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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 747.

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **April 17, 1985**. 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. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

AGRICULTURE

(a)

Seed, General Certification Standards

Proposed Readoption with Amendments: N.J.A.C. 2:16-2

Proposal Number: PRN 1985-158.

The agency proposal follows:

Summary

N.J.A.C. 2:16-2, which will expire on May 12, 1985, was reviewed in January 1985 in compliance with Executive Order No. 66(1978) and found to be adequate, reasonable and necessary. The Department of Agriculture proposes to readopt the rule with amendments. N.J.A.C. 2:16-2 describes the standards applicable to all crops eligible for certification, and with the standards for the individual crops, shall constitute the standards for the certification of field crops in New Jersey. The purpose of seed certification is to maintain and make available to the public, high quality seed of superior crop varieties grown and distributed to insure genetic identity, genetical and mechanical purity and a minimum of seed-borne diseases.

DIVISION OF PLANT INDUSTRY

The following proposals (PRN 1985-158 through 169) are readoptions of existing rules pursuant to the requirements and criteria of Executive Order No. 66(1978) and are authorized by the State Board of Agriculture, Arthur R. Brown, Jr., Secretary, Department of Agriculture, pursuant to the authority delegated at N.J.S.A. 4:1-21.7.

Submit comments by April 17, 1985 to:
William Metterhouse, Director
Division of Plant Industry
CN 330
Trenton, New Jersey 08625

The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notices of their readoption. Amendments to the readopted rules become effective upon publication in the Register of a notice of their adoption.

NEW JERSEY REGISTER

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- 2:16-2.33 [Processors] **Conditioners** requirements for certification
 [Processors] **Conditioners** desiring inter-agency certification shall apply to the New Jersey Department of Agriculture, Trenton, and shall meet the following requirements:
 (a)-(b) (No change.)
 (c) Records of all operations shall be complete and adequate to account for all incoming and finally certified seed. They shall include:
 1. (No change.)
 2. Record of blending, cleaning, or other [processing] **conditioning**, also rebagging including:
 i.-v. (No change.)
 vi. Date [processor] **conditioner** rebagged.
 3.-4. (No change.)
 5. [Processors] **Conditioners** shall permit inspection by the New Jersey Department of Agriculture of all records of the kind of seed certified, including both certified and non-certified seed.
 (d) Approved [processors] **conditioners** shall designate an individual who shall be responsible to the New Jersey Department of Agriculture for performing such duties as may be required.
 (e) Approval of [processors] **conditioners** shall be on an annual basis.
- 2:16-2.34 Inspection of [processing] **conditioning** operations
 (No change in text.)
- 2:16-2.37 Educational responsibilities
 (a) It shall be the responsibility of [the College of Agriculture] **Cook College**, Rutgers—The State University to:
 1.-2. (No change.)
- 2:16-2.38 Charges for blending and repackaging certified seed
 (a) (No change.)
 (b) Inter-agency certification labels will be issued by the certifying agency with the cost assumed by the [processor] **conditioner**.
- 2:16-2.40 Interpretation and change of rules by Foundation Seed Committee
 (a) (No change.)
 (b) The chairman of the Foundation Seed Committee shall be appointed by the Dean of [the New Jersey College of Agriculture] **Cook College**, Rutgers—The State University. The committee shall consist of personnel from the [New Jersey College of Agriculture] **Cook College** and the Department of Agriculture, [New Jersey Crop Improvement Association] as directed by the chairman.

(a)

Standards for Corn, Field (Commercial Hybrids)

Proposed Readoption: N.J.A.C. 2:16-4

Proposal Number: PRN 1985-160.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-4 will expire on May 12, 1985. The Department of Agriculture has reviewed the rule and found it to be adequate, reasonable and necessary, and proposes to readopt the rules. N.J.A.C. 2:16-4 contains rules concerning the certification of seed of commercial hybrids of field corn. The rules define the term "hybrid" in this context, and describe the standards for varieties allowed, field conditions and growing requirements, field inspections and seed quality. N.J.A.C. 2:16-4 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

In the past, the rule has assured the buyer of New Jersey field certified seed corn that he had obtained seed of known variety and high quality, thus maintaining the consistency and quality of the seed. Profiteering and false labelling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rule for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality.

Economic Impact

The use of certified seed protects the farmer from potential loss due to uncertain seed variety and quality, and from field corn varieties unsuitable to New Jersey growing conditions. Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality. Certified seed has a higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for

the consuming public. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-4.

(a)

Standards for Sweetcorn (Inbred Lines)

**Proposed Readoption with Amendment:
N.J.A.C. 2:16-5**

Proposal Number: PRN 1985-161.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-5 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and found them to be adequate, reasonable and necessary; and proposes to readopt the rules. N.J.A.C. 2:16-5 sets the standards for growing certified seed of inbred lines of sweetcorn. The rules describe the sources and classes of seed, field standards, field inspections, and line purity standards. The proposed amendment updates the name of Cook College. N.J.A.C. 2:16-5 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

N.J.A.C. 2:16-5 provides the grower of hybrid sweetcorn seed with varietally pure lines of inbred sweetcorn. In the past, the rules have assured the buyer of New Jersey certified seed of inbred lines of sweetcorn, that he had obtained seed of known variety and high quality, thus maintaining the consistency and quality of the seed. Profiteering and false labelling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rules for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality. The proposed amendment updates the name of Cook College, and is administrative in nature.

Economic Impact

Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed and produce the sweetcorn are protected from loss due to inbred seed contaminated with off-types, and will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality. Certified seed has a higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for the consum-

ing public. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards. The proposed amendment updates the name of Cook College, and is administrative in nature.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-5.

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

2:16-5.3 Field inspections

(a) (No change.)

(b) A minimum of one field inspection must be made by the plant breeder in charge of sweetcorn improvement at [the New Jersey College of Agriculture] **Cook College** to ascertain genetic purity before pollen starts to shed.

(b)

Standards for Sweetcorn (Single Cross Hybrids)

**Proposed Readoption with Amendment:
N.J.A.C. 2:16-6**

Proposal Number: PRN 1985-162.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-6 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and found them to be adequate, reasonable and necessary, and proposes to readopt the rules. N.J.A.C. describes the procedures for growing single cross hybrid sweetcorn seed. The rules regulate the source and classes of seed allowed, and sets standards for inspection, field requirements and standards and seed quality. The amendment updates the name of Cook College. N.J.A.C. 2:16-6 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

In the past, the rules have assured the buyer of New Jersey certified single cross hybrid sweetcorn that he had obtained seed of known variety and high quality, thus maintaining the consistency and quality of the seed. Profiteering and false labeling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rules for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality. The amendment updates the name of Cook College and is purely administrative.

Economic Impact

Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed have been protected from loss due to incorrect variety or low quality. They will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality. Certified seed has a higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for the consuming public. As in the past, the Department will continue to incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards. The amendment updates the name of Cook College, and is purely administrative.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-6.

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

2:16-6.7 Samples and sampling procedures

- (a) (No change.)
- (b) The plant breeder at [the New Jersey College of Agriculture] **Cook College** shall be permitted to have limited quantities of seed for research purposes.
- (c) (No change.)

(a)

Standards for Small Grains (Wheat, Rye, Barley, Oats)

**Proposed Readoption with Amendment:
N.J.A.C. 2:16-7**

Proposal Number: PRN 1985-163.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-7 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and found them to be adequate, reasonable and necessary, and proposes to readopt the rules. N.J.A.C. 2:16-7 is concerned with the growing of wheat, rye, barley, and oats as New Jersey certified seed. The rules provide for seed and land requirements, field inspection, field standards, and seed quality. The proposed amendment states that the restricted noxious weed seeds will be those listed in the New Jersey State Seed Law, plus radish, mustard, vetch, and curled dock. The amendment is proposed to clarify the text and conform to the Federal Seed Act. N.J.A.C. 2:16-

7 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

In the past, the rules have assured the buyer of New Jersey certified small grain seed that he had obtained seed of known variety, high quality, and which was low in contaminants, thus maintaining the consistency and quality of the seed. Profiteering and false labeling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rule for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality.

The proposed amendment clarifies the meaning of "Restricted Noxious Weed Seeds" by identifying them with the list in the State Seed Control Law Rules and Regulations, N.J.A.C. 2:21-42, and adding others which are objectionable in small grains.

Economic Impact

Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality, the right variety, and free of contamination by troublesome weeds. Certified seed has a higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for the consuming public. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards. The proposed amendment clarifies the rule.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-7.

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

2:16-7.8 Seed standards

(No change in text of table.)

Footnotes:

- (1) (No change.)
- (2) Restricted noxious weed seed shall include those listed under [Field standards, plus curled dock] **the New Jersey State Seed Law Rules and Regulations, N.J.A.C. 2:21-4.2, plus radish, mustard, vetch and curled dock.**
- (3) (No change.)

(a)**Standards for Soybeans****Proposed Readoption: N.J.A.C. 2:16-9**

Proposed Number: PRN 1985-164.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-9 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to re-adopt the rules.

The rules provide for the production of New Jersey certified soybean seed. The rules set requirements for land and field standards, provides for field inspection, and sets seed quality and variety standards.

N.J.A.C. 2:16-9 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

Soybeans are a vital part of New Jersey agriculture. In the past, the rules have assured the buyer of New Jersey certified seed soybean that he had obtained seed of known, true variety and high quality, which is suited to New Jersey conditions, thus maintaining the consistency and quality of the seed. Profiteering and false labeling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rules for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality.

Economic Impact

Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed are assured against loss caused by low quality seed and mislabeled varieties. They will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality. Certified seed has a higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for the consuming public. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-9.

(b)**Standards for Vegetables****Proposed Readoption with Amendment:
N.J.A.C. 2:16-10**

Proposal Number: PRN 1985-165.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-10 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to readopt the rules.

N.J.A.C. 2:16-10 is concerned with the growing of vegetable seed kinds for New Jersey certification. The rules set eligibility requirements for seed to be used and provides for inspection and sampling of harvested seed and sets standards for seed conditioning equipment. The rules also provide for seed which is of sub-standard quality, but which has genetic value. The proposed amendment changes the wording of N.J.A.C. 2:16-9.10 from "processing" to "conditioning" to conform with current use.

N.J.A.C. 2:16-10 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

In the past, the rules have assured the buyer of New Jersey certified vegetable seed kinds that he had obtained seed of known variety and high quality, thus maintaining the consistency and quality of the seed. Profiteering and false labelling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rules for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality. The proposed amendment conforms with current usage.

Economic Impact

Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality. Certified seed has a higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for the consuming public. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards. The proposed amendment conforms with current usage.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-10.

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

2:16-10.10 Seed [Processing] **Conditioning**

Seed eligible for final certification shall be [processed] **conditioned** by equipment approached by the certifying agency. A [processing] **conditioning** plant may be approved on the basis of the following”.

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

(a)

Standards for Turfgrass Sod

**Proposed Readoption with Amendments:
N.J.A.C. 2:16-13**

Proposal Number: PRN 1985-166.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-13 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to readopt the rule.

The subchapter applies to the growing of New Jersey certified sod. The rules regulate the source of seed or vegetative material to be planted to produce the sod, provides for field inspection, and sets standards for land requirements, pest control, contaminating crops and weeds, and the appearance and labeling of the sod. The proposed amendments update the name of Cook College.

Social Impact

In the past, the rules have assured growers and buyers of New Jersey certified sod, which is used in landscaping, that they had obtained seed and sod of a known variety and high quality, thus maintaining the consistency and standards of the product. Profiteering and false labeling were barred, and uniformity of the crop and its orderly marketing were promoted. The public benefitted from the availability of a high quality product. The Department has proposed the rules for readoption in order to continue these beneficial affects in the future. Growers will have to continue to comply with the certification standards. The proposed amendment, which updates the name of Cook College, is administrative in nature.

Economic Impact

The rules allow the grower of sod to label and market a premium quality product. Growers have incurred expenses in order to comply with certification standards, and will continue to do so in the future. They will receive a higher price for growing a certified product, and the market price of certified sod will be correspondingly higher to the public than

for an uncertified product. The Department will continue to incur expenses for carrying out the certification program. The proposed amendment, which updates the name of Cook College, is purely administrative.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-13.

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

2:16-13.2 Type of certifying organization

(a) [The College of Agriculture] **Cook College** of Rutgers, the State University is the agricultural research and extension agency for turf certification.

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

2:16-13.4 Eligibility requirements for certification

(a) Only those species, varieties and mixtures that are approved by [the College of Agriculture] **Cook College** of Rutgers, The State University shall be eligible for certification.

2:16-13.5 Sources of certified turfgrass sod

(a) (No change.)

1. No change.

2. Turfgrass established from vegetative material: certified shall be the progeny of foundation or registered stock that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. Certified may be the progeny of certified stock only after the approval has been granted by the turfgrass breeder of [the College of Agriculture] **Cook College** of Rutgers—The State University and the Bureau of Seed Certification **and Control**.

2:16-13.15 Failure to comply with certification regulations

(a) (No change.)

(b) In such cases, a board consisting of a representative of the certified sod growers, chairman of the Soils and Crops Department of [the College of Agriculture] **Cook College** of Rutgers, The State University, and the Chief of the Bureau of Seed Certification **and Control** of the New Jersey Department of Agriculture shall interpret the evidence and give recommendations.

2:16-13.16 Application for certification

(a) (No change.)

(b) The completed application form, together with a check in payment of the certification fee, should be New Jersey Department of Agriculture, [P.O. Box 1888] **CN 330**, Trenton, New Jersey 08625.

2:16-13.26 Seed standards for New Jersey certified sod production

(a) (No change.)

(b) Those desiring to have a lot of seed approved should submit to the Bureau of Seed Certification **and Control**, New Jersey Department of Agriculture, [P.O. Box 1888] **CN 330**, Trenton, New Jersey 08625, the following:

1. (No change.)

2. (No change.)

(a)

Standards for Vegetatively Propagated Grasses

Proposed Readoption with Amendment: N.J.A.C. 2:16-15

Proposal Number: PRN 1985-167.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-15 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to readopt the rules.

The rules allow for the certification of vegetatively propagated grasses which are used primarily for soil and beach conservation and are developed or recommended by the U.S.D.A. Plant Materials Center (Cape May, N.J.). The rules list the requirements for land eligibility and field standards for viability and weed contamination. The proposed amendment deletes the kind "American Beachgrass" from the title of the subchapter, allowing it to be used for other vegetatively propagated grasses as well.

Social Impact

The use of vegetatively propagated beachgrass of approved varieties has provided a means of maintaining New Jersey beaches and protecting them from erosion, thus benefitting the promotion of New Jersey's natural resources and the public welfare. Recreation and tourism have been promoted by this rule.

The certification procedure has assured that the production of American beachgrass of superior and uniform quality. The growers of American beachgrass have had to comply with certification requirements and the Department has had to conduct the testing that is part of the certification process. These beneficial affects of the rule are expected to continue in the future. The Department seeks to extend this beneficial impact by amending the rule with the deletion of "American beachgrass" from the title, thus allowing the certification program to be used for other vegetatively propagated grasses as well.

Economic Impact

Beach preservation is of prime importance to New Jersey's shore communities, which depend on water resources as a source of income. New Jersey's tourism and recreational industries have benefitted from the preservation of beaches from erosion. Growers of American beachgrass have incurred expenses for compliance with certification program, and the Department has incurred expenses for administering the program.

These economic effects are expected to continue into the future. The readoption, with the amendment which allows the certification process to be used for grasses other than American beachgrass, is expected to continue these economic impacts, and to counter the beach erosion which has occurred in major proportions in recent years to the State's beaches and recreation areas.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-15.

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

SUBCHAPTER 15. VEGETATIVELY PROPAGATED GRASSES [; AMERICAN BEACHGRASS]

(No change in text.)

(b)

Asparagus Seed Standards

Proposed Readoption: N.J.A.C. 2:16-16

Proposal Number: PRN 1985-168.

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-16 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to readopt the rules.

These rules concern the growing of asparagus seed for certification, and includes the rules for parental material, land and field requirements, inspections, and field and seed standards. N.J.A.C. 2:16-16 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

In the early 1970s, Fusarium disease decimated the asparagus crop of South Jersey. Certified seed were those proven resistant to the disease. The rules have assured the buyer of New Jersey certified asparagus seed that he had obtained seed of known variety and high quality, thus maintaining the consistency and quality of the seed. Profiteering and false labeling of seeds was barred, and the orderly marketing of seeds was promoted, as was uniformity in the seeds, no matter from whom they were purchased. The public benefitted from the availability of high quality produce. The Department has proposed the rules for readoption in order to continue these beneficial results. Growers of seed will have to comply with the certification standards, and those who plant the seed will be assured that the seed will yield crops of known variety and high quality.

The production of certified asparagus seed should increase the acreage of asparagus grown in New Jersey providing more locally grown asparagus for N.J. consumers.

Economic Impact

Certified asparagus seed of newly developed, disease resistant varieties should increase the yield per acre for producers of asparagus. Growers of seed have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for growing certified instead of uncertified seed. Those who plant the seed will pay a higher price for certified rather than uncertified seed, but will receive a higher price for their crop, as it will be of a higher quality. Certified seed has a

higher rate of germination and desired variety. The market price of crops grown from certified seed will be correspondingly higher for the consuming public. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-16.

(a)

Asparagus Crown Standards

Proposed Readoption: N.J.A.C. 2:16-17

Proposal Number: PRN 1985-169.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-17 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to readopt the rules.

The Department of Agriculture certifies asparagus crowns grown from certified seed. This subchapter describes the land and field requirements; the field inspection methods; regulates the harvesting and storage conditions; sets tolerances for incidence of disease; and regulates labeling.

N.J.A.C. 2:16-17 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

The rules have allowed for the production of higher yielding asparagus crowns of disease-resistant varieties which can increase the supply of New Jersey grown asparagus to the consumer. In the past, the rules have assured and maintained the consistency and quality of the asparagus crop. Orderly marketing has been promoted. The Department has proposed the rules for readoption in order to continue these beneficial results. Growers of asparagus crowns will continue to comply with the certification standards.

Economic Impact

Uniform disease-free asparagus crowns have provided a higher return per acre to the asparagus farmer. Asparagus growers have incurred expenses in order to comply with the certification standards, and will continue to do so in the future. They will continue to receive a higher price for grow-

ing certified instead of uncertified asparagus. The Department will incur the expense of testing and inspecting the seeds in order to comply with the seed certification standards.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-17.

(b)

Flatpea Certification Standards

Proposed Readoption: N.J.A.C. 2:16-19

Proposal Number: PRN 1985-159.

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 2:16-19 will expire on May 12, 1985. The Department of Agriculture has reviewed the rules and has found them to be adequate, reasonable and necessary, and proposes to readopt the rules.

The subchapter provides for the certification of flatpea seed. Land requirements, field standards and inspection, classes of seed produced, and seed quality are covered.

N.J.A.C. 2:16-19 supplements the general seed certification standards established by the State Board of Agriculture at N.J.A.C. 2:16-2, and was enacted in order to comply with the United States Department of Agriculture (USDA) Marketing Service, Part 201, Federal Seed Act Regulation, 7 CFR 201.67 to 201.78.

Social Impact

Flatpea has been used for soil conservation on road banks and waste areas, such as gravel pits, preventing erosion by wind and water. It is also valuable as a wildlife cover. Its use promotes benefit to the public by preservation of the landscape. This beneficial impact is expected to continue into the future, and necessitates readoption of the rule.

Economic Impact

The prevention of erosion by water runoff on road banks can reduce road maintenance costs. The growers of the flatpea seed will incur expenses in order to meet certification requirements. As in the past, the State will continue to incur costs for the certification and inspection process.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:16-19.

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Certification and Appointment Additions to Eligible Lists

Proposed Amendment: N.J.A.C. 4:1-12.12

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:6-2, 11:10-7.
Proposal Number: PRN 1985-143.

Submit comments by April 17, 1985 to:
Peter J. Calderone
Assistant Commissioner
Department of Civil Service
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 4:1-12.12 provides a listing of the situations when additions are made to eligible lists. The proposed amendment, which addresses the situation where an employee is removed from a promotional list because of a layoff, demotion in lieu of layoff, or reassignment and subsequently returns to the original promotional unit scope, provides that the employee's name shall be restored to the promotional list upon his or her written request.

Social Impact

The proposed amendment is beneficial to all Civil Service employees. It recognizes that an employee who has been removed from a promotional list because of layoff or demotion in lieu of layoff should have his or her status on the promotional list restored upon the return to his or her original status in the promotional unit scope. It also recognizes that in State service an employee who has been removed from a promotional list because of reassignment should have his or her status on the promotional list restored upon his or her reassignment back to the original promotional unit scope.

Economic Impact

Proposed N.J.A.C. 4:1-12.12 is strictly procedural and has no fiscal implications or economic impact other than administrative and operational costs. The staff required to implement the proposed rule is operational as are the internal procedures of adding the names to the eligible list. Any cost that may be incurred or saved is too negligible to be calculated as having any economic impact.

Full text of the current rule may be found at 17 N.J.R. 388.

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

4:1-12.12 Additions to eligible lists

(a) Additions may be made to the eligible lists when:

1. A make-up examination has been given and the applicant attains a passing score;

2. Administrative errors by the Department of Civil Service are corrected;

3. Changes are necessary due to the actions of a third party; that is, an appointing authority fails to notify promotional eligibles, the Veterans Administration makes an error in submitting a document, a college makes an error on an official document; [or]

4. An error is corrected by the Director, Division of Examinations, at any time during the life of an eligible list [.]

5. An employee who has had his or her name removed from a promotional list for a given unit scope because of layoff or demotion in lieu of layoff is returned to his or her original status in the promotional unit scope and submits a written request to have his or her name added to the list;

6. In State service, an employee who has had his or her name revoked from a promotional list for a given unit scope due to reassignment is subsequently reassigned to the original promotional unit scope and submits a written request to have his or her name added to the list.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Engineers and Architects

Proposed Amendments: N.J.A.C. 5:23-2.15 and 2.21

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

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

Proposal Number: PRN 1985-150.

Submit comments by April 17, 1985 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, N.J. 08625

The agency proposal follows:

Summary

In accordance with the recent decision of the Superior Court in the case of State of New Jersey Board of Architects v. North, Chancery Division, Docket No. C-0056-84, the Department proposes to amend the regulations limiting engineers who are not architects to the preparation of plans, computations and specifications for "structures designed incidental or supplemental to engineering projects"—the language being taken from N.J.S.A. 45:3-10—and specifying that plans prepared by engineers are only to be submitted for buildings in the F (factory and industrial) and S (storage) use groups, the two use groups in which incidental or supplemental structural design might be encountered.

Social Impact

This amendment will bring practice under the State Uniform Construction Code into conformity with the law as enunciated in State of New Jersey Board of Architects v. North, which interpreted the architects licensing procedure. More employment will be generated for architects and less for engineers.

Economic Impact

To the extent that engineers have been engaged in the types of design work which is now declared to be off-limits to them, they will suffer an economic detriment, with a corresponding economic benefit for the architects. Diminished competition among professionals may result in higher costs to consumers.

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

5:23-2.15 Construction permits—application

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

(e) Plans, plan review, plan approval.

1. Plans and specifications: The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. Plans submitted shall only be required to show such detail and include such information as shall be reasonably necessary to assure compliance with the requirements of the code and these regulations. When quality of materials is essential for conformity to the regulations, specific information shall be given to establish such quality; and this code shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information.

i.-vi. (No change.)

vii. Architect's or engineer's seal: The seal and signature of the registered architect or licensed engineer who prepared the plans shall be affixed to each sheet of each copy of the plans submitted and on the first or title sheet of the specifications and any additional supportive information submitted. The construction official shall waive the requirement for sealed plans in the case of a single family home owner who had prepared his own plans for the construction, alteration or repair of a structure used or intended to be used exclusively as his private residence, and to be constructed by himself, providing that the owner shall submit an affidavit attesting to the fact that he has prepared the plans and provided further that said plans are in the opinion of the construction official, and appropriate subcode official, legible and complete for purposes of ensuring compliance with the regulations. **Engineers may submit plans for use groups F and S only; architects may submit plans for all use groups.**

2.-3. (No change.)

5:23-2.21 Construction control

(a) (No change.)

(b) Professional architecture/engineering services.

1. (No change.)

2. **Plans, computations or specifications signed and sealed by a licensed engineer who is not also a registered architect shall be acceptable only for structures designed incidental or supplemental to engineering projects.**

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

DEFENSE**(a)****THE ADJUTANT GENERAL****Leaves of Absence for Military Duty for and by Members of the National Guard****Proposed New Rules: N.J.A.C. 5A:2**

Authorized By: Major General Frances R. Gerard, The Adjutant General.

Authority: N.J.S.A. 38A:3-6 and 38A:4-4.

Proposal Number: PRN 1985-142.

Submit comments by April 17, 1985 to:

MAJ GEN Frances R. Gerard

The Adjutant General

New Jersey Department of Defense

CN 340

Trenton, NJ 08625-0340

The agency proposal follows:

Summary

The purpose of the proposed new rules is to establish policies and procedures to implement the provisions of N.J.S.A. 38A:1-1 et. seq. governing the issuance of orders and the granting of leaves of absence for military duty for employees of the private sector, public officials and employees, including those of the State of New Jersey, and of any county, school district, municipality, board, commission, or authority, who are members of the New Jersey National Guard.

N.J.A.C. 5A:2-1.2, Purpose, details the obligation of every employer to release a member of the New Jersey National Guard who has been ordered to military duty, through either the New Jersey Department of Defense or the service secretaries of the United States Department of Defense.

Procedures are established for public officials and employees, who are members of the New Jersey National Guard, to obtain the written endorsement of their agency's appointing authority and the approval of the Adjutant General of the State of New Jersey for leaves of absence for military duty. (N.J.A.C. 5A:2-2.1).

Furthermore, those procedures insure that public appointing authorities will have verification that the military duty to be performed by a public official or employee meets the mandatory criteria for military leaves with pay. Those authorities are also provided with an opportunity to apprise the Adjutant General of the impact of the military duty on the operations of the agency. (N.J.A.C. 5A:2-2.2).

The regulations define the types of military duty which are mandatory and require that leaves of absence with pay be granted to public officials and employees (N.J.A.C. 5A:2-2.3). They also describe the types of military duty which are authorized, but without pay for those officials and employees.

Other provisions detail the contents of military orders, the Department of Defense internal administrative processes and forms necessary to implement the regulations (N.J.A.C. 5A:2-2.4 and Appendix A).

Social Impact

The proposed new rules will affect appointing authorities and their personnel administrators at all governmental levels within the State as well as the New Jersey National Guard and the New Jersey Department of Defense. The implementation of the procedures in these regulations will provide specific guidance regarding leave of absence for military duty to governmental appointing authorities, unit commanders and members of the New Jersey National Guard to facilitate the uniform administration and enforcement of N.J.S.A. 38A:1-1 et. seq.

Economic Impact

The proposed new rules will have no tangible economic impact upon the State of New Jersey or other public appointing authorities since the rules provide uniform administrative standards which clarify the provisions of N.J.S.A. 38A:4-4 and restrict its applicability in accordance with current judicial interpretation. Additionally these rules will provide for specific identification of those categories of duty and training that will qualify for paid leaves of absence and those that will not qualify for paid leaves of absence.

TITLE 5A
DEPARTMENT OF DEFENSE
CHAPTER 1 (RESERVED)

CHAPTER 2

LEAVES OF ABSENCE FOR MILITARY DUTY FOR
AND
BY MEMBERS OF THE NATIONAL GUARD

SUBCHAPTER 1. GENERAL PROVISIONS

5A:2-1.1 Scope

(a) This chapter is applicable to members of the National Guard only.

5A:2-1.2 Purpose

(a) The State of New Jersey is committed to the accomplishment of the Federal mission of furnishing trained National Guard units and individuals as an integral part of the first line of defense of this Nation in accordance with Federal and State law.

(b) The purpose of this chapter is to establish policies and procedures to implement the provisions of N.J.S.A. 38A:1-1 et. seq. governing the issuance of orders and the granting of leaves of absence for military duty for employees of the private sector and public officials and employees, including those of the State of New Jersey, and of any county, school district, municipality, board, commission, or authority, who are members of the New Jersey National Guard.

(c) The President of the United States, through the respective military service secretaries, and the Governor, through The Adjutant General, New Jersey Department of Defense (NJDDOD), as defined in N.J.S.A. 38A, are the proponents for the issuance of military orders for the New Jersey National Guard (NJNG) and its members, who enlist, are mobilized, attend military schools, conferences, training exercises, or perform any other duty ordered by the President or the Governor.

(d) The New Jersey Department of Defense must, by law, adhere and conform to State and Federal law and the regulations, forms, precedence, and usages of the United States Department of Defense, the Departments of the Army or the Air Force, and the National Guard Bureau concerning training requirements and other military duty.

5A:2-1.3 Public and private employers

(a) Every public and private employer is obligated to release a member of the New Jersey National Guard who has been ordered to military duty, through either the New Jersey Department of Defense or the service secretaries of the United States Department of Defense. Military duty may be voluntary or involuntary and includes Initial Active Duty Training, Active Duty in State service, Active Duty in Federal service, Inactive Duty Training, and all forms of Active Duty for Training. Employers must grant excused absences from work for military duty without regard to shift or weekend work policies. The rescheduling of work to make up work lost is at the discretion of the employer. Failure to release an employee who has been so ordered may subject the employer to criminal prosecution or other penalties.

SUBCHAPTER 2. NEW JERSEY PUBLIC OFFICIALS
AND EMPLOYEES

5A:2-2.1 General policy

(a) The New Jersey Department of Defense recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by State or Federal law.

(b) It is therefore the policy of the New Jersey Department of Defense that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written endorsement of their agency's appointing authority, as defined in N.J.A.C. 4:1-2.1, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of Defense. The requirement to obtain a written endorsement does not apply to Initial Active Duty for Training (IADT), Inactive Duty Training (IDT), Federal Mobilization, Active Duty (AD), or other duty ordered by the Governor.

5A:2-2.2 Procedures for requesting orders

(a) Public officials and employees will initiate an appropriate request for orders through military channels. The request for orders will specify the type of military duty to be performed, the necessity for such duty, the name or title of the employing agency, whether or not there will be a conflict with work requirements as a result of the performance of the proposed military duty requested, and whether military leave will or will not be requested of the public employer.

(b) Unit commanders must obtain from the New Jersey public official or employees appointing authority, a completed Notice of Leave of Absence For Military Duty, NJDDOD Form 33, (see Appendix A) prior to the issuance of orders and the commencement of military duty to be performed by the New Jersey public official or employee. NJDDOD Form 33 is not required for duty exempted in N.J.A.C. 5A:2-2.1(b).

(c) If the public official or employee's appointing authority declines to indorse a leave of absence for military duty, the employer must provide supporting reasons and return the NJDDOD Form 33 to the unit commander not later than the date specified on the form. Failure of the appointing authority to return the NJDDOD Form 33 will not prevent the issuance of military orders. The unit commander will forward the completed NJDDOD Form 33, or the file copy indicating the failure of the appointing authority to return the original form,

through military channels for review by The Adjutant General, New Jersey Department of Defense. All requests will be reviewed on a case-by-case basis to determine the impact upon the mission readiness and capability of the unit concerned.

(d) Orders for military duty to be performed by a New Jersey public official or employee will not be issued pursuant to N.J.A.C. 5A:2-2.2(a) by any headquarters without the prior written approval of The Adjutant General contained on the NJDOD Form 33.

(e) To insure that appointing authorities have verification that the military duty to be performed by a public official or employee meets the mandatory criteria for military leave with pay, orders and NJDOD Form 33 will contain statements identifying the military duty in accordance with N.J.A.C. 5A:2-2.3(b).

(f) The Adjutant General, New Jersey Department of Defense may, in his discretion, make a final determination to approve, modify, or disapprove any duty specified in the NJDOD Form 33 and will notify the appointing authority directly by providing a completed copy of that form.

5A:2-2.3 Military leave

(a) Military Leave is authorized in accordance with N.J.S.A. 38A:4-4 and N.J.A.C. 4:1-17.7, for all public officials and employees including those of the State of New Jersey, and of any county, school district, municipality, board, commission or authority, who are members of the New Jersey National Guard.

(b) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. 4:1-17.7(e), the following Active Duty and Active Duty for Training in State service are mandatory and require that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time, not to exceed 90 days in the aggregate in any one year, and shall be in addition to the regular vacation allowed such officials and employees.

1. Active Duty (AD), pursuant to N.J.S.A. 38A:1-1(i), is a period of full-time duty in the active State military service other than Active Duty for Training (ADT).

2. Active Duty for Training (ADT), pursuant to N.J.S.A. 38A:1-1(j), is a period of full-time duty in the active State military service for training purposes other than Active Duty (AD). It includes the following types of duty:

i. Annual Training: A period of training duty for members of the National Guard required by Title 10 USC to be performed each training year (usually between October 1 and September 30). It may be accomplished at posts, bases, camps, stations, or at such other places as may be appropriate for gaining or sustaining unit skills. Annual Training may be conducted at any period during the year as authorized by the appropriate commanders and state authorities and approved by Chief, National Guard Bureau. Annual Training may be performed during one consecutive period or on a year-round basis.

ii. Commissioned Officer Basic and Advanced Branch Training Not Available By Correspondence Course: Courses required to qualify officers for retention in the military service. Such courses provide in-depth technical training in the branch to which assigned. Such courses are required in accordance with National Guard Regulation 600-100 and Air National Guard Regulation 36-02.

iii. Duty Military Occupational Specialty (DMOS) or Duty Air Force Specialty Code (DAFSC) Qualification Courses Not Available By Correspondence Course: Courses required to qualify individuals enlisted to accomplish the technical aspects of their assigned duty, when such qualification is not

available through correspondence courses or on the job training in accordance with United States Army Regulation 611-201 and United States Air Force Regulations 36-1 & 39-1.

iv. New Jersey Military Academy Faculty and Staff Support: Duty required to support the academic programs that train, qualify, and produce officers and non-commissioned officers of the New Jersey National Guard. States are required by National Guard Regulation 351-5 to provide resources to operate local schools.

v. Training or Other Specified Duty Required to Meet Federal Unit Mission Readiness Standards: Duty required by Title 32 USC in exercises, drills, or evaluation designed to test or demonstrate individual or unit readiness. Such duty is directed by the various major commands of the United States Army or the United States Air Force.

vi. Professional Development Training Not Available by Correspondence Course Required to Meet Federal or State Promotion or Retention Standards: Training required by National Guard Regulation 350-1 and Air National Guard Regulation 50-01 to maintain proficiency or required level of professional development. Such training qualifies individuals in specialty areas directly related to duty assignments, type of unit or specific individual or unit mission requirements.

vii. Duty Or Other Training Required By Higher Federal Headquarters For the Administration and Management Of The National Guard (NGR 350-1) (ANGR 50-01): Duty or other training scheduled on an irregular or non-recurring basis by higher Federal Military Headquarters for Adjutants General or their designees to facilitate the administration and management of the National Guard.

(c) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. 4:1-17.7(b), all other duty ordered by the Governor is mandatory and requires that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time and shall be in addition to regular vacation allowed such officials and employees.

(d) Military leaves of absence with pay are not authorized for New Jersey public officials and employees for periods of Initial Active Duty for Training (IADT), Inactive Duty Training (IDT), or any other military duty not specified in (b) and (c) above.

5A:2-2.4 Military orders for New Jersey public officials and employees

(a) The New Jersey Department of Defense and Army and Air National Guard Administrative Headquarters will issue military orders to authorize the following duty by New Jersey Public Officials and Employees.

1. Active Duty (AD);
2. Active Duty for Training (ADT);
3. Annual Training (AT);
4. Initial Active Duty for Training (IADT);
5. Other duty ordered by the Governor.

(b) Military orders will contain as a minimum the following information:

1. Order Number;
2. Name of Service Member;
3. Social security account number, rank, unit of assignment, location of assigned unit, home address, and other information pertaining to the individual;
4. Type Duty (ADT, AT, FTTD etc.);
5. Assigned to (training duty station);
6. Reporting time;
7. Period of training (number of days);
8. A statement identifying training to be mandatory or non-mandatory citing N.J.A.C. 5A:2-2.3(b).

(c) Subordinate headquarters of the New Jersey Department of Defense are also authorized to issue unit orders, in either order or training schedule format, which require attendance at Inactive Duty Training (IDT) for specified periods of Unit Training Assemblies (UTA).

APPENDIX A: Notice of Leave of Absence For Military Duty (New Jersey Department of Defense Form 33)

Date

SUBJECT: Notice of Leave of Absence for Military Duty

Appointing Authority (as defined in N.J.A.C. 4:1-2.1)

1. The individual listed below, an employee of your agency, is required to perform military duty for the time and purpose indicated below in connection with his assignment as a member of the New Jersey Army/Air National Guard.

Name and Rank _____

Period of Duty _____

Possible Alternate Periods of Duty _____

Location _____

Purpose _____

Authority _____

(Cite a specific portion of or para 3c of N.J.A.C. _____)

2. The New Jersey Department of Defense recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by state or federal law. It is therefore the policy of the New Jersey Department of Defense that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written indorsement of their agency's appointing authority, as defined in N.J.A.C. 4:1-2.1, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of Defense.

3. It is requested that you provide your indorsement and/or comments regarding this leave of absence in the space provided below and return this form directly to this headquarters in the envelope provided not later than _____. In some cases, it may be necessary to postpone this duty to

another time period due to circumstances beyond our control. Should this occur, the New Jersey Department of Defense will notify you of the date change.

4. You will receive a completed copy of this form by return mail indicating the final action taken by The Adjutant General regarding the issuance of the orders for military duty. Your cooperation in this matter is appreciated.

Signature

Title

Unit

Date

Indorsement and/or comment

Signature

Typed Name

Title

TO: Appointing Authority
SUBJ: Final Action of The Adjutant General, NJDOD

Issuance of orders is

Approved

Approved for alternate dates as follows:

Disapproved

If approval of the issuance of orders is contrary to the appointing authority's comments or indorsement, The Adjutant General will notify the appointing authority of an opportunity to further discuss the matter.

By: _____
The Adjutant General
New Jersey Department of Defense

EDUCATION

STATE BOARD OF EDUCATION

The following proposals are authorized by the State Board of Education, Saul Cooperman, Secretary.

Submit comments by April 17, 1985 to:

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

(a)

DIVISION OF BUSINESS AND FINANCE

School Facility Planning Services

Proposed New Rules: N.J.A.C. 6:22

Proposed Amendments: N.J.A.C. 6:3-1.17

(to be recodified as N.J.A.C. 6:22-3.1)

N.J.A.C. 6:3-1.23 (to be recodified as

N.J.A.C. 6:22-4.1)

Authority: N.J.S.A. 18A:4-15, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:33-1 et seq. and 52:27D-130.

Proposal Number: PRN 1985-145.

The agency proposal follows:

Summary

The State Board of Education pursuant to the authority of N.J.S.A. 18A:4-15, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:33-1 et seq. and 52:27D-130 proposes new rules under School Facility Planning Services, N.J.A.C. 6:22-1.1 et seq. and proposes to amend, relocate and recodify the rules for Substandard School Facilities from N.J.A.C. 6:3-1.17 to N.J.A.C. 6:22-3.1. The proposed amendments also relocate and recodify Long Range Facilities Plans from N.J.A.C. 6:3-1.23 to N.J.A.C. 6:22-4.1.

The proposed new rules pertain to the operations of the Bureau of Facility Planning Services. They establish rules for plan preparation and approval, code variances, filing of certificates of occupancy and contracts, types of projects requiring educational adequacy review, land acquisition and disposal, site size and an appeal process.

The proposed new rules also pertain to enhancements to the Uniform Construction Code (U.C.C.) and adopt, by reference, that code.

Finally, the proposed amendments establish the criteria for the approval of instructional spaces as substandard (pursuant to Chapter 373, Laws of 1983). The criteria address board-owned facilities and off-site, leased facilities.

The new rules for bureau operations and enhancements to the Uniform Construction Code are proposed for several reasons. N.J.A.C. 6:22-1.1 et seq. expired July 1, 1984 per Executive Order No. 66(1978). This chapter contained the standards for public school facility construction. Chapter 496, Laws of 1983 which became effective April 17, 1984, changed

the process by which district boards of education obtain approvals for school construction projects and made public school facility construction subject to the requirements of the Uniform Construction Code (U.C.C.). The proposed new rules reflect the changes in the law.

A more detailed summary of the proposed new rules and amendments is presented below:

N.J.A.C. 6:22-1.1 through 1.6: The proposed new rules update the prior approval processes and indicate that the Department of Education is the plan approval agency for school construction projects requiring review for educational adequacy. Local construction officials will approve plans for construction projects where a review for educational adequacy is not necessary. Local construction officials are also responsible for issuing building permits, conducting inspections and issuing a certificate of occupancy in connection with all construction projects by district boards of education. The proposed new rules define the Department of Education's responsibility for providing technical assistance, reviewing land acquisitions and dispositions, the acquisition of existing buildings for school use and the closing of schools. An appeal process is also provided under this subchapter.

N.J.A.C. 6:22-2.1 through 2.3: Chapter 496, Laws of 1983 also authorized the State Board of Education to adopt enhancements to the Uniform Construction Code as amendments to the U.C.C. Since the U.C.C. does not contain many of the standards which previously existed, enhancements are required and are proposed in this subchapter.

N.J.A.C. 6:22-3.1: With respect to substandard facilities, county superintendents of schools have historically been charged with the approval of substandard facilities. Such facilities were approvable if district boards of education faced an emergency shortage of instructional space and if the facilities met criteria which were general in nature. Conscientious efforts resulted in the judicious approval of substandard spaces. Those spaces, however, remained in use for several years thus permitting the emergency conditions which caused their approval and use to continue. This condition raised questions about the approval process and created concern for the health, safety and educational growth of students who use the facilities.

In response to N.J.S.A. 18A:33-1.2, the proposed amendments contain specific standards for the approval of substandard educational facilities. The county superintendents of schools will approve the facilities through the first two years and the Bureau of Facility Planning Services will approve the facilities before they can be used for a third or successive year. The facilities, following the approval for a third year, shall, according to Chapter 373, Laws of 1983, be considered temporary and, therefore, the district boards of education must develop plans for their upgrading.

N.J.A.C. 6:22-4.1: The Department of Education proposes to relocate and recodify the rules for long-range facility plans from N.J.A.C. 6:3-1.23 to this subchapter.

Social Impact

The proposed new rules for Bureau operations and enhancements to the U.C.C. provide district boards of education with specific information concerning facility plan approvals and other related approvals and insure that district boards of education will have facilities which are healthful and safe for pupils.

The proposed rules for substandard facilities will cause a significant improvement in the conditions of school facilities in the State. The proposal will also give district boards of education a definite reference as to the definition of an ap-

proved substandard instructional space. Because the criteria for substandard approval is only slightly below that for standard, fully-approved spaces, the number of spaces upgraded to that status will increase.

Economic Impact

In the past, district boards of education were required to pay a plan review and construction fee of 0.001 times the overall cost of the project to a maximum of \$3,000. The proposed rules apply a fee schedule developed by the Department of Community Affairs in accordance with the U.C.C. For projects which require a review for educational adequacy, 20 percent of the fee will be paid to the Department of Education and 80 percent to the local construction agency. A fee collected by the Department of Education for a typical major project was \$3,000 under the previous rules; the department will collect \$600.00 using the new schedule. For projects not requiring a review for educational adequacy, the district board of education will pay 100 percent of the fee to the local construction agency. (Fees for this kind of work will increase from \$50.00 to \$310.00.

The proposed enhancements to the U.C.C. should result in no higher costs to district boards of education than costs already incurred for compliance to the former rules for school construction.

Over 2,000 substandard facilities were known to exist before the initiation of the revised school monitoring process. The number which will be identified through monitoring is yet unknown. The total cost of upgrading, therefore, cannot yet be estimated. The amount could be in the millions of dollars thus creating additional costs for district boards of education and the State.

Full text of the proposed new rules follows.

CHAPTER 22

SCHOOL FACILITY PLANNING SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

6:22-1.1 Approval of plans and specifications

(a) Plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, and conversion of public school facilities shall be submitted to the Bureau of Facility Planning Services, Department of Education whenever a review for educational adequacy is necessary. An architect or engineer licensed in New Jersey shall submit the plans and specifications on behalf of the district board of education as follows:

1. One set of schematic plans shall be submitted before funds are authorized locally. This set of plans shall be submitted with a cost estimate, site plan, educational specifications, and an updated long-range facilities plan. The review for educational adequacy shall take into consideration the suitability of the site; size, location and number of instructional and ancillary spaces; furniture and equipment; circulation patterns; provisions for the handicapped; maintenance, security, and energy conservation; and locations of future additions. Room sizes shall meet or exceed minimum acceptable gross areas in the "School Capacity" publication of the Department of Education.

2. One set of preliminary plans shall be submitted after funds are authorized locally. This set of plans shall include room layouts, a statement regarding the method of heating and ventilating, a description of lighting, and building elevations. For additions a floor plan of the existing building showing the present and proposed use of all areas, and docu-

mentation that the Department of Environmental Protection is reviewing the methods of sewerage disposal and water supply shall be included. The preliminary plan review for educational adequacy is an extension of the schematic review for educational adequacy.

3. Four sets of signed and sealed final plans and specifications shall be submitted for review and approval after the architect and district board of education have received preliminary plan approval. This submission shall include the following:

- i. A completed Uniform Construction Code application;
- ii. A completed fee schedule as specified in N.J.A.C. 5:23-4.20;
- iii. A check payable to the "Treasurer, State of New Jersey" for 20 percent of the total fee;
- iv. The results of soil borings;
- v. The appropriate documents indicating compliance with the energy subcode;
- vi. The approval letter from the New Jersey Department of Agriculture regarding soil erosion control;
- vii. The approval letters from the New Jersey Department of Environmental Protection regarding sewerage disposal, water supply, gas installations, major excavations, and air contaminant control apparatus or equipment.

4. Upon release of the plans from the New Jersey Department of Education, the district board of education shall apply to the local municipal construction enforcing agency for the required permit. The local municipal construction enforcing agency will issue the construction permit, collect 80 percent of their total construction permit fee, perform the required inspections during construction, and issue the required certificate of occupancy upon completion of the project. The district board of education shall send to the New Jersey Department of Education a copy of the certificate of occupancy obtained from the local construction agency if the project was reviewed by the New Jersey Department of Education.

5. When there are practical difficulties involved in meeting the Department of Education standards, the manager of the Bureau of Facility Planning Services may vary the rules upon application of the owner or a representative, provided that the spirit and intent of the rules is observed, and the public's welfare and safety shall be ensured. Variation to the State Uniform Construction Code may be requested and acted on in accordance with N.J.A.C. 5:23-2.9.

6. Before construction contracts are awarded, the district board of education shall submit to the Department of Education for approval a list of the contractors which have been selected, the amount of each contract, and the amount of each contractor's uncompleted contracts.

7. A copy of each contract shall be filed with the Department of Education.

8. All plans and specifications for public school construction projects shall be prepared by an architect or professional engineer licensed to practice in the State within the limits covered by such registration. The Department of Education shall accept plans for review only from licensed professionals who have been retained by the district board of education for the project (see N.J.S.A. 52:32-3). Each page of the plans and the title page of the specifications shall bear the signature and embossed seal of the architect and/or professional engineer. The name, signature, and embossed seal of consulting professional engineers shall be placed on their own plans.

(b) Types of work requiring a review for educational adequacy shall consist of the following:

1. New school building;
2. An addition to an existing school building;
3. A change involving the total number of instructional spaces or the number of any one kind of instructional space;
4. A change in the dimensions (volume, and/or area) of any instructional space;
5. The relocation of any instructional space;
6. Any change in the use of an existing instructional space;
7. A change in the general office area or the school board office building that involves instructional spaces;
8. Any change in locker rooms including those contained within field houses, weight rooms and game rooms;
9. Any change to the athletic fields and tracks;
10. The utilization of mobile units;
11. The utilization of prefabricated facilities for instructional purposes. The placement of prefabricated facilities, including relocatables, on a school site is considered new construction.

(c) Construction projects that do not require a review for educational adequacy shall be submitted to the local municipal construction enforcing agency in accordance with N.J.A.C. 5:23-2.

(d) All buildings and structures and parts thereof, both existing and new, shall be maintained in a safe, sanitary, and energy efficient condition. All service equipment, means of egress devices, and safeguards which are required by the State Uniform Construction Code in a building or structure, or which were required by a previous statute for a building or structure, when erected, altered or repaired, shall be maintained in good working order.

6:22-1.2 Approval of land acquisition

(a) No district board of education may conduct a referendum for land acquisition, secure board of school estimate approval, or enter into a lease agreement for land without prior approval of the Bureau of Facility Planning Services of the Department of Education.

(b) Before any action is taken to purchase or otherwise acquire or lease land, the district board of education shall receive approval of the adequacy of the land from the Bureau of Facility Planning Services. To consider the approval of such land acquisition by a district board of education, the manager of the Bureau of Facility Planning Services shall be provided with the following:

1. A written request from the district board of education for such approval, which includes a statement indicating the immediate and ultimate proposed uses of the land in terms of grade organization and potential maximum enrollment;
2. A statement from the State Department of Environmental Protection that the land can be adequately provided with the necessary water and an acceptable sewerage disposal system for the proposed ultimate maximum enrollment, and that the project has no potential for a substantially adverse environmental impact;
3. A statement from an architect or engineer indicating that the land to be acquired is suitable for the proposed use;
4. A complete plot plan of the land to be acquired, showing topographical and contour lines, adjacent properties (on all sides), and access roads. The acreage and dimensions of the tract proposed for acquisition shall be included. In the application of the following standards for minimum acceptable school site sizes, the bureau shall take into consideration the proximity and extent of non-school open land and availability of nearby athletic fields and parking areas;

Standards for Minimum Acceptable School Site Sizes

District Population Density (Persons per Square Mile)	Required Acres, Base		
	Elementary School	Middle School	High School
Below 500	10	20	30
500-1000	8	16	24
1001-5000	6	12	18
5001-10,000	4	8	12
Above 10,000	2	4	6
Added Acres/ Each 100 Pupils	Examples (Building Capacity)		
	Elementary School (500)	Middle School (1000)	High School (1500)
1.0	15	30	45
0.8	12	24	36
0.6	9	18	27
0.4	6	12	18
0.2	3	6	9

5. A map of the school district showing the location of the land and the location of existing schools in the district;

6. Recommendations of the county superintendent of schools based on criteria contained in the Department of Education's publication entitled "School Site" and the requirements specified in this subchapter;

7. A pupil distribution map showing gross distribution of residencies;

8. If existing buildings are located on the land to be acquired, the intended use and/or disposition of these buildings shall be indicated. Any building to be acquired and used must comply with all procedures and rules of the State Board of Education which apply to the construction of a new building;

9. Data regarding the impact of such a facility upon racial balance within the district's public schools;

10. Recommendations of local planning boards (in municipality where the site is located and in adjacent municipality, if proposed school site is along the municipality's boundary line).

6:22-1.3 Disposal of land

A district board of education deciding to dispose of land by sale, transfer, or exchange shall make written application to the Bureau of Facility Planning Services of the Department of Education for approval. A copy of the application shall be sent to the county superintendent of schools who shall make recommendations to the bureau, with a copy to the district board of education.

6:22-1.4 Acquisition of existing buildings

A district board of education planning to acquire any existing building or facility through purchase, gift, lease or otherwise, shall comply with all procedures and rules pertaining to the appropriation and use of capital funds (N.J.S.A. 18A:20-4 et seq.) and shall have the building approved in accordance with the rules of this chapter which apply to the construction of a new building.

6:22-1.5 School closings

(a) By September 1 prior to a school closing the following year, the district board of education shall send to the Bureau of Facility Planning Services of the Department of Education, with a copy to the county superintendent of schools, a statement regarding the intent to close a school, and how the district board of education intends to accommodate pupils presenting using the school. No school building shall be closed without first receiving a letter of approval from the Department of Education.

(b) By January 1 prior to a school closing the following year, the district board of education shall conduct at least two public meetings after advertising not less than 10 days prior to the date fixed for each meeting.

6:22-1.6 Appeals and hearing process

Appeals arising from action of the Bureau of Facility Planning Services of the Department of Education may be requested, and an opportunity given for an informal fair hearing before the bureau manager. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24, and 18A:6-27. Such hearings will be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

SUBCHAPTER 2. APPLICATION OF THE UNIFORM CONSTRUCTION CODE

6:22-2.1 Model code adoption

(a) The State Board of Education hereby adopts, by reference, the 1984 edition of the New Jersey Uniform Construction Code, hereafter referred to as U.C.C., for all public school construction in New Jersey.

1. This document is available for review at the Bureau of Facility Planning Services, Department of Education, 1676 N. Olden Avenue, Trenton, New Jersey 08038, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.

2. This document may be purchased from the New Jersey Department of Community Affairs, CN 805, Trenton, New Jersey 08625.

6:22-2.2 Definitions

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

“Academic classroom” means an instructional space approved for use for general instructional purposes. This term differentiates the space from specialized instructional uses such as science lab and shops.

“Artificial lighting” means electrical or battery/operated lighting.

“Built-in equipment” means equipment that is constructed into the building at the time of construction or added later.

“Change-of-use” means any change in educational function such as from a classroom to a laboratory or other specialized activity space, and/or change in age group of occupants as from pre-kindergarten or kindergarten to elementary, or elementary to secondary.

“Department” means, with regard to these enhancements, the New Jersey Department of Education specifically, the Bureau of Facility Planning Services.

“Greenhouse” means an instructional space or non-instructional space which is used primarily for the growth and/or storage of plants.

“Hazardous” means areas where materials or equipment are likely to burn or cause burning with moderate rapidity.

“Inner court” means a courtyard surrounded on all four sides by walls of the same building.

“Instructional spaces or areas” means any space which is designed and approved for instructional use.

“Middle school” means any school in which any of grades five through eight are housed and the program is departmentalized.

“Multi-purpose” means any space that has been approved for more than one use including instructional use.

“Non-portable motorized equipment” means motorized equipment that is stationary equipment.

“Open space” means any portion of a building other than a gymnasium, auditorium, and cafeteria designed for multiple teaching which may be subdivided into smaller areas by use of partial partitions, moveable partitions, moveable furniture and does not have defined permanent corridors.

“Panic hardware” means knob-less, bar-type mechanisms situated at an approvable height and position on the door.

“Portable or moveable equipment” means any equipment not secured to the building such as free-standing display cases and stuffed furniture.

“Primary corridors” means a corridor which is designed to service 75 or more persons traversing to an exit.

“Resilient floor covering” means any approvable material applied over concrete.

“School capacity formula” means the computational formula used in computing the capacity of a school building to derive the functional capacity for the building. Official prescriptions are in the “School Capacity” bulletin. This document may be purchased from the Department of Education, Office of Central Services, CN 500, Trenton, New Jersey 08625.

6:22-2.3 Enhancements to Uniform Construction Code (U.C.C.)

(a) Under the authority granted to it in Chapter 496, Laws of 1983, the State Board of Education hereby adopts the following enhancements to the U.C.C. (see N.J.A.C. 6:22-2.1).

1. Open space educational areas shall comply with the following:

i. An open space area of noncombustible or fire resistive construction shall not exceed 30,000 square feet in undivided area. A solid wall or smoke-stop noncombustible or fire resistant partition may have smoke-stop doors therein consistent with the Uniform Construction Code (U.C.C.);

ii. Each subsection of an open space area shall provide an opening to the largest section of the total open space expanse that is at least as wide as 20 percent of the perimeter of the enclosure of that subsection, but cannot be less than 10 feet wide. Any area of the open space which does not provide an unobstructed opening of at least 10 linear feet must be interpreted as not meeting the requirements of open space planning or construction. Such areas will then have to meet all the requirements of the code applying to areas that are not open space areas;

iii. For each 1,000 square feet of floor area, in an open space area that is not air-conditioned, there must be provided at least one window that complies with all the requirements of the U.C.C. The window areas provided shall be reasonably distributed.

2. When an instructional room has windows, the major window wall shall have no exterior obstructing wall within 20 feet of it.

3. In non-air-conditioned instructional rooms, windows shall be glazed with clear glass or other transparent medium, having a light transmission factor of not less than 10 percent. The top of the window area shall be not less than six feet above the finished floor. Window stools in instructional areas shall not be more than three feet six inches above the finished floor. Glazing shall meet Federal Public Law 92-73. The required area of glazing and operable glazing shall comply with Building Officials Code Administrators 704.2 and 706.2.

4. Subdivided portions of an auditorium shall be designed to meet all criteria for windowless instructional spaces.

5. Every inner court shall have a minimum width of 20 feet.

6. All inner courts up to 2,000 square feet in area shall have not less than one exit. Inner courts with an area from 2,000 to 5,000 square feet shall have not less than two exits, one of which shall open into a corridor or to the exterior. Inner courts with an area from 5,000 through 7,500 square feet shall have at least three separate exits, one of which shall open into a corridor or to the exterior. All courts of over 7,500 square feet shall have four exits, two of which shall open into a corridor or to the exterior. Exits to the corridor shall have widths of not less than two exit units. Inner courts shall have exit facilities operable from the court side at all times that the building is occupied; corridor exit doors shall swing into the corridor.

7. No portable or moveable equipment or furniture shall be placed in any lobby, corridor, exitway, stairway or space used as a means of egress.

8. One unit of exit to the corridor or to the exterior is required for each 100 students or fraction thereof for locker rooms. When the gross floor area is more than 2,000 square feet, two separate exitways shall be provided.

9. Bars, grills, or screens placed over existing emergency escape windows and over all windows located in rooms occupied by pupils shall be releasable or removeable from the inside without the use of a key, tool, or excessive force.

10. All instructional rooms over 300 square feet in area and all places of assembly shall have doors opening into a corridor except those with direct exterior exits. Instructional spaces 300 square feet or less may exit through an adjoining instructional room which opens directly to a corridor or exterior.

11. All exit signs shall be electrically or battery powered. No self-illuminous signs shall be permitted.

12. Corridors shall not terminate more than 10 feet beyond an exit.

13. Where a corridor widens to form a lobby or other space, its depth shall be no greater than its width.

14. A passage off a corridor shall not be deeper than the width of that passage.

15. Minimum clear widths for primary corridors in elementary schools, grades kindergarten through eight, shall be:

- i. Seven feet, wall-to-wall without lockers or wardrobes;
- ii. Eight feet, wall to locker face with lockers or wardrobes on one side;
- iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides.

16. Minimum clear widths, at any point in secondary schools, grades seven through 12, shall be:

- i. Seven feet six inches, wall-to-wall without lockers;
- ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side;
- iii. Ten feet locker face to locker face with lockers or wardrobes on both sides.

17. Primary corridors may be reduced one foot in width from the above requirements when each room has a direct exit to the outside, the corridor door is recessed so as not to project more than seven inches beyond the corridor wall or face of lockers, or the corridor door swings into the instructional room.

18. Exit stairways shall discharge directly to the exterior.

19. Rooms or spaces with a capacity of from 501 to 900 persons shall have at least three exitways.

20. Rooms or spaces with a capacity of more than 900 persons shall have at least four exitways.

21. Required exitways may use a communicating corridor leading to exterior exits, but exitways from any one room or space with a capacity of 200 or more persons shall not use a common stairway.

22. Instructional rooms having a capacity of 10 or more persons and providing 300 or more square feet of space with direct entrance only through a space other than a corridor, such as an assembly room, stage, gymnasium, cafeteria, all-purpose room or room of similar function, shall be provided with an exterior exit door.

23. Where there are windowless instructional areas, including gymnasiums, cafeterias, and auditoriums, the room shall be provided with an automatic fire suppression system in accordance with National Fire Protection Association Standard No. 13.

24. All pupil exit doors from a building, including exit doors from auditoriums, gymnasiums, instructional media centers, all-purpose rooms, cafeterias, rooms for 50 or more pupils, and two or more classrooms using a common door shall be equipped with bartype panic hardware.

25. Locks on all doors used by pupils, except where panic hardware is required, shall be only the lever-operated type permitting egress from the room at all times.

26. Plastic shall not be used for any interior glazing.

27. In pupil-occupied education buildings the height of vertical rise between landings and intermediate platforms shall not exceed nine feet.

28. Guardrails along stair runs and landings shall be at 42 inches above the tread nosing without exception.

29. Built-in equipment, display cabinets and lockers erected in corridors or exitways shall be of noncombustible construction.

30. Powered grounds equipment, automobiles and other internal combustion type engines when stored and/or operated within a school building shall be in rooms with a sill height of 18 inches.

31. The fire doors installed in heater rooms shall be hinged to swing into the heater room.

32. Concrete floors in all instructional areas except shops shall be covered with a resilient floor covering.

33. Carpeting shall not be used except as a floor covering.

34. Existing boiler rooms and existing rooms which house flame operated equipment or incinerators, shall be upgraded to comply with all present regulations when new equipment is installed or the method of firing such equipment is modified or changed or the equipment is enlarged.

35. Not less than two emergency cut-off switches for all heating furnaces shall be provided to disconnect the burner and fuel supply. The switches shall be clearly lettered and conveniently located, one at or near each exit doorway.

