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(Includes adopted rules filed through December 21, 1989)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 20, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 18, 1989

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **February 15, 1990.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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Filing Deadlines

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Division of Motor Vehicles Cases involving Excessive Points, Surcharges and Certain Failures to Appear

Proposed Amendment: N.J.A.C. 1:13-1.1
Proposed New Rule: N.J.A.C. 1:13-14.4

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1990-33.

Submit written comments by February 15, 1990 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building No. 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment and new rule expand the scope of N.J.A.C. 1:13. In addition to Division of Motor Vehicle cases involving excessive points and surcharges, the proposed amendment and rule includes failures to appear after an agency settlement conference.

Proposed new rule N.J.A.C. 1:13-14.4 provides that individuals who fail to appear at the hearing, and who do not offer an explanation for that nonappearance, are subject to the full penalty originally proposed by the Division rather than any lesser penalty offered at a settlement conference. The settlement offer is made to encourage resolution of the matter without resorting to the hearing process. A licensee who proceeds with an OAL hearing request after rejecting the settlement offer, but then fails to appear at the OAL hearing, should not receive the benefit of the settlement offer except in unusual circumstances. N.J.A.C. 1:1-1.3(b) permits a judge to relax or disregard a rule to prevent unfairness or injustice. Therefore, in exceptional cases where it would be unfair or unjust to impose the original penalty, the judge is fully empowered to impose the settlement offer by explaining his or her reasons on the record in accordance with N.J.A.C. 1:1-1.3(b).

The proposed amendment and new rule therefore attempt to encourage parties to take the settlement offer made by the Division without resorting to the hearing process or to appear at the scheduled hearing after rejecting the settlement offer. The Division of Motor Vehicles concurs with the OAL proposal.

Social Impact

Proposed new rule N.J.A.C. 1:13-14.4 notifies licensees of the consequences of failing to appear at a scheduled hearing without explanation and so should encourage appearance at the scheduled time and place.

Economic Impact

Proposed new rule N.J.A.C. 1:13-14.4 may encourage more individuals to appear at the hearing and so may marginally increase OAL's costs for conducting the hearing.

Regulatory Flexibility Statement

The proposed amendment and new rule do not affect small businesses because they do not impose reporting, record keeping or other requirements on small businesses. Licensees who might be affected by the amendments and rule are individuals.

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

CHAPTER 13

DIVISION OF MOTOR VEHICLES CASES INVOLVING EXCESSIVE POINTS, [AND] SURCHARGES [CASES] AND CERTAIN FAILURES TO APPEAR

1:13-1.1 APPLICABILITY

(a) The rules in this chapter shall apply to hearings [arising from] **transmitted by the** Division of Motor Vehicles (DMV) [cases] involving:

1. Disciplinary actions, other than license revocations, for accumulating excessive points; [and]

2. Proposed license suspensions for failure to pay surcharge under the New Jersey Merit Rating Plan[.]; **and**

3. Licensees who fail to participate in evidentiary hearings after attending an agency settlement conference.

(b) (No change.)

1:13-14.4 Failure to appear

If the licensee fails to appear at the hearing and fails to submit the certification required by N.J.A.C. 1:13-14.2, the judge shall hold the matter 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall impose the full penalty proposed by DMV in the notice of proposed suspension.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Vocational School Ownership, Financial Responsibility, Conduct and Violation of Rules

Proposed Amendments: N.J.A.C. 6:46-4.5, 4.12 and 4.16

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:7A-1 et seq., 18A:54-6, 18A:54-10, 18A:69-1 et seq., 34:1A-38 and Public Law 98-524.
Proposal Number: PRN 1990-37.

Submit written comments by February 15, 1990 to:
Irene Nigro, Rules Analyst
State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 6:46, Local Area Vocational School Districts and Private Vocational Schools was readopted by the State Board of Education and became effective October 5, 1987. Amendments to N.J.A.C. 6:46 were adopted by the State Board of Education on April 5, 1989 and became effective May 1, 1989.

The proposed amendment to N.J.A.C. 6:46-4.5 will require that tuition collected from students 30 or more calendar days in advance of instruction in private vocational schools be protected through tuition performance bonds. Irrevocable letters of credit would no longer be accepted by the Department in lieu of a tuition performance bond to secure advance tuition collected.

The irrevocable letter of credit option should be removed because of its identified shortcomings as a financial protection instrument. Discussion with a special deputy commissioner in the New Jersey Department of Insurance revealed the following about the irrevocable letters of credit:

1. Letters of credit require significant amounts of monitoring and staff time to be effectively managed.

2. State bureaucracies do not have the resources or procedural design to react in a timely fashion to a letter of credit cancellation or the need to execute the instrument if a school closes. This difficulty is compounded by the usual lack of notice to the department from schools that they are closing.

3. Letters of credit may be accepted by a surety company as collateral to secure a tuition performance bond. Schools wishing to secure advance tuition with a letter of credit could still utilize that option with the surety company as collateral for a tuition performance bond. Surety companies have a system in place to manage and collect on letters of credit.

The proposed amendment to N.J.A.C. 6:46-4.12 is designed to strengthen the ability-to-benefit admission process for students who do not possess a locally issued, state endorsed high school diploma or a state issued high school diploma recognized by the New Jersey Department of Education. As proposed for amendment, a potential student, without the requisite diploma, could be admitted to a course or program in a private vocational school through the administration of a nationally recognized test to measure the prospective student's grace level attainment in reading and mathematics. The students may be admitted if they demonstrate a reading and mathematics ability at the ninth grade level. In addition, the reading ability test must be in the primary language of instruction. Schools offering courses or programs that are primarily manipulative skill oriented (for instance, bartending or fashion modeling), may request that the Department permit alternate ability-to-benefit testing requirements.

The proposed amendment to N.J.A.C. 6:46-4.16 is designed to establish procedures to be followed by the Department in the enforcement of the rules regarding the operation of private vocational schools. The amendment permits the withholding of a certificate of approval to operate until a school complies with applicable rules and specific penalties for noncompliance. In addition, the amendment establishes a three level system of enforcement of the rules to provide noncompliant schools adequate notice of noncompliance and time to come into compliance. Sanctions for continuing noncompliance are detailed and could ultimately result in an action by the Commissioner to revoke the approval of the school to continue to operate. The addition of the amendment at N.J.A.C. 6:46-4.16(g) will ensure a timely response by the Department to a private vocational school effected by a requirement by the Department to cease student recruitment activities, new enrollments and new class starts.

Social Impact

The proposed amendment to N.J.A.C. 6:46-4.5 will have a positive social impact on individuals who are enrolled in private vocational schools that close prior to the individual's completion of a program for which he or she contracted. The bonding requirement would ensure that a secure source of tuition refunds is available if the school does not have the financial assets available after closing to honor its outstanding refund responsibilities.

The proposed amendment to N.J.A.C. 6:46-4.12 will benefit potential students by establishing academic performance standards to be met by students who wish to enroll in postsecondary education programs offered at private vocational schools and do not possess a recognized high school diploma. The ability-to-benefit testing procedure will preclude schools from enrolling students who have little chance of successfully completing a course or program because of basic deficiencies in reading and mathematics skills. It will also preclude the enrollment of non-English or limited English speaking students in courses or programs taught in English. If a course or program relies on manual skill development for successful completion alternate ability-to-benefit testing standards may be permitted by the Department. Requests to approve alternate standards will be reviewed on a case-by-case basis.

The proposed amendments to N.J.A.C. 6:46-4.16 will benefit the consumers of the services of private vocational schools by establishing a uniform system to enforce the rules governing the operation of private vocational schools so the consumer is protected from inappropriately operated schools. In addition, school owners and directors will have a clear understanding of enforcement procedures to which they are subject.

Economic Impact

It is anticipated that the removal of the letter of credit option at N.J.A.C. 6:46-4.5 will cause a minimal increase in costs to the private vocational schools effected. Tuition performance bonds cost an average of $10.00 for each $1,000 in coverage provided by a surety company. Letters of credit in the amount of $243,000 for seven private vocational schools are currently in effect. It is estimated that the schools will have to pay an annual amount of $2,430 to convert the letters of credit to tuition performance bonds. Other schools may incur increased or decreased costs for bonds if the amount of advance tuition requiring protection through a tuition performnce bond increases or decreases.

It is not anticipated that the amendment proposed to N.J.A.C. 6:46-4.12 will increase the operating cost at schools admitting students under ability-to-benefit provisions. Schools are presently permitted to charge a nonrefundable $25.00 application fee to each potential student to defray administrative costs incurred to determine eligibility for enrollment and other processing.

The amendment to N.J.A.C. 6:46-4.16 may cause schools to incur additional costs dependent on specific actions required to correct any areas of noncompliance with rules of operation. Circumstances are variable and it is not possible to estimate the financial impact. Regardless of the financial impact, the cost would have to be incurred by a school to maintain compliance with operatng rules.

Regulatory Flexibility Analysis

The amended rules would apply to all private vocational schools regulated by the Department of Education. There are 243 individual school sites regulated by the Department. One hundred and fifty-two can be defined as small businesses as defined at N.J.S.A. 52:14B-7. Ninety-one other sites are owned and operated by 10 corporations and do not appear to meet the definition of a small business. All of the private vocational schools, whether meeting the definition of a small business or not, would be subject to the provisions of the amended rules in order to assure that all students are provided with equal consumer protection.

The removal of the letter of credit option because of its defined deficiencies as a less manageable advance student protection finance instrument, would apply to all schools, regardless of size, that collect tuition 30 or more days in advance of instruction. Whether a particular school is defined as a small business or not, it is essential for the financial welfare of students attending the private vocational schools that a stable method be in place to guarantee the return of unearned tuition should a school close before students have the opportunity to complete the instructional program for which they contacted with the schools.

The amendments detailing procedures to ensure compliance of all private vocational schools with the rules are designed to establish consistent rule enforcement procedures to be followed by the Department. The procedures permit adequate notification to schools that they are operating in noncompliance and provide reasonable time to take actions necessary to come into compliance. The rules concerning private vocational schools are intended to protect the interests of the consuming public and the establishment of uniform enforcement procedures will support the Department's efforts to effectively regulate all private vocational schools in the best interest of the public.

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

6:46-4.5 School ownership and financial responsibility

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

(f) Any school approved under this section that collects tuition 30 or more calendar days in advance of instruction, **except for a nonrefundable registration fee described in N.J.A.C. 6:46-4.7(d),** shall post a **tuition** performance bond [or irrevocable letter of credit] payable to the [commissioner] **Commissioner and in a format designated by the Commissioner** in the amount of the [projected] advance tuition accepted by the school.

(g) (No change.)

6:46-4.12 Conduct of the school

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

(c) A **prospective** pupil not meeting the minimum educational requirement prescribed in (b) above may be admitted by the school on **the determination that the individual has** the ability to benefit from the education or training offered by the school as determined by the director. Prior to admission, **a prospective** pupil[s] **being considered under the ability-to-benefit provision** shall be administered [and pass] a nationally recognized standardized or industry developed test **designed to measure grade level in reading and mathematics.** [measuring the applicant's ability to successfully complete the program for which applied. Based on the test results, the director shall determine whether the pupil can benefit from the course or program and be admitted to the school.] A copy of the test(s) **to be** used and the [minimum passing] score(s) required by the school shall be forwarded

to the Assistant Commissioner, Division of Vocational Education **for review and approval prior to its use by the school.**

(d) A demonstrated ability at the ninth grade level for reading and mathematics will qualify a prospective student to be enrolled under the ability-to-benefit provision of (c) above. The reading portion of the test shall measure the prospective student's skill in the primary language of instruction. In those courses where the preponderance of instruction is performance based rather than academic, the school may request that the Department approve an alternative ability-to-benefit standard under which a student may be admitted to the specific course/program.

[(d)](e) Applicants unable to satisfy the admissions testing requirements specified in (c) **and (d)** above shall not be admitted to the private vocational school. The director of the school shall provide the pupil with information regarding the availability of remedial education programs at adult learning centers. Locations of the centers are contained in the "Adult Education Program Directory" available from the Division of Adult Education, New Jersey Department of Education. Following the remedial or developmental education program, the pupil may be re-evaluated by the director for compliance with admission requirements or ability to benefit criteria.

[(e)](f) A pupil shall not be retained by the school when the pupil fails to meet the school's minimum standards of academic progress or exceeds the maximum number of absences as stated in the school bulletin. The maximum number of unexcused absences shall not exceed 20 percent of the total [clock hours] **instructional hours** of the course or program.

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

6:46-4.16 Violations of rules **and enforcement procedures**

(a) (No change.)

(b) Prior to the revocation [or withholding] of a certificate of approval the Commissioner shall direct the owner of the school to show cause why such a sanction[s] shall not be imposed in accordance with the procedure established under N.J.A.C. 6:24-3.1. **When the annual renewal of an approval is withheld due to chronic non-compliance with the requirements of this subchapter, the following actions shall be taken by the Department:**

1. The school director shall be notified in writing of the deficiencies for which the approval has been withheld;

2. The school director shall be directed to cease student recruitment activities, new enrollments and new course/program starts, effective immediately upon receipt of the notification;

3. The school director shall be given 90 days from the receipt of notification to correct the deficiencies or to submit and implement a plan of corrective action deemed acceptable to the Department of Education;

4. Upon correction of the deficiencies or implementation of an approved plan of corrective action, the school's annual approval will be issued;

5. Failure to correct the deficiencies or implement an approved plan of corrective action within 90 days will result in a notice to the school director that its approval will not be renewed. The Commissioner shall issue a temporary approval of the school to permit the school to complete the instructional program of students enrolled or arrange the transfer of students to other schools to complete their instructional programs. The order to cease the activities as per (b)2 above shall remain in effect under the temporary approval.

(c) An appeal of the actions of the Department of Education under (b)5 above may be made to the Commissioner of Education as per N.J.A.C. 6:24. During the appeal process, the school may continue to conduct classes under the conditions described in (b)2 above.

[(c)](d) Any person, firm, corporation or association that operates a private vocational school without obtaining or maintaining the approval required by this chapter shall be referred by the [commissioner] **Commissioner** to the Office of the Attorney General with a request that the Attorney General obtain a court order to enjoin the offending school from continuing to operate through an action in the Superior Court, Law Division. The [commissioner] **Commissioner** shall request that the court sign an order to show cause why the school should not be enjoined from continuing to operate in violation of the law.

[(d)](e) The Commissioner shall notify all relevant agencies, including but not limited to, accrediting agencies, the Department of Higher Education, New Jersey Higher Education Assistance Authority and other student loan guarantors when the approval of an approved private vocational school is revoked or withheld by the Commissioner.

(f) Schools found in non-compliance with this subchapter shall be subject to a three level enforcement process designed to permit a school to comply with these rules or have its approval to operate revoked by the Commissioner in accordance with (b) above. Nothing in this subsection shall preclude the Commissioner from initiating the enforcement procedure at any level if non-compliance with the rules of this subchapter is deemed serious enough to endanger the safety, health or welfare of students or staff of the school or the general public.

(g) Level 1 Enforcement: When a non-compliance with the rules of this subchapter has been identified, Department staff designated by the Assistant Commissioner, Division of Vocational Education, shall notify the school director in writing of the violation(s) and grant the school director 30 days from receipt of notification to submit actions taken to correct the violation(s) and to identify procedures to be established to preclude a recurrence of the violation(s) in the continued operation of the school. Failure to respond to the notification of violation will result in the moving of the action to Level 2 Enforcement.

1. Upon review of the corrective action(s) taken, the Department staff shall notify the school director in writing of the acceptability of the action(s).

2. If the action(s) taken do not correct the violation(s) and preclude recurrence, the Department staff shall notify the school director in writing and grant the school director 15 days from receipt of the notice of non-correction to submit evidence of correction.

3. If there is a failure to respond or if the corrective action submitted does not adequately address correction of the violation(s), the matter will be moved to Level 2 Enforcement.

(h) Level 2 Enforcement: The Department staff shall notify the Assistant Commissioner, Division of Vocational Education, when a violation of this subchapter has not been corrected through the Level 1 Enforcement process.

1. The Assistant Commissioner shall notify the school director in writing that the violation(s) has not been corrected and notify the school director that he or she, upon receipt of the notification, shall cease the recruitment and enrollment of additional students and refrain from initiating any new class starts after the date of receipt of the notice.

2. The school director will be granted 30 days from the date of notification from the Assistant Commissioner to submit actions taken to correct the violation(s) and to establish procedures to preclude a recurrence of the violation(s) in the continued operation of the school.

i. The notification letter will also contain the requirement that the school director return a certified statement to the Assistant Commissioner that recruitment, enrollment and new class start activities have ceased and will remain so unless the sanction is removed by the Assistant Commissioner.

ii. The notification letter will also require that the school director submit to the Assistant Commissioner appropriate information, as a minimum, to identify students actively enrolled and attending the school, course/program completion status for each student enrolled and attending and the title of the course or program in which each student is enrolled. The certification statement and student status information will be submitted to the Assistant Commissioner by the school director within five days of receipt of the notification from the Assistant Commissioner.

3. Until the sanction is removed by the Assistant Commissioner, the school will be periodically visited by a representative designated by the Assistant Commissioner. The representative will verify that the school is abiding by the sanction imposed and receive a written certification from the school director that the sanction is being abided by.

4. If the school does not submit a response within the 30 day period or the response does not adequately address the correction of the violation(s), the matter will be moved to Level 3 Enforcement.

5. If the violation(s) is corrected, the sanctions will be removed by the Assistant Commissioner.

(i) Level 3 Enforcement: The Assistant Commissioner shall notify the Commissioner when a violation of these rules has not been corrected through the Level 2 Enforcement process.

1. The Commissioner will issue an order to the school director to show cause why the Commissioner should not remove the school's approval to operate or why another corrective action should not be taken by the Department because of the violation of these rules.

2. The notification from the Commissioner will also specify the continuation or initiation of the procedures to cease recruitment, enrollment and new class start activities and to verify that the school abides by the sanction as described in (h) above.

(j) Whenever a school director submits written corrective actions or plans in response to a notice to cease recruitment, enrollment of additional students and refrain initiating new class starts, the corrective actions or plans will be reviewed by the Department. The school will be notified of the acceptability of the corrective actions or plans within five working days of receipt of the information by the Department.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species List

Proposed Amendment: N.J.A.C. 7:5C-5.1

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

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-15.146 through 13:1B-15.150 and P.L. 1989, c.56 (to be codified at 13:1B-15.151 through 13:1B-15.158); and 13:1D-9.

DEP Docket Number: 059-89-12.

Proposal Number: PRN 1990-38.

Submit written comments by March 17, 1990 to:

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

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:5C-5.1 in order to promulgate an official list of endangered plant species native to the State. Adoption of the Endangered Plant Species List (List) is required by the Endangered Plant Species List Act (Act), P.L. 1989, c.56, to be codified at N.J.S.A. 13:1B-151 through 13:1B-158. On September 18, 1989, the Department proposed a new chapter at N.J.A.C. 7:5C to provide detailed procedures, standards and criteria for developing, adopting, and revising the List (see 21 N.J.R. 2847(a), adopted elsewhere in this issue of the New Jersey Register). The proposed chapter reserved space at N.J.A.C. 7:5C-5.1(a) for the eventual adoption of the List. The list contained in this proposal was developed in accordance with the procedures, standards and criteria at N.J.A.C. 7:5C, particularly N.J.A.C. 7:5C-2.1 and 2.2. A basis and background document containing detailed documentation on the suitability of each of the 304 species herein proposed for inclusion on the List has been filed with the Office of Administrative Law as part of the proposal. This document is available for inspection at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey, and at the Office of Natural Lands Management, 501 East State Street, Trenton, New Jersey.

The primary purpose of the Act is to establish an official list of plant species native to New Jersey which are endangered as a result of habitat destruction, over-collection, pollution or other factors, natural or man-made. The Legislature has directed the Department to adopt the List in order to eliminate the confusion that various existing conflicting and inconsistent unofficial lists have produced. Adoption of the List is expected to increase the effectiveness and efficiency of protecting and preserving endangered plant species as an element of existing and future government planning functions. The Act directs the Department's Division of Parks and Forestry to develop and adopt the List by April 14, 1990.

The Act also directs the Commissioner of Environmental Protection to direct, within the limits of available funds, research and investigations on the biology and ecology of plant species and their habitats in order to determine the eligibility of plant species for placement on the List. The Commissioner may accept money from a variety of sources, public and private, to carry out the purposes of the Act, and may establish a separate fund for this purpose. In accordance with proposed N.J.A.C. 7:5C-2.1, the Department will incorporate the results of such research and investigations into the Division's Natural Heritage Database. This information will then be used by the Department to determine which species are eligible for inclusion on the Endangered Plant Species List in accordance with criteria specified at N.J.A.C. 7:5C-2.2.

The Department will also be developing, within the limits of available funds, educational or informational programs to inform the public as to the status and significance of endangered flora. Over an extended period following adoption of the Endangered Plant Species List, the Department will provide materials indicating the importance and status of the State's endangered flora to the general public and, in particular, those involved in making land use planning and management decisions. Through such efforts, the Department hopes to increase public awareness and concern over the plight of the State's endangered plant species. Eventually, the Department hopes to incorporate consideration of endangered plant species early in the land use planning process at both the State and local level.

Because endangered plant species occupy habitats throughout the State, primarily in undeveloped rural and suburban areas, the proposed Endangered Plant Species List will have Statewide effect. The proposed amendment is designed to promote research, education and informed planning and management decisions. The proposed amendment does not contain any prohibitions or enforcement mechanisms.

Social Impact

The proposed amendment is expected to have a positive social impact by increasing awareness of and concern by the general public and land use planners and managers for the status of the State's floral diversity. Adoption of the Endangered Plant Species List will have positive consequences for that segment of the population involved in conservation, land management and planning decisions by focusing their attention and efforts on a single publicly endorsed official list of endangered plant species.

Economic Impact

The proposed amendment does not contain direct regulatory requirements or impose fees and, therefore, will not have any direct economic impact on the citizens of the State. The presence of listed plants, however, may affect permitting decisions. Adoption of the Endangered Plant Species List may have a positive economic impact on local and State government planning functions by increasing the efficiency by which endangered plant species are considered in the planning process. It is possible that maintenance of the official list, as well as the research, educational, informational and monetary provisions of the Act, may require the Department's hiring an additional part-time or full-time staff person.

Environmental Impact

Adoption of the Endangered Plant Species List and the endangered plant species program in general will have a long term positive environmental impact because research, investigations and public education conducted under the program will enhance public awareness of the need for preservation of endangered flora. This increased public awareness should facilitate the Department's efforts to maintain the State's floral diversity, thereby contributing to the stability and viability of the State's ecosystems. Because many endangered plant species occupy specialized and often harsh environments, such as sand dunes, rock faces, bogs and other wetlands, and mountain tops, their preservation will aid in soil development, in preventing wind and water erosion, and in promoting water retention. In addition, maintaining a diverse flora within the State is essential to the conservation of wildlife. All of these factors will result in an overall enhancement of the environment and the quality of life for State citizens.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses since the proposed list imposes requirements on the Department but not on members of the general public.

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

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species: [(Reserved)]

1. Scientific Name	Common Name
Aeschynomene virginica	sensitive joint-vetch
Agrimonia microcarpa	small-fruited groovebar
Agropyron trachycaulum	slender wheatgrass
Alisma triviale	large water-plantain
Amaranthus pumilus	sea-beach pigweed
Amelanchier humilis	running serviceberry
Andromeda glaucophylla	bog rosemary
Anemone cylindrica	long-headed anemone
Aplectrum hyemale	puttyroot
Arabis drummondii	Drummond's rock cress
Arceuthobium pusillum	dwarf mistletoe
Arenaria stricta	rock sandwort
Aristida lanosa	wooly three-awned grass
Armoracia aquatica	lake cress
Asimina triloba	pawpaw
Asplenium bradleyi	Bradley's spleenwort
Asplenium pinnatifidum	lobed spleenwort
Aster borealis	rush aster
Aster lucidulus	shining aster
Aster praeltus var angustior	willow-leaved aster
Aster pringlei	Pringle's aster
Aster radula	low rough aster
Athyrium pycnocarpon	glade fern
Boltonia asteroides var glastifolia	boltonia
Botrychium multifidum	leathery grape-fern
Botrychium simplex var simplex	little grape-fern
Bouteloua curtipendula	side-oats gramma grass
Breweria pickeringii var caesariense	Pickering's morning-glory
Cacalia atriplicifolia	pale indian plantain
Calamagrosatis pickeringii	Pickering's reedgrass
Calamovilfa brevipilis	pine barren reedgrass
Cardamine longii	Long's bitter cress
Cardamine pratensis var palustris	cuckoo flower
Cardamine rotundifolia	round-leaved water-cress
Carex alopecoidea	foxtail sedge
Carex aquatilis	water sedge
Carex backii	Back's sedge
Carex barrattii	Barratt's sedge
Carex brunnescens	brownish sedge
Carex bushii	Bush's sedge
Carex crawei	Crawe's sedge
Carex cumulata	clustered sedge
Carex deweyana	Dewey's sedge
Carex foenea	dry-spiked sedge
Carex haydenii	cloud sedge
Carex jamesii	Nebraska sedge
Carex leptonervia	finely-nerved sedge
Carex limosa	mud sedge
Carex louisianica	Louisiana sedge
Carex oligocarpa	few-fruited sedge
Carex plantaginea	plantain-leaved sedge
Carex polymorpha	variable sedge
Carex pseudocyperus	cyperus-like sedge
Carex tuckermanii	Tuckerman's sedge
Cares woodii	Wood's sedge
Centrosema virginianum	spurred butterfly pea
Ceratophyllum echinatum	spiny coontail
Cercis canadensis	redbud
Chenopodium rubrum	red goosefoot
Cinna latifolia	slender wood reedgrass
Cirsium virginianum	Virginia thistle
Claytonia virginica forma hammondiae	Hammond's yellow spring beauty
Cleistes divaricata	spreading pogonia
Clitoria mariana	butterfly pea
Commelina erecta	slender dayflower
Conioselinum chinense	hemlock-parsley
Convolculus spithamaeus	erect bindweed
Corema conradii	broom crowberry
Crataegus calpodendron	pear hawthorn
Crataegus succulenta	fleshy hawthorn
Cryptogramma stelleri	slender rock-brake
Cuscuta cephalanthii	button-bush dodder
Cuscuta polygonorum	smartweed dodder
Cynoglossum boreale	northern wild comfrey
Cyperus engelmannii	Engelmann's flatsedge
Cyperus lancastriensis	Lancaster flatsedge
Cyperus polystachyos var texensis	coast flatsedge
Cyperus pseudovegetus	marsh flatsedge
Cyperus refractus	reflexed flatsedge
Cyperus retrofractus	rough flatsedge
Cypripedium candidum	small white lady's-slipper
Cypripedium reginae	showy lady's-slipper
Dalibarda repens	robin-run-away
Desmodium humifusum	trailing tick-trefoil
Desmodium pauciflorum	few-flowered tick-trefoil
Desmodium sessilifolium	sessile-leaved tick-trefoil
Desmodium strictum	pineland tick-trefoil
Dicentra canadensis	squirrel-corn
Dicentra eximia	wild bleeding-hearts
Diodia virginiana	larger buttonweed
Draba reptans	Carolina whitlow-grass
Eleocharis brittonii	Britton's spikerush
Eleocharis compressa	flat-stemmed spikerush
Eleocharis equisetoides	knotted spikerush
Eleocharis melanocarpa	black-fruited spikerush
Eleocharis pauciflora var fernaldii	few-flowered spikerush
Eleocharis tortilis	twisted spikerush
Eleocharis verrucosa	spikerush
Elephantopus carolinianus	elephant's foot
Ellisia nyctelea	Aunt Lucy
Equisetum pratense	meadow horsetail
Equisetum variegatum	variegated horsetail
Eriocaulon parkeri	Parker's pipewort
Eriophorum gracile	slender cottongrass
Eriophorum spissum	sheathed cottongrass
Eriophorum tenellum	rough cottongrass
Eupatorium capillifolium	dog-fennel thoroughwort
Eupatorium resinosum	pine barren boneset
Euphorbia marilandica	Maryland spurge
Euphorbia purpurea	glade spurge
Fraxinus profunda	pumpkin ash
Galactia volubilis	downy milk-pea
Galium hispidulum	coast bedstraw
Galium labradoricum	Labrador marsh bedstraw
Galium trifidum	small bedstraw
Gaultheria hispidula	creeping snowberry
Gentiana linearis	narrow-leaved gentian
Geum vernum	spring avens
Glaux maritima	sea-beach milkwort
Glyceria borealis	small floating mannagrass
Glyceria grandis	American mannagrass
Gnaphalium macounii	clammy everlasting
Goodyera tesselata	checkered rattlesnake plantain
Gymnopogon brevifolius	short-leaved skeleton grass
Helonias bullata	swamp-pink
Hemicarpha micrantha	Hemicarpha
Hieracium canadense var fasciculatum	Canada hawkweed
Hottonia inflata	featherfoil
Hybanthus concolor	green violet
Hydrocotyle ranunciloides	floating pennywort
Hydrophyllum canadense	broad-leaved waterleaf
Hypericum majus	larger Canadian St. John's-wort
Hypericum prolificum	shrubby St. John's-wort
Ilex montana	mountain holly

Isoetes macrospora	lake quillwort
Isoetes melanopoda	black-based quillwort
Isoetes x eatonii	Eaton's quillwort
Isotria medeoloides	small whorled pogonia
Jeffersonia diphylla	twinleaf
Juncus brachycarpus	short-fruited rush
Juncus caesariensis	New Jersey rush
Juncus coriaceus	awl-leaved rush
Juncus elliottii	Elliott's rush
Kalmia polifolia	pale laurel
Krigia dandelion	dwarf dandelion
Kuhnia eupatorioides	false boneset
Lathyrus ochroleucus	pale vetchling peavine
Lathyrus venosus	smooth veiny peavine
Lechea tenuifolia	slender pinweed
Limosella subulata	mudweed
Linnaea borealis	twin-flower
Linum intercursum	Florida yellow flax
Linum sulcatum	grooved yellow flax
Listera cordata	heart-leaved twayblade
Listera smallii	kidney-leaved twayblade
Lobelia boykinii	Boykin's lobelia
Lobelia dortmanna	water lobelia
Lonicera canadensis	fly honeysuckle
Luzula acuminata	hairy woodrush
Lycopodium annotinum	stiff clubmoss
Malaxis monophyllos	white adder's-mouth
Manisuris rugosa	wrinkled jointgrass
Megalodonta beckii	water-marigold
Melanthium virginicum	Virginia bunchflower
Micranthemum micranthemoides	Nuttall's mudwort
Milium effusum	tall millet grass
Monarda clinopodia	basil bee-balm
Muhlenbergia capillaris	long-awned smoke grass
Muhlenbergia torreyana	pine barren smoke grass
Myriophyllum pinnatum	cut-leaved water-milfoil
Myriophyllum tenellum	slender water-milfoil
Myriophyllum verticillatum	whorled water-milfoil
Narthecium americanum	bog asphodel
Nelumbo lutea	American lotus
Nuphar microphyllum	small yellow pond lily
Oenothera humifusa	sea-side evening primrose
Onosmodium virginianum	Virginia false-gromwell
Ophioglossum vulgatum var pycnostichum	sheathed adder's tongue
Oryzopsis asperifolia	white-grained mountain ricegrass
Oryzopsis pungens	slender mountain ricegrass
Panicum aciculare	bristling panic grass
Panicum boreale	northern panic grass
Panicum flexile	wiry panic grass
Panicum hirstii	Hirsts' panic grass
Panicum xanthophysum	slender panic grass
Phlox pilosa	downy phlox
Phyla lanceolata	fog fruit
Pinus pungens	table mountain pine
Pinus resinosa	red pine
Plantago pusilla	slender plantain
Platanthera flava var flava	southern rein orchid
Platanthera integra	yellow fringeless orchid
Platanthera leucophaea	prairie white-fringed orchid
Platanthera nivea	snowy orchid
Platanthera orbiculata	large round-leaved orchid
Platanthera peramoena	purple fringeless orchid
Pluchea foetida	stinking fleabane
Poa autumnalis	autumn bