for charity care. The Department supports maintenance of the threshold at 30 percent.

COMMENT: (Hackensack Medical Center) There is conflicting information regarding the application of these rules to non-Jersey residents. The rules should clarify applicability to out-of-State residents from abroad.

In general, it appears that the proposed revisions would transfer uncompensated care costs from charity care to bad debts having a neutral effect on the Trust Fund but having an increased burden on the free care patient.

RESPONSE: Charity care is available only to New Jersey residents and non-New Jersey residents who present themselves at the emergency room with an emergency condition for which they are admitted.

The Department disagrees that this will have only a neutral effect on the trust fund. The trust fund will be protected from persons who come to New Jersey for charity care, rather than seek care in their own state where they will be billed.

COMMENT: (Hackensack Medical Center) The residency rule should include a provision for certain services to be waived from the rule. This waiver would be granted by the Department of Health after an appeal, which included an alternative methodology, was filed. The waiver might be considered for specialty, tertiary or regional type services.

RESPONSE: The Department does not support the concept of allowing hospitals to appeal for a waiver of the rules for specialty, tertiary or regional services. The legislation establishing the hospital rate setting system and the Uncompensated Care Trust Fund specify that they are for the benefit of residents and inhabitants of the State. It is not appropriate to permit hospitals to provide charity care to out-of-State patients, when such care will be paid for primarily by State residents.

COMMENT: The Public Advocate strongly supports the proposed addition of N.J.A.C. 8:31B-4.37(c)4, which permits an applicant for charity care to apply any assets to current hospital bills for which he or she seeks charity care. This modification would correct a flaw in the current rules, which concerns the situation in which a family becomes pauperized in the process of providing partial payment for a hospital bill.

RESPONSE: No response is necessary.

COMMENT: (Public Advocate) These proposed changes include an increase in the "catastrophic cap" in proposed N.J.A.C. 8:31B-4.37(b)3, and the prohibition of the provision of charity care to people who are not New Jersey residents, in proposed N.J.A.C. 8:31B-4.37(d)7. The Public Advocate urges that these modifications, if adopted, be monitored closely to ensure that they do not have the effect of unfairly limiting access to health care.

RESPONSE: The Department will monitor the access concerns related to the change to 30 percent of annual income. However, the protection of access to non-State residents is outside the purview of chapter 83 and chapter 204.

COMMENT: (Deborah Hospital) The definition of bad debt is a patient who can afford to pay for the care, but refuses to do so. The non-resident charity care patient does not fit the definition of bad debt but, rather, conforms to the definition of charity care as defined in the

rules at N.J.A.C. 8:31B-4.38(a)(2): "The provisions of health care services to individuals unable to pay for them for reasons of indigency."

RESPONSE: The Act makes a distinction in the purpose section where it indicates that a goal of the act is the promotion of health of the inhabitants of the State. Therefore, it is proper to distinguish between residents and non-residents of the State in defining charity care.

COMMENT: (Deborah Hospital) The first reason advanced by the Department for keeping non-resident charity patients out of New Jersey hospitals is that "... uncompensated care in New Jersey hospitals is funded primarily by New Jersey residents through insurance premiums and taxes used to finance Medicaid." Why the Department even mentions Medicaid in this context is unclear. New Jersey hospitals regularly bill out-of-State Medicaid programs for care provided in New Jersey hospitals to non-resident Medicaid beneficiaries.

RESPONSE: New Jersey Medicaid, which is 50 percent funded directly by New Jersey taxpayers, pays between 10 and 15 percent of the bills in New Jersey hospitals. No out-of-State Medicaid program approaches this level. Therefore, it is appropriate to point out that New Jersey taxpayers are funding approximately 25 percent of the uncompensated care in New Jersey hospitals, through State and Federal tax contributions to the Medicaid program.

COMMENT: (Deborah Hospital) To further the statutory goals, N.J.S.A. 26:2H-18(d) provides that hospitals shall be reimbursed for the reasonable cost of "... direct patient care; provision of health care services to individuals unable to pay for them by reason of indigency and debts, provided adequate recovery procedures are followed ..." Subsection (d) makes no distinction between any of those three elements as to residency and makes no distinction as to all three of those elements between residents and non-residents.

RESPONSE: The Act makes a distinction in the purpose section where it indicates that a goal of the Act is the promotion of health of the inhabitants of the State.

COMMENT: (Deborah Hospital) An applicant for a Certificate of Need ("CN") must agree to the following mandatory conditions for approval:

1. In order to assure access to patient care services, under no circumstances may any patient be denied admission to the applicant institution or, once admitted, transferred to another institution due to inability to pay for services. This condition shall remain in effect for the life of the approved project ...

3. The applicant will assure that indigents and Medicaid patients have access to all services offered by the facility.

f. Each applicant must demonstrate a historical commitment to caring for the medically indigent (that is, provision of uncompensated charity care, excluding bad debt accounts) and that it has taken steps to develop services for this population; for example, primary care programs followed-up with appropriate specialty referral; and the applicant submits evidence from its medical staff that staff physicians with admitting privileges will insure access to care by all indigent and Medicaid patients.

RESPONSE: Hospitals are mandated under these rules to provide access to all indigents. Therefore, there is no conflict between this proposed amendment and the CN conditions. The law authorizing the CN process includes in its purpose section only a requirement to promote the health of the inhabitants of the State.

COMMENT: (Deborah Hospital) It is the Department's position that the proposed amendment will preclude a hospital from claiming charity care reimbursement for care provided to non-resident charity patients. However, there will be reimbursement to those identical hospitals for those same patients, but only if the hospital bills those patients and then claims them as bad debt. For this reason, Deborah will be uniquely harmed. Deborah will be the only institution in this State not receiving reimbursement for any of its non-resident charity patients. Other hospitals will treat these charity patients, undergo the futile process of billing them, and then claim reimbursement as bad debt.

RESPONSE: Any hospital that opts, in general or in any specific case, not to bill out-of-State patients would be treated in the same way.

COMMENT: (Deborah Hospital) "The requirement to bill and dun out-of-State patients who may be unable to pay is a consequence of the need to ensure that indigent patients do not come to New Jersey in order to access health services that should be provided in their home state." It appears that keeping non-resident charity patients out of this State is the goal of the proposed amendment.

RESPONSE: This provision is designed to ensure that there is no financial incentive for indigents to seek care in New Jersey rather than in their own states.

COMMENT: (Deborah Hospital) The additional requirement in the proposed Amendment that "(h)ospitals may not report as either bad debt or charity care the costs of services delivered to persons who are brought to New Jersey by the hospitals or other organization for the purpose of receiving medical care . . ." is ambiguous. Does "brought to" mean transported by ambulance or helicopter? Does it mean the cost of the trip to the hospital is paid for by the hospital or the organization? The sentence is impermissibly vague and for that reason unconstitutional. In any event, this sentence violates the statute's requirement that hospitals be reimbursed their full financial elements including related bad debt and charity care.

RESPONSE: "Brought to" means solicited, organized, or sponsored by the hospital or another entity. Moreover, the Uncompensated Care Trust Fund is authorized to pay only the reasonable costs of hospital Uncompensated Care; it is unreasonable to allow hospitals and other organizations to bring patients from other jurisdictions and have that cost paid by the Trust Fund.

COMMENT: (Deborah Hospital) The Department concedes that indigents might come to a New Jersey hospital for care because the hospital service they require is just not accessible to them in their home state. Nevertheless, the proposed amendment intends to bar non-resident indigents from New Jersey hospitals, in spite of the fact that they may have no accessible source in their home state for the particular health care service they might require. But what is to become of the non-resident charity patient that these rules successfully keep out of New Jersey when hospitals accessible to them in their state of residence do not offer health services that are easily accessible in neighboring New Jersey?

RESPONSE: The patient will be financially indifferent as to whether he or she receives care in New Jersey or at home because the patient will be billed in either case. These rules do not deny access to non-state residents, but they do mandate that these patients be billed just as they would be in their home state.

COMMENT: (Deborah Hospital) N.J.A.C. 8:31B-4.39(a)(8) incorporates the Hospital Financial Management Association Principles and Practices Board Statement 2, which clarifies the distinction between charity care and bad debt. Charity care results from an individual's indigency, an inability to pay rather than an unwillingness to pay. (HFMA Principles and Practices Board Statement 2, p.1.) A determination of indigency is not related to residency, but to financial resources.

RESPONSE: N.J.A.C. 8:31B-4.39(a)(8) was amended (see 20 N.J.R. 2276(a)) to remove the reference to the Hospital Financial Management Association Principles and Practices Board Statement 2.

COMMENT: (Deborah Hospital) It is the purpose of the dunning process to keep non-resident charity patients out of the State of New Jersey. In the Economic Impact statement to the proposed amendment the Department states that "... a positive economic impact will occur if this rule prevents out-of-State residents from coming to New Jersey to seek charity care for which they would not be eligible in their own state or country."

RESPONSE: It is the purpose of the dunning process to keep financial considerations from governing whether a charity care patient comes to New Jersey for care or seeks care in his or her home state. When the patient will be billed in either state, only medical considerations will attract indigents to New Jersey hospitals.

COMMENT: (Deborah Hospital) Furthermore, hospitals in this State are required under N.J.A.C. 8:43B-1.11(i) to "provide care for the needy sick and no hospital shall withhold service from any person because of race, creed or national origin." (emphasis added). There is no qualification to this requirement based upon residency.

RESPONSE: Hospitals are required to provide care to the needy sick, except in the exception provided in this rule. However, pursuant to these rules, the hospital is required to bill non-resident patients.

COMMENT: (Deborah Hospital) What will happen when an individual presenting himself as having the ability to pay for care is brought to a New Jersey hospital by the hospital or some organization, and the patient ultimately refuses to pay his or her bill? Does this rule preclude reimbursement as bad debt? What will happen when an organization agrees to pay the full cost of care for an individual that qualifies as a charity patient but subsequently the organization reneges on that commitment? Must the hospital be penalized? The statute requires full reimbursement of the cost of that care to the hospital.

RESPONSE: A prudent collection policy would not accept a promise of payment that could be reneged upon. This is not a plausible example.

COMMENT: (Deborah Hospital) The assumption is that charity care patients are coming to New Jersey for care because the hospitals in their

communities, though offering the same health care services as New Jersey hospitals, make no provision for indigents to receive that care without at least being billed for that care. For this reason, the proposed amendment would prevent persons from other states from accessing health care in New Jersey for which they will not be expected to pay and for which they would not be eligible in their home state. This assumption ignores the fact that the majority of the hospitals in Delaware, New York and Pennsylvania are not-for-profit, tax exempt institutions that must provide free care to charity care patients in order to retain their tax exempt status.

RESPONSE: The Department understands that most other states have no organized system of providing charity care. The Department further understands from inquiries to other states that hospitals in other states regularly bill out-of-state as well as in-state, indigent patients.

COMMENT: (Deborah Hospital) None of the operative provisions of the Uncompensated Care Trust Fund Act makes any distinction between residents and non-residents. Section 2(g) expressly defines uncompensated care as "inpatient and outpatient care provided to medically indigent persons and bad debts . . ." without regard to residence. N.J.S.A. 26:2H-4.1. The continued recognition of non-resident bad debt as uncompensated care under the Act evidences the Department's recognition that there is no statutory basis or mandate for any distinction between residents and non-residents.

RESPONSE: Chapter 83 states that among its purposes are the promotion of health of the inhabitants of the State, cost containment and the protection of the financial solvency of hospitals. The basis for the distinction is that out-of-State bad debts must be recognized in order to ensure the fiscal solvency of hospitals. Only State residents are afforded any personal protection of their health.

Chapter 204 reiterates that its purpose include the promotion of the health of the residents of the state.

COMMENT: (Deborah Hospital) To the extent that the proposed amendment limits eligibility for charity care to New Jersey residents, it is beyond the power of the Department to issue. The proposed amendment purports to be authorized by the Health Care Facilities Planning Act (the "Act"), N.J.S.A. 26:2H-5b and 18d. A thorough review of those provisions, however, demonstrates that the proposed amendment is inconsistent with legislative intent and authority.

RESPONSE: Chapter 83 states that among its purposes are the promotion of health of the residents of the State, cost containment and the protection of the financial solvency of hospitals. The first two purposes are fostered by limiting charity care to State residents. The last is fostered by permitting hospitals to recover the costs for caring for out-of-State residents through bad debt, provided appropriate collection procedures are followed.

COMMENT: (Deborah Hospital) The repetition in the responses to comments of the word "primarily" in qualifying the assertion that reimbursement of indigent care comes from the pockets of New Jersey residents is itself recognition by the Department that some portion ("primarily" has nowhere been defined by the Department) does come from out-of-State. Consequently, the compelling State interest test clearly does apply. And as to that test, the response to comments candidly acknowledges that: "Hospitals and facilities are not a scarce resource in New Jersey." Consequently, no compelling State interest has been demonstrated.

RESPONSE: Some uncompensated care payments come from the insurers' of out-of-State residents who access health care in New Jersey. This amount has not been quantified by the hospitals.

The Department reiterates that while hospitals and facilities are not a scarce resource in New Jersey, funding for uncompensated care is. This proposed amendment does not restrict access to hospital services, it restricts payment for uncompensated care. Therefore, it has demonstrated a compelling State interest justifying this provision.

COMMENT: (Deborah Hospital) The financial burden placed on individuals who would be required to pay 30 percent of their gross income for hospital care before they are eligible for services as charity care, without regard to physician and prescription expenses, may be prohibitive.

RESPONSE: The intent of the rule is to focus charity care on the most needy populations within sound financial parameters. Charity care is available to the indigent (under 150 percent of the Federal poverty guidelines) and the medically indigent (those between 150 and 250 percent who incur bills for which they are responsible which exceed 30 percent of their income).

COMMENT: (Deborah Hospital) The Department states that the purpose of the increase in the spenddown from 10 to 30 percent is to

reduce the related administrative burdens. While administrative burdens may be reduced, a threshold of 30 percent of gross income will force patients to choose between paying their hospital bill or providing for the necessities of life.

RESPONSE: The Department has indicated that the reduction of administrative burden on the hospitals is a positive impact of the rule, not the purpose. The purpose is to more appropriately allocate charity care to the most poor and those with catastrophic hospital bills.

COMMENT: (Deborah Hospital) The Department states that the proposed amendment is likely to change the distribution of uncompensated care, because more charity care will be provided, which should lead to a reduction in the bad debt component of uncompensated care. Actually, the effect will be to shift out-of-State charity care to bad debt, increasing bad debt and decreasing charity care.

RESPONSE: The net impact on the distribution of charity care and bad debt cannot be determined at this time. However, it is probable that more charity care will be provided to New Jersey residents, the intended beneficiaries of the Act, with a concomitant reduction in bad debt attributable to New Jersey residents.

COMMENT: The proposed rule will affect only Deborah Hospital and will result in lost reimbursement for care provided to non-resident charity patients in the amount of \$2,231,000 a year.

RESPONSE: The proposed amendment will affect any hospital which opts not to bill any or all out-of-State patients.

COMMENT: It is apparent that the Department intends, through the adoption of the proposed amendment, to bring about a change in Deborah's historic practice of not sending a bill to patients.

RESPONSE: The Department does not intend to encourage Deborah to give up the philanthropic practice of not billing patients. The Department finds, however, that it is inappropriate to shift the cost of this "philanthropy" to New Jersey residents, taxpayers and purchasers of health insurance.

COMMENT: (Deborah Hospital) Since these patients are indigent, the process of billing the patient will provide no additional revenue. It must be obvious that this aspect of the proposed amendment will put hospitals through a rather unnecessary and meaningless exercise. Even the Economic Impact statement accompanying the proposed amendment does not project one dollar of additional revenue as a result of billing non-resident charity patients. In the Economic Impact statement, the Department concedes that it does not expect to collect any additional revenue as a result of billing non-resident charity care patients: "... limiting charity care to the State residents may not have a significant impact on the total amount of uncompensated care provided in the State ... because out-of-State residents may still have their care paid (to a hospital) as bad debt."

RESPONSE: The proposed amendment may not have a significant impact on the amount of uncompensated care in New Jersey. However, it is likely to prevent an influx of indigent patients from jurisdictions outside New Jersey who wish to access New Jersey hospitals because they will not be billed.

COMMENT: (Deborah Hospital) The Public Advocate advised the Department that medically indigent patients who are denied uncompensated care "... suffer the humiliation and trauma of aggressive collection practices, notwithstanding their clear inability to pay. As a result, these medically indigent patients forgo necessary hospital care, or put off needed care until their health has been impaired."

RESPONSE: New Jersey has taken the lead in funding indigent care for its own residents. It has no responsibility to guarantee free care for indigents from other jurisdictions. In order to be able to continue this for New Jersey residents, it is necessary to prevent inappropriate use of the charity care system.

COMMENT: (Deborah Hospital) Additionally, hospitals throughout the country that have received Hill-Burton loans from the Federal government are required to make a certain percentage of the care provided in their facility available to the truly indigent. In fact, the State of New York reimburses hospitals for care provided to charity patients, regardless of their state of residence! The proposed amendment might result in a similar policy being adopted by the State of New York, purely on a defensive or retaliatory basis, rendering institutions like Sloan-Kettering inaccessible to New Jersey charity patients.

RESPONSE: New Jersey hospitals continue to provide access to non-State residents, although on a basis. The Department has been informed that New York hospitals bill out-of-State patients as well as in-State patients. Since both New York and New Jersey hospitals will bill out-of-State patients, there should be no "retaliatory" policies set up.

COMMENT: (Deborah Hospital) "Hospitals are prohibited from denying persons medically necessary treatment if the hospital has the medical capacity to provide such care." Again, the proposed amendment contains no qualification based on residency, with respect to this obligation. Consequently, the Department has no power to deprive health care facilities of that portion of the financial elements granted to them by statute which represent non-resident charity care, particularly when, at the same time, the Department requires hospitals to provide care to all patients, regardless of inability to pay and regardless of residency.

RESPONSE: The hospital is prohibited from denying access to persons on the basis of residence. However, they will be expected to bill these patients. Therefore, hospitals, if they follow appropriate collection efforts, will be guaranteed their full financial elements representing uncompensated care.

COMMENT: (Deborah Hospital) The statute creating the Uncompensated Care Trust Fund (P.L. 1986, c.204, approved January 5, 1987) reiterates the same goal of protecting financial solvency of the State's general hospitals (see N.J.S.A. 26:2H-4.1). The Uncompensated Care Trust Fund Act at N.J.S.A. 26:2H-4.1 also specifically defines uncompensated care as the "... inpatient and outpatient care provided to medically indigent persons and bad debt as defined by regulation of the department pursuant to P.L. 1971, c.136 (c.26:2H-1 et seq.)" (emphasis added). The Uncompensated Care Trust Fund Act did not create a new definition for indigent care. It adopted and incorporated the then existing definition promulgated pursuant to the Health Care Facilities Planning Act. Those rules drew no distinction between charity care patients based on the state in which they resided. Perhaps that is why the Department excludes the Uncompensated Care Trust Fund Act, N.J.S.A. 26:2H-4.1 et seq., from its statement of authority for the proposed amendment.

RESPONSE: The Uncompensated Care Trust Fund Act was not included in the statement of authority for the proposed amendment because it will sunset prior to the implementation of these rules. However, this Act reiterates that the purpose of the Act is to promote the health of the residents of the State. Therefore, the Department finds that it is appropriate to distinguish between in-State and out-of-State charity care.

COMMENT: (Deborah Hospital) The Department, through the proposed amendment, attempts to amend the definition of charity care to exclude from that definition non-resident patients who otherwise meet all financial criteria for qualifying as charity patients. This means that hospitals that treat non-resident patients who meet the definition of charity care will not be reimbursed the cost of providing that care, unless they dun that patient. The proposed limitation of reimbursement for charity care to New Jersey residents is, thus, a violation of the legislative goals advanced in the Health Care Facilities Planning Act and the Uncompensated Care Trust Fund Act set forth at N.J.S.A. 26:2H-1, 2H-4.1 and 2H-18d.

RESPONSE: The Health Care Facilities Planning Act, N.J.S.A. 26:2H-1, establishes the following goals: "to provide for the protection and promotion of the health of the inhabitants of the State, promote the financial solvency hospitals and similar health care facilities, and contain the rising costs of health care services." By limiting charity care to New Jersey residents, this rule provides for the protection and promotion of the health of the inhabitants of the State and contain the rising cost of health care services by ensuring that indigents do not seek free care in New Jersey for that which they will be billed at home. By allowing hospitals to report services to non-State residents as bad debts, provided appropriate collection procedures are followed, this rule ensures that hospitals' financial solvency is protected.

COMMENT: (Deborah Hospital) Both the intent and impact of the proposed amendment are exclusionary. The proposed amendment as resubmitted expressly states that, except in emergency situations, "Persons who are not New Jersey residents may not be screened for charity care pursuant to [the proposed amendment]." Nonetheless, New Jersey hospitals such as Deborah are mandated to admit non-resident indigent patients and waste resources on billing and collection procedures even though it is patently clear at the time of admission that collection requirements that are the predicate for bad debt reimbursement will be unavailable. Furthermore, the Economic Impact statement admits that the goal of the proposed amendment is to discourage the use of New Jersey hospitals by non-resident indigents.

RESPONSE: Because the rule requires hospitals to admit these patients, it is patently nonexclusionary. Hospitals are required to follow appropriate collection procedures for out-of-State patients in order to make patients financially indifferent as to whether they access care in New

Jersey or in their home state. The Department is seeking to ensure that indigent patients will access New Jersey hospitals solely for medical, not financial, reasons.

COMMENT: Such an express intent to discourage or chill the exercise by nonresident indigents of their constitutional right to travel interstate to seek necessary medical treatment and of their constitutional right to receive medical care, is not within the power of state government.

RESPONSE: This rule does not bar patients from traveling to New Jersey for medical treatment at New Jersey hospitals. In fact it provides greater protection for access to out-of-State residents than other states provide for their own residents because it requires hospitals to provide access and will pay for those services through bad debt provided appropriate collection procedures are followed.

COMMENT: (Deborah Hospital) "This rule does not bar patients from traveling to New Jersey for medical treatment at New Jersey hospitals. It is proper, without a showing of compelling State interest to allow only State residents to take advantage of a State-based payment system funded primarily by State residents." (see 20 N.J.R. 2276(a), 2284) (emphasis supplied)

The first sentence of the referenced Department response to a comment on N.J.A.C. 8:31B-4.37 as a proposed new rule fails to take account of the fact that a rule that places a burden and penalty indirectly on indigent non-residents and directly on the hospitals rendering those services solely as a consequence of the exercise of these privileges and immunities to travel and receive medical care, is in and of itself unconstitutional. Unconstitutionality does not require a showing that any individual is deterred by the rule. That there is such a chilling effect on the exercise of constitutional rights is confirmed by the comments of the Public Advocate that indigents denied uncompensated care "... forgo necessary hospital care, or put off needed care until their health has been impaired." The penalty in this instance is only increased by the newly included provision that even bad debt reimbursement will not be available as to an indigent non-resident who is "brought to New Jersey by the hospital or other organization for the purpose of receiving medical care."

RESPONSE: The Department reiterates its original response, as quoted in the comment. It is an appropriate use of the State's authorization, pursuant to P.L. 1978, c.83, to limit payment under charity care to State residents.

COMMENT: (Deborah Hospital) The exclusionary intent of the proposed amendment is only reinforced by the response to earlier comments such as the following: "It is altogether appropriate to return a benefit primarily paid for by New Jersey residents solely for the use of New Jersey residents."

RESPONSE: State residents and out-of-State residents pay for uncompensated care through their hospital bills. However, the majority of paying users of health care services in New Jersey are New Jersey residents, therefore New Jersey residents are the primary payers of uncompensated care.

Out-of-State residents are eligible for payment for their bad debts; therefore, it is appropriate to bill them for uncompensated care.

The intent of this amendment is to ensure that patients are financially indifferent as to whether they receive care in New Jersey or in their own states.

COMMENT: (Deborah Hospital) The lack of a definition of the term "New Jersey resident" renders this aspect of the proposed amendment too vague for accurate application. Deborah submits that a definition of "resident" should be added to the regulation and re-submitted for comment.

RESPONSE: The Department disagrees that the definition of "resident" must be resubmitted for comment. The Department defines a resident as a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom. This is the same definition used by the Medicaid program at N.J.A.C. 10:72-3.3.

COMMENT: (Deborah Hospital) The proposed amendment does not contain a definition of the term "New Jersey resident". Although the Department has assured that it "... will provide additional guidance on the definition of residency prior to the implementation of these rules ..." it would leave this rule impermissibly vague to adopt them without a clear definition of "resident". Given that the Department acknowledges that the definition of resident is very broad and that it can include migrant workers, the homeless and residents in New Jersey nursing homes", a clear definition of who is a resident for purposes of a hospital claiming an individual as reimbursable as a resident charity care patient is absolutely necessary.

RESPONSE: The Department will use the same definition of resident as the Medicaid program as found in the JerseyCare Manual at N.J.A.C. 10:72-3.3. The term resident shall mean a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

COMMENT (Zurbrugg Memorial Hospital) It is necessary that the Department define the terms "resident" and "organization". These definitions should be included in N.J.A.C. 8:31-4.37. This would avoid misinterpretation of proposed amendments. For example, the traditional definition of a "resident" is someone who can show evidence of residing at a permanent address within the state for a minimum of six months. The term "organization" could be similarly misinterpreted.

RESPONSE: The Department will use the same definition of resident used by the Medicaid program in its JerseyCare Manual at N.J.A.C. 10:72-3.3. The term "resident" shall mean a person who is living in the State voluntarily and not for a temporary purpose. In charity care cases involving the situation in N.J.A.C. 10:72-3.3(a)3 (where an individual enters the State in order to receive medical care) the hospital must make the determination that county welfare office is required to make in Medicaid cases involving these circumstances.

Full text of the adopted amendments follows:

8:31B-4.37 Charity care and reduced charge care for indigent patients
(a) (No change.)

(b) Income eligibility criteria for identifying charity care patients are as follows:

1.-2. (No change.)

3. A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services after any applicable third party has paid; that percentage shall be calculated by the following:

i. Income as a Percentage of HHS Income Poverty Guideline as adopted by the Department		Percentage of Charges Paid by Patient
From	To	
151	175	20
176	200	40
201	225	60
226	250	80

ii. If the percentage of charges for individuals between 150 and 250 percent of the Federal poverty guidelines which is unpaid by other parties and billed to the patient exceeds 30 percent of the person's, or family's if applicable, annual income as calculated by reference to (b)2 above, this excess will be eligible for treatment as charity care. This 30 percent threshold must be met once per family in a 12 month period.

4. (No change.)

(c) Assets eligibility criteria for identifying charity care and reduced charge charity care patients are as follows:

1. (No change.)

2. Liquid assets are assets which consist of, or which can be readily converted into, cash. This includes, but is not limited to, cash, savings and checking accounts, certificates of deposit, treasury bills, negotiable paper, corporate stocks and bonds, and equity in real estate, other than the patient's or family's, if applicable, primary residence.

3. (No change.)

4. The assets of an applicant for charity care shall be counted only after the applicant has had an opportunity to apply any assets to the hospital charges for which the applicant seeks charity care.

(d) Eligibility determination for charity care and reduced charge charity care are as follows:

1.-6. (No change.)

7. Persons who are not New Jersey residents may not be screened for charity care pursuant to (d)1 above. Hospitals shall not report care delivered to non-New Jersey residents as charity care unless the care is related to an emergency situation resulting in an inpatient admission. Necessary and appropriate care may not be denied to non-New Jersey residents for failure to meet financial requirements pursuant to N.J.A.C. 8:31B-4.40(a). Hospitals may not report as either bad debt or charity care the costs of services delivered to persons who are brought to New Jersey by the hospital or other organization for the purpose of receiving medical care. With that

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exception, hospitals may report costs associated with care delivered to non-New Jersey residents as bad debt provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40.

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

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: April 18, 1988 at 20 N.J.R. 871(a).

Adopted: November 24, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: December 1, 1988 as R.1989 d.3, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 3, 1989.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following product and its manufacturer was **adopted**:

Metaproterenol tabs 10, 20 mg	PharmBasics
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The following products were **not adopted but are still pending**:

Amiloride/HCTZ tabs 5/50	Barr
Carisoprodol tabs 350 mg	Mutual
Cortisone acetate tabs 25 mg	T-P
Diphenhydramine elixir 12.5 mg/5 ml	Cenci
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Barr
Hydrochlorothiazide tabs 25, 50, 100 mg	T-P
Nystatin tabs 500,000 units	Mutual
Perphenazine tabs 2, 4, 8, 16 mg	Cord
Prednisolone acetate ophth soln 1%	America
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
Verapamil tabs 80, 120 mg	Bolar

Office of Administrative Law Note: See related notices of adoption at 20 N.J.R. 1710(b), 2376(d), and 2768(b).

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: September 19, 1988 at 20 N.J.R. 2356(a).

Adopted: November 24, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: December 1, 1988 as R.1989 d.4, 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: January 3, 1989.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments were received concerning the products either adopted or rejected.

The following products and their manufacturers were **adopted**:

Amitriptyline tabs 10, 25, 50, 75, 100 mg	Superpharm
Baclofen tabs 10, 20 mg	PharmBasics
Benztrapine mesylate tabs 0.5, 1, 2 mg	PharmBasics
Benztrapine mesylate tabs 0.5, 1, 2 mg	Quantum

HEALTH

Betamethasone dipropionate lotion 0.05%
Betamethasone valerate lotion 0.1%
Betamethasone valerate oint 0.1%
Chlorzoxazone tabs 250, 500 mg
Clorazepate tabs 3.75, 7.5, 15 mg
Clorazepate tabs 3.75, 7.5, 15 mg
Desipramine tabs 10, 25, 50, 75, 100, 150 mg
Fenoprofen calcium tabs 600 mg
Fenoprofen caps 200, 300 mg
Fenoprofen tabs 600 mg
Fenoprofen tabs 600 mg
Fluocinonide cream, oint 0.05%
Flurazepam caps 15, 30 mg
Indomethacin caps 25, 50 mg
Lactulose syrup 10 g/15 ml
Methyclothiazide tabs 2.5, 5 mg
Metoclopramide tabs 10 mg
Nalidixic acid tabs 250, 500, 1000 mg
Nystatin susp 100,000 U/ml
Propranolol tabs 10, 20, 40, 80 mg

Copley
Copley
Clay-Park
Cord
ALRA
Cord
Cord
Cord
PharmBasics
Cord
Cord
Mylan
Clay-Park
PharmBasics
Novopharm
Alra
Cord
Superpharm
Danbury
Lemmon
Superpharm

The following product was **not adopted**:

Nitrofurazone oint, soln 0.2%	Clay-Park
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The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Amer.Ther.
Albuterol tabs 2, 4 mg	Cord
Allopurinol tabs 300 mg	Cord
Amitriptyline/CDP tabs 5/12.5, 10/25	Danbury
Amitriptyline/perphenazine 2/10, 2/25	Danbury
Amitriptyline/perphenazine 4/10, 4/25, 4/50	Danbury
Amoxicillin caps 250, 500 mg	Lab A
Carisoprodol tabs 350 mg	Cord
Erythromycin ethylsucc/sulfisox 200/600	ALRA
Fenoprofen calcium tabs 600 mg	Lederle
Fluocinonide oint. 0.05%	Clay-Park
Haloperidol tabs 10, 20 mg	Danbury
Lithium carbonate caps 300 mg	Reid-Rowell
Meclofenamate caps 50, 100 mg	Cord
Metaproterenol tabs 10 mg	Quantum
Methyldopa/HCTZ tabs 250/15, 250/25	Novopharm
Methyldopa/HCTZ tabs 500/30, 500/50	Novopharm
Methyldopa/HCTZ tabs 250/25, 500/50	Danbury
Methylprednisolone tabs 4 mg	Heather
Metoclopramide tabs 10 mg	Cord
Prazosin caps 1, 2, 5 mg	Danbury
Prednisone tabs 10, 50 mg	Cord
Propoxyphene HCl/APAP tabs 65/650	Cord
Quinidine gluconate ER tabs 324 mg	Cord
Quinidine sulfate tabs 300 mg	Cord
Salsalate tabs 500, 750 mg	Upsher-Smith
Sulindac tabs 150, 200 mg	Mutual
Theophylline ER tabs 100, 200, 300 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Cord
Trazodone tabs 50, 100 mg	Cord
Triamcinolone acet. lotion 0.025, 0.1%	Clay-Park

(c)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: August 1, 1988 at 20 N.J.R. 1766(a).

Adopted: November 23, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: December 1, 1988 as R.1989 d.5, 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: January 3, 1989.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: Marion Laboratories objected to the proposed ox-
 ybutynin tablets based on an argument that the elderly often use the

HEALTH

product, that pharmacokinetics may be different in such patients, that physician retitration may be needed if a switch is made, and also based on Dr. Sugita's recommendation of "bioinequivalent".

RESPONSE: The general argument that pharmacokinetics of drugs are different in the elderly is granted, but is not the question. The pertinent question is whether the same drug in elderly individuals would be metabolized differently. Marion Laboratories provided no data on this point. Additionally, the Council does not agree that retitration may be necessary when a substitution is made on this non-critical drug. Further, the differences seen in the biodata are not statistically significant. Finally, regarding Dr. Sugita's recommendation, the Council agrees with the communications received from a urologist and a pharmacokineticist, both of whom stated that the small differences seen and the low study power would not be of clinical significance.

The following products and their manufacturers were **adopted**:

Doxepin caps 10, 25, 50 mg	Danbury
Doxepin caps, 75, 100, 150 mg	Purepac
Erythromycin solution 2%	Naska
Fenoprofen calcium caps 200, 300 mg	Par
Fenoprofen calcium tabs 600 mg	Par
Megestrol acetate tabs 20, 40 mg	Par
Minoxidil tabs 2.5 mg	Quantum
Oxybutynin tabs 5 mg	PharmBasics
Triameterene/HCTZ tabs 75/50	Par

The following products were **not adopted**:

Methylprednisolone tabs 16, 24, 32 mg	Par
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Sidmak

The following products were **not adopted but are still pending**:

APAP/codeine elix 120/12/5 ml	Naska
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Amiloride/HCTZ tabs 5/50	Par
Amitriptyline/CDP tabs 5/12.5, 10/25	Par
Chlorthalidone tabs 25, 50 mg	Superpharm
Cyclobenzaprine tabs 10 mg	Par
Diazepam tabs 10 mg	Pharbita
Dipyridamole tabs 25, 50, 75 mg	Lederle
Disopyramide ER caps 100, 150 mg	KV
Divalproex EC tabs 125, 250, 500 mg	Par
Doxepin caps 75, 150 mg	SKF
Erythromycin E.C. pellet caps 250 mg	Abbott
Erythromycin E.C. tabs 250, 333 mg	Abbott
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Chelsea
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Duramed
Fluphenazine tabs 1, 2.5, 5, 10 mg	Par
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Lidocaine viscous solution 2%	Naska
Meclofenamate caps 50, 100 mg	Par
Metaproterenol tabs 20 mg	Quantum
Methocarbamol/Aspirin tabs 400/325	Par
Methylprednisolone tabs 2, 4, 8 mg	Par
Norethindrone/ethin. estradiol 10/11-21	Watson
Norethindrone/mestranol 1 mg/50 mcg tabs	Watson
Oxacillin for susp 250/5 ml	Biocraft
SMZ/TMP tabs 400/80, 800/160	Pharbita
Sulindac tabs 150, 200 mg	Par
Trazodone tabs 50, 100 mg	TEVA
Triamcinolone cream 0.5%	Naska
Triamcinolone oint 0.025, 0.1, 0.5%	Naska
Triamcinolone/nystatin oint 1 mg/100 MU	Naska

Office of Administrative Law Note: See related notice of adoption at 20 N.J.R. 2769(a).

PUBLIC NOTICES

BANKING

(a)

THE COMMISSIONER

Decision and Determination of Effective Date and Reciprocal States for Nationwide Reciprocity Pursuant to Public Law 1987, Chapter 226 (Savings and Loan Interstate Law)

Public Notice

New Jersey Public Law 1987, Chapter 226, codified at N.J.S.A. 17:12B-278 et seq. [hereinafter "the Statute"], which became generally effective on July 30, 1987, established a two-phase process for the introduction of reciprocal interstate savings and loan acquisitions in New Jersey.

The first phase was the recognition of a Central Atlantic Region with the reciprocal states of Ohio, Pennsylvania and West Virginia. That phase became effective pursuant to a Decision and Determination of Reciprocity issued by the New Jersey Commissioner of Banking on June 15, 1988.

The second phase provided in the Statute is the recognition of nationwide reciprocal privileges under the following formula:

"Eligible state" means any state which meets either or both of the following conditions:

- (1) ***[Regional phase]; and
- (2) Any state or territory of the United States, when at least 13 states in addition to this state (for this purpose the District of Columbia is included as a state, but all other territories are excluded), at least four, other than this state, of which are among the 10 states other than this state, with the largest amount of insured institution deposits, have reciprocal legislation in effect.

P.L. 1987, Ch. 226, Sec. 1(f), N.J.S.A. 17:12B-278(f).

The term "reciprocal legislation" is defined in the Statute as follows: . . . statutory law of a state of the United States, including the District of Columbia, which authorizes or permits an insured institution or a savings and loan holding company, or both, located in this State to acquire insured institutions or [savings and loan] holding companies, or both, located in that state on terms and conditions substantially the same as the terms and conditions pursuant to which an insured institution or a savings and loan holding company, or both, located in that state may acquire insured institutions or holding companies, or both, located in this State. The fact that the law of that other state imposes limitations or restrictions on the acquisition of insured institutions or savings and loan

holding companies, or both, located in that state by an insured institution or a savings and loan holding company, or both, located in this State shall not necessarily mean that the law of that state is not reciprocal legislation; provided, however, that if the law of the other state limits acquisitions by an insured institution or a savings and loan holding company, or both, located in this State to insured institutions or savings and loan holding companies, or both, which are not in competition with insured institutions or savings and loan holding companies, or both, located in or chartered by that state or to insured institutions or savings and loan holding companies which do not have customary deposit and commercial loan powers, the law of that other state shall not be reciprocal legislation. If the reciprocal legislation of that other state imposes limitations or restrictions on the acquisition or ownership of an insured institution or a savings and loan holding company located in that state by an insured institution or a savings and loan holding company, or both, located in this State, substantially the same limitations and restrictions shall be applicable to the eligible insured institution or eligible savings and loan holding company, or both, located in that other state with respect to its acquisition of insured institutions or savings and loan holding companies, or both, located in this State.

P.L. 1987, Ch. 226, Sec. 1(i), N.J.S.A. 17:12B-278(i).

This definition of reciprocal legislation implicitly recognizes the broad diversity of interstate savings and loan laws among the states and territories, and expresses the legislative intent of New Jersey to harmonize its law with those of the other jurisdictions to the maximum degree reasonably feasible. Accordingly, the New Jersey definition of reciprocal legislation by its terms establishes two levels of analysis that must be considered for each potential acquisition in New Jersey. Those analytical steps may be referred to as follows:

a. **Threshold Reciprocity**—Does the other jurisdiction permit a New Jersey insured institution or savings and loan holding company (hereafter "Institution") to make acquisitions there on "terms and conditions substantially the same" as the terms and conditions applicable to its own Institutions making acquisitions here?

b. **Particular Limitations or Restrictions**—Once threshold reciprocity is recognized, does the interstate law of the other jurisdiction impose "limitations or restrictions" on the acquisition or ownership of an Institution there by a New Jersey Institution? If so, then substantially the same limitations and restrictions shall be applicable when Institutions from that jurisdiction seek to make acquisitions in New Jersey.

The question of the effective date for nationwide reciprocity under the New Jersey statute depends on a finding of threshold reciprocity with a sufficient number of states.

I hereby find that threshold reciprocity pursuant to the New Jersey statute exists between New Jersey and the following states, based upon the following data and my review of the statutes cited:

STATE/TERRITORY	STATUTE	RECIPROCAL EFFECTIVE DATE	WHETHER AMONG TOP TEN DEPOSIT STATES (BASED ON AUGUST 1988 FHLBB FIGURES)
Arizona	Ariz. Rev. Stat. Ann. §6-321 et seq. (1988)	Current	—
Idaho	Idaho Code §26-2601 et seq. (1988)	Current	—
Kentucky	Ky. Rev. Stat. Ann. 289.905 et seq. (Baldwin 1988)	Current	—
Maine	Me. Rev. Stat. Ann., tit. 9-B, §1011 et seq. (1987)	Current	—
Michigan	Mich. Comp. Laws §1119(4) et seq. Mich. Stat. Ann. §23.602 (Callaghan 1988)	Current	YES
New York	New York Banking Law §413 (McKinney 1987)	Current	YES
Ohio	Ohio Rev. Code Ann. §1151.71 et seq. (Anderson 1988)	Current	YES
Oklahoma	Okla. Stat. Ann. tit. 18, §381.73 (West 1986)	Current	—
Oregon	Or. Rev. Stat. §722.072	Current	—

BANKING

Pennsylvania	Pa. Stat. Ann. tit. 7, §6020-14 et seq. (Purdon 1988)
Utah	Utah Code Ann. §7-1-702 et seq. (1988)
West Virginia	W. Va. Code §31-6-7a (1986)
Wyoming	Wyo. Stat. §13-9-301 et seq. (1987)

It remains to be determined what particular "limitations or restrictions" may be applicable to acquisitions of New Jersey Institutions by eligible out-of-state Institutions under the New Jersey definition of reciprocal legislation. This and other types of specific determinations required under the New Jersey statute and regulations can be made more fairly and effectively in the context of a specific acquisition application, and I therefore do not reach any findings on such particular "limitations or restrictions" in this decision.

Particular attention is directed to Section 2(b) of P.L. 1987, Chapter 226, which states, "It is not the intent of this act, and nothing in this act shall be deemed to permit acquisitions in any form that would result in branching into New Jersey of insured institutions or savings and loan holding companies."

NOW, THEREFORE, based upon the foregoing interpretations and findings, IT IS, on this 15th day of November, 1988 DECIDED AND DETERMINED as follows:

1. As of November 15, 1988 any state or territory of the United States is an "eligible state";

2. As of November 15, 1988* eligible states which have reciprocal legislation in effect are:

Arizona	New York	Pennsylvania
Idaho	Ohio	Utah
Kentucky	Oklahoma	West Virginia
Maine	Oregon	Wyoming
Michigan		

3. As of the following stated dates,* eligible states which have reciprocal legislation in effect are:

State	Reciprocal Date
New Mexico	January 1, 1989
Louisiana	January 1, 1989

4. This determination will be supplemented and revised from time to time in response to legislative enactments in the eligible states.

*(Based on currently existing legislation in the named states and assuming no material change in such legislation in the future.)

ALL INTERESTED PERSONS ARE HEREBY ADVISED that all persons making transactions and thereafter controlling Institutions located in New Jersey pursuant to P.L. 1987, Chapter 226 are reminded that they are required to comply with all applicable provisions of the New Jersey Savings and Loan Act of 1963, as supplemented and revised (N.J.S.A. 17:12B-1 et seq.), and with all regulations issued thereunder, in addition to complying with applicable provisions of federal law and the laws of other affected states.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program and Waterfront Development

Special Notice of Program Amendment to the New Jersey Coastal Management Program

Take notice that Federal regulations at 15 C.F.R. §923.80 require the Department to provide public notice to the general public, affected parties, local governments, State agencies and regulatory offices of relevant Federal agencies of the State's action to amend its Federally-approved Coastal Management Program.

The Department considers the changes to the Coastal Permit Program rules adopted on December 2, 1988, appearing in this issue of the New Jersey Register, and the changes contemplated in the rule proposal which also appears in this issue of the New Jersey Register to constitute a "program amendment". This term is defined in 15 CFR §923.80(c) as

(CITE 21 N.J.R. 66)

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Current	YES
Current	—
Current	—
Current	—

"substantial changes in, or substantial changes to, enforceable policies or authorities related to:

- (1) Boundaries;
- (2) Uses subject to the management program;
- (3) Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
- (4) Consideration of the national interest involved in the planning for and in the siting of facilities which are necessary to meet requirements which are other than local in nature."

The Department has requested the concurrence of the Office of Oceanic and Coastal Resources Management in the National Oceanic and Atmospheric Administration (NOAA) in the determination that these rulemaking actions constitute a program amendment. Comments on whether or not these actions should be considered a program amendment should be sent by February 2, 1989 to:

Kathryn Cousins
Office of Oceanic and Coastal Resources Management,
National Oceanic and Atmospheric Administration
1825 Connecticut Avenue, N.W.
Washington, D.C. 20235

For the full text or further information about the above-described rulemaking actions, write or call:

Robert A. Tudor, Assistant Director
N.J. Department of Environmental Protection
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625
(609) 292-0060

This Notice is published as a matter of public information.

(b)

DIVISION OF FISH, GAME AND WILDLIFE FISH AND GAME COUNCIL

Body-Gripping Restraining Snares

N.J.A.C. 7:25-5.12(f)

Response to Comments Received During Record Inspection and Public Comment Period

Take notice that, in accordance with the decision in *Furbearer Defense Council v. New Jersey Fish and Game Council*, Docket No. A-59760-86T1 rendered by the New Jersey Superior Court, Appellate Division, on June 7, 1988, the New Jersey Fish and Game Council hereby concludes the proceedings undertaken to reconsider and redetermine the rule governing the use of body-gripping restraining snares, N.J.A.C. 7:25-5.12(f).

In order to correct and clarify the public record, the council devoted a segment of its monthly meeting on September 13, 1988 to accept public comments on the use of body-gripping restraining snares and comments regarding the public documents, scientific literature and technical studies that the Council relied upon in its 1986 decision to adopt N.J.A.C. 7:25-5.12(f) as part of the 1986-87 Game Code.

The Council's September meeting was held at Mercer County Community College in order to better accommodate members of the public who wished to present oral or written testimony. The New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife (Division), filed the agenda for the September meeting with the Secretary of State, as is required of all public meetings of the Council pursuant to N.J.S.A. 10:4-8. Notice was also provided by the Division in a press release to the Atlantic City Press and the Newark Star Ledger. The Council provided further public notice that comments regarding body-gripping restraining snares would be accepted at the September meeting by publishing a "Notice of Record Inspection and Public Comment" in the New Jersey Register. This Notice, which contained information re-

garding the comment procedures and information on the location of the public meeting, appeared on August 15, 1988 at 20 N.J.R. 2099(b).

Prior to the receipt of comments at the September 13, 1988 public meeting, copies of the public documents, technical studies and scientific literature that the Council relied upon in its 1986 decision to adopt N.J.A.C. 7:25-5.12(f) as part of the 1986-87 Game Code were made available for public inspection. The public inspection period ran from August 15, 1988 until September 20, 1988, as set forth in the public notices provided by the Council and the Division. A summary of this information, entitled "Procedures and Information Sources Utilized and Presented To The Fish and Game Council In Its Consideration Of The Modification To The 1986-87 Game Code Relating To The Use Of Snares For The Capture Of Furbearers" (Report) was prepared by the Division, presented to the Council and was also made available during the public inspection period. A representative of the Division made an oral presentation of the Report to the Council at the September 13, 1988 public meeting.

Twenty individuals attended the September 13, 1988 public meeting. Eleven of the 20 individuals presented oral comments. Five written comments were received at the conclusion of the comment period (four of these written comments were read into the public record on the night of the meeting). The individuals, their affiliations, and the organizations which submitted either written or oral comments are listed below:

1. Douglas G. Sanborn, Esq., Counsel for Friends of Animals, Inc.
2. Mr. Papai, licensed trapper, member, Central Jersey Furtakers and New Jersey Organizer for the Furtakers of America
3. Mr. Joe Cinotti, licensed trapper
4. Mr. Marinelli, licensed trapper
5. Mr. Jim Pederson, licensed trapper and Field Director, N.J. Trappers Association
6. Mr. Jim DeStaphano, licensed trapper and Vice-President, N.J. Trappers Association
7. Mr. O'Dell, licensed trapper
8. Dr. Doris Aaronson, Pinecliffe Lake Community Club
9. Poehuck Valley Farm
10. Mr. Giovanelli, licensed trapper
11. Mr. Frederick Gimbel, licensed trapper and Assistant President, Central Jersey Furtakers
12. Mr. John Nesti, licensed trapper and Secretary/Treasurer, Central Jersey Furtakers
13. Miss Janis Tettermer, licensed trapper
14. Mr. Art Monto, licensed trapper and President, New Jersey Trappers Association
15. Richard Webber, licensed trapper
16. Robert Itchmoney, Assistant Director, Division of Fish, Game and Wildlife

The written and oral comments are summarized below:

COMMENT: Friends of Animals questioned whether the Council had access to any of the studies produced by the Division of Fish, Game and Wildlife (Division) at the time of its decision to regulate snares two years ago.

RESPONSE: All of the studies produced by the Division for the purpose of aiding the Council in its decision on the rules of snares were made available to the Council. The information contained therein was presented verbally to the Council at its public meetings and Council members had the opportunity to question Division staff and review the written materials and studies.

COMMENT: Friends of Animals requested additional information concerning the occurrence of non-target captures which did not appear on a video produced by a licensed trapper which was shown to the Council in 1986 in order to instruct the Council as to how snares are used as body-gripping restraining devices. The commenter also requested information regarding the length of time animals remained in snares.

RESPONSE: Although there were captures made by the licensed trapper that do not appear in this tape, the Division has no information concerning possible non-target captures and length of time animals were restrained. The tape was privately made and is the property of the licensed trapper.

COMMENT: Friends of Animals asked why the video was made.

RESPONSE: The video is the property of the licensed trapper. Although he volunteered to show it to the Council as evidence that snares can be utilized as live-capture devices, the Council has no knowledge as to why the licensed trapper originally prepared this video.

COMMENT: Friends of Animals asked if the Council had directed the Division to do additional studies to verify the information depicted in the video presentations.

RESPONSE: The Council did not request that the Division do follow up field studies. Thus the Division has not conducted any field studies on snare evaluations to date. At the time of its consideration of N.J.A.C. 7:25-5.12(f) in 1986, the Council was not in fact legalizing a "new" trapping system; rather, the purpose of enacting the proposed rule was to place restrictions on a trapping system that was already in wide use. In order to make recommendations to the Council regarding the proposed restrictions, the Division reviewed and analyzed the more than adequate information available in the current literature and from trapper interviews. Therefore, in light of the adequate information available, the Council determined that additional studies were not necessary.

COMMENT: Friends of Animals questioned the Council as to why they did not adopt rules prohibiting the types of snare sets that can result in the death of the snared animal.

RESPONSE: The Council determined that because of the variety of conditions faced by trappers in the field and the difficulty of writing rules which would address the diversity of conditions, this issue was best handled within the structure of the mandatory snare training course by instruction rather than regulation.

COMMENT: Friends of Animals questioned whether the Division had excluded any literature from the record which indicated that the body-gripping restraining snare caused the death of animals.

RESPONSE: The Division presented all the information to which it had access that concerned the use of snares as live-capture devices with the exception of the following scientific papers: Romanoff (1956) and Lensing and Roux (1975). These papers were published in journals not readily available to the Division. The Romanoff paper, however, was quoted in both Verme, L.J. 1962 (An automatic tagging device for deer. J. Wildl. Mgmt. 26(4):387-392) and in Keith, L.B. 1965 (A live snare for trap-shy snowshoe hares. J. Wildlife Mgmt. 36(3):998-991) which were provided.

Citations:

Romanoff, A. 1956. Automatic tagging of wild animals and prospects for its use. Zoological J., 25:190-205. USSR acad Sci., MOSCOW.

Lensing, J.E., and T.F. Roux, 1975. A capture snare for smaller mammal predators and scavengers. Madoqua 9(1) 357-61.

COMMENT: Friends of Animals asked if the Council considered the literature available, including the Krause manual, to be "reliable scientific materials".

RESPONSE: The papers from the scientific journals which were presented to the Council and referred to in the Report prepared by the Division are considered by the Division and the Council to be "reliable scientific materials." The Krause manual, though an excellent source of information on the use of snares as live-capture devices, is not considered to be a scientific document. Rather, it is considered a technical manual outlining the techniques and experiences of Mr. Krause in the use of snares.

COMMENT: In the opinion of the Friends of Animals, the Krause manual was the major source of information relied upon by the Division concerning snare use.

RESPONSE: Contrary to the Friends of Animals' contention, the Krause manual "Dynamite Snares and Snaring" was not the major source of information relied upon by the Division. It was only one of several papers reviewed, in addition to the information provided by New Jersey trappers to the Council and Division by way of interviews and presentations.

COMMENT: Friends of Animals questioned if Mr. Krause was a "leading" expert in snares and snaring.

RESPONSE: Mr. Krause is one of several individuals to have published "snare manuals". He is an expert in the use of snares as live-capture body-gripping restraining devices.

COMMENT: Friends of Animals questions why the rule does not require a relaxing lock on the snare as was indicated in some of the papers reviewed.

RESPONSE: Information which the Division obtained from both the literature and trapper interviews indicated that entanglement of the target animals was the major concern, not the lock type. According to the information sources, so-called non-slip locks are not a major consideration. The Division's experience to date has not indicated locks to be a problem in causing mortality.

COMMENT: Friends of Animals expressed the opinion that the current rule does not prohibit a trapper from setting a snare so that it kills.

RESPONSE: Pursuant to New Jersey statutory and administrative law, snares set on land, that is above water, must function as live-capture devices; therefore, a snare set with the intent to kill is illegal except wher

submerged underwater. A trapper who sets a snare that is designed to do more than restrain is violating the law. Because of the variety of situations found in the field, the curriculum of the mandatory snare-training course, which all trappers must complete prior to using snares, has been designed to instruct trappers as to what constitutes a killing set.

COMMENT: Friends of Animals noted that the Krause manual states that bobcats are almost always killed in snares.

RESPONSE: Bobcat mortality in snares has been reported to be higher than for other species. However, due to its extremely low density and the remoteness of its habitat, and the fact that the Division has no record of bobcat captures in New Jersey, the probability of bobcat capture in New Jersey is very low.

COMMENT: Friends of Animals noted that Krause manual placed little value on the swivel in preventing the death of a snared animal.

RESPONSE: Some trappers and researchers feel that swivels are of value in minimizing injury and mortality. The Council therefore took the conservative approach and made swivels a requirement pursuant to N.J.A.C. 7:25-5.12(f). Swivels can, in some situations, reduce the possibility of entanglement.

COMMENT: Friends of Animals noted that the Krause manual recommended a seven-inch stop for deer while New Jersey requires only a six-inch stop.

RESPONSE: As noted previously, the Krause manual was only one source of information considered and relied upon by the Council. A six-inch stop was considered adequate for New Jersey to allow deer to escape and yet still allow the capture of most furbearers that are found in this State.

COMMENT: Friends of Animals pointed out that the Nellis study used a stop at 11 inches, while New Jersey requires only a stop at six inches.

RESPONSE: N.J.A.C. 7:25-5.12(f) presently restricts maximum loop size to eight inches, whereas Nellis used a maximum 12-inch diameter loop. The eight-inch maximum loop size all but eliminates coyote capture (Nellis's prime target species), and, therefore, minimizes the capture of dogs. The six-inch stop is adequate for its purpose which is to allow deer to escape. A stop placed at 11 inches as recommended by Nellis would close to approximately a four-inch diameter loop size which would allow for the escape of the primary furbearing target species in New Jersey.

COMMENTS: Friends of Animals questioned why several papers (studies) were supplied to the Council by the Division which have no direct bearing on the snare system used in New Jersey?

RESPONSE: The Division made an effort to review all papers in the scientific literature related to the use of snares as live-capture devices.

COMMENT: Friends of Animals noted that the Krause manual did not recommend the use of crucible wire for live-capture snares.

RESPONSE: As stated earlier, the Krause manual was only one of several information sources consulted by the Division. The New Jersey trappers interviewed did not experience problems with live-captures using crucible wire. In addition, since the adoption of the snare rules, there has not been any problems with the use of crucible wire for live-capture body-gripping restraining snares.

COMMENT: Friends of Animals questioned the Council as to why they had not consulted veterinarians and other "experts" to advise them as to suitability of snares as live-capture devices and whether or not their use is likely to result in death of the captured animal.

RESPONSE: The Council through the Division did consult a number of experts concerning the use of snares as a live-capture device: namely those trappers engaged in the actual activity of snaring and the authors of papers dealing with this trapping issue. In its day-to-day operations, the Division has received no reports from veterinarians regarding snares and injuries to animals. In the Division's experience, the average New Jersey veterinarian has limited experience with trapping and/or the use of snares. The Division does not recognize veterinarians as experts in this area.

COMMENT: Friends of Animals notes that the Division recognized a need to regulate snare use and questions what created this need.

RESPONSE: The Division became aware of the increasing use of snares in the early 1980's. Snare use increased substantially during this period, especially following the statutory prohibition on the use of the steel-jawed leg-hold trap in 1985. The Division determined that training in the use of snares, especially for the newer trapper, would be prudent to insure that snares were used as live-capture devices.

COMMENT: Friends of Animals asked if there were any other information sources utilized by the Division and presented to the Council other than those outlined in the Report.

RESPONSE: There were no additional information sources.

COMMENT: Friends of Animals questioned whether all the reviewed documents were produced and available during the comment period.

RESPONSE: Yes.

COMMENT: Friends of Animals asked if other presentations were made to the Council in addition to the video tape.

RESPONSE: Additional presentations were made by trapper organizations and the Division as outlined in the Report.

COMMENT: Friends of Animals asked what information Mr. Krause provided during his interview.

RESPONSE: Mr. Krause essentially discussed the information in his manual which concerned live-capture and the use of snares. He provided no additional information.

COMMENT: Friends of Animals questioned how the Division can make recommendations to the Council based on scientific information when the Division has no direct experience with snares, such as studies on snares.

RESPONSE: As stated previously, the Council was not in the process of legalizing a new trapping system but was in fact restricting an existing one. Adequate information was available by way of studies reported in the wildlife literature, in addition to information obtained from trappers interviews, to make a determination on the issue of snare use restrictions. Thus, the Council determined that additional information was not needed.

COMMENT: Friends of Animals requested information as to what was supplied to the Council and Division at the various meetings, interviews and demonstrations that were conducted.

RESPONSE: Information was obtained relative to snare construction and placement in order to determine what combination(s) of equipment and set designs that worked best in the use of snares as live-capture devices. Recommendations were made by individual trappers and trapper organizations concerning type and size of cable, type and use of locks, location of stops to allow deer to escape, set location and set construction. The Council and Division considered all the information provided in the formulation of the rules, and in many cases, adopted more restrictive rules than initially recommended by the trappers. Examples of these added restrictions include the elimination of smaller diameter wires because of kinking problems, the requirement of swivels, the reduced maximum loop size to eight inches and the requirement that all trappers to take a mandatory snare-training course in addition to the currently required trapper-training course.

COMMENT: Friends of Animals expressed the opinion that the Friends of Animals has not been given access to the information presented to the Council and Division by trappers during interviews, demonstrations and meetings.

RESPONSE: With the exception of the video tape submitted by the licensed trapper, the information provided to the Council and Division by the trappers was all verbal. The Council and Division is not required to make, nor did it make, transcripts of these discussions. The fact that the discussions took place is reflected in the minutes of the Council meeting. The information obtained by the Division during the Division's trapper interviews was presented to the Council during the Council's February 15, 1986 meeting. The minutes of the February 15, 1986 meeting reflect that the information was presented. These minutes were available for inspection during the comment period and the Report reflects the topics discussed during all the trapper interviews and demonstrations conducted by the Council and the Division.

COMMENT: Friends of Animals noted that the video tape showed two mortalities resulting from snare use and contended that the type of set employed in those instances are not prohibited by rule.

RESPONSE: The video was made prior to the implementation of current rules and the requirement for mandatory snare training course. The two mortalities contained in the video highlighted the importance of set location and entanglement in terms of animal mortality and the need to incorporate instruction on these subjects in the mandatory snare course. The video provided valuable information concerning the problems caused by these "illegal sets" and aided the Division and the Council in formulating its current rule.

COMMENT: Friends of Animals contended that there is no prohibition anywhere in the rules on the use of "log sets" whereby a snare is set on a log so that a snared animal can fall and hang itself.

RESPONSE: N.J.A.C. 7:25-5.12(c) prohibits killer traps on land. Therefore, snares set to hang an animal are and have been illegal. The information provided within the framework of the mandatory snare training course addresses the issue of snare placement to prevent mortalities. Additional rule provisions are not needed.

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COMMENT: Friends of Animals asserted that if the stated purpose of the current rules is to design a snare that is not likely to kill, then the present design does not achieve this objective.

RESPONSE: The Council and the Division disagree. The vast majority of the information available indicates that it is the opportunity of entanglement that is the major factor in determining whether a snare will kill or not. Therefore, the subject of snare placement is reviewed at length in the mandatory snare training course. Current provisions concerning size and type of cable, maximum loop size and swivel use further reduce the possibility of mortality. In addition, follow-up information provided by trappers using the snare, including the testimony received during this comment period, indicates that snares, when used in accordance with N.J.A.C. 7:25-5.12(f), are successfully functioning as live-trapping devices.

COMMENT: Friends of Animals notes that "for most species it is the entanglement possibility at the site rather than the lock or design that determines whether or not the snare will kill."

RESPONSE: The Council and the Division agree with this comment and that is why this subject is stressed in the mandatory snare training course.

COMMENT: Friends of Animals have expressed the opinion that the Council and the Division have not produced materials to refute certifications filed during the proceedings in 1986 that lead to the decision in *Furbearer Defense Council v. New Jersey Fish and Game Council*, Docket No. A-5976-86T1 (hereinafter, the Furbearer Decision).

RESPONSE: The certifications and evidence produced by the Friends of Animals during the proceedings that resulted in the Furbearer Decision were refuted by the Council and the Division at the time the arguments were heard in the Appellate Division of the Superior Court in 1986. The Appellate Division's decision does not require that the evidence presented by Friends of Animals in 1986 be refuted again. The Court, however, did find that the record created during the promulgation of N.J.A.C. 7:25-5.12(f) was insufficient to determine whether "the Council made a well-informed exercise of its delegated power" in determining that the approved snares are not "killer traps" within the meaning of N.J.S.A. 23:4-38.2 (see page 12 of the Decision). The Court found that while the administrative record indicated a factual dispute, the adoption document filed with the Office of Administrative Law in 1986 did not set forth the basis upon which the Council made its determination. The Court therefore remanded the matter to the Council for appropriate proceedings to reconsider and redetermine the rule governing the use of body-gripping restraining snares in order to clarify the record and articulate an adequate basis for the decision.

COMMENT: Friends of Animals contended that the Council's actions to clarify the record are inconsistent with the Appellate Division's decision, administrative due process and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

RESPONSE: As stated above, the Appellate Division in the Furbearer Decision held that the present record was insufficient to determine whether the approved snares are killer traps within the meaning of N.J.S.A. 23:4-38.2. As such, the Court remanded the matter back to the Council for appropriate proceedings to reconsider and redetermine the regulation governing body-gripping, restraining snares. In order to comply with the Court's decision, the Council has taken the appropriate steps to clarify the record with respect to the rule amendment promulgated in 1986. In addition, the Council opened the record to receive new, additional information from interested parties.

The commenter's reliance on the Administrative Procedure Act is misplaced since the Court did not order a rule-making procedure. The Council has taken the necessary steps to correct and clarify the record by illustrating the basis upon which the Council made its decision in 1986 and the basis of its reconsideration of the information available in 1986 and any new information presented during the comment period. The commenter failed to present its case as to any administrative due process inconsistencies and the Council perceives none.

COMMENT: This proceeding must afford interested parties the opportunity to obtain pertinent information, to examine the Division witnesses and confront any experts used by the Division in its reconsideration of the snare.

RESPONSE: The Furbearer Decision did not require that the Council hold a forum which would provide for examination and cross-examination of Division personnel, that is, an adversarial hearing. As stated previously, the Council took steps to accept new information at its September public meeting and has taken the appropriate action to clarify the record concerning N.J.S.A. 7:25-5.12(f), in compliance with the

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Court's ruling in the Furbearer Decision. Even in rule-making situations, the Council is not required to provide interested parties with the opportunity to examine Departmental personnel. All interested parties received notice and were given the opportunity to examine and comment on the information relied upon by the Council in 1986 in its promulgation of N.J.A.C. 7:25-5.12(f). Interested parties were also given the opportunity to introduce new information for the Council's consideration. The Council has responded to this information through this response document.

COMMENT: Friends of Animals requested that the Council not promulgate a rule authorizing the use of snares and if it did promulgate such a rule, the commenter urged that the rule should prohibit the use of snares in circumstances where they are reported to be deadly.

RESPONSE: The Furbearer Decision did not require the Council to promulgate a new rule concerning the use of snares. The Council has undertaken a process by which it is both setting forth the basis for its 1986 rule promulgation and responding to any new information in its reconsideration of the question as to whether snares are legal pursuant to N.J.S.A. 23:4-38.2. This process does not amount to rule-making and, therefore, the premise of the comment is incorrect. However, in its request for a rule prohibiting the use of "snares in circumstances where they are reported to be deadly", the commenter points out the very fact that snares are not killer traps unless they are designed and placed in such a way that they become a killer trap.

COMMENT: A licensed trapper representing the Central Jersey Furtakers and the Furtakers of America, reported that in his experience snares did not kill and that they do not even restrict breathing in gray fox. He further requested that an exception be made to the 24-hour trap checking requirement for special circumstances or emergencies. The representative also presented 32 photographs of furbearers alive in body-gripping restraining snares.

RESPONSE: The commenter's experiences with snares are similar to those reported by other trappers and the available literature. With regard to the change in the 24-hour trap checking requirement set forth in N.J.A.C. 7:25-5.12(i), the Council is opposed to the creation of any exceptions allowing an animal to remain in a trap in excess of 24 hours because of the possibility of increased mortality or injury.

A single response to comments by the various licensed trappers and representatives of trapping organizations follow their comments below.

COMMENT: A licensed trapper commented that he uses snares for trapping raccoon and that no animals were killed nor were there any non-target animal captures in his snares. He also indicated that he was successful in capturing both beaver and otter alive, using snares. He presented photos of beaver alive in snares.

COMMENT: A licensed trapper commented that he uses snares for trapping fox in the vicinity of an apartment complex and townhouses and has never caught a dog or cat, although he captured five fox last year. He indicated that he never had a fox die in a snare and in fact did release a pregnant female fox and watched her run off.

COMMENT: A licensed trapper and member of the New Jersey Trapper's Association commented that in nine years of using snares, the only animals that died in his snares were those captured in snares set to drown the animal. He further commented that during the last two years he has not caught a single non-target animal in a snare, even though he sets as many as 100 snares at the same time.

COMMENT: A licensed trapper and a member of the New Jersey Trapper's Association provided a letter from the 500 family member organization of Pinecliff Lake Community Club which urged the Council not to prohibit snares and a letter from the Pochuck Valley Farm stating that snares are useful in controlling raccoons which cause damage to corn crops. The Pochuck Valley Farm letter states that snares do catch raccoons humanely and alive. He also submitted an album of photographs belonging to another licensed trapper, showing furbearers alive in snares and a letter from the trapper (which was read) stating that he used snares 75 percent of the time last year and box traps 25 percent of the time and "that not one life was compromised during the use of the snare."

COMMENT: A licensed trapper representing the New Jersey Trapper's Association commented that he has been snaring for nine years, has captured 150 raccoons, 25 fox, five opossums, five woodchuck and two otter on land, and that these animals were alive and could have been released unharmed. He stated that properly set snares restrain and do not kill and that they are very selective.

COMMENT: A licensed trapper showed pictures to the Council and indicated that they represented about 50 percent of the foxes that he caught last year and that they were all "alive and alert while restrained

by the snare." He further indicated that he captured 54 fox last year within a radius of five miles of his home. He stated that snares were much more selective than leg-hold traps and that snares prevented the capture of cats, opossums, etc. He urged the Council to retain the snare.

COMMENT: A licensed trapper commented that he has been trapping for over 12 years, has a bachelor degree in wildlife management and that in his experience snares are indeed a body-gripping restraining device and not a killer trap. He stated that he lives in a very populated area and, to this day, he has never caught a deer or a cat. This trapper did state that he caught one dog which he released unharmed. He urged that snares continue to be allowed.

COMMENT: A licensed trapper commented that trapping is an important tradition and should be carried on.

COMMENT: A licensed trapper and representative of the Central Jersey Furtakers commented that he has caught a lot of animals in snares and that he finds them all alive and had no problem with non-target catches. He provided photos of foxes and raccoon alive in snares and urged that the use of snares continue.

COMMENT: A licensed trapper representing the Furtakers of Central Jersey commented that the snare is an effective and humane method of trapping. He further commented that snares are necessary to control the fox population and he showed photos of animals alive in snares.

COMMENT: A licensed trapper and representative of the New Jersey Trapper's Association asked to go on record as favoring the use of snares in New Jersey, commenting that snares, properly used, do not kill.

RESPONSE: The Council acknowledges receipt of the aforementioned comments submitted by the various licensed trappers and representatives of trapping organizations and appreciates these efforts to relate their experience with and knowledge of the body-gripping restraining snares to the Council.

Based upon a reconsideration of the information relied upon by the Council in its promulgation of N.J.A.C. 7:25-5.12(f) in 1986 and a review of the public comment received during the comment period, the Council has determined that snares, when constructed and utilized in accordance with N.J.A.C. 7:25-5.12(f), function as body-gripping restraining snares and are not prohibited as killer traps pursuant to N.J.S.A. 23:4-38.2.

HEALTH

(a)

DIVISION OF ALCOHOLISM

Recodification of Alcohol Countermeasures Rules

N.J.A.C. 13:20-31 to N.J.A.C. 8:66-1

Take notice that, pursuant to P.L. 1984, c.243 (N.J.S.A. 26:2B-9.1), the Bureau of Alcohol Countermeasures (Bureau) was transferred from the Department of Law and Public Safety to the Department of Health. Further, that Act amended N.J.S.A. 39:4-50(f), to provide that the Director, Division of Alcoholism, shall adopt rules to effectuate its purposes.

Currently, rules regarding the Bureau are codified at N.J.A.C. 13:20-31. However, due to the transfer of the Bureau to the Department of Health, the Department and the Office of Administrative Law have determined that these rules should be recodified and placed into Title 8 of the Administrative Code, where all other Department of Health rules are codified.

In light of the foregoing, please be advised that the Department hereby recodifies N.J.A.C. 13:20-31 as follows:

Current Citation	Recodified Citation
N.J.A.C. 13:20-31.1	N.J.A.C. 8:66-1.1
N.J.A.C. 13:20-31.2	N.J.A.C. 8:66-1.2
N.J.A.C. 13:20-31.3	N.J.A.C. 8:66-1.3
N.J.A.C. 13:20-31.4	N.J.A.C. 8:66-1.4
N.J.A.C. 13:20-31.5	N.J.A.C. 8:66-1.5
N.J.A.C. 13:20-31.6	N.J.A.C. 8:66-1.6

NARCOTIC AND DRUG ABUSE CONTROL

(b)

Controlled Dangerous Substances

Addition to Schedule II: N.J.A.C. 8:65-10.2(b), Carfentanil, CDS Code 9743

Take notice that, effective January 3, 1989, the controlled dangerous substance Carfentanil, CDS Code 9743 has been placed into Schedule II. This action has been taken pursuant to N.J.S.A. 24:21-3(c), which provides that once a substance has been scheduled under Federal Law and notice is given to the Commissioner of Health, the Commissioner shall similarly schedule the substance after 30 days following the publication in the Federal Register of a final order scheduling the substance.

A final order scheduling the substance Carfentanil, CDS Code 9743 was published in the Federal Register October 28, 1988 (see 53 FR 43684). Publication of this notice also serves to amend N.J.A.C. 8:65-10.2(b)2 by adding Carfentanil to Schedule II.

(c)

Controlled Dangerous Substances

Additions to Schedule IV: N.J.A.C. 8:65-10.4(b)1 Cathine, CDS Code 1230; Fencamfamin, CDS Code 1760; Fenproporex, CDS Code 1575 and Mefenorex, CDS Code 1580

Take notice that, effective January 3, 1989, the controlled dangerous substances Cathine, CDS Code 1230; Fencamfamin, CDS Code 1760; Fenproporex, CDS Code 1575; and Mefenorex, CDS Code 1580 have been placed into Schedule IV. This action has been taken pursuant to N.J.S.A. 24:21-3(c), which provides that once a substance has been scheduled under Federal law and notice is given to the Commissioner of Health, the Commissioner shall similarly schedule the substance after 30 days following the publication in the Federal Register of a final order scheduling the substance.

A final order scheduling the substances, Cathine, Fencamfamin, Fenproporex and Mefenorex was published in the Federal Register May 17, 1988 (see 53 FR 17459). Publication of this notice also serves to amend N.J.A.C. 8:65-10.4(b)1 by adding Cathine, Fencamfamin, Fenproporex and Mefenorex to Schedule IV.

(d)

Controlled Dangerous Substances

Additions to Schedule V: N.J.A.C. 8:65-10.5(d) Propylhexadrine, CDS Code 8161 and Pyrovalerone, CDS Code 1485

Take notice that, effective January 3, 1989, the controlled dangerous substances Propylhexadrine, CDS Code 8161 and Pyrovalerone, CDS Code 1485 have been placed into Schedule V. This action has been taken pursuant to N.J.S.A. 24:21-3(c), which provides that once a controlled dangerous substance has been scheduled under Federal law and notice is given to the Commissioner of Health, the Commissioner shall similarly schedule the substance after 30 days following the publication in the Federal Register of a final order scheduling the substance.

A final order scheduling the substances propylhexadrine and pyrovalerone was published in the Federal Register April 4, 1988 (see 53 FR 10869). The Federal action was taken to meet the obligations of the United States under the 1971 Psychotropic Convention. Publication of this notice also serves to amend N.J.A.C. 8:65-10.5(d) by adding propylhexadrine and pyrovalerone to Schedule V. Both of these substances will require registration for distributors but will be exempt from the security, inventory and recordkeeping requirements of N.J.A.C. 8:65-2, 8:65-5.7 and 8:65-5.17. Registration will also be required for anyone engaging in research, manufacturing or otherwise handling these substances.

(a)

THE COMMISSIONER**Availability of Grants****Directory of Department of Health Grant Programs**

Take notice that, in compliance with P.L. 1987 c.7, the Department of Health hereby publishes notice of grant availability in the Directory of Department of Health Grant Programs. Copies of the Directory can be obtained by contacting the Grant Evaluation and Review Unit, Office of Financial and General Services, Department of Health at 609-588-7448.

INSURANCE

(b)

THE COMMISSIONER**Adjustment of \$1,950 Tort Threshold Option Amount
Public Notice**

Take notice that Kenneth D. Merin, Commissioner of Insurance, pursuant to the authority of N.J.S.A. 36:6A-8(b), announces that the tort threshold option amount will be increased from \$1,950 to \$2,100. This change becomes effective January 1, 1989, to apply to any claim for noneconomic loss arising from any automobile accident occurring on or after January 1, 1989, for those insureds who have selected the tort option offered under N.J.S.A. 39:6A-8(b) for policies issued or renewed prior to January 1, 1989.

The adjustment is based on the 6.6 percent increase in the professional services component of medical care services costs reflected in the Consumer Price Index for all urban consumers, United States city average, from October, 1987 to October, 1988. This percentage is determined by the United States Department of Labor, Bureau of Labor Statistics.

LAW AND PUBLIC SAFETY

(c)

**DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION****Petition for Rulemaking
Home Improvement Practices****N.J.A.C. 13:45A-16**

Petitioners: Peter Horan, Albert Hoesley, Jr., Lighthouse Electrical Construction Inc., and New Jersey State Council of Electrical Contractors Associations, Inc., a non-profit corporation of the State of New Jersey.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 56:8-4.

Take notice that on November 22, 1988 petitioners filed a petition with the Division of Consumer Affairs requesting amendment or invalidation of the Home Improvement Practices rules, N.J.A.C. 13:45A-16 as related to electrical contractors licensed under N.J.S.A. 45:5A-1 et seq.

Specifically, petitioners request a determination that the cited rules are invalid as they apply to all electrical contractors who are licensed by the New Jersey Board of Examiners of Electrical Contractors and who are the holders of valid electrical contractors business permits issued by the Board; or, in the alternative, that the rules be amended to provide that such licensed and permitted persons and entities are exempt from the Home Improvement Practices regulations.

Petitioners state that:

1. The cited rules were intended to prohibit and prevent fraud and "sharp" business practices which pervaded New Jersey prior to adoption of the rules, such as "bait and switch" tactics; "model home" sales pitches; the starting but failing to complete awning, roofing, heating and aluminum siding and storm windows installations; and the fraudulent financial manipulations which resulted in substantial economic losses to homeowners in New Jersey, particularly among the poor and illiterate.

2. These rules, as meritorious as they may be, were not intended to regulate electrical contractors who were and are already subject to regu-

lation and control by the statutorily created Board of Examiners of Electrical Contractors which has the power to investigate claims of wrongdoing by such contractors and to conduct hearings in cases of alleged wrongdoing; and upon a finding of violation of the Licensing Act to impose sanctions, penalties and even revocation of the license and business permit of such wrongdoer.

3. There is no evidence or findings by the Director of the Division of Consumer Affairs or his agents that there is a pattern or pervasive scheme by licensed electrical contractors in New Jersey that warrants the use of these rules against the petitioners or electrical contractors as a class or body.

4. The actual and threatened actions of the Director's agents present a clear, imminent and real threat to all licensed electrical contractors in New Jersey inasmuch as they may be subject to further investigation, prosecution and fines or penalties; as well as having to suffer intrusion into their normal business practices and therefore forced to incur the unnecessary legal costs and other expenses needed to contest these charges and accusations, which are based on rules which do not and should not apply to them.

After due notice, this petition will be considered by the Division of Consumer Affairs in accordance with the provisions of N.J.S.A. 52:14B-4(f).

(d)

OFFICE OF THE ATTORNEY GENERAL**Legislative Activities Disclosure Act (N.J.S.A.****52:13C-18 et seq.) for the Third Quarter of 1988****ending September 30, 1988****Public Notice**

Take notice that Cary Edwards, Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the Third Quarter of 1988, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Third Calendar Quarter of 1988, the Notices of Representation filed with this office reflect that 647 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of this Summary and copies of all Quarterly Reports filed by Legislative Agents for the Third Calendar Quarter of 1988 has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of the Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

The names of registered Agents, their registration numbers, their business addresses and whom they represent.

A list of Agents who have filed Quarterly Reports for the Third Calendar Quarter of 1988.

A list of Agents who did not file a Quarterly Report for the Third Calendar Quarter of 1988.

A list of new Legislative Agents who have filed Notices of Representation during the Third Calendar Quarter of 1988.

A list of Legislative Agents who have terminated all activity and have filed Notices of Termination during the Third Calendar Quarter of 1988.

Future Public Notices shall include a list of new Legislative Agents who have filed Notices of Representation and Legislative Agents who have filed Notices of Termination ending their activities.

For further information contact the Legislative Agents Unit at (609) 984-9371.

(a)

DIVISION OF MOTOR VEHICLES**Notice of Contract Carrier Application**

Take notice that Glenn Paulsen, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E.11, hereby lists the name and address of an applicant who has filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
Steven M. Agulis, Inc.
R.D. 3
Stockton, NJ 08559

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, New Jersey 08666 within 20 days (January 23, 1989) following the publication date of the application.

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION**Architect-Engineer Selection****Notice of Assignments—Month of November 1988**

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated November 2, 1988.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M1001	Replacement of Shower Room Floors Ancora Psychiatric Hospital Hammondon, NJ	Harry A. DeFazio, RA	\$100,000
M754	Laundry Building Greystone Park Psychiatric Hospital Greystone Park, NJ	L.J. Mineo, Jr., AIA	\$200,000

S225	MVS Prototypical HVAC Review Westfield Facility Westfield, NJ	Burns & Roe Industrial Services	\$5,000 Services
C321	Perimeter Fence Review Leesburg State Prison Leesburg, NJ	John D. Wood	\$1,500 Services
P575	Renovations Drumthwacket Estate Princeton, NJ	Holt & Morgan	\$560,000
H720	Sprinkler System Green Hall Trenton State College	Edward A. Sears Assoc.	\$170,000
M703	Wastewater Treatment Plant Johnstone Developmental Center Bordentown, NJ	Kupper Assoc.	\$200,000
P548	Roof Repairs Skylands Manor House Ringwood State Park	ARMM Design Group, Inc.	\$200,000
1027	Steamline Repair/Replacement Kean College of NJ Union, NJ	Turek Assoc.	\$100,000
P584	Sanitary Facilities Voorhees State Park Borough of Glen Gardner Hunterdon Co., NJ	Van Note-Harvey Assoc.	\$450,000

COMPETITIVE PROPOSALS

	Van Note-Harvey Assoc.	\$57,000 Lump Sum
	Storch Engineers	\$68,203 Lump Sum
	Berson, Ackermann & Assoc.	\$69,000 Lump Sum
M1000	New Education/Program Building Woodbridge Developmental Center Woodbridge, NJ	Morton, Russo & Maggio \$2,630,00

COMPETITIVE PROPOSALS

	Morton, Russo & Maggio	\$148,660 Lump Surr
	Nadaskay, Kopelson, Architects	\$170,950 Lump Surr
	The Harsen & Johns Partnership, Arch.	\$194,000 Lump Surr
J048	Facility Consultant FY '89 Division of Building & Construction	James C. Anderson Assoc., Inc. \$50,000 Services
J050	Facility Consultant FY '89 Division of Building & Construction	Won Kim, PE \$25,000 Services

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92

N.J.A.C.

3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	9/1/93
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90

N.J.A.C.	Expiration Date
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90

N.J.A.C.	Expiration Date
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91

(Except for 7:25-I which
expired 9/17/85)

7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/7/89
8:33K	4/16/89
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91

N.J.A.C.	Expiration Date
8:65	12/2/90
8:70	8/19/93
8:71	4/2/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89

N.J.A.C.	Expiration Date
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/21/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93

N.J.A.C.	Expiration Date
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

N.J.A.C.	Expiration Date
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	6/27/93
13:77	2/1/93

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89

N.J.A.C.	Expiration Date
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	6/18/89
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90

N.J.A.C.	Expiration Date
17:30	5/4/92
17:32	3/21/93

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

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 November 7, 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.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 17, 1988

NEXT UPDATE: SUPPLEMENT NOVEMBER 21, 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
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	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 435 and 570	March 7, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1:1-5.5 Non-lawyer representatives: consent orders and stipulations	20 N.J.R. 2845(a)		
1:1-10.4 Discovery: requests for admissions	20 N.J.R. 2845(b)		
1:1-14.3 Interpreters for hearing impaired	20 N.J.R. 2845(c)		
1:1-14.8 Proceedings on the papers: inaction by requesting party	20 N.J.R. 1979(c)	R.1988 d.517	20 N.J.R. 2749(a)
1:6-10.1 Discovery in school budget cases	20 N.J.R. 1980(a)	R.1988 d.516	20 N.J.R. 2749(b)
1:10-12.2 Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions	20 N.J.R. 3049(a)		
1:30-3.1 Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		

Most recent update to Title 1: TRANSMITTAL 1988-4 (supplement September 19, 1988)

AGRICULTURE—TITLE 2

2:2 Animal disease control program	20 N.J.R. 2419(a)		
2:24-2, 3 Registration and transportation of bees	20 N.J.R. 2951(a)		
2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27, 2.28 Sire Stakes conditions	20 N.J.R. 2952(a)		
2:33 Agricultural fairs	20 N.J.R. 2954(a)		
2:52-1.6 Reporting by small milk dealers	20 N.J.R. 2955(a)		
2:68-1 Association standards for commercial feeds	20 N.J.R. 1671(c)	R.1988 d.528	20 N.J.R. 2749(c)
2:69 Commercial fertilizers and soil conditioners	20 N.J.R. 1673(a)	R.1988 d.527	20 N.J.R. 2750(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. 1761(a)		
2:76-8 Acquisition of farmland in fee simple	20 N.J.R. 2501(a)		

Most recent update to Title 2: TRANSMITTAL 1988-7 (supplement October 17, 1988)

BANKING—TITLE 3

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)	R.1988 d.524	20 N.J.R. 2750(b)
3:24-5.1 Licensed check cashing	20 N.J.R. 2353(a)		
3:38-5 Repeal (see 3:1-16)	20 N.J.R. 1021(b)		

Most recent update to Title 3: TRANSMITTAL 1988-6 (supplement October 17, 1988)

CIVIL SERVICE—TITLE 4

4:1-16.1-16.6, 24.2 Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.1, 16.2 Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:3-16.1, 16.2 Repeal (see 4A:8)	20 N.J.R. 2955(b)		

Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)

PERSONNEL—TITLE 4A

4A:6-1.3, 1.10 Sick leave; leave without pay	20 N.J.R. 133(a)	R.1989 d.29	21 N.J.R. 19(a)
4A:8 Layoffs	20 N.J.R. 2955(b)		
4A:8 Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-3 (supplement September 19, 1988)

COMMUNITY AFFAIRS—TITLE 5

5:10 Maintenance of hotels and multiple dwellings	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
5:10-1.3, 1.6, 1.10, 1.12, 1.17, 25 Fire safety in hotels and multiple dwellings	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)	R.1988 d.521	20 N.J.R. 2752(a)
5:13-1.14	Limited dividend and nonprofit housing projects: payment in lieu of taxes	20 N.J.R. 2425(a)	R.1988 d.571	20 N.J.R. 3123(a)
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-3.15	Uniform Construction Code: plumbing subcode	20 N.J.R. 2846(c)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-4.4	Acting appointments: correction to text			20 N.J.R. 2823(a)
5:23-7.104, 7.116	Barrier Free Subcode: recreation standards	20 N.J.R. 1764(b)	R.1988 d.503	20 N.J.R. 2754(a)
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-1.3, 1.6, 5	Fire safety in rooming and boarding houses	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:38	State intergovernmental review process for Federal programs and direct development activities	20 N.J.R. 2354(a)	R.1988 d.553	20 N.J.R. 3015(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	20 N.J.R. 2426(a)	R.1988 d.576	20 N.J.R. 3123(b)
5:91-4.1	Council on Affordable Housing: adoption of housing element	20 N.J.R. 2613(b)		
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
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5:92-12.4	Initial pricing: correction to text			20 N.J.R. 3127(a)
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)		

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6:8-1.1, 4.3, 7.1	High school core proficiencies	20 N.J.R. 2619(a)		
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6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)		
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6:22A-1	School facility lease purchase agreements	20 N.J.R. 2127(a)	R.1988 d.590	20 N.J.R. 3127(b)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)	R.1988 d.563	20 N.J.R. 3016(a)
6:39	High school core proficiencies	20 N.J.R. 2619(a)		
6:78-1.1, 1.2, 1.3	Marie H. Katzenbach School for the Deaf	20 N.J.R. 1678(a)	R.1988 d.534	20 N.J.R. 2754(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)		
7:1D	Allocation of costs for emergency water supply projects	20 N.J.R. 2197(a)	R.1988 d.589	20 N.J.R. 3135(a)
7:2	State Park Service: extension 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)	R.1988 d.570	20 N.J.R. 3135(b)
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7-2.3	Waterfront development	20 N.J.R. 2815(a)	R.1989 d.8	21 N.J.R. 34(a)
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)	R.1989 d.28	21 N.J.R. 43(a)
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		

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7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
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)	R.1988 d.588	20 N.J.R. 3135(c)
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)	R.1988 d.529	20 N.J.R. 2755(a)
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:20A	Water usage certifications for agricultural and horticultural purposes	20 N.J.R. 2663(a)		
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)		
7:25-1.5, 8	Clam licenses	20 N.J.R. 2666(a)	R.1989 d.26	21 N.J.R. 55(a)
7:25-5.7	1989 Wild turkey season	20 N.J.R. 2217(a)	R.1988 d.530	20 N.J.R. 2757(a)
7:25-5.24	Bow and arrow provisions: correction to text			20 N.J.R. 2936(a)
7:25-6	1989-90 Fish Code	20 N.J.R. 1627(a)	R.1988 d.531	20 N.J.R. 2758(a)
7:25-16.1	Upstream fishing license line: administrative correction			20 N.J.R. 2936(b)
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)		
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 1.7, 1.11, 1.12, 2.1, 2.4, 2.8, 2.13	Permit exemptions for composting facilities	Emergency (expires 12-25-88)	R.1988 d.547	20 N.J.R. 2817(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, 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)		
7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:26-1.7	Exemption from registration: correction to text			20 N.J.R. 2936(c)
7:26-3A	Special medical waste	20 N.J.R. 2321(a)	R.1988 d.523	20 N.J.R. 2760(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)		
7:26-9.4	General facility standards: correction to text			21 N.J.R. 56(a)
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)	R.1989 d.11	21 N.J.R. 56(a)
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)	R.1989 d.27	21 N.J.R. 57(a)
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)		
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: extension of comment period	20 N.J.R. 2355(a)		
7:30	Pesticide Control Code	20 N.J.R. 579(a)	R.1988 d.538	20 N.J.R. 2865(a)
7:36	Green Acres Program	19 N.J.R. 2358(b)	R.1988 d.549	20 N.J.R. 2891(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)		

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8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)		
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)		
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)		
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)		
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)		
8:31B-4.37	Uncompensated Care Trust Fund: charity care eligibility and charges	20 N.J.R. 2219(a)	R.1989 d.25	21 N.J.R. 58(a)
8:31B-4.41	Hospital reimbursement: uncompensated care audit functions	20 N.J.R. 2959(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33E-1.2, 1.11	Cardiac diagnostic facilities: pediatric patients; new facilities	20 N.J.R. 2847(a)		
8:33E-2.3, 2.4	Cardiac surgery centers: pediatric patients; surgery teams	20 N.J.R. 2848(a)		
8:33J-1.3	Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) demonstration period	20 N.J.R. 2220(a)	R.1988 d.573	20 N.J.R. 3136(a)
8:34	Licensing of nursing home administrators	20 N.J.R. 2355(b)	R.1988 d.567	20 N.J.R. 3136(b)
8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:43-4.11	Residential health care facilities: hot water temperature	20 N.J.R. 2221(a)	R.1988 d.578	20 N.J.R. 3136(c)
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)		
8:43B-18	Hospital anesthesiology standards	20 N.J.R. 2544(a)		
8:44	Operation of clinical laboratories	20 N.J.R. 2222(a)	R.1988 d.561	20 N.J.R. 3017(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)		
8:65-10.2, 10.4, 10.5	Scheduling of controlled dangerous substances	_____	_____	21 N.J.R. 70(b), 70(c), 70(d)
8:66-1	Bureau of Alcohol Countermeasures (recodified from 13:20-31)	_____	_____	21 N.J.R. 70(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a), 1711(b))	20 N.J.R. 146(a)	R.1988 d.509	20 N.J.R. 2768(a)
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b))	20 N.J.R. 871(a)	R.1989 d.3	21 N.J.R. 63(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a))	20 N.J.R. 1766(a)	R.1989 d.5	21 N.J.R. 63(b)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)	R.1989 d.4	21 N.J.R. 63(c)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)		

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9:3	Facilities planning for public colleges and universities	20 N.J.R. 1768(a)	R.1988 d.506	20 N.J.R. 2771(a)
9:4-1.5	Chargeback for disability-specific programs at county colleges	20 N.J.R. 1330(a)	R.1988 d.519	20 N.J.R. 2771(b)
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)		
9:7-3.5	Tuition Aid Grant Program: part-time students	20 N.J.R. 2007(a)	R.1988 d.533	20 N.J.R. 2772(a)
9:7-4.2, 4.3, 4.4	Garden State Scholarships	20 N.J.R. 1635(a)	R.1988 d.532	20 N.J.R. 2772(b)
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)		
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

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10:3	Contract administration	20 N.J.R. 1771(a)	R.1988 d.513	20 N.J.R. 2898(a)
10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)		
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10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
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10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)		
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)	R.1988 d.546	20 N.J.R. 2898(b)
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.12	Timely claim submittal—pharmaceutical services	20 N.J.R. 1642(a)	R.1988 d.541	20 N.J.R. 2915(a)
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)		
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)		
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)		
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10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)	R.1988 d.556	20 N.J.R. 3017(b)
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66	Independent Clinic Services Manual	20 N.J.R. 2562(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)		
10:69B	Lifeline Credit/Tenants Lifeline Assistance programs	20 N.J.R. 2440(a)	R.1988 d.575	20 N.J.R. 3153(a)
10:81-14	Realizing Economic Achievement (REACH) program	20 N.J.R. 2222(b)	R.1988 d.551	20 N.J.R. 2916(a)
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)		
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)		
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)	R.1989 d.7	21 N.J.R. 20(a)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)		
10:87	Food Stamp Program	20 N.J.R. 2689(a)		
10:87-12.1-12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	20 N.J.R. 2592(a)	R.1989 d.1	21 N.J.R. 21(a)
10:100-3, App. A	Special Payments Handbook for SSI recipients (Recodified to 10:83-1)	20 N.J.R. 2563(a)		
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:122	Requirements for child care centers	20 N.J.R. 3079(b)		
10:124-1.2, 4.11, 5.2, 6.5	Shelters accepting juveniles: corrections to text	_____	_____	20 N.J.R. 3169(d)
10:126	Registration of family day care providers	20 N.J.R. 1508(a)	R.1988 d.507	20 N.J.R. 2774(b)
10:127-4.10, 4.19, 5.1, 5.3	Residential child care facilities: corrections to text	_____	_____	20 N.J.R. 3170(a)

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10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)	R.1988 d.543	20 N.J.R. 2928(a)
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:5-5.2	Involuntary placement to protective custody: hearing procedure	20 N.J.R. 2746(b)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmity care	20 N.J.R. 2969(a)		
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10A:16-6.6	Infants born to female inmates	20 N.J.R. 2747(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:32-6.5	Temporary restriction of juveniles	20 N.J.R. 2442(a)		
10A:34-2.8	Municipal cell equipment	20 N.J.R. 2442(b)	R.1988 d.583	20 N.J.R. 3155(b)
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)		
10A:71-3.21, 6.4	State Parole Board: juvenile inmates; conditions of parole	20 N.J.R. 2747(b)		

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11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	20 N.J.R. 2130(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:3-13.5, 14.1, 14.3, 14.5, 14.6, 14.7, 15.1-15.8	Private passenger automobile coverage: standards for written notice to buyers	20 N.J.R. 2984(a)		
11:2-17.3, 17.10	Replacement parts for damaged automobiles	20 N.J.R. 1159(a)	R.1988 d.480	20 N.J.R. 2578(a)
11:3-16	Private passenger automobile rate filings for voluntary market	20 N.J.R. 2135(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)		
11:4-16.6, 16.8, 23.6, 23.8, Appendices	Medicare Supplement insurance coverage, benefits and premiums	20 N.J.R. 2510(a)	R.1988 d.587	20 N.J.R. 3155(c)
11:4-29	Homeowners price comparison survey	20 N.J.R. 2181(a)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:4-31	Term life insurance comparison survey	20 N.J.R. 2990(a)		
11:5	Real Estate Commission rules	20 N.J.R. 2184(a)	R.1988 d.555	20 N.J.R. 3019(a)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		
Most recent update to Title 11: TRANSMITTAL 1988-7 (supplement October 17, 1988)				
LABOR—TITLE 12				
12:3-1	Debarment from contracting; conflicts of interest	20 N.J.R. 2519(a)	R.1988 d.584	20 N.J.R. 3137(a)
12:15-1.3-1.7	1989 Unemployment Compensation weekly benefit, taxable wage base, local government contribution rate, base week, and alternate earnings test	20 N.J.R. 2187(a)	R.1988 d.535	20 N.J.R. 2786(a)
12:16-21	Employer reporting of workplace and residential zip codes of employees	20 N.J.R. 2625(a)		
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)		
12:41-1	Job Training Partnership Act: grievance procedures	20 N.J.R. 2626(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:58-4.12	Minor employees in meat industry	20 N.J.R. 2357(a)	R.1988 d.548	20 N.J.R. 2929(b)
12:60-8	Public works and EDA projects: debarment from contracting	20 N.J.R. 2520(a)	R.1989 d.23	21 N.J.R. 21(b)
12:100-4.2	Public employee safety and health: access to exposure and medical records	20 N.J.R. 2995(a)		
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-9.18	Public employee safety and health: work in confined spaces	20 N.J.R. 2855(b)		
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)		
12:175	Ski lift safety	20 N.J.R. 2521(a)	R.1988 d.585	20 N.J.R. 3138(a)
12:235-1.6	1989 Workers' Compensation maximum weekly benefit	20 N.J.R. 2188(a)	R.1988 d.536	20 N.J.R. 2786(b)
12:235-3.11-3.23	Workers' Compensation: conduct of compensation judges	20 N.J.R. 2442(c)	R.1989 d.24	21 N.J.R. 23(a)
12:235-13	Uninsured Employers' Fund and Second Injury Fund: surcharge collection	20 N.J.R. 2522(a)	R.1988 d.586	20 N.J.R. 3139(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:12-2.10	Local Development Financing Fund program: information confidentiality	20 N.J.R. 2524(a)	R.1989 d.6	21 N.J.R. 26(a)
12A:60	Methodology for computing energy cost savings	20 N.J.R. 2238(b)	R.1988 d.545	20 N.J.R. 2929(c)
12A:80-1	Urban Small Business Incubator Program	20 N.J.R. 2524(b)		
12A:81-1	Urban Development Program	20 N.J.R. 2527(a)		
12A:82-1	Neighborhood Development Corporation	20 N.J.R. 2530(a)		
12A:121	Urban enterprise zone boundaries	20 N.J.R. 2358(a)	R.1988 d.565	20 N.J.R. 3020(a)
Most recent update to Title 12A: TRANSMITTAL 1988-5 (supplement September 19, 1988)				
LAW AND PUBLIC SAFETY—TITLE 13				
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:3-5, 6	Amusement games control: disciplinary proceedings and appeals	20 N.J.R. 2032(a)	R.1988 d.500	20 N.J.R. 2787(a)
13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:20-31	Bureau of Alcohol Countermeasures (recodified to 8:66-1)	_____	_____	21 N.J.R. 70(a)
13:20-39	Special motor vehicle plates for nonprofit organizations	20 N.J.R. 2033(a)	R.1988 d.537	20 N.J.R. 2788(a)
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)	R.1989 d.22	21 N.J.R. 26(b)
13:21-22	Certificates of title for salvage motor vehicles	20 N.J.R. 2675(a)		
13:26	Transportation of bulk commodities	20 N.J.R. 2035(a)	R.1988 d.502	20 N.J.R. 2790(a)
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 2359(a)		
13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)		
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:30-8.5	Board of Dentistry: access to complaint history of licensees	20 N.J.R. 2680(a)		
13:34	Board of Marriage Counselor Examiners	20 N.J.R. 2361(a)	R.1988 d.550	20 N.J.R. 2932(a)
13:37-1.1, 1.2	Accreditation of nursing programs	20 N.J.R. 1645(b)	R.1988 d.558	20 N.J.R. 3021(a)
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:40-10.1	Professional engineers and land surveyors: contract to provide services	20 N.J.R. 2243(b)		
13:42	Board of Psychological Examiners	20 N.J.R. 2244(a)	R.1988 d.557	20 N.J.R. 3023(a)
13:44-1.1	Qualified graduate of veterinary medicine	20 N.J.R. 2680(b)		
13:44C-10.1	Audiologist and speech-language pathologist licensure: administrative correction	_____	_____	20 N.J.R. 3140(a)
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45A-25	Health club services	20 N.J.R. 2036(a)	R.1988 d.520	20 N.J.R. 2790(b)
13:45A-26	Automotive dispute resolution: Lemon Law implementation	20 N.J.R. 2681(b)		
13:45B-4, 5	Temporary help service firms; booking agencies	20 N.J.R. 2684(a)		
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)		
13:47B	Commercial weighing and measuring devices	20 N.J.R. 2856(a)		
13:49	State Medical Examiner rules	20 N.J.R. 2687(a)		
13:49	State Medical Examiner: standards and procedures	20 N.J.R. 2856(b)		
13:70-1.30	Thoroughbred racing: horsemen's associations and surplus funds	20 N.J.R. 2995(c)		
13:70-5	Thoroughbred racing: registration of colors	20 N.J.R. 2536(a)		
13:70-9.29	Thoroughbred racing: apprentice jockey weight allowance	20 N.J.R. 2996(a)		
13:70-9.30	Thoroughbred racing: apprentice jockey contracts	20 N.J.R. 2996(b)		
13:70-11.12	Thoroughbred racing: abusive whipping by jockey	20 N.J.R. 2038(a)	R.1988 d.559	20 N.J.R. 3025(a)
13:70-14.5	Thoroughbred racing: testing for illegal devices	20 N.J.R. 3114(b)		
13:70-19.22	Thoroughbred racing: determining finishing place	20 N.J.R. 2038(b)	R.1988 d.560	20 N.J.R. 3025(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:71-1.25	Harness racing: horsemen's associations and surplus funds	20 N.J.R. 2997(a)		
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:78	Advocacy fund for crime victims and witnesses	20 N.J.R. 2997(b)		
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		

Most recent update to Title 13: TRANSMITTAL 1988-9 (supplement October 17, 1988)

PUBLIC UTILITIES—TITLE 14

14:3-7.5	Interest on customer deposits	20 N.J.R. 737(a)	R.1988 d.568	20 N.J.R. 3140(b)
14:3-7.13	Collection activity on disputed charges; interest on overpayments	20 N.J.R. 963(b)	R.1988 d.569	20 N.J.R. 3141(a)
14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:18-15.1	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

14A:14	Certificate of need for electrical facilities	20 N.J.R. 2188(b)		
14A:14	Certificate of need for electrical facilities: public hearing	20 N.J.R. 2861(a)		

Most recent update to Title 14A: TRANSMITTAL 1988-2 (supplement May 16, 1988)

STATE—TITLE 15

15:2-2, 3	Preclearance of corporation documents and adoption of corporation name	20 N.J.R. 2998(a)		
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Most recent update to Title 15: TRANSMITTAL 1988-2 (supplement September 19, 1988)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

TRANSPORTATION—TITLE 16

16:21-1.2, 3.1	State aid to counties and municipalities	20 N.J.R. 2999(a)		
16:21A-1.3, 3.1	State aid for bridge rehabilitation	20 N.J.R. 3000(a)		
16:22-1.3, 3.1	State aid for urban revitalization, special demonstration and emergency projects	20 N.J.R. 3000(b)		
16:28-1.6, 1.14, 1.44	Speed limit zones along U.S. 40 in Salem County, Route 33 in Monmouth County, and Route 27 in Middlesex County	20 N.J.R. 2630(a)	R.1989 d.19	21 N.J.R. 26(c)
16:28-1.13	Speed limit zone along Route 20 in Paterson	20 N.J.R. 2631(a)	R.1989 d.14	21 N.J.R. 27(a)
16:28-1.41	Speed limits along U.S. 9 in Atlantic County and Ocean County	20 N.J.R. 2190(a)	R.1988 d.540	20 N.J.R. 2932(a)
16:28-1.72	School zone along U.S. 206 in Montaque Township	20 N.J.R. 2862(a)		
16:28-1.79	Speed limits along Route 94 in Sussex County	20 N.J.R. 3116(a)		
16:28-1.79, 1.81	Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County	20 N.J.R. 2632(a)	R.1989 d.17	21 N.J.R. 28(a)
16:28-1.130	Speed limit zones along Route 66 in Monmouth County	20 N.J.R. 2633(a)	R.1989 d.13	21 N.J.R. 27(b)
16:28A-1.4, 1.11, 1.21, 1.38	Bus stop zones and no stopping or standing along Routes 4, 21, and 71, and U.S. 30	20 N.J.R. 2862(b)		
16:28A-1.7, 1.22, 1.32, 1.34	Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville	20 N.J.R. 2633(b)	R.1989 d.18	21 N.J.R. 28(b)
16:28A-1.7, 1.38	Parking restrictions along U.S. 9 in Howell and Route 71 in Asbury Park and Manasquan	20 N.J.R. 2189(a)	R.1988 d.539	20 N.J.R. 2933(a)
16:28A-1.9	Bus stop zone along Route 17 in Ho-Ho-Kus	20 N.J.R. 2374(a)	R.1988 d.552	20 N.J.R. 2933(b)
16:28A-1.20	Parking restrictions along Route 29 in Lambertville	20 N.J.R. 3001(a)		
16:28A-1.21, 1.51, 1.53, 1.68	Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia	20 N.J.R. 3001(b)		
16:28A-1.33	No stopping or standing zone along Route 47 in Franklin Township	20 N.J.R. 2634(a)	R.1989 d.15	21 N.J.R. 29(a)
16:28A-1.53	Parking along Route 179 in Lambertville	20 N.J.R. 3117(a)		
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)	Expired	

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:30-9	Use restrictions on bridges along highway system	20 N.J.R. 3117(b)		
16:30-10.9	Midblock crosswalk along U.S. 9 in Galloway Township	20 N.J.R. 2635(a)	R.1989 d.16	21 N.J.R. 29(b)
16:31-1.11	Turn restrictions along Route 21 in Newark	20 N.J.R. 3120(a)		
16:32-3.5, 3.6, App. A	102-inch truck standard network; Route 47 access	20 N.J.R. 2536(b)	R.1989 d.9	21 N.J.R. 29(c)
16:44-1.2	Classification of prospective bidders for department projects	20 N.J.R. 3004(a)		
16:49-1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials: intrastate shipments of combustible liquids	20 N.J.R. 3005(a)		
16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)		
16:53D	Regular route autobus carriers: zone of rate freedom	20 N.J.R. 2374(b)		
16:54-1.4	Licensing of aeronautical facilities	20 N.J.R. 2638(a)		
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:76	NJ TRANSIT: private carrier capital improvement	20 N.J.R. 2638(b)		
16:80	NJ TRANSIT: Section 16(b)(2) Capital Assistance Program	20 N.J.R. 2044(b)	R.1988 d.515	20 N.J.R. 2791(a)
16:81	NJ TRANSIT: Small Urban and Rural Area Public Transportation Program	20 N.J.R. 2046(a)	R.1988 d.514	20 N.J.R. 2793(a)

Most recent update to Title 16: TRANSMITTAL 1988-10 (supplement October 17, 1988)

TREASURY-GENERAL—TITLE 17

17:1-1.18	Public retirement systems: disbursement checks	20 N.J.R. 2639(a)		
17:6	Consolidated Police and Firemen's Pension Fund	20 N.J.R. 2537(a)	R.1988 d.579	20 N.J.R. 3142(a)
17:7	Prison Officers' Pension Fund	20 N.J.R. 2375(a)	R.1988 d.577	20 N.J.R. 3142(b)
17:8-3.3	Supplemental Annuity Collective Trust: lump sum distributions	20 N.J.R. 2192(a)	R.1988 d.554	20 N.J.R. 3026(a)
17:9-1.8	State Health Benefits Program: enrollment policy	20 N.J.R. 2863(a)		
17:19-10.4, 10.5, 10.7, 10.9	Architect/engineer selection procedures	20 N.J.R. 180(a)		
17:20	Lottery Commission rules	20 N.J.R. 2048(a)	R.1988 d.501	20 N.J.R. 2795(a)
17:25	Collection of delinquent educational loans from local government employees	20 N.J.R. 2537(b)	R.1989 d.2	21 N.J.R. 30(a)
17:27	Affirmative action and public contracts	20 N.J.R. 1780(a)	R.1988 d.522	20 N.J.R. 2795(b)
17:27	Affirmative action and public contracts: chapter expiration date			20 N.J.R. 2934(a)

Most recent update to Title 17: TRANSMITTAL 1988-9 (supplement October 17, 1988)

TREASURY-TAXATION—TITLE 18

18:6-7.13	Wholesaling of prepackaged cigarettes	20 N.J.R. 2192(b)		
18:12-10	Real property defined	20 N.J.R. 1787(a)	R.1988 d.581	20 N.J.R. 3142(c)
18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.1, 6.2, 6.3, 7.10, 8.1, 8.6, 8.7, 8.12, 9.4, 9.10, 12.2, App. A	Transfer inheritance tax rules	20 N.J.R. 2193(a)		
18:35-1.24	Gross income tax: investment fund distributions	20 N.J.R. 742(b)		

Most recent update to Title 18: TRANSMITTAL 1988-4 (supplement September 19, 1988)

TITLE 19—OTHER AGENCIES

19:4-5.3A, 6.28	Hackensack Meadowlands: Planned Development Center specially planned areas (PDC-1)	20 N.J.R. 2247(b)	R.1989 d.21	21 N.J.R. 31(a)
19:8-10.1	Garden State Parkway: pre-employment screening	20 N.J.R. 2864(a)		
19:9-1.2	Speed limitation on constructor vehicles	20 N.J.R. 2864(b)		
19:25-1.7, 4.6, 6.1, 8.1, 9.8, 10.6, 10.8, 11.6, 11.8, 12.4, 15.14, 16.11	Reporting and record keeping	20 N.J.R. 2640(a)		
19:25-1.7, 4.7, 8.3, 9.6, 10.4, 11.9, 12.2	Campaign reporting	20 N.J.R. 3009(a)		
19:25-15.4, 15.5, 15.14, 15.16, 15.17, 15.20, 15.26, 15.46	Public financing of general election for governor	20 N.J.R. 2642(a)		

Most recent update to Title 19: TRANSMITTAL 1988-5 (supplement October 17, 1988)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-1.2	Junket activities and representatives	20 N.J.R. 2644(a)		
19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:40-2	Access to information maintained by casino licensees: public hearing	20 N.J.R. 2049(b)		
19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, 9.18, 9.20	Billing rates for Commission and Gaming Enforcement services; special assessment	20 N.J.R. 2539(a)	R.1988 d.591	20 N.J.R. 3146(a)
19:41-9.16	Deletion of endorsement from employee license	20 N.J.R. 2647(a)		
19:42-4.2-4.7	Exclusion of persons hearings	20 N.J.R. 2250(a)	R.1988 d.526	20 N.J.R. 2801(a)
19:44	Gaming schools: licensure and standards	20 N.J.R. 2050(a)	R.1988 d.508	20 N.J.R. 2802(a)
19:45-1.1, 1.15, 1.24, 1.24A, 1.24B	Wire transfers of funds	20 N.J.R. 3012(a)		
19:45-1.9	Junket activities and representatives	20 N.J.R. 2644(a)		
19:45-1.11A, 1.12	Jobs compendium information; assistant casino manager position	20 N.J.R. 3120(b)		
19:45-1.20	Marking baccarat vigorish	20 N.J.R. 2647(b)		
19:45-1.25	Verification of cash equivalents	20 N.J.R. 1789(a)		
19:45-1.33, 1.42, 1.43	Count times for cash and coin	19 N.J.R. 2265(a)	Expired	
19:45-1.40, 1.41	Jackpot payout and hopper fill forms	20 N.J.R. 2050(b)		
19:45-1.40B	Inspection of slot machine jackpots	20 N.J.R. 2648(a)		
19:46-1.7, 1.9	Roulette wheels	20 N.J.R. 2445(a)		
19:47-2.15	Blackjack irregularities	20 N.J.R. 3014(a)		
19:47-3.3	Marking baccarat vigorish	20 N.J.R. 2647(b)		
19:48	Exclusion of persons	20 N.J.R. 2252(a)	R.1988 d.525	20 N.J.R. 2802(b)
19:49-1.1, 1.2, 1.3, 2.1, 2.4, 3.1, 3.2, 3.5, 3.6	Junket activities and representatives	20 N.J.R. 2644(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-2	Set-aside goals for minority and women's business enterprises	20 N.J.R. 2446(a)		

Most recent update to Title 19K: TRANSMITTAL 1988-8 (supplement October 17, 1988)