36. All heating appliances intended to supply domestic hot water or hot water or steam for space heating shall not be located in any instructional room in use group E, A-4 and I-2,

as designated in Building Officials Code Administrators 301.1, except for industrial arts and vocational education shops and laboratories.

37. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop, or other area where gas is used by students, except home economics rooms.

38. Gas supply lines at each point of entry, exit, or reentry into a school building shall be encased in a conduit, which conduit shall extend into a normally usable and accessible portion of the building and at the point where the conduit terminates in the building, the space between the conduit and the gas piping shall be sealed to prevent the possible entrance of any leakage. The conduit shall extend at least four inches outside and be vented above grade. Vent pipes shall terminate outside the building at a point not less than two feet measured vertically or horizontally from any window or other building opening. The outer end of vent pipes shall terminate in a weatherproof and securely fastened vent cap. They shall terminate sufficiently above the ground to avoid being obstructed with snow and shall be secured firmly to the building. The entire installation shall be such that the gas piping can be readily replaced without damage to the building. Vents in courts shall be extended to not less than five feet above the roof.

39. The line supplying gas to each instructional room, laboratory, shop or other space where gas is used by students, except home economics areas, shall be provided with an electric solenoid key-operated gas shut-off switch.

40. An automatic fire detection system shall be installed in all new buildings of use group E (educational), as designated in Building Officials Code Administrators 301.1.

41. An automatic Fire Detection system shall be required to be installed in accordance with applicable National Fire Protection Association standards. The system shall utilize:

i. A combination fixed-temperature and Rate of Rise devices in classrooms and other spaces not covered in ii. below; or

ii. Devices to detect abnormal visible smoke densities or gaseous products of combustion are required in corridors and exit stairs; or

iii. An automatic fire suppression system and in areas where suppression is deleted automatic detection devices are installed;

iv. A combination of the above three types of detection device except that a fixed-temperature detector shall be permitted in approved locations such as in a boiler room or incinerator.

42. Where an addition is provided to a building which is exempted from an existing automatic fire detection system, the entire structure shall be brought into compliance. Detectors shall be installed in all areas to provide total building coverage.

43. Where additions or alterations, other than ordinary repairs, are to be made to existing pneumatic fire alarm systems, the entire fire alarm system shall be brought into compliance with item number 46 below.

44. Manual fire alarm boxes, in addition to BOCA 1717.2 requirements, shall be provided in the natural path of escape from fire, near each exterior door from the corridor, kitchen, heater room and other exterior exits that are required to serve 50 or more persons. Additional fire alarm boxes shall be located in the main office, stage, at each stairway entrance from a corridor or place of assembly and near one exterior exit in each section of a place of assembly. It shall not be

necessary to traverse more than 200 feet of unobstructed horizontal distance on the same floor in order to reach a fire alarm box.

45. All fire alarm signals shall be automatically locked in at the control panel until manually reset. The manual reset switch shall be of the self restoring type which cannot be left in an abnormal position. It shall be enclosed within the control cabinet or located so as not to be readily accessible to unauthorized personnel.

46. Fire extinguishers shall meet the following standards:

i. Fire extinguishers shall be dry chemical type suitable for use on Class A, B and C fires (multi-purpose). Extinguishers shall carry a rating of at least 2A in addition to its Class B and C ratings. The location of fire extinguishers shall be indicated on the plans and installed prior to occupancy;

ii. Extinguishers in corridors shall be housed in a special cabinet or in a recessed wall rack clearly identified and readily accessible at all times. When the cabinet is glazed, only wire plate glass shall be used. They shall be so distributed that one extinguisher shall be not more than 75 feet travel distance from any point in the corridor, and so that there will not be less than one extinguisher for each 6,000 square feet of floor area or fraction thereof;

iii. Extinguishers having a gross weight not exceeding 20 pounds shall be installed so that the top of the extinguisher is not more than four feet above the floor. Extinguishers having a gross weight greater than 20 pounds (except wheel types) shall be installed so that the top of the extinguisher is not more than 42 inches above the floor;

iv. For hazardous locations, including but not restricted to shops, science laboratories, stages, faculty rooms, garages and heater rooms, at least one 10 BC rated extinguisher shall be provided. These shall be in addition to those required in corridors;

v. Fire blankets of type listed by Underwriters' Laboratories, Inc. shall be provided in all shops, science laboratories, art rooms, home economics rooms, and kitchens. A fire blanket shall be properly mounted in a readily accessible and highly visible cabinet within the room;

vi. The owner or occupant of a property in which portable fire extinguishers are located shall be responsible for the inspection, maintenance and recharging of such equipment in accordance with National Fire Protection Association Standard No. 10.

47. Corridor and stairhall lights shall be controlled by three-way switches at convenient control points.

48. There shall be push-type emergency cut-out switches provided at appropriate locations within shops to de-energize the electrical supply to machinery. These switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but not less than two. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized thereby being inoperative.

49. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off.

50. Each instructional space and room of assembly which is illuminated with the use of high intensity discharge (HID) sources (such as mercury vapor, high pressure sodium, and

metal halide lamps) shall also be provided with a second source of illumination to provide illumination instantly upon activation of the circuit.

51. All high intensity discharged (HID) lamps shall be of the fail-safe type which will be permanently extinguished within two minutes after the outer glass of the bulb is broken. All lamps shall be provided with a glass or plastic lens to protect the bulb.

52. Special exhaust systems shall be provided for removal of dust, fumes, odors and excessive heat in all areas such as shops, kitchens, dishwashing rooms, home economics cooking rooms, paint finishing rooms, paint finishing booths, cosmetology classrooms, science laboratories, science prep rooms, and rooms with kilns. Provisions shall be made for introducing tempered make-up air to satisfy exhaust system requirements. Make-up air may be drawn from corridor ceiling plenums. The systems shall be manually controlled and energized when required. Exhaust systems shall have capacities 10 percent in excess of air make-up systems. Rooms accommodating internal combustion engines shall be provided with adequate air intake and exhaust facilities to suit engine requirements; engine exhaust shall be piped to the exterior of the building. Kilns shall be installed in rooms set aside for the teaching of art. They may be installed in other instructional spaces if ventilation systems to the exterior are present. Kilns shall be Underwriters' Laboratories approved and be installed according to manufacturer's specifications which shall not conflict with applicable standards of the National Fire Protection Association, BOCA Basic Mechanical Codes and National Electrical Code.

53. Each shop, where dust generating equipment is installed, shall be provided with dust collecting equipment. Such equipment shall be either single or multi-use vacuum packs or a central dust collection system. Installed systems shall comply with National Fire Protection Association Standard No. 91, and New Jersey Department of Environmental Protection rules (N.J.A.C. 7:27-81 et seq.).

54. All heater rooms shall be provided with an exterior window, skylight or approved explosion hatch of suitable proportions to serve as a release in the event of an explosion.

55. The average ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall not be less than nine feet six inches in height and no part shall be lower than eight feet. Instructional spaces of less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space may have ceilings eight feet in height. It is recommended that an additional two inches in height be provided to allow for inadvertent variations in materials or construction which could result in the finished ceiling height not meeting this requirement.

56. The ceiling height in an academic classroom shall be not less than nine feet six inches. Ceiling heights in other areas shall be at least the following:

Gymnasium (Elementary)	18 feet
Gymnasium (Middle)	20 feet
Gymnasium (High School)	22 feet
Auxiliary Gymnasium	14 feet
Music Room (Vocal and/or Instrumental) ..	18 feet
Multipurpose Room	18 feet
Cafeteria	12 feet
Industrial Arts and Vocational Shop	15 feet

57. Public school corridors shall have a minimum ceiling height of not less than eight feet.

58. Lavatories shall be provided with mechanical ventilation.

59. The New Jersey Department of Education School Capacity Bulletin shall be used to determine the capacity of a school building for the purpose of determining numbers of plumbing fixtures.

60. General pupil toilet rooms are those designed and labeled for pupil use, containing at least two of each required fixture, and which are directly accessible from a corridor or an open plan instructional space whenever the building is occupied. Pupils housed within an instructional space shall not be required to travel through any other space, except a corridor to reach a general pupil toilet room.

61. Individual toilet rooms are those designed for and directly accessible to a specific individual or group.

62. There shall be at least one general toilet room for each sex, containing at least two of each respective fixture, on each floor occupied by pupils, or all instructional rooms shall have individual toilet rooms.

63. In conjunction with the individual toilet room requirements, on the main floor at least one toilet room for each sex, with at least one of each respective fixture, must be accessible from the corridor. When there is an assembly room in the building, sanitary facilities shall be available for public use.

64. At least one individual toilet room shall be provided in each kindergarten and prekindergarten room. The water closet shall not exceed 10 inches in height.

65. Entrance to toilet rooms and locker rooms shall be screened to prevent visibility into the room.

66. Water closets shall be separated by individual stall partitions of a smooth impervious material to permit effective cleaning.

67. Floors of all toilet rooms, shower rooms and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high.

68. Flooring materials of ceramic tile, quarry tile, sheet vinyl (except for showers) and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter; resilient tiles or exposed concrete are not acceptable in toilet rooms.

69. Where showers are provided, they shall be as follows: 15 to 20 square feet per pupil in a supporting locker room; benches shall be 30 inches apart; one shower head for each 5 to 6 boys and 3 to 4 girls; shower head height of five feet for girls and six feet for boys; and, 12 square feet per shower head.

70. Where classrooms, shops or physical education rooms are provided with self-contained individual facilities (water closet, lavatory, and drinking fountains), the pupils in these rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms.

71. Drinking fountains shall be provided in kindergarten and prekindergarten rooms.

72. Instructional places shall be provided with sufficient outlets (receptacles) to satisfy the program need but in no case shall there be less than two duplex outlets remotely located.

73. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with a convenience outlet at the probable location of portable projectors, and built-in speaker cables at the above location as well as stage and platform areas.

74. A health unit shall be provided and shall include a waiting area, an examination area, a rest area with privacy, and toilet facilities sized and arranged so that physically handicapped persons requiring assistance will be able to receive such aid.

75. Instructional greenhouses shall meet the following standards in addition to the U.C.C. standards:

- i. Exist doors shall swing out;
- ii. All doors shall be a minimum of three feet wide;
- iii. Drinking fountains shall not be located inside greenhouses;
- iv. A fire alarm system is required when a greenhouse is either attached to a school building or free-standing with more than one instructional space;
- v. A minimum of one 2A-10B:C fire extinguisher shall be provided for each 6,000 square feet of floor area or fraction thereof; travel distance to an extinguisher shall not exceed 75 feet from any point in the space;
- vi. A minimum of 10 footcandles of artificial lighting is required in all work areas;
- vii. Greenhouses may be either attached to a school building or located no less than 20 feet from a major area of the school building;
- viii. A greenhouse located in an enclosed court shall not have over 400 square feet of floor area unless it is attached to the school building with an exit door leading directly into a corridor;
- ix. The storage of pesticides shall be in a locked metal cabinet and vented to the exterior;
- x. Roof load design shall take into consideration the local wind load. The minimum live load design for the roof shall be 15 pounds per square foot;
- xi. A minimum of 60 pounds per square foot of live load shall be provided for the floor of greenhouses above the first floor;
- xii. Toilet facilities shall be readily available without traveling outdoors for greenhouses which are greater than 400 square feet in area and located more than 100 feet from a secondary school or more than 50 feet from an elementary or middle school (from door to door of each structure);
- xiii. Wherever chemicals are stored or used, an eyewash facility shall be provided.

76. Small group instruction areas shall meet the following standards in addition to the U.C.C. standards:

- i. No part of the ceiling shall be lower than eight feet, six inches;
- ii. A number of electrical outlets sufficient to satisfy the program need but in no case fewer than two duplex outlets shall be provided;
- iii. Lighting shall be in accordance with the National Electrical Subcode;
- iv. Emergency lighting shall be provided where there is no window or no light is available from an adjoining area through a glazed panel of at least four square feet;
- v. Concrete floors shall be covered with a resilient floor covering;
- vi. The minimum dimension of the room shall be 10 feet;
- vii. No small group instructional room shall be less than 150 square feet.

77. In a public school facility or part of a public school facility, any change in education or any change in age group of the occupants shall be considered a change of use, and thus subject to review and approval by the Department of Education.

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

SUBCHAPTER 3. SUBSTANDARD SCHOOL FACILITIES

[6:3-1.17] **6:22-3.1** Emergency provisions for accommodation of school pupils in **substandard school facilities**

(a) Substandard facilities are all on-site facilities which have never received approval of the State Board of Education as having met the requirements of this chapter or the approval of the local municipal construction official, and sub-code officials, as having met the State Uniform Construction Code which were in effect at the time the facilities were constructed or altered. All off-site facilities being provided by district boards of education for use by public school students are also substandard.

[(a)] **(b)** All emergency provisions for the accommodation of school pupils shall be **initially** approved by the county superintendent of schools of the county in which the **district board of education** is situated, such approval to be given for one year only, renewable **for one year** if, in the [opinion] **judgment** of the county superintendent, effort is being made for the provision of adequate and proper school accommodations. **No substandard facility, however, shall be approved for more than two consecutive years unless it is inspected by the Bureau of Facility Planning Services in the Division of Finance, Department of Education to insure that the accommodations meet health, safety and educational standards for temporary facilities, that the utilization of the accommodations is temporary, and that a plan has been developed by the district board of education to upgrade the accommodations to standard, fully-approved conditions.**

[(b)] In making a determination upon any application for the use of emergency facilities, the county superintendent shall take into account the following:

- 1. Safety factors;
- 2. Ceiling height;
- 3. Heat and ventilation;
- 4. Toilet facilities;
- 5. Lighting;
- 6. Drinking water;
- 7. School ground and play facilities;
- 8. Equipment and supplies;
- 9. Room size.]

[(c)] Any district board of education which is dissatisfied with the county superintendent's determination on any application may appeal such determination to the Commissioner of Education and to the State Board of Education successively.]

(c) County superintendents will annually monitor the plan of district boards of education to upgrade facilities to approved temporary substandard and/or standard status. Also, they will insure that district board of education annual budgets include sufficient funding to implement the plan. As an alternative funding method, district boards of education may secure voter authorization for capital improvements to include implementation of the plan.

(d) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account.

1. Accommodations in an existing public school:

i. Safety factors:

(1) The floors, walls and ceilings of rooms used for instruction shall be free from moisture, peeling paint, plaster and materials which are potentially hazardous;

(2) Provision shall be made for the storage of pupils' clothing other than in a corridor or exitway;

(3) Each instructional room housing more than 10 pupils and containing more than 400 square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior. Any windowless rooms shall have two separate means of egress leading to an exitway separated by fire doors;

(4) The hardware on doors of any space occupied by pupils shall be of the lever-operated type only, permitting egress from the room at all times. Key operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;

(5) Doors opening into the corridor shall be glazed with one-quarter inch wire plate glass only;

(6) Every enclosed space shall be protected by either an approved automatic fire or smoke detector or a fire suppression device tied into the total public school fire alarm system;

(7) Each instructional room capable of housing more than 10 pupils shall have an approved exitway with sufficient units of exit available and within 150 feet travel distance;

(8) Directions for exiting from the building in case of emergency shall be posted in each space;

(9) Concrete floors shall be covered with a resilient floor covering, except shops. Any carpeting, together with its backing or underlayment, shall have passed the flame spread requirements of 75 or less as per the American Society for Testing and Material 84-77.

ii. Ceiling height: The average ceiling height shall be at least eight feet six inches for instructional spaces containing over 400 square feet of floor area.

iii. Heating and ventilation:

(1) The room shall be uniformly heated to a temperature of at least 68°F and not to exceed 80°F when occupied;

(2) Each instructional room shall have natural light with one or more operative window sash which has a stool height not to exceed four feet six inches; or the room shall have mechanical air supply and exhaust sufficient to provide not less than two air changes per hour.

iv. Toilet facilities and drinking fountains: Toilet facilities shall be available within a reasonable distance, that is, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation.

v. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided. Emergency lighting shall also be provided if the space is windowless and exceeds 400 square feet.

vi. Equipment and supplies: Furniture and equipment suitable for the age and size of the pupils, purposes of instruction and which is in good condition shall be provided.

vii. Room size: Each small group instructional room shall provide at least 20 square feet of open floor area per pupil with no dimension less than 10 feet and not less than 100 square feet. Rooms housing handicapped pupils shall generally adhere to the "School Capacity" Bulletin and other applicable policy documents of the Department of Education.

viii. Instruction:

(1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided;

(2) Sufficient electrical duplex outlets shall be provided to satisfy the educational program with not less than one outlet per space.

2. Emergency provisions for accommodation of school pupils in off-site, rented or leased buildings:

i. Safety factors:

(1) The floors, walls, and ceilings of rooms used for instruction shall be free from moisture, peeling paint, plaster and materials which are potentially hazardous;

(2) Provision shall be made for the storage of pupils' clothing other than in a corridor or exitway;

(3) Each instructional room housing more than 10 pupils and containing more than 400 square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior. Any windowless rooms shall have two separate means of egress leading to an exitway separated by fire doors;

(4) The hardware on doors of any space occupied by pupils shall be of the lever-operated type only, permitting egress from the room at all times. Key operated locks, hasps or similar types of locking devices shall not be permitted;

(5) Concrete floors shall be covered with a resilient floor covering, except shops. Any carpeting, together with its backing or underlayment, shall have passed the flame spread requirements of 75 or less as per the American Society for Testing and Material 84-77;

(6) Each exterior exit door serving more than 25 persons shall be equipped with panic hardware only and shall be free at all times of chains or other restraints;

(7) Every building shall be equipped with a manual fire alarm system with pull stations located at or near each exterior exit door, place of assembly, boiler room, and main office. The system shall be designed to provide continuous ringing automatically with bells located so that the bells are clearly audible in all occupied spaces;

(8) Adequate units of exit and exitways as required by the Uniform Construction Code shall be provided. Directions for exiting the facility under emergency conditions shall be posted in every instructional room;

(9) The boiler room shall be enclosed by a floor wall and ceiling designed to provide not less and a ¾ hour fire resistance rating. All openings within the enclosure shall be equipped with a self-closing "C" label fire door lettered "Fire Door Keep Closed." Provision shall be made for a fresh air intake to supply outside air necessary to support burner combustion.

ii. Ceiling height: The average ceiling height shall be at least eight feet six inches for instructional spaces containing 400 square feet of floor area.

iii. Heating and ventilation:

(1) The room shall be uniformly heated to a temperature of at least 68°F and not to exceed 80°F when occupied;

(2) Each instructional room shall have natural light with one or more operative window sash which has a stool height not to exceed four feet six inches; or the room shall have mechanical air supply and exhaust sufficient to provide not less than two air changes per hour;

iv. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided. Emergency lighting shall also be provided if the space is windowless and exceeds 400 square feet.

v. Toilet facilities and drinking fountains:

(1) There shall be a minimum of two urinals, two water closets and two lavatories for boys and girls. They shall be available within a reasonable distance, that is, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. Single toilet facilities will be permitted for students in grades pre-kindergarten, kindergarten, one and two;

(2) At least one drinking fountain for each 50 pupils shall be provided.

vi. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided.

vii. Schoolground and play facilities: The recreational-outside play area for students shall include but not be limited to sufficient space, equipment and safe surfaces for the building enrollment and program need and be protected from hazards or traffic conditions.

viii. Equipment and supplies: Furniture and equipment suitable for the age and size of the pupils, purposes of instruction and which is in good condition shall be provided.

ix. Room size: Each small group instructional space shall provide at least 20 square feet of open floor area per pupil with no dimension less than 10 feet and not less than 100 square feet. Rooms housing handicapped pupils shall generally adhere to the "School Capacity" Bulletin and other applicable policy documents of the Department of Education.

x. Instruction:

(1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided.

(2) Sufficient electrical duplex outlets shall be provided to satisfy the instructional program with not less than one outlet per space.

xi. Other:

(1) A copy of an Occupancy Permit for the facility issued by the local construction official shall be on file in the Department of Education.

(2) A copy of an inspection report from the local fire official and health official approving use of the facility shall be on file in the Department of Education.

SUBCHAPTER 4. LONG-RANGE FACILITIES PLANS

[6:3-1.23] 6:22-4.1 Long-range facilities plans
(No change in text.)

(a)

Health, Safety and Physical Education
Athletics Procedures

Proposed Amendments: N.J.A.C. 6:29-6.4

Authority: N.J.S.A. 18A:4-15, 18A:35-5, 18A:35-7, 18A:36-1 and 18A:40-1.

Proposal Number: PRN 1985-144.

The agency proposal follows:

Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, 18A:35-5, 18A:35-7, 18A:36-1 and 18A:40-1 proposes to amend N.J.A.C. 6:29-6.4 concerning athletic procedures.

The proposed amendments: (1) require district boards of education to adopt emergency medical procedures for all practice sessions and athletic events; (2) require districts to adopt policy defining the content and procedures to be used in the administration of the medical examination required prior to pupil participation on a school athletic squad or team; (3) set minimum requirements for the content of such examinations and (4) revise various procedures regarding the administration of such medical examinations.

A more detailed summary of the proposed amendments is presented below:

N.J.A.C. 6:29-6.4(c): This new subsection would require that each district board of education adopt and annually review a policy regarding emergency procedures for all school athletic practice sessions and events.

N.J.A.C. 6:29-6.4(d): Amendments to this subsection, as recodified, would clarify a number of definitions and procedures associated with the examination of school athletes. The term "comprehensive physical examination" is changed to "medical examination"—a broader, more inclusive term describing an assessment which would include a medical history questionnaire, a physical examination and laboratory data.

The subsection also would allow the medical examination to be administered up to 60 days prior to the first practice session rather than the current requirement of 30 days. The subsection, however, would require that an examination not be given before the first day of the school year for which the fitness of a pupil to participate in athletics is being determined. It should be noted that the first day of the school year is defined, pursuant to N.J.S.A. 18A:36-1, as of July 1.

The subsection would permit districts to accept the results of an examination administered by any other licensed physician.

The amendments to this subsection would require only one physical examination in each school year, eliminating the requirement of an additional examination prior to subsequent participation of pupils in other sports.

Finally, the amendments clarify the language pertaining to the written notification that must be given to the parent or guardian regarding the pupil's fitness to participate in athletics.

N.J.A.C. 6:29-6.4(e): This new subsection would establish minimum requirements for the content of the medical examination used to determine the fitness of a pupil to participate in athletics. These minimum requirements would consist of a medical history questionnaire completed by the parent or legal guardian, a physical examination of the pupil consisting of 15 elements and a urinalysis.

N.J.A.C. 6:29-6.4(f): This new subsection would require that each district board of education adopt policy regarding the content and procedures for administration of the medical examination. Districts are specifically advised that the rules do not preclude the district board of education from adopting content and procedures in excess of the minimums set forth. The subsection would require that any examination provided by a physician other than the medical inspector or designated team doctor include the elements defined in the policy adopted by the district board of education. The results of an examination administered by a physician other than the medical inspector or designated team doctor would be reported to the medical inspector or designated team doctor on a form furnished by the district board of education. If the examination is administered by other than the medical inspector or designated team doctor at the choice of the pupil's parent or legal guardian, this subsection would require that the examination not be done at the expense of the school district.

Social Impact

The adoption of emergency medical procedures would increase the safety precautions district boards of education have in place for those pupils participating in school sponsored or endorsed athletics. The proposal is a reasonable extension of the existing rules and is necessary to insure that adequate medical emergency services are available for pupils in case of injury or accident during all school sponsored athletics.

The proposed amendments regarding the preparticipation medical examination are intended to provide a framework within which districts can assure effective medical screening of potential athletic participants. The proposal to require districts to adopt policy defining the content and procedures to be used in administering such examinations, within specified minimum requirements, is based upon the fact that N.J.S.A. 18A:40-1 requires every district to employ one or more licensed physicians to be known as medical inspectors. Further, N.J.A.C. 6:29-3.1 empowers such medical inspectors to compile and issue regulations governing professional techniques and the conduct of the inspections or tests. By requiring the adoption of medical examination content and procedures as policy, public discussion, with the advice and counsel of the medical profession, will result in the establishment of standards that best meet the concerns and ability of districts to provide for the physical well being of pupils. Within the context of the proposed minimum requirements, the standards adopted by districts would be guided by the concern for protecting the physical well being of pupils and by the necessity to minimize each district's exposure to risk in the face of liability arising from its athletic program.

Pupils or their families who, for either medical or personal reasons, wish to have the pupil examined by a private physician would be able to do so. Districts would be provided more ample time for the scheduling of examinations, thereby facilitating their compliance with the rules.

Economic Impact

The proposed amendments would have no direct or indirect economic impact on the State. The additional costs to districts, however, would vary depending on the extent of both their current policies and the policies which would be adopted as a result of these amendments. Districts which already have a policy regarding emergency medical procedures or utilize a medical examination equivalent to that proposed in the amendments would not be financially affected. Many districts, however, may currently have standards which would require significant upgrading in order to meet the proposed minimum requirements. Such an upgrading will increase the district's costs to the extent that additional time is required of the medical inspector or other personnel. Estimates received from the field indicate a two or threefold increase in the cost of administering the preparticipation examination.

Since the policies of districts vary widely across the State, it is not possible to accurately project the additional cost of the proposed amendments. The requirement of only one preparticipation medical examination each school year would be expected to reduce district costs. Current rules require a more general assessment prior to participation in each subsequent sport. The cost savings resulting from the elimination of this requirement cannot be estimated because the current rule has not yet been fully implemented.

Full text of the proposal follows (additions shown in bold-face thus; deletions shown in brackets [thus]).

6:29-6.4 Athletics procedures

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

(c) Upon the recommendation of the chief school administrator, the district board of education shall adopt, and thereafter, annually review a policy of emergency medical procedures for all practice sessions, and competitive contests, games, events or exhibitions with individual pupils or teams of one or more schools of the same district or of other districts. Said policy should be disseminated to appropriate personnel.

[(c)] (d) Good physical condition, freedom from injury and full recovery from illness shall be prerequisites to participation in athletics, whether in practice or in competition. Each candidate for a place on a school athletic squad or team shall be given a [comprehensive physical] medical examination by the medical inspector or designated team doctor no more than [30] 60 days prior to the first practice session or in lieu thereof, the medical inspector may accept the report of such an examination by a physician licensed to practice medicine. Any examination which shall be used to determine the fitness of a pupil to participate in athletics shall not be given before the first day of the school year, as defined in N.J.S.A. 18A:36-1, for which such fitness is being determined. [If a pupil participates in more than one sport, the initial physical examination must be comprehensive. If the pupil has not sustained any serious injuries or illnesses prior to participation in another sport, the succeeding physical assessment may be of a more general nature.] Each candidate must undergo [at least] one [comprehensive physical] medical examination [per] in each school year. The parent or legal guardian shall receive [a certificate or record card] written notification signed by the medical inspector or team doctor testifying to the [candidate's] pupil's physical fitness [or lack of physical fitness for the sport he or she has selected] to participate in athletics. The reasons for the medical inspector's or team doctor's approval or disapproval [for] of the [candidate's] pupil's participation shall be [registered thereon] included in such notification. The health findings of the medical examination for participation in athletics shall be made a part of the general medical examination record.

(e) A medical examination to determine the fitness of a pupil to participate in athletics shall include, as minimum, no less than the following:

1. A medical history questionnaire, completed by the parent or legal guardian of the pupil, to determine if the pupil:

- i. Has been medically advised not to participate in any sport, and the reason for such advice;**
- ii. Is under physician's care and the reasons for such care;**
- iii. Has experienced loss of consciousness after an injury;**
- iv. Has experienced a fracture or dislocation;**
- v. Has undergone any surgery;**
- vi. Takes any medication on a regular basis, the names of such medication and the reasons for such medication;**
- vii. Has allergies including hives, asthma and reaction to bee stings;**
- viii. Has experienced frequent chest pains or palpitations;**
- ix. Has a recent history of fatigue and undue tiredness;**
- x. Has a history of fainting with exercise; and**
- xi. Has a history of a family member having sudden death.**

2. A physical examination which shall include, as a minimum, no less than the following:

- i. Measurement of weight, height and blood pressure;**
- ii. Examination of the skin to determine the presence of infection, scars of previous surgery or trauma, jaundice and purpura;**

iii. Examination of the eyes to determine visual acuity, use of eyeglasses, or contact lenses, and examination of the sclerae for the presence of jaundice;

iv. Examination of the ears to determine the presence of acute or chronic infection, perforation of the eardrum and gross hearing loss;

v. Examination of the nose to assess the presence of deformity which may affect endurance;

vi. Assessment of the neck to determine range of motion and the presence of pain associated with such motion;

vii. Examination of chest contour;

viii. Auscultation and percussion of the lungs;

ix. Assessment of the heart with attention to the presence of murmurs, noting rhythm and rate before and after exercise;

x. Assessment of the abdomen with attention to the possible presence of hepatomegaly, splenomegaly or abnormal masses;

xi. Assessment of the back to determine range of motion and abnormal curvature of the spine;

xii. Examination of extremities to determine abnormal mobility or immobility, deformity, instability, muscle weakness or atrophy, surgical scars and varicosities;

xiii. Examination of the testes to determine the presence and descent of both testes, abnormal masses or configurations, or hernia;

xiv. Assessment of physiological maturation; and

xv. Neurological examination to assess balance and coordination and the presence of abnormal reflexes; and

3. A urinalysis for glucose, protein and red blood cells.

(f) The district board of education shall adopt policy regarding the content and procedures for the administration of the medical examination required in (d) above. Nothing in this section shall be interpreted as precluding the district board of education from adopting content and procedures in excess of the minimum requirements set forth herein. Any examination conducted by a physician other than the medical inspector or designated team doctor must be reported to the medical inspector or designated team doctor on a form furnished by the district board of education and, as a minimum, include that content adopted by the board. If, at the request of the parent or legal guardian, the medical examination is conducted by a physician other than the medical inspector or designated team doctor, such examination shall not be at the expense of the district board of education.

(d)-(e) recodified as (g)-(h).

ENVIRONMENTAL PROTECTION

(a)

Bureau of Shellfish Control Shellfish-Growing Water Classification

Proposed Amendments: N.J.A.C. 7:12-1.3 and 1.4

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEP Docket No. 011-85-02.

Proposal Number: PRN 1985-170.

Submit comments by April 17, 1985 to:

William J. Eisele Jr., Chief
Bureau of Shellfish Control
Division of Water Resources
Department of Environmental Protection
Stoney Hill Rd., Leeds Point
Star Route
Absecon, New Jersey 08201

The agency proposal follows:

Summary

The Department of Environmental Protection (the Department) proposes to amend its rules on the classification of certain shellfish beds as a result of surveys conducted by the Bureau of Shellfish Control.

The investigatory work consists of the collection and analysis of water samples, the inventory of actual and potential sources of pollution, and hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations at National Shellfish Sanitation Program Manual of Operations (part I—Sanitation of Shellfish Growing Areas). The FDA further requires that each state appraise, once every two years, the quality of those waters classified as Approved for the harvest of shellfish. New Jersey conducts investigatory work and research and, pursuant to N.J.S.A. 58:24-1 et seq., revises the regulations annually.

The recommendations for change to the shellfish harvesting regulations for Shrewsbury River and certain of its tributaries do not necessarily indicate a degradation in water quality. The proposed modification primarily results from a combination of (1) formalizing existing regulations and (2) enhanced monitoring technique. While a degradation was identified in Barnegat Bay, the area in question is rather small and not considered to support an abundant population of shellfish.

The coastal waters near Hereford Inlet are recommended for reclassification due to the relocation of the navigation aid originally used to delineate this area. The waters as such have not exhibited a change in quality.

Due to the vastness of the Cohanse River drainage basin, it is difficult to point to any single pollution source as responsible for the proposed downgrading of Cohanse Cove. However, it appears quite certain that the chronic degradation that is experienced in the affected waters is the result of nonpoint source pollution entering the river system throughout the area. The Division will be investigating the possible nonpoint sources.

These proposed rules will result in the reclassification of approximately 1901 acres. The names of the waterways and number of acres reclassified are listed below in general terms:

Chart	Area	Reclassification Proposed	Acres
2	Shrewsbury River	Special Restricted to Condemned	80
4	Barnegat Bay (Applegate Cove)	Approved to Condemned	100
7	Reed Bay	Condemned to Seasonal	93
9	Atlantic Ocean	Condemned to Approved	670
		Approved to Condemned	315
10	Delaware Bay (Beach Creek)	Approved to Condemned	Too small to determine
	(Cohanse Cove)	Approved to Condemned	643

Social Impact

In addition to the more than 23,000 persons licensed to harvest shellfish, the adoption of this proposal benefits the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. At the same time, the downgrading of some waters may in limited cases reduce recreational opportunities. The continued monitoring efforts undertaken by the Department insure that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters.

Economic Impact

The net shellfish growing water reclassifications contained herein, represent a small percentage (less than 0.1 percent) of New Jersey's estuarine and coastal waters. While the total acreage available for harvest will be lessened, adoption of this proposal will allow the Department to effectively fulfill its statutory responsibility to protect the public health. The overall economic impact of these regulatory changes are not considered to be highly significant in that shellfish from the areas being downgraded could be used in conjunction with a State sanctioned relay program. Administrative costs to the State are minimal.

Environmental Impact

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

This proposal represents a tangible measurement of the quality of New Jersey's coastal surface waters as well as providing a historical record for future comparison. The adoption of this proposal will have a positive environmental impact primarily by sanctioning the extensive monitoring efforts that preceded the specific changes recommended herein.

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

7:12-1.3 Growing water condemnations

(a) Charts designating growing water classifications as hereinafter described are available from the Bureau of Shellfish Control Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closure may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 79th Edition, July 2, 1983; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 21st Edition, March 5, 1983; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 20th Edition, November 27, 1982; and Number 12304 Delaware Bay, 28th Edition, April 17, 1982. The State Department of Environmental Protection hereby condemns all shellfish growing waters or other places from which shellfish are or may be taken, at all times of the year, except when otherwise noted in N.J.A.C. 7:12-1.4, 1.5, and 1.6.

1.-3. (No change.)

4. Shrewsbury River area (A portion is designated as Special Restricted Area):

i. (No change.)

ii. Special Restricted area: All of the Shrewsbury River and tributaries thereof (not including the Navesink River[.]; see paragraph [(a)] 5 below) with the exception of those areas listed below (at sub-subparagraphs (1)-(8)) which shall remain Condemned.

(1) (No change.)

(2) All waters in Little Silver Creek and its tributaries north and west of a line beginning on [the eastern bank of that unnamed lagoon located between Wardell Avenue and Oakes Road in Rumson and bearing approximately 171 degrees T to its terminus on the southshore of Little Silver Creek (additionally, the lagoon located between Wardell Avenue and Rivers Edge Drive in Rumson as well as the lagoon located between Rivers Edge and Rumson Drive in Rumson shall remain Condemned in their entirety);] **the point of land immediately south of the southern extent of Rumson Drive and bearing approximately 155 degrees true to its terminus on the easternmost point of land adjacent to the end of Little Silver Point Road on the southern bank.**

(3) (No change.)

[(4) All of Parker Creek and its tributaries west of a line beginning on the easternmost extent of Horseneck Point and bearing approximately 000 degrees T to its terminus on Breezy Point on the Little Silver side (north) of Parker Creek;

(5) All of Oceanpoint Creek and its tributaries south and west of a line beginning on the easternmost extent of Horseneck Point and bearing approximately 140 degrees T to its terminus on the westernmost extent of an unnamed point of land located at the westernmost extent of Monmouth Boulevard in Oceanport;]

(4) All of that portion of the Shrewsbury River that includes the confluence of Parker and Oceanport Creeks, in-

cluding Parker and Oceanport Creeks and their tributaries south and west (upstream) of the fixed bridge for Seven Bridges Road.

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

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

[(8)] (7) (No change in text.)

[(9)] (8) (No change in text.)

5.-10. (No change.)

11. Barnegat Bay-Brick Township area and Dover Township from the Metedeconk River to Toms River (A portion is designated seasonal. See: N.J.A.C. 7:12-1.5):

i.-iv. (No change.)

v. All waters of Applegate Cove south and west of a straight line beginning on Tilton Point and bearing approximately 334 degrees T, to the easternmost point of land on the northern shore of Applegate Cove.

[v.] vi. (No change in text.)

12.-23. (No change.)

24. Reed Bay area: **(A portion is designated as Seasonal. See N.J.A.C. 7:12-1.4):**

[i. All the waters northwest of a line from a Department-maintained marker southwest of Somers Cove and bearing approximately 215 degrees T to another Department-maintained marker on an unnamed point of land and terminating (this line condemns an unnamed cove adjacent to the Seaview Country Club golf course);]

[iii.] i. (No change in text.)

ii. (No change.)

[iv. All of the waters of Broad Creek south of a line beginning at the foot of Magnolia Way, City of Brigantine, and following the shoreline in a northerly direction to its northernmost tip, then bearing approximately 024 degrees T to the southernmost tip of the unnamed island, then following the southern shoreline of that unnamed island in a northwesterly direction to its westerly tip then bearing approximately 264 degrees T to the easternmost tip of the unnamed island, then along its shoreline in a westerly direction to the Condemned area line established in subparagraph iii above;

v. All of Doughty Creek and that portion of Somers Cove lying north of a line commencing at the point of land on the southeast entrance to Somers Cove and bearing approximately 281 degrees T across the cove to a small unnamed ditch.]

25.-36. (No change.)

37. Delaware Bay area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4.):

i.-ix. (No change.)

x. Nantuxent Cove area (A portion is designated as Seasonal. See N.J.A.C. 7:12-1.4):

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

(3) All of Beach Creek.

xi. Cohansey Cove-Cohansey River Area: All of [Cohansey Cove, Cohansey River and tributaries inshore and upstream of a line starting at FL 28 ft 5M and continuing to Fl 4 sec. 42 ft 3M, then bearing approximately 096 degrees T to the Point of land on the south shore at the mouth of Middle Marsh Creek and terminating.] **Delaware Bay, Cohansey Cove, Cohansey River, and tributaries inshore and upstream of a line from Fl 2.5 sec 4 M "3" and bearing 99 degrees T to a Department-maintained marker on the mainland and terminating.**

xii.-xiii. (No change.)

38. (No change.)

39. Atlantic Ocean

i.-iv. (No change.)

v. All of the ocean waters inshore of a line beginning at the American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N. [and], longitude of 74 degrees 46.2 minutes W. and bearing approximately [168] **180 degrees T** for approximately [2.6] **3.4** nautical miles to a point with coordinates of latitude 38 degrees [59.8] **59.0** minutes N., longitude 74 degrees [45.5] **46.2** minutes W. (generally marked by a buoy charted as R "8" Fl R [4 sec WHISTLE] **4 sec BELL** at the entrance to Hereford Inlet), then bearing approximately [233] **237 degrees T** towards light Fl [4 sec.] **4 sec 30 ft. 7M** at the end of the east jetty at Cape May Inlet for [a distance of two] **approximately one** nautical mile[s] to a point with **coordinates of latitude 38 degrees 58.5 minutes N., longitude 74 degrees 47.3 minutes W.,** then bearing approximately 312 degrees T to the standpipe located on the corner of New Jersey Avenue and Maple Avenue, City of Wildwood, with coordinates of latitude 38 degrees 59.5 minutes N., and longitude of 74 degrees 48.8 minutes W., and terminating. This condemnation adjoins the closure defined in paragraph 35i of this subsection;

vi.-vii. (No change.)

7:12-1.4 Seasonally Approved Growing Waters (Approved November 1 through April 30, Condemned May 1 through October 31, yearly)

(a) The Seasonal waters described in this subchapter shall be Condemned for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly. The areas are designated on the charts referred to in N.J.A.C. 7:12-1.3 and are described as:

1.-3. (No change.)

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

i. (No change.)

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

5. (No change.)

6. Ocean City-Somers Point area-Great Egg Harbor Bay: Seasonal-Condemned May 1 through October 31, yearly; Approved November 1 through April 30, yearly:

i. All the waters contained within a line from the base of the Ocean City-Longport Bridge in Ocean City, extending to the southern end of the bascule, then bearing approximately 250 degrees T to "RB" N buoy, then bearing approximately 227 degrees T to the northern end of the bascule on the Ocean City-Somers Point Bridge, then bearing approximately 261 degrees T to Cowpens Island and along the southern shoreline in a westerly direction to a Department-maintained marker, then bearing approximately 286 degrees T to [Flashing Red light "16" (Fl R "16"),] **the easternmost tip of the unnamed island adjacent to Shooting Island,** then bearing approximately [142] **149** degrees T to the end of West 16th Street, Ocean City, then along the Ocean City shoreline in a northeasterly direction, across the mouth of the Lagoon to the point of origin at the base of the Ocean City-Longport Bridge and terminating.

7.-9. (No change.)

HEALTH

DIVISION OF HEALTH FACILITIES EVALUATION

The following proposals are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

Submit comments by April 17, 1985 to:

Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
New Jersey Department of Health
CN 367
Trenton, NJ 08625

(a)

Standards; All Health Care Facilities Licensure Fees

Proposed Amendment: N.J.A.C. 8:31-26.5

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

Proposal Number: PRN 1985-151.

The agency proposal follows:

Summary

The current rule, N.J.A.C. 8:31-26.5, delineates the licensure fees charged by the Department of Health for the filing of an application for licensure of a health care facility and for the annual renewal of the license of a health care facility. The inpatient health care facilities subject to the licensure fees specified in N.J.A.C. 8:31-26.5(a) are: long-term care facilities, alcoholism treatment facilities, drug treatment facilities, and residential health care facilities. All other health care facilities, except hospitals, that are subject to the licensure fee specified in N.J.A.C. 8:31-26.5(a) are ambulatory care facilities, home health agencies, and medical day care facilities. Hospital facilities are excluded from N.J.A.C. 8:31-26.5 since N.J.A.C. 8:43B-1.8 specifies the licensure fee schedule for hospitals.

The current fees paid by inpatient health care facilities (except hospitals) are indicated in a prorated schedule based on the number of beds in the facility. The current fees range from a minimum of \$100.00 to a maximum of \$500.00 for inpatient health care facilities. The proposed amendment to N.J.A.C. 8:31-26.5(a)1 will increase the licensure fee for long-term care facilities, alcoholism treatment facilities and drug treatment facilities to \$500.00 with an additional fee of \$3.00 for each bed in the facility. For example, a long-term care facility with 120 beds will pay a total licensure fee for that facility of \$860.00. The proposed amendment to N.J.A.C. 8:31-26.5(a)1 will change the licensure fee for residential health care facilities to \$100.00 with an additional fee of \$3.00 for each bed in the facility.

All other health care facilities, except hospitals, currently pay a fee of \$100.00. The proposed amendment to N.J.A.C. 8:31-26.5(a)2 increases the licensure fee for all other health care facilities from \$100.00 to \$500.00. These facilities include

ambulatory care facilities, home health agencies, and medical day care facilities which provide patient care on an outpatient basis.

The purpose of the proposed amendment to N.J.A.C. 8:31-26.5 is to increase the fees charged by the Department for the filing of an application for licensure of a health care facility and the annual renewal of the license in accordance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto. This proposed increase in licensure fees is a continuation of the Department's implementation of the legislative directive to increase the Department's revenues. The total licensure fee for a health care facility shall not exceed \$2,000.00 as established by N.J.S.A. 26:2H-1 et seq., and amendments thereto. The fee increase is needed in order to maintain a level of surveillance of facilities sufficient to support the effort of the Department to ensure the quality of health care provided to patients in New Jersey. Failure to maintain the present level of surveillance would compromise the health and safety of patients.

The current rule, N.J.A.C. 8:31-26.5, became effective on March 7, 1983 (see 14 N.J.R. 1273(a) and 15 N.J.R. 336(a)) and increased the maximum licensure fee from \$250.00 to \$500.00. This increase in licensure fees was a partial implementation of a 1978 amendment to N.J.S.A. 26:2H-1 et seq. N.J.A.C. 8:31-26.5 was scheduled to expire on July 1, 1984, pursuant to the "sunset" provisions of Executive Order No. 66, which mandates the five-year automatic expiration of a rule. Therefore, the rule was readopted effective August 20, 1984 (see 16 N.J.R. 1430(a) and 16 N.J.R. 2278(a)). Concurrent with the readoption of N.J.A.C. 8:31-26.5 was the adoption of an amendment to N.J.A.C. 8:31-26.5 (see 16 N.J.R. 2278(b)) which excludes hospitals from the scope of the fee schedule specified in N.J.A.C. 8:31-26.5(a) since the fee schedule for hospitals is delineated in N.J.A.C. 8:43B-1.8.

Social Impact

Surveillance of health care facilities for compliance with regulations for licensure is an indispensable part of the Department's effort to ensure the quality of health care provided to patients which is mandated in Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto. The survey process enables health care facilities to identify both their strengths and weaknesses in regard to the licensure rules established by the Department, thus ensuring safe, efficient, and effective health care to patients. The adoption of the proposed amendment will help to ensure the quality of care in health care facilities by providing a source of revenue for the continued surveillance of health care facilities. An increase in the fees charged by the Department for the filing of an application for licensure of a health care facility and for the annual renewal of a license is necessary, at the present time, to permit the current level of surveillance of health care facilities to be maintained. Failure to maintain the present level of surveillance would compromise the health and safety of patients in health care facilities. The Department contends that an increase in the licensure fees is necessary to generate revenue for the surveillance of the health care facilities and thus to ensure the health and safety of the patients.

Economic Impact

An increase in licensure fees for all health care facilities other than hospitals will benefit the Department by providing additional funds which will enable the Department to more effectively execute its duties regarding the surveillance of

health care facilities. The Department currently collects licensure fees, excluding hospitals, totaling approximately \$85,415.00 per year. The proposed fee increase will yield an additional \$307,668.00 of revenue per year to the Department.

The Department does not expect that the proposed fee increases will pose a financial hardship for providers or consumers of health care services. When calculated on a per patient basis, the costs to the facility resulting from the proposed fee increase will be insignificant. The increase for residential health care facilities has intentionally been kept lower than that for all other types of facilities because of the Department's concern over the ability of the residential health care facilities to recover this added cost. Hence, the proposed amendment will be beneficial to the Department by enabling it to more effectively discharge its mandated functions while minimizing costs to health care facilities and the public at large.

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

8:31-26.5 Licensure fees

(a) The department shall charge a nonrefundable fee for the filing of an application for licensure of a health care facility and for the annual renewal of the license in accordance with the following:

1. All inpatient health care facilities, except hospitals, shall pay a fee based on the number of beds in the facility as follows:

[Number of Beds	Fees
1-99	\$100.00
100-199	\$200.00
200-299	\$300.00
300-399	\$400.00
400-999	\$500.00]

Inpatient Facilities	Fees
Long-Term Care	\$500.00 plus \$3.00 per bed
Alcoholism Treatment	\$500.00 plus \$3.00 per bed
Drug Treatment	\$500.00 plus \$3.00 per bed
Residential Health Care	\$100.00 plus \$3.00 per bed

"Hospital" is defined in N.J.A.C. 8:43B-1. Facilities referred to as "satellites" shall be included among those referred to as "hospitals" in N.J.A.C. 8:31-26.5 for the purposes of issuance of licenses and assessment of licensure fees.

2. All other health care facilities, except hospitals, shall pay a fee [of \$100.00.] as follows:

Facilities	Fees
Ambulatory Care	\$500.00
Home Health Agencies	\$500.00
Medical Day Care	\$500.00

(b) These regulations shall supersede all previous regulations regarding fees for licensure of health care facilities.

(a)

Standards for Licensure of Hospital Facilities Psychiatric Patient Rights

Proposed New Rule: N.J.A.C. 8:43B-1.14

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

Proposal Number: PRN 1985-150.

The agency proposal follows:

Summary

Individuals who are under treatment for a psychiatric disorder in a New Jersey State psychiatric hospital, a county psychiatric hospital, or in a private psychiatric facility designated as "mental hospital" have been afforded certain patient right protections under New Jersey law (N.J.S.A. 30:4-24.2). These rights have been extended by regulation (N.J.A.C. 10:37-1 et seq.) of the New Jersey Department of Human Services to all individuals under treatment on an outpatient basis in community mental health centers which receive State aid. It has not been clearly determined whether patient right provisions are in effect for those individuals who have been admitted to New Jersey licensed general hospitals for psychiatric inpatient care.

Through amendment to the Manual of Standards for Hospital Facilities, the Department of Health is proposing to adopt by reference the psychiatric patient rights standards that were established by the New Jersey Legislature under Title 30, N.J.S.A. By extending patient rights requirements to general hospitals in this manner, individuals will be assured of uniformly applied protections regardless of the classification of the facility of treatment. Public policy in this area cannot acknowledge establishment of a dual system of patient rights standards within the health care system.

In developing the proposed new rule, the Department secured the recommendations and endorsement of the Psychiatric Bed Task Force Committee of the Statewide Health Coordinating Council, who reviewed the rules in their entirety. The Department through the Task Force considered the comments of the hospital industry, psychiatric professionals, and the Departments of Human Services and the Public Advocate.

Social Impact

Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, enjoin the Department of Health to protect and promote the health of the citizens of this State. The Act also mandates the Department to develop "standards and procedures relating to the licensing of health care facilities and the institution of additional health care services" to ensure the efficient and effective delivery of health care services.

The proposed new rule will have a significant social impact upon the provision of inpatient psychiatric care through effecting uniform patient rights standards in all New Jersey hospitals. Individuals will be assured through these rules that protections established by the Legislature of the State of New Jersey will not be denied and that their liberty interests can be protected.

Through adoption of these rules, all patients will receive a statement of their specific rights within five days of admission. Certain basic rights would not be denied under any circumstances, while other rights could be denied where determined clinically necessary, and where this can be documented in the patients' treatment record.

These rights have been found effective in assuring that all patients undergoing psychiatric treatment receive dignified and humane care. Compliance with these rights is monitored by licensing and accreditation teams and patients may be represented by staff of the Division of Mental Health Advocacy in the New Jersey Department of the Public Advocate in civil and patient rights actions.

The Department of Health believes the extension of these rights to all psychiatric inpatient settings is an essential and significant public policy action.

Economic Impact

The Department does not expect the proposed new rule N.J.A.C. 8:43B-1.14 to have any substantial financial impact upon hospitals providing psychiatric inpatient services.

Implementation of the patient rights standards requires only that a statement of rights be written and printed, furnished to each patient within 5 days of admission, and that an acknowledgement of the receipt of such notice be placed in the patient's record. Each hospital may develop its own language and format for notification forms, although model forms will be provided by the Department.

No physical renovations or staffing modifications within hospitals will be necessary as a result of the implementation of this amendment.

Full text of the proposed new rule follows.

8:43B-1.14 Psychiatric patient rights

All facilities shall comply with the patient rights requirements as set forth in N.J.S.A. 30:4-24.1-3 in admitting and treating any individual for a psychiatric disorder.

INSURANCE

The following proposal is authorized by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Submit comments by April 17, 1985 to:

Verice M. Mason, Director
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

REAL ESTATE COMMISSION

Advertising

Sale of Interstate Property

Proposed Amendment: N.J.A.C. 11:5-1.15 and 1.25

Authority: N.J.S.A. 45:15-6, 45:15-16.1, specifically 45:15-16.19.

Proposal Number: 1985-149.

The agency proposal follows:

Summary

As a result of the Real Estate Commission's 1983 review of N.J.A.C. 11:5-1, it became apparent that the rules for the sale of interstate property, promulgated to effect the Subdivided Lands Full Disclosure Act, N.J.S.A. 45:15-16.3 *et seq.*, required substantial revision. The following proposal makes a number of editorial and substantive changes in two existing rules, N.J.A.C. 11:5-1.15 and 11:5-1.25.

The editorial changes simplify language, make the rules more consistent and easier to read, and incorporate statutorily defined terms. The most significant of these editorial changes is the deletion of N.J.A.C. 11:5-1.15(m)3, 4, and 5 which have been revised and now appear as N.J.A.C. 11:5-1.25(h)8. This editorial change places all rules for sale of interstate property together; the prior organization had placed these provisions with others relating solely to domestic brokers.

Substantive changes are reflected in the following proposed amendments to N.J.A.C. 11:5-1.25:

Paragraphs (a)9, (c)4 and subsection (d) are amended to confirm the discretion of the Commission in conducting on-site inspections of property. Since the adoption of the prior rules, many situs states have established effective regulatory authorities enforcing comprehensive regulatory schemes, eliminating the need for on-site inspection of every property registered. Because of limited staff time and availability, all registered properties have not been inspected, the Commission exercising its discretion inferred in existing rules not to do so. This amendment confirms that practice. Costs associated with such inspection are paid by the developers, but passed on to purchasers. Any attempt to inspect every property would result in substantial delays in processing registrations. This amendment provides certainty: developers are advised which properties will be inspected and are assured that it will be completed promptly.

Paragraph (b)2 is proposed to be amended to permit cooperation among New Jersey brokers, consistent with N.J.A.C. 11:5-1.23(c). Under present practice each broker other than the one designated must register as a supplemental broker and pay a \$100.00 fee for each subdivision. The fee serves to discourage other New Jersey brokers from taking part in the interstate market.

The proposed amendment to paragraph (2) corrects an anomaly that permits New Jersey brokers to pay referral fees to out-of-state brokers, but not to those in New Jersey. The existing rule serves as an exception to N.J.A.C. 11:5-1.23(c) and is contrary to the general policy of encouraging cooperation among brokers.

Most importantly this amendment permits the establishment of broker networks for the sale of properties registered with the Bureau of Subdivided Lands. The Commission has determined that such networks are a better method of marketing than presently exist. This amendment will encourage licensed brokers to inform the public of the wide choice of out-of-state properties available.

Paragraphs (h)3, 4, 5, 6 and 7 are amended to change language and use of warning legends in advertising. Both the full legend and the brief legend contain editorial changes acknowledging that the property has been registered for sale to New Jersey residents by the Commission. A standard for use of the brief legend has been added: that is, written advertisements of one page or less, or radio or television advertisements of 30 seconds or less.

The amended version further provides for the elimination of the legend, and use solely of the advertisement registration number for spot advertisements when consumer responses

will be followed by written material containing the full legend. Such small advertisements are often placed in the classified advertising section of newspapers or magazines; use of the legend often doubles the size of such advertisements, without enhancing any regulatory purpose.

Paragraph (h)7 is proposed to be amended to eliminate a fixed disclaimer legend, permitting advertisers to devise their own legend in conjunction with such disclaimers required by other states. It should be noted that the proposed amendment requires advertisers to specifically identify residents of this State: a general legend such as "void where prohibited" would not be permitted.

Proposed paragraph (h)8 is the amended version of existing N.J.A.C. 11:5-1.15(m)3, 4 and 5. As proposed, this section permits subdividers to offer reimbursement of the travel expenses of potential customers in cash or merchandise.

The existing rule serves to encourage New Jersey purchasers of out-of-state properties to visit the properties prior to entering into agreements to purchase them, by permitting the subdivider to pay for or reimburse travel expenses. In recent years, however, resort and second-home subdivisions in adjoining states have established a market within a few hours' drive. These prospective purchasers are sufficiently close to the properties that they may be inspected in a single day's trip. In 1983, the Commission relaxed the rule requiring reimbursement in cash to permit merchandise to be substituted. No significant problems have resulted and this amendment is proposed to formalize the practice.

Three cautions should be noted. First, the proposed amendment to N.J.A.C. 11:5-1.25(h) effects the purpose of existing N.J.A.C. 11:5-1.15(m)3, 4 and 5 by confirming that merchandise can only be used, as with cash, as a reimbursement of travel expenses. Advertising must clearly specify that the merchandise is offered in consideration for the purchaser traveling to the site of the property. Second, all advertising offering reimbursement of travel expenses shall clearly state its retail value. The subdivider is obliged to provide adequate proof of retail value. Third, the proposed amendment provides that the Commission shall disapprove any promotional material offering merchandise reimbursement of travel expenses if the advertising taken as a whole emphasizes the reimbursement of expenses through cash or merchandise, rather than the property being offered.

New subsection (n) describes the standards applied by the Commission for granting an exemption from registration. N.J.S.A. 45:15-16.6(c) provides that the Commission may, upon application, exempt subdivisions from registration when it finds enforcement of the provisions of Subdivided Land Full Disclosure Act is not necessary in the public interest or required for the protection of purchasers by reason of the small amount involved or the limited character of the offering. In the past, despite the absence of a specific rule, exemptions have occasionally been granted, usually for offerings of a very few lots, or offerings directed at purchasers likely to be sophisticated buyers with independent advice.

New subsection (n) provides this general authority, pursuant to N.J.S.A. 45:15-16.

Paragraph (n)1 requires that the application for exemption specify the particular lots, parcels, units or interests; and limits any exemption granted to those specifically identified. Paragraph (n)2 requires the application to include a narrative description of the reason for exemption.

Paragraph (n)3 permits exemptions based on the small size of the offering, but only when all improvements necessary for the use of the property have been completed. Additionally,

this paragraph prohibits an exemption when a previous exemption was granted to a subdivision contiguous or reasonably contiguous and being offered by the same subdivider or a successor in title. Paragraph (n)4 permits exemptions of offerings to a limited group of purchasers when the nature of either the property or the purchasers is such that it is likely they will have independent advice.

Paragraph (n)5 provides for exempted subdivisions to be assigned a registration number with the prefix "N.J.E." which shall thereafter appear in advertising directed to New Jersey residents. Paragraph (n)6 limits the time of operation of an exemption to one year, although successive renewals may be granted. Paragraph (n)7 provides that the exemption shall be granted only from the registration and advertising approval processes; exempted subdivisions are still within the regulatory oversight powers of the Commission.

Social Impact

The proposed amendments impact on subdividers of out-of-state property, their advertisers and purchasers.

The editorial revisions throughout the proposal have a positive social impact, as the amended rule is easier to read and understand; moreover, the reorganization of the advertising sections establishes all advertising provisions applicable to registered projects in one section.

The substantive changes regarding inspections, exemptions and reimbursement by merchandise conform the written rule to present practice. This has a positive social impact in that all those subject to the rule may read and understand the provided guidelines. Moreover, the provisions for discretionary inspections permits the developers a degree of certainty: they will know shortly after Statements of Record are submitted whether their projects will be inspected. The provision regarding merchandise reimbursement has a positive social impact, in that it permits the marketing of projects in nearby states to compete for attention with those further away.

The change in the warning legend has a positive social impact, as it conforms the language to the fact of approval for sale to New Jersey residents. The flexibility provided by the full, brief or N.J.A. New Jersey number legend has a positive social impact in that it encourages compliance by all subdividers, despite the length or nature of the advertisement.

The provision permitting broker cooperation has a positive social impact, in that it promotes the establishment of broker networks for sales of these properties. It also places New Jersey brokers on an equal footing with out-of-state brokers in referral sales.

Economic Impact

The proposed amendments impact upon the personnel of the Bureau of Subdivided Land Sales in the Real Estate Commission, as well as regulated subdividers and brokers. The amendments will have a positive economic impact on the Commission, in that they set standards for use of the legends, use of reimbursement of travel expenses by merchandise and exemptions. Since there were no previous standards for these, they were required to be developed on a case-by-case basis with additional time required to review.

These amendments have a positive economic impact on subdividers and brokers. Subdividers are permitted to vary the size of the warning legend in the advertising, based upon the size and nature of the advertisement. Subdividers are further provided the certainty of knowing whether their project will be subject to on-site inspection, which saves the deposit for expenses submitted as part of the registration application.

New Jersey real estate brokers who choose to serve in a network for the sale of out-of-state properties are economically benefitted, as they will be permitted to receive commissions on a variety of projects without registering as a supplemental broker for each.

Full text of the proposal follows (additions shown in bold-face **thus**; deletions shown in brackets [thus]).

11:5-1.15 Advertising rules

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

(m) Except as herein provided, no free offering, including the offering of a free appraisal, shall be made in any advertisement or promotional material. "Appraisal" as used herein is given its technical meaning as a complete study and analysis by a specialist or expert to ascertain fair market value using a process in which all factors that would fix price in the market place must be considered.

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.

2. Free offerings ancillary to the real estate transaction process, including but not limited to offerings of market studies, seminars, or offerings in the nature of promotional items of token value, such calendars or pens, are not prohibited. A market study is not an appraisal as herein defined.

3. Advertising or other promotional material may contain an offer to provide transportation to the site of the property offered for sale together with room and board, or the equivalent of the cost of such transportation, room and board in cash, for a period not exceeding three days and two nights. Any advertising which offers such transportation, room and board or the equivalent in cash shall clearly define the terms of the offering and shall clearly state that such transportation, room and board or the equivalent is offered in consideration for the purchaser traveling to the site of the property offered for sale. Any such offer shall not obligate the prospective purchaser or respondee. A record of all responses shall be maintained for inspection and verification by the Commission and shall include the name, home address, dates of visit, and what was accepted by the respondee either in cash or the equivalent.]

4. Any advertisement or other promotional material of a subdivider, or his agent, as defined in N.J.S.A. 45:15-16.3 offering to provide transportation, room and board or the equivalent in cash may be published within New Jersey only after the filing of a copy of such proposed advertising or other material with the Commission at least 30 days prior to the proposed use, and only after approval by the Commission as prescribed by N.J.A.C. 11:5-1.25(h)2. Satisfactory evidence that the value of such equivalent in cash does not exceed the cost of transportation, room and board must also be submitted.]

5. The term "cash" as used herein shall include United States savings bonds or any other cash equivalent as shall be determined by the Commission.]

11:5-1.25 Sale of interstate properties

(a) Rules concerning documents **with respect to sale of interstate properties are as follows:**

1. All [registrations received by this] **statements of record submitted to [this] the Commission** shall be bound, referenced and properly indexed with the exception of those [registrations] received from the Office of Interstate Land Sales Regis-

tration, Department of Housing and Urban Development[,], [Washington, D.C.]

2. [A document to be filed with the Commission] **All documents submitted to the Commission for filing** shall be typewritten on one side of the paper only. One copy of each exhibit or document shall be submitted, unless the Commission [requires] **requests** more than one copy. A document shall be reduced to a size not to exceed 8 1/2 by 14 inches. All [papers filed] **documents submitted** pursuant to these rules shall become part of the Commission's records.

3. [The use of verified] **An applicant for registration may submit** photographs as part of documentation [is permitted], except that the photographs shall not be permitted in lieu of proper legal descriptions of real property or other required written documents.

4. [The use of] **An applicant may submit** verified copies of original documents [is permitted].

5. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

- i. Statement of record, partial statement of record;
- ii. Consolidation registration;
- iii. Registration amendment;
- iv. Annual registration renewal;
- v. Partner, officer, director o[f]r principal disclosure;
- vi. Consent to service of process; and
- vii. Broker's application.

6. All financial statements submitted in a [registration] **statement of record** shall be audited financial statements by certified public accountants.

7. [The commission, at its discretion, may consider the] **A** certified report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, [as compliance with N.J.S.A. 45:15-16.3.] **may be filed in lieu of a statement of record conforming to the requirements of N.J.S.A. 45:15:16.10, provided**

[8. In conjunction with the submission of the certified report and statement of record of the Office of Interstate Land Sales Registration,] the following documentation shall also be submitted:

- i. Consent to service of process;
- ii. Audited financial statement;
- iii. Details of any bonding or security agreements entered into;
- iv. Copies of all plats pertinent to the subdivision;
- v. A copy of the contracts to be used in the sale of property in the development;
- vi. A list of the officers of the corporation;
- vii. A copy of the articles of incorporation;
- viii. A current price list of the lots in the subdivision;
- ix. A copy of the contractual agreement between the broker and the developer[.];
- x. Such other additional documents or proofs that may be requested.

[9.] **8.** The acceptance of the certified report and statement of record of the Office of Interstate Land Sales Registration [shall] **may** be conditioned upon an acceptable on-site inspection by this commission or its designee. No sales activity will be permitted until the proper authorization has been received by the broker from this commission or its designee.

(b) Rules concerning the designation of brokers **for the sale of interstate properties** are as follows:

1. The subdivider must designate an original broker-of-record with the initial registration. The subdivider may there-

after substitute another broker for the one initially designated. The initially designated broker or any [subsequent] substitute must join in the execution of all documents and affidavits as prescribed by the Commission.

2. The subdivider may designate in addition to the broker-of-record other additional brokers, who may join in the disposition of the property covered by the registration, subject to filing the proper application with the Commission and the payment of the necessary fees. **Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker on any transaction, in accordance with N.J.A.C. 11:5-1.23(c).**

(c) Rules concerning fees with respect to the sale of interstate properties are as follows:

1. The fee for substitution of, or additional New Jersey broker or brokers as authorized representatives of the subdivider [shall be] is \$100.00. All additionally designated New Jersey brokers shall pay an annual, non-refundable renewal fee of \$100.00.

2. Should the subdivider fail to renew his registration within 30 days after his annual[,] anniversary date, the **order of registration will be cancelled** [in the manner provided under N.J.S.A. 45:15-16.8(b)]. [In order] **Any further application to reinstate the order of registration** [, it] **shall** [then] **be** [treated as] **a new registration and fees will be** [charged] **paid in accordance with N.J.S.A. 45:15-16.8(a).**

3. The Commission will furnish to the public, upon request, a copy of the statement of record of any [development] **registered subdivision** at a cost of \$0.25 per page.

4. The date of filing shall be considered as the date when all fees are paid to include the fee for inspection **if requested.**

(d) [Rules concerning inspections are:]

[1.] The Commission at its discretion [shall] **may** make on-site inspections of [all] **any** offering[s] submitted under this Act.

[2.] The Commission [shall] **may** at its discretion conduct annual renewal on-site inspections.

(e) The official address of the New Jersey Real Estate Commission for delivery and receipt of all mail, telegrams, information, filings [registrations], fees and other material required by the Act or these rules is: New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control, 201 East State Street, CN-325, Trenton, New Jersey 08625.

(f) [If in the advertising of any common promotional endeavor, a home builder mentions in his promotional material a lot of subdivision situated outside the State of New Jersey, he must register in compliance with N.J.S.A. 45:15-16.3.] **A homebuilder selling house and lot packages is a "subdivider" as defined in N.J.S.A. 45:15-16.4(d) if selling as part of a common promotional plan, even if the lots are not contiguous.**

(g) [All] **A finding that a developer has previously engaged in unfair acts and deceptive practices, as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 USC 1701 et seq.), may** [subject the registrant to rejection or cancellation of his registration.] **constitute grounds to refuse to issue an order of registration.**

(h) Rules concerning advertising and sales promotions with respect to sales of interstate properties are as follows:

1. General standards:

i. Claims and representations contained in advertising shall be accurate and provable. **Proof shall be submitted to the Commission upon request.**

ii. Advertising shall not misrepresent facts or create misleading impressions.

iii. Advertising shall not contain a statement which, though true, implies a non-existent fact.

iv. Advertising shall not make a derogatory or unfair reference to competitive developments, subdivisions or properties.

v. Advertising shall not reprint published material unless information contained in the reprint is representative, truthful, relevant and pertinent to the property being offered.

vi. Advertising shall not contain a statement, photograph or sketch portraying the use to which land can be put unless the land can be put to such use without unreasonable cost.

vii. Advertising shall not contain an asterisk or any other reference symbol as a means of contradicting or substantially changing a previously made statement or as a means of obscuring a material fact.

viii. Advertising shall not use a name or trade style which implies that the advertiser is a nonprofit research organization or public bureau or group[, when such is not true. Advertising of such an organization is prohibited when the true nature of the plan of sale or ownership is misrepresented or concealed].

ix. Maps, plats or representations shall clearly indicate the date that the development will be completed. If completion dates are over a period of years, then a series of shadings, outlines, or coding may be used to indicate dates of completion.

x. Any use of the word "investment" must be qualified, sustained and properly justified **by such proof as the Commission may request.**

2. In reviewing any advertising submitted by an applicant, the Commission shall determine whether it makes a full and fair disclosure or is false and misleading within the intent and meaning of the Act and these rules, by examining the form, language and content of the advertising and supporting data and any other available information to ascertain whether the express and implied representations therein are true and make a full and fair disclosure. If it appears that the representations are not true and do not make a full and fair disclosure as to all subdivided lands to which the filing relates, the Commission will [enter an order of rejection or take such other action as it considers necessary.] **reject the advertisement.** All advertisements must be submitted **for approval** by the subdivider or [the] agent to the Commission **at least 30 days** prior to use [for approval or disapproval].

3. [Advertising in newspapers or periodicals:] **Any** [such proposed advertisements] **advertising in newspapers or periodicals**, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, must be submitted to the [New Jersey Real Estate] Commission, [Bureau of Subdivided Land Sales Control,] for review, acceptance and assignment of an advertising number before being used. Each such advertisement must contain the following legend:

[An offering statement filed with the New Jersey Real Estate Commission neither approves the offering nor in any way passes upon the merits and value of the property.] **A statement of record filed with the New Jersey Real Estate Commission permits this property to be offered to New Jersey residents, but does not pass upon its merits or value.** Obtain the New Jersey Public [Report and Broker's Release] **Offering Statement** [from the registered New Jersey broker] and read it before signing anything.

4. Literature, circulars, fliers, cards, letters and other promotional items used in connection with the advertising or offering for sale must [also] be submitted to the [New Jersey Real Estate] Commission[, Bureau of Subdivided Land Sales Control] for review, and if accepted [,] will be assigned [an

NJA number.] a registration number with the prefix "N.J.A." The above legend as set forth in paragraph 3 and the assigned NJA number must be shown [in a place] in these materials in a place reasonably calculated to capture the attention of the public.

5. [Upon request, the Bureau,] **The Commission** may authorize that the [below mentioned] following brief legend be used for written advertisements of a page or less, or radio or television advertisements of 30 seconds or less:

A[n offering] statement of record filed with the New Jersey Real Estate Commission [neither approved the offering nor] in [any] no way passes upon the merits [and] or value of the property.

i. **The Commission may authorize the use of an NJA number without a legend for spot advertisements when consumer responses will be followed by written advertising containing the full legend.**

6. [Detailed advance notice to the Bureau of Subdivided Land Sales Control is required as to any and all sales promotional presentations, meetings, receptions, parties or other gatherings. This notice must be filed at least 30 days prior to the event and must contain the information required by the Bureau of Subdivided Land Sales Control. Notice of all cancellations or changes must also be given.] **At least 30 days prior to any advertised sales promotion presentation in this State, the subdivider or agent must file a notice with the Commission containing the following information:**

i. **Name and address of the subdivision or subdivisions being promoted;**

ii. **Time, date and place of the presentation;**

iii. **Names of the licensed brokers and salespersons to be present;**

iv. **Nature of the presentation, that is, meeting, reception, seminar, dinner party, etc.;**

v. **Number of people invited or expected;**

vi. **Copy of the advertisement announcing the presentation;**

vii. **Copy of any advertising or promotional items to be used at the presentation; and**

viii. **Such other information that may be specifically requested.**

7. [In cases where] **When** developments are not registered with [this bureau] **the Commission** and advertisements are placed in any media which has a distribution in the State of New Jersey, [the following] **a disclaimer** must appear **indicating that the advertisement is not an offer to New Jersey residents.**

[This advertisement is not an offering to New Jersey residents.]

8. **Reimbursement of travel expenses in cash or merchandise shall be subject to the following:**

i. **Advertising or other promotional material may contain an offer to provide transportation to the site of the property or a model together with room and board ("travel expenses") for a reasonable period sufficient to inspect it, but in no event more than three days and two nights plus travel time. Any advertising which offers to reimburse travel expenses shall clearly define the terms of the offering and shall clearly state reimbursement is offered in consideration for the purchaser traveling to the site of the property. Any such offer shall not obligate the prospective purchaser or respondee. A record of all responses shall be maintained for inspection and verification by the Commission and shall include the name, home address, dates of visit, and the form of the reimbursement;**

ii. **Any advertisement or other promotional material of a subdivider or agent offering to provide travel expenses may be published in New Jersey only after the filing of a copy of such proposed advertising or other material with the Commission at least 30 days prior to the proposed use, and only after approval by the Commission as prescribed by N.J.A.C. 11:5-1.25(h)2. Satisfactory evidence that the value of such equivalent in cash or merchandise does not exceed the cost of transportation, room and board must also be submitted;**

iii. **Travel expenses may be reimbursed in cash or by merchandise;**

iv. **When merchandise is offered in consideration of travel expenses, the offer shall clearly state its retail value. The subdivider or agent shall submit proof of retail value satisfactory to the Commission;**

v. **The Commission shall reject any promotional material offering reimbursement of travel expenses if it appears that the advertising taken as a whole emphasizes the reimbursement of travel expenses through cash or merchandise rather than the property being offered.**

(i) An instrument evidencing sale or disposition of an interest in a subdivision shall be executed [in a recordable form] in accordance with the laws of the state where the land is located. An applicant [has the burden of an affirmative showing of this compliance.] **may be required to submit proof of compliance.**

(j) A subdivision or a part thereof on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition[. However, an uncompleted improvement does not constitute an objection if] **unless** completion of the improvement is assured by substantial completion, bond or similar undertaking posted with a public authority and acceptable to the Commission, or by adequate reserves established and maintained in a trust or escrow account [In determining adequacy of the account, the Commission will be guided by the facts and circumstances of each individual case, but the account shall comply with the following:] **meeting the following criteria:**

1. Funds shall be kept and maintained in an **escrow** account separate and apart from the [owner's personal] **subdivider's** funds;

2. The account shall be established in a bank or trust company doing business in this State, or another state [where] if the account is required to be maintained there by the laws of the state and approved by the Commission.

3. Monthly statements shall be furnished to the Commission for a new account for the first six months, and [in the Commission's discretion, quarterly or semiannually thereafter;] **annually thereafter or upon request by the Commission.**

4. The trust or escrow agreement shall state that its purpose is to protect the purchaser or prospective purchaser in case the owner fails to complete construction of promised improvements or to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

5. The Commission, by its director, shall execute an acknowledgement on the face of each agreement. This acknowledgement shall indicate[s] approval of the form and content of the agreement, but shall not [be construed to] make the Commission a party thereto.

(k) A subdivision or a part thereof on which construction of a promised improvement not for public use, convenience or necessity is represented or implied and the improvement has not been completed, shall not be registered for disposition to

the public]. However, the uncompleted improvement shall not constitute an objection if] **unless** completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (1) below, which plan is subject to the Commission's continuing review and approval; or

2. [In case of failure of a subdivider to establish an adequate plan or to adhere to the plan once established, the Commission may require the establishment of a] **A** trust or escrow account.

(l) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security [which it considers adequate in assuring] **adequate to assure** a plan of development [has adequate safeguards and assurances]. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchasers' contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission [shall] **may** consider whatever financial security has been posted with other governmental authorities in making its determination.

(m) Street identification must be made, and every 1,000 feet, identifying lot stakes must be placed designating lot and block. Further, the property should be traversable by roads sufficiently improved to handle **automobile** traffic [of the average vehicle].

(n) **Upon application the Commission may exempt a subdivision from registration if it determines that enforcement of the act and these rules is not necessary in the public interest or for the protection of purchasers.**

1. **An application for exemption shall specify the particular lots, parcels, units or interests for which exemption is sought. Any exemption granted shall be limited to those lots, parcels, units or interests.**

2. **An application for exemption shall include a narrative description that clearly describes the nature of the subdivision and the factual basis and reasons why the exemption should be granted.**

3. **An exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed. No exemption may be granted to a subdivision contiguous or reasonably contiguous to one for which an exemption has previously been granted being offered by the same subdivider or a successor in title.**

4. **An exemption may be granted by reason of the limited character of the offering when the nature of the property or the prospective purchasers to whom the property will be offered is such that it is likely they will have advice concerning the purchase independent of that supplied by the subdivider of his agents. An application for exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. An exemption granted for this reason shall be limited to the group of officers specified in the application.**

5. **Upon the granting of an exemption the Commission shall assign an "N.J.E." (New Jersey Exemption) number beginning with the prefix "N.J.E.," which shall thereafter appear on all advertising directed to citizens of this State, or national advertising circulated within this State.**

6. **Any exemption granted shall be for a period of one year. Successive renewals may be granted upon further application.**

7. **Any exemption granted shall permit the subdivider to offer the property to New Jersey residents without obtaining**

an Order of Registration and to distribute advertising without prior approval. An exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the act or these rules, or to revoke the exemption after notice and an opportunity to be heard.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Discrimination Against Handicapped Persons General Provisions; Employment; Real Property; Access to Public Accommodations

Proposed New Rule: N.J.A.C. 13:13

Authorized By: Pamela S. Poff, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-1 et seq., specifically 10:5-8(g).

Proposal Number: PRN 1985-153.

Submit comments by April 17, 1985 to:
Pamela S. Poff, Director
Division on Civil Rights
Room 400
1100 Raymond Boulevard
Newark, N.J. 07102

The agency proposal follows:

Summary

In 1972, the New Jersey Legislature passed an amendment to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., prohibiting discrimination in employment, housing, and public accommodation on the basis of physical handicap. The statute was further amended in 1978 to include a prohibition of discrimination based on mental handicap. The proposed new rule will serve to establish principles for the interpretation of the New Jersey Law Against Discrimination as it applies to physical and mental handicap, and to specifically bring the New Jersey Law into conformity with existing federal regulations pertaining to discrimination against the handicapped. The regulations are designed to alleviate any confusion experienced by employers, handicapped individuals and others who are impacted by the application of the New Jersey Statute.

The Division on Civil Rights proposed its original version of this rule on April 16, 1984 (16 N.J.R. 838). Following publication of the rule, the Division received numerous comments from groups and agencies serving the handicapped and from individuals. In response to the comments the original version of the rules has been revised to make the rule clearer, to insure internal consistency between various sections of the rule, and to strengthen the protections which the rule provides.

The following are capsulizations of the most significant changes in the proposed rule:

13:13-1.3 Definitions

The section has been changed to make clear that, consistent with N.J.S.A. 10:5-4.1, the regulations prohibit discrimination because of past handicaps.

13:13-2.1 Job advertising and solicitation

A reference to the Division of Vocational Rehabilitation Services was added to assist employers in practicing affirmative action.

13:13-2.3 Employment criteria

A reference to reasonable accommodation has been added to 13:13-2.3(b), to make clear that employers, employment agencies or labor organizations must provide reasonable accommodation to handicapped applicants in giving employment tests. An example of such accommodation would be administering an oral instead of a written test to a blind applicant.

13:13-2.4 Pre-employment inquiries

The Division received numerous comments regarding 13:13-2.4(a), most of them objecting to the sentence which permits inquiries regarding handicaps which would impede work performance. A final sentence was added to subsection (a) to insure that such inquiries will only be made in a context conducive to making reasonable determinations about job performance and in a context where reasonable accommodation is considered. Subsection (b) was also changed to require that employer disclosures be made in writing, so that the Division can later ascertain whether the disclosures were actually made. References to reasonable accommodation and to section 13:13-2.8 were added to section 13:13-2.4(e)(2) to clarify that this section does not establish any grounds for disqualifying handicapped applicants beyond those contained in 13:13-2.8.

13:13-2.5 Reasonable accommodation

Section (a) has been modified to make clear that employers are required to conduct all aspects of their employment procedures in a nondiscriminatory manner. Section (b) has been changed to clarify that all determinations regarding whether an employer has failed to make reasonable accommodation will be made on a case-by-case basis, and to make clear that employers must consider the possibility of reasonable accommodation when making employment decisions about handicapped persons.

13:13-2.8 Exceptions

This section has been modified to more specifically define for employers those situations where an individual's handicap reasonably precludes the performance of a particular job.

13:13-3.4 Sale or rental

This section, as modified, specifically precludes landlords from demanding additional security deposits from handicapped persons on account of their maintaining special accessories such as guide or service dogs.

13:13-4 Access to public accommodations

This section has been modified to specifically prohibit discrimination against deaf persons accompanied by service dogs in places of public accommodation. Consistent with the Law

Against Discrimination, persons using guide or service dogs are liable for damage done by these dogs. In response to numerous comments, this section was also modified to eliminate an exception which would have permitted places of public accommodation to exclude handicapped persons in certain circumstances.

Social Impact

The proposed regulations are intended to promote and expand employment and housing opportunities in the public and private sectors for handicapped individuals. The regulations will also assist in the mainstreaming of handicapped persons into society through the availability of additional employment, housing, and increased access to public accommodations.

The proposed employment regulations attempt to insure that handicapped individuals have the opportunity to perform in positions of employment for which they are qualified. Hence, positive societal impact is foreseen because the proposed rules will have the cumulative result of making the handicapped valuable contributors to the workforce. Employers will be minimally impacted because employers are generally prohibited from discriminating against qualified handicapped employees or applicants, and employers are obligated merely to reasonably accommodate such handicapped individuals.

Economic Impact

The proposed regulations relating to employment of the handicapped will have no significant economic impact on employers since they represent no appreciable change in the legal obligations of those employers already covered by regulations promulgated under the Federal Rehabilitation Act of 1973. Further, the impact on the business operations and concurrent productivity and efficiency of those employers not covered by the federal regulations will be minimal. It should be noted in this regard that the proposed rules require that employment opportunities be extended to handicapped employers or applicants who are qualified for the positions sought. Also, employers need not accommodate an employee's limitation if such an accommodation would impose an undue hardship on the operation of their business. The regulations list factors to be considered in the determination of whether the accommodation of a particular individual's handicap is required under the law. These factors include the overall size of the employer's business, type of operation the employer is engaged in, and the nature and cost of the accommodation needed. Hence, the proposed regulations are specifically designed to advance the opportunities of handicapped individuals without excessively burdening employers. Finally, the regulations clarify and capsulize existing law, and should therefore, assist employers in preventing complaints of discrimination and in protecting themselves from potential liability under the New Jersey Law Against Discrimination.

Lastly, the cost of compliance with the proposed regulations relating to real property and public accommodations will be minimal since the performance sought is limited to the sale and rental of real property and the use of public accommodations which would otherwise have been occupied or utilized by the non-handicapped.

Full text of the proposed new rules follows.

CHAPTER 13

REGULATIONS PERTAINING TO DISCRIMINATION
ON THE BASIS OF HANDICAP

SUBCHAPTER 1. GENERAL PROVISIONS

13:13-1.1 Purpose

This chapter is designed to implement the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("the act" or "the statute") as it pertains specifically to discrimination on the basis of physical and mental handicap.

13:13-1.2 Construction

(a) Consistent with the public policy underlying the Law Against Discrimination and with firmly established principles for the interpretation of such remedial legislation, the remedial provisions of the statute will be given a broad construction and its exceptions construed narrowly.

(b) The provisions of these regulations are severable. If any provision or the application of any provisions of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

13:13-1.3 Definitions

"Handicap" as used in this chapter will have the same meaning as that term is given by N.J.S.A. 10:5-5(q). It is also unlawful to take any action prohibited by these regulations:

1. Because of a perception or belief that an individual suffers from a handicap, whether or not that individual is actually handicapped, or

2. Because a person has been at any time handicapped.

SUBCHAPTER 2. EMPLOYMENT

13:13-2.1 Job advertising and solicitation

(a) It is unlawful to print or cause to be printed any advertisement which has the effect of discouraging handicapped persons from applying for a job for which they are qualified, despite a particular disability or which contains the words "ablebodied persons wanted," or their equivalent. An employer may include a statement of the particular physical or mental abilities reasonably necessary for the performance of the job.

(b) The publication by any communications medium of any notice or advertisement relating to employment, or to membership in a labor organization, indicating any preference, limitation, specification, or discrimination based on handicap is unlawful unless such notice or advertisement falls within one of the exceptions enumerated by N.J.A.C. 13:13-2.8.

(c) All employers, labor organizations and employment agencies should conduct job vacancy, membership recruitment and employment referral programs in such a manner as to assure that all persons, including the handicapped, are given fair and adequate notice of job vacancies, membership opportunities and employment referral opportunities:

1. Employers and labor organizations are encouraged to place notices or advertisements relating to employment, or to membership in a labor organization, in the newspaper having the largest circulation in the relevant labor market, unless the position sought to be filled requires specialized training, education, experience or licensing of a type not commonly found among members of the workforce in the relevant labor market.

2. Employers should encourage their referral sources to seek and refer qualified handicapped individuals.

3. Employers are encouraged to list all job openings and requests for referrals with institutions, agencies, and organizations of or serving the handicapped, including the Division of Vocational Rehabilitation Services.

13:13-2.2 Job referrals

(a) The knowing use by an employer of any employment agency or recruitment source which does not refer handicapped individuals or which discriminates against handicapped individuals is an unlawful act of discrimination.

(b) The failure or refusal of any employment agency or labor organization to refer for employment any individual because that individual possesses a handicap is an unlawful employment practice. It is unlawful for an employment agency or labor organization to comply with an employer's request for referrals if such a request indicates either directly or indirectly that the employer will discriminate against persons possessing handicaps.

(c) It is an unlawful employment practice for any employment agency or labor organization to classify handicapped individuals in any way which deprive or have the effect of depriving handicapped persons of employment opportunities or otherwise affect employee status.

13:13-2.3 Employment criteria

(a) It is an unlawful employment practice for any employer, employment agency or labor organization to make use of any employment test or other selection criterion that screens out or has the effect or screening out handicapped persons unless:

1. That test score or other selection criterion is shown to be job related for the position in question; and

2. Alternative job-related tests or criteria that do not screen out or have the effect of screening out fewer handicapped persons are not available.

(b) An employer, employment agency or labor organization shall select and administer tests concerning employment which accurately reflect, with the benefit of reasonable accommodation, the applicant's or employee's job skills, aptitude or competency, rather than reflecting the applicant's or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure, and are necessary to perform the job in question).

13:13-2.4 Pre-employment inquiries

(a) It shall be an unlawful practice for an employer, employment agency or labor organization to elicit or attempt to elicit, either verbally or through the use of an application form, any information which would tend to divulge the existence of a handicap or health condition not reasonably related to the individual's fitness to perform the duties of the particular job sought; provided, however, an inquiry may be made as to whether an applicant for employment has any handicaps or health problems which will impede work performance in the job being sought. An employer shall not, however, make any inquiry of an applicant regarding whether the individual has a handicap or health problem which will impede work performance, without providing the applicant with an accurate description of the duties of the job applied for and without also obtaining information from the applicant as to reasonable accommodations which could be made if the inquiry reveals that the applicant has a handicap.

(b) It is not unlawful for an employer to invite applicants for employment to indicate whether and to what extent they are handicapped, if such an inquiry is made in conjunction with required or voluntary remedial action to correct past

discrimination or in compliance with instructions or requirements of an agency or agencies of local, state or federal government. In such cases the employer must state clearly in writing that the information requested is intended for use solely in connection with its remedial obligations or its voluntary or affirmative action efforts or its compliance with governmental instructions, that the information is being requested on a voluntary basis, that it will be kept confidential, and that refusal to provide it will not subject the applicant to any adverse treatment.

(c) It is not an unlawful employment practice to record any data required by law or by the rules and regulations of any state or federal agency or acquired in connection with voluntary or affirmative action efforts conducted in accordance with these regulations, provided such records are maintained on separate forms that shall be accorded confidentiality, are kept in good faith for the purpose of complying with the law, and are not used for the purpose of discrimination in violation of the act.

(d) The act does not prohibit any officially recognized agency from keeping necessary records in order to provide services to individuals requiring rehabilitation or employment assistance.

(e) It is not unlawful for an employer to condition an offer of employment on the results of a medical examination held subsequent to such offer and prior to the employee's entrance on duty, provided that:

1. All entering employees are subjected to such examination; and

2. The results of such an examination are used in accordance with these regulations and are not used to disqualify an applicant except to the extent that any disability discovered would, even with reasonable accommodation, preclude the safe or adequate performance of the job in question, as defined in N.J.A.C. 13:13-2.8. An examination should consider the degree to which the person has compensated for his limitations and the rehabilitation services he has received or is receiving.

13:13-2.5 Reasonable accommodation

(a) All employers shall conduct their employment procedures in such a manner as to assure that all handicapped persons are given equal consideration with non-handicapped persons for all aspects of employment including but not limited to hiring, promotion, tenure, training, assignment, transfers, and leaves on the basis of their qualifications and abilities. Each individual's ability to perform a particular job must be assessed on an individual basis.

(b) An employer must make a reasonable accommodation to the limitations of a handicapped employee or applicant, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. The determination as to whether an employer has failed to make reasonable accommodation will be made on a case-by-case basis.

1. Under circumstances where such accommodation will not impose an undue hardship on the operation of an employer's business, examples of reasonable accommodation may include:

i. Making facilities used by employees readily accessible and usable by handicapped persons;

ii. Job restructuring, part-time or modified work schedules;

iii. Acquisition or modification of equipment or devices; and

iv. Job reassignment and other similar actions.

2. An employer shall consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a handicapped person on the grounds that his or her handicap precludes job performance.

3. In determining whether an accommodation would impose undue hardship on the operation of an employer's business, factors to be considered include:

i. The overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget;

ii. The type of the employer's operations, including the composition and structure of the employer's workforce;

iii. The nature and cost of the accommodation needed; and

iv. The extent to which accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

13:13-2.6 Wages and fringe benefits

(a) An employer's wage scale must be unrelated to the existence of handicap, except where permitted by state or federal law.

(b) Occupational training and retraining programs, including but not limited to, guidance programs, apprentice training programs and executive training programs, shall not be conducted in such a manner as to discourage or otherwise discriminate against persons possessing handicaps.

(c) It is an unlawful practice for an employer to discriminate between persons who are handicapped and those who are not, with regard to fringe benefits provided either directly by an employer or through contracts with insurance carriers. Fringe benefits as used in this section include, but are not limited to, medical, hospital, accident and life insurance, retirement benefits, profit sharing and bonus plans, and leave.

This subsection does not, for example, prohibit any employer from providing medical insurance which does not cover the cost of any medical condition arising out of preexisting illnesses, which costs are incurred following an employee's date of hire. Rather, whatever medical insurance is made available to non-handicapped employees must be equally available to handicapped employees.

(d) Regulations promulgated pursuant to the Law Against Discrimination shall supersede any inconsistent term of a collective bargaining agreement.

13:13-2.7 Labor organizations

(a) It is unlawful for any labor organization to exclude or expel any individual from membership or from any apprenticeship program because that individual possesses a handicap.

(b) It is an unlawful employment practice for any labor organization to discriminate on the basis of a person's handicap in respect to hiring, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership in or employment by such an organization.

(c) It is unlawful for a labor organization to cause or to attempt to cause an employer to discriminate against an individual because of a handicap.

(d) It is unlawful to engage in any activity proscribed by (a), (b), or (c) above notwithstanding that activity is authorized or required by the constitution or by-laws of a labor organization or by a collective bargaining agreement or other contract to which the labor organization is a party.

13:13-2.8 Exception

(a) It shall be lawful to take any action otherwise prohibited under this section where it can reasonably be determined that an applicant or employee, as a result of a handicap, cannot presently perform the job even with reasonable accommodation.

1. Refusal to refer, admit to membership, hire, or transfer a handicapped person may be lawful where the nature or extent of the handicap presently reasonably precludes the performance of the particular employment. Such a decision, however, must be based upon an objective standard supported by factual evidence rather than on the basis of general assumptions that a particular handicap would interfere with the individual's ability to perform the duties of the job.

2. Refusal to select a handicapped individual may be lawful where it can be demonstrated that the employment of the handicapped person in a particular position would presently be hazardous to the safety or health of such individual, other employees, clients or customers. Such a decision must be based upon an objective standard supported by factual or scientifically validated evidence, rather than on the basis of general assumptions that a particular handicap would create a hazard to the safety or health of such individual, other employees, clients or customers. A "hazard" to the handicapped person is a materially enhanced risk of serious harm.

3. The burden of proof is upon the employer, employment agency or labor organization to demonstrate in each case that the exception relied upon is based upon an objective standard supported by factual evidence, but no exception shall be based on:

i. A refusal to select a handicapped individual because of the preferences of co-workers, clients, customers or the employer.

ii. A refusal to select a handicapped individual because of the increased cost of insurance whether actual or anticipated, under a group or employee insurance plan provided in accordance with the law or as a fringe benefit.

iii. A refusal to select a handicapped individual because of an assumption not supported by factual documented proof that such individual will incur a high rate of absenteeism in the future.

SUBCHAPTER 3. REAL PROPERTY

13:13-3.1 Application

This subchapter on discrimination in real property applies to vendors and lessors of property and their agents, real estate brokers, agents and salespersons, and lending institutions. For the purpose of this subchapter lending institutions include banks, building and loan associations, insurance companies and any other enterprise whose business consists in whole or in part in the making of commercial loans or other forms of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations.

13:13-3.2 Advertising and solicitation

(a) It is unlawful for any person to make, print or publish or cause to be made, printed or published any notice, listing statement or advertisement with respect to the sale, rental or lease of real property which indicates any preference, limitation, specification or otherwise discriminates based upon a handicap.

(b) It is unlawful for any real estate broker, agent or salesperson to accept for listing any housing accommodation when the seller or lessor or his agent has expressed, directly or indirectly, an intention to discriminate against handicapped persons.

(c) It is not unlawful for any person, to make, print or publish or cause to be made, printed or published any notice, listing, statement, or advertisement which indicates that barrier free accommodations are available for sale, rent, lease or occupancy.

13:13-3.3 Inquiries

It is unlawful for any person to make or cause to be made any written or oral inquiry or record concerning the handicap of any prospective purchaser, tenant or prospective occupant of any real property, unless such information is required by an agency of local, state or federal government and the person states clearly that the information requested is intended for use solely by the government agency.

13:13-3.4 Sale or rental

(a) It is unlawful for any person to discriminate on the basis of handicap in the actual showing, sale, rental or lease of available real property. For example, a representation to any person, because that person possesses a handicap, that real property is not available for inspection, sale or rental when such real property is in fact so available is a violation of the act.

(b) It is unlawful for any broker, agent or salespersons to misrepresent the price of real property listed for sale, rent or lease or to fail to communicate to the seller or lessor any offer made by a prospective buyer or lessor because the applicant or prospective occupant possesses a handicap.

(c) It is unlawful for any person to fail or refuse to show, rent or lease any real property to a person because he or she has a sight or hearing disability and must be accompanied by a guide or service dog. Policies which restrict the availability of housing accommodations to persons without pets shall be void with respect to the above-mentioned segment of this protected class.

(d) It is unlawful for any person to discriminate against any individual because of handicap in the price, terms, conditions or privileges of the sale, rental or lease of real property or in the provision of services for facilities in connection therewith. Handicapped persons shall not be required to pay extra compensation or additional security deposits as a result of their maintaining or requiring special practices or accessories though such persons may be liable for any specific damage which may be done to the premises by virtue of their requirement.

1. This provision does not require a landlord to install or bear the expense of any such special accessories or practices. Apart from requiring payment for specific damage which may be done to the premises, however, a landlord may not charge a handicapped person an extra fee, for example, for keeping a guide or service dog or maintaining special equipment such as a shower bar.

(e) It is unlawful for any person to fail or refuse to rent to, or to impose different terms of tenancy upon, any handicapped individual because that individual is a recipient of federal, state or local assistance, including medical assistance or housing subsidies.

13:13-3.5 Eviction

It is an unlawful act of discrimination for any person to evict a tenant because the tenant possesses a handicap.

13:13-3.6 Financing

It is unlawful for any lending institution or person to discriminate against an individual seeking a loan or other form of financial assistance whether in the initial extension of credit or in the terms and conditions of the obligation because that individual or an intended occupant of real property possesses

a handicap. An application for loans or other forms of financial assistance means and extends to the purchase of an existing property, the reconstruction of new buildings and the rehabilitation, repair or maintenance of existing property.

SUBCHAPTER 4. ACCESS TO PUBLIC ACCOMMODATIONS

13:13-4.1 Application

The term "person" as used in this subchapter shall mean the owners, lessees, proprietors, managers, superintendents, agents or employees of any place of public accommodation.

13:13-4.2 General practices

(a) It shall be unlawful for any person to refuse, withhold from or deny an individual, either directly or indirectly, on account of a handicap, access to any of the accommodations, advantages, facilities or privileges of a place of public accommodation. It shall be unlawful for any person to discriminate against a handicapped person in the price, terms, or conditions upon which access to such accommodations, advantages, facilities or privileges may depend.

(b) It shall be unlawful for any person to refuse, withhold or deny either directly or indirectly the right of visually handicapped or deaf persons to be accompanied by guide or service dogs, especially trained for the purpose, in any place of public accommodation. Such visually handicapped or deaf persons shall be liable for any damage done to the premises or facilities by such dogs.

(c) It shall be unlawful for any person to publish, circulate, issue, display, post or mail or cause to be printed, circulated, issued, displayed, posted or mailed any written, printed or broadcast notice indicating directly or indirectly that the right of a handicapped person to have equal access to a place of public accommodation will be denied or abridged.

(a)

DIVISION OF MOTOR VEHICLES

Enforcement Service

Motor Vehicle Reinspection Centers

Proposed New Rule: N.J.A.C. 13:20-32.16

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:8-11.

Proposal Number: PRN 1985-157.

Submit comments by April 17, 1985 to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

According to the provisions of N.J.S.A. 39:8-11, the Division of Motor Vehicles may license as many private garages to

conduct reinspections as is necessary as determined by the Director. It was the decision of the previous directors to issue reinspection center licenses to as many private garages as applied for such licensure. As a result there were approximately 4,000 reinspection centers at the end of 1984. By this proposed regulation, the Director proposes to restrict the number of licensed reinspection centers based on the population of each county. The result will be a decrease in the number of reinspection center licenses from 4,000 to approximately 2,200.

The reason that underlies this decision to restrict the number of licenses is to effectively manage the vehicle inspection/reinspection system. In arriving at the revised number of licenses, the Division estimated the total number of annual initial inspections and reinspections conducted by all the reinspection centers and the optimum number of records that could be monitored at such centers each month. This resulted in the determination that one license for every 3,500 residents of the State was adequate for servicing the public and manageable for monitoring by the Division. This formula was then applied to the individual counties to determine the exact number of licenses each county would be allotted.

As of May 1, 1985, all licensed reinspection centers must also comply with the revised specifications for emissions analyzers. Those licensees in compliance prior to that date would be "grandfathered" into the number of licenses allotted to their respective counties. Garages that comply after that date will be licensed only if the county total does not exceed the limit that has been set. Fleet licensees would be exempt from the restricted number, as they may only inspect and reinspect their own vehicles.

The Director reserves the right to increase or decrease the number of licenses depending on the needs of the driving public.

This regulation shall take effect immediately upon the publication of the Notice of Adoption in the New Jersey Register.

Social Impact

The proposed regulation would enhance the Division of Motor Vehicles' ability to conduct thorough audits of licensed private reinspection centers as required by P.L. 1983, c. 236, §3, (N.J.S.A. 39:8-2), while maintaining enough reinspection centers to serve the public. This will result in effective management of the vehicle inspection system.

Those garages that desire to continue as reinspection centers should apply as soon as possible as licenses would be issued on a "first come-first serve" basis.

Economic Impact

There will be a cost saving by the State as the number of licensed reinspection centers that will be audited will be reduced. There will be no cost to the general public. Those garages that fail to apply in time will not be permitted to continue as reinspection centers.

Full text of the proposed new rule follows.

13:20-32.16 Number of Licensed Reinspection Centers

(a) The Director of the Division of Motor Vehicles shall restrict the number of private garages which are licensed as reinspection centers, pursuant to N.J.S.A. 39:8-11 et seq., on the basis of the population in each of the respective counties.

(b) Each county shall have one licensed reinspection center for every 3,500 residents of the county as indicated in the latest census reported by the New Jersey Department of Labor. The number of licenses that may be issued to the respective counties is listed as follows:

County	Number of Licenses
Atlantic	57
Bergen	241
Burlington	107
Camden	137
Cape May	25
Cumberland	38
Essex	241
Gloucester	59
Hudson	160
Hunterdon	26
Mercer	89
Middlesex	175
Monmouth	147
Morris	118
Ocean	104
Passaic	130
Salem	19
Somerset	59
Sussex	34
Union	145
Warren	24
TOTAL:	2134

(c) Except as provided by (d) and (f) below, reinspection center licenses available for each county shall be granted to applicants meeting all of the qualifications established by statute or regulation in the order in which those applications are received by the Division. In order to be considered for licensure an applicant must meet, at the time application is made, all of the requirements established by statute or regulation. Incomplete applications shall not be considered. Beginning April 30, 1986 all applications shall expire on the last day of April of each year.

(d) The provisions of (c) above shall not apply to the renewal applications of licensees who have been granted a license for meeting all of the criteria set forth in *N.J.A.C. 13:20-32.1 et seq.*, and *N.J.S.A. 39:8-33*. These renewal licenses shall be counted toward the total number of licensed reinspection centers for the county in which the garage is located prior to granting any remaining licenses for that county pursuant to (c), above.

(e) Only those private garages that comply with the requirements of *N.J.A.C. 13:20-32.1 et seq.* and *P.L. 1983, c. 236 §12 (N.J.S.A. 39:8-33 et seq.)* shall be eligible to conduct inspections or be licensed as reinspection centers after May 1, 1985.

(f) Any private garage that complies with the criteria set forth at *N.J.A.C. 13:20-32.1 et seq.* and *P.L. 1983, c. 236 §12 (N.J.S.A. 39:8-33)* and is licensed as a reinspection center prior to the effective date of this regulation shall be counted toward the total number of licensed reinspection centers for the county in which the garage is located.

(g) Those garages licensed pursuant to *N.J.S.A. 39:8-14* to inspect or reinspect 10 or more vehicles owned by the licensee are excluded from the provisions of this section.

(h) The Director reserves the right to increase or decrease pursuant to the administrative procedure act, *N.J.S.A. 52:14-1 et seq.*, the total number of licensed reinspection centers allocated to the counties based upon the need to best serve the motorists of this State and the individual counties. In the event that the number of licenses is decreased, existing licenses will be allowed to continue operations, but no new licenses will be issued in excess of the revised total for each county.

(a)

BOARD OF OPTOMETRISTS

Fee Schedule

Licensure By Examination; Reexamination

Proposed Readoption as a New Rule:

N.J.A.C. 13:38-5.1

Proposed Amendment: N.J.A.C. 13:38-3.2

Authorized By: State Board of Optometrists, Kenneth Brehne, O.D., President.

Authority: *N.J.S.A. 45:12-4; N.J.S.A. 45:1-3.2.*

Proposal Number: PRN 1985-156.

Submit comments by April 17, 1985 to:

Kenneth Brehne, O.D., President
 New Jersey State Board of Optometrists
 1100 Raymond Boulevard, Room 501
 Newark, New Jersey 07102
 Telephone 201-648-2012

Summary

Subchapter 5 which is solely comprised of *N.J.A.C. 13:38-5.1* is proposed for readoption in a similar manner and for the same reasons it originally came into existence, that is, to cover the expenses of the Board of Optometrists in administering and regulating all the aspects of the optometrist profession. In order to achieve this goal, the proposed amendments would increase the fees charged to optometrists for the following services: renewals, changes of address, transfers, applications for examinations and reexaminations, branch office certificates, late penalties, certifications by endorsement, wall certificates, letters of certification, (continuing education credits and licensure status) and preceptorship certificates.

Pursuant to Executive Order No. 66(1978), subchapter 5 expired on April 23, 1984. This proposal is presented as a new rule but is shown with amendments to the text now found in the New Jersey Administrative Code.

Although the major changes consist of the increase in the dollar amounts of required fees, there are a few modifications proposed dealing with those services which will entail fees. For example, *N.J.A.C. 13:38-5.1(a)6* will mandate a fee to be charged for any application for reexamination. *N.J.A.C. 13:38-5.1(a)13ii* is being added to encompass a charge for certification letters issued for continuing education credits which have become administratively significant as a result of the increased frequency of such requests and the time and copying costs entailed for each request. *N.J.A.C. 13:38-5.1(a)14* has been added to codify a fee which has previously been charged pursuant to a Board policy regarding preceptorship.

In order to remain consistent with the goal of operating an adequate budget, *N.J.A.C. 13:38-3.2* is being proposed for amendment. The portion allowing for a second examination without payment of a fee following the failure of the first examination by an applicant would be deleted. Moreover the section requiring an applicant to pay an additional \$55.00 for retaking the examination a third or fourth time would be deleted in order to remain consistent with the newly proposed across-the-board fee for all reexaminations under *N.J.A.C. 13:38-5.1(a)6*.

The Board has proposed these changes only after discussion with the Chief Fiscal Officer and careful evaluation of its current and anticipated fiscal status and the Board has determined that the changes are warranted.

Social Impact

The proposed readoption and amendments to N.J.A.C. 13:38-5.1 and 3.2 will necessarily impact upon all optometrists and potential optometrists in New Jersey. The various Board administrative services are not rendered without cost to the Board and directly benefit the licensees. The Board must attempt to recoup its expenditures through its direct source of revenue by assessing these costs to the optometrists.

The amendments should be regarded as having a necessary and positive impact upon licensees insofar as they allow licensees to continue to receive professionally important administrative services. Similarly, the impact upon the public if any, will be positive with regard to the continued control over optometry through licensure. Such control is very much in the public's best interest in view of the important health related services that licensees are responsible for performing.

Economic Impact

The economic impact inherent in having to pay more money for services received will be felt by all individual licensees in one form or another for the common good of the profession. The need for increases is not difficult to imagine when one realizes the current fee schedule has remained the same since 1978, while the costs of efficient operating have steadily increased.

Without the rise in fees, the Board anticipates deficits in the amount of money required to cover actual operating expenses. Consequently, the positive impact associated with the proposed readoption and these amendments will be to allow for fiscally sound and secure administration of the profession by providing the means for meeting necessary expenses.

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

13:38-3.2 Reexamination

An applicant for licensure failing the first examination shall be permitted to take any of the next two succeeding examinations conducted by the Board. [without payment of any additional fee.] An applicant failing the examination twice must take courses approved by the Board before taking the examinations a third and fourth time. [and must pay an additional fee of \$25.00] This same procedure shall prevail after each two failures. If an applicant fails to pass in only one subject of the examination, [he] **the applicant** shall be examined at the next examination [he shall take] **taken**, only in the subject which [he failed to pass] **was not passed**. If an applicant fails to pass in more than one subject, [he shall] **the applicant shall**, at the next examination [he shall take] **taken**, be examined in all subjects. [of the examination].

13:38-5.1 [General provisions] Fee schedule

(a) The following fees shall be charged by the Board:

1. Biennial renewal fee—active certificate: [\$50.00] **\$100.00**;
2. Biennial renewal fee—non-active certificate: [\$35.00] **\$70.00**;
3. Biennial renewal fee—branch office certificate: [\$100.00] **\$200.00**;
4. Change of address fee—active or non-active: \$15.00;
5. Transfer fee—non-active to active: [\$25.00] **\$50.00**;

6. [Application for reexamination—candidates who have had a New Jersey non-active certificate for five years or more: \$50.00] **Application for examination: \$225.00**;

7. [Application for examination—new applicants: \$150.00] **Application for reexamination: \$125.00**;

8. New branch office certificate [\$50.00;] **\$100.00**;

9. Penalty for late renewal of any certificate: [\$50.00] **\$100.00**;

10. Certification by endorsement—Reciprocity: [\$100.00] **\$200.00**;

11. Duplicate wall certificate: [\$15.00;] **\$25.00**;

12. Wall certificate—new registrants: [\$50.00;] **\$100.00**;

13. Letter of certification: [\$25.00;]

i. License: **\$25.00**;

ii. Continuing education credit: **\$25.00**;

14. Preceptorship certificate: **\$25.00**.

DIVISION OF CONSUMER AFFAIRS

For proposals numbered PRN 1985-152, 154 and 155, submit comments by April 17, 1985 to:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

(a)

Merchandise Advertising

Proposed Readoption: N.J.A.C. 13:45A-9

Authorized By: Division of Consumer Affairs, James J. Barry, Jr., Director.

Authority: N.J.S.A. 56:8-1 et seq., specifically 56:8-4.
Proposal Number: PRN 1985-155.

The readoption of N.J.A.C. 13:45A-9 becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption.

The agency proposal follows:

Summary

The Division of Consumer Affairs proposes to readopt pursuant to Executive Order No. 66(1978) N.J.A.C. 13:45A-9 concerning merchandise advertising. The rules are scheduled to expire on May 5, 1985. The rules were initially promulgated in March 1974. They were drafted to redress a number of problem practices in the consumer market place, as indicated by consumer complaints, as well as via field inspections conducted by the Division of Consumer Affairs. The identified problem practices included: non-availability of advertised items in sufficient quantity to meet reasonably anticipated consumer demand; the failure to issue, or the misuse of issuance of rainchecks; and the use of unsubstantiated or misrepresented advertising claims.

The rules were revised and expanded in 1980. Specific amendments and clarifications were added in various identified problem areas, including: comparison to "cost" advertising; "limited supply" advertising; advertising of home appliances; "percent off" advertising; "Public Notice" advertising misrepresentations; and expanded clarification of price reduction advertising.

The Division has consistently welcomed and solicited input on the problems and recommendations of consumers, businesses and relevant groups and associations with regard to the rules and their impact on the consumer marketplace. A wide variety of data gathering and dissemination has occurred and continues, including: public gatherings, speeches, and media coverage; forums for business and industry, the press and other media associations; as well as continued complaint handling, enforcement and survey activities.

Social Impact

General merchandise advertising has been and remains perhaps the primary means of attracting consumers to consider and make purchases in the marketplace. The rules have extended to consumers certain assurances that advertisers must advertise truthfully and fairly. Non-compliance allows the consumer to seek clearcut redress, pursuant to the specific requirements of the rules. Pursuant to the Consumer Fraud Act N.J.S.A. 56:8-1 et seq., the Division may also seek specific sanctions, in the event of serious or persistent violations having significant impact on the consuming public.

Businesses and other entities concerned with advertising have gained by the removal of unfair competitive advantage going to the minority of advertisers who would seek unscrupulous advantage in attracting consumers to make purchases.

Economic Impact

Consumers have gained the economic advantages of being able to compare, with reasonable assurance, the claims made in advertising. Time and expense are saved for consumers, who can largely avoid unnecessary trips seeking unavailable or misrepresented merchandise. The consumer also gains the economic advantage of being able to make meaningful and reasonably accurate advertising comparisons, based on standardized requirements for representing the price, former price, comparative features and other qualities of the merchandise being offered for sale to the public.

Businesses and other advertisers gain the economic advantage of defined and uniform standards applicable to all advertisers. As a result, consumers feel free to shop with greater confidence. The reputable advertiser avoids competitive disadvantage in seeking to attract consumer purchasers. Long-standing principles of fair advertising in the consumer marketplace (such as the 1964 Federal Trade Commission Advertising Guidelines) have been made specific and expanded in the New Jersey business and consumer context.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:45A-9.

(a)

Home Improvement Practices

Proposed Readoption: N.J.A.C. 13:45A-16

Authorized By: Division of Consumer Affairs, James J. Barry, Jr., Director.

Authority: N.J.S.A. 56:8-1 et seq., specifically 56:8-4.
Proposal Number: PRN 1985-154.

The readoption of N.J.A.C. 13:45A-16 becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption.

The agency proposal follows:

Summary

The Division of Consumer Affairs proposes to readopt pursuant to Executive Order No. 66(1978), N.J.A.C. 13:45A-16 concerning home improvement practices.

These rules initially took effect in April 1980. Home improvement investigations and complaints have consistently been among the most significant two or three consumer protection concerns of the Division of Consumer Affairs. Together with automotive purchases and repairs, home improvement tends to represent one of the consumer's most expensive monetary outlays in and about the household.

The rules came into being in response to indications of numerous problem practices and economic losses sustained by consumers with regard to various remodeling and improvement work contracted in or about the home, including repairs to the home and surrounding property; repairs to or replacement of heating systems; basement waterproofing; installation of wall-to-wall carpeting or inlaid flooring; and swimming pool construction or installation.

Specific prohibitions have been defined, concerning "model home" representations; product and material representations; "bait and switch" selling tactics; the identity of the contractor or seller; "gift" offers; price and financing arrangements; performance of contract; and misrepresentation as to competitors, sales representations, building permits, guarantees or warranties.

A written contract containing standard disclosures is mandated for contracts in excess of \$25.00. Required disclosures include: legal name and address of the seller; a description of the work to be done and products and materials to be used; total price or other considerations, including all finance charges; description of mortgage or security interest to be taken; and a statement of any warranty or guaranty with respect to products, materials, labor or service.

The Division has consistently sought and obtained, both prior to and since implementation of the rules, relevant input from consumers and affected groups, contractors and related businesses and associations.

Social Impact

Since home improvement, with the partial exception of master plumbers and electrical contractors, had been a relatively unregulated area in the consumer marketplace, consumers experienced considerable uncertainty in seeking objective assurances as to the terms and criteria according to which home improvement work was to be done. The same may be said of home improvement contractors, in particular those who had moved to New Jersey from jurisdictions in which their business practices had been more strictly regulated.

By creating standards of disclosure, prohibiting specified practices and requiring written disclosure of important information about the contractor and the specific contract, the rules give both consumers and reputable contractors the assurance that work is to be performed according to reasonably defined, objective criteria, and that misrepresentations and unfair competitive practices have been prohibited.

Economic Impact

Consumers have gained the economic benefit of having mutually agreed upon terms specified in a written contract. The requirement for true and accurate written disclosure of the identity of the seller/contractor is also of specific benefit, particularly in minimizing the impact of a minority of unscrupulous "fly-by-night," door to door contractors, who would seek to prey upon such possibly unsuspecting consumers as senior citizens.

Reputable contractors have gained the advantage that unscrupulous or "fly-by-night" competitors must now comply with standard practice and disclosure requirements, or be faced with the prospect of available sanctions and prospective legal action.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:45A-16.

(a)

Deceptive Watercraft Repair Practices

Proposed New Rule: N.J.A.C. 13:45A-22.1 and 22.2

Authorized By: Irwin I. Kimmelman, Attorney General of New Jersey.

Authority: N.J.S.A. 56:8-1 et seq., specifically 56:8-4.
Proposal Number: PRN 1985-152.

The agency proposal follows:

Summary

The proposed new rule extends to consumers who own watercraft essentially the same rights and protections presently afforded consumers with regard to repairs on their motor vehicles. Those persons, including boat dealers, boat repair shops, and marinas, who engage in the business of performing maintenance, diagnosis or repair services on watercraft or related components must afford the consumer the right to an itemized written repair estimate, not to be exceeded without documented consumer authorization. Additionally, the watercraft repair dealer must conspicuously post a consumer notice, advising the consumer of his right to a written repair estimate.

In the event hauling or transporting the watercraft to the repair facility is necessary, charges for same must be disclosed in advance (except in "distress" situations) and be separately itemized on the estimate or invoice. As in the motor vehicle repair rules, provisions exist to reasonably facilitate after hours presentation of the watercraft for repairs, as well as for oral approval of repairs by the consumer, with accompanying specific notations on the estimate or invoice.

Social Impact

Recreational activities, including, prominently, boating and related seashore area pursuits, are a major leisure time priority for New Jersey consumers and others who vacation in New Jersey. By clarifying rights and responsibilities with regard to watercraft repairs, both consumers and watercraft repair dealers will be assured that repair transactions are conducted in an equitable, mutually agreeable environment. The added confidence that this will bring to the area of recreational boating pursuits in New Jersey will serve to enhance both the boating industry and the enjoyment of the boating public.

Economic Impact

The rules will have the minimal economic impact on watercraft repair dealers of requiring conspicuous posting of a consumer disclosure notice of the right to an itemized written repair estimate. They will also require the repair dealer to make verifying notations of additional repairs mutually agreed upon, or repairs for which verbal authorization has been granted.

The greatest impact will be felt in areas bounded by water, or in which waterways utilized for recreational purposes are located. Consumers will benefit by virtue of enhanced economic confidence that the same rights they are presently afforded in automotive repair transactions will be extended to the relatively uncertain field of watercraft repair. Watercraft repair dealers will gain the assurance that the unfair competitive gain by those who would seek unscrupulous advantage over unsuspecting consumers has been made unlawful.

Full text of the proposed new rule follows.

SUBCHAPTER 22. DECEPTIVE PRACTICES CONCERNING WATERCRAFT REPAIR

13:45A-22.1 Definitions

"Customer" means the owner, or any family member, employee or any other person whose use of the watercraft is authorized by the owner.

"Director" means the Director of the Division of Consumer Affairs.

"Repair of watercraft" means all maintenance and repair to such watercraft, its engine or motor, but excluding lubrication, oil changes, installing light bulbs, and other such minor accessories and services. No service or accessory to be installed shall be excluded for purpose of this rule if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices or involves a part of such watercraft essential to its safe operation.

"Watercraft" includes but is not limited to any craft, boat or vessel, powerboat, sailboat, motor sailer, mono hull, catamaran or trimaran, documented or registered (if required) in the State of New Jersey or by any other agency having authority to document or register watercraft.

"Watercraft repair dealer" means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on any watercraft, its propulsion system (internal combustion or electrical, inboard or outboard) or the replacement of parts including, but not limited to, hull planking, fiberglass sections and standing rigging, and shall include but not be limited to: boat dealers, repair shops (fixed, mobile or marina) and marinas where such maintenance, diagnosis or repair services are available. Excluded are those persons who engage in the business of repairing watercraft of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

13:45A-22.2 Deceptive practices: watercraft repairs

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and to afford customers of watercraft repair dealers similar rights and protections afforded to customers of automotive repair dealers, N.J.A.C. 13:45A-7.1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of a watercraft repair dealer, whether such act or omission is done by the watercraft repair dealer, its employees, agents, partners, officers, or members, or by any third party who performs such service at the request of the watercraft repair dealer.

1. Making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known or, which by the exercise of reasonable care should be known to be untrue or misleading.

2. Commencing work for compensation without securing one of the following:

i. Specific written authorization from the customer which states the nature of the repair requested or problem presented; or

ii. If the customer's watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the watercraft repair dealer during other than normal working hours or by one other than the customer, or in other than distress circumstances, oral authorization from the customer to proceed with the requested repair or problem presented, evidenced by a notation on the repair order and/or invoice of the repair requested or problem presented, date, time, name of person granting such authorization and the telephone number if any, at which said person was contacted.

3. Commencing work for compensation without either:

i. One of the following:

(1) Providing the customer with a written estimated price to complete the repair, quoted in terms of a not-to-exceed figure; or

(2) Providing the customer with a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the repair. If the dealer makes a diagnostic examination, the dealer has a right to furnish such estimate in a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnosis charge must be agreed to in advance by the customer. No cost of diagnosis which would have been incurred in accomplishing the repair shall be billed twice if the customer elects to have the dealer make the repair. Should it be necessary to haul the watercraft and or transport it to the repair facility where the maintenance, diagnosis or estimate is to be made (in all but distress circumstances), charges for such hauling and/or transportation shall be disclosed in advance and itemized separately on the estimate or invoice; or

(3) Providing the customer with a written estimated price to complete a specific repair, for example "repack stuffing box;" or

(4) Obtaining from the customer a written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or

(5) If the customer waives his right to a written estimate in a written statement, signed by the customer, obtaining from the customer oral approval of an estimated price of repairs, evidenced by a notation on the repair or invoice of the estimated price of repairs, date, time, name of person approving such estimate, and the telephone number if any, at which such person was contacted; or

ii. If the customer's watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the repair dealer during other than normal working hours or by one other than the customer, obtaining from the customer either:

(1) A written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or

(2) Oral approval of an estimated price of repairs evidenced by a notation on the repair order or invoice of the estimated price of repairs, date, time, name of person approving such estimate and the telephone number, if any, at which such person was contacted.

4. Failure to provide a customer with a copy of any receipt or document signed by him, when he signs it.

5. Making false promises of a character likely to influence, persuade or induce a customer to authorize the repair, diagnosis, service or maintenance of any craft or its propulsion system.

6. Charging the customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the customer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the watercraft repair dealer shall make a notation on the repair order and on the invoice of the date, time, name of person authorizing the additional repairs and the telephone number called, if any, together with a specification of the additional parts and labor and total additional cost. The watercraft repair dealer shall obtain the consent of any customer before any additional work not estimated is done or parts not estimated are supplied.

7. Failure to return replaced parts to the customer at the time of completion of work, provided that the customer, before work is commenced, requests such return, and provided that the parts, by virtue of their size, weight or other similar factors, are not impractical to return. Those parts and components, that are replaced and that are sold on an exchange basis and those parts that are required to be returned by the watercraft repair dealer to the manufacturer or distributor, are exempt from the provisions of this section.

8. Failure to record on an invoice all repair work performed by a watercraft repair dealer or for a customer, itemizing separately the charges for parts and labor, and clearly stating whether any new, rebuilt, reconditioned or used parts have been supplied. A legible copy shall be given to the customer.

9. The failure to deliver to the customer, with the invoice, a legible written copy of all guaranties, itemizing the parts, components and labor represented to be covered by such guaranty or in the alternative, delivery to the customer of a guaranty covering all parts, components and labor supplied pursuant to a particular repair order. A guaranty shall be deemed false and misleading unless it conspicuously and clearly discloses in writing the following:

i. The nature and extent of the guaranty including a description of all parts, characteristics or properties covered by or excluded from the guaranty, the duration of the guaranty and what must be done by a claimant before the guarantor will fulfill his obligation (such as returning the product and paying service or labor charges); and

ii. The manner in which the guarantor will perform. The guarantor shall state all conditions and limitations and exactly what the guarantor will do under the guaranty, such as repair, replacement or refund. If the guarantor or recipient has an option as to what may satisfy the guaranty, this must be clearly stated; and

iii. The guarantor's identity and address shall be clearly revealed in any documents evidencing the guaranty.

10. Failure to clearly and conspicuously disclose the fact that a guaranty provides for adjustment on a pro rata basis, and the basis upon which the guaranty will be pro-rated; that is, the time, the part, component or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on a price other than that paid by the customer, clear disclosure must be made of the amount. However, a fictitious price must not be used even where the sum is adequately disclosed.

11. Failure to post in a conspicuous place, a sign informing the customer that the watercraft repair dealer is obligated to provide a written estimate when the customer physically presents such watercraft to the dealer during normal working hours and, in any event, before work is commenced except in distress circumstances. In addition, copies of any receipts or document signed by the customer, a detailed invoice, a written copy of any guaranty and the return of any replaced parts that have been requested must be provided. The sign is to read as follows:

“A CUSTOMER OF THIS ESTABLISHMENT IS ENTITLED TO:

1. When a watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof is presented during normal working hours, and in any event before work begins, a written estimate price stated either:

(A) PRICE NOT TO EXCEED \$ _____ and given without charge; or

(B) As an exact figure broken down as to hauling, transporting, parts and labor. This establishment has the right to charge you for this diagnostic service, although, if you then have the repair done here you will not be charged twice for any part of such charge necessary to make the repair.

(C) As an exact figure to complete a specific repair.

2. For your protection, you may waive your right to an estimate only by signing a written waiver.

3. Require that this establishment not start work on your watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof until you sign an authorization stating the nature of the repair or problem if you physically present the watercraft here during normal working hours.

4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.

5. The replaced parts, if requested before work is commenced, unless their size, weight or similar factors make return of the parts impractical.

6. A written copy of any guaranty.”

12. Nothing in this section shall be construed as requiring a watercraft repair dealer to provide a written estimate if the dealer does not agree to do the repair.

13. Any other unconscionable commercial practice prohibited pursuant to N.J.S.A. 56:8-1 et seq.

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The readoption of N.J.A.C. 17:8 becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of readoption.

The agency proposal follows:

Summary

N.J.A.C. 17:8 contains rules concerning the administration of the Supplemental Collective Annuity Trust Program. The program applies to active members of the several state-administered retirement systems, who agree to make voluntary contributions through their pension funds to purchase variable retirement annuities in order to supplement the benefits provided by their basic systems or whose employers agree to purchase for certain eligible public employees tax sheltered annuities for the same purpose.

The program is administered by the Supplemental Collective Annuity Trust Council which is composed of the Commissioner of the Department of Insurance, the State Budget Director and the State Treasurer.

The Division of Pensions proposes to readopt N.J.A.C. 17:8 in compliance with Executive Order No. 66(1978). The rules would otherwise expire on September 30, 1985. The chapter proposed for readoption contains rules on the administration of the program, enrollment and contribution requirements; retirement and termination procedures; and qualified voluntary employee contributions and accounts.

Obviously, in any such substantial financial operation, the applicable statute could not possibly consider all of the possible issues as they may arise in the administration of the program and in the proper consideration of the monies appropriate to the coverages provided under the program. In such cases rules are required to do equity whenever the statute is silent or when the statute only generally supplies the specifics and is often subject to interpretation by the Courts and the opinions of the Attorney General’s office. Thus, rules are required and will always be required to provide equity, uniformity of treatment and administrative efficiency.

With every opinion of the Attorney General’s office, an interpretation by the courts or a change in the statute, the rules are reviewed for the purpose of determining their continued applicability. All of the rules are reviewed at least annually to determine the same, to improve upon the language, to clarify any issues which may have arisen in the course of the previous 12 months and to ensure the implementation of such rules in the day-to-day activities of the Division of Pensions.

The Division of Pensions appreciates the significance of Executive Order Number 66(1978) and its review of the rules has always been with the view of curtailing any which are no longer necessary because of changes in the statutes which may have implemented what had previously been only regulation, or where the courts have disposed of the issue or where it was disposed by opinions of the Attorney General, so that the rule was deemed to be unnecessary. The most recent review of these rules indicates that they are still necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were originally promulgated. As the rules are adopted or amended for readoption, public comment and review are received. The Division is satisfied that

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Supplemental Annuity Collective Trust

Proposed Readoption: N.J.A.C. 17:8

Authorized By: Supplemental Collective Annuity Trust Council, Douglas R. Forrester, Secretary.

Authority: N.J.S.A. 52:18A-107 et seq., specifically 52:18A-111.

Proposal Number: PRN 1985-141.

Submit comments by April 17, 1985 to:

such comments have been properly considered in the language of the final regulations to be promulgated.

Social Impact

With respect to the social impact, the rules in N.J.A.C. 17:8, as are the rules of all programs administered by the Division of Pensions, are pertinent to past and present participants in the Supplemental Annuity Collective Trust.

As a large financial undertaking involving the receipt of cash, the proper consideration of claims and the audited review of disbursements are all within the prescriptions of the rules which have been adopted, explaining or interpreting the provisions of the law or providing for the proper administration of the program where the law is silent. Certainly, in terms of the large amounts of money and the very large numbers of people involved, every effort must be made to assure that there is a lack of discrimination in the performance of the program and that it services the beneficiaries equitably and uniformly.

Economic Impact

If the rules contained in N.J.A.C. 17:8 were not readopted, then chaos would follow because the Division could not cite such rules in clarifying the policy of the Council among the host of issues which the rules are designed to cover. While the rules may not be adopted, the program is continued by legislation. The opportunity for designing the best possible program required changes and this leads to periodic alteration in the rules which have been adopted. Without their reoption, it would be difficult to maintain a fair, equitable and cost effective administration of the program. The Division would find itself in court on disputes dealing with inequitable treatment and it would be involved with substantially increased cost of administration.

Full text of the proposed reoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:8.

Summary

The Division of Taxation's proposal conforms with a recent legislative change relating to county boards of taxation. Chapter 188, Laws of 1984 amended R.S. 54:3-2. The proposal will extend from 18 months to 24 months the time period in which county tax board members must complete course work designated in section 4 of P.L. 1967, c.44 (C.54:1-35.28). The new statute took effect on November 15, 1984.

Social Impact

The proposal, like the statute, will give county tax board members more time to complete their education. The prior statute, for example, would require four nights of classes which places an undue burden on the appointee to the county board of taxation. The public benefits by having a more educated member sit on the county board of taxation.

Economic Impact

The proposal has no economic impact since it only deals with the time in which a member of the county tax board must complete his education.

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

18:12A-1.2 Educational requirements; organization and meetings; annual report by board president

(a) (No change.)

(b) Each member serving on [January 1, 1980] **November 15, 1984**, the effective date of [P.L. 1979, c.499] **P.L. 1984, c.188** shall furnish such proof within [18] **24** months of such date, if [18] **24** months or more of his term are remaining thereafter.

(c)-(h) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

**Local Property Tax
County Boards of Taxation**

Proposed Amendment: N.J.A.C. 18:12A-1.3

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:3-2, 54:3-14 and P.L. 1984, C.188.

Proposal Number: PRN 1985-146.

Submit comments by April 17, 1985 to:

John C. Raney
Superintendent
Local Property Tax Branch
Division of Taxation
CN 52
Trenton, NJ 08646

The agency proposal follows:

OTHER AGENCIES

**ELECTION LAW ENFORCEMENT
COMMISSION**

Proposals numbered PRN 1985-148 and 149 are authorized by the Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.

Submit comments by April 17, 1985 to:

Gregory E. Nagy, Esq.
Staff Counsel
Election Law Enforcement Commission
28 West State Street—Suite 1215
Trenton, New Jersey 08608

(b)

Facsimile Signatures

Proposed New Rule: N.J.A.C. 19:25-2.6

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1985-147.

The agency proposal follows:

Summary

The purpose of this proposed rule is administrative. The rule permits the Commission to authorize that the signature of the chairman of the Commission on final decisions, orders or other determinations made pursuant to N.J.S.A. 19:44A-22 may be executed by a facsimile signature.

Social Impact

The Commission does not perceive any social impact other than to improve the efficiency of its enforcement activities.

Economic Impact

The Commission perceives no significant economic impact the proposed new rule simply concerns an internal administrative function of the Commission.

Full text of the proposed new rule follows.

19:25-2.6 Signatures

(a) Whenever authorized by the commission by resolution, the signature of the chairman of the commission on final decisions, orders or other determinations issued by the commission pursuant to N.J.S.A. 19:44A-22 may be a facsimile signature.

(b) Whenever authorized by the commission by resolution, the executive director, or such employee of the commission as may be from time to time designated in writing by the executive director, shall be authorized to sign final decisions, orders or other determinations of the commission pursuant to N.J.S.A. 19:44A-22 in the name of the chairman of the commission, or to affix to such final decisions, orders or other determinations pursuant to N.J.S.A. 19:44A-22 the facsimile signature of the chairman.

(a)

Continuing Political Committees

Proposed Amendments: N.J.A.C. 19:25-15.3, 15.12, 16.3 and 16.10

Authority: N.J.S.A. 19:44A-38. Proposal Number: PRN 1985-148.

The agency proposal follows:

Summary

When "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. was amended by Chapter 579 of the Laws of 1983, effective January 17, 1984, the term "political committee" was redefined to distinguish between a "political committee" that existed principally for a single election and a "continuing political committee" which was intended to exist for more than a single election; see N.J.S.A. 19:44A-3(i) and 19:44A-3(n). There was not a concomitant amendment to the Gubernatorial election statutes; N.J.S.A. 19:44A-27 et seq. The 1984 statutory amendment did not purport to address the public financing sections of the Reporting Act.

As a result of the amendment to the definition of "political committee," the use of that term in N.J.S.A. 19:44A-29(a) may support an unintended meaning that "continuing political committees" are excluded from the \$800 limit on contributions. N.J.S.A. 19:44A-29(a) was intended to prohibit political committees generally, including "continuing political committees" which were previously included in the definition of "political committee," from making contributions to gubernatorial candidates in excess of \$800. These proposed

amendments to the regulations are intended to clarify N.J.S.A. 19:44A-29(a), and any other section creating limitations on "political committee" activity in Gubernatorial elections.

Social Impact

The purpose of these proposed regulations is to remove any ambiguity that may exist concerning the role of "continuing political committees" in Gubernatorial elections. The Commission believes that the changes are merely technical and in conformity with the legislative intent concerning the regulation of Gubernatorial elections. No person has suggested to the Commission that "continuing political committees" are to be treated differently from "political committees" in regard to Gubernatorial election Contributions.

Economic Impact

The Commission believes that the proposed regulations will not have any new significant economic impact. The Gubernatorial elections conducted in 1981 limited contributions from "political committees" generally to \$800. No person has suggested that because of the 1984 amendments "continuing political committees" should be treated differently in the 1985 or any future Gubernatorial election.

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

19:25-15.3 Definitions for this subchapter

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

"Political committee" means any two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does aid or promote the nomination, election or defeat of a candidate for the office of Governor, but shall not mean a duly constituted State, county, or municipal committee of a political party. When used in this subchapter, "political committee" shall include "continuing political committee" as defined in N.J.S.A. 19:44A-3(n) (2).

19:25-15.12 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for election to the office of Governor in a general election, in the aggregate in excess of \$800.00. Any such contribution in excess of \$800.00 must be promptly returned to the contributor, and evidence of repayment shall be submitted to the commission. Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees", the term "political committee" as it appears in N.J.S.A. 19:44A-29(a) and herein shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n) (2). (b)-(c) (No change.)

19:25-16.3 Definitions for this subchapter

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

“Political committee” means any two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does aid or promote the nomination, election, or defeat of a candidate for nomination for the office of Governor, but shall not mean a duly constituted State, county or municipal committee of a political party. When used in this subchapter, “political committee” shall include “continuing political committee” as defined in N.J.S.A.19:44A-3(n)(2).

. . .

19:25-16.10 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate’s campaign treasurer or deputy campaign treasurer, or to any

other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of \$800.00. Any such contribution in excess of \$800.00 must be promptly returned to the contributor, and evidence of the repayment shall be submitted to the commission. **Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding “continuing political committees” from the meaning of “political committees,” the term “political committee” as it appears in N.J.S.A. 19:44A-29(a) and herein shall include “continuing political committees” as defined in N.J.S.A. 19:44A-3(n)(2).**

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

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program Rules

Adopted Amendment: N.J.A.C. 2:32-2.7

Proposed: January 7, 1985 at 17 N.J.R. 3(a).
 Adopted: February 25, 1985 by Sire Stakes Board of Trustees; Arthur R. Brown, Jr., Secretary of Agriculture.
 Filed: February 25, 1985 as R.1985 d.135, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: March 18, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): March 21, 1988.

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

Full text of the adoption follows.

2:32-2.7 Closing of yearling nominations
 The date of the closing of nominations of yearlings to the Pari-mutuel and Fair Divisions shall be May 15 of each year, in accordance with the United States Trotting Association regulations, with no exceptions. A copy of the horse's United States Trotting Association's Certificate of Registration must accompany the yearling nomination payment. A \$40.00 payment per horse covers the nomination fee to both the Fair and Pari-mutuel Divisions. Thereafter, each division will have separate sustaining payments with separate due dates. In addition, beginning in 1985, for foals of 1984, the yearling nomination payment form will also include the nomination to the Lou Babic Pace at \$25.00. If one chooses to nominate to both of these events, the yearling nomination payment will be a total of \$65.00 and be due on or before May 15 of each year. Supplementary nominations may be made to the New Jersey Sire Stakes commencing with foals of 1984. Parties delinquent to either or both the required May 15 yearling nomination fee and date or submission of the yearling's copy of the United States Trotting Association registration, are given until January 15th of the two-year-old season to fulfill the aforementioned conditions of nominations for a fee of \$400.00 for each of the above nominations.

CIVIL SERVICE

(b)

CIVIL SERVICE COMMISSION

**Provisional and Temporary Appointments
 Emergency Appointments**

Adopted New Rule: N.J.A.C. 4:1-14.7

Proposed: August 20, 1984, at 16 N.J.R. 2191(a).
 Adopted: February 5, 1985 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.
 Filed: February 19, 1985 as R.1985 d.124, **without change.**

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:11-2, 11:22-14, 11:22-15.

Effective Date: March 18, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): December 7, 1986.

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

Full text of the adoption follows.

SUBCHAPTER 14. PROVISIONAL, TEMPORARY AND EMERGENCY APPOINTMENTS

4:1-14.7 Emergency appointments
 (a) In State service, an appointing authority may make an emergency appointment in order to prevent an interruption in State business or serious inconvenience to the public. An emergency appointment may not exceed 10 working days.
 (b) In local service, an emergency appointment shall be subject to the provisions applicable to temporary appointments under N.J.A.C. 4:1-14.3, 14.4 and 14.5.

(c)

CIVIL SERVICE COMMISSION

**Assignment and Transfers
 Transfer of County Caseworkers**

Adopted Repeal: N.J.A.C. 4:3-15.1

Proposed: November 19, 1984, at 16 N.J.R. 3073(a).
 Adopted: February 5, 1985 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.
 Filed: February 19, 1985 as R.1985 d.125, **without change.**

Authority: N.J.S.A. 11:1-7a, 11:501a.

Effective Date: March 18, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): None.

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

Full text of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 4:3-15.1.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Teacher Preparation and Certification Types of Certificates: Emergency

Operative Date: N.J.A.C. 6:11-4.3

Take notice that the operative date for N.J.A.C. 6:11-4.3 concerning emergency certification was omitted in the February 19, 1985 New Jersey Register at 17 N.J.R. 422(a). The operative date for N.J.A.C. 6:11-4.3 is **September 1, 1985**.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations Delineated Floodways for Various Tributaries and Streams in the Passaic River Basin within Morris, Essex, Passaic, Somerset, and Union Counties (Supplemental Project I)

Adopted Amendment: N.J.A.C. 7:13-7.1 (formerly 7:13-1.11)

Proposed: July 16, 1984 at 16 N.J.R. 1865(b).
Adopted: February 25, 1985 by Robert E. Hughey,
Commissioner, Department of Environmental Protection.
Filed: February 25, 1985 as R.1985 d.130, **without change**.

Authority: N.J.S.A. 58:16A-50 et seq.

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1989.
DEP Docket No.: 044-84-06.

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

Full text of the adoption follows.

7:13-7.1 Delineated floodways
(a)-(c) (No change.)
(d) A list of delineated streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follow:
1.-49. (No change.)
50. (See proposal at 16 N.J.R. 1146(a).)
51. (See proposal at 16 N.J.R. 1307(a).)
52. Passaic River from the junction with the Whippany

River upstream to the Somerset Morris County border, Spring Garden Brook from the confluence with the Passaic River upstream to 300 feet upstream of Cross Street Bridge, Canoe Brook from the confluence with the Passaic River upstream to a location 150 feet downstream of Rt. 280, Canoe Brook Downstream Tributary Number 1 from the confluence with Canoe Brook upstream to 1000 feet upstream of White Oak Ridge Road, Bear Brook from the confluence with Canoe Brook upstream to downstream of Bear Brook dam, Slough Brook from 100 feet downstream of Parsonage Hill Road upstream to 150 feet upstream of Irving Avenue, Salt Brook from the confluence with the Passaic River upstream to the Con-Rail Bridge, West Branch Salt Brook from the confluence with Salt Brook upstream to 300 feet upstream of Morris Avenue, Cory's Brook from the confluence with the Passaic River upstream to 100 feet upstream of Private Road Bridge, Dead River from the confluence with the Passaic River upstream of Annin Road, Harrison Brook from the confluence with Dear River upstream to 100 feet upstream of South Alward Avenue, Harrison Brook Branch 2 from the confluence with Harrison Brook upstream to 900 feet upstream of Private Road Dam, Indian Grave Brook from the confluence with the Passaic River upstream to 1700 feet upstream of Washington Corner Road and Tributary K from the confluence with Indian Grave Brook upstream to 50 feet upstream of Driveway Bridge. (Amends (d)48 for Roseland, Harding and Chatham Townships, and (e)1 for West Caldwell Township.)

(e)-(g) (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: A map delineating the flood hazard area described in this notice can be inspected at:

Division of Water Resources
1474 Prospect Street
CN 029
Trenton, New Jersey 08625

(c)

DIVISION OF WATER RESOURCES

Water Supply Management Act Rules

Adopted New Rule: N.J.A.C. 7:19-6

Proposed: September 17, 1984 at 16 N.J.R. 2399(a).
Adopted: February 25, 1985 by Robert E. Hughey,
Commissioner Department of Environmental Protection.
Filed: February 25, 1985 as R.1985 d.133, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:1A-1 et seq., specifically 58:1A-5.

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.
DEP Docket No. 056-84-08.

Summary of Public Comments and Agency Responses and Reasons for Changes:

The Department of Environmental Protection (the "Department") received significant comments on the rules proposed to implement certain aspects of the Water Supply Management Act, N.J.S.A. 58:1A, (the "Act") and the associated Water Supply Management Plan. Public hearings were held at four regional locations and written public comments were received through October 24, 1984. All substantive comments and the Department's responses thereto follow.

Comment: The Department should provide for some degree of regulatory control in areas of special environmental sensitivity, such as wetlands and areas where rain and surface water recharge ground water aquifers.

Response: Control of wetlands and aquifer recharge areas is a suggestion which merits serious consideration. Such a program, however, would require significantly different types of controls from those proposed in this rule and require further study in order to outline a definite strategy. Because of the complex problems associated with protection of wetland and recharge areas, the Legislature has been considering legislative proposals to address these issues.

Comment: Water conservation should not be required in water systems where there is sufficient water to meet customer demand, see N.J.A.C. 7:19-6.5.

Response: The Department believes that waste of water, even where there are adequate present supplies, is unwise and inconsistent with developing a much needed, statewide conservation ethic. Further, water systems which have excess water may be called upon to provide supplies to systems for which there is less adequate protection.

Comment: The proposal to exempt purveyors from addressing unaccounted-for-water, where the water systems draw from and are laid in water table aquifers, should be withdrawn, see N.J.A.C. 7:19-6.4(d)4.

Response: This exemption is allowable only after the purveyor has shown that water leakage losses will not contribute to water shortages. Furthermore, leakage from a water table system will return to the aquifer and, therefore, is ultimately not lost. Though there are other reasons why it is important for a system of this type to reduce unaccounted-for-water, it need not be required by the State.

Comment: The proposed rules should be made applicable to only those systems that are found to be in need of renewal and rehabilitation.

Response: While it is realized that a number of large, privately-owned systems are generally well run, the Department believes that there are objectives of the Act which are not adequately addressed by present practices. It is also appropriate that the standards apply uniformly to all water companies. Where purveyors are found to not be in need of upgrading, compliance with the requirements of these rules should not be burdensome.

Comment: The Department should require recharge of depleted aquifers.

Response: Though recharge of aquifers may be advisable in certain circumstances, the means used to increase availability of water in deficient areas must be determined by feasibility studies which consider all alternatives. The main process by which alternatives have been and are being considered is the planning process associated with the State Water Supply Master Plan.

Comment: The responsibility for reductions in withdrawals of ground water in critical areas should be upon specific

industries rather than solely on water purveyors, see N.J.A.C. 7:19-12, generally.

Response: The theory which the Department is using to reduce withdrawals in critical areas is to develop alternative sources of water, minimize leakage and waste and to encourage conservation, the burden of which will be shared fairly by all water users. If drought circumstances require reductions in use, all users will share in the reductions. To select out certain industries to bear an extra burden is unnecessarily unfair, absent emergency justification.

Comment: The Department should not restrict its concern for excess unaccounted-for-water to the 35 percent of water companies having highest figures in a given year, see N.J.A.C. 7:19-16.4(c).

Response: The Department believes that addressing the top third of water companies is a reasonable level of initial review. As time allows, all companies will be reviewed by the Department.

Comment: Where interconnections already exist, the requirement for an agreement between systems could be rendered unnecessary by a "simple reallocation of diversion rights between the two systems", see N.J.A.C. 7:19-6.3.

Response: More than simple water-availability is involved in responding adequately to varying drought conditions. Description of specific procedures of response and the need for periodic testing of the workability of the systems of water transfer are among the necessary subject matter of purveyor agreements, which cannot be addressed by reallocation.

Comment: There should be special consideration for agricultural use in critical areas, with a view to modifying the proposal or exempting agriculture entirely from the requirements of these rules.

Response: The Department considers that it would be inequitable to exempt agricultural users generally, and also that such exemptions would seriously weaken the necessary general reduction in withdrawals from threatened aquifers. However, the legislature has recognized the special characteristics of agricultural water use by special legislation covering water use certification; and it is understandably difficult for small farmers to comply with detailed administrative requirements. Accordingly, the regulation has been changed to provide that water allocation procedures in critical areas will not be required for agricultural water use certifications of less than 100,000 gallons per day, see N.J.A.C. 7:19-6.10(f).

Comment: Water uses essential to generation of power should be exempted from control in critical areas, see 7:19-6.10(c) generally.

Response: The fact that energy-related water uses are vital to New Jersey citizens does not negate the need for regulation of such uses, to the degree that circumstances might require. Further, proper consideration of water use priorities is given through the water allocation process (N.J.A.C. 7:19-1 et seq.)

Comment: It was recommended that the determination of "safe and dependable" yield of water purveyors should be made by what is known as the "probabilistic approach". This approach would consider as adequate the availability of water at a level less than what will be needed during the "most serious drought of record". It was suggested that use of a lesser drought as the standard would be consistent with sound and prudent management practice.

Response: The Department's analysis indicates that the use of the "probabilistic approach" would result in the use of water-availability standard of a drought of approximately 20-year frequency. The most critical concern of the Department is the likelihood of future droughts more severe than those of

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the past. The history of various parts of the country indicate that, even after a long period of record, more severe droughts unexpectedly occur. The use of the maximum drought of record and the expectation of conservation are factors which "hedge our bets" against a future drought which could truly threaten the economic and environmental fabric of this State. The Department believes that a lesser standard would inadequately protect the public interest. See N.J.A.C. 7:19-6.2 and 7:19-6.3.

Comment: The definition for critical water supply area should be modified to include sole-source and buried-valley aquifers.

Response: The rules, as proposed, permit the consideration, among other things, of sole source or buried-valley aspect of an aquifer when designating critical areas. See N.J.A.C. 7:19-6.2.

Comment: The determination of what is "safe and dependable yield" of water available to purveyors should use "average" rather than "peak" water demand in the calculation. See N.J.A.C. 7:19-6.3.

Response: This comment is, on its face, unacceptable, since it is usually during periods of peak demand when deficient yield becomes evident.

Comment: The safe/dependable yield determination does not take into account the fact that a water purveyor has a potential for managing peak demand periods if given the incentive to do so.

Response: The proposed rule determines safe and dependable yield by comparing water system capacity to customer demand. If demand management increases capacity or decreases peak demand, it will be considered when determining safe/dependable yield. See N.J.A.C. 7:19-6.3.

Comment: Concern was expressed about the appropriateness of requiring management improvements and the associated costs which conflict in priority with existing rehabilitation and construction projects. See N.J.A.C. 7:19-6.6.

Response: The management and status survey should evaluate priorities and propose a schedule for implementation of both management and capital improvements. Priorities will be evaluated by the Department and modifications made only if they appear to be needed.

Comment: Water supplies should have metering at the source.

Response: Source metering is a standard condition of the Department's water allocation permits, see N.J.A.C. 7:19-1 et seq.

Comment: Purveyors should be exempt from performing management and status surveys where the systems are relatively new, have low unaccounted-for-water and functioning conservation plans; see N.J.A.C. 7:19-6.6.

Response: The adequacy of management and status of a water system can be evaluated only after the surveys have been submitted to the Department. Further, newer systems are obliged to plan for future needs, as well as show the sufficiency of existing systems. Where a company can show compliance with reasonable management, rehabilitation and maintenance standards, the burden of performing the required surveys should be small.

Comment: May the management and status survey be performed by professional engineer or a licensed operator?

Response: Yes. There is no requirement regarding who is to perform the survey.

Comment: May water wells be substituted for physical storage of water? See N.J.A.C. 7:19-6.7.

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Response: N.J.A.C. 7:19-6.7(b) allows the Department to lessen the storage requirement where there is justification. Availability of water diversion rights will be part of the Department's consideration.

Comment: The proximity of water mains in adjacent water systems should not be the sole criterion for determining the need for interconnections, see N.J.A.C. 7:19-6.8(b).

Response: The Department agrees. The proximity of mains is relevant to the economic feasibility of interconnection. As the proposed rules provide, the need and technical feasibility for interconnection are also considered in determining whether an interconnection will be required.

Comment: The requirement for Departmental approval of agreements among purveyors will unreasonably interfere with the ability of purveyors to negotiate such agreements. N.J.A.C. 7:19-6.3(c).

Response: The Water Supply Management Act, N.J.S.A. 58:1A, specifically contemplates that the Department will supervise intercompany arrangements among water companies in the State. The written agreements between companies are the mechanisms which define the specifics of these arrangements. Review and approval of these agreements by the Department is vital to its ability to manage New Jersey's water supplies.

Comment: How can interconnection tariffs (water rates) be set where interconnections are not metered? See N.J.A.C. 7:19-6.9 generally and 6.9(e), specifically.

Response: Where meters are lacking, flows may be estimated.

Comment: There should be a formula for the Department to use to set required reductions in the use of groundwater in critical water supply areas.

Response: A formula does not allow for consideration of the numerous variables which must be considered in the process of creating strategies for effective and equitable responses to water supply management requirements. The variables are too numerous to make the use of a formula feasible.

Comment: Salt water intrusion into an aquifer should be "imminent" rather than "threatened" before a critical area designation occurs, see N.J.A.C. 7:19-6.10(b).

Response: Responses to loss of water supply by users and purveyors involves a protracted period of planning and often, construction. To wait until the threat of salt water contamination is imminent could be too late to allow rational and economical response to the threat.

Comment: Where ground water withdrawal reductions are needed in critical areas, the Department should consider whether a purveyor is making efficient use of the water taken, when determining the levels of required reduction.

Response: Efficiency of water use is routinely examined by the Department in its water allocation program. This is done under provisions of N.J.A.C. 7:19-6.4 (Unaccounted-for-water), rather than through the levels of required reduction.

Comment: The Department should limit water allocations in non-critical areas where water levels are declining.

Response: A declining water level does not necessarily mean that pumping is exceeding recharge. The Department, through the water allocation process, watches water levels to determine the pumping rate at which water levels will stabilize. If the pumping results in progressive lowering of water levels, as described in N.J.A.C. 19-6.10, critical area designation is allowed under the proposed rules.

Comment: Does the Department have the authority to require additional or different measures in critical areas which

overlap the area regulated by the Delaware River Basin Commission (DRBC)? See N.J.A.C. 7:19-6.5.

Response: Yes. The scope of the Department's water supply management authority in the Delaware River Basin is defined by the Delaware River Basin Compact (N.J.S.A. 32:11D-1 et seq.), as well as the Water Supply Management Act. As a result of the independent authority of the DRBC, more stringent or differing standards and controls may apply.

Comment: Calculations of amounts of unaccounted-for-water by purveyors should be based upon a "rolling average"; that is, an average adjusted, as data becomes available, see N.J.A.C. 7:19-6.4(d).

Response: The Department chose to review the status of unaccounted-for-water on an annual basis to limit the amount of resources required to perform this review activity.

Comment: Economic assistance should be made available to water users who may be required to install meters to help measure unaccounted-for-water.

Response: The New Jersey Legislature has not enacted legislation to provide funds for such things as meter installation. Since meters will be required to assist in implementing the requirements of the Act and associated rules, the costs of installation might be more appropriately included in the rate base of purveyors, rather than borne directly by the individual users. Also, if individual users are expected to pay the costs of meters directly, water purveyors are not inhibited from allowing payment over a period of time in the fashion of a loan.

Comment: It would be simpler for the Department to adjust ground water allocations to various purveyors, rather than require interconnections to be constructed. See N.J.A.C. 7:19-6.3.

Response: Interconnections permit the movement of water around the State in order to respond to water emergencies. They also permit use of transferred water to decrease drawing of ground water in areas of greatest management concern. Reallocation alone does not satisfy all requirements of good water planning.

The Department has made several nonsubstantive changes to the proposed rules in response to public comment and to enhance the clarity of the rules. These changes and reasons therefor are as follows:

The definition of "adverse impact upon wells" was amended to include "impairment of water quality" as a type of adverse impact. Water quality impairment is appropriately within the scope of what is meant by an adverse impact upon wells. See N.J.A.C. 7:19-6.2.

The definition of "dependable yield of subsurface sources" is changed to include the "spreading" of saline or polluted water, as one of the undesirable effects which could threaten the dependability of water yield. This concern is within the scope of what was intended to be described in this definition. See N.J.A.C. 7:19-6.2.

The definitions of "multiple sources" and "single prime source" are amended to reference interconnection as sources of water within the meaning of these terms. Such reference was inadvertently left out in the proposal. See N.J.A.C. 7:19-6.2.

Commenters suggested that "normal demand" for waters from a system be calculated by uses of peak demand levels, rather than annual averages. Though the Department cannot accept the use of peak demand levels to calculate normal demand, the language of the proposal was changed to make it clear that normal demand of a given amount means an annual average demand of that amount, with variations (peaks) characteristic of the system, see N.J.A.C. 7:19-6.2, definition of

"normal demand". A related clarifying change was also made to N.J.A.C. 7:19-6.3(b) to indicate that safe yield of a given amount must include required peaking capabilities.

Several commenters felt that the 12 percent threshold level for Departmental involvement with unaccounted-for-water, is too low to reasonably allow for such things as flushing of mains and firefighting which are not and will not be metered, see N.J.A.C. 7:19-6.4(b). The Department has raised the threshold level to 15 percent, which is considered to be more consistent with reality.

The definitions of Class I, II and III purveyors have been moved from 7:19-6.4(a) to the definition section (6.2), where they more appropriately belong. Also, the Department has determined that very small water companies (serving less than 500 persons) may properly be excluded from the requirements of N.J.A.C. 7:19-6.4 (unaccounted-for-water) 7:19-6.5(a)5 (metering) and 7:19-6.6 (Rehabilitation).

The Department mistakenly proposed fees under 7:19-6.4(d)5 whereby small purveyors pay higher fees than larger systems. The reverse was intended and the rule was changed to correct this mistake. (See N.J.A.C. 7:19-6.4(c)5). The change was announced at five public hearings, which occurred prior to adoption.

The Department did not intend to require installation of meters for fire emergency water sources under N.J.A.C. 7:19-6.5(a). Such a requirement is clearly impractical and unnecessary. Therefore, such water use is exempted from the metering requirement.

The Department has provided for discretion to waive the requirement for metering of all existing service connection in critical areas where the purveyor serves less than 500 service connections, see N.J.A.C. 7:19-6.5(a)5 and 6.5(b). It is believed that the overall conservation purpose of the metering requirement will continue to be adequately met, even if very small purveyors are excluded. This is essentially true, since other conservation, rehabilitation and maintenance requirements will continue to apply and since the Department can still require metering if there is evidence of exceptionally high levels of unaccounted-for-water.

The requirement in N.J.A.C. 7:19-6.6(a)1, that the management and status survey describe the measures needed to maintain a water system in good physical condition, has been augmented to include the description of preventative maintenance measures. Under the proposed rule, the Department could have reasonably required that preventative maintenance be addressed in the survey. This change expresses that implicit authority.

The Department has concluded that the proposed requirement of N.J.A.C. 7:19-6.6(f), that water revenues be the sole source of financing rehabilitation, was inappropriate. Purveyors should not be limited in the financial choices available to them to address water system needs. Therefore, this provision has been withdrawn.

The requirement for annual flow tests on interconnections, proposed at N.J.A.C. 7:19-6.9(d), has been augmented to require that the results of these tests be submitted to the Department by the end of each calendar year. The Department originally intended that these test be submitted for review but inadvertently failed to incorporate the time for submission.

The purpose of the proposed description of adverse conditions, justifying a critical area determination (see N.J.A.C. 7:19-6.10(a)2ii and iii), was to address salt water intrusion into ground water sources, regardless of the source of the salt water. The proposal referenced "the sea" only. Since there

are non-ocean sources of salt water (Delaware Bay, for example) which do and may threaten ground water supplies, these provisions have been changed to address salt water intrusion in general, as the proposal was intended to do.

The provisions in N.J.A.C. 7:19-6.10(a)2ii and iii were also amended to remove the reference to ten square miles of affected aquifer because such description language is duplicative of the introductory language included in 7:19-6.10(a)2.

The addition at N.J.A.C. 7:19-6.10(f) of areas described in N.J.A.C. 7:19-6.10(a)2 and 3 was discussed at the hearings which occurred prior to adoption.

Several commenters requested additional public participation concerning the various decisions that the Department will be making under the proposed rules. In the proposed rules, public participation exists at two strategic points in the decision-making process associated with these rules: when critical water supply areas are being set by the Department and when changes in the allocation of ground and surface water uses are being determined. Procedures for full public participation exist for critical area determinations and for water allocations under N.J.A.C. 7:19-6.13. Additional public participation requirements for the issuance of water allocation permits exists at N.J.A.C. 7:19-2 and cross-references to these rules have been inserted at appropriate places in the rule. The Department believes that further changes in the scope of public participation are unnecessary.

One commenter requested that the Department allow an appeal for an administrative hearing, regarding the determination of critical water supply areas by the Department. Since the entire State water supply management program is dependent upon critical area determinations, it is vital that an administrative appeal not be allowed to delay implementation of this aspect of the rules. Therefore, a right to administrative appeal has been included in N.J.A.C. 7:19-6.14 but not such as to delay program implementation. The Department also reserves the right to deny such an appeal, if it appears to be without merit on its face.

Commenters requested that the appeals for an administrative hearing under N.J.A.C. 7:19-6.14 should allow for appeal by "adversely affected persons", as well as purveyors, as the proposal allowed. The rule has been changed to allow appeal by adversely affected persons, regarding critical area determinations, regarding water extension bans under N.J.A.C. 7:19-6.3(d) and upon administrative orders issued under N.J.A.C. 7:19-6.13(b). It was determined that appeals by purveyors only would remain as proposed for disapprovals of and mandates for management and status surveys under N.J.A.C. 7:19-6.6(a) and mandates for interconnections under 6.8(a), since these decisions are primarily of concern to purveyors and not the public at large.

The right to an administrative hearing on changes in water allocations of water use (see N.J.A.C. 7:19-6.10(c)) was deleted, since allocations are governed by the procedures in N.J.A.C. 7:19-2. Duplicative requirements are unnecessary in this rule.

Finally, a variety of clarifying changes have been added to the proposal to remove ambiguity and to assist the reader's understanding.

Full text of the adoption follows (additions shown in bold-face with asterisks ***thus***; deletions shown in brackets *[thus]*).

SUBCHAPTER 6. WATER SUPPLY MANAGEMENT ACT RULES

7:19-6.1 Scope and Authority

(a) The Statewide Water Supply Master Plan represents the planning mechanism by which the State approaches its water needs. Inclusion of a project in the Master Plan is a prerequisite for the expenditure of funds under the Water Supply Bond Act of 1981.

(b) This subchapter is intended to provide administrative mechanisms through which some of the objectives of the Water Supply Management Act and more specific goals of the Water Supply Master Plan may be accomplished.

(c) The specific provisions mandated by this subchapter are subject to modification by administrative order by the Department. The provisions of this subchapter shall not supercede the provisions of administrative orders issued by the Department prior to the effective date of this subchapter.

(d) This subchapter includes administrative procedures and policies to carry out specified management responsibilities of the Department. These requirements supplement other rules adopted by the Department, such as the water allocation procedures for agricultural and non-agricultural uses of water (see N.J.A.C. 7:19 et seq.)

(e) To avoid the imposition of needless administrative burdens on water purveyors and users, only a limited number of specified requirements in this subchapter apply throughout New Jersey. Other requirements are only applicable within designated water supply critical areas, where special situations require a greater degree of control to be exercised by the Department.

7:19-6.2 Definitions

The following words and terms shall have the following meanings unless the context indicates otherwise:

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., P.L. 1981, c.262.

"Adverse impact upon wells" means a forced reduction in pumping rate or a required change in the construction of an affected well ***or any impairment of water quality***.

"Aquifer" means any water-saturated zone in sedimentary or rock stratum which is significantly permeable so that it may yield sufficient quantities of water from wells or springs in order to serve as a practical source of water supply.

"Allocation permit" means the document issued by the Department to a person, granting that person the privilege, so long as the person complies with the conditions of the permit, to divert water for any purpose other than agricultural or horticultural use.

"Class A standard" means the capacity of one or more interconnections with an adjacent water system, having the combined capacity to supply 75 percent of the average water usage of the receiving system, while relying on no more than one adjacent system for more than 25 percent of the average water supply of that adjacent system.

"Class B standard" means the capacity of one or more interconnections with an adjacent water system, having the combined capacity to supply 50 percent of the average water usage of the receiving system, while relying on one adjacent system for no more than 35 percent of the average water supply of that adjacent system.

*****Class 1 purveyor** means a water purveyor which serves a population of up to 10,000 persons.**

“Class 2 purveyor” means a water purveyor which serves a population of 10,001 to 50,000 persons.

“Class 3 purveyor” means a water purveyor which serves a population of over 50,000 persons.*

“Confined aquifer” means an aquifer which contains groundwater confined under pressure between relatively impermeable or significantly less permeable material so that its groundwater surface rises above the top of the aquifer.

“Critical **water supply** area” or “critical area” means a water supply area in which it is officially determined by the Department, after public notice and a public meeting, that adverse conditions exist, related to the ground or surface water, which require special measures in order to achieve the objectives of the Act.

“Dependable yield of subsurface sources” means that yield of water from a subsurface source or sources available continuously during **projected** future conditions, including a repetition of the most severe drought of record, without creating undesirable effects. Undesirable effects may include adverse impact upon other wells of a depth of 50 feet or more, increased risk of introducing **or spreading** saline water or polluted water in **[to]** the aquifer or unacceptable reduction of surface flow of streams.

“Dependable yield of combined surface/ground water sources” means the yield of water by a water system which is available continuously throughout a repetition of the most severe drought of record, without causing undesirable effects, as described in the definition of “Dependable yield of subsurface sources” above.

“Drought” means a condition of dryness due to lower than normal **precipitation** **[rainfall]**, resulting in **[such effects as]** reduced stream flows, reduced soil moisture and **or** lowering of the potentiometric surface in wells.

“Interconnection” means a water supply connection with another water supply system or systems.

“Multiple sources” means one or more production wells, surface water intakes, **or interconnections** or a combination of wells **[and]**, **or** surface water intakes **or interconnections** utilized to meet the demands of a public community water system.

“Normal demand” means the **annual** average demand during the three preceding non-drought years, **including normal occurring peaks**.*

“Purveyor” means any person who owns or operates a public community water system.

“Public community water system” means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

“Safe yield from surface sources” means the yield maintainable by a water system continuously throughout a repetition of the most severe drought of record, after compliance with requirements for maintaining minimum passing flows.

“Single prime source” means a single diversion of surface or groundwater, **including an interconnection**, capable of providing the peak water demand of a public community water supply system.

“Unaccounted-for water” means water withdrawn by a purveyor from a source and not accounted for as being delivered to customers in measured amounts.

“Unconfined or semi-confined aquifer” means an aquifer close to the land surface with continuous layers of materials with permeabilities in the high to low range, extending from the land surface to the base of the aquifer.

“User” means any person **[s and]** **or** other entity which utilizes water.

“**Water allocation**” or “**certification**” means the authority to withdraw surface or groundwater for use, pursuant to a permit issued under N.J.A.C. 7:19-1 et seq. or 7:20A-1.1 et seq.*

“Water supply system” means a facility for providing potable water.

“Water table” means the water surface in the uppermost part of the water-saturated zone which is at atmospheric pressure.

“Water table aquifer” means a geological formation which carries water at atmospheric pressure at the top of the saturated zone.

“Yield of a water resource system” means the output of water from a system, available with monthly variations corresponding to the needs of the system.

7:19-6.3 Determination of safe or dependable yield

(a) **[Each purveyor serving over 10,000 people during the month of peak demand]** **Class 2 and 3 purveyors** within the first year after the effective date of this subchapter, and other purveyors within one year after **written** request by the Department, shall either accept an estimate of safe yield from surface supplies or of dependable yield of subsurface sources previously made by the Department or submit **[an independent]** **its own** evaluation and estimate for the approval of the Department.

(b) A purveyor is required to provide a safe or dependable yield of water from its own sources, which, when added to water supplies available by contract and after subtraction of water obliged to be delivered by the purveyor by contract, shall be sufficient to provide for **the normal demand of** its own customers.

1. A progressive reduction in the potentiometric surface of an aquifer will be considered presumptive evidence that dependable yield of a subsurface source is less than current withdrawals, subject to **[a showing]** **acceptable evidence** to the contrary.

2. Water supplies available by contract may be relied upon only if the contract is not subject to cancellation or suspension and assures the availability of water throughout a period of drought **and if the source of supply is reliable**.* Water obtainable through interconnections shall not be included unless reliable delivery is assured by contract.

3. All contracts relied upon to meet the requirement of this subsection (b) shall be subject to review and approval by the Department **to determine their compliance with the rules in this Chapter and the Act**.*

4. Increased safe yield or dependable yield of individual water supply systems may be allowed, to take advantage of system diversity and interconnections, but only in conformance with regional arrangements approved by the Department, under which coordinated systems of operation will assure system-safe yields greater than that which could be provided by the individual water systems.

(c) If a determination of yield in accordance with (a) above shows that a purveyor has insufficient capacity to meet the normal demands of its customers, the purveyor may elect to announce its **[intentions]** **decision to attempt** to revise existing contract arrangements by a given date, as necessary, in order to serve the balance of its customers reliably during a drought. **[1.]** In such a case, the **[users who will not be reliably served]** **purveyor serving the balance of the cus-**

tomers* will be required by the Department to immediately obtain a firm yield from some other source.

[2. Normal demand shall be defined as the average demand during the three preceeding, non-drought years.]

(d) As an alternative to (c) above, the Department may order a ban on further extensions of service to new customers or expansions of service to existing customers, or the Department may order the acquisition of additional water supply capability, or both. The Department must allow reasonable time for acquisition of additional water supply.

7:19-6.4 Unaccounted-for water

*[(a) Water purveyor size classes are as follows:

1. Those serving a population of up to 10,000 population;
2. 10,001 to 50,000 population; and
3. Above 50,000 population.]*

[(b)](a)* For each of the water purveyor size classes *(see N.J.A.C. 7:19-6.2, Definitions)*, an annual enumeration will be made by the Department of all purveyors *, **servicing a population of over 500 persons**,* with unaccounted-for water in excess of *[12]**15* percent. The Department may, at a later date, increase this percentage, if experience indicates that the *[12]**15* percent figure is low.

[(c)](b)* For each purveyor size class, the Department shall determine the percentage of purveyors having the highest proportion of unaccounted-for water, and these purveyors will be determined by the Department to be provisionally delinquent. This determination may not include more than 35 percent of the total number of purveyors each year. These purveyors will be notified of their provisionally delinquent status.

[(d)](c)* Purveyors found provisionally delinquent will be allowed one year in which to **take appropriate corrective action, including elimination of** *[eliminate]* leaks, *[to]* establish***ment of*** records of use of previously unaccounted-for water and *[to]* submit*[t]**sion of* a schedule for further corrective action. After consideration of supplementary information and the schedule submitted by the purveyor, an annual review of each provisionally delinquent purveyor will be conducted by the Department.

1. If the review establishes that the percentage of unaccounted for water has been reduced to the median percentage for purveyors of that class, the provisionally delinquent status of the purveyor will be terminated.

2. If the provisionally delinquent status is reaffirmed and unless the purveyor submits a schedule for corrective action which is approved by the Department, an order will be issued by the Department, requiring the elimination of all undue losses in the system in accordance with a specified compliance schedule.

3. If the purveyor does not accept the findings of the annual review, it may request that the Department hold an informal, public fact-finding meeting, the findings of which must be approved by the Department.

4. Purveyors whose systems draw from and are laid in water table aquifers may be exempted from the requirements of this section provided that circumstances are such that leakage losses will not contribute to water shortages and that this is adequately documented by the purveyor.

5. The fee for conducting this delinquent status review will be *[\$1,000 for classes 1 and 2]**\$300.00 for Class 1* and *[\$300.00 for class 3 (see (a) above)]**\$1,000 for classes 2 and 3*. After two years from the effective date of this subchapter, if it is determined that the average cost of conducting such reviews has decreased, the fees will be adjusted downward accordingly.

7:19-6.5 Water conservation

(a) Unless more stringent water conservation measures are required by the Department, all public community water systems shall:

1. Proceed expeditiously to correct leakage in the total distribution system, as detected through a systematic program to monitor leakage. Program results may be required to be submitted to the Department at least once every three years;

2. Adopt and implement, to the satisfaction of the Department, an on-going program to encourage water conservation for all types of use within the area served by the system*. **This does not preclude other water conservation requirements imposed by the Board of Public Utilities***;

3. Submit a water conservation report to the Department on or before the first anniversary of the date on which an allocation permit is granted, or other date specified in the permit. **In areas subject to the supervision of the Delaware River Basin Commission, conservation reports shall also be submitted in compliance with Commission requirements.*** This report must describe the actions taken pursuant to the conservation program and the associated results;

4. **Establish*** **File*** water rate structures which provide incentives for water conservation*;* **with the Department and the Board of Public Utilities, as appropriate; and***

5. Require installation of water meters for all new service connections*;* **[6.]**[I]**and** **i**n critical areas, require installation of water meters for all existing service connections. **This shall not apply to fire emergency uses. Small water systems with fewer than 500 service connections may be exempted from metering if it is shown that the annual average daily water use by the system does not exceed 350 gallons per day, per service connection*.**

(b) Water systems with fewer than 500 service connections are not required to comply with the water conservation requirements of (a) 1-4 above unless specifically notified otherwise by the Department.*

6. In critical areas, require installation of water meters for all existing service connections.

7:19-6.6 Rehabilitation

(a) Purveyors shall comply with the following requirements for preparation and implementation of management and status surveys:

1. Within one year after the effective date of this subchapter, all **Class 3*** purveyors *[serving over 50,000 population]* must perform management and status surveys in accordance with criteria to be provided by the Department, except that those having had such surveys or partial surveys performed within the preceding five years may, with the approval of the Department, submit such completed work in partial or complete compliance with this requirement. The survey must include an analysis of the current status of the system infrastructure and the planned renewal and rehabilitation required to maintain the system in good physical condition *, **including preventative maintenance***. The survey shall be accompanied by an evaluation of the status of the system, including acceptance or rejection of each recommendation and a schedule for planned renewal and rehabilitation. Within two years of the effective date of this subchapter, all **Class 2*** purveyors *[serving between 10,000 and 50,000 population]* must also submit such surveys and evaluations. **The management and status survey required hereby does not preclude compliance with similar requirements of the Board of Public Utilities.***

2. Upon approval by the Department, the schedule of planned renewal and rehabilitation shall commence upon the

next fiscal year starting after approval by the Department; thereafter it shall be implemented annually by the purveyor.

3. If no management and status survey is submitted pursuant to the above requirements or if the recommended schedule is disapproved by the Department, planned renewal and rehabilitation of system infrastructure shall be carried out by each purveyor to the extent of 10 percent of total gross water supply revenue, in accordance with Departmental criteria.

4. Upon the effective date of these regulations, all ***Class 2 and 3*** purveyors **[serving 10,000 population or over]** must initiate administrative preparation for planned renewal and rehabilitation programs, of the magnitude contemplated by this section, as applied to each purveyors particular situation**[s]**. This shall be done, without awaiting the completion of the management and status surveys required above.

(b) Upon determination by the Department that any component(s) of a water supply system have deteriorated to a degree that may jeopardize the ability of the system to deliver an adequate and reliable supply of water or may cause waste of an unduly large amount of water, the purveyor shall submit, within a time period required by the Department, a report and implementation schedule specifically identifying the scope of rehabilitation work necessary, the time required for work implementation and the required water rate modification to finance the work.

(c) Upon approval of the report by the Department, the purveyor shall commence rehabilitation work in an expeditious manner and shall perform the work in a manner which minimizes system disruptions.

(d) All rehabilitation work performed on water supply systems shall conform to the current design requirements specified in the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A et seq., and this subchapter.

(e) For planned or required transmission/distribution system rehabilitation**, *loans will be provided on a priority basis pursuant to the Water Supply Bond Act of 1981 (Public Law 1981 ch. 261) and associated rules (N.J.A.C. 7:1A-1 et seq.)*, to the extent that eligibility requirements of the regulations are met and the funding availability allows.

1. In cases where a critical water supply **[source]* *transmission/distribution** disruption exists, pursuant to N.J.A.C. 7:1A-6, application may be made for an emergency, interim rehabilitation loan. Upon approval of said loan, the emergency applicant is required to make full application for a Water Supply Rehabilitation Loan, pursuant N.J.A.C. 7:1A-1 **[and 2]* *et seq.**

[(f) Water system revenues shall be used to pay for all rehabilitation work unless otherwise approved by the Department.]

7:19-6.7 System pressure and storage

(a) Public community water systems shall be adequately maintained so as to sustain minimum water pressures of at least 20 pounds per square inch at street level, in all parts of the distribution network, under all required flow conditions. **[Pressures shall be sustained by providing such measures as]* *The* balances and interrelationships of source location, interconnections, transmission and distribution grid, size of transmission-distribution system lines, location of booster pumps, existence of pressure zones and location of storage facilities ***must be such as to insure the minimum pressure of 20 pounds per square inch at street level***.*

(b) **[Under no circumstances shall total water storage be less than 20 percent of the average, daily production from prime sources. Such storage should be spread out and located at different points within the system.]* *With respect to the*

total capacity of system storage, the following minimum requirements apply to all systems. The Department may modify these requirements, provided adequate justifying data is submitted, demonstrating that service will not be disrupted during extended periods of system stress.*

[1. With respect to the total capacity of system storage, the following minimum requirements apply to all systems serving more than 10,000 population:]*

Type of System	Minimum Storage Percentage of Average Daily Demand
i. Single, prime source, no interconnection(s), no auxiliary power at water source	100 percent
ii. Single, prime source, no interconnection(s), auxiliary power provided at water source†	80 percent
iii. Single, prime source with interconnection(s)††	50 percent
iv. Multiple source, no interconnection(s), no auxiliary power at water source	80 percent
v. Multiple sources, no interconnection(s), auxiliary power provided at water source†	50 percent
vi. Multiple sources, with interconnection(s)	50 percent
vii. Multiple sources, interconnection(s)††, auxiliary power provided at water source†	30 percent
viii. Same as vii. above, and distributing more than an average of 50 million gallons per day	20 percent

† Auxiliary power must be able to supply at least 50 percent of average production.

†† Combined interconnection(s) must able to supply at least 50 percent of average production; contract commitment from supplier is required.

*** (c) Where system size allows, storage should be spread out and located at different points within the system.**

(d) The provisions of this section are intended to complement N.J.A.C. 7:10-11.8(a) of the New Jersey Safe Drinking Water Act Regulations and are to be complied with in lieu of the present requirements in N.J.A.C. 7:10-11.8(a)3 and 4.*

7:19-6.8 Interconnections

(a) In order to assure the availability of water during times of emergency, including drought, the Department may require interconnections of the Class A or Class B standard (see N.J.A.C. 7:6-6.2, Definitions) to the extent practicable and economically feasible for all ***Class 2 and 3*** purveyors **[serving over 10,000 population]**. The purveyor, upon being notified of such a requirement, is required to conduct a interconnection feasibility study which must identify the most cost-effective alternative and schedule for project completion. The conclusions of the study shall be approved by the Department before project implementation. Prior to issuing an order requiring interconnections, the Department shall advise the purveyor(s) of the proposed action and thereafter allow 30 days for submission of information by the purveyor(s). If undue hardship would be caused by the proposed action, it may be waived by the Department.

(b) ***For the purposes of this subchapter,* * [P]* *p*otential interconnections shall be presumed to be economically feasible in all cases in which the actual service areas of two-purveyor systems are closer than 1000 feet, at the closet point, measured between mains at least eight inches in diameter. Exceptions to this requirement may be granted where hardship can be shown, such as where system pressures require a pumping station. In cases where there is a minimum distance of over 1000 feet, but less than a mile, between adjacent**

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service areas, a feasibility study may be required. Where adjacent service areas are more than a mile distant at all points, a feasibility study will be required only in cases where there are special conditions threatening the continued viability of the existing source of water.

(c) Unless it can be clearly shown that benefits accrue mainly to one system, costs of interconnections shall be shared between the participating systems. Where both systems benefit, distribution of costs between participating systems shall be proportionate to the benefits, as approved by the Department.

(d) Large, integrated water systems may be exempt from the requirements of N.J.A.C. 7:19-6.8 where it can be demonstrated that system components provide adequate alternative sources.

(e) If found to be necessary to accomplish the purposes of the Act, the Department may order the constructions of interconnections by purveyors serving less than 10,000 population.

7:19-6.9 Operation of interconnections

(a) All **Class 3** purveyors [serving over 50,000 population] shall make a report as to the status of interconnections within one year of the effective date of this subchapter.

(b) All **Class 2** purveyors [serving over 10,000 population] shall make a report as to status of interconnections within three years of the effective date of this subchapter.

(c) If found to be necessary to accomplish the purposes of the Act, the Department may require purveyors serving less than 10,000 population to provide a report as to the status of interconnections.

(d) [The operator of all public community water systems serving over 10,000 population] **Class 2 and 3 purveyors** shall make interconnection flow tests (without measurement) on an annual basis on all interconnections six inches or more in diameter, unless exempted by the Department. **The results of such tests may be submitted to the Department at any time, but shall be submitted by the end of each calendar year.**

1. Such annual tests shall be attended by representatives of both interconnected systems.

2. When specifically ordered to do so by the Department, [the operator of any public community water system] **a purveyor** shall [be required to] perform complete interconnection flow tests.

(e) [The operator of all] **All purveyors operating** interconnections between public community water systems shall have rate tariffs for sale of water through such interconnections, which shall be part of the overall tariff for that system. The purveyor shall submit the tariff, once established, to the Board of Public Utilities, if appropriate, and to the Department.

(f) Higher rates may be charged during an emergency (see the Emergency Water Supply Allocation Plan Regulations, N.J.A.C. 7:19A-8.2).

(g) There shall be a written agreement between interconnected systems, specifying the conditions for use of each interconnection of six inches or more in diameter. The agreement must be approved by the Department and a copy placed on file with the Department.

7:19-6.10 Water supply critical areas: general

(a) Water supply critical areas are those areas in which it is officially determined by the Department, after public notice and a public meeting, that adverse conditions exist, related to the ground or surface water, which require special measures in order to achieve the objectives of the Act. The adverse conditions may include one or more of the following:

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1. Shortage of surface water by the diversions from surface or groundwater sources which leave insufficient surface water for authorized users or for environmental protection purposes in an area at least ten square miles in extent.

2. Shortage of ground water by overdraft [on] **affecting** at least ten square miles of an aquifer, beyond its [permanent] **long-term**, dependable yield. This may be demonstrated by a verified mathematical groundwater model. In the event that such model is unavailable, it may be demonstrated by one or more the following:

i. A progressive lowering of ground water to the extent that existing wells of 50 feet or more in depth are threatened or rendered inoperative;

ii. A reduction of the annual, average potentiometric surface in [a ten square mile or other given area of a] confined aquifer **s** to at least 30 feet below mean sea level (MSL), a portion of which area is within five miles of [the sea] **salt water** or which contains 250 parts per million or more of chloride isochlor;

iii. A reduction of the annual average potentiometric (pressure) surface in an unconfined or semi-confined aquifer to mean sea level or lower, [within a ten square mile area or greater,] a portion of which area is either within five miles of [the sea] **salt water** or contains 250 parts per million chloride isochlor;

3. Aquifer pollution, where actual pollution contaminates a substantial part of the aquifer or where major source(s) of hazardous or toxic pollution may be reasonably anticipated to contaminate the aquifer;

4. Location within the Delaware River Basin Commission planning areas, where, by interstate agreement, certain reporting, well-drilling, allocation or other requirements apply which are not required elsewhere in New Jersey.

(b) For water supply critical areas described in (a)1, 2 and 3 above, the delineation shall include all areas adversely affected and areas which may be adversely affected if present trends continue, such as where a progressive reduction of the potentiometric surface threatens existing wells or an aquifer with saline contamination. It may also include adjacent areas, where the slope of the potentiometric surface indicates a major source of water for the overdrawn area.

(c) Within water supply critical areas of the type described in (a)1 and 2 above, where it is necessary to balance competing needs, the Department may[, by Administrative Order,] reduce the privilege given to users to withdraw water, as previously allocated or authorized, and require those users to substitute water from a reasonably available alternative source. To the extent practicable, all users shall equitably share the burden of reductions and/or costs of replacement supplies. **Procedures set forth in N.J.A.C. 7:19-2 are applicable to reallocations.**

(d) Within critical **water supply** areas of the type described in (a)2 and 3 above, the Department[, by Administrative Order,] may require the following:

1. Special quality testing;

2. Reduction in the amounts of water withdrawn by users;

3. Substitution of alternative sources, as described in (c) above;

4. Artificial recharge, to prolong the life of the aquifer or to [avoid] **mitigate** or delay salt water intrusion;

5. Substitution of a different aquifer for the one already in use.

(e) A reduction in withdrawal amount shall not exceed the amount considered necessary to reduce the aggregate with-

drawal from the aquifer to the dependable yield from subsurface sources (see N.J.A.C. 7:19-6.2, Definitions).

(f) Within critical ***water supply*** areas of the type described in (a)*2, 3 and* 4 above, the Department may require water allocation for all wells withdrawing between 10,000 and 100,000 gallons per day, exclusive of single family residences ***and agricultural and horticultural water use certifications***.

(g) In specified portions of water supply critical areas of the types described in (a)1 and 2 above, where access to an alternative water supply source would be unduly expensive, users may be allowed to withdraw their full allocation from the source in short supply, in accordance with the following:

1. Full allocation is compensated for by corresponding additional reductions on the part of other users; and

2. The Department has given prior approval to the arrangements for full allocations; and

3. The extra costs of the alternative source are or will be equitably distributed between all users within the critical area;

4. Reduction or other restrictions may be arranged through participation in a regional plan ***approved by the Department***.

(h) Within critical ***water supply*** areas of the types described in (a)1, 2 and 3 above, the Department may require additional measures for water conservation, metering and leakage control which are more stringent than those required elsewhere in this chapter.

(i) Within critical ***water supply*** areas of the type described in (a)4 above, the Department may only institute controls and requirements required by interstate mandate unless the same area is also a critical area of the type described in (a)1, 2 or 3 above. If so classified ***and mandated***, the additional controls and requirements may include water allocation for diversions of less than 100,000 gallons per day, metering, added reporting requirements, restriction of inter-basin diversions, restriction of consumptive uses and water quality testing of wells.

(j) Any area, meeting the criteria of more than one of the critical area types described in (a) above, is subject to the requirements for each applicable type.

*** (k) Once established, a critical water supply area shall remain a critical area unless modified or designated otherwise by the Department, after determining that the reason(s) for the area's designation as a critical water supply area has changed or ceased to exist.***

7:19-6.11 Critical ***water supply*** areas in other than the coastal plain

(a) The establishment of critical water supply areas in other than coastal plain aquifers will depend upon the geological conditions.

(b) In large areas of fairly uniform characteristics, such as pleistocene buried valley aquifers, criteria may be the same as for coastal zone aquifers.

(c) Where aquifer characteristics are irregular, such as hard rock aquifers and unstratified glacial deposits, such that delineation of lowered piezometric pressure zone is impracticable, only widespread pollution or the existence of general deficiency in water supply without practicable alternative sources, may be bases for establishment of a water supply critical area.

7:19-6.12 ***Public participation*** ***[P]**p*rocedure*s*** for application of critical area requirements

(a) When the Department determines that a critical ***water supply*** area should be established or that arrangements should be initiated for ***[disproportionate]*** water allocations ***other than proportionate to existing allocations*** with consequent financial adjustments in an established critical area, the following requirements shall be met:

1. A written explanation and request for action shall be sent to parties known to be directly concerned ***and to concerned municipalities and public interest groups***.

2. Public notice shall be given and a public ***[meeting]* hearing*** shall be held.

3. Opportunity for written comments shall be given.

4. As appropriate, procedures under N.J.A.C. 7:19-2 shall be followed.

(b) Upon completion of the requirements in (a) above, the Department may issue an administrative order requiring establishment of the arrangements described in (a) above.

7:19-6.13 Administrative hearings

*** (a) A purveyor may [request]**apply in writing* to the Department *for* an administrative hearing before the Office of Administrative Law within 15 days of *receiving* an order or other final decision pursuant to N.J.A.C. 7:19-*[6.3(d)]* 6.6(a)3 *and* 6.8*[(e)]** (a)**[6.10(c) and 6.13(b)]*.**

*** (b) An adversely affected person may apply in writing to the Department for an administrative hearing before the Office of Administrative Law within 15 days of receiving an order or other final decision pursuant to N.J.A.C. 7:19-6.3(d), 6.10(a) and 6.13(b). Requests for administrative hearings relating to critical water supply area determinations under N.J.A.C. 7:19-6.10(a) shall not stay the effect of such determination nor stay implementation of response measures associated with such determinations.***

*** (c) The request for a hearing shall specify in detail the basis for the request. The Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate. Should the efforts to settle the dispute fail, *and the Department determines that the matter is a contest case,* the Department will forward the request for a hearing to the Office of Administrative Law, pursuant to the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).**

7:19-6.14 Penalties

Any person that violates any of the provisions of this subchapter shall be subject to the remedies and penalties set forth in section 16 of the Act (N.J.S.A. 58:1A-16).

(a)

BUREAU OF MARINE FISHERIES**Crab Dredging in the Atlantic Coast Section****Readopted New Rule: N.J.A.C. 7:25-7.13**

Proposed: November 19, 1984 at 16 N.J.R. 3216(a).

Adopted: February 25, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: February 25, 1985 as R.1985 d.131, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 23:2B-6, 50:1-5, and 50:4-2.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

DEP Docket No. 06-84-08.

Summary of Public Comment and Agency Response:

1. The deletion at subsection (b) of the prohibition against using crab pots on leased grounds by any person other than the lessee was recommended. As the regulation of crab pots is beyond the scope of this rule governing the use of crab dredges, the reference to crab pots is deleted in this adoption.

2. The deletion at subsection (b) of the lessee's or his employee's exemption from the prohibition against dredging within this 50-yard buffer zone marked leased shellfish grounds was recommended. As the lessee pays no fee for dredging in the buffer zone, the department has determined that this exemption is inequitable and deleted it in this adoption.

Full text of the readopted new rule follows (deletions from proposal shown in brackets with asterisk *[thus]*).

7:25-7.13 Crab dredging in the Atlantic Coast section

(a) No crabs may be caught or taken in the Atlantic Coast section by dredges unless a valid crab dredge license is aboard the vessel. The crab dredges shall conform to the following specifications:

1. The maximum length of the tooth bar shall be 75 inches in Raritan and Sandy Hook Bays and 38 inches in all other waters.

2. The maximum weight of the dredge shall be 110 pounds in Raritan and Sandy Hook Bays and 60 pounds in all other waters.

3. The maximum length of the teeth shall be six inches in Raritan and Sandy Hook Bays and three inches in all other waters.

4. The minimum space between teeth shall be three inches, measured at the base.

5. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two and one-half inches diameter and be connected with no more than five "S" hooks that measure not less than two and one-half inches in length as measured to the inside of the "S" configuration.

6. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line.

7. South of Route 36 (Highlands Bridge), no boat shall have more than four dredges working at the same time.

(b) No person shall catch, take, or attempt to take crabs by *[crab pot or]* crab dredge from any of the marked leased grounds except the lessee or his employee; and no person shall dredge or attempt to dredge crabs on any State oyster beds or grounds as defined in N.J.A.C. 7:25-19.1; and no person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds*[], except the lessee or his employee]*.

(c) Any clams, oysters, scallops, mussels or other bivalve mollusks, or finfish which may be caught incidentally to the catching of the crabs by dredge shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels or other bivalve mollusks, or finfish are caught; nor shall any person, while engaged in the catching and taking of crabs by dredge, have in his boat or possession any clams, oysters, scallops, mussels or other bivalve mollusks, or finfish obtained from any source.

1. The possession of clams, oysters, scallops, mussels or other bivalve mollusks, or finfish and dredges simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this rule.

2. Harvesting of oysters by dredging from leased shellfish grounds by the lessee thereof shall be exempt from this section.

(d) No person shall catch, take, or attempt to catch or take crabs from any of the lands of the Atlantic Coast Section except from one-half hour after sunrise to one-half hour before sunset between November 1 and March 31 north of Route 36 (Highlands Bridge), November 15 and March 31 south of Route 40 (Black Horse Pike), and December 1 and March 31 between Route 36 and Route 40, nor at any time on Sunday except in Raritan and Sandy Hook Bays.

(e) The license fee for New Jersey residents for the catching and taking of crabs by means of crab dredge shall be \$1.00 per gross vessel ton. The minimum license fee for New Jersey residents shall be \$15.00 and the maximum shall be \$50.00. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs by dredge in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be \$5.00 per gross vessel ton, with a minimum license fee of \$75.00 and a maximum fee of \$250.00.

(f) Any person who violates any of the provisions of this regulation shall be subject to the penalties set forth in N.J.S.A. 23:2B-14.

(g) All persons commercially licensed to take crabs by means of dredges in this State shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate records which shall include the number of bushels of crabs, and the areas fished. These records will be filed monthly with the Division of Fish, Game and Wildlife. Failure to file on or before the tenth of the month following the month of record may lead to suspension of license by the Division of Fish, Game and Wildlife. Prior to such suspension, a hearing shall be scheduled by the division and the violator notified of the date. Failure to appear at a scheduled hearing may result in suspension of license.

(a)

BUREAU OF SHELLFISHERIES**Preservation of Sea Clams****Adopted Amendment: N.J.A.C. 7:25-12.1**

Proposed: November 5, 1984, at 16 N.J.R. 2885(b).
Adopted: February 25, 1985 by Robert E. Hughey,
Commissioner, Department of Environmental Protection.

Filed: February 25, 1985 as R.1985 d.132, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 50:1-5, 50:2-6.1, and 50:2-6.3.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): December 5, 1988.

DEP Docket No. 063-84-06.

Summary of Relevant Public Comments and Agency Responses:

1. Testimony was given by a member of the Rutgers Sea Clam Investigation Project in support of opening a one mile-wide band of marine waters located between one and two miles off Brigantine and Atlantic City. These waters were previously closed as a conservation measure. This adoption allows the harvest of sea clams in these waters. (See N.J.A.C. 7:25-12.1(d)5.)

2. The proposed increase in landing fees from \$0.10 per bushel to \$0.15 per bushel met with comments of both approval and disapproval. This adoption reflects a compromise in setting the new landing fee at \$0.125 per bushel. (See N.J.A.C. 7:25-12.1(i).)

3. The proposed requirement that all sea clam cages or containers must be tagged also met with comments both of approval and disapproval. In order to aid in the identification of sea clam cages or containers during the offloading process, where the harvest of several clambers might inadvertently be misidentified, the department retains the proposed provision. (See N.J.A.C. 7:25-12.1(e)7.)

4. The proposed provision prohibiting the fishing within New Jersey marine waters by a Federally-permitted vessel on its designated Federal fishing day was vociferously objected to on the ground that this prohibition would work an extraordinary hardship on the harvesters.

The department has determined that the preexisting provisions prohibiting a vessel's fishing in or landing clams from both New Jersey and Federal waters during the same fishing excursion will adequately preclude invoking Federal catch limits on the harvest of sea clams from New Jersey marine waters even on the day or days the vessel is assigned to fish in Federal water so long as the vessel is not actually engaged in the harvest of clams in Federal waters on that day. Therefore, the proposed prohibition is not adopted. (See N.J.A.C. 7:25-12.1(e)2.)

5. During internal agency review, it was discovered that the description of the annual season for taking sea clams specified at N.J.A.C. 7:25-12.1(d)4, erroneously specified the 1982-1983 year where the intent was merely to specify the day and month of the annual opening and closure. Therefore, the

1982-1983 designation is deleted in this adoption. (See N.J.A.C. 7:25-12.1(d)4.)

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

7:25-12.1 Preservation of the sea clam resource in New Jersey

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

(c) General provisions are as follows:

1.-5. (No change.)

6. This subchapter may be enforced by the Division of Fish, Game and Wildlife, Bureau of Law Enforcement, and the New Jersey State ***[Policy]* *Police*** Marine Law Enforcement Bureau.

7. (No change.)

(d) Harvest limitations are as follows:

1.-2. (No change.)

3. When, at any time during the period of November 1 through May 31, the Department has determined that 500,000 bushels have been harvested from the waters of this State, the Department may close the State's waters to any further harvesting upon two day's public notice, or may increase the harvest limit and adjust the weekly per vessel limit, with the advice of the Shellfisheries Councils and the staff of the Rutgers Shellfish Laboratory, to extend the season. Said notice may be accomplished by publication in newspapers circulating in Monmouth, Ocean, Salem, Cumberland, Burlington, Atlantic, and Cape May Counties and by certified mail to each licensee. A public notice of any change pursuant to this subsection shall be published in the New Jersey Register.

[4.-5. (No change.)]

4. Season: Except for bait purposes as hereafter provided, the season for taking sea clams (*Spisula solidissima*) ***[on]* *in*** the waters of the State shall extend from November 1 ***[, 1982]*** through and including May 31 ***[, 1983]*** unless the season is earlier terminated if the season limit is reached.

5. Prohibited Fishing Areas: Including any areas which may be condemned for the harvest of shellfish without a special permit, the areas in which sea clams may not be taken are limited to those waters enclosed within the following description:

i. (No change.)

ii. Thence seaward ***[90.8°T 2]* *090.5°T one*** nautical mile^[s] to ***[the buoy BW (IE) longitude 74 degrees 15.90'W, Latitude 39 degrees 28.26'N, Loran A 3H5-3176, 3H4-3980; Loran C 9960-W-15615, 9960-X-26949, 9960-Y-43099]* *point 'A', latitude 39 degrees 28.25N longitude 74 degrees 17.20W, Loran C 9960-X-26958, 9960-Y-43099*;**

iii. And thence south following the line of the beach ***[two]* *one*** mile^[s] off shore to ***[the lighted bell buoy Mo(a), BW-"GE" Longitude 74 degrees 30.2'W, Latitude 39 degrees 17.0'N, Loran A 2H5-3186, 3H4-3802, Loran C 9960-W-15681, 9960-X-27015, 9960-Y-42966]* *point B Latitude 39-17.0'N, Longitude 74-31.5'W, Loran C 9960-X-27033 9960-Y-42975*;**

iv. Thence to the shore 268 degrees T to the watertank in Ocean City located at Haven Avenue between 7th and 8th Streets with a ***[longitude 74 degrees 34.6'W, latitude 39 degrees 16.9'N]* *latitude 39 degrees 16.9'N, longitude 74 degrees 34.6'W*;**

v. And the area of Island Beach from a point on the southern boundary of the area closed for shellfishing by N.J.A.C. 7:12-1 et seq. with ***[longitude 74 degrees 3.6'W, latitude 39 degrees 52.9'N, Loran A 3H4-4264, 3H5-3212.5]* *latitude**

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39 degrees 52.9' N, longitude 74 degrees 3.6' W*, Loran C ***[9960-W-15550.5,]*** 9960-X-26924, 9960-Y-43357, thence south following the line of the beach one nautical mile off shore to a point; ***[longitude 74 degrees 4.5' W, latitude 39 degrees 45.85' N, Loran A 3H4-4198, 3H5-3919.5]*** ***latitude 39 degrees 45.85' N, longitude 74 degrees 4.5' W***, Loran C ***[9960-W-15557.5,]*** 9960-X-26914, 9960-Y-43283, thence to the shore 090 degrees T to the abandoned light house with a ***[longitude 74 degrees 06.4' W, latitude 39 degrees 45.8' N]*** ***latitude 39 degrees 45.84' N, longitude 74 degrees 06.4' W***;

vi. (No change.)

(e) General control methods are as follows:

1. Any licensee fishing at any time in the State's waters, or who notifies the Division of Fish, Game and Wildlife's Bureau of Law Enforcement of his intention to fish in the State's waters as required below at (e)4, shall have his entire catch for that day counted as part of his weekly vessel quota.

2. No New Jersey licensed vessel shall transfer sea clams to any other vessel. All sea clams harvested in New Jersey waters shall be landed in New Jersey. No vessels shall fish in or land clams from ***both*** New Jersey ***and Federal*** waters ***[on the day or days it is assigned to fish in Federal waters]*** ***from the same fishing trip***.

3. (No change.)

4. A licensed vessel shall notify the Marine Enforcement Unit, Bureau of Law Enforcement of the Division of Fish, Game and ***[Wildfish]*** ***Wildlife***, of its intended fishing location each day it fishes in state waters. The notification shall be made by phone by calling (609) 441-3474. The telephone call shall be made by the captain of the vessel or his designee prior to fishing in State waters and prior to change of location.

5.-6. (No change.)

7. All sea clam cages or containers must be tagged with tags furnished by the Division before leaving the vessel. Tags shall not be removed until the cages or containers are emptied at the processing plant, at which point said tags will be discarded.

(f) (No change.)

(g) Miscellaneous provisions are as follows:

1. Bait clams:

i. (No change.)

ii. License and permit required: A Sea Clam Bait license for the taking of sea clams shall be required for the taking of bait clams. In addition, the special permit issued pursuant to Chapter 24, Title 58, of the New Jersey Statutes Annotated from the Division of Water Resources shall be required.

iii. (No change.)

iv. Season and time: The season for taking of bait clams ***[only]*** shall extend throughout the year. The time for taking bait clams shall be daily, Sunday through Saturday from November 1 ***[,]*** through May 31 between 6:00 a.m. and 6:00 p.m. and Monday through Saturday from ***one*** half-hour before sunrise to 4:00 p.m. from June 1 through October 31.

v. (No change.)

2. Rebuttable presumptions: The presence of a dredge overboard at any other time or in any of the prohibited ocean areas or both shall be rebuttable evidence of a violation of the provisions of this regulation. Any malfunction of gear causing the dredge to be left overboard in prohibited areas or at prohibited times, or both, shall be reported immediately to the Marine Enforcement Unit of the Division of Fish, Game and Wildlife.

3.-4. (No change.)

(h) (No change.)

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(i) Licensees shall pay a fee of ***[fifteen cents (\$0.15)]*** ***twelve and one-half cents (\$0.125)*** for each bushel, or its equivalent, of the sea clams harvested from the waters of this State. The Department shall use such monies for the conservation, protection, management, and improvement of the sea clam resource and industry.

(j)-(l) (No change.)

(a)

COMMISSION ON RADIATION PROTECTION

Nuclear Medicine Technology

Readoption: N.J.A.C. 7:28-24

Proposed: January 7, 1985 at 17 N.J.R. 22(a).

Adopted: February 22, 1985 by Max Weiss, Chairman, Commission on Radiation Protection.

Filed: February 25, 1985 as R.1985, d.140, **without change**.

Authority: N.J.S.A. 13:D-1 et seq. and 26:2D-1 et seq.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

DEP Docket No: 075-84-12.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:28-24.

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Noise Control

Adopted Amendments: N.J.A.C. 7:29-1.1, -1.2, -1.3, -1.4, and -1.5

Proposed: July 2, 1984 at 16 N.J.R. 1682(a).

Adopted: February 25, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: February 25, 1985, as R.1985 d.129, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1G-4.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

DEP Docket No.: 034-84-06.

Summary of Relevant Public Comments and Agency Responses:

Comment: If the costs which were incurred by one motor carrier to meet property-line standards of a local ordinance were extrapolated to every potential facility that could be affected by the proposed amendments, the cost of the proposed amendments would exceed \$100,000,000.00.

Response: It is in the opinion of the Department that the situation to which the commenter alluded was unique and that it would be inappropriate to extrapolate the costs related to this situation to every potential facility that could be affected by the proposed amendments.

Comment: The phrase "used for human habitation" (at N.J.A.C. 7:29-1.1), should be clarified to indicate whether the DEP is referring to "transient" use, such as people at a ball field, park, etc., "permanent" use, such as occupants of the domicile, or both.

Response: Both the use of the term "residential property" in the text of the regulation and the definition of the word "habitation" clearly indicate that the Department meant this term to refer to situations addressing a continued stay in a dwelling. The examples cited in the definition were used to clarify that a "residential property" was not limited to only private residences or property used exclusively for the purpose of human habitation.

Comment: The proposed peak sound pressure level of 80 decibels at N.J.A.C. 7:29-1.2, may not be practicable because natural or extraneous sound sources may exceed that level.

Response: The Procedures for the Determinations of Noise from Stationary Sources (N.J.A.C. 7:29B-1.1 et seq.) addresses the problems cited above. In particular, the procedures specify that:

1. Wind speed measurements must be conducted prior to testing and the sound measurements must be postponed until the wind speed is no greater than 12 miles per hour (N.J.A.C. 7:29B-1.8(c));

2. A wind screen must be used if a noise measurement is taken (N.J.A.C. 7:29B-1.8(c) and 1.9(b));

3. Sound level measurements must be postponed until extraneous sounds not located on the facility under investigation have abated (N.J.A.C. 7:29B-1.9(b)1.vi); and

4. Neighborhood residual sound levels must be measured (N.J.A.C. 7:29B-1.9(b)2) and appropriate corrections to the total sound level must be made (N.J.A.C. 7:29B-1.10(a)).

These procedures were instituted to ascertain that the sound level measurements are accurate and are related to the noise source under investigation.

Comment: Compliance with the proposed noise levels at N.J.A.C. 7:29-1.2, is not technologically feasible for commercial vehicle operations because:

1. Vehicle engine noise levels have been documented to be in excess of the proposed standard; and

2. An instantaneous noise reading as a vehicle enters or leaves a facility would automatically result in a violation of the regulation because of the inherent engine noise.

Using a noise measurement procedure which time-weight averages noisy and quiet periods would be more appropriate and would allow the facility operator to conduct his operations in a manner that would result, overall, in an acceptable noise level.

Response: The concerns of the commenter are adequately addressed by the noise level measurement procedures specified in the Procedures for the Determination of Noise from Stationary Sources (N.J.A.C. 7:29B-1.1 et seq.). In particular, subparagraph 1.9(b)1vi requires that the sound level measurement must be postponed until "extraneous sound sources such as passing vehicles" have abated unless "the extraneous sound is located on the facility under investigation." Thus, the rule clearly indicates that, with one exception, the noise generated by passing vehicles should not be included in the sound level measurement.

The one exception deals with whether the extraneous sound source is located on the facility. The department has consistently determined that a vehicle which is directly entering or leaving a facility is "in transit" as opposed to being "on a facility." Therefore, noise from these vehicles should not be included in the noise level measurement.

The rule also precludes the use of an instantaneous noise level reading in the manner indicated by the commenter. Specifically, N.J.S.A. 7:29B-1.9(b)1viii requires that the sound measurement reading be conducted "over a period of time sufficient to ensure that the sound levels measured are typical of the source under observation but in no event should the duration of the test be less than ten minutes." Sound level measurements conducted under the auspices of the Office of Noise Control are taken over a period of time interval that would insure that the sound levels measured are typical of the source under observation.

Comment: The cost of the trucking industry to meet the proposed noise levels could be rather substantial.

Response: As indicated in the Basis and Background for Proposed Amendments to the Noise Control Regulation, it is the opinion of the Department that the proposed amendment would result in no significant cost increase for the trucking industry. This determination was based on the past experience of the Department, which indicated that most of the facilities associated with commercial vehicle operations already are complying with the proposed standards.

Comment: Motor vehicle race tracks should not be exempted from noise control regulations. Noise control regulation should be adopted for these sources and the regulations should provide for immediate enforcement at the local level.

Response: Motor vehicle race tracks were specifically exempted from the operational performance standards of the Noise Control Regulation (N.J.A.C. 7:29-1.1 et seq.) because they were recognized to have unique noise problems which need to be addressed in a separate rule. Preliminary departmental efforts to develop rules for such unique noise problems have begun. It should be noted that this exemption does not prohibit any governing body of a municipality from adopting an ordinance which regulates the level or duration of community noise emanating from a motor vehicle racetrack or any other type of noise source not regulated by N.J.A.C. 7:29-1.1 et seq.

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

7:29-1.1 Definitions

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

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“Commercial facility” means any premises, property, or facility involving traffic in goods or furnishing of services for sale or profit including, but not limited to:

1. Banking and other financial institutions;
2. Dining establishments;
3. Establishments for providing retail services;
4. Establishments for providing wholesale services;
5. Establishments for recreation and entertainment;
6. Office buildings;
7. Transportation;
8. Warehouses.

“Community service facility” means any non-residential facility used to provide services to the public, including but not limited to:

1. Club meeting halls, offices and facilities;
2. Organization offices and facilities;
3. Facilities for the support and practice of religion;
4. Private and parochial schools.

“Continuous airborne sound” means sound that is measured by the slow response setting of a sound level meter in accordance with the provisions of N.J.A.C. 7:29B-1.

“dBA” means the abbreviation designating the unit of sound level as measured by a sound level meter using the A-weighting.

“Decibel” means the practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 micropascals); abbreviated “dB.”

“Emergency energy release device” means a device used specifically to release excess energy on a non-scheduled basis as necessary for purposes of safety.

“Frequency” means the number of sound pressure oscillations per second, expressed in hertz; abbreviated “Hz.”

“Impulsive sound” means either a single pressure peak or a single burst (multiple pressure peaks) having a duration of less than one second.

“Industrial facility” means any activity and its related premises, property, facilities, or equipment involving the fabrication, manufacture, or production of durable or nondurable goods.

“Octave band sound pressure level” means the sound pressure level measured in decibels in standard octave bands with a sound level meter.

“Peak sound pressure level” means the maximum instantaneous sound pressure level measured by a sound level meter on the PEAK setting.

“Person” means any individual, public or private corporation, political subdivision, governmental agency, department or bureau of the State, municipality, industry, copartnership, or association.

“Public service facility” means any facility and its related premises, property, or equipment used to provide governmental services to the public including, but not limited to:

1. Maintenance centers;
2. Offices and buildings of agencies or instrumentalities of government;
3. Schools;
4. Waste collection centers;
5. Waste recycling centers; ***and***
6. Water and sewage facilities*[*]**.*

“Residential property” means property used for human habitation including, but not limited to:

1. Private property used for human habitation;
2. Commercial living accommodations and commercial property used for human habitation;
3. Recreational and entertainment property used for human habitation;
4. Community service property used for human habitation.

“Sound level” means the sound pressure level measured in decibels with a sound level meter set for A-weighting; sound level is expressed in dBA.

“Sound level meter” means a ***n*** instrument used in accordance with the provisions of N.J.A.C. 7:29B-1 to measure sound pressure level, sound level, octave band sound pressure level, or peak sound pressure level, separately or in any combinations thereof.

“Sound pressure level” means the level of a sound measured in dB units with a sound level meter which has a uniform (“flat”) response over the band of frequencies measured.

“Stationary emergency signaling device” means any device, excluding those attached to motor vehicles, used to alert persons engaged in emergency operations. These include, but are not limited to, fire-fighters, first aid squad members, and law enforcement officers, whether paid or volunteer.

7:29-1.2 Industrial, commercial, public service, or community service facilities

(a) No person shall cause, suffer, allow, or permit sound from any industrial, commercial, public service or community service facility that, when measured at any residential property line, is in excess of any of the following:

1. From 7:00 A.M. to 10:00 P.M.:
 - i. Continuous airborne sound which has a sound level in excess of 65 dBA; or
 - ii. (No change.)
 - iii. Impulsive sound in air which has a peak sound pressure level in excess of 80 decibels.
2. From 10:00 P.M. to 7:00 A.M.:
 - i. Continuous airborne sound which has a sound level in excess of 50 dBA; or
 - ii. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands:

Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
31.5	86
63	71
125	61
250	53
500	48
1000	45
2000	42
4000	40
8000	38

; or

- iii. Impulsive sound in air which has a peak sound pressure level in excess of 80 decibels.

(b) No person shall cause, suffer, allow, or permit sound from any industrial, commercial, public service, or community service facility that, when measured at the property line of any other commercial facility is in excess of any of the following:

1. Continuous airbor***n*e** sound which has a sound level in excess of 65 dBA; or

2. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands:

Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
31.5	96
63	82
125	74
250	67
500	63
1000	60
2000	57
4000	55
8000	53

or;

3. Impulsive sound in air which has a peak sound pressure level in excess of 80 decibels.

7:29-1.3 Stationary emergency signaling devices

(a) Testing of only the electromechanical functioning of a stationary emergency signaling device shall occur at the same time each day that a test is performed, but not before 8:00 A.M. or after 8:00 P.M. Any such testing shall only use the minimum cycle test time. Except as provided for in (b) below, such test time shall not exceed ten seconds.

(b) Testing of the complete emergency signaling system including the electromechanical functioning of the signaling device and the personnel response to the signal shall not occur more than once in each calendar month. Such testing shall not occur before 8:00 A.M. or after 8:00 P.M. The ten second time limit on the electromechanical functioning of the signaling device shall not apply to such system testing.

(c) Stationary emergency signaling devices shall be used only for testing in compliance with applicable provisions of these regulations and for emergency purposes where personnel and equipment are mobilized.

7:29-1.4 Exceptions

(a) The operational performance standards established in this subchapter shall not apply to any of the following noise sources:

- 1.-2. (No change.)
3. Emergency energy release devices;
4. Emergency work to provide electricity, water or other public utilities when public health or safety is involved;
5. Motor vehicle race tracks;
6. National Warning System (NAWAS): Systems used to warn the community of attack or imminent public danger such as flooding or explosion. These systems are controlled by the New Jersey Office of Emergency or Hazardous Spill Management, Division of State Police;
7. Noise of aircraft flight operations;
8. Public celebrations;
9. Public roadways;
10. Surface carriers engaged in commerce by railroad;
11. The unamplified human voice;
12. Use of explosive devices: These are regulated by the New Jersey Department of Labor under the 1960 Explosive Act (N.J.S.A. 21:1A-1 to 21:1A-144).

7:29-1.5 Performance test principle

For the purposes of measuring sound in accordance with

the applicable provisions of these regulations, test equipment methods and procedures shall conform to the provisions of N.J.A.C. 7:29B*-1*.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Standard Hospital Accounting and Rate Evaluation (SHARE)

Readoption: N.J.A.C. 8:31A

Proposed: November 5, 1984 at 16 N.J.R. 2898(a).

Adopted: February 15, 1985, J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 19, 1985, as R.1985 d.121, without change.

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

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

COMMENT:

The SHARE system should be rebased to the base year of 1982 similar to the DRG hospitals.

RESPONSE:

By rebasing to 1982 the Hospital's overspending challenge would be eliminated between 1980 and 1982. It would not be appropriate to automatically waiver costs which have been deemed unreasonable through the SHARE appeal process. The current SHARE regulations provide a mechanism for a hospital to address these expenditures in the rate year as management changes. N.J.A.C. 8:31A-7.16; 8:31A-7.2; 8:31A-7.13.

COMMENT:

The SHARE system should be rebased to the base year 1982 to allow for increases in technology.

RESPONSE:

Costs for changes in technology may be requested through the normal appeals process provided by the SHARE Rate Review Guidelines. N.J.A.C. 8:31A-7.2; 8:31A-7.13.

COMMENT:

Unit of Service for Central Sterile Supply should be changed to Patient Days. Physical Therapy and other Physical Medicine costs centers should be changed to a relative value unit. The peer group for Central Sterile Supply, Physical Therapy, other Physical Medicine, and Physician's cost centers should be based on category rather than a Statewide basis for screening purposes.

RESPONSE:

The Units of Service currently established in the SHARE Rate Review Guidelines for central sterile supply, physical therapy, other physical medicine, and physician cost centers represent an equitable measurement for the development of reasonable unit costs. The hospital has not demonstrated that the proposed units of service would provide a more equitable measure for the development of reasonable unit costs or the impact of the proposed units of service on all SHARE facilities. N.J.A.C. 8:31A-7, Appendix A.

COMMENT:

A separate category should be created for Comprehensive Rehabilitation hospitals.

RESPONSE:

It is the Department's position that there is sufficient commonality among services of all rehabilitation hospitals that the reasonableness test based on the current peer groupings under the SHARE regulations are appropriate. N.J.A.C. 8:31A-7.12.

COMMENT:

The SHARE system should incorporate a Bad Debt Allowance and a Capital Facilities Allowance.

RESPONSE:

The hospital's capital costs are currently recognized under the SHARE regulations by allowing the hospital actual plant depreciation, lease costs, and capital interest costs to be passed through the system and incorporated into the reimbursement rate. The SHARE system provides for the reimbursement of New Jersey Blue Cross, and Medicaid patients only. Since the SHARE system was not intended to be an all payor system, it would be inappropriate to place the burden for bad debts on New Jersey Blue Cross and Medicaid. N.J.A.C. 8:31A-7.4.

COMMENT:

The SHARE system should eliminate the calculation of the Minimum Base Period Challenge.

RESPONSE:

The purpose of the minimum base period challenge (overspending) is to ensure that the actual costs in excess of the approved costs for the base year are not carried forward into the rate year. It is not a duplicate penalty, but rather the elimination of the base year unreasonable costs. N.J.A.C. 8:31A-7.5.

COMMENT:

The Average Physician Compensation should be calculated based upon the physician's specialty in Comprehensive Rehabilitation Hospitals.

RESPONSE:

The current SHARE regulations compare the average physician compensation based on the hospital's peer category as identified in the system. There is sufficient commonality among services of all rehabilitation hospitals that reasonable tests based on the current peer groupings under the SHARE regulations are appropriate. N.J.A.C. 8:31A-7.2.

COMMENT:

The SHARE Guidelines should be reflective of Comprehensive Rehabilitation Service, including licensure of Comprehensive Rehabilitation Hospitals.

RESPONSE:

The Department of Health continually reviews the SHARE Rate Review Guidelines for equity and reasonableness in establishing the rates. Based on current licensing standards for SHARE hospitals, there is sufficient commonality to perform reasonableness tests for peer cost comparison. N.J.A.C. 8:31A-7.2.

COMMENT:

The SHARE hospitals should have a Hospital Rate Commission similar to the DRG system as part of the appeals process.

RESPONSE:

The SHARE Rate Review Guidelines have always provided an appeal process for all hospitals concerning the establishment of the SHARE rates. Hospitals have never been denied due process under the system. The issue of right to appeal is not predicated on whether a facility appears before the Rate Setting Commission or the Administrative Law Judge, as long as the facility is provided a mechanism for the right to appeal. N.J.A.C. 8:31A-7.2; 8:31A-7.13.

COMMENT:

The employment Cost Index-Northeast proxy for the Development of the SHARE Economic Factor should be changed to the National Average Hourly Earnings for hospital workers.

RESPONSE:

The Department of Health is in agreement to changing the proxy from the Employment Cost Index-Northeast to the National Average Hourly Earnings for hospital workers. This change, once it is formally proposed and subsequently approved by the Health Care Administration Board, will be reflected in the 1985 SHARE rates and all subsequent years.

COMMENT:

The change to the SHARE Economic Factor should be retrospective beginning in 1983.

RESPONSE:

The negotiation on the revision to the economic factor wage proxy was solely related to the Chapter 83 of the Procedural and Methodological Regulations, DRG system. Therefore, applying the changes to the SHARE economic factor on a retrospective basis is inappropriate and the Department will not so propose.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:31A.

(a)**HOSPITAL REIMBURSEMENT****Diagnosis Related Groups (DRG) List Regulation****Adopted Amendment: N.J.A.C. 8:31B-5.2**

Proposed: November 19, 1984 at 16 N.J.R. 3119(a).
 Adopted: February 15, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).
 Filed: February 19, 1985 as R.1985 d.122, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-3.5.)

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

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 1, 1987.

Summary of Public Comments and Agency Responses:

Representatives of the hospital industry understand and are in agreement with the changes in the language from proposal to adoption.

COMMENT: Hospitals are still not certain of how they will be reimbursed for same day surgery patients as of January 1, 1985. The proposed amendment to the DRG List Regulation excludes these patients from outliers. However, the Procedural and Methodological Regulations at 8:31B-3.19(a)4 still states that same day surgery patients will be "treated as low trim outliers." Which regulation is correct?

RESPONSE: The DRG List Regulation amendment is correct. The Procedural and Methodological Regulation, N.J.A.C. 8:31B-3.19(a)4, will be amended.

COMMENT: The proposed amendment excludes DRGs with five or fewer cases from outliers. These low volume DRGs are still outliers and should not be excluded since they are reimbursed differently than inlier DRGs.

RESPONSE: The Department agrees with the comment and has modified the language in the amendment on low volume outlier patients.

COMMENT: Beginning in 1985, transfer patients will only be considered an earlier category at the transferring (sending) hospital. This should be made clear in the DRG List Regulation.

RESPONSE: The Department agrees with the comment and has modified the language on Transfer Patients to provide more clarification.

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

8:31B-5.2 Outliers

(a) Outliers are patients displaying atypical characteristics relative to other patients in a DRG. Payment for outliers is based on the methodology established in the Procedural and Methodological regulations (N.J.A.C. 8:31B-3.38).

(b) Outliers are defined as:

1. Patients assigned to a DRG but whose Length of Stay (LOS) is beyond the trim points established for the DRG

(shorter than the low LOS trim point or longer than the high LOS trim point);

[4.] 2. Patients admitted and discharged on the same date; exclusive of Same Day Surgery patients as defined in N.J.A.C. 8:31B-3.11.

[5.] 3. Patients assigned to DRGs defined as "clinical outlier" DRGs in N.J.A.C. 8:31B-5.3. Clinical outlier DRGs are DRGs with poorly defined clinical characteristics precluding valid comparison of patients within a DRG. Clinical outlier DRGs are generally those reserved for patients whose clinical characteristics are not comparable to any other established DRGs. Patients identified as having unrelated surgery are also considered clinical outliers.

4. As stated in the Procedural and Methodological Regulations (N.J.A.C. 8:31B-3.38), DRGs with five or fewer merged cases in the base year for a hospital will not have a hospital-specific payment rate in that hospital. Patients in such DRGs are billed and reconciled to the standard rate per case.

[7.] ***[6.]* *5.*** Transfer Patients: The circumstances under medical advice in which a patient needing continued acute care is transferred from one Acute Care Facility to another Acute Care Facility for diagnostic and/or therapeutic reasons. ***Patients transferred out of an Acute Care Facility will be considered outliers and billed a per diem rate by the transferring facility. Transferred patients received by an Acute Care Facility will be considered the same as non-transferred patients and billed the price per case by the receiving facility.***

(b)**DIVISION OF HEALTH FACILITIES
EVALUATION****Home Health Agencies
Standards for Licensure****Readoption: N.J.A.C. 8:42-1**

Proposed: December 3, 1984 at 16 N.J.R. 3250(a).
 Adopted: February 14, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
 Filed: February 19, 1985 as R.1985 d.117, **without change**.

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

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment from the Ocean County Health Department. The commentor requested that the proposed readoption of licensure standards for home health agencies contain provisions requiring home health agencies to have a "specific indigent care factor."

The Department's response was in three parts. First, the Department indicated that such requirements could be implemented either through the licensure process or through Certif-

icate of Need regulations. (N.J.A.C. 8:42-1.2). Secondly, the Department maintains that the proposal was a re-adoption of existing regulations without change and was not intended as a revision. Therefore, it would have been inappropriate at that time to propose any additions or modifications to the regulations. Finally, the Department explained that the recently adopted amendment regarding the Commissioner's Certificate of Need Approval Letter (17 N.J.R. 285 d.), to which the commentor made reference, is a licensure regulation which enables the Department to enforce policy decisions of the Commissioner regarding conditions imposed upon individual facilities in the Certificate of Need Approval Letter. This adopted amendment applies to all health care facilities including home health agencies.

The commentor was advised that he may want to contact the Division of Health Planning and Resources Development of our Department since that Division is responsible for promulgating Certificate of Need regulations. The Department will consider the commentor's recommendation when the licensure standards for home health agencies are revised.

Full text of the re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 8:42-1.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards; All Health Care Facilities
Commissioner's Certificate of Need
Approval Letter**

Adopted Amendments: N.J.A.C. 8:42-1.2(c)

Proposed: November 19, 1984 at 16 N.J.R. 3125(a).
Adopted: February 15, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: February 19, 1985, as R.1985 d.118, **without change.**

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

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment from the Assistant Deputy Public Advocate, State of New Jersey, Department of the Public Advocate, Division of Public Interest Advocacy, supporting the proposed amendments. The Department acknowledges receipt of the comment.

Full text of the adopted amendment follows.

8:42-1.2(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions must result in the imposition of sanctions in accordance with

Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards for Licensure of Hospital Facilities
Definitions, Classifications and Licensing
Policies**

Adopted New Rule: N.J.A.C. 8:43B-1

Proposed: December 3, 1984 at 16 N.J.R. 3275(a).
Adopted: February 15, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: February 19, 1985, as R.1985 d.115, **without change.**

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

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

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

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 8:43B-1.

(c)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards; All Health Care Facilities
Commissioner's Certificate of Need
Approval Letter**

**Adopted Amendments: N.J.A.C.
8:43B-1.7(f)**

Proposed: November 19, 1984 at 16 N.J.R. 3125(a).
Adopted: February 15, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: February 19, 1985 as R.1985 d.116, **without change.**

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

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment from the Assistant Deputy Public Advocate, State of New Jersey, Department of the Public Advocate, Division of Public Interest Advocacy, supporting the proposed amendments. The Department acknowledges receipt of the comment.

Full text of the adopted amendment follows.

8:43B-1.7(f) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions must result in the imposition of sanctions in accordance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Non-Residential Medical Day Care Facilities
Standards for Licensure**

Readoption: N.J.A.C. 8:43F

Proposed: December 3, 1984 at 16 N.J.R. 3277(a).
Adopted: February 15, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: February 19, 1985, as R.1985 d.120, **without change**.

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

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:43F.

(b)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards; All Health Care Facilities
Commissioner's Certificate of Need
Approval Letter**

**Adopted Amendments: N.J.A.C.
8:43F-2.1(c)**

Proposed: November 19, 1984 at 16 N.J.R. 3125(a).
Adopted: February 15, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: February 19, 1985, as R.1985 d.119, **without change**.

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

Effective Date: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment from the Assistant Deputy Public Advocate, State of New Jersey, Department of the Public Advocate, Division of Public Interest Advocacy, supporting the proposed amendments. The Department acknowledges receipt of the comment.

Full text of the adopted amendment follows.

8:43F-2.1(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

HUMAN SERVICES

(c)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

Manual for Psychological Services

Adopted Amendment: N.J.A.C. 10:67-2.6
**Readoption: N.J.A.C. 10:67-1.1 through 1.6,
1.10 and 1.11**
**Adopted Concurrent Amendments: N.J.A.C.
10:67-1.7, 1.8, 1.9**

Proposed: November 19, 1984 at 16 N.J.R. 3163(a).
Adopted: February 19, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: February 19, 1985 as R.1985 d.114, **without change**.

Authority: N.J.S.A. 30:4D-6b(10), 7 and 7b.

Effective Date of Readoption: February 19, 1985.
Effective Date of Amendments: March 18, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990 for N.J.A.C. 10:67-1; July 9, 1986 for N.J.A.C. 10:67-2.6.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:67-1.

Full text of the adopted amendments follows.

10:67-1.7 Policies related to inpatient care
(a) (No change.)

(b) Patients will be admitted to a hospital only on the direction of a physician. Under the Health Services Program, the hospital record of admission will serve as the physician's certification of need. The physician's certification and recertification and utilization committee's approval and reapproval must be on file at the hospital and must be kept available for audit. Certification is not required for outpatient services.

(c) (No change.)

10:67-1.8 Prior authorization

(a) Prior authorization means approval by the Chief, Bureau of Mental Health Services, Division of Medical Assistance and Health Services, of a mental health service before the service is rendered.

1. Exception: For patients in long term care facilities, prior authorization of a mental health service is obtained from the Division's medical consultant at the Medicaid District Office (M.D.O.).

(b) (No change.)

(c) When prior authorization is required, the following procedures are to be observed:

1. For patients residing in a long term care facility (LTCF) the request is to be submitted on a "Request for Authorization of Psychiatric Services" form (FD-07) to the Medicaid District Office that services the LTCF. Items 1 through 17 on the FD-07 must be completed, except items 10, 11, 12 need not be filled in if a copy of the consultation report is attached.

2. For patients who do not reside in an LTCF, but live in a community setting, including a sheltered boarding home, the request for prior authorization is to be submitted (form FD-07) directly to the Chief, Bureau of Mental Health Services, CN-712, Trenton, New Jersey 08625. Items 1 through 17 must be completed.

(d) (No change.)

(e) If the request for prior authorization is approved, both the provider copy and the contractor copy will be returned to the provider. The provider must attach the contractor copy of the FD-07 to the claim form that is submitted to the Prudential Insurance Company; otherwise, the claim will not be processed for payment and will be returned to the provider.

(f) If the request for authorization is denied, the provider shall be notified of the reason, in writing, by the unit of the Division responsible for the decision.

10:67-1.9 Basis of payment

(a) Psychological services are reimbursed on a fee-for-service basis in accordance with the Procedure Code Manual, which is referenced at N.J.A.C. 10:54-3. In no event shall the payment exceed the charge by the provider for identical services to other governmental agencies; or other groups or individuals in the community. If a patient receives care from more than one member of a partnership or corporation in the same discipline, the maximum payment allowance would be the same as that of a single attending physician.

(b) Payment for a psychological consultation shall be considered as inclusive for all psychologic services provided, performed or rendered on that day. No additional reimbursement will be allowed for therapy on the day that a consultation is provided.

10:67-2.6 Directory of Medicaid District Offices (MDO)

(a) (No change.)

(No change in list.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families

Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Adopted Amendment: N.J.A.C. 10:123-3.2

Proposed: January 7, 1985 at 17 N.J.R. 39(b).

Adopted: February 22, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Filed: February 25, 1985 as R.1985 d.134, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 27, 1985.

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

Full text of the adopted amendment follows.

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding house shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing herein, a personal needs allowance in the amount of at least \$52.00 per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Automobile Insurance

Automobile Reparation Reform Act

Readoption with Amendments: N.J.A.C. 11:3-7

Proposed: January 7, 1985 at 17 N.J.R. 43(a).

Adopted: February 13, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: February 13, 1985 as R.1985 d.109, **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C:6-(e), 39:6A-1 et seq., and 39:6A-10.

Effective Date: March 18, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): February 13, 1990.

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

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

SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

11:3-7.1 Purpose

This subchapter implements certain provisions of the Automobile Reparation Reform Act, N.J.S.A. 39:6A-1 as amended. The Act empowers the Commissioner to establish the amounts and terms of additional Personal Injury Protection benefits which must be provided in policies covering automobiles as defined in N.J.S.A. 39:6A-2.

11:3-7.2 Minimum schedule of additional personal injury protection benefits

(a) In addition to the personal injury protection benefits insurers must provide according to N.J.S.A. 39:6A-4, insurers must offer additional benefits pursuant to ***N.J.S.A. 39:6A-10 and*** this subchapter.

(b) Table 1 in N.J.A.C. 11:3-7.4(b) outlines the minimum schedule of "additional personal injury protection" coverage benefits that insurers must make available ***[in accordance with N.J.S.A. 39:6A-10]***.

(c) The additional coverage shall be offered by the insurer at least annually on a form prescribed by the Commissioner of Insurance which shall be attached to or accompanying all applications, initial policies and renewal policies or renewal notices.

1. The Buyer's Guide/Written Notice specified at N.J.S.A. 39:6A-23 and N.J.A.C. 11:3-15 will meet the requirements of (c) above.

(d) Each insured shall be provided with a form on which he may conveniently indicate any change in benefits desired.

11:3-7.3 Policy form or endorsement

(a) The policy form or endorsement providing the personal injury protection benefits shall provide that the benefits required by N.J.S.A. 39:6A-4 as stated in 1 through 5 below shall be afforded by the insurer of the injured person, subject to any deductibles or exclusions elected by the policyholder pursuant to N.J.S.A. 39:6A-4.3:

1. Medical expense benefits;
2. Income continuation benefits;
3. Essential services benefits;
4. Death benefits; and
5. Funeral expense benefits.

(b) Each policy form or endorsement shall include excess medical payments coverage, corresponding to Section II, Extended Medical Expense Benefits Coverage of the personal automobile policy. Insurers must ***[offer]* *include*** a minimum coverage of \$1,000 and may offer coverage of \$10,000.

11:3-7.4 Filings

(a) Additional personal injury protection coverage: Every rate filer's schedule of rates shall provide at least the benefit schedules set forth in Table 1 in (b) below.

(b) The additional personal injury protection coverage table follows:

Table 1

Option	Income		Essential Services		
	Weekly	Total	Per Day	Total	Death
1	\$100	\$10,400	\$12	\$ 8,760	\$10,000
2	125	13,000	20	14,600	10,000
3	175	18,200	20	14,600	10,000
4	250	26,000	20	14,600	10,000
5	400	41,600	20	14,600	10,000
6	500	52,000	20	14,600	10,000
7	600	62,400	20	14,600	10,000
8	700	72,800	20	14,600	10,000
* 9	100	unlimited	12	8,760	10,000
10	125	unlimited	20	14,600	10,000
11	175	unlimited	20	14,600	10,000
12	250	unlimited	20	14,600	10,000
13	400	unlimited	20	14,600	10,000
14	500	unlimited	20	14,600	10,000
15	600	unlimited	20	14,600	10,000
16	700	unlimited	20	14,600	10,000*

(c) The following rules apply to Table 1 in (b) above.

1. The benefit indicated in each option for Income Benefits and Essential Services Benefits is the aggregate of the Basic and Additional Personal Injury Protection Benefits.

2. The additional personal injury protection income benefits are limited to 75 percent of the insured's weekly income.

3. Limits apply per person, per accident.

4. Death Benefits shall be payable provided death occurs within 90 days from the date of the accident.

(d) Income continuation benefits for as long as the disability persists shall be made available by each insurer. Rates for such benefits shall be given ***[on]* *when* request*ed*** by the insured.

(e) Nothing in this section is intended to prohibit the marketing of Additional Coverage on a per car basis.

11:3-7.5 Cancellation of automobile coverage for nonpayment of premium

(a) This rule applies to all automobile policies delivered or issued for delivery in this State, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, not rented to others; or

2. Any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not customarily used in the occupation, profession or business of insured, other than farming or ranching, provided, however, that this rule shall not apply to any policy insuring more than four automobiles, or to any policy covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards.

(b) The effective date of the cancellation of a policy for nonpayment of premium shall be not earlier than 10 days prior to the last full day of which premium received by the company prior to the date of preparation of the cancellation notice, would pay for coverage on a pro rata basis. In calculating the effective date of the cancellation as provided in this

section, the premium applicable to the coverages provided by the policy and the premium received by the company at or prior to the time cancellation notice was prepared shall be the premium used for the calculation and determination of such effective date.

(c) Cancellation for nonpayment of premium does not include cancellation at the request of a premium finance company or of a producer of record under N.J.A.C. 11:1-3.1.

(d) No cancellation notice shall be mailed prior to 30 days in advance of its effective date.

(e) The rule shall not apply to deposits accompanying New Jersey Automobile Insurance Plan applications which are insufficient under Plan rules or those of any succeeding residual market availability plan.

(a)

DIVISION OF ADMINISTRATION

**Automobile Insurance Group Self Insurance
Joint Insurance Funds for Local
Governmental Units**

Readopted Amendment: N.J.A.C. 11:15-2.15

Proposed: January 21, 1985 at 17 N.J.R. 218(a).

Adopted: February 22, 1985 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: February 22, 1985 as R.1985 d.128, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), and P.L. 1983, c.372 (N.J.S.A. 40A:10-36 et seq.).

Effective: February 22, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): December 3, 1989.

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

Full text of the adoption follows.

11:15-2.5 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. During the first year of operation of a joint insurance fund these contributions shall be paid in two equal installments, the first installment payable no later than January 15 and the second installment payable no later than May 15 or in any other manner that the Commissioner in his discretion may direct. Subsequent years' assessments may be paid in such installments as shall be provided in the fund's bylaws, provided, however, that the full assessment shall be paid by each member no later than August 1.

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

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Motorized Bicycles

Motorized Bicycle Operator License

**Adopted Repeals: N.J.A.C. 13:25-3.15, 3.16
and 3.17**

Adopted New Rule: N.J.A.C. 13:25-3.15

Proposed: January 7, 1985 at 17 N.J.R. 48(a).

Adopted: February 13, 1985 by Clifford W. Snedeker, Director, Division of Motor Vehicles.

Filed: February 19, 1985 as R.1985 d.112, **without change.**

Authority: N.J.S.A. 39:4-14.3c.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

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

Full text of the adopted repeals appears in the New Jersey Administrative Code at N.J.A.C. 13:25-3.15 through 13:25-3.17.

Full text of the adoption follows.

13:25-3.15 Expiration of motorized bicycle operator license; no-fee renewal

(a) Every motorized bicycle operator license shall expire on the last day of the forty-eighth calendar month following the calendar month in which the license was issued.

(b) All applications for renewals of licenses shall be made on forms prescribed by the director and shall be issued at no-fee.

(c)

**BOARD OF BEAUTY CULTURE
CONTROL**

Beauty Culture Industry

Readoption: N.J.A.C. 13:28-1

Proposed: January 7, 1985 at 17 N.J.R. 49(a).

Adopted: February 11, 1985 by Board of Beauty Culture Control, Bridget Damiano, President.

Filed: February 25, 1985 as R.1985 d.139, **without change.**

Authority: N.J.S.A. 45:4A-13 and 16.

Effective Date: February 25, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 25, 1990.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:28-1.

(a)

**BOARD OF EXAMINERS OF
OPHTHALMIC DISPENSERS AND
OPHTHALMIC TECHNICIANS**

Minimum Standards and Tolerances

Adopted Amendment: N.J.A.C. 13:33-1.38

Proposed: December 3, 1984 at 16 N.J.R. 3288(b).
Adopted: January 9, 1985 by New Jersey State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, J. Leo Kymer, President.
Filed: February 19, 1985 as R.1985 d.113, **without change.**

Authority: N.J.S.A. 52:17B-41.13.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

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

Full text of the adoption follows.

13:33-1.38 Minimum standards and tolerances

(a) Every prepared pair of lenses, spectacles, eyeglasses or appurtenances thereto dispensed to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their profession, or duplication, replacement, reproduction or repetitions, must conform to the following minimum standards and tolerances:

1.-6. (No change.)

- 7. Prism power and location of specified optical center

Vertical + or - 0.25 prism for each lens or a total of 1/3 prism imbalance.
Horizontal + or - 0.25 prism for each lens or a total of 0.50 prism diopter imbalance; if prism exceeds .50 prism diopter, the optical centers must be within 2 mm. If prism is less than .50 prism diopter, the optical centers must be within 4mm.

8.-13. (No change.)

(b)

**BOARD OF EXAMINERS OF
OPHTHALMIC DISPENSERS AND
OPHTHALMIC TECHNICIANS**

Contact Lenses

Readoption: N.J.A.C. 13:33-4.1

Proposed: October 1, 1985 at 16 N.J.R. 2513(a).
Adopted: January 9, 1985 by New Jersey State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, J. Leo Kymer, President.
Filed: February 25, 1985 as R.1985 d.136, **without change.**

Authority: N.J.S.A. 52:17B-41.13.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

There was one comment received in response to the rule as proposed. It was authored by a contact lens wearer who requested that the Board consider the plight of those wearers who only require a replacement lens on occasion. The inconvenience of the necessity for an appointment with an optometrist or ophthalmologist was cited for Board consideration of a possible exception to the rule.

In response to the issue raised by the comments, the Board discussed again those factors pertinent to the readoption of the rule. Although the Board recognized the inconveniences which may result for veteran contact lens wearers on those limited occasions where a replacement lens is all that is required, it was determined that the public health concerns outweighs this inconvenience. Notwithstanding the infrequency, there could still be that instance where a lens of poor quality could cause problems to the eye. The optician cannot currently be held responsible or accountable for such a situation, and the consumer would be left without recourse. At present, the Board feels control should be maintained by one licensed to fit contact lenses to avoid these problems and to minimize any other risks to the ocular health and safety of the public.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:33-4.1.

(c)

NEW JERSEY RACING COMMISSION

Thoroughbred and Harness Rules: Claiming

**Readoptions: N.J.A.C. 13:70-12 and
13:71-14**

Proposed: January 7, 1985 at 17 N.J.R. 57(a).
Adopted: February 22, 1985 by New Jersey Racing Commission, Harold G. Handel, Executive Director.
Filed: February 25, 1985 as R.1985 d.137, **without change.**

ADOPTIONS

Authority: N.J.S.A. 5:5-30.

Effective Date: February 25, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 25, 1990.

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

Full text of the readoptions appears in the New Jersey Administrative Code at N.J.A.C. 13:70-12 and 13:71-14.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules: Applications

Adopted Amendment: N.J.A.C. 13:71-7.7

Proposed: January 7, 1985 at 17 N.J.R. 57(b).

Adopted: February 22, 1985 by New Jersey Racing Commission, Harold G. Handel, Executive Director.
Filed: February 25, 1985 as R.1985 d.138, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

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

Full text of the adoption follows.

13:71-7.7 Applications

(a) (No change in text.)

1. In considering each application for a license, the steward may require the applicant, as well as the applicant's endorsers, to appear before him.

2. The burden shall be upon the applicant to show that he, she or it is qualified in every respect to receive the license applied for.

3. Ability, as well as integrity, must be clearly shown by the applicant in order to receive the steward's recommendation to the New Jersey Racing Commission for the granting of the license.

TRANSPORTATION

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes 27 in Union County and 45 in Gloucester County

Adopted Amendments: N.J.A.C.
16:28A-1.18 and 1.31

TRANSPORTATION

Proposed: January 7, 1985 at 17 N.J.R. 58(a).

Adopted: February 8, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: February 22, 1985 as R.1985 d.127, **without change.**

Authority: N.J.S.A. 27:1A-5, 1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

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

Full text of the adoption follows.

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 described in this section 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.-21. (No change.)

22. Along the northbound (easterly) side in the City of Linden, Union County:

i. Far side bus stop:

(1) Wood Avenue—Beginning at the northerly curb line of N. Wood Avenue and extending 160 feet northerly therefrom.

16:28A-1.31 Route 45

(a) The certain parts of State highway Route 45 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-5. (No change.)

6. No stopping or standing in West Deptford Township, Gloucester County:

i. Along the westerly side:

(1) Beginning at the northerly curb line of Hessian Avenue and extending 200 feet northerly therefrom.

(c)

TRANSPORTATION OPERATIONS

No Passing Zones

Routes 324 in Gloucester County; 31 in Hopewell Township; 15 in Morris County and 159 in Essex County

Adopted Amendment: N.J.A.C. 16:29-1.4

Adopted New Rules: N.J.A.C. 16:29-1.46, 1.47 and 1.48

Proposed: January 7, 1985 at 17 N.J.R. 59(a).

Adopted: February 8, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: February 22, 1985 as R.1985 d.126, **without change.**

TRANSPORTATION

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

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

Full text of the adoption follows.

16:29-1.4 Route 31

(a) The following certain parts of State highway Route 31 shall be designated and established as "No Passing" zones:

1. Within City of Trenton, Ewing Township, Hopewell Township and Pennington Borough in Mercer County and described in drawing number HNPZ-014 dated August 15, 1977.

2.-3. (No change.)

16:29-1.46 Route 324

(a) The following certain parts of State highway Route 324 shall be designated and established as "No Passing" zones:

1. That part within Logan Township, Gloucester County and described in drawing number HNPZ-077 dated October 5, 1984.

16:29-1.47 Route 15

(a) The following certain parts of State highway Route 15 shall be designated and established as "No Passing" zones:

1. That part within the Town of Dover, Rockaway Township and Wharton Borough, Morris County and described in drawing number HNPZ-078 dated October 15, 1984.

16:29-1.48 Route 159

(a) The following certain parts of State highway Route 159 shall be designated and established as "No Passing" zones:

1. That part within Fairfield Borough, Essex County and described in drawing number HNPZ-080 dated October 17, 1984.

(a)

TRANSPORTATION SERVICES

Transportation of Hazardous Materials

Adopted New Rule: N.J.A.C. 16:49

Proposed: November 5, 1984 at 16 N.J.R. 2979(a).

Adopted: February 11, 1985 by James A. Crawford, Assistant Commissioner for Transportation Services.

Filed: February 19, 1985 as R.1985 d.123, **with technical and substantive changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, Hazardous Materials Transportation Act, Pub. L. 93-633 (49 U.S.C. 1801 et seq.), and 39:5B-25 et seq. (P.L. 1983, Chapter 401).

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

ADOPTIONS

Consultation Efforts:

As mandated under N.J.S.A. 39:5B-25 et seq., the New Jersey Department of Transportation consulted with all appropriate agencies and departments in developing the state's Hazardous Material Regulations. The Department organized a formal working group composed of designated members from each of the following agencies: (1) Association of American Railroads, (2) National Council of Physical Distribution Managers, (3) New Jersey Board of Public Utilities, (4) New Jersey Chamber of Commerce, (5) New Jersey Department of Agriculture, (6) New Jersey Department of Commerce and Economic Development, (7) New Jersey Department of Environmental Protection, (8) New Jersey Department of Health, (9) New Jersey Department of Labor, (10) New Jersey Department of Law and Public Safety, (11) New Jersey Department of Transportation, (12) New Jersey Department of Treasury, (13) New Jersey Fuel Merchants Association, (14) New Jersey Industrial Development Association, and (15) New Jersey Motor Truck Association. Coordination efforts were also pursued with the Federal Highway Administration and the Port Authority of New York and New Jersey. The regulations published herein were sent to the above named agencies for comment.

Summary of Public Comments and Agency Responses.

Four comments were received regarding the proposal. They were from: (1) Drug and Toilet Preparation Traffic Conference, Inc., (D&TPTC) (2) Fuel Merchants Association of New Jersey, (3) New Jersey Department of Environmental Protection, and (4) The Port Authority of New York and New Jersey.

1. The Drug and Toilet Preparation Traffic Conference, Inc. (D&TPTC) endorsed the state's hazardous material regulations as a whole and commended the pragmatic efforts of the New Jersey Department of Transportation in adopting uniform regulations, citing the economic benefits of so doing in addition to the benefit of improved compliance. The Drug and Toilet Preparation Traffic Conference, however, opposed four aspects of the regulations:

Comment: The D&TPTC opposed the provision of N.J.A.C. 16:49-1.3(h), stating that "allowing stricter more stringent standards, which may be inconsistent with each other and may be inconsistent with CFR 49 standards, to govern will result in" endless problems. The D&TPTC recommended instead that regulatory agencies get together such as was done by USDOT and USEPA where EPA acknowledged in 40 CFR 263.10 that "a carrier complying with DOT requirements will be considered in compliance with corresponding EPA requirements even though those requirements may be stated differently".

Response: To address the D&TPTC comments, the New Jersey Department of Transportation explicitly recognized NJDEP's authority in the areas of hazardous waste, radioactive materials, and spill compensation and control. Should problems develop for the shipping or motor carrier industries, the Department will consider further clarifying language and/or inter-agency agreements with appropriate agencies.

Comment: The D&TPTC states that "the penalty provisions as specified by N.J.S.A. 39:5B-25 . . . are at the same time too lenient and too severe."

Response: NJDOT recognizes the problem with the penalty schedule as adopted by the Legislature. As a result, the Department has recommended to the Legislature that the penalties be made less severe, because of the nature of many of the

minor violations which will be cited. A revised penalty schedule is pending in Senate Bill S 2296, introduced on October 18, 1984. For more severe cases, the Department notes that because of the complexity of the regulations, frequent or dangerous violators may be cited for multiple infractions, and that each violation is to be treated separately. In addition, when a violation is a continuing one, each day of the violation constitutes a separate offense, as stated in N.J.A.C. 16:49-1.4.

Comment: "The required compliance of the packaging manufacturers seems to get lost in 16:49-1.2 and 16:49-1.3(c), although compliance will be required by the adopted 49 CFR Section 171.2(c). N.J.A.C. 16:49-1.3(b) authorizes inspection of hazardous materials but is silent on access to shipper or carrier records."

Response: The Department has clarified the right to inspect places of origin in the state as may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq. and the regulations adopted supplementary thereto in N.J.A.C. 16:49-1.3(b). This provision has also been clarified to specify the right to inspect shipping and carrier records in response to the above comment.

Comment: "Part 16:49-1.5 on document availability could be misleading to people not familiar with the Federal system. When one receives a copy of CFR 49 it will be obsolete in part. The Code of Federal Regulations are constantly amended in the Federal Register."

Response: Please note that the Department has adopted the federal Hazardous Material Regulations, revised as of November 1, 1983, and the Federal Motor Carrier Safety Regulations, revised as of October 31, 1983. The Department plans to update the regulations as new publications become available. Hence, it will not be necessary for intrastate carriers to review the Federal Register changes on a regular basis.

2. The Fuel Merchants Association of New Jersey, representing 500 fuel oil and gasoline distributing companies within the state, had several concerns with respect to the proposed hazardous material regulations, as follows.

Comment: While noting the exceptions granted to carriers of combustible liquids in Section 173.118(a), the Fuel Merchants are concerned with the economic impact of the regulations on the intrastate gasoline distribution business. Primary concerns are related to the requirements of the Motor Carrier Safety Act relating to age, medical certification, driver training, hours of service, and on-duty time. These requirements may necessitate the termination of certain employees and training of new employees to replace them. In addition, the Fuel Merchants Association is concerned with the vehicle construction requirements of Section 178. The Association requested a grandfather provision or clause to take these vehicles into account. At the very least, the Association requested an implementation period be granted before penalty provisions are assessed to allow industry personnel time to understand and learn about the compliance requirements.

Response: The U.S. Department of Transportation considers the distribution of gasoline, classified as a flammable liquid, sufficiently dangerous during transportation to warrant the requirements with which the Fuel Merchants Association is concerned. The New Jersey Department of Transportation concurs with this finding. Half of the hazardous material incidents recorded by U.S.D.O.T. to have taken place in New Jersey between 1971 and 1983, involved flammable liquids. Combustible liquids, on the other hand, are not subject to these more stringent requirements since they pose less risk during transportation and were involved in fewer hazardous

material incidents (5%). The N.J. Department of Transportation, while recognizing the significance of the conditions imposed on the gasoline distribution industry, has not been authorized to grant grandfathering provisions or an implementation period without penalties. The Department has, however, recommended a reduction in the penalty schedule to the Legislature. These provisions are contained in Senate Bill S 2296 introduced on October 18, 1984.

Comment: The Fuel Merchants Association objected to the use of Sections 178.340-2 and 177.804 under the Hazardous Material Regulations to assess heavier penalties or fines for minor vehicle violations such as a broken tail light, reflector, or cracked mirror.

Response: The N.J. Department of Transportation and the Division of State Police recognize the above problem. Consequently, the Department has recommended a reduction in the penalty schedule to the Legislature. These provisions are contained in Senate Bill S 2296 introduced on October 18, 1984. In addition, the bill presently contains explicit language to require violations dealing with motor vehicle equipment and inspection to be cited under the provisions and penalties prescribed under Article 3 of Chapter 3 and of Chapter 8 respectively of Title 39 of the Revised Statutes, rather than provisions of N.J.S.A. 39:5B-25 et seq., as the above comment suggests.

Comment: Finally, the Fuel Merchants Association requested that the Department of Transportation adopt minimum insurance levels required to transport hazardous materials as required by part 387 of the federal Department of Transportation regulations.

Response: The N.J. Department of Transportation does not have sufficient authority to consider the adoption of these regulatory provisions.

3. The Port Authority of New York and New Jersey presented concerns with respect to their ability to enforce the state's new Hazardous Material Regulations, and the proposed penalty provisions requiring civil action pursuant to the "penalty enforcement law". The Port Authority presently has an extensive hazardous materials enforcement program, and "we believe it is important that our police continue to enforce Federal, New York, and New Jersey statutes as well as our own Rules and Regulations. Penalties and procedures similar to those presently provided by 39:5B-12, 13 and 14, we believe, should be included as part of our new enforcement scheme . . . we believe the civil penalty provision of the proposed regulations is somewhat limited and should be expanded. In addition, the civil penalty provision may be overly burdensome on the enforcement authorities in all but the most serious cases."

Response: The N.J. Department of Transportation wants to encourage the Port Authority Police to continue their hazardous materials enforcement program including the ability to cite New Jersey's new regulations as published herein. Since the N.J. Department of Transportation does not have the authority to grant enforcement powers, it has been recommended to the State Legislature that explicit enforcement authority be given to the Port Authority of New York and New Jersey, enabling them to cite under the new and more extensive regulatory provisions during the normal course of their duties. The Department of Transportation has further recommended that the Legislature authorize the State Police and police officers of the Port Authority of New York and New Jersey to issue summonses for appearance before municipal court. These powers would be in addition to the civil action proceedings already provided for in N.J.S.A. 39:5B-25

et seq. The summons provision as well as enforcement authority for the Port Authority of New York and New Jersey are contained in Senate Bill S 2296 introduced on October 18, 1984.

4. The New Jersey Department of Environmental Protection commented that they were omitted from the listing of authorized agencies having the authority to inspect under the state's new Hazardous Material Regulations.

Response: As noted in the previous comment, granting enforcement power is not within the authority of the New Jersey Department of Transportation, The Division of State Police is the only agency granted authority under N.J.S.A. 39:5B-25 et seq. The Department of Transportation has recommended to the Legislature that NJDOT be provided enforcement authority relating to the inspection of rail facilities and equipment because NJDOT already has responsibility for rail inspection within the State. In addition, the Department of Transportation has recommended that the Port Authority of New York and New Jersey be given enforcement authority to enable them to continue their current hazardous materials enforcement program, but to allow them to issue summonses under the new regulatory provisions, published herein. Finally, the Department has added provisions under N.J.A.C. 16:49-1.3(h) recognizing NJDEP's authority pursuant to statutory and regulatory provisions related to hazardous wastes, radioactive materials, spill compensation and control.

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

CHAPTER 49

TRANSPORTATION OF HAZARDOUS MATERIALS

SUBCHAPTER 1. GENERAL REQUIREMENTS

16:49-1.1 Purpose

This chapter prescribes the requirements of the New Jersey Department of Transportation governing the transportation of hazardous materials in the State of New Jersey. This chapter is adopted to establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling, and transportation of hazardous materials, and is established consistent with the regulations issued by the United States Department of Transportation.

16:49-1.2 Application

(a) This chapter shall apply to:

1. Every shipper and motor carrier and its officers, drivers, agents, employees, and representatives involved or in any manner related to the transportation of interstate and/or intrastate commerce, shall comply with and be bound by these regulations or any future amendments, and shall take such measures as are necessary to insure compliance therewith.

2. All officers, agents, representatives, drivers, and employees of shippers and carriers involved or concerned with the management, maintenance, operation or driving of vehicles, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter.

16:49-1.3 General requirements

(a) Hazardous materials that do not comply with the requirements of this chapter shall not be offered for transportation, accepted for transportation, or transported.

(b) ***[Hazardous materials which are manufactured, packaged, stored, loaded, unloaded, or transported shall be open to inspection upon request by any duly authorized representative of the New Jersey Division of State Police, the New Jersey Department of Transportation, or the Port Authority of New York and New Jersey.]* ***Vehicles, railroad cars, containers, shipping records, carrier records, and places of origin in the state involved in the transportation of hazardous materials, substances, or wastes are subject to inspection by duly authorized representatives of the Division of State Police as may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq., and the regulations adopted supplementary thereto.*****

(c) No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of the New Jersey Department of Transportation unless such container or package meets the requirements of this chapter.

(d) ***[Without the necessity of further action or case-by-case review on its part,]* The New Jersey Department of Transportation ***[accepts the validity of any]* ***will recognize an*** exemption or renewal thereof issued by the United States Department of Transportation under Section 107, Subpart B of Title 49 ***subject to review by the New Jersey Department of Transportation***. Any person operating under a current, valid exemption or renewal thereof under Section 107 ***subject to review by the New Jersey Department of Transportation will*** ***[shall]*** be deemed to be in compliance with those portions of these regulations to which the exemption applies, provided that the person is complying with the terms of the exemption.****

(e) Intrastate carriers and shippers ***[in need of]* ***desiring*** exemptions shall be subject to the same rules and procedures required of interstate carriers and shippers.***See Title 49, Code of Federal Regulations, Part 107, Subpart B. Also see N.J.A.C. 16:49-1.3(k) herein.*****

(f) Whenever the term "interstate" is used in the Federal regulations adopted herein it shall, for the purpose of these regulations, mean and include both "interstate" and "intrastate" transportation in commerce^[.] *** , except where stated otherwise.***

(g) Any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline with Parts 107, 171, 172, 173, 174, 177, 178, and 179 are hereby excluded and not adopted by the Department.

(h) This chapter establishes minimum standards which must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this chapter and any other State regulation, the stricter, more stringent standard shall apply and govern. ***This chapter is intended to complement those related statutory and regulatory provisions of the New Jersey Department of Environmental Protection regarding hazardous wastes, radioactive materials, spill compensation and control.***

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation. ***The federal "Hazardous Materials Regulations" referenced herein, are adopted as of November 1, 1983. The "Federal Motor Carrier Safety Regulations" as referenced in Section 177.804 are adopted as of October 31, 1983. The New Jersey Department of Transportation intends to amend these regulations as new federal publications become available.***

(j) If any provision or clause of this chapter is held invalid to any person or circumstance, such invalidity shall not affect

ADOPTIONS

other provisions or applications of the regulation which can be given effect without the invalid provision or application. To this end the provisions of this regulation are declared to be severable.

(k) This chapter or any portion or portions thereof may be waived by the New Jersey Department of Transportation if after consideration of the facts involved it is determined that a particular situation warrants such waiver. ***This provision shall apply to intrastate movements only. Application shall be made in writing to the Commissioner of Transportation before the subject materials are offered for transportation. The written application shall set forth the full circumstances and facts of the case. The applicant(s) shall not have the right to a hearing. Application shall only be made in cases of unique circumstances or hardship.***

(1) The provisions and requirements of these regulations as well as the federal regulations adopted by reference and made a part hereof are applicable to interstate as well as intrastate transporters of hazardous materials unless specifically stated otherwise. However, transporters of combustible liquids excluded under 49 C.F.R. 173.118a(a) as modified (See Appendix) are not subject to any of the provisions or requirements of the adopted federal regulations. Furthermore, combustible liquids excluded under 49 C.F.R. 173.118a(b) as modified (See Appendix) are subject only to the requirements specified therein.

1. A transporter carrying combustible liquids, not categorized under 49 C.F.R. 171.8 or 49 C.F.R. 172.101 (see Appendix) as a hazardous substance or hazardous waste, in packaging having a rated capacity of 110 gallons or less and in compliance with the standard packaging requirements found in 49 C.F.R. 173.24 (See Appendix) is not subject to these provisions including the federal regulations adopted and incorporated herein; however, a transporter carrying such combustible liquids, not categorized as a hazardous substance or waste, in a cargo tank, tank car, portable tank or packaging having a rated capacity greater than 110 gallons is subject only to the requirements specified within 49 C.F.R. 173.118a(b)(1) through (b)(7) as modified in the appendix where applicable; it is not subject to any other provision of the adopted federal regulations.

2. A transporter carrying a combustible liquid categorized as a hazardous substance or waster under 49 C.F.R. 171.8 or 49 C.F.R. 172.101 (see Appendix) in packaging having a rated capacity of 110 gallons or less is subject only to the requirements specified within 49 C.F.R. 173.118a(b)(1) through (7) as modified in the appendix; it is not subject to any other provision of the adopted federal regulations. A transporter carrying combustible liquids categorized as a hazardous substance or waster in packaging having a rated capacity greater than 110 gallons, a portable tank, cargo tank or tank car is subject to all applicable provisions of these regulations including the adopted federal regulations.

16:49-1.4 Penalty for violation of these ***provisions***
[State regulations]

(a) The penalty for ***a*** violation of ***[this chapter]*** ***these provisions including the federal regulations incorporated by reference in N.J.A.C. 16:49-2 and herein*** shall be as specified ***[pursuant]*** ***under*** N.J.S.A. 39:5B-25 et seq.,

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

TRANSPORTATION

16:49-1.5 Document availability

(a) ***[Copies of the existing Title 49, Code of Federal Regulations, Parts 107, 171, 172, 173, 174, 177, 178, and 179, as referenced herein, may be purchased from the following places:]*** ***Copies of the federal "Hazardous Materials Regulations", Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, and 179, revised as of November 1, 1983, and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations", Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 31, 1983, and adopted by reference in Section 177.804 of the Appendix to the Regulations Regarding the Transportation of Hazardous Materials may also be purchased at the places listed below.***

1. Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
(202) 783-3238
2. U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, New York 10278-0081
(212) 264-3825
3. U.S. Government Printing Office Bookstore
Room 1214, Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106
(215) 597-0677

(b) Copies of the above, Title 49, CFR volumes are also available for review at the Newark Public Library, Social Science Division of the Main Library, 5 Washington Street, Newark, New Jersey, and the New Jersey State Library, Law Section, 185 West State Street, Trenton, New Jersey.

(c) Copies of the Title 49, CFR volumes noted above, are further available for review at the New Jersey Department of Transportation, Office of Freight Services, 1035 Parkway Avenue, Trenton, New Jersey 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) 292-1530.

16:49-1.6 Assistance

For ***general*** assistance ***and procedural questions*** in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

***Office of Freight Services
New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625
(609) 292-1530**

For assistance in matters related to enforcement or interpretation of the Hazardous Materials Regulations, contact:

Office of Hazardous Materials
Transportation Compliance and
Enforcement New Jersey
Division of State Police
P.O. Box 7068
West Trenton, New Jersey 08625
(609) 882-2000, extensions 2581 or 2582

SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATIONS, BY REFERENCE

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by

reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of November 1, 1983. The parts adopted by reference are found in Chapter I, referred to as “Research and Special Programs Administration, Department of Transportation”*. ***These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS.*** The portions adopted are summarized *[following:]* ***below.***

[1. Part 107, Hazardous Materials Program Procedures, Subpart B—Exemptions.]

[2.] ***1.*** Part 171, General Information, Regulations, and Definitions. ***(Sections 171.1, 171.4, 171.5, 171.10, and 171.20 are omitted from adoption herein;)*** modifications ***are*** made to Sections 171.15 and 171.16).

[3.] ***2.*** Part 172, Hazardous Materials Tables and Hazardous Materials Communications Regulations.

[4.] ***3.*** Part 173, Shippers—General Requirements for Shipments and Packagings ***(Section 173.32a is excluded from adoption herein;)*** modifications ***are*** made to Section 173.118a and applicability to Section 173.24).

[5.] ***4.*** Part 174, Carriage by Rail ***[(modifications made to)]* ***(Section 174.8*)**is excluded from adoption herein.)*****

[6.] ***5.*** Part 177, Carriage by Public Highway ***(Section 177.825(a), (b), (c), and (e), and* Appendix A *are* excluded from adoption).**

[7.] ***6.*** Part 178, Shipping Container Specifications.

[8.] ***7.*** Part 179, Specifications for Tank Cars. ***(Sections 179.3, 179.4, and 179.5 are excluded from adoption herein.)***

APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS

[The remaining text] *** This Appendix to the Regulations Regarding the Transportation of Hazardous Materials*** details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER I RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, *U.S.* DEPARTMENT OF TRANSPORTATION

[SUBCHAPTER B—MATERIALS TRANSPORTATION BUREAU]

(Entire Subchapter B is not being incorporated upon adoption)

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

[Section 171.1 Purpose and scope.]

Section 171.2 General Requirements.

Section 171.3 Hazardous Waste.

[Section 171.4 Changes in specifications for tank cars.]

[Section 171.5 Procedure covering tank car construction.]

Section 171.7 Matter incorporated by reference.

***These materials incorporated by reference are technical documents referred to, on occasion, in Title 49, Code of Federal Regulations. Specific technical document names, as-**

socialions, and addresses where they may be found are contained in Section 171.7 of Title 49, Code of Federal Regulations.*

Section 171.8 Definitions and abbreviations.

Section 171.9 Rules of construction.

[Section 171.10 Flammable or combustible liquids in bulk on board vessels.]

Section 171.11 Use of ICAO Technical Instructions.

Section 171.12 Import and export shipments.

Section 171.13 Emergency regulations.

Section 171.14 Specification markings.

Section 171.15 Immediate notice of certain hazardous materials incidents. ***(New Jersey Revisions as noted below.)***

Section 171.15 is revised to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, such carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which as a direct result of hazardous materials

(1) A person is killed;

(2) A person receives injuries requiring his hospitalization;

(3) Estimated carrier or other property damage exceeds \$50,000;

(4) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. (See also Sections 174.45, 175.45, 176.48 and 177.807 of this subchapter); or

(5) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(6) A situation exists of such a nature that, in the judgment of the carrier, it should be reported in accordance with paragraph (b) of this section even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section; e.g., a continuing danger to life exists at the scene of the incident.

(b) Each notice required by paragraph (a) of this section shall be given to the *U.S.* Department ***of Transportation*** by telephone (toll-free) on 800-424-8802. Notice involving etiologic agents may be given the Director, Center of Disease Control, U.S. Public Health Service, Atlanta, Georgia, Area Code (404) 653-5313, in place of the notice to the *U.S.* Department ***of Transportation*** or (toll call) on 202-426-2675. Each notice must include the following information:

(1) Name of reporter.

(2) Name and address of carrier represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Classification, name, and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by Section 171.16.

(d) If a New Jersey Police Accident Report has been filed with the New Jersey Division of Motor Vehicles, or if a Spill Report has been filed with the New Jersey Department of Environmental Protection, then reports requested above in paragraphs (b) and (c) are not required*[*] ***of intrastate**

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carriers who are not under the jurisdiction of U.S.D.O.T. All other carriers are subject to the U.S.D.O.T. reporting requirements as usual.*

Section 171.16—Detailed hazardous materials incidents reports.
 (New Jersey Revision as noted below.)

Section 171.16 is revised to state the following: (Note: Paragraph (a) has been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form F 5800.1 to the Department within 15 days of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous materials has been discharged during transportation. If a report pertains to a hazardous waste discharge—

(1) A copy of the hazardous waste manifest for the waste must be attached to the report, and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any unremoved waste, must be entered in Part H of the report (Form F 5800.1).

(b) Each carrier making a report under this section shall send that report to the Information Systems Manager, Materials Transportation Bureau, *U.S.* Department of Transportation, Washington, DC 20590.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of hazardous materials being transported under the following proper shipping names:

- (1) Consumer commodity.
- (2) Battery, electric storage, wet, filled with acid or alkali.
- (3) Paint and paint related material when shipped in packagings of five gallons or less.

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

- (1) Incidents required to be reported under Section 171.15(a);
- (2) Incidents involving transportation aboard aircraft; nor
- (3) Incidents involving the transportation of hazardous waste.

(e) If a New Jersey Police Accident Report has been filed with the New Jersey Division of Motor Vehicles or if a Spill Report has been filed with the New Jersey Department of Environmental Protection, then other reports requested in this section are not required*.[.]* ***of intrastate carriers who are not under the jurisdiction of U.S.D.O.T. All other carriers are subject to the U.S.D.O.T. reporting requirements as usual.***

- Section 171.17 Hazardous substance discharge notification.
- Section 171.18 Continuation of effectiveness of existing Bureau of Explosives registrations.
- Section 171.19 Approvals or authorizations issued by the Bureau of Explosives.
- *[Section 171.20 Submission of Examination Reports.]*

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PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

Subpart A—General

- Section 172.1 Purpose and scope.
- Section 172.3 Applicability.

***(a) This part applies to: (1) Each person who offers a hazardous material for transportation, and (2) Each carrier by highway or rail who transports a hazardous material.**

(b) When a person other than one of those provided for in paragraph (a) of this section, performs a packaging, labeling or marking function required by this part, that person shall perform the function in accordance with this part.*

Subpart B—Tables of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements

- Section 172.101 Purpose and use of hazardous materials table, including the Hazardous Materials Table, CERCLA List, Specific Chemical Wastes, Chemicals Listed by EPA under Section 307(a) of the Clean Water Act, Chemicals Listed by EPA under Section 112 of the Clean Air Act.
- Section 172.102 Purpose and Use of Optional Hazardous Materials Table for international shipments, including the Optional Hazardous Materials Table.

Appendix A—Identification Number Cross Reference to Proper Shipping Names in Section 172.101 and Section 172.102.

Subpart C—Shipping Papers.

- Section 172.200 Applicability.
- Section 172.201 General entries.
- Section 172.202 Description of hazardous material on shipping papers.
- Section 172.203 Additional description requirements.
- Section 172.204 Shipper's certification.
- Section 172.205 Hazardous waste manifest.

Subpart D—Marking.

- Section 172.300 Applicability.
- Section 172.301 General marking requirements.
- Section 172.302 Export shipments by water.
- Section 172.304 Marking requirements.
- Section 172.306 Consignee's or consignor's name and address.
- Section 172.308 Authorized abbreviations.
- Section 172.310 Radioactive materials.
- Section 172.312 Liquid hazardous materials.
- Section 172.316 Packaging containing material classed as ORM.
- Section 172.324 Hazardous substances.
- Section 172.326 Portable tanks.
- Section 172.328 Cargo Tanks.
- Section 172.330 Tank cars and multi-unit tank car tanks.
- Section 172.332 Identification number markings.
- Section 172.334 Identification numbers; prohibited display.
- Section 172.336 Identification numbers; special provisions and exceptions.

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- Section 172.338 Replacement of identification numbers.
- Subpart E—Labeling.
- Section 172.400 General labeling requirements.
- Section 172.401 Prohibited labeling.
- Section 172.402 Additional labeling requirements.
- Section 172.403 Radioactive material.
- Section 172.404 Labels for mixed and consolidated packaging.
- Section 172.405 Authorized label modifications.
- Section 172.406 Placement of labels.
- Section 172.407 Label specifications.
- Section 172.411 EXPLOSIVE A, EXPLOSIVE B, EXPLOSIVE C, AND BLASTING AGENTS labels.
- Section 172.415 NON-FLAMMABLE GAS label.
- Section 172.416 POISON GAS label.
- Section 172.417 FLAMMABLE GAS label.
- Section 172.419 FLAMMABLE LIQUID label.
- Section 172.420 FLAMMABLE SOLID label.
- Section 172.422 SPONTANEOUSLY COMBUSTIBLE label.
- Section 172.423 DANGEROUS WHEN WET label.
- Section 172.426 OXIDIZER label.
- Section 172.427 ORGANIC PEROXIDE label.
- Section 172.430 POISON label.
- Section 172.432 IRRITANT label.
- Section 172.436 RADIOACTIVE WHITE-I label.
- Section 172.438 RADIOACTIVE YELLOW-II label.
- Section 172.440 RADIOACTIVE YELLOW-III label.
- Section 172.442 CORROSIVE label.
- Section 172.444 ETIOLOGIC AGENT label.
- Section 172.446 MAGNETIZED MATERIAL label.
- Section 172.448 CARGO AIRCRAFT ONLY label.
- Section 172.450 EMPTY label.
- Subpart F—Placarding.
- Section 172.500 Applicability of placarding requirements.
- Section 172.502 Prohibited placarding.
- Section 172.503 Identification number display on placards.
- Section 172.504 General placarding requirements.
- Section 172.506 Providing and affixing placards: Highway.
- Section 172.507 Special placarding provisions: Highway.
- Section 172.508 Placarding and affixing placards: Rail.
- Section 172.510 Special placarding provisions: Rail.
- Section 172.512 Freight container.
- Section 172.514 Cargo tanks and portable tanks.
- Section 172.516 Visibility and display of placards.
- Section 172.519 General specifications for placards.
- Section 172.521 DANGEROUS placard.
- Section 172.522 EXPLOSIVES A placard.
- Section 172.523 EXPLOSIVES B placard.
- Section 172.524 BLASTING AGENTS placard.
- Section 172.525 Standard requirements for the EMPTY placard.
- Section 172.527 Background requirements for certain placards.
- Section 172.528 NON-FLAMMABLE GAS placard.
- Section 172.530 OXYGEN placard.
- Section 172.532 FLAMMABLE GAS placard.
- Section 172.536 CHLORINE placard.
- Section 172.540 POISON GAS placard.
- Section 172.542 FLAMMABLE placard and modification.
- Section 172.544 COMBUSTIBLE placard and modification.
- Section 172.546 FLAMMABLE SOLID placard.
- Section 172.548 FLAMMABLE SOLID W placard.
- Section 172.550 OXIDIZER placard.
- Section 172.552 ORGANIC PEROXIDE placard.
- Section 172.554 POISON placard.
- Section 172.556 RADIOACTIVE placard.
- Section 172.558 CORROSIVE placard.
- Appendix A—Office of Hazardous Materials Regulation
Color Tolerance Charts and Tables
- Appendix B—Dimensional Specification for Placards
- Appendix C—Dimensional Specifications for Recommended
Placard Holder
- PART 173—SHIPPERS—GENERAL REQUIREMENTS
FOR SHIPMENTS AND PACKAGINGS
- Subpart A—General
- Section 173.1 Purpose and scope.
- Section 173.2 Classification of a material having more than one hazard as defined in this Part.
- Section 173.3 Packaging and exceptions.
- Section 173.4 Exceptions for small quantities.
- Section 173.5 Agricultural operations.
- Section 173.6 Shipments by Air.
- Section 173.7 U.S. Government material.
- Section 173.8 Canadian shipments and packagings.
- Section 173.9 Cars, truck bodies or trailers containing lading which has been fumigated or treated with flammable liquids, flammable gases, poisonous liquids or solids, or poisonous gases.
- Section 173.10 Tank car shipments.
- Section 173.11 Shipper's registration statement; flammable cryogenic liquids.
- Subpart B—Preparation of Hazardous Materials for
Transportation
- Section 173.21 Forbidden materials and packages.
- Section 173.22 Shipper's responsibility.
- Section 173.22a Use of packagings authorized under exemptions.
- Section 173.23 Previously authorized packaging.
- Section 173.24 Standard requirements for all packages.
- Section 173.25 Authorized packages and overpacks.
- Section 173.26 Quantity limitations and metric measurements.
- Section 173.27 Aircraft quantity limitations.
- Section 173.28 Reuse of packagings (containers).
- Section 173.29 Empty packagings, portable tanks, cargo tanks, and tank cars.
- Section 173.30 Loading and unloading of transport vehicles.
- Section 173.31 Qualification, maintenance, and use of tank cars.
- Section 173.32 Qualification, maintenance and use of portable tanks other than specification IM portable tanks.
- *[Section 173.32a Approval of Specification IM portable tanks.]*
- Section 173.32b Periodic testing and inspection of Specification IM portable tanks.

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- Section 173.32c Use of Specification IM portable tanks.
Section 173.32d Additions, modifications and removals of entries in the IM Tank Table.
- Section 173.33 Qualification, maintenance, and use of cargo tanks.
- Section 173.34 Qualification, maintenance and use of cylinders.
- Subpart C—Explosives and Blasting Agents; Definitions and Preparation
- Section 173.50 An explosive.
Section 173.51 Forbidden explosives.
Section 173.52 Acceptable explosives.
Section 173.53 Definition of class A explosives.
Section 173.54 Ammunition for cannon.
Section 173.55 Ammunition, nonexplosive.
Section 173.56 Ammunition, projectiles, grenades, bombs, mines, gas mines, and torpedos.
Section 173.57 Rocket ammunition.
Section 173.58 Ammunition for small arms.
Section 173.59 Chemical ammunition, explosive.
Section 173.60 Black powder and low explosives.
Section 173.61 High explosives.
Section 173.62 High explosives, liquid.
Section 173.63 High explosives with liquid explosive ingredient.
Section 173.64 High explosives with no liquid explosive ingredient and propellant explosives, Class A.
Section 173.65 High explosives with no liquid explosive ingredient nor any chlorate.
Section 173.66 Detonators.
Section 173.68 Detonating primers.
Section 173.69 Detonating fuses, Class A, with or without radioactive components, detonating fuse parts containing an explosive, boosters, bursters, or supplementary charges.
Section 173.70 Diazodinitrophenol or lead mononitrosorsorcinate.
Section 173.71 Fulminate of mercury.
Section 173.72 Guanyl nitrosamino guanylidene hydrazine.
Section 173.73 Lead azide.
Section 173.74 Lead styphnate.
Section 173.75 Nitro mannite.
Section 173.76 Nitrosoguanidine.
Section 173.77 Pentaerythrite tetranitrate.
Section 173.78 Tetrazene.
Section 173.79 Jet thrust units (jato), Class A explosives; rocket motors, class A explosives, igniters, jet thrust (jato), class A explosives; and igniters, rocket motor, class A explosives.
Section 173.80 Charged well casing jet perforating guns.
Section 173.86 New explosives definitions; approval and notification.
Section 173.87 Explosives in mixed packaging.
Section 173.88 Definition of class B explosives.
Section 173.89 Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles or without projectiles.
Section 173.90 Rocket ammunition with empty, inert-loaded, or solid projectiles.

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- Section 173.91 Special fireworks.
Section 173.92 Jet thrust units (jato), class B explosives; rocket motors, class B explosives; igniters, jet thrust (jato), class B explosives; igniters, rocket motors, class B explosives; and starter cartridges, jet engine, class B explosives.
Section 173.93 Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).
Section 173.94 Explosive power devices, Class B.
Section 173.95 Rocket engines (liquid), Class B explosives.
Section 173.100 Definition of Class C explosives.
Section 173.101 Small-arms ammunition.
Section 173.101a Cartridges, practice ammunition.
Section 173.102 Explosive cable cutters; explosive power devices, class C; explosive release devices, or starter cartridges, jet engine, class C explosives.
Section 173.103 Detonators, class C explosives, and detonating primers, class C explosives.
Section 173.104 Cordeau detonant fuse, mild detonating fuse, metal clad or flexible linear shaped charges, metal clad.
Section 173.105 Percussion, tracer, combination, time fuses and tracers.
Section 173.106 Cartridge bags, empty, with black powder igniters, igniters, safety squibs, electric squibs, delay electric igniters, igniter fuse-metal clad, and fuse lighters or fuse igniters.
Section 173.107 Primers, percussion caps, grenades, empty, primed, and cartridge cases, empty, primed.
Section 173.108 Common fireworks, signal flares, hand signal devices, smoke signals, smoke candles, smoke grenades, smoke pots, and Very signal cartridges.
Section 173.109 Toy caps.
Section 173.110 Charged well casing jet perforating guns, total explosive content in guns not exceeding 20 pounds per motor vehicle.
Section 173.111 Cigarette loads, explosive auto alarms, toy propellant devices, toy smoke device, trick matches, and trick noise makers, explosive.
Section 173.112 Oil well cartridges.
Section 173.113 Detonating fuses, class C explosives.
Section 173.114 Actuating cartridges, explosive, fire extinguisher or valve.
Section 173.114a Blasting agents.
- Subpart D—Flammable, Combustible, and Pyrophoric Liquids; Definitions and Preparation.
- Section 173.115 Flammable, combustible, and pyrophoric liquids; definitions.
Section 173.116 Outage.
Section 173.117 Closing and cushioning.
Section 173.118 Limited quantities of flammable liquids.
Section 173.118a Exceptions for combustible liquids. Section 173.118a is revised to state the following: (Note: *[P]* *Sub*aragraph (b)(7) has been added.*[)]* *Most com-

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combustible liquids being transported are only subject to items (b)(1) through (b)(7) as stated below. They are not subject to the remainder of New Jersey's Hazardous Material Regulations.)*

(a) Unless otherwise stated for a specific material, the regulations in this subchapter do not apply to a material classed as a combustible liquid in a packaging having a rated capacity of 110 gallons or less, unless the combustible liquid is a hazardous substance, or a hazardous waste.

(b) A combustible liquid that is a hazardous substance or a hazardous waste in a packaging having a rated capacity of 110 gallons or less, and a combustible liquid in a portable tank, cargo tank or a tank car is not subject to the requirements of this subchapter except those pertaining to:

(1) Shipping papers, waybills, switching orders, and hazardous waste manifests;

(2) Marking of portable tanks and marking of packages having a rated capacity of 110 gallons or less that contain hazardous substances or hazardous wastes;

(3) Display or identification numbers on portable tanks, cargo tanks, tank cars and multi-unit tank car tanks;

(4) Placarding of portable tanks, cargo tanks and tank cars;

(5) Carriage aboard aircraft and vessels (for packaging requirements for transport by vessel see Section 176.340 of this subchapter); and,

(6) Reporting incidents as prescribed by Sections 171.15, 171.16, and 171.17 of this subchapter*.[.]* ***as revised herein.***

(7) Standard packaging requirements for all packages as prescribed in Section 173.24.

Section 173.119 Flammable liquids not specifically provided for.

Section 173.120 Automobiles, motorcycles, tractors, or other self-propelled vehicles.

Section 173.121 Carbon bisulfide (disulfide).

Section 173.122 Acrolein, inhibited.

Section 173.123 Ethyl chloride.

Section 173.124 Ethylene oxide.

Section 173.125 Alcohol, n.o.s. (flammable liquid).

Section 173.126 Nickel carbonyl.

Section 173.127 Nitrocellulose or collodion cotton, fibrous or nitrostarch, wet; nitrocellulose flakes; colloided nitrocellulose, granular, flake, or block, and lacquer base of lacquer chips, wet.

Section 173.128 Paint and paint related material (flammable liquids).

Section 173.129 Polishes (flammable liquids).

Section 173.130 Refrigerating machines.

Section 173.131 Road asphalt, or tar, liquid.

Section 173.132 Adhesive; cement; container cement; linoleum cement; pyroxylin cement; rubber cement; tile cement; wallboard cement, and coating solution.

Section 173.133 Spirits of nitroglycerin.

Section 173.134 Pyroforic liquids, n.o.s.

Section 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.

Section 173.136 Methyl dichlorosilane and trichlorosilane.

Section 173.137 Lithium aluminum hydride, ethereal.

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Section 173.138 Pentaborane.

Section 173.139 Ethylene imine, inhibited, and propylene imine, inhibited.

Section 173.140 Zirconium, metallic, solutions, or mixtures thereof, liquid.

Section 173.141 Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.

Section 173.143 Methylchloromethyl ether, anhydrous.

Section 173.144 Ink (flammable liquid).

Section 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.

Section 173.146 Heaters for refrigerator cars, flammable liquid fuel type.

Section 173.147 Methyl vinyl ketone, inhibited.

Section 173.148 Monoethylamine.

Section 173.149 Methyl magnesium bromide in ethyl ether in concentrations not over 40 percent.

Section 173.149a Nitromethane.

Subpart E—Flammable Solids, Oxidizers, and Organic Peroxides; Definitions and Preparation.

Section 173.150 Flammable solid; definition.

Section 173.151 Oxidizer; definition.

Section 173.151a Organic peroxide; definition.

Section 173.152 Packing.

Section 173.153 Limited quantities of flammable solids, oxidizers and organic peroxides.

Section 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.

Section 173.154a Fuses.

Section 173.155 Bags, nitrate of soda, empty and unwashed.

Section 173.156 Barium peroxide and calcium peroxide.

Section 173.157 Benzoyl peroxide, chlorobenzoyl peroxide (para), cyclohexanone peroxide, demethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide, wet.

Section 173.158 Benzoyl peroxide, dry; chlorobenzoyl peroxide (para) dry, cyclohexanone peroxide, dry; lauroyl peroxide, dry; or succinic acid peroxide, dry.

Section 173.159 Burnt cotton.

Section 173.160 Calcium chlorite and sodium chlorite.

Section 173.161 Calcium phosphide.

Section 173.162 Charcoal.

Section 173.163 Chlorate of soda, chlorate of potash, and other chlorates.

Section 173.164 Chromic acid or chromic acid mixture, dry.

Section 173.165 Coal, ground bituminous, sea coal, coal facings.

Section 173.166 Cobalt resinate, precipitated, calcium resinate, and calcium resinate fused.

Section 173.167 Cotton waste, oily.

Section 173.168 Lithium amide, powdered.

Section 173.169 Fiber, burnt.

Section 173.170 Fibers of fabrics impregnated, saturated or coated.

Section 173.171 Fish scrap or fish meal.

Section 173.172 Hair, wet.

Section 173.173 Aluminum dross or magnesium dross.

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- Section 173.174 Iron sponge, spent oxide, spent iron mass, spent iron sponge.
- Section 173.175 Lacquer base, or lacquer chips, dry.
- Section 173.176 Matches.
- Section 173.177 Motion-picture film and X-ray film.
- Section 173.178 Calcium carbide, calcium silicon powder, and magnesium granules, coated.
- Section 173.179 N-methyl-N'-nitro-N-nitrosoguanidine.
- Section 173.182 Nitrates.
- Section 173.183 Potassium nitrate mixed (fused) with sodium nitrite.
- Section 173.184 Nitrocellulose or collodion cotton, wet, or nitrocellulose, colloidized, granular, or flake, wet, or nitrostarch, wet, or nitroguanidine, wet.
- Section 173.185 Paper stock, wet.
- Section 173.186 Paper waste, wet.
- Section 173.187 Potassium peroxide; potassium superoxide; sodium peroxide or sodium superoxide.
- Section 173.188 Phosphoric anhydride.
- Section 173.189 Phosphorus, amorphous, red.
- Section 173.190 Phosphorus, white or yellow.
- Section 173.191 Phosphorus pentachloride.
- Section 173.192 Ammonium picrate, picric acid, trinitrobenzoic acid, and urea nitrate, wet.
- Section 173.193 Picric acid, trinitrobenzoic acid, or urea nitrate, wet.
- Section 173.194 Potassium permanganate.
- Section 173.195 Pyroxylin plastic scrap.
- Section 173.197 Pyroxylin plastics, in sheets, rolls, rods, or tubes.
- Section 173.197a Smokeless powder for small arms.
- Section 173.198 Sodium hydride.
- Section 173.199 Rags, oily.
- Section 173.200 Rags, wet.
- Section 173.201 Rubber scrap, rubber buffings, reclaimed rubber, or regenerated rubber.
- Section 173.202 Sodium metal liquid alloy, potassium metal liquid alloy, and sodium potassium liquid alloy.
- Section 173.203 Tetranitromethane.
- Section 173.204 Sodium hydrosulfite.
- Section 173.205 Sodium picramate, wet.
- Section 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylde-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.
- Section 173.207 Sulfide of sodium or sulfide of potassium, fused or concentrated, when ground.
- Section 173.208 Titanium metal powder, wet or dry.
- Section 173.209 Tankage, garbage, and tankage fertilizers.
- Section 173.210 Tankages, rough ammoniate.
- Section 173.211 Textile waste, wet.
- Section 173.212 Trinitrobenzene and trinitrotoluene, wet.
- Section 173.213 Wool waste, wet.
- Section 173.214 Hafnium metal or zirconium metal, wet, minimum 25 percent water by weight,

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- mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, chemically produced (See Note 1), finer than 20 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, chemically produced (See Note 1), finer than 20 mesh particle size.
- Note 1: Produced by means other than attrition or grinding.
- Note 2: Any product containing 10 percent or more, particle size specified, shall be subject to this section.
- Note 3: Any product containing less than 25 percent water by weight is considered dry for purposes of these regulations.
- Section 173.216 Zirconium picramate, wet.
- Section 173.217 Calcium hypochlorite, hydrated; calcium hypochlorite, mixture, dry; lithium hypochlorite mixture, dry; mono-(trichloro)tetra-(monopotassium dichloro)-penta-s-triazinetriene, dry; potassium dichloro-s-triazine-trione, dry; sodium dichloro-s-triazinetriene, dry; trichloro-s-triazinetriene, dry.
- Section 173.218 Isopropyl percarbonate, unstabilized.
- Section 173.219 Potassium perchlorate.
- Section 173.220 Magnesium or zirconium scrap consisting of borings, clippings, shavings, sheets, turnings, or scalplings, and magnesium metallic (other than scrap), powder, pellets, turnings, or ribbon; magnesium aluminum powder.
- Section 173.221 Liquid organic peroxides, n.o.s., and liquid organic peroxide solutions, n.o.s.
- Section 173.222 Acetyl peroxide and acetyl benzoyl peroxide, solution.
- Section 173.223 Peracetic acid.
- Section 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.
- Section 173.225 Phosphorus trisulfide, phosphorus sesquisulfide, phosphorus heptasulfide, and phosphorus pentasulfide.
- Section 173.227 Urea peroxide.
- Section 173.228 Zinc ammonium nitrate.
- Section 173.229 Chlorate and borate mixtures or chlorate and magnesium chloride mixtures.
- Section 173.230 Sodium, metallic, dispersion in organic solvent.
- Section 173.231 Calcium, metallic, crystalline.
- Section 173.232 Aluminum, metallic powder.
- Section 173.233 Nickel catalyst, finely divided, activated or spent.
- Section 173.234 Sodium nitrite and sodium nitrite mixtures.
- Section 173.235 Ammonium bichromate (ammonium dichromate).
- Section 173.236 Decaborane.

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- Section 173.237 Chlorine dioxide hydrate, frozen; chloric acid.
- Section 173.238 Aircraft rocket engines (commercial) and/or aircraft rocket engine igniters (commercial).
- Section 173.239 Barium azide-50 percent or more water wet.
- Section 173.239a Ammonium perchlorate.
- Subpart F—Corrosive Materials: Definition and Preparation.
- Section 173.240 Corrosive material; definition.
- Section 173.241 Outage.
- Section 173.242 Bottles containing corrosive liquids.
- Section 173.243 Closing and cushioning.
- Section 173.244 Limited quantities of corrosive materials.
- Section 173.245 Corrosive liquids not specifically provided for.
- Section 173.245a Corrosive liquids, n.o.s. shipped in bulk.
- Section 173.245b Corrosive solids not specifically provided for.
- Section 173.246 Antimony pentafluoride, bromine pentafluoride, iodine pentafluoride, bromine trifluoride, and chlorine trifluoride.
- Section 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride-acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; and trimethyl acetyl chloride.
- Section 173.247a Vanadium tetrachloride and vanadium oxytrichloride.
- Section 173.248 Acid sludge, sludge acid, spent sulfuric acid, or spent mixed acid.
- Section 173.249 Alkaline corrosive liquids, n.o.s.; Alkaline corrosive battery fluid; Potassium fluoride solution; Potassium hydrogen fluoride solution; Sodium aluminate, liquid; Sodium hydroxide solution; Potassium hydroxide solution; Boiler compound, liquid, solution.
- Section 173.249a Cleaning compound, liquid; Coal tar dye, liquid; Dye intermediate, liquid; Mining reagent, liquid; and Textile treating compound mixture, liquid.
- Section 173.250 Automobiles, other self-propelled vehicles, engines or other mechanical apparatus.
- Section 173.250a Benzene phosphorus dichloride and benzene phosphorus thiodichloride.
- Section 173.251 Boron trichloride and boron tribromide.
- Section 173.252 Bromine.
- Section 173.253 Chloroacetyl chloride.
- Section 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.
- Section 173.255 Dimethyl sulfate.
- Section 173.256 Compounds, cleaning, liquid.
- Section 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

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- Section 173.258 Electrolyte, acid or alkaline corrosive battery fluid, packed with storage batteries.
- Section 173.259 Electrolyte, acid, or alkaline corrosive battery fluid, packed with battery charger, radio current supply device, or electronic equipment and actuating devices.
- Section 173.260 Electric storage batteries, wet.
- Section 173.261 Fire-extinguisher charges.
- Section 173.262 Hydrobromic acid.
- Section 173.263 Hydrochloric (muriatic) acid, hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited; sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.
- Section 173.264 Hydrofluoric acid; White acid.
- Section 173.265 Hydrofluorosilicic acid.
- Section 173.266 Hydrogen peroxide solution in water.
- Section 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).
- Section 173.268 Nitric acid.
- Section 173.269 Perchloric acid.
- Section 173.270 Phosphorus tribromide.
- Section 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.
- Section 173.272 Sulfuric acid.
- Section 173.273 Sulfur trioxide.
- Section 173.274 Fluosulfonic acid.
- Section 173.275 Difluorophosphoric acid, anhydrous, monofluorophosphoric acid, anhydrous hexafluorophosphoric acid, and mixtures thereof.
- Section 173.276 Anhydrous hydrazine and hydrazine solution.
- Section 173.277 Hypochlorite solutions.
- Section 173.278 Nitrohydrochloric acid.
- Section 173.279 Anisoyl chloride.
- Section 173.280 Trichlorosilanes.
- Section 173.281 Benzyl bromide (bromotoluene, alpha).
- Section 173.282 Isopropyl percarbonate, stabilized.
- Section 173.283 Fluoboric acid.
- Section 173.284 Tungsten hexafluoride.
- Section 173.286 Chemical kits.
- Section 173.287 Chromic acid solution.
- Section 173.288 Chloroformates.
- Section 173.289 Formic acid and formic acid solutions.
- Section 173.290 Mixtures of hydrofluoric and sulfuric acid.
- Section 173.291 Flame retardant compound, liquid.
- Section 173.292 Hexamethylene diamine solution.
- Section 173.293 Iodine monochloride.
- Section 173.294 Monochloroacetic acid, liquid or solution.
- Section 173.295 Benzyl chloride.
- Section 173.296 Di iso octyl acid phosphate.
- Section 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.
- Section 173.298 Memtetrahydro phthalic anhydride.
- Section 173.299 Etching acid liquid, n.o.s.

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- Section 173.299a Tris-(1-aziridinyl) phosphine oxide.
- Subpart G—Compressed Gases; Definition and Preparation.
- Section 173.300 Definitions.
- Section 173.300a Approval of independent inspection agency.
- Section 173.300b Approval of non-domestic chemical analyses and tests.
- Section 173.300c Termination of approval.
- Section 173.301 General requirements for shipment of compressed gases in cylinders.
- Section 173.302 Charging of cylinders with non-liquefied compressed gases.
- Section 173.303 Charging of cylinders with compressed gas in solution (acetylene).
- Section 173.304 Charging of cylinders with liquefied compressed gas.
- Section 173.305 Charging of cylinders with a mixture of compressed gas and other material.
- Section 173.306 Limited quantities of compressed gases.
- Section 173.307 Exceptions for compressed gases.
- Section 173.308 Cigarette lighter or other similar device charged with fuel.
- Section 173.314 Requirements for compressed gases in tank cars.
- Section 173.315 Compressed gases in cargo tanks and portable tank containers.
- Section 173.316 Liquefied hydrogen.
- Section 173.318 Cryogenic liquids in cargo tanks.
- Section 173.319 Cryogenic liquids in tank cars.
- Section 173.320 Cryogenic liquids; exceptions.
- Subpart H—Poisonous Materials, Etiologic Agents, and Radioactive Materials; Definition and Preparation.
- Section 173.325 Classes of poisonous materials.
- Section 173.326 Poison A.
- Section 173.327 General packaging requirements for Poison A materials.
- Section 173.328 Poison A materials not specifically provided for.
- Section 173.329 Bromacetone; chlorpicrin and methyl chloride mixtures; chlorpicrin and non-flammable, nonliquefied compressed gas mixtures.
- Section 173.330 Chemical ammunition.
- Section 173.331 Gas identification sets.
- Section 173.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied.
- Section 173.333 Phosgene or diphosgene.
- Section 173.334 Organic phosphates mixed with compressed gas.
- Section 173.336 Nitrogen dioxide, liquid; nitrogen peroxide, liquid; and nitrogen tetroxide liquid.
- Section 173.337 Nitric oxide.
- Section 173.343 Poison B.
- Section 173.344 General packaging requirements for Poison B liquids.
- Section 173.345 Limited quantities of Poison B liquids.
- Section 173.346 Poison B liquids not specifically provided for.
- Section 173.347 Aniline oil.
- Section 173.348 Arsenic acid.
- Section 173.349 Carbolic acid (phenol) liquid.
- Section 173.350 Chemical ammunition.

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- Section 173.351 Hydrocyanic acid solutions.
- Section 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s.
- Section 173.353 Methyl bromide and methyl bromide mixtures.
- Section 173.353a Methyl bromide, liquid and non-flammable, nonliquefied compressed gas mixtures.
- Section 173.354 Motor fuel antiknock compound or tetraethyl lead.
- Section 173.355 Phenylchlorarsine.
- Section 173.356 Thiophosgene.
- Section 173.357 Chloropicrin and chloropicrin mixtures containing no compressed gas or Poison A liquid.
- Section 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorus compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.
- Section 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures; organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).
- Section 173.360 Perchloro-methyl-mercaptan.
- Section 173.361 Aldrin mixtures, liquid, with more than 60 percent aldrin.
- Section 173.362 4-Chloro-o-toluidine hydrochloride.
- Section 173.362a Dinitrophenol solutions.
- Section 173.363 General packaging requirements for Poison B solids.
- Section 173.364 Limited quantities of Poison B solids.
- Section 173.365 Poison B solids not specifically provided for.
- Section 173.366 Arsenic (arsenic trioxide) or arsenic acid (solid).
- Section 173.367 Arsenical compounds, n.o.s.; arsenate of lead; calcium arsenate; Paris green; and arsenical mixtures.
- Section 173.368 Arsenical dust, arsenical flue dust, and other poisonous non-combustible by-product dusts; also arsenic trioxide, calcium arsenate, and sodium arsenate.
- Section 173.369 Carbolic acid (phenol), not liquid.
- Section 173.370 Cyanides and cyanide mixtures, dry.
- Section 173.371 Dinitrobenzol (dinitrobenzene).
- Section 173.372 Mercury bichloride (mercuric chloride).
- Section 173.373 Ortho-nitroaniline and paranitroaniline.
- Section 173.374 Nitrochlorobenzene, meta or para.
- Section 173.375 Sodium azide.
- Section 173.376 Aldrin and aldrin mixtures, dry, with more than 65 percent aldrin.
- Section 173.377 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures, organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, dry.

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- Section 173.379 Cyanogen bromide.
Section 173.381 Irritating materials; Definition and general packaging requirements.
Section 173.382 Irritating materials, not specifically provided for.
Section 173.383 Chemical ammunition.
Section 173.384 Monochloracetone, stabilized.
Section 173.385 Tear gas grenades, tear gas candles, or similar devices.
Section 173.386 Etiologic agents; definition and scope.
Section 173.387 Packaging requirements for etiologic agents.
Section 173.388 Labeling of packages containing etiologic agents.
- Subpart I—Radioactive Materials.
Section 173.401 Scope.
Section 173.403 Definitions.
Section 173.411 General design requirements.
Section 173.412 Additional design requirements for Type A packages.
Section 173.413 Requirements for Type B packages.
Section 173.415 Authorized Type A packages.
Section 173.416 Authorized Type B packages.
Section 173.417 Authorized packaging—Fissile materials.
Section 173.418 Authorized packaging—pyrophoric radioactive materials.
Section 173.419 Authorized packaging—oxidizing radioactive materials.
Section 173.421 Limited quantities of radioactive materials.
- Section
173.421-1 Additional requirements for limited quantities of radioactive materials and radioactive instruments and articles.
- Section
173.421-2 Requirements for multiple hazard limited quantity radioactive materials.
Section 173.422 Exceptions for instruments and articles.
Section 173.423 Table of activity limits-excepted quantities and devices.
Section 173.424 Excepted article containing natural uranium or thorium.
Section 173.425 Transport requirements for low specific activity (LSA) radioactive materials.
Section 173.427 Empty radioactive materials packaging.
Section 173.431 Activity limits for Type A and Type B packages.
Section 173.433 Requirements for determination of A_1 and A_2 values for radionuclides.
Section 173.434 Activity-mass relationships for uranium and natural thorium.
Section 173.435 Table of A_1 and A_2 values for radionuclides.
Section 173.441 Radiation level limitations.
Section 173.442 Thermal limitations.
Section 173.443 Contamination control.
Section 173.444 Labeling requirements.
Section 173.446 Placarding requirements.
Section 173.447 Storage incident to transportation—general requirements.
Section 173.448 General transportation requirements.
Section 173.451 Fissile materials—general requirements.
Section 173.453 Fissile materials—exceptions.
Section 173.455 Classification of fissile materials packages.

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- Section 173.457 Transportation of Fissile Class III shipments—specific requirements.
Section 173.459 Mixing of fissile material packages.
Section 173.461 Demonstration of compliance with tests.
Section 173.462 Preparation of specimens for testing.
Section 173.463 Packaging and shielding—testing for integrity.
Section 173.465 Type A packaging tests.
Section 173.466 Additional tests for Type A packagings designed for liquids and gases.
Section 173.467 Tests for demonstrating the ability of Type B and fissile radioactive materials packagings to withstand accident conditions in transportation.
Section 173.469 Tests for special form radioactive materials.
Section 173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.
Section 173.472 Requirements for exporting DOT specification Type B and fissile packages.
Section 173.473 Requirements for foreign-made packages.
Section 173.474 Quality control for construction of packaging.
Section 173.475 Quality control requirements prior to each shipment of radioactive materials.
Section 173.476 Approval of special form radioactive materials.
Section 173.477 Approval for export shipments.
Section 173.478 Notification to competent authorities for export shipments.
- Subpart J—Other Regulated Material; Definition and Preparation.
Section 173.500 Definitions.
Section 173.505 Exceptions for Other Regulated Material (ORM).
Section 173.510 General packaging requirements.
- Subpart K—Other Regulated Material; ORM-A.
Section 173.605 Ammonium hydrosulfide solution, ammonium polysulfide solution, bromochloromethane, dibromodifluoromethane, dichlorodifluoroethylene dichloromethane, methyl chloroform, perfluoro-2-butene, tetrachloroethylene, and trichloroethylene.
Section 173.610 Camphene.
Section 173.615 Carbon dioxide, solid (dry ice).
Section 173.620 Carbon tetrachloride, ethylene dibromide (1,2-dibromoethane), and tetrachloroethane.
Section 173.630 Chloroform.
Section 173.635 Ferrophosphorus.
Section 173.645 Ferrosilicon.
Section 173.650 Hexachloroethane.
Section 173.655 Naphthalene or naphthalin.
- Subpart L—Other Regulated Material, ORM-B.
Section 173.800 Ammonium hydrogen sulfate, ammonium fluoride, barium oxide, chloroplatinic acid, copper chloride, ferric chloride, lead chloride, molybdenum pentachloride, potassium hydrogen sulfate, sodium aluminate, sodium hydro-

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- gen sulfate, and/or sodium hydrogen sulfite (each in solid form).
- Section 173.850 Lime, unslaked; quicklime; and calcium oxide.
- Section 173.860 Mercury, metallic.
- Section 173.861 Gallium metal, liquid.
- Section 173.862 Gallium metal, solid.
- Subpart M—Other Regulated Material; ORM-C.
- Section 173.906 Inflatable life rafts, escape slides, and evacuation slides.
- Section 173.910 Ammonium sulfate nitrate.
- Section 173.915 Battery parts.
- Section 173.920 Bleaching powder.
- Section 173.925 Box toe board.
- Section 173.930 Burlap bags, used and unwashed or not cleaned.
- Section 173.931 Burlap cloth, burlap bags, new, used, and washed, or vacuum cleaned, wheel cleaned or otherwise mechanically cleaned.
- Section 173.945 Calcium cyanamide, not hydrated.
- Section 173.952 Castor beans and castor pomace.
- Section 173.955 Coconut meal pellets.
- Section 173.960 Copra.
- Section 173.965 Cotton and other fibers.
- Section 173.970 Cotton batting, batting dross, wadding, seed hull fiber, shavings pulp, and cut linters.
- Section 173.975 Cotton sweepings; and textile, cotton, felt, or wool waste.
- Section 173.980 Excelsior.
- Section 173.985 Exothermic ferrochrome, ferromanganese, and silicon-chrome.
- Section 173.990 Feed, wet, mixed.
- Section 173.995 Fish scrap and fish meal.
- Section 173.1000 Garbage tankage, rough ammoniate tankage, or tankage fertilizer.
- Section 173.1005 Hay or straw.
- Section 173.1010 Lead dross or scrap containing 3 percent or more free acid.
- Section 173.1015 Lithium batteries, for disposal.
- Section 173.1020 Magnetized material.
- Section 173.1025 Ferrous metal borings, shavings, turning, or cuttings (excluding stainless steel).
- Section 173.1030 Oakum or twisted jute packing.
- Section 173.1035 Oiled material.
- Section 173.1040 Pesticide, water-reactive.
- Section 173.1045 Petroleum coke, uncalcined.
- Section 173.1065 Rubber curing compound, solid.
- Section 173.1070 Sawdust or wood shavings.
- Section 173.1075 Scrap paper or waste.
- Section 173.1080 Sulfur.
- Section 173.1085 Yeast, active (in liquid or compressed form).
- Section 173.1090 Asbestos.
- Subpart N—Other Regulated Material; ORM-D.
- Section 173.1200 Consumer Commodity.
- Subpart O—Other Regulated Material; ORM-E.
- Section 173.1300 Hazardous waste, liquid or solid, n.o.s.; hazardous substance, liquid or solid, n.o.s.

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Appendix A—Method of Testing Corrosion to Skin.

PART 174—CARRIAGE BY RAIL

Subpart A—General Requirements.

- Section 174.1 Purpose and scope.
- Section 174.3 Unacceptable hazardous materials shipments.
- Section 174.5 Carrier's materials and supplies.
- Section 174.7 Responsibility for compliance.
- *[Section 174.8 Inspection.

This section is changed to read as follows.

(a) Methods of manufacture, packing, and storage of hazardous material, insofar as they affect safety in transportation by rail, must be open to inspection by a duly authorized representative of the U.S. Department of Transportation, the New Jersey Department of Law and Public Safety, the New Jersey Department of Transportation, an initial carrier, and the U.S. Bureau of Explosives.

(b) At any point where a train is required to be inspected, each loaded placarded rail car and each rail car immediately adjacent thereto must be inspected. The cars may continue in transit only when the inspection indicates that the cars are in a safe condition for transportation. (See Sections 174.9 and 174.10.) The inspection of a rail car other than a tank car or a rail car containing Class A explosives must include a visual inspection for obvious defects of the running gear and any leakage of contents from the car and to determine whether all required placards are in place and conform to the information given on the train consist or other shipping document as required by Section 174.26(b).

(c) For inspection requirements applicable to rail cars containing Class A explosives, see Sections 174.10 and 174.104.]*

- Section 174.9 Inspection of tank cars.
- Section 174.10 Inspection of cars at interchange.
- Section 174.11 Canadian shipments and packages.
- Section 174.12 Intermediate shippers and carriers.
- Section 174.14 Movements to be expedited.
- Section 174.16 Removal and disposition of hazardous materials at destination.
- Section 174.18 Astray shipments.
- Section 174.20 Local or carrier restrictions.

Subpart B—General Operating Requirements

- Section 174.24 Shipping papers.
- Section 174.25 Additional information on waybills, switching orders and other billings.
- Section 174.26 Notice to train crews of placarded cars.
- Section 174.33 Lost or destroyed labels and placards.
- Section 174.45 Reporting hazardous materials incidents.
- Section 174.47 Correction of violations.
- Section 174.48 Leaking packages other than tank cars.
- Section 174.49 Flammable vapors.
- Section 174.50 Leaking tank cars.

Subpart C—General Handling and Loading Requirements.

- Section 174.55 General requirements.
- Section 174.57 Cleaning cars.
- Section 174.59 Marking and placarding of rail cars.
- Section 174.61 Truck bodies, trailers or freight containers on flat cars.
- Section 174.63 Freight containers, portable tanks and IM portable tanks.
- Section 174.67 Tank car unloading.

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- Section 174.69 Removal of placards and car certificates after unloading.
- Section 174.81 Segregation and separation requirements for hazardous materials in rail cars.
- Subpart D—Handling of Placarded Cars.
 - Section 174.83 Switching of cars containing hazardous materials.
 - Section 174.84 Switching of flatcars carrying placarded trailers, freight containers, portable tanks or IM portable tanks.
 - Section 174.85 Placement of freight cars placarded “EXPLOSIVES A” in yards, on sidings, or side tracks.
 - Section 174.86 Position in train of cars placarded “EXPLOSIVES A” or “POISON GAS” when accompanied by cars carrying guards or technical escorts.
 - Section 174.87 Placarded cars prohibited in passenger trains, limited in mixed trains.
 - Section 174.88 Position in train of cars placarded “EXPLOSIVES A”.
 - Section 174.89 Position in train of cars placarded “RADIOACTIVE”.
 - Section 174.90 Separating cars placarded “EXPLOSIVES A” or “POISON GAS” from other cars in trains.
 - Section 174.91 Position in train of loaded placarded tank car other than car placarded “COMBUSTIBLE”.
 - Section 174.92 Separating loaded placarded tank cars other than cars placarded “COMBUSTIBLE” from other cars in trains.
 - Section 174.93 Position in train of empty placarded tank cars.
- Subpart E—Detailed Requirements for Explosives
 - Section 174.100 Forbidden explosives.
 - Section 174.101 Loading explosives.
 - Section 174.102 Forbidden mixed loading and storage.
 - Section 174.103 Disposition of damaged or astray shipments.
 - Section 174.104 Class A explosives; car selection, preparation, inspection, and certification.
 - Section 174.105 Routing shipments, Class A explosives.
 - Section 174.106 “Order-Notify” or “C.O.D.” shipments, Class A explosives.
 - Section 174.107 Shipping days for Class A explosives.
 - Section 174.109 Non-agency shipments.
 - Section 174.110 Car magazine.
 - Section 174.112 Loading Class B explosives (Also see Section 174.101).
 - Section 174.114 Record to be made of change of seals on “EXPLOSIVES A” laden cars.
 - Section 174.115 Loading Class C explosives.
- Subpart F—Detailed Requirements for Gases
 - Section 174.200 Special handling requirements.
 - Section 174.201 Compressed gas cylinders.
 - Section 174.204 Tank car delivery of gases.
 - Section 174.208 Rail cars, truck bodies, or trailers with fumigated or treated lading.
 - Section 174.280 Poison gases with foodstuffs.
 - Section 174.290 Poison A shipped by, for, or to the Department of Defense.

- Subpart G—Detailed Requirements for Flammable Liquid
 - Section 174.300 Special handling requirements.
 - Section 174.304 Flammable liquids in tank cars.
 - Section 174.380 Poisonous flammable liquids with foodstuffs.
- Subpart H—Detailed Requirements for Flammable Solids
 - Section 174.410 Special handling requirements for matches.
 - Section 174.450 Fires.
 - Section 174.480 Poisonous flammable liquids with foodstuffs.
- Subpart I—Detailed Requirements for Oxidizers
 - Section 174.510 Special handling requirements for nitrates.
 - Section 174.515 Cleaning cars; potassium permanganate.
 - Section 174.580 Poisonous oxidizers with foodstuffs.
- Subpart J—Detailed Requirements for Poisonous Materials
 - Section 174.600 Special handling requirements for Poison A materials.
 - Section 174.615 Cleaning cars.
 - Section 174.680 Poisons with foodstuffs.
- Subpart K—Detailed Requirements for Radioactive Materials
 - Section 174.700 Special handling requirements for radioactive materials.
 - Section 174.715 Cleanliness of cars after use.
 - Section 174.750 Incidents involving leakage.
- Subpart L—Detailed Requirements for Corrosive Materials
 - Section 174.800 Special handling requirements for corrosive materials.
 - Section 174.810 Special handling requirements for wet electric storage batteries.
 - Section 174.812 Special handling requirements for nitric acid.
- Subpart M—Detailed Requirements for Other Regulated Materials
 - Section 174.840 Special loading and handling requirements for asbestos.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

- Subpart A—General Information and Regulations
 - Section 177.800 Purpose of regulations in Parts 170-189 of this chapter.
 - Section 177.801 Scope of regulations in Parts 170-189 of this chapter.
 - Section 177.802 Application of regulations in Parts 170-189 of this chapter.
 - Section 177.803 Export and import shipments by domestic carriers by motor vehicles.
 - Section 177.804 Compliance with Federal Motor Carrier Safety Regulations.

***Motor carriers and other persons subject to this part shall comply with 49 CFR Parts 390 through 397 (excluding Sections 391.69, 391.71, 393.81, 397.3, and 397.9) revised as of October 31, 1983, to the extent those rules apply. Carriers transporting hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below, except transporters carrying combustible liquids which have been excluded pursuant to Section 173.118a.**

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(See N.J.A.C. 16:49-1.3(1) herein).

MOTOR CARRIER SAFETY REGULATIONS

PART 390 FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A—Definitions

- Section 390.1 Motor vehicle.
- Section 390.2 Vehicle.
- Section 390.3 Bus.
- Section 390.4 Truck.
- Section 390.5 Truck tractor.
- Section 390.6 Semitrailer.
- Section 390.7 Full trailer.
- Section 390.8 Pole trailer.
- Section 390.9 Driveaway-towaway operation.
- Section 390.10 Gross weight.
- Section 390.11 Driver.
- Section 390.12 Business district.
- Section 390.13 Residence district.
- Section 390.15 Motor carrier.
- Section 390.16 Exempt intracity operation.
- Section 390.17 Lightweight vehicle.

Subpart B—General

- Section 390.28 Other terms.
- Section 390.30 State and local laws, effect on.
- Section 390.31 Vehicles used for purposes other than as defined.
- Section 390.32 Motor carrier to require observance of driver regulations.
- Section 390.33 Applicability of regulations.
- Section 390.40 Locations for filing accident reports and notifications.
- Section 390.45 Photographic copies of records or documents.

PART 391 QUALIFICATIONS OF DRIVERS

Subpart A—General

- Section 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.
- Section 391.2 General exemptions.
- Section 391.3 Definitions.
- Section 391.5 Familiarity with rules.
- Section 391.7 Aiding or abetting violations.

Subpart B—Qualifications and Disqualification of Drivers

- Section 391.11 Qualifications of drivers.
- Section 391.15 Disqualification of drivers.

Subpart C—Background and Character

- Section 391.21 Application for employment as specified in this Section 391.21 are not required for persons already employed by same carrier as of March 4, 1985.
- Section 391.23 Investigation and inquiries. Section 391.23 shall apply only to drivers hired after March 4, 1985.
- Section 391.25 Annual review of driving record.
- Section 391.27 Record of violations.

Subpart D—Examinations and Tests

- Section 391.31 Road test.
- Section 391.33 Equivalent of road test.

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- Section 391.35 Written examination.
- Section 391.37 Equivalent of written examination.

Subpart E—Physical Qualifications and Examinations

- Section 391.41 Physical qualifications for drivers.
- Section 391.43 Medical examination; certificate of physical examination.
- Section 391.45 Persons who must be medically examined and certified.
- Section 391.47 Resolution of conflicts of medical evaluation.
- Section 391.49 Waiver of certain physical defects.

Subpart F—Files and Records

- Section 391.51 Driver qualification files.

Subpart G—Limited Exemptions

- Section 391.61 Drivers who were regularly employed before January 1, 1971.
- Section 391.62 Drivers of lightweight vehicles.
- Section 391.63 Intermittent, casual, or occasional drivers.
- Section 391.65 Drivers furnished by other motor carriers.
- Section 391.67 Drivers of articulated (combination) farm vehicles.

PART 392 DRIVING OF MOTOR VEHICLES

Subpart A—General

- Section 392.1 Scope of the rules in this part.
- Section 392.2 Applicable operating rules.
- Section 392.3 Ill or fatigued operator.
- Section 392.4 Narcotics, amphetamine, and other dangerous substances.
- Section 392.5 Intoxicating beverage.
- Section 392.6 Schedules to conform with speed limits.
- Section 392.7 Equipment, inspection and use.
- Section 392.8 Emergency equipment, inspection, and use.
- Section 392.9 Safe loading.
- Section 392.9a Corrective lenses to be worn.
- Section 392.9b Hearing aid to be worn.

Subpart B—Driving of Vehicles

- Section 392.10 Railroad grade crossings; stopping required.
- Section 392.11 Railroad grade crossings; slowing down required.
- Section 392.12 Drawbridges; stopping of buses.
- Section 392.13 Drawbridges, slowing down of other vehicles.
- Section 392.14 Hazardous conditions; extreme caution.
- Section 392.15 Required and prohibited use of turn signals.
- Section 392.16 Use of seat belts.

Subpart C—Stopped Vehicles

- Section 392.20 Unattended vehicles; precautions.
- Section 392.21 Stopped vehicles not to interfere with other traffic.
- Section 392.22 Emergency signals; stopped vehicles.
- Section 392.24 Emergency signals; flame-producing.
- Section 392.25 Emergency signals; dangerous cargoes.

Subpart D—Use of Lighted Lamps and Reflectors

- Section 392.30 Lighted lamps; moving vehicles.

- Section 392.31 Lighted lamps; stopped or parked vehicles.
- Section 392.32 Upper and lower head-lamp beams.
- Section 392.33 Obscured lamps or reflectors.
- Subpart E—Accidents and License Revocation; Duties of Driver**
 - Section 392.40 All accidents.
 - Section 392.41 Striking unattended vehicle.
 - Section 392.42 Notification of license revocation.
- Subpart F—Fueling Precautions**
 - Section 392.50 Ignition of fuel; prevention.
 - Section 392.51 Reserve fuel.
 - Section 392.52 Buses; fueling.
- Subpart G—Prohibited Practices**
 - Section 392.60 Unauthorized persons not to be transported.
 - Section 392.61 Driving by unauthorized person.
 - Section 392.62 Bus driver; distraction.
 - Section 392.63 Towing or pushing loaded buses.
 - Section 392.64 Riding within closed vehicles without proper exits.
 - Section 392.65 Sleeper berth; transfer to or from.
 - Section 392.66 Carbon monoxide; use of vehicle when detected.
 - Section 392.67 Heater, flame-producing; or vehicle in motion.
 - Section 392.68 Motive power not to be disengaged.
 - Section 392.69 Sleeper berth, occupation.

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

- Subpart A—General**
 - Section 393.1 Scope of the rules in this part.
 - Section 393.2 Additional equipment and accessories.
- Subpart B—Lighting Devices, Reflectors, and Electrical Equipment**
 - Section 393.9 Lamps operable.
 - Section 393.11 Lamps and reflectors, small buses and trucks.
 - Section 393.12 Lamps and reflectors, large buses and trucks.
 - Section 393.13 Lamps and reflectors, truck tractors.
 - Section 393.14 Lamps and reflectors, large semi-trailers and full trailers.
 - Section 393.15 Lamps and reflectors, small semi-trailers and full trailers.
 - Section 393.16 Lamps and reflectors, pole trailers.
 - Section 393.17 Lamps and reflectors, combinations in driveaway-towaway operation.
 - Section 393.18 Lamps on motor vehicles with projecting loads.
 - Section 393.19 Requirements for turn signaling systems.
 - Section 393.20 Clearance lamps to indicate extreme width and height.
 - Section 393.22 Combination of lighting devices and reflectors.
 - Section 393.23 Lighting devices to be electric.
 - Section 393.24 Requirements for head lamps and auxiliary road lighting lamps.

- Section 393.25 Requirements for lamps other than head lamps.
- Section 393.26 Requirements for reflectors.
- Section 393.27 Wiring specifications.
- Section 393.28 Wiring to be protected.
- Section 393.29 Grounds.
- Section 393.30 Battery installation.
- Section 393.31 Overload protective devices.
- Section 393.32 Detachable electrical connections.
- Section 393.33 Wiring, installation.
- Subpart C—Brakes**
 - Section 393.40 Required brake systems.
 - Section 393.41 Parking brake system.
 - Section 393.42 Brakes required on all wheels.
 - Section 393.43 Breakaway and emergency braking.
 - Section 393.44 Front brake lines, protection.
 - Section 393.45 Brake tubing and hose, adequacy.
 - Section 393.46 Brake tubing and hose connections.
 - Section 393.47 Brake lining.
 - Section 393.48 Brakes to be operative.
 - Section 393.49 Single valve to operate all brakes.
 - Section 393.50 Reservoirs required.
 - Section 393.51 Warning devices and gauges.
 - Section 393.52 Brake performance.
- Subpart D—Glazing and Window Construction**
 - Section 393.60 Glazing in specified openings.
 - Section 393.61 Window construction.
 - Section 393.62 Window obstructions.
 - Section 393.63 Windows, markings.
- Subpart E—Fuel Systems**
 - Section 393.65 All fuel systems.
 - Section 393.67 Liquid fuel tanks.
 - Section 393.69 Liquefied petroleum gas systems.
- Subpart F—Coupling Devices and Towing Methods**
 - Section 393.70 Coupling devices and towing methods, except for driveaway-towaway operations.
 - Section 393.71 Coupling devices and towing methods, driveaway-towaway operations.
- Subpart G—Miscellaneous Parts and Accessories**
 - Section 393.75 Tires.
 - Section 393.76 Sleeper berths.
 - Section 393.77 Heaters.
 - Section 393.78 Windshield wipers.
 - Section 393.79 Defrosting devices.
 - Section 393.80 Rear-vision mirrors.
 - Section 393.82 Speedometer.
 - Section 393.83 Exhausts system location.
 - Section 393.84 Floors.
 - Section 393.86 Rear end protection.
 - Section 393.87 Flags on projecting loads.
 - Section 393.88 Television receivers.
 - Section 393.89 Buses, driveshaft protection.
 - Section 393.90 Buses, standee line or bar.
 - Section 393.91 Buses, aisle seats prohibited.
 - Section 393.92 Buses, marking emergency doors.
 - Section 393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.
 - Section 393.94 Vehicle interior noise levels.
- Subpart H—Emergency Equipment**
 - Section 393.95 Emergency equipment on all power units.

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Subpart I—Protection against Shifting or Falling Cargo

- Section 393.100 General rules for protection against shifting or falling cargo.
- Section 393.102 Securement systems.
- Section 393.104 Blocking and bracing.
- Section 393.106 Front-end structure.

PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS

- Section 394.1 Scope of the rules in this part.
- Section 394.3 Definition of "reportable accident".
- Section 394.5 Definition of "farm-to-market agricultural transportation".
- Section 394.7 Immediate notification of fatal accidents.
- Section 394.9 Reporting of accidents.
- Section 394.11 Notice of death after filing report.
- Section 394.15 Assistance in investigations and special studies.
- Section 394.20 Instructions for preparing accident reports.

PART 395 HOURS OF SERVICE OF DRIVERS

- Section 395.1 Compliance with, and knowledge of, the rules in this part.
- Section 395.2 Definitions.
- Section 395.3 Maximum driving and on-duty time.
- Section 395.7 Travel time.
- Section 395.8 Driver's record of duty status.
- Section 395.10 Adverse driving and conditions.
- Section 395.11 Emergency conditions.
- Section 395.12 Relief from regulations.
- Section 395.13 Drivers declared out of service.

PART 396 INSPECTION, REPAIR, AND MAINTENANCE

- Section 396.1 Scope.
- Section 396.3 Inspection, repair, and maintenance.
- Section 396.5 Lubrication.
- Section 396.7 Unsafe operations forbidden.
- Section 396.9 Inspection of motor vehicles in operation.
- Section 396.11 Driver vehicle inspection report(s).
- Section 396.13 Driver inspection.
- Section 396.15 Driveaway-towaway operations, inspections.

PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

- Section 397.1 Application of the rules in this part.
- Section 397.2 Compliance with Federal motor carrier safety regulations.
- Section 397.5 Attendance and surveillance of motor vehicles.
- Section 397.7 Parking.
- Section 397.11 Fires.
- Section 397.13 Smoking.
- Section 397.15 Fueling.
- Section 397.17 Tires.
- Section 397.19 Instructions and documents.
- Section 397.21 Marking of vehicles operated by private carriers.*

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- Section 177.805 Canadian shipments and packagings.
- Section 177.806 U.S. Government material.
- Section 177.807 Reporting hazardous materials incidents. ***(Reporting requirements are as revised herein in Sections 171.15, 171.16, and 171.17.***
- Section 177.808 Connecting carrier shipments.
- Section 177.809 Carrier's material and supplies.
- Section 177.810 Vehicular tunnels.
- Section 177.811 Astray shipments.
- Section 177.812 Containers required.
- Section 177.813 Inefficient containers.
- Section 177.814 Retention of manufacturer's certificate and retest reports.
- Section 177.815 Lost or destroyed labels.
- Section 177.816 Training.
- Section 177.817 Shipping Papers.
- Section 177.818 Special instructions; flammable cryogenic liquids.
- Section 177.821 Hazardous materials forbidden or limited for transportation.
- Section 177.822 Acceptable articles.
- Section 177.823 Marking and placarding motor vehicles.
- Section 177.824 Retesting and inspection of cargo tanks.
- Section 177.825 Routing and training requirements for radioactive materials. ***Parts (a), (b), (c) and (e) of Section 177.825 are excluded from adoption herein. Part (d) of Section 177.825 regarding driver training is included for adoption herein*.**
- Section 177.826 Carrier's registration statement; flammable cryogenic liquids.

Subpart B—Loading and Unloading

- Section 177.834 General requirements.
- Section 177.835 Explosives.
- Section 177.836 Nonexplosive material.
- Section 177.837 Flammable liquids.
- Section 177.838 Flammable solids and oxidizing materials.
- Section 177.839 Corrosive liquids.
- Section 177.840 Compressed gases.
- Section 177.841 Poisons.
- Section 177.842 Radioactive material.
- Section 177.843 Contamination of vehicles.
- Section 177.844 Other regulated materials.

Subpart C—Loading and Storage Chart of Hazardous Materials

- Section 177.848 Loading and storage chart of hazardous materials.

Subpart D—Vehicle and Shipments in Transit; Accidents

- Section 177.853 Transportation and delivery of shipments.
- Section 177.854 Disabled vehicles and broken or leaking packages; repairs.
- Section 177.855 Accidents; explosives.
- Section 177.856 Accidents; flammable liquids.
- Section 177.857 Accidents; flammable solids and oxidizing materials.
- Section 177.858 Accidents; corrosive materials.
- Section 177.859 Accidents; compressed gases.
- Section 177.860 Accidents or leakage; poisons.
- Section 177.861 Accidents; radioactive materials.

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Subpart E—Regulations Applying to Hazardous Material on Motor Vehicles Carrying Passengers for Hire
Section 177.870 Regulations for passenger carrying vehicles.

APPENDIX A—RELATIONSHIP BETWEEN ROUTING REQUIREMENTS IN PART 177 WITH STATE AND LOCAL REQUIREMENTS

Appendix A above, of Part 177, is excluded from adoption herein.

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Section 178.0 Purpose, scope, and applicability.

Subpart A—Specifications for Carboys, Jugs in Tubs, and Rubber Drums

- Section 178.1 Specification 1A, boxed carboys.
- Section 178.4 Specification 1D; boxed glass carboys.
- Section 178.5 Specification 1X; boxed carboys, 5 to 6½ gallons, for export only.
- Section 178.6 Specification 1EX; glass carboys in plywood drums.
- Section 178.13 Specification 1H; polyethylene carboys in low carbon steel or other equally efficient metal crates.
- Section 178.14 Specification 1K; glass carboys cushioned with expandable polystyrene in wooden wirebound box outside containers.
- Section 178.16 Specification 35; non-reusable molded polyethylene drum for use without overpack; removable head required.
- Section 178.17 Specification 1M; non-reusable glass carboy in non-reusable expanded polystyrene packaging.
- Section 178.19 Specification 34; reusable molded polyethylene container for use without overpack. Removable head not authorized.

Subpart B—Specifications for Inside Containers, and Linings

- Section 178.21 Specification 2T; polyethylene container.
- Section 178.22 Specification 2C; inside containers, corrugated fiberboard cartons.
- Section 178.23 Specification 2D; inside containers, duplex paper bags.
- Section 178.24 Specification 2U; molded or thermoformed polyethylene containers having rated capacity of over one gallon. Removable head containers or containers fabricated from film not authorized.
- Section 178.24a Specification 2E; inside polyethylene bottle.
- Section 178.25 Specification 2F; inside metal containers and liners.
- Section 178.26 Specification 2G; inside containers, fiber cans and boxes.
- Section 178.27 Specification 2TL; polyethylene container.
- Section 178.28 Specification 2J; inside containers, waterproof paper bags for linings.
- Section 178.29 Specification 2K; inside containers, paper bags for linings.

- Section 178.30 Specification 2L; lining for boxes.
- Section 178.31 Specification 2M; waterproofed paper lining.
- Section 178.32 Specification 2N; inside containers, metal cans.
- Section 178.33 Specification 2P; inside nonrefillable metal containers.
- Section 178.33a Specification 2Q, inside nonrefillable metal containers.
- Section 178.34 Specification 2R; inside containment vessel.
- Section 178.35 Specification 2S; polyethylene packaging.
- Section 178.35a Specification 2SL; molded or thermoformed polyethylene packaging.

Subpart C—Specifications for Cylinders

- Section 178.36 Specification 3A; seamless steel cylinders or 3AX; seamless steel cylinders of capacity over 1,000 pounds water volume.
- Section 178.37 Specification 3AA; seamless steel cylinders made of definitely prescribed steels or 3AAX; seamless steel cylinders made of definitely prescribed steels of capacity over 1,000 pounds water volume.
- Section 178.38 Specification 3B; seamless steel cylinders.
- Section 178.39 Specification 3BN; seamless nickel cylinders.
- Section 178.42 Specification 3E; seamless steel cylinders.
- Section 178.44 Specification 3HT; inside containers, seamless steel cylinders for aircraft use made of definitely prescribed steel.
- Section 178.45 Specification 3T; seamless steel cylinder.
- Section 178.46 Specification 3AL; seamless cylinders made of definitely prescribed aluminum alloys.
- Section 178.47 Specification 4DS; inside containers, welded stainless steel for aircraft use.
- Section 178.50 Specification 4B; welded and brazed steel cylinders.
- Section 178.51 Specification 4BA; welded or brazed steel cylinders made of definitely prescribed steels.
- Section 178.53 Specification 4D; inside containers, welded steel for aircraft use.
- Section 178.54 Specification 4B240-FLW; welded or welded and brazed cylinders with fusion-welded longitudinal seam.
- Section 178.55 Specification 4B240ET; welded and brazed cylinders made from electric resistance welded tubing.
- Section 178.56 Specification 4AA480; welded steel cylinders made of definitely prescribed steels.
- Section 178.57 Specification 4L; welded cylinders insulated.
- Section 178.58 Specification 4DA; inside containers, welded steel for aircraft use.
- Section 178.59 Specification 8; steel cylinders with approved porous filling for acetylene.
- Section 178.60 Specification 8AL; steel cylinders with approved porous filling for acetylene.
- Section 178.61 Specification 4BW; welded steel cylinders made of definitely prescribed steel with electric-arc welded longitudinal seam.

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- Section 178.65 Specification 39; non-reusable (nonrefillable) cylinder.
- Section 178.68 Specification 4E; welded aluminum cylinders.
- Subpart D—Specifications for Metal Barrels, Drums, Kegs, Cases, Trunks, and Boxes
- Section 178.80 Specification 5; steel barrels or drums.
- Section 178.81 Specification 5A; steel barrels or drums.
- Section 178.82 Specification 5B; steel barrels or drums.
- Section 178.83 Specification 5C; steel barrels or drums.
- Section 178.88 Specification 5K; nickel barrels or drums.
- Section 178.89 Specification 5L; steel barrels or drums.
- Section 178.90 Specification 5M; monel drums.
- Section 178.92 Specification 5P; lagged steel drums.
- Section 178.98 Specification 6B; steel barrels or drums.
- Section 178.99 Specification 6C; steel barrels or drums.
- Section 178.100 Specification 6J; steel barrels and drums.
- Section 178.102 Specification 6D; cylindrical steel overpack, straight sided, for inside plastic container.
- Section 178.103 Specification 6L; metal packaging.
- Section 178.104 Specification 6M; metal packaging.
- Section 178.107 Specification 42B; aluminum drums.
- Section 178.109 Specification 42D; aluminum drums.
- Section 178.115 Specification 17C; steel drums.
- Section 178.116 Specification 17E; steel drums.
- Section 178.117 Specification 17F; steel drums.
- Section 178.118 Specification 17H; steel drums.
- Section 178.120 Specification 20PF phenolic-foam insulated, metal overpack.
- Section 178.121 Specification 21PF fire and shock resistant, phenolic-foam insulated, metal overpack.
- Section 178.130 Specification 37K; steel drums.
- Section 178.131 Specification 37A; steel drums.
- Section 178.132 Specification 37B; steel drums.
- Section 178.133 Specification 37P; steel drums with polyethylene liner.
- Section 178.134 Specification 37M; cylindrical steel overpack, straight sided for inside plastic container; nonreusable containers.
- Section 178.135 Specification 37C; steel drums.
- Section 178.137 Specification 37D; steel drum. Nonreusable container. Open-head not authorized.
- Section 178.140 Specification 13; metal kegs.
- Section 178.141 Specification 13A; metal drums.
- Section 178.146 Specification 32A; metal cases, riveted or lock-seamed.
- Section 178.147 Specification 32B; metal cases, welded or riveted.
- Section 178.148 Specification 32C; metal trunks.
- Section 178.149 Specification 32D; metal boxes for old and worn-out motion-picture film no longer exhibitable.
- Section 178.150 Specification 33A; polystyrene cases. Nonreusable containers.
- Subpart E—Specifications for Wooden Barrels, Kegs, Boxes, Kits and Drums.
- Section 178.156 Specification 10B; wooden barrels and kegs (tight).
- Section 178.165 Specification 14; wooden boxes, nailed.

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- Section 178.168 Specification 15A; wooden boxes, nailed.
- Section 178.169 Specification 15B; wooden boxes, nailed.
- Section 178.170 Specification 15C; wooden boxes, nailed.
- Section 178.171 Specification 15D; wooden boxes, nailed.
- Section 178.172 Specification 15E; wooden boxes, fiberboard lined.
- Section 178.176 Specification 15L; wooden boxes with inside containers for desensitized liquid explosives.
- Section 178.177 Specification 15M; wooden boxes, metal lined, with inside containers for desensitized liquid explosives.
- Section 178.181 Specification 15X; wooden boxes for two five-gallon cans.
- Section 178.182 Specification 15P; glued plywood, or wooden box for inside containers.
- Section 178.185 Specification 16A; plywood or wooden boxes, wirebound.
- Section 178.186 Specification 16B; wooden boxes, wirebound.
- Section 178.187 Specification 16D; wooden wirebound overwrap for inside containers.
- Section 178.190 Specification 19A; wooden boxes, glued plywood, cleated.
- Section 178.191 Specification 19B; wooden boxes, glued plywood, nailed.
- Section 178.193 Specification 18B; wooden kits.
- Section 178.194 Specification 20WC; wooden protective jacket.
- Section 178.195 Specification 21WC; wooden-steel protective overpack.
- Section 178.196 Specification 22A; wooden drums, glued plywood.
- Section 178.197 Specification 22B; wooden drums, glued plywood.
- Section 178.198 Specification 22C; plywood drum for plastic inside container.
- Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes.
- Section 178.205 Specification 12B; fiberboard boxes.
- Section 178.206 Specification 12C; fiberboard boxes.
- Section 178.207 Specification 12D; fiberboard boxes.
- Section 178.208 Specification 12E; fiberboard boxes.
- Section 178.209 Specification 12H; fiberboard boxes.
- Section 178.210 Specification 12A; fiberboard boxes.
- Section 178.211 Specification 12P; fiberboard boxes. Nonreusable containers for inside plastic containers greater than 1-gallon capacity, as prescribed in Part 173 of this subchapter.
- Section 178.212 Specification 12R; paperfaced expanded polystyrene board boxes. Nonreusable containers.
- Section 178.214 Specification 23F; fiberboard boxes.
- Section 178.218 Specification 23G; special cylindrical fiberboard box for high explosives.
- Section 178.219 Specification 23H; fiberboard boxes.
- Section 178.224 Specification 21C; fiber drum.
- Section 178.225 Specification 21P; fiber drum overpack for inside plastic container.
- Section 178.226 Specification 29; mailing tubes.
- Subpart G—Specifications for Bags, Cloth, Burlap, Paper or Plastic

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- Section 178.230 Specification 36A; lined cloth bags (triplex).
- Section 178.233 Specification 36B; burlap bags, lined.
- Section 178.234 Specification 36C; burlap bags, paper lined.
- Section 178.236 Specification 44B; multiwall paper bags.
- Section 178.237 Specification 44C; multiwall paper bags.
- Section 178.238 Specification 44D; multiwall paper bags.
- Section 178.239 Specification 44E; multiwall paper bags.
- Section 178.240 Specification 45B; bags, cloth and paper, lined.
- Section 178.241 Specification 44P; all-plastic bags.
- Subpart H—Specifications for Portable Tanks
- Section 178.245 Specification 41; steel portable tanks.
- Section 178.251 General design and construction requirements applicable to specifications 56 (Section 178.252) and 57 portable tanks (Section 178.253).
- Section 178.252 Specification 56; metal portable tank.
- Section 178.253 Specification 57; metal portable tank.
- Section 178.255 Specification 60; steel portable tanks.
- Section 178.270 Specification IM 101 and IM 102 steel portable tanks; general design and construction requirements.
- Section 178.271 Specification IM 101 steel portable tanks.
- Section 178.272 Specification IM 102 steel portable tanks.
- Subpart J—Specifications for Containers for Motor Vehicle Transportation
- Section 178.315 Specification MC 200; containers for liquid nitroglycerin, desensitized liquid nitroglycerin or diethylene glycol dinitrate.
- Section 178.318 Specification MC 201; container for detonators and percussion caps.
- Section 178.337 Specification MC 331; cargo tanks constructed of steel, primarily for transportation of compressed gases as defined in the Compressed Gas Section.
- Section 178.338 Specification MC 338; insulated cargo tank.
- Section 178.340 General design and construction requirements applicable to specifications MC 306 (Section 178.341), MC 307 (Section 178.342), and MC 312 (Section 178.343) cargo tanks.
- Section 178.341 Specification MC 306; cargo tanks.
- Section 178.342 Specification MC 307; cargo tanks.
- Section 178.343 Specification MC 312; cargo tanks.

Subpart K—Specifications for General Packagings

- Section 178.350 Specification 7A; general packaging, Type A.

Appendix A—Specifications for Steel

Appendix B—Specifications for Plastics

PART 179—SPECIFICATIONS FOR TANK CARS

Subpart A—Introduction, Approvals, and Reports

- Section 179.1 General.
- Section 179.2 Definitions and abbreviations.
- *[Section 179.3 Procedure for securing approval.]*
- *[Section 179.4 Changes in specifications for tank cars.]*
- *[Section 179.5 Certificate of construction.]*
- Section 179.6 Repairs and alterations.

Subpart B—General Design Requirements

- Section 179.10 Tank mounting.
- Section 179.11 Welding certification.
- Section 179.12 Interior heater systems.
- Section 179.13 Tank car capacity and gross weight limitation.
- Section 179.14 Tank car couplers.

Subpart C—Specifications for Pressure Tank Car Tanks (Classes DOT—105, 109, 112 and 114).

- Section 179.100 General specification applicable to pressure tank car tanks.
- Section 179.101 Individual specification requirements applicable to pressure tank car tanks.
- Section 179.102 Special commodity requirements for pressure tank car tanks.
- Section 179.103 Special requirements for class 114A*** tank car tanks.
- Section 179.104 Special requirements for spec. 105-A200-F tank car tanks.
- Section 179.105 Special requirements for Specifications 112 and 114 tank cars.
- Section 179.106 Special requirements for Specification 105 tank cars.

Subpart D—Specifications for Non-Pressure Tank Car Tanks (Classes DOT—103, 104, 111AF, 111AW, and 115AW).

- Section 179.200 General specifications applicable to non-pressure tank car tanks (Classes DOT—103, 104, and 111).
- Section 179.201 Individual specification requirements applicable to non-pressure tank car tanks.
- Section 179.202 Special commodity requirements for non-pressure tank car tanks.
- Section 179.220 General specifications applicable to non-pressure tank car tanks consisting of an inner container supported within an outer shell (class DOT—115).
- Section 179.221 Individual specification requirements applicable to tank car tanks consisting of an inner container supported within an outer shell.

Subpart E—Specifications for Multi-Unit Tank Car Tanks (Classes DOT—106A and 110AW).

- Section 179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from car structure for filling and emptying (Classes DOT—106A and 110AW).
- Section 179.301 Individual specification requirements for multi-unit tank car tanks.
- Section 179.302 Special commodity requirements for multi-unit tank car tanks.

Subpart F—Specifications for Liquefied Hydrogen Tank Car Tanks and Seamless Steel Tanks (Classes DOT—113A—W and 107A).

- Section 179.400 General specifications applicable to liquefied hydrogen tank car tanks.
- Section 179.401 Individual specification requirements for liquefied hydrogen tank car tanks.
- Section 179.500 Specification DOT—107A****seamless steel tank car tanks.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Classification of Bidders: Prequalification

Adopted Repeal: N.J.A.C. 17:19-2.1 through 2.13

Adopted New Rules: N.J.A.C. 17:19-2.1 through 2.9 and 17:19-2.11 through 2.14

Proposed: October 15, 1984 at 16 N.J.R. 2751(a).

Adopted: February 5, 1985 by William L. Stringer, Acting State Treasurer and James G. Ton, Director, Division of Building and Construction.

Filed: February 11, 1985 as R.1985 d.95, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5) **and with a portion of proposal not adopted but still pending.**

Authority: N.J.S.A. 52:35-1 et seq., specifically 52:35-11.

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): March 18, 1990.

Summary of Public Comments and Agency Responses:

17:19-2.1(b)5

Comment: It was recommended that the last sentence in this section be modified to read: "The prospective bidder shall explain any of the above problems. . . ."

Response: It was agreed to adopt the addition of these words to the last sentence.

17:19-2.1(b)8c

Comment: Request is made to change the word "shall" to "may" where used as: ". . . shall be permanently disqualified . . .", so that the Director is not confronted with the absolute choice of disqualifying a bidder when a false statement is inadvertently filed.

Response: This request must be denied. The paragraph concerned is a direct quote from the statutes governing the classification of bidders.

17:19-2.4(c)1

Comment: It was recommended that at least two (2) persons from a designated list be required to submit ratings on the performance of a contractor. The list comprised:

Project Inspector
Inspector for Code Enforcement
Assistant Construction Manager
Construction Manager
Group Projects Manager
Architect/Engineer of Record

Response: The Division rejected this listing, preferring to be less specific, since titles change in the course of time and others than those listed could be involved in performance

ratings. The language as it exists in the proposal is more appropriate.

17:19-2.4(f)

Comment: Concern was expressed over the inclusion of language as follows: ". . . and where the contractor's performance exhibits a disregard for the standards of DBC". What are the standards of DBC? These are not specifically defined. We believe that reference to "standards of DBC" should be eliminated.

Response: By changing "DBC" to "contract", thus reading ". . . standards of the contract . . .", the intent of the proposal is met.

17:19-2.5(b)

Comment: The inclusion of: "No later than 30 days prior . . ." is deemed to be administratively unenforceable and an unnecessary constraint on the prequalification process.

Response: Eliminate the phrase: "No later than 30 days . . ." and begin the sentence with: "Prior to the expiration . . ."

17:19-2.5(b)2

Comment: In retrospect, the Division finds that the restriction of ". . . no later than 10 days from receipt of written extension request.", to be an unnecessary restriction and one that would be administratively difficult to enforce.

Response: The requirements for prequalification would be better served if the phrase was changed to read ". . . in a timely fashion upon receipt of the written extension request."

17:19-2.5(c)

Comment: The phrase ". . . no later than 20 days prior to the expiration date of the contractor's classification or rating . . ." is an unnecessary restriction on the prequalification process. The only time requirement, as set forth in the statutes, is that no prequalification can be issued within 20 days prior to the bid opening; however, the Division should accept a requalification request at any time.

Response: Delete the words ". . . no later than 20 days prior to the expiration date of the contractor's classification or rating . . ." from the proposal.

17:19-2.5(d)

Comment: In addition to changes in the financial and bonding status of the contractor, the Division should be aware of its corporate status. In addition, notification in writing of this change should be done through the means of a revised Financial and Experience Questionnaire.

Response: Insert the word "corporate" between "financial or bonding status" to now read ". . . the financial, corporate or bonding status . . .". Also, add at the end of the paragraph the words ". . . including the submission of a revised DBC Form 36R."

17:19-2.6

Comment: The following additions or changes are required to the List of Trades:

Add:	C033	Boilers (New/Repair)
Change:	C044	Air Balancing and Testing to
	C044	Balancing and Testing of
		Environmental Systems
Change:	C098	Energy Management to
	C098	Energy Management Systems

Response: These changes more completely and accurately reflect the intent of "Trade Classification".

17:19-2.6(c) and (d)

Comment: This category should include C007, General Construction (Single Prime) to completely and more accurately reflect the "umbrella" of specialties granted to general contractors.

Response: Add C007, General Construction (Single Prime) prior to C008, General Construction (Multiple Prime) to provide both types of General Construction with the same spectrum of prequalification in the specialty trades.

17:19-2.6(e) and (f)

Comment: Include under this category, 2.6(e), the additional specialty trades of:

- C013 Siding and Gutters
- C014 Carpeting
- C018 Acoustical
- C020 Gunite

Simultaneously eliminate the same specialty trades from 2.6(f). The general contractor can perform these trades without the requirement of separate prequalification.

Response: It is agreed that the General Contractor/Alterations and Additions can perform these four (4) specialties without separate prequalification.

17:19-2.6(h)

Comment: Add C104 Food Service to the specialty trades to be performed by the C030 Plumbing contractor without having to prequalify separately.

Response: This addition is appropriate.

17:19-2.6(j)

Comment: It is requested that C044 Balancing and Testing/Environmental Systems be added to the specialty trades to be performed by C039 HVAC contractor, thus not requiring a separate prequalification.

Response: This request must be denied. The Division has had serious problems in achieving proper balancing and testing of environmental systems. It has developed separate Administrative Rules on this category of work and must retain separate control over those prequalified to do this work.

17:19-2.8(e)

Comment: In the original concept, it was agreed that: "Aggregate rating limit may not exceed aggregate bonding. Contractor may be assigned aggregate rating equal to verified aggregate bonding limit, if above calculation is equal to 70% or more of bonding and if performance factor is equal to 5.0 or better." The new proposal depicts a different formula; substitution of the original concept is requested.

Response: After considerable deliberation, it was conceded that a better way to accomplish the same thing would be to multiply the calculated rating by 140% and to grant this rating to the contractor so long as it does not exceed the bonding capacity. Virtually, the same result is achieved; however, the Division believes that calculations using the 140% method will be more easily applied by the prequalification analysts.

17:19-2.8(i)

Comment: The phrase ". . . issue an amended rating for use . . ." should be modified to alert the contractor to performance ratings that will adversely affect their overall classification. They should have the opportunity to respond before such ratings are applied.

Response: In all fairness, the Division agrees to this contention and the phrase shall be changed to read ". . . shall immediately notify the contractor of the amended rating and its intended use . . .".

17:19-2.10

The following comments were submitted by the Office of Administrative Law.

Comment: N.J.S.A. 52:35-6 provides for a hearing before a board of review whose members are specified in N.J.S.A. 52:35-5. The proposed rules provide for an "administrative review" to be conducted by a "Prequalification Review Committee." As two (2) different procedures are described, question arises as to whether the proposal is authorized by statute.

Response: The "Prequalification Review Committee" is not intended to supercede the requirements of a hearing as called for under the statutes. It is an interim step in an attempt to ferret-out the difference between the contractor and the Division and to reach a reasonable solution. Under 17:19-2.10(f), the contractor is still permitted to turn to his rights under the statutes, i.e. "In the event that the contractor shall remain dissatisfied with his classification, said contractor may seek further recourse in accordance with N.J.S.A. 52:35-5 and 6."

17:19-2.10

Comment: In addition to the above, N.J.S.A. 52:35-6 requires a hearing on the classification issue when an objection is received and this provision may, therefore, require that the proceeding be conducted as a contested case.

Response: DBC has decided not to adopt the proposed hearing procedures, N.J.A.C. 17:19-2.10, at this time. The current hearing procedures utilized will be continued pursuant to the statute. After further consultation between the DBC and the Office of Administrative Law, a new hearing procedure rule will be adopted.

17:19-2.11

Comment: Exception is taken to the phrase ". . . as may be necessary in order to insure competitive bidding for that project . . .". Competitive bidding has nothing to do with special prequalification requirements and these words are extraneous to the intent of 17:19-2.11.

Response: It is agreed that the intent of the paragraph has nothing to do with competitive bidding. Competitive bidding occurs in accordance with existing statutes. The words are accordingly deleted.

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

17:19-2.1 Statements required from prospective bidders; contents

- (a) Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as DBC-36R (Contractor's Financial Statement and Experience Questionnaire). The DBC-36R shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership and prior experience of the prospective bidder and shall be used by the Division of Building and Construction (DBC) in prequalifying prospective bidders pursuant to N.J.S.A. 52:35-1, et seq.
- (b) Each DBC-36R shall contain:
 - 1. A statement as to financial status which statement shall show current assets and current liabilities, and which shall include verifications of lines of credit extended by lending institutions and the cash surrender value of relevant life insurance policies;
 - 2. A statement as to plant and equipment, which shall give complete details as to cost, age, condition and book value;

3. A statement as to organization, which shall demonstrate the adequacy of such organization (officers and key management personnel) to undertake a project in the classification desired;

4. A statement as to prior experience, which shall show the number of years the prospective bidder has been engaged in the contracting business and shall further disclose his experience over that period. In such statement, the applicant may demonstrate the experience of officers, managers and key personnel prior to their affiliation with applicant, which information shall be considered by the DBC;

5. A statement as to past performance, which shall give an accurate and complete record of work completed in the past five years, giving the names of the projects, type of work, location, contract price and the name of the owner and of the architect/engineer in charge for the owner. This statement shall also disclose any labor problems experienced, any failure to complete a contract on schedule, any failure to meet contractual Affirmative Action requirements, any penalties imposed by reason of any contract undertaken within the said five year period. The prospective bidder shall explain any ***of the above*** problems, failures or penalties encountered during the past five years, and what steps have been taken to avoid the recurrence of such problems, failures or penalties;

6. A statement that the applicant has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with New Jersey and Federal laws and regulations;

7. A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey to the applicant contractor, and shall indicate single and aggregate bonding limits as well as the trades for which the bonding limits apply;

8. A statement setting forth any other pertinent material and facts that will justify the classification and ratings requested by the contractor.

(c) The DBC-36R shall also contain the following statement:

The statute governing classification of bidders provides:

“Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted or in the course of any hearing under this chapter, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000.00 and shall be permanently disqualified from bidding on all public work of the State; or, in case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, co-partnership, association or corporation, to pay such fine or undergo imprisonment, not exceeding six months, or both.” (N.J.S.A. 52:35-9)

(d) It shall be the responsibility of the contractor to demonstrate and provide any and all supportive material to justify a classification and rating applied for.

17:19-2.2 Joint Venture statement

(a) Where two or more contractors, each with valid classifications and ratings, purpose to form a Joint Venture for purposes of bidding on one or more projects, the venturers shall jointly submit a statement to the Division which shall:

1. Be received by the Division no less than five days prior to the bid opening date set for the project on which they propose to bid;

2. State the classifications and ratings of the individual venturers;

3. Describe the purpose, structure and resources of the Joint Venture, and be supplemented by any other information requested by the Division;

4. Include a statement from an authorized surety of the bonding capacities of the individual venturers and the bonding capacity of the Joint Venture; and

5. Be signed by each of the venturers.

17:19-2.3 Statements from an authorized surety

(a) Any contractor proposing to submit bids on a public works project which requires a performance bond or a payment bond, or both, shall cause to be submitted with its DBC-36R (see N.J.A.C. 17:19-2.1(b)7.) a statement of the contractor's bonding capacity. The statement shall be contained on a standardized form prepared by the DBC and shall be from a surety authorized to issue bid bonds, performance bonds and payment bonds in the State of New Jersey. This statement shall be used by the DBC in calculating the applicant's single project rating and aggregate rating, pursuant to N.J.A.C. 17:19-2.7 and 17:19-2.8.

(b) A contractor who does not provide a statement of bonding capacity from an authorized surety shall not be eligible to bid on any projects for which a bond is necessary, but may be eligible to bid on any project for which a bond is not required, within the rating limits described in N.J.A.C. 17:19-2.7 and 17:19-2.8.

(c) In the event that a contractor obtains the required bonding statement subsequent to being classified and rated under (b) above, the contractor may apply for a conversion of its classification and ratings. Such a conversion shall be a prerequisite to the receipt by the contractor of any plans, specifications, proposals and associated documents for the preparation of a competitive bid on a project requiring a bid, performance or payment bond.

(d) Where two or more contractors holding valid classifications and ratings propose to form a Joint Venture for the purpose of bidding on a project, the Joint Venture shall submit with its Joint Venture Statement (see N.J.A.C. 17:19-2.2) a statement from an authorized surety of the Joint Venture's bonding capacity.

17:19-2.4 Performance ratings

(a) For any contractor proposing to submit bids on public work, a performance rating shall be determined. The rating shall be based on a scale of one through ten, with ten as the best, and with five as the minimum satisfactory grade.

(b) For any applicant who has no prior public work experience with the State of New Jersey, the performance rating shall be based on an evaluation of the applicant's references and past experience on private sector projects, as identified in the applicant's DBC-36R form (N.J.A.C. 17:19-2.1(b)5).

(c) For any applicant who has prior public works experience with the State of New Jersey, a performance rating shall be based on the project evaluations done for those State projects, as follows:

1. A project evaluation shall be made for each of the prime contractors on a public works project. The evaluation shall be made by no less than two persons employed by the State and directly involved in the management, supervision or inspection of the project. The evaluators for a given project shall be appointed by the Director or his designee.

2. Project evaluations shall be presented on a standardized form (DBC-67) prepared by the DBC and shall be filed with the DBC within 30 days of final completion of the contractor's work on the project. Where necessary, interim evaluations may also be prepared and filed as required.

3. While the Director may establish special evaluation criteria for special projects, in general a project evaluation shall be based on but not limited to the following factors:

- i. Schedule adherence, including job planning, manning and submissions;
- ii. Workmanship;
- iii. Supervision;
- iv. Subcontractor performance;
- v. Compliance with specified materials and procedures;
- vi. Cooperation with other prime contractors;
- vii. Completion of punch list items and prompt furnishing of closeout documents;
- viii. Timely and cooperative processing of change orders; and
- ix. Affirmative Action compliance.

4. A contractor's performance rating shall be calculated as the average of the various project evaluations.

(d) The performance ratings of contractors shall be updated as State work is completed and as these contractors bid on other projects.

(e) A contractor shall be notified of a project evaluation or performance rating which would adversely affect the contractor's single project rating, aggregate project rating or ultimate classification. The contractor shall be afforded an opportunity to respond to such adverse evaluation or rating.

(f) Where a contractor receives a project evaluation or a performance rating significantly below five, and where the contractor's performance exhibits a disregard for the standards of the *[DBC]**contract*, the DBC may institute suspension or debarment proceedings against that contractor, pursuant to N.J.A.C. 17:19-3.1, et seq.

17:19-2.5 Bidders to be classified

(a) Upon receipt of the completed DBC-36R, the Director or his designee shall classify the applicant as to the trade, character, and the dollar value of the public work on which the applicant shall be qualified to submit bids. Classifications will be based on the information contained in and with the DBC-36R and on the contractor's performance rating. Applicants shall be classified as to the trades listed in N.J.A.C. 17:19-2.6; as to the dollar value of individual State projects for which they may bid pursuant to the Single Project Rating Limit in N.J.A.C 17:19-2.7; and as to the dollar value of total projects on which they may work at any given time pursuant to the Aggregate Rating Limit in N.J.A.C. 17:19-2.8.

(b) Where classification or rating of a contractor is based on a DBC-36R, the classification of rating shall be effective for a period of seven months from the date of the financial data disclosed in the DBC-36R. *[No later than 30 days]* *[p]**P*rior to the expiration of the classification or rating, a contractor may apply in writing for a single seven month extension of its classification or rating, or both, without filing a new DBC-36R.

1. In applying for an extension, the contractor shall submit a signed affidavit stating that the applicant's financial and bonding status has not so substantially changed since its last submission of a DBC-36R that a change of classification or rating would be warranted. The Division of Building and Construction may verify this statement and request additional documentation before an extension is granted;

2. The Division shall grant or deny the extension *[no later than 10 days from]* *in a timely fashion upon* receipt of the written extension request;

3. No more than one extension may be granted and, thereafter, a contractor shall submit an updated DBC-36R in order to continue its prequalified classification;

4. The extension of a classification or rating shall be effective for a period of seven months from the *[notice of extension]* *expiration date of the preceeding rating period which was based upon the submission of a DBC Form 36R.*

(c) Where a contractor has not been granted an extension or where an extension period is expiring, *[no later than 20 days prior to the expiration date of the contractor's classification or rating]* the contractor shall file an updated DBC-36R with the DBC. Based on this DBC-36R, the DBC shall reclassify the contractor, as appropriate.

(d) Where, in the course of a seven month classification period, the financial*, corporate* or bonding status of a contractor changes so substantially as to warrant a change of classification or rating, the contractor shall forthwith notify the Division in writing *including the submission of a revised DBC Form 36R.*

1. With this notice, the contractor may also request a change of classification or rating.

2. The DBC shall review the request for revision and issue a decision no later than 20 days from the date of the request.

3. Any change of classification or rating shall be effective only for the remainder of the original seven month period.

17:19-2.6 Trade classifications

(a) In order to be classified for a given trade, a contractor must have successfully completed at least two projects in that trade within the previous five years. These projects may have been either public projects or private sector projects, or a combination of the two.

(b) The trades for which an applicant may request pre-qualification are as follows:

C007	General Construction (Single Prime)	C039	HVAC
C008	General Construction (Multiple Primes)	C040	Solar Installation Active
C009	General Construction/ Alterations & Additions	C041	Insulation/ Mechanical
C010	Partitions/Ceilings	C042	Incinerators
C011	Doors & Hardware	C043	Control Systems
C012	Windows	C044	*[Air]* Balancing & Testing *of Environmental Systems*
C013	Siding & Gutters	C047	Electrical
C014	Carpeting	C048	Communication Systems
C015	Flooring/Tile	C049	Fire Alarm/ Signal Systems
C016	Millwork	C050	Security/ Intrusion Alarms
C017	Insulation	C054	Site Work
C018	Acoustical	C055	Sewage & Water Treatment
C019	Concrete/Foundation Footings/Masonry Work	C056	Sewer Piping & Storm Drains
C020	Gunite	C057	Landscape Constr.
C021	Demolition	C058	Underground Water & Utilities
C022	Fencing	C059	Road Constr. & Paving
C023	Solar Installation Passive	C060	Athletic Fields/ Tracks/Courts
C024	Historical Renovation	C061	Storage Tanks
C029	Structural Steel & Ornamental Iron	C062	Pumping Stations
C030	Plumbing	C063	Waste Disposal
C031	Oil & Gas Burners		
C032	Refrigeration		
C033	Boilers (New/Repair)		
C034	Service Station		

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C064	Parking Control Systems	C093	Asbestos Removal/Treatment
C068	Roofing-Built Up	C094	Waste Removal Toxic/Hazardous
C069	Roofing-Metal	C097	Prison Equipment Systems
C070	Roofing-Tile/Slate/Shingles	C098	Energy Management *Systems*
C071	Roofing-Membrane	C099	Elevators
C072	Roofing-Urethane	C100	Test Labs
C073	Caulking & Waterproofing	C101	Test Borings
C077	Painting-General	C102	Well Drilling
C078	Painting-Tanks/Steel Structures/Elevated Structures	C104	Food Service Equipment
C079	Painting-Historical Sites	C105	School Library Furniture
C080	Sandblasting	C106	Lab Furniture/Equipment
C083	Bulkhead & Docks	C107	Seating-Auditorium Bleachers
C084	Jetty & Breakwater		
C085	Dredging		
C086	Pile Driving		
C089	Prefab. Bldgs.		
C090	Prefab Music/Sound/Clean Rooms		
C091	Relocatable Bldgs.		

(c) A contractor who is prequalified in trade*s C007, **General Construction (Single Prime)**, and* C008, **General Construction, (Multiple Prime)**, shall also be deemed prequalified for the following trades:

C009	C016	C054	C089
C010	C017	C057	C090
C011	*C018*	C059	C097
C012	C019	C062	C104
C013	C021	*C073*	C105
C014	C022	*C077*	C106
C015	C023	C080	C107

(d) A contractor who is prequalified in trade*s C007, **General Construction (Single Prime)**, and* C008, **General Construction (Multiple Prime)**, shall also be eligible to bid upon contracts including the following speciality trades but shall be required to engage a subcontractor who is prequalified in the speciality trades listed:

[C013]	C060	C071
[C014]	C061	C072
[C018]	C068	C091
C020	C069	C099
C034	C070	

(e) A contractor who is prequalified in trade C009, **General Construction/Alterations & Additions**, shall also be deemed prequalified for the following trades:

C010	C015	*C020*	C057
C011	C016	C021	C059

C012	C017	C022	C073
C013	*C018*	C023	C077
C014	C019	C054	C080
			C089

(f) A contractor who is prequalified in trade C009, **General Construction/Alterations & Additions** shall also be eligible to bid upon contracts including the following specialty trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

[C013]	C061	C071
[C014]	C068	C072
[C018]	C069	C091
[C020]	C070	C099
C034		

(g) A contractor who is prequalified in trade C030, **Plumbing**, shall also be deemed prequalified in trade C041.

(h) A contractor who is prequalified in trade C030, **Plumbing**, shall also be eligible to bid upon contracts including the following specialty trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

C055	C056	C058	C062	*C104*
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(i) A contractor who is prequalified in trade C039, **HVAC**, shall also be deemed prequalified for the following trades:

C031	C033	C041
C032	C040	C042

(j) A contractor who is prequalified in trade C039, **HVAC**, shall also be eligible to bid upon contracts including the following specialty trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

C043	*[C090]*
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(k) A contractor who is prequalified in trade C047, **Electrical**, shall be deemed prequalified for the following trades:

C048	*C049*	*C050*	*[C064]*
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(l) A contractor who is prequalified in trade C047, **Electrical**, shall also be eligible to bid upon contracts including the following trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

C043	*C064*	*[C049]*	*[C050]*
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(m) For each trade classification, the Director or his designee shall give each applicant a single project rating and an aggregate rating based upon an analysis of the completed DBC-36R. The single project rating shall be the dollar amount of the largest project for that trade or trades for which the contractor qualifies. The aggregate rating shall be the total amount of work which the contractor is permitted to perform at any one time in all trades combined.

17:19-2.7 Single project rating limit

(a) A contractor's single project rating shall limit the size and type of project for which a contractor is eligible. The single project rating shall be based on three factors:

1. The dollar value of the single largest project completed by the applicant within the past five years;

2. The contractor's performance rating as described in N.J.A.C. 17:19-2.4; and,

3. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.3.

(b) In no event shall a contractor's single project rating for any project requiring a bond exceed the contractor's single project bonding capacity.

(c) Where a contractor's performance grade is at least 5.0, the contractor shall be assigned a single project rating limit of 1.5 times the dollar value of the largest project completed by the contractor within the last five years, but not to exceed the contractor's bonding capacity for any project requiring a bond.

(d) However, where a contractor's performance rating is greater than 5.0, the contractor may be assigned a single project rating up to three times the dollar value of its largest completed project within the past five years, but not to exceed the contractor's bonding capacity for a project requiring a bond. In such a case, the specific increase in a contractor's single project rating shall be based on the magnitude of the contractor's performance rating and on the nature, volume and dollar value of the projects which resulted in that performance rating.

(e) Where a contractor has not provided a formal statement of bonding capacity from an authorized surety pursuant to N.J.A.C. 17:19-2.2, that contractor's single project rating shall be 1.5 times its largest completed project within the past five years, irrespective of whether its performance rating exceeds 5.0. Further, that contractor may only bid on projects for which a bond is not required.

(f) When the contractor's performance rating is less than 5.0, the Director may reject the application or assign a pre-qualification rating less than that provided for in (c) above, based on all factors relevant to the contractor's ability to perform.

(g) Where two or more contractors, each holding valid classifications and ratings from the DBC, propose to form a Joint Venture for the purpose of bidding on a project, the single project rating of the Joint Venture shall be the sum of the individual single project ratings of the venturers, but not to exceed the bonding capacity of the Joint Venture.

(h) Where a project evaluation report is received by the Division which would significantly and adversely affect a contractor's existing single project rating, the DBC shall recalculate the contractor's rating and issue an amended rating for use during the remainder of the contractor's seven month rating period (see N.J.A.C. 17:19-2.5).

(i) Where a contractor objects to a single project rating limit, or any amended rating, issued by the DBC the contractor shall be afforded an opportunity for a hearing pursuant to N.J.A.C. 17:19-2.10.

17:19-2.8 Aggregate rating limit

(a) A contractor's aggregate rating shall limit the dollar value of State contracts which the contractor may perform at any given time. The aggregate rating limit shall be based on four factors:

1. The contractor's net current assets reported in its DBC-36R;

2. Any lines of credit available to the contractor;

3. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.3; and,

4. The contractor's performance rating as described in N.J.A.C. 17:19-2.4.

(b) Net current assets shall be determined according to generally accepted accounting principles, but may not include:

1. Any assets not in the name of the contractor;

2. Any past due accounts;

3. Any fixed assets or other assets which either are not liquid or are not readily convertible to cash;

4. Securities which are not readily saleable;

5. Securities which have been pledged;

6. The cash surrender value of a life insurance policy on the contractor unless that value is verified in writing from the insurance company; and,

7. Lines of credit available to the contractor.

(c) In no event may a contractor's aggregate rating exceed the contractor's aggregate bonding capacity, for projects requiring a bond.

(d) Where a contractor's performance rating is at least 5.0, the contractor's aggregate rating shall be calculated as follows:

1. Multiply the contractor's net current assets according to the following table:

Net Current Assets	Multiplier
\$1-10,000	6
\$10,001 - 10,000	8
\$20,001 - 80,000	10
\$80,001 - and over	12

2. To the figure obtained above, add any verified, valid line of credit from a responsible lending institution available to the contractor. The total, up to the contractor's bonding capacity, is the aggregate rating limit for projects requiring a bond.

(e) However, where a contractor's performance grade exceeds 5.0, the contractor may be assigned an aggregating rating for projects requiring bonds, which is up to 140 percent of the total obtained in (d)2, above but not to exceed its bonding capacity.

(f) Where a contractor has not provided a bonding statement as required in N.J.A.C. 17:19-2.3, the contractor's aggregate rating shall be equal to the total obtained in (d)2 above, irrespective of whether the contractor's performance grade exceeds 5.0. Further, the contractor may bid only on projects which do not require any bond.

(g) When the contractor's performance rating is less than 5.0, the Director may reject the application or assign a pre-qualification rating less than that provided for in N.J.A.C. 17:19-2.7(d), based on all factors relevant to contractor's ability to perform.

(h) Where two or more contractors, each holding valid classifications and ratings from the DBC, propose to form a Joint Venture for the purpose of bidding on a project, the aggregate rating of the Joint Venture shall be the sum of the individual aggregate ratings of the venturers, but not to exceed the bonding capacity of the Joint Venture.

(i) Where a project evaluation report is received by the DBC which would significantly and adversely affect the contractor's existing aggregate rating, the DBC shall recalculate the contractor's rating and ***[issue an amended rating for use]* *shall immediately notify the contractor of the amended rating and its intended use*** during the remainder of the contractor's seven month rating period (see N.J.A.C. 17:19-2.4).

(j) Where a contractor objects to an aggregate rating limit, or any amended rating, issued by the DBC, the contractor shall be afforded an opportunity for a hearing pursuant to N.J.A.C. 17:19-2.10.

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(k) Upon adoption of these rules, in the event that the procedures described herein produce an aggregate rating for a contractor which is less than the contractor's existing aggregate rating, the Director shall consider an extension of the existing rating through June 30, 1985 providing that the following conditions are met:

1. The contractor shall have at least three performance evaluations on file for projects completed in the past three years with none less than 5.0 or the equivalent;

2. The contractor shall have maintained a continuous classification for a period not less than three years immediately preceding the adoption of these rules;

3. The contractor shall not have experienced any reductions in ratings for whatever reason, during the three year period immediately preceding the adoption of these rules; and,

4. The contractor shall make written application and affirmation of these facts to the Director no later than 45 days following the effective date of these rules.

17:19-2.9 Rejection of bid upon subsequent development affecting bidder's responsibility

The Director may reject any bid, and deny an award to a contractor at any time prior to the actual award of a contract, where there have been developments subsequent to the latest classification of such bidder which, in the opinion of the Director would substantially affect the rating and qualifications of the bidder. Prior to taking any such action, the Director shall notify the bidder and afford him an opportunity, pursuant to N.J.A.C. 17:19-2.10, to present information which might tend to substantiate the existing rating and qualification of the contractor.

17:19-2.10 Classification notice and hearing ***(RESERVED)***

(NOT ADOPTED BUT STILL PENDING)

17:19-2.11 Special prequalification requirements

(a) The Director may establish appropriate and special prequalification requirements for a given project *[as may be necessary in order to ensure competitive bidding for that project or]* as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special prequalification requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformity with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously prequalified contractors and will be appropriately published.

17:19-2.12 Effective dates and effect of classifications and ratings

(a) A classification or rating resulting from the filing of a DBC-36R shall be effective for seven months from the date of the financial data contained in the DBC-36R.

(b) The extension of a classification or rating, resulting from the filing of an affidavit pursuant to N.J.A.C. 17:19-2.5(b), shall be effective for seven months from the *[date of the extension notice.]* ***expiration date of the preceding rating period which are based upon the submission of a DBC Form 36R.***

(c) The revision or amendment of a classification or rating, resulting from an administrative review or an application for revision, shall be effective only for the unexpired remainder of the existing seven month period.

(d) In order to be an eligible bidder for a project, a contractor must have been assigned by the DBC a valid classification and rating which is appropriate to the project and which

is effective as of the date of the bid opening for the project. Any classification or rating which, as of the date of the bid opening, either has expired or has not yet been assigned, shall not be valid for that bid.

(e) Where a question arises as to whether a bid for a project is within a bidder's existing classification or rating limits, the bid shall be opened provisionally, and if it appears that the bid is at variance with the contractor's trade classification or dollar value ratings, the bid shall be rejected.

17:19-2.13 Award of contracts exceeding aggregate rating limits

(a) A contractor may not be awarded a contract which, when added to the uncompleted portions of any other currently held contracts from whatever source, would exceed the contractor's aggregate rating limit. For example, for purposes of determining the dollar value of currently held contracts, contracts from the State of New Jersey, from other governmental jurisdictions and from the private sector shall be counted.

(b) Where there is a question of whether a contractor's aggregate rating limit can accommodate a given award, the contractor's bid for that contract shall be opened in the normal course, and the contractor's eligibility shall thereafter be computed.

(c) A contractor shall include with each bid a statement of the current value and status of its outstanding contracts, and whether the award of the given contract would exceed its aggregate rating limit. Whether a contractor is eligible for a given award shall be determined based on the dollar value of the given contract, the contractor's aggregate rating limit as of the bid opening date, and the dollar value of the contractor's uncompleted contract work as of the bid opening date.

1. However, where a contractor provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating limit by the time the bid project is scheduled to begin, the Director may accept that contractor's bid on that condition. The Director shall base this determination on the complexity of the bid project, the duration of the bid project and the risk that the State will encounter if the bid is accepted.

(d) Where a contractor successfully bids for two or more contracts which, either in combination with each other or in combination with the uncompleted portions of other currently held contracts, would exceed the contractor's aggregate rating limit, the contractor shall be awarded only those contracts which in combination fall within the contractor's aggregate rating limit, as follows:

1. Contracts shall be considered for that contractor in chronological order of the bid opening dates; and,

2. Where a given contract award would exceed the contractor's aggregate limit, the contractor shall not be eligible for that award.

(e) As a contractor completes existing contracts or discrete portions thereof, the contractor's eligibility for new contracts within its existing aggregate rating shall be adjusted accordingly.

17:19-2.14 Removal of bidder from approved list

Where the Director determines that a prospective bidder is unqualified to submit bids on any public work, he shall so notify the prospective bidder of the proposed debarment, suspension or disqualification. In such circumstances, the contested case hearing provisions of N.J.A.C. 17:19-3.1, et seq. shall be followed.

TREASURY-TAXATION**(a)****DIVISION OF TAXATION****Homestead Rebate Act****Extension of Time to File Homestead Rebate Claim****Readopted Amendment: N.J.A.C. 18:12-7.12**

Proposed: December 17, 1984 at 16 N.J.R. 3498(a).

Adopted: February 14, 1985 by John R. Baldwin, Director, Division of Taxation.

Filed: February 15, 1985 as R.1985 d.111, **without change.**

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

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

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

Full text of the adoption follows.

18:12-7.12 Extension of filing date

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

(i) The time for property owners to file their applications for a homestead rebate payable in 1985 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, 1985.

OTHER AGENCIES**(b)****CASINO CONTROL COMMISSION****Rules of the Games****Minimum and Maximum Wagers****Adopted Amendment: N.J.A.C. 19:47-8.2**

Proposed: December 17, 1984 at 16 N.J.R. 3425(a).

Adopted: February 13, 1985 by New Jersey Casino Control Commission, Walter N. Read, Chairman.

Filed: February 14, 1985 as R.1985 d.110, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-70(g).

Effective Date: March 18, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1988.

Summary of Public Comments and Agency Responses.

The Division of Gaming Enforcement commented in full support of this adoption indicating that with the increased availability of Baccarat tables, "market conditions as opposed to regulatory requirements should govern."

Agency Response: The commission accepted the division's favorable comment.

Full text of the adoption follows.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-4. (No change.)

5. Baccarat:

i. (No change in text.)

(c) (No change.)

EMERGENCY ADOPTION

HEALTH/LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

Asbestos Training Courses

Jointly Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 12:120-2 and 6 and N.J.A.C. 8:60-2 and 6

Emergency New Rule Adopted: March 1, 1985 by Charles Serraino, Commissioner, Department of Labor, and J. Richard Goldstein, M.D., Commissioner, Department of Health.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): March 1, 1985.

Emergency New Rule Filed: March 4, 1985 as R.1985 d.144.

Authority: N.J.S.A. 34:5A-39 (P.L. 1984 c.173).

Emergency New Rule Effective Date: March 4, 1985.
Emergency New Rule Expiration Date: May 3, 1985.

A **public hearing** concerning the proposed new rule will be held at the following time and location:

April 4, 1985
1 p.m. to 5 p.m.
State Auditorium
205 West State Street
Trenton, New Jersey 08625

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before April 17, 1985. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Clark, Director
Division of Workplace Standards
New Jersey Department of Labor
CN 504
Trenton, New Jersey 08625-0054

with a copy sent to:

Joseph Schirmer
Occupational Disease Prevention
and Information Program
New Jersey Department of Health
CN 360
Trenton, NJ 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1985-182.

The agencies' emergency adoption and concurrent proposal follows:

Summary

The Asbestos Application and Remediation Act (L. 1984, c.173) became effective October 31, 1984. This legislation requires that all employees engaged in asbestos application, enclosure, removal, encapsulation or disposal (hereinafter "asbestos work"), obtain a performance permit from the Department of Labor. Permit applicants (except those meeting the criteria set forth below for "experienced asbestos workers") must successfully complete a training program certified by the Department of Health. Contractors/employers performing asbestos work must obtain a license from the Department of Labor.

Pursuant to the Act, the Departments of Health and Labor are jointly proposing rules covering permitting and licensing qualifications and procedures, and requirements for training course certification.

The purpose of both the Act and the rules issued to implement the Act is to reduce the public's exposure to asbestos from improperly performed asbestos application and remediation operations. Measures that disturb asbestos, particularly remediation projects performed either by untrained personnel or not in strict accordance with proper work practices, can create high levels of exposure. These exposures pose serious risk of disability and death for building occupants both during and after the asbestos work period.

The emergency rule consists of subchapter 2, definitions, and subchapter six which deals with the certification of training courses.

Subchapter 6 sets forth the items to be covered in a certifiable asbestos training program and the information to be submitted to the Department of Health to receive certification. Eligibility criteria are listed, including requirements that programs use any materials supplied by the Department of Health, send course instructors to relevant Department of Health training meetings, open training courses to Health Department representatives, hire course instructors with specific training, education and experience, and limit class size to 25 students. Certification is a two-step process, with provisional certification being granted to those agencies, institutions and firms whose written application materials meet the requirements of this subchapter. Complete certification is contingent upon the Health Department determining, after observing and evaluating a training course in progress, that the course satisfies the requirements of this subchapter.

Social Impact

Licensing of asbestos contractors and permitting of asbestos workers, upon successful completion of a certified training program, will reduce the public's exposure to life-threatening asbestos by assuring that asbestos operations are performed by knowledgeable and competent workers in accordance with scientifically accepted work practices.

Building owners contracting with licensed asbestos contractors and contractors hiring permitted asbestos workers will know that the work is being performed by individuals who have received adequate training and demonstrated competence in correct asbestos handling procedures.

Certification of training programs will assure license and permit applicants that successful completion of such a program means they have the information necessary to perform asbestos work without endangering either their health or that of other building occupants.

The public will be assured that buildings in which asbestos remediation work projects are performed will be safe for occupancy.

Economic Impact

Building owners will benefit from the assurance that they are paying qualified, competent and knowledgeable personnel to perform asbestos work.

Licensed contractors and permitted workers will benefit from the elimination of unfair competition from unqualified contractors and their employees performing asbestos work in violation of scientifically accepted practices.

The public will benefit from reductions in wage loss, insurance, medical expenses, disability compensation payments and other costs resulting from asbestos-related disability and death.

License and permit fees are minimal. The costs incurred due to compliance with mandated work practices are more than offset by the benefits set forth above.

Full text of the emergency adoption and concurrent proposal follows.

SUBCHAPTER 2. DEFINITIONS

12:120-2.1 and 8:60-2.1 Definitions

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

"Act" means the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.

"Approved" means acceptable to the Commissioner of Labor.

"Asbestos" means the asbestiform varieties of chrysotile; crocidolite; amosite; anthophyllite; tremolite; or actinolite and includes any asbestos containing material.

"Asbestos containing material" means any material which contains more than one percent asbestos by weight.

"Asbestos employee" means an employee performing asbestos work.

"Asbestos work" means the application or enclosure or encapsulation or safe removal or disposal of asbestos.

"Commissioner" means the Commissioner of Labor or his authorized agent.

"Commissioner of Health" means the Commissioner of Health or his authorized agent.

"Contractor" means an asbestos employer.

"Control" means to exercise restraint or direction over any activity concerning asbestos for the purpose of reducing the number of airborne asbestos fibers.

"Division of Workplace Standards" means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, N.J. 08625-0054.

"Employee" means any person including supervisory personnel suffered or permitted to work by an employer.

"Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work. This term shall apply to private employers and to the State, its political subdivisions and any boards, commissions, schools, institutions or authorities created or recognized thereby.

"License" means a certificate documenting acceptance by the commissioner of a contractor as competent to perform the application or enclosure, or encapsulation or safe removal of asbestos.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Permit" means a certificate documenting acceptance by the commissioner of an employee as competent to perform the application or enclosure or encapsulation or safe removal of asbestos.

"Shall" means a mandatory requirement.

"Subcontractor" means an employer.

SUBCHAPTER 6. CERTIFICATION OF TRAINING COURSES

12:120-6.1 and 8:60-6.1 Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain certification from the Commissioner of Health for training courses on asbestos abatement as provided for in the New Jersey Asbestos Application and Remediation Act (P.L. 1984, c.173).

12:120-6.2 and 8:60-6.2 Types of courses

(a) The basic core curriculum shall be presented over four days and shall include 24 hours of training at a minimum. The items which shall be presented in the core curriculum are listed in outline form in N.J.A.C. 12:120-6.6 and 8:60-6.6. All applicants for licenses shall attend a certified training course which covers this curriculum. All applicants for permits, except those who meet the criteria for experienced asbestos workers, shall also attend a certified training course which also covers this curriculum. There shall be additional specialized training designed for the particular needs of each type of course participant. This specialized training shall provide specialized information in addition to the core curriculum and shall be at least six hours in length.

(b) A supplementary course of at least six hours shall be presented during a fifth day of training. Asbestos abatement supervisors and contractors shall receive specialized supplemental training designed to meet their particular needs. The items required to be included during this supplemental training are listed in N.J.A.C. 12:120-6.7 and 8:60-6.7. Asbestos abatement workers shall receive specialized supplemental training designed to meet their particular needs. The items required to be presented during this supplemental training are listed in N.J.A.C. 12:120-6.8 and 8:60-6.8.

12:120-6.3 and 8:60-6.3 Application for certification of training courses

(a) An applicant for certification of an asbestos abatement training course shall submit the following information to the Department of Health:

1. The name and address of the agency, institution or private firm which plans to conduct the training course, and the

name of the responsible individual and his or her telephone number;

2. A description of course location, course schedule, including hours and projected dates, and course fees;

3. A description of the public outreach and publicity efforts which will be made to inform the appropriate potential attendees of the course availability;

4. A detailed outline of the course curriculum, the amount of time allotted to each topic, and the name of the instructor for each topic;

5. A description of the teaching methods to be used to present each topic, including, where appropriate, lectures, discussions, demonstrations and audio-visual materials. When applicable, include the name, producer and date of production of audio-visual materials to be used;

6. Copies of written materials to be distributed;

7. Evidence demonstrating that the applicant has employed or contracted as instructors, either on a full time or temporary basis, a sufficient number of persons (a minimum of two) to satisfy the education, experience and qualifications criteria as set forth in N.J.A.C. 12:120-6.4 and 8:60-6.4. Resumes describing special training and education and/or prior experience may be submitted to the Department of Health for the purpose of providing this evidence;

8. A list of the types, brand names and quantities of respirators to be used to demonstrate and fit test or flow test respirators;

9. A description of the type and quantity of protective clothing to be used during practice exercises and demonstrations;

10. A description of the materials to be used for hands-on practice exercises and demonstrations including hand tools, ladders, plastic sheeting and other barrier construction supplies, negative air filtration units, water spray devices and decontamination facilities;

11. A detailed description of the site of the training course including address where demonstrations and hands-on practice exercises will be conducted;

12. Any restrictions on attendance such as English language only, or other language to be used, and the degree of literacy required for admission to the training course;

13. Instructor to student ratio for the hands-on practice exercises and demonstrations;

14. Sample student evaluation forms as required in N.J.A.C. 12:120-6.6(q)3 and 8:60-6.6(q)3.

(b) All materials submitted in connection with the application shall be typewritten or machine printed.

(c) The Department of Health shall be notified immediately of any significant changes in any information submitted by the applicant.

12:120-6.4 and 8:60-6.4 Eligibility for certification of training courses

(a) In order to be eligible for certification of an asbestos abatement training course, an applicant shall comply with this section and N.J.A.C. 12:120-6.3, 6.5 and 6.6 (8:60-6.3, 6.5 and 6.6).

(b) The applicant shall demonstrate to the Department of Health that it meets the criteria established for education, experience, and access to current control technologies and demonstration facilities.

(c) The applicant shall agree to use any training materials, information and audio-visual aids which may be supplied by the Department of Health.

(d) The applicant shall agree to send at least one course instructor to any meetings sponsored by the Department of

Health for the purpose of ensuring uniform and high quality training courses in asbestos abatement.

(e) The applicant shall agree to limit class size to not more than 25 students.

(f) The training course for asbestos workers and asbestos supervisors shall be at least five days and 30 hours long. The core course for both asbestos workers and supervisors shall be at least four days and 24 hours long. The fifth day shall be devoted to additional information or exercises as required by N.J.A.C. 12:120-6.7 and 6.8 (8:60-6.7 and 6.8) for the appropriate participants.

(g) The applicant shall agree to cooperate fully with the Department of Health in all aspects which pertain to this rule.

(h) The applicant shall agree to inform the Department of Health at least two weeks in advance of any asbestos abatement training course to be conducted by the applicant and to permit representatives of the Department of Health to attend, evaluate and monitor any asbestos abatement training courses.

12:120-6.5 and 8:60-6.5 Criteria for instructors

(a) To be eligible for certification of any training course, two or more course instructors shall be employed. A sufficient number of instructors shall be hired to ensure that all of the education and experience criteria for instructors set forth below are met:

1. An instructor shall have experience in both the design, field performance and evaluation of air monitoring programs and the design and implementation of respiratory protection programs.

2. In order to qualify to teach the sections of the course concerning the health effects of asbestos, one instructor shall be either a physician, a nurse, a health educator, or another qualified health professional.

3. An instructor shall have experience as an asbestos abatement contractor or experience as an on-site foreman or supervisor of asbestos abatement workers. This person shall have had direct experience in all phases of asbestos abatement work including work area preparation, construction of barriers, the use of personal protective equipment, engineering controls, work practices, clean-up, disposal and decontamination.

4. An instructor shall have experience in designing, implementing and evaluating either employee educational programs in occupational health and safety or vocational education programs.

12:120-6.6 and 8:60-6.6 Criteria for topics in training courses

(a) In order to be eligible for certification of asbestos abatement training courses for workers and supervisors/contractors, the applicant shall design and conduct training which shall include at least those topics listed in (b) through (q) below.

(b) Introduction:

1. Goals of the training program;
2. New Jersey State Asbestos Policy;
3. History of asbestos use;
4. Magnitude of asbestos problem;

(c) Recognition of asbestos:

1. Types and physical characteristics of asbestos;
2. Asbestos products and their end uses;
3. Products where asbestos may be encountered;
4. Need for specific laboratory analyses to positively identify asbestos.

(d) Health effects of asbestos:

1. Factors affecting disease development including: properties of asbestos, how asbestos enters the body (respiratory and digestive systems, abdominal and chest cavity), concentration and duration of exposure, critical dose, individual susceptibility and group susceptibility;

2. Body defenses;

3. Clinical signs of asbestos exposure based upon visible changes in x-rays including plaques and asbestos bodies;

4. Asbestos-related diseases: Asbestosis, lung cancer, mesothelioma, and digestive system cancers, including definitions, and the concepts of risk, latency, symptoms and diagnoses;

5. Health risk to family members of asbestos workers;

6. Effects of smoking and smoking cessation.

(e) Purposes and methods of asbestos monitoring and testing:

1. Bulk samples;

2. Personal samples;

3. Area samples;

4. Sampling equipment demonstration: pumps, filters, calibration;

5. Interpretation of analytical results;

6. Current standards and proposed changes;

7. OSHA regulations governing access to employee exposure and medical records.

(f) Cases Studies: Typical problems and corrective measures:

1. Discussion of students' experiences;

2. Presentation by course instructor(s).

(g) Introduction to control methods:

1. Protection of the worker;

2. Preparation of the workplace;

3. Minimize fiber release and work practices to minimize exposures;

4. Clean-up and disposal;

5. Decontamination.

(h) Protection of the worker:

1. Protective clothing: disposable and non-disposable; purpose; requirements; options; who must wear; donning, removal, storage, handling and disposal; and types such as suits, booties, hoods, footwear, gloves, eye protection and hard hats:

2. Respiratory protection: purpose; types of respirators; characteristics and limitations; choosing respirators; factors affecting fit (facial hair); fit testing; methods for field testing; donning and removal; protection factors; inspection; cleaning; adjusting; use; storage; repair and replacement of parts:

3. Type "C" supplied air respirators, continuous flow or pressure demand class:

i. Description of physical characteristics; purpose; limitations; components of the respirator, including the compressed air cylinders, and quality specifications for compressed air, low air alarm, pressure regulator, manifold, lines or hoses, belt-mounted regulator, breathing hose and facepiece;

ii. A demonstration and practice exercises in donning, using, flow testing and adjusting these respirators.

4. Powered Air-Purifying Respirators (PAPR):

i. Description of physical characteristics; purpose; limitations; components of the respirator, including filters, battery, breathing hose and facepiece;

ii. A demonstration and practice exercises in donning, using, flow testing and adjusting these respirators.

5. Air-Purifying Respirators:

i. Description of physical characteristics; purpose; limitations; components of the respirator, including full/half facepiece, filters and cartridges;

ii. A demonstration and practice exercises in donning, using, fit testing and adjusting these respirators.

6. Occupational Safety and Health Administration regulations—29 CFR Part 1910.134—Respiratory Protection;

7. Demonstration exercises of the above respirators, including fit testing or flow testing, wearing, adjusting, filter replacing and cleaning procedures. Each participant shall have individual, supervised personal practice using these procedures with at least one of the types of respirators listed in 3, 4 or 5 above.

(i) Preparation of the work area:

1. Occupants;

2. Furniture and equipment—clean and either remove or cover;

3. Ventilation and electric systems;

4. Flooring;

5. Enclosures: Plastic sheeting for horizontal surfaces;

6. Change area;

7. Signs.

(j) Minimizing fibers in the air:

1. Containment;

2. Wetting;

3. Vacuum Cleaners equipped with High Efficiency Particulate Absolute (HEPA) Filters;

4. Specialized tools;

5. Good housekeeping.

(k) Special work practices to minimize exposure and health hazards.

(l) Personal hygiene.

(m) Proper clean-up and disposal:

1. Clean-up including techniques and sequence of activities;

2. Disposal including bagging, drumming, storage and transport.

(n) Decontamination:

1. Decontamination areas: clean room, shower room and equipment room;

2. Direction of air flow;

3. Sequential steps;

(o) General safety considerations:

1. Heat stress;

2. Gas engines;

3. Slips and falls;

4. Scaffolding;

5. Electrical hazards;

6. Material handlings.

(p) Work practice demonstration:

1. Simulated on-the-job activities;

2. Demonstrate knowledge acquired from entire course through discussion and demonstrations.

(q) Review and Course Evaluation:

1. Review;

2. Practice tests (optional);

3. Evaluation of course by participants.

12:120-6.7 and 8:60-6.7 Additional criteria for supervisor's training course

(a) The specialized course for asbestos abatement supervisors/contractors shall address the following issues:

1. Legal responsibilities and potential liabilities of various parties including, but not limited to, contractors, licensees, employers, employees, building owners and suppliers;

2. Insurance and bonding;

3. Establishing a medical surveillance program;

4. United States Environmental Protection Agency and United States Department of Labor Occupational Safety and Health Administration recordkeeping requirements;

5. How to supervise effectively;

6. Additional emphasis on work practices, including purpose, proper construction and maintenance of barriers and decontamination systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques for minimizing fiber release, use of wet methods and surfactants, use of negative pressure ventilation equipment, use and maintenance of HEPA vacuums, proper clean-up and disposal procedures.

12:120-6.8 and 8:60-6.8 Additional criteria for asbestos workers training course

(a) The course for asbestos workers shall provide each applicant with sufficient opportunities for practice exercises to thoroughly demonstrate to the training agency's satisfaction that the asbestos worker can:

1. Properly perform all aspects of asbestos work;

2. Prevent unnecessary asbestos exposures to other citizens by properly constructing and maintaining temporary plastic barriers, by using protective, disposable clothing, and by using proper decontamination, work area clean-up and waste disposal techniques. At least 4 hours per applicant shall be devoted to these practice exercises.

12:120-6.9 and 8:60-6.9 Granting of certification

(a) Two types of certification shall be granted: provisional and complete certification.

1. Provisional certification shall be granted to a training agency, institution or private firm which has submitted materials concerning course content, teaching methods and instructors qualifications which meet the requirements of this subchapter (N.J.A.C. 12:120-6 and 8:60-6). Provisional certification shall expire within six months unless it has been converted to complete certification.

2. Complete certification shall be granted after the Department of Health has granted provisional certification, has con-

ducted a thorough observation and evaluation of a training course in progress, and has determined that the applicant's asbestos abatement training course meets the requirements of this subchapter (N.J.A.C. 12:120-6 and 8:60-6). Complete certification shall not have an expiration date, but shall be good until further notice, unless suspended or revoked.

(b) A letter of certification shall be granted to a training agency, institution or private firm which complies with N.J.A.C. 12:120-6.3 and 6.4 (8:60-6.3 and 6.4).

(c) A letter of certification shall:

1. Contain the date of issuance;

2. Contain an expiration date if a provisional certification;

3. Contain the name and address of the training agency, institution, or private firm;

4. State whether the certification is provisional or complete;

5. Contain the signature of the Commissioner of Health.

12:120-6.10 and 8:60-6.10 Suspension or revocation of certification

(a) Any agency, institution or private firm may have its certification suspended or revoked for:

1. Incompetence, or

2. Failure to adequately present either the topics set forth in this subchapter or any other materials required by the Department of Health, or

3. Submitting false information on an application, or

4. Failure to comply with the rules promulgated under the act, or

5. Any good cause within the meaning and purpose of the law.

12:120-6.11 and 8:60-6.11 Examination of applicants

(a) Each applicant for a permit under N.J.A.C. 12:120-5.5(a) and 8:60-5.5(a) shall successfully pass an examination in asbestos work and control. This examination shall be conducted by the Department of Health under procedures in N.J.A.C. 12:120-5.4 and 8:60-5.4.

(b) The examination shall include questions on the topics presented in N.J.A.C. 12:120-6.6 and 8:60-6.6.

MISCELLANEOUS NOTICES

ENERGY

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Draft Energy Master Plan Comment Period and Public Hearing Schedule

Authority: N.J.S.A. 52:27F-14.

Take notice that the Draft Energy Master Plan is available for public comment. Copies of the Master Plan are available for inspection by the public at each County Library and the State Library. Public Hearings on the Master Plan will be held as follows:

May 20, 1985, 10:00 A.M.
Hearing Room I
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey

May 21, 1985, 10:00 A.M.
Ocean County Library
110 Washington Street
Toms River, New Jersey

May 22, 1985, 10:00 A.M.
City Council Chambers
City Hall
Sixth and Market Streets
Camden, New Jersey

The Department of Energy requests that persons wishing to testify at the public hearing notify the Department in writing with copies of their testimony by May 15, 1985. Copies of the DRAFT ENERGY MASTER PLAN may be obtained by forwarding a written request to:

Office of Community and Educational Services
New Jersey Department of Energy
101 Commerce Street
Newark, New Jersey 07012

The Department, after public hearings and consideration of the comments received, may adopt the Master Plan and distribute it without further notice consistent with N.J.S.A. 52:27F-14(c).

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Homestead Rebate Act Extension of Time to File Homestead Rebate Claim

Notice of Correction: N.J.A.C. 18:12-7.12

Take notice that the regulations concerning the time for property owners to file their applications for a homestead rebate payable in 1984 was omitted in the December 17, 1984 supplement to Title 18. N.J.A.C. 18:12-7.12(h) as printed in the Code has been recodified as 18:12-7.12(i).

N.J.A.C. 18:12-7.12(h) should have appeared as follows:

18:12-7.12 Extension of filing date

...
(h) The time for property owners to file their applications for a homestead rebate payable in 1984 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, 1984.
...

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 changes proposed in this issue will be entered in the Index of the next 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 date of the latest 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 February 4, 1985 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 timely adopt a proposed rule 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(d).

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.1984 d.300 means the three hundredth rule adopted in 1984.

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 number and date verifying 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 quickly find the issue of publication of a rule proposal or adoption.

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
16 N.J.R. 405 and 470	March 5, 1984	16 N.J.R. 2391 and 2474	September 17, 1984
16 N.J.R. 471 and 576	March 19, 1984	16 N.J.R. 2475 and 2708	October 1, 1984
16 N.J.R. 577 and 778	April 2, 1984	16 N.J.R. 2709 and 2864	October 15, 1984
16 N.J.R. 779 and 940	April 16, 1984	16 N.J.R. 2865 and 3066	November 5, 1984
16 N.J.R. 941 and 1130	May 7, 1984	16 N.J.R. 3067 and 3240	November 19, 1984
16 N.J.R. 1131 and 1294	May 21, 1984	16 N.J.R. 3241 and 3336	December 3, 1984
16 N.J.R. 1295 and 1406	June 4, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1407 and 1634	June 18, 1984	17 N.J.R. 1 and 140	January 7, 1985
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 141 and 236	January 21, 1985
16 N.J.R. 1833 and 2026	July 16, 1984	17 N.J.R. 237 and 338	February 4, 1985
16 N.J.R. 2027 and 2184	August 6, 1984	17 N.J.R. 339 and 502	February 19, 1985
16 N.J.R. 2185 and 2318	August 20, 1984	17 N.J.R. 503 and 634	March 4, 1985
16 N.J.R. 2319 and 2390	September 4, 1984	17 N.J.R. 635 and 762	March 18, 1985

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)		
1:2-2	Civil Service cases: readopt conference hearings	16 N.J.R. 3338(a)	R.1985 d.77	17 N.J.R. 569(a)
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 3339(a)	R.1985 d.78	17 N.J.R. 569(b)
1:10	Public welfare hearings	16 N.J.R. 3068(a)	R.1985 d.79	17 N.J.R. 569(c)
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)		
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)	R.1985 d.76	17 N.J.R. 572(a)
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2:24-1.1, 1.2	Bee diseases: acarine mite quarantine	17 N.J.R. 118(a)	R.1985 d.107	17 N.J.R. 573(a)
2:32-2	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.108	17 N.J.R. 573(b)
2:32-2.7	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.135	17 N.J.R. 686(a)
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75	17 N.J.R. 576(a)
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75	17 N.J.R. 576(a)
2:90-3	Water conservation project cost sharing	17 N.J.R. 7(a)		
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BANKING—TITLE 3				
3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)	R.1985 d.98	17 N.J.R. 577(a)
3:2-1	Readopt rules on Advertising by Financial Institutions	17 N.J.R. 238(a)		
3:30-2.1	Savings associations and Federal reserve requirements	17 N.J.R. 142(a)		
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4:1-8.24, 8.25	Examination records	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-12.12	Additions to eligible lists	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)		

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4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)	R.1985 d.124	17 N.J.R. 686(b)
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:1-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)	R.1985 d.61	17 N.J.R. 389(a)
4:1-20.2	Certified Public Manager Program	16 N.J.R. 3072(a)	R.1985 d.62	17 N.J.R. 392(a)
4:2-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 393(a)
4:2-17.10	Correction: Administrative leave			17 N.J.R. 393(a)
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:2-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)	R.1985 d.61	17 N.J.R. 389(a)
4:2-20.7	Certified Public Manager Program	16 N.J.R. 3072(a)	R.1985 d.62	17 N.J.R. 389(a)
4:3-9	Readopt Examination Scoring	16 N.J.R. 2873(a)	R.1985 d.63	17 N.J.R. 387(a)
4:3-15.1	Repeal rule concerning transfer of county caseworkers	16 N.J.R. 3073(a)	R.1985 d.125	17 N.J.R. 686(c)
4:3-20	Readopt Performance Evaluation and Employee Training	16 N.J.R. 2877(a)	R.1985 d.61	17 N.J.R. 389(a)

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5:12	Homelessness Prevention Program	16 N.J.R. 3497(a)	R.1985 d.74	17 N.J.R. 577(b)
5:18, 18A, 18B	Uniform Fire Code; Fire Code Enforcement; High Level Alarms	16 N.J.R. 3339(b)	R.1985 d.66	17 N.J.R. 394(a)
5:23-2.4, 2.6, 2.17A	UCC: rooming and boarding houses	16 N.J.R. 3073(b)	R.1985 d.16	17 N.J.R. 275(a)
5:23-3.8A	UCC: products in violation	16 N.J.R. 3074(a)	R.1985 d.38	17 N.J.R. 421(a)
5:23-3.14, 3.20	Building and mechanical subcodes	17 N.J.R. 239(a)		
5:23-4.5	UCC: duties of construction officials	17 N.J.R. 340(a)		
5:23-5.4	UCC: trainee suspension, fire protection trainees	16 N.J.R. 3372(a)	R.1985 d.85	17 N.J.R. 579(a)
5:23-5.4	UCC: private enforcing agencies and trainee positions	17 N.J.R. 341(a)		
5:27	Readopt rules on Rooming and Boarding Houses	17 N.J.R. 341(b)		
5:27-1.5	UCC: rooming and boarding houses	16 N.J.R. 3073(b)	R.1985 d.16	17 N.J.R. 275(a)
5:27-5.1	Fire safety in rooming and boarding houses	16 N.J.R. 3242(a)	R.1985 d.39	17 N.J.R. 421(b)
5:27-5.3	Fire safety in rooming and boarding houses	16 N.J.R. 299(a)	Expired	
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)		
5:71	Readopt County Offices on Aging rules	17 N.J.R. 342(a)		
5:80	Rules of the Housing and Mortgage Finance Agency	17 N.J.R. 505(a)		
5:80-7	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)	R.1985 d.106	17 N.J.R. 580(a)

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6:3-1.2	Board of school estimate	17 N.J.R. 143(a)		
6:8-6.2	Evaluation and certification of school districts	17 N.J.R. 143(b)		
6:11-4.3	Emergency certification	16 N.J.R. 3075(a)	R.1985 d.49	17 N.J.R. 422(a)
6:11-4.3	Emergency certification: operative date			17 N.J.R. 687(a)
6:20-3	Readopt rules on Tuition Public Schools	17 N.J.R. 144(a)		
6:20-3.1	Tuition public schools: determining rates	17 N.J.R. 119(a)	R.1985 d.91	17 N.J.R. 583(a)
6:20-5.3, 5.4	State facility pupil assignments: district of residence	17 N.J.R. 344(a)		
6:20-6	Readopt rules on Purchase and Loan of Textbooks	17 N.J.R. 148(a)		
6:20-8	Readopt rules on Public School Contracts	16 N.J.R. 3372(b)	R.1985 d.88	17 N.J.R. 584(a)
6:26-3	Readopt rules on Elementary School Summer Sessions	16 N.J.R. 2715(a)	R.1985 d.47	17 N.J.R. 422(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:27-3	Readopt rules on Secondary School Summer Sessions	16 N.J.R. 2717(a)	R.1985 d.48	17 N.J.R. 423(a)
6:28-3.2, 3.6, 6.1, 6.3, 8.3	Special Education	17 N.J.R. 345(a)		
6:29-7.1	Readopt Family Life Education Programs	16 N.J.R. 3377(a)		
6:31	Readopt Bilingual Education rules	16 N.J.R. 2721(a)	R.1985 d.46	17 N.J.R. 425(a)
6:68-2	Library assistance: readopt Incentive Grant Program rules	17 N.J.R. 346(a)		
6:70	Library network services	16 N.J.R. 3076(a)	R.1985 d.53	17 N.J.R. 428(a)

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7:1C-1	90-day construction permits	16 N.J.R. 3243(a)		
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)		
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)		
7:11-2.3, 2.5, 2.8-2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)		
7:12	Shellfish-growing water classification	16 N.J.R. 3112(a)	R.1985 d.64	17 N.J.R. 433(a)
7:12-2.1, 2.2, 2, 3, 2.4	Correction: Shellfish-growing water classification	16 N.J.R. 3379(a)	R.1985 d.64	17 N.J.R. 433(a)
7:13-1.4, 4.7, 5.2, 5.4	Flood hazard area control	16 N.J.R. 2193(a)	R.1985 d.24	17 N.J.R. 275(b)
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)		
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)		
7:13-7.1	Paulins kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)	R.1985 d.130	17 N.J.R. 687(b)
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)		
7:19-5	Small water company takeover	16 N.J.R. 3380(a)		
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)	R.1985 d.133	17 N.J.R. 687(c)
7:19A	Emergency Water Supply Allocation Plan rules	16 N.J.R. 308(a)	R.1985 d.67	17 N.J.R. 438(a)
7:19B	Emergency Water Surcharge Schedule	16 N.J.R. 314(a)	R.1985 d.67	17 N.J.R. 438(a)
7:20	Dam Safety Standards	16 N.J.R. 790(a)		
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.2, 4.14, 4.17	Possession of endangered and nongame species	17 N.J.R. 516(a)		
7:25-4.13, 4.17	Status of the osprey	17 N.J.R. 350(a)		
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)		
7:25-7.13	Crab dredging in Atlantic coast section	16 N.J.R. 3216(a)	R.1985 d.131	17 N.J.R. 697(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)	R.1985 d.132	17 N.J.R. 698(a)
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:25-23	Permit to kill wild deer	17 N.J.R. 350(b)		
7:25A	Oyster management	17 N.J.R. 352(a)		
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		

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7:26-1.4, 2.6, 2.10, 2.13, 3.5	Disposal of asbestos waste	16 N.J.R. 440(a)	R.1985 d.65	17 N.J.R. 446(a)
7:26-6.5	Solid waste flow: Atlantic County	17 N.J.R. 517(a)		
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(b)		
7:26-8.13, 8.16	Hazardous waste from non-specific sources; hazardous constituents	17 N.J.R. 354(a)		
7:26-8.15	Hazardous waste management: warfarin and zinc phosphide	17 N.J.R. 356(a)		
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)		
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)		
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)		
7:26-14	Resource recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)		
7:27	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and certificates	16 N.J.R. 1671(a)	R.1985 d.96	17 N.J.R. 587(a)
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1676(a)		
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27-18.1, 18.2, 18.3, 18.4, 18.7	Air pollution control: emission offset rules	16 N.J.R. 1679(a)	R.1985 d.25	17 N.J.R. 277(a)
7:28-24	Readopt Nuclear Medicine Technology rules	17 N.J.R. 22(a)	R.1985 d.140	17 N.J.R. 699(a)
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)	R.1985 d.129	17 N.J.R. 699(b)
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

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HEALTH—TITLE 8

8:20-1	Birth Defects Registry	16 N.J.R. 3118(a)	R.1985 d.92	17 N.J.R. 591(a)
8:21-2.40	Baby foods and ethylene dibromide level	16 N.J.R. 2897(a)	R.1985 d.42	17 N.J.R. 449(a)
8:21A	Good drug manufacturing practices	16 N.J.R. 3248(a)		
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)		
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)	R.1985 d.121	17 N.J.R. 702(a)
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)		
8:31B-3.26, App. II	Hospital reimbursement: economic factor	17 N.J.R. 153(a)		
8:31B-5.2	Diagnosis Related Groups: outliers	16 N.J.R. 3119(a)	R.1985 d.122	17 N.J.R. 704(a)
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33A-2	Surgical facilities: planning and need review	17 N.J.R. 154(a)		
8:33E-2	Cardiac surgical centers	16 N.J.R. 3120(a)	R.1985 d.28	17 N.J.R. 281(a)
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33F	Renal Disease Services: readopt Planning and Certification rules	16 N.J.R. 3124(a)	R.1985 d.29	17 N.J.R. 284(a)

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8:39-2.1	All health care facilities: certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:35	Repeal (see 8:43B-8)	16 N.J.R. 188(a)	R.1985 d.30	17 N.J.R. 285(c)
8:40-1.1	Licensure of invalid coach and ambulance services	16 N.J.R. 3127(a)		
8:42-1	Home health agencies: readopt licensure standards	16 N.J.R. 3250(a)	R.1985 d.117	17 N.J.R. 704(b)
8:42-1.2	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.118	17 N.J.R. 705(a)
8:42A-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:42B-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43-1.5	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
8:43A-1.3	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.26	17 N.J.R. 285(a)
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)	R.1985 d.115	17 N.J.R. 705(b)
8:43B-1.7	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.116	17 N.J.R. 705(c)
8:43B-6	Hospital facilities: readopt Medical Staff rules	16 N.J.R. 3152(a)	R.1985 d.27	17 N.J.R. 285(b)
8:43B-8	Hospital licensure: obstetric and newborn services	16 N.J.R. 188(a)	R.1985 d.30	17 N.J.R. 285(c)
8:43B-8.33-8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)	R.1985 d.120	17 N.J.R. 706(a)
8:43F-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.119	17 N.J.R. 706(b)
8:45	Clinical laboratory services	17 N.J.R. 268(a)		
8:57-4.15	Immunization of school children: mumps vaccine	17 N.J.R. 358(a)		
8:57-4.16	Emergency Powers of Commissioner	Emergency	R.1985 d.40	17 N.J.R. 483(a)
8:60-2,6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)		
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)	R.1985 d.83	17 N.J.R. 592(a)
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)		
8:65-10.4	Controlled dangerous substances: additions to Schedule IV	16 N.J.R. 3390(a)		
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(a)	R.1985 d.29	17 N.J.R. 284(a)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b), 17 N.J.R. 200(b))	16 N.J.R. 1436(a)		
8:71	Generic drug list additions (see 17 N.J.R. 201(a))	16 N.J.R. 2483(a)		
8:71	Additions to generic drug list	17 N.J.R. 158(a)		

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HIGHER EDUCATION—TITLE 9

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)		
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)		
9:7-3.1	Tuition Aid Grant Award Tables	17 N.J.R. 23(a)		
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)		

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9:7-5.1, 5.4, 5.10	Public Tuition Benefits Program	17 N.J.R. 24(a)		
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)		

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10:44A-1.1-1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)		
10:44B	Community training and family-based respite care homes	17 N.J.R. 359(b)		
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:49-1	Administration Manual: readopt General Provisions	17 N.J.R. 532(a)		
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		
10:49-1.7	Administration Manual: utilization of insurance benefits	16 N.J.R. 1933(a)	R.1985 d.7	17 N.J.R. 309(a)
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:52-2	Hospital Services: readopt Admission and Billing Procedures	16 N.J.R. 3159(a)	R.1985 d.56	17 N.J.R. 451(a)
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:53-2	Special Hospital Services: admission and billing	17 N.J.R. 544(a)		
10:54-1.3	Progress notes for mental health providers	16 N.J.R. 2333(a)	R.1985 d.52	17 N.J.R. 452(a)
10:54-3	Preproposal: radioimmunoassay laboratory fees	16 N.J.R. 677(a)		
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)		
10:55-1	Prosthetic and orthotic services	17 N.J.R. 26(a)		
10:55-1.5, 1.8, 3.1	Shoes and shoe appliances: provider reimbursement	17 N.J.R. 162(a)		
10:56-1.11	Dental Services: utilization of insurance benefits	16 N.J.R. 1933(a)	R.1985 d.7	17 N.J.R. 309(a)
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)		
10:60-3	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)		
10:66-1.1, 1.2, 1.3,1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:66-1.9	Progress notes for mental health providers	16 N.J.R. 2333(a)	R.1985 d.52	17 N.J.R. 452(a)
10:67-1, 2.6	Readopt Psychologist's Services Manual	16 N.J.R. 3163(a)	R.1985 d.114	17 N.J.R. 706(c)
10:67-1.6	Progress notes for mental health providers	16 N.J.R. 2333(a)	R.1985 d.52	17 N.J.R. 452(a)
10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10, 6.11	Pharmaceutical Assistance for Aged and Disabled	17 N.J.R. 367(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:81-3.9, 3.17, 3.40	PAM: support rights; continued absence	16 N.J.R. 3282(a)	R.1985 d.99	17 N.J.R. 594(a)
10:81-3.34	PAM: temporary absence of children from home	17 N.J.R. 163(a)		
10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)		
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(a)		
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:82-2.2	ASH: initial grant computation	17 N.J.R. 546(b)		
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:82-3.1-3.7	ASH: resource eligibility in AFDC	16 N.J.R. 486(a)		
10:85-3.1	GAM: household size	17 N.J.R. 37(a)		
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	17 N.J.R. 48(a)
10:85-3.3, 12	GAM: medical care eligibility; repeal income standards rules	16 N.J.R. 3165(a)	R.1985 d.81	17 N.J.R. 595(a)
10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)		
10:85-8	GAM: readopt Referral to Other Agency Programs	16 N.J.R. 3166(a)	R.1985 d.80	17 N.J.R. 596(a)
10:85-App. A	Expiration of List of Forms			17 N.J.R. 616(a)
10:87-1.14	Food Stamps: release of case file information	17 N.J.R. 166(a)		
10:87-2.16, 2.17, 8.2	Food Stamps: quality control case review	17 N.J.R. 167(a)		
10:89-1.1, 2.2, 2.3, 3.1-3.6, 4.1, 5.3	Home Energy Assistance	16 N.J.R. 3217(a)	R.1985 d.5	17 N.J.R. 310(a)
10:94-3.16	Medicaid district offices	17 N.J.R. 38(a)		
10:94-5.6	Medicaid Only: health insurance premiums	17 N.J.R. 39(a)		
10:99	Commodities and Services Council: Rehabilitation Facilities	16 N.J.R. 2338(a)	R.1985 d.55	17 N.J.R. 453(a)
10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8, 6.9	Child care centers	17 N.J.R. 548(b)		
10:123-3.2	Residential health care: personal needs allowance	17 N.J.R. 39(b)	R.1985 d.134	17 N.J.R. 707(a)

(TRANSMITTAL 25, dated January 21, 1985)

CORRECTIONS—TITLE 10A

10A:31	Adult county correctional facilities	16 N.J.R. 3284(a)	R.1985 d.17	17 N.J.R. 312(a)
10A:32	County juvenile detention centers	17 N.J.R. 40(a)	R.1985 d.97	17 N.J.R. 598(a)
10A:71	State Parole Board rules	16 N.J.R. 3391(a)		

(TRANSMITTAL 8, dated July 16, 1984)

INSURANCE—TITLE 11

11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-10	Repeal rules on Licensing of Financial Institutions, Subsidiaries and Affiliates	16 N.J.R. 2919(a)	R.1985 d.69	17 N.J.R. 458(b)
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-10.1	Repeal Personal Lines Insurance rule	16 N.J.R. 2920(a)	R.1985 d.71	17 N.J.R. 458(a)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-7	Readopt Automobile Reparation Reform Act rules	17 N.J.R. 43(a)	R.1985 d.109	17 N.J.R. 707(b)
11:3-7.8, 7.9	PIP premium on additional automobiles	16 N.J.R. 488(a)		
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-11.1	Moped insurance	16 N.J.R. 3285(a)	R.1985 d.72	17 N.J.R. 458(c)
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-8	Charitable annuities	16 N.J.R. 3172(a)	R.1985 d.94	17 N.J.R. 598(b)
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16, 17, 18	Readopt health insurance standards	17 N.J.R. 554(a)		
11:4-16.8	Medicare Supplement Coverage: disclosure standards	16 N.J.R. 2944(a)	R.1985 d.68	17 N.J.R. 459(a)
11:4-20	Insuring of handicapped	17 N.J.R. 168(a)		
11:4-23	Medicare Supplement Policies and Contracts	16 N.J.R. 2945(a)	R.1985 d.70	17 N.J.R. 460(a)
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.19	Real estate branch offices	16 N.J.R. 2228(a)		
11:5-1.24	Closing or transfer of real estate brokerage	16 N.J.R. 2228(b)		
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.32	Residential rental referral agencies	16 N.J.R. 2952(a)	R.1985 d.93	17 N.J.R. 600(a)
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)		
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)		
11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1, 4.2	Auto body repair facilities	16 N.J.R. 2235(a)		
11:15-2.15	Payment of joint fund assessments by local governments	17 N.J.R. 218(a)	R.1985 d.128	17 N.J.R. 709(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
(TRANSMITTAL 25, dated January 25, 1985)				
LABOR—TITLE 12				
12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:16	Contributions, records, reports	16 N.J.R. 2488(b)		
12:19	Contributions, records, reports	16 N.J.R. 2488(b)		
12:120-2,6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
(TRANSMITTAL 19, dated December 17, 1984)				
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-4.6	Police Training Commission: radar instructor certification	17 N.J.R. 377(a)		
13:2-23.16, -24, -35	ABC proposal: industry marketing and sales practices	16 N.J.R. 3292(a)		
13:13	Discrimination against handicapped persons	16 N.J.R. 838(a)		
13:18-6.1	DMV: notification of liability coverage termination	16 N.J.R. 3174(a)		
13:19-10	Point System and Driving During Suspension: 25-day waiver of expiration of rules	16 N.J.R. 502(a)		
13:20-26.5, 26.12, 26.16	State inspection of certain trucks and truck tractors	17 N.J.R. 270(a)		
13:20-33.1, 33.50	Licensed reinspection centers	16 N.J.R. 3288(a)	R.1985 d.20	17 N.J.R. 313(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:20-34	Motor vehicle registration identifying marks	16 N.J.R. 2743(a)	R.1985 d.101	17 N.J.R. 601(a)
13:20-37	Motor vehicles with modified chassis height	16 N.J.R. 2501(a)	R.1985 d.100	17 N.J.R. 603(a)
13:20-38	Maximum length for auto transporters	16 N.J.R. 3176(a)	R.1985 d.23	17 N.J.R. 313(b)
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		
13:21-4.1	Readopt rules on Motor Vehicle Titles	17 N.J.R. 377(b)		
13:21-14	Readopt rules on licensing of bus drivers	17 N.J.R. 556(a)		
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:25-3.15, 3.16, 3.17	Motorized bicycle operator license	17 N.J.R. 48(a)	R.1985 d.112	17 N.J.R. 709(b)
13:27-3.13	Certification of landscape architects: fee schedule	16 N.J.R. 3176(b)	R.1985 d.22	17 N.J.R. 313(c)
13:27-8	Certified landscape architects	17 N.J.R. 169(b)		
13:28-1	Readopt Beauty Culture Industry rules	17 N.J.R. 49(a)	R.1985 d.139	17 N.J.R. 709(c)
13:28-2	Readopt rules on Beauty Culture Schools	17 N.J.R. 172(a)		
13:29-1.1-1.6, 1.8-1.12	Board of Accountancy general rules	17 N.J.R. 557(a)		
13:29-2.1, 2.2, 2.3	Registered municipal accountants	17 N.J.R. 559(a)		
13:29-3	Accountancy: readopt rules of professional conduct	16 N.J.R. 3418(a)	R.1985 d.104	17 N.J.R. 604(a)
13:30-8	Readopt Board of Dentistry general provisions	17 N.J.R. 378(a)		
13:33-1.38	Eyeglass standards and tolerances	16 N.J.R. 3288(b)	R.1985 d.113	17 N.J.R. 710(a)
13:33-4.1	Readopt Dispensing of Contact Lenses rule	16 N.J.R. 2513(a)	R.1985 d.136	17 N.J.R. 710(b)
13:35-2.4	Chiropractic licensure	16 N.J.R. 3177(a)	R.1985 d.102	17 N.J.R. 605(a)
13:35-3.1-3.4	Licensing of medical practitioners	17 N.J.R. 561(a)		
13:35-6.1	Medical practice identification	16 N.J.R. 3178(a)	R.1985 d.103	17 N.J.R. 606(a)
13:35-6.13	Medical examiners board: fee schedule	17 N.J.R. 562(a)		
13:35-6.14	Therapeutic treatment by unlicensed Medical aides	16 N.J.R. 2065(a)		
13:36-1.6	Mortuary Board fees and charges	17 N.J.R. 50(a)		
13:37-1.8	Schools of professional nursing	17 N.J.R. 51(a)		
13:37-2-6	Nursing licensure	16 N.J.R. 3179(a)	R.1985 d.105	17 N.J.R. 607(a)
13:38-2	Readopt rules of optometric practice	16 N.J.R. 3289(a)	R.1985 d.60	17 N.J.R. 467(a)
13:40-8	Engineers and land surveyors: release of project records	16 N.J.R. 1027(a)		
13:40-9	Supervision of engineering and land surveying projects	16 N.J.R. 2067(b)		
13:44-4.1	Veterinary medicine: training certificate fee	17 N.J.R. 383(a)		
13:46	Boxing Rules	16 N.J.R. 2962(a)		
13:46-4.20, 5.26, -23	Boxing and wrestling standards of conduct	17 N.J.R. 55(a)		
13:46-8.19, 10.7	Scoring of boxing contest; announcement of decision	16 N.J.R. 1956(a)	R.1985 d.21	17 N.J.R. 314(a)
13:46-18.15	Scheduling of boxing programs	16 N.J.R. 1030(a)	R.1985 d.19	17 N.J.R. 314(b)
13:70-3.46	Thoroughbred rules: horsemen's bookkeeper account	17 N.J.R. 173(a)		
13:70-6.53	Thoroughbred rules: qualification as New Jersey bred	17 N.J.R. 271(a)		
13:70-12	Thoroughbred Racing: readopt Claiming rules	17 N.J.R. 57(a)	R.1985 d.137	17 N.J.R. 710(c)
13:70-14A	Thoroughbred racing: medication and testing procedures	16 N.J.R. 3180(a)	R.1985 d.59	17 N.J.R. 468(a)
13:70-14A.10, 14A.11,	Thoroughbred rules: breathalyzer tests for jockeys and track personnel; urine tests	16 N.J.R. 1457(a)	R.1985 d.57	17 N.J.R. 470(a)
13:71-7.7	Harness racing applications	17 N.J.R. 57(b)	R.1985 d.138	17 N.J.R. 711(a)
13:71-14	Harness Racing: readopt Claiming rules	17 N.J.R. 57(a)	R.1985 d.137	17 N.J.R. 710(c)
13:71-23	Harness Racing: medication and testing procedures	16 N.J.R. 3182(a)	R.1985 d.58	17 N.J.R. 471(a)

(TRANSMITTAL 27, dated January 21, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PUBLIC UTILITIES—TITLE 14				
14:3-4.7	Adjustment of charges for inaccurate billings	16 N.J.R. 511(a)		
14:3-7.12, 7.13	Discontinuance of service for non-payment of combined utilities	16 N.J.R. 2747(a)		
14:3-8.1, 8.2	Suggested formulae for extension of utility service	17 N.J.R. 174(a)		
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:9-6	Small water company takeover	16 N.J.R. 3419(a)		
14:17-18.1-18.3	CATV: common tariff rules	16 N.J.R. 2978(a)		
14:18-3.10	CATV installation: compensation for taking	17 N.J.R. 563(a)		
14:18-14	Pre-proposal: landlord compensation for installation of cable TV	16 N.J.R. 2069(a)		
(TRANSMITTAL 20, dated October 15, 1984)				
ENERGY—TITLE 14A				
14A:3-4.4	Energy Subcode: thermal efficiency standards	16 N.J.R. 2748(a)		
14A:20-1	Energy conservation planning and evaluation	16 N.J.R. 3293(a)		
(TRANSMITTAL 14, dated October 15, 1984)				
STATE—TITLE 15				
(TRANSMITTAL 14, dated January 3, 1984)				
PUBLIC ADVOCATE—TITLE 15A				
(TRANSMITTAL 1, dated March 20, 1978)				
TRANSPORTATION—TITLE 16				
16:1	Records management	17 N.J.R. 564(a)		
16:6	Relocation assistance	17 N.J.R. 565(a)		
16:20A-4.4	Municipalities qualified for depressed rural centers aid	17 N.J.R. 565(b)		
16:21	State aid to counties and municipalities: readopt rules	17 N.J.R. 566(a)		
16:28-1.25, 1.72	Speed rates for Route 23 in Wayne and U.S.206 in Somerset County	17 N.J.R. 176(a)		
16:28-1.47	Speed rate on River Drive in Passaic	16 N.J.R. 3185(a)	R.1985 d.13	17 N.J.R. 315(a)
16:28-1.79	Route 94 speed limits, Sussex County	17 N.J.R. 384(a)		
16:28A-1.1, 1.7, 1.9, 1.18, 1.19, 1.44, 1.51	Parking on Routes US 1, 9, 17, 27, 28, 88 and 168	16 N.J.R. 3186(a)	R.1985 d.11	17 N.J.R. 316(a)
16:28A-1.7, 1.46	Bus stops on U.S.9 in Ocean County and U.S.130 in Salem County	17 N.J.R. 177(a)		
16:28A-1.18, 1.31	Parking on Route 27 in Linden and Route 45 in West Deptford	17 N.J.R. 58(a)	R.1985 d.127	17 N.J.R. 711(b)
16:28A-1.27, 1.37	Parking on Route 38 in Mt. Laurel and Route 70 in Pennsauken	16 N.J.R. 3188(a)	R.1985 d.10	17 N.J.R. 318(a)
16:28A-1.28, 1.85, 1.103	Parking on Routes 40, 161, and 140	16 N.J.R. 3296(a)	R.1985 d.35	17 N.J.R. 474(a)
16:28A-1.32	Parking on US 46 in Bergen County	16 N.J.R. 3419(b)	R.1985 d.89	17 N.J.R. 608(a)
16:28A-1.32, 1.33, 1.102	Parking on Routes 46, 47, and 48	16 N.J.R. 3297(a)	R.1985 d.33	17 N.J.R. 474(b)
16:28A-1.93, 1.101	Parking on US 322 in Harrison Twp. and Route 109 in Lower Twp.	16 N.J.R. 3189(a)	R.1985 d.12	17 N.J.R. 318(b)
16:28A-1.96	Route 183 parking, Sussex County	17 N.J.R. 384(a)		
16:29-1.4, 1.46, 1.47, 1.48	No passing zones: Routes 31, 324, 15, and 159	17 N.J.R. 59(a)	R.1985 d.126	17 N.J.R. 711(c)
16:29-1.26, 1.39-1.45	Passing on Routes 38, 53, 71, 72, 88, 169, 173 and 182	16 N.J.R. 3189(b)	R.1985 d.9	17 N.J.R. 318(c)
16:30-2.8	Stop intersection, Route 23 in Wayne	16 N.J.R. 3420(a)	R.1985 d.90	17 N.J.R. 608(b)
16:31-1.4	No left turn on Route 35 in Shrewsbury	17 N.J.R. 566(b)		
16:32-2	Trucks exempted from Federal bridge formula	16 N.J.R. 2072(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:33	Construction control	17 N.J.R. 567(a)		
16:41A-6.1	Outdoor advertising permit fees	17 N.J.R. 385(a)		
16:41B	Newspaper dispensers on State highways	16 N.J.R. 225(a)	R.1985 d.73	17 N.J.R. 608(c)
16:41B	Public hearing: Newspaper dispensers on State highways	16 N.J.R. 1957(a)	_____	_____
16:43	Junkyards adjacent to public highways: readopt rules	17 N.J.R. 567(b)		
16:44-3.2	Distribution and sale of construction plans and specifications	16 N.J.R. 2515(a)	R.1985 d.6	17 N.J.R. 319(a)
16:44-5.1	Receipt of bids: requirements	16 N.J.R. 3191(a)		
16:49	Transportation of hazardous materials	16 N.J.R. 2979(a)	R.1985 d.123	17 N.J.R. 712(a)
16:53A	Readopt Bus Operating Assistance Program rules	17 N.J.R. 272(a)		
16:53D	Zone of rate freedom	16 N.J.R. 3298(a)	R.1985 d.34	17 N.J.R. 475(b)
16:62	Air safety and hazardous zoning	16 N.J.R. 860(b)		
16:62	Public hearing: air safety and hazardous zoning	17 N.J.R. 59(b)		

(TRANSMITTAL 26, dated January 21, 1985)

TREASURY-GENERAL—TITLE 17

17:1-1.10	Pensions: minimum adjustments for reconciliation of members' accounts	16 N.J.R. 3192(a)	R.1985 d.8	17 N.J.R. 320(a)
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	16 N.J.R. 2350(b)		
17:3-2.3	Teachers' pension and annuity: full-time employment	17 N.J.R. 60(a)		
17:5-5.5	State Police Retirement: outstanding loans	16 N.J.R. 2997(a)		
17:6-1, 2, 3, 4	Readopt rules on Consolidated Police and Firemen's Pension Fund	16 N.J.R. 2997(b)	R.1985 d.37	17 N.J.R. 475(b)
17:6-1.4	Police and firemen's pension: election of Commission members	16 N.J.R. 2999(a)	R.1985 d.36	17 N.J.R. 476(a)
17:9-2.3	State Health Benefits Program: annual enrollment period	16 N.J.R. 2422(a)	R.1985 d.18	17 N.J.R. 320(b)
17:9-6.3	Health Benefits Program: retired employees' coverage	16 N.J.R. 3192(b)		
17:16-27	Investment Council: certificates of desposit	17 N.J.R. 60(b)		
17:19-2	Construction contracts: prequalification of bidders	16 N.J.R. 2751(a)	R.1985 d.95	17 N.J.R. 733(a)
17:20-5	Revocation or suspension of Lottery agent's license	17 N.J.R. 272(b)		

(TRANSMITTAL 26, dated January 21, 1985)

TREASURY-TAXATION—TITLE 18

18:7-1.17, 11.15	Casino consolidated tax return	16 N.J.R. 2423(a)		
18:7-7.1, 7.2	Corporation Tax: "regular place of business"; allocation	16 N.J.R. 2999(b)	R.1985 d.54	17 N.J.R. 476(b)
18:7-8.7-8.10, 8.12	Corporation business tax revisions	16 N.J.R. 3420(b)	R.1985 d.43	17 N.J.R. 477(a)
18:12-7.12	Homestead rebate: extension of time to file	16 N.J.R. 3498(a)	R.1985 d.111	17 N.J.R. 740(a)
18:22-1.5	Public utility corporations: accounting methods	16 N.J.R. 3423(a)		
18:24-9.11	Sales by exempt organizations	16 N.J.R. 3298(b)	R.1985 d.44	17 N.J.R. 480(a)
18:24-12	Sale of food and drink	17 N.J.R. 178(a)		
18:24-31.4	Certified vendors within urban enterprise zones	16 N.J.R. 3193(a)	R.1985 d.31	17 N.J.R. 320(c)
18:36	Savings institution tax	16 N.J.R. 3194(a)	R.1985 d.32	17 N.J.R. 321(a)

(TRANSMITTAL 25, dated January 21, 1985)

TITLE 19 SUBTITLES A-L—OTHER AGENCIES (Except Casino Control Commission)

19:4-4.33, 4.35, 4.36, 4.39, 4.40, 4.42, 6.28	Hackensack Meadowlands waterfront recreation zone	16 N.J.R. 3423(b)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:4-5.6, 5.6A, 6.28	Zoning changes	16 N.J.R. 2351(a)		
19:4-6.28	Change in zoning designation	17 N.J.R. 385(b)		
19:8-2.12	Emergency service charges	16 N.J.R. 3299(a)	R.1985 d.14	17 N.J.R. 321(b)
19:8-3.1	Bus tolls	16 N.J.R. 3300(a)	R.1985 d.15	17 N.J.R. 321(c)
19:61-5.5	State government positions with casino responsibility	16 N.J.R. 517(a)		

(TRANSMITTAL 24, dated December 17, 1984)

TITLE 19 SUBTITLE K-CASINO CONTROL COMMISSION

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19:41-7.14	Vendor registration form	16 N.J.R. 3302(a)	R.1985 d.50	17 N.J.R. 480(b)
19:45-1.1, 1.25	Cash equivalents	16 N.J.R. 3302(b)	R.1985 d.41	17 N.J.R. 480(c)
19:45-1.2, 1.5 1.8	Recordkeeping	16 N.J.R. 3303(a)	R.1985 d.51	17 N.J.R. 481(a)
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19:45-1.27	Patron credit	17 N.J.R. 181(a)		
19:45-1.28	Depositing gaming-patron checks	16 N.J.R. 2076(a)		
19:45-1.37	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:46-1.20	Inspection of gaming equipment	16 N.J.R. 1467(a)		
19:46-1.26, 1.27, 1.33	Issuance and use of tokens for slot machines	17 N.J.R. 184(a)		
19:47-2.4, 3.4, 4.3	Opening of the table for gaming	17 N.J.R. 61(a)		
19:47-8.2	Baccarat: minimum wager	16 N.J.R. 3425(a)	R.1985 d.110	17 N.J.R. 740(b)

(TRANSMITTAL 12, dated January 21, 1985)

Spring 1985

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May 20 issue:
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Adoptions **April 29**

June 3 issue:
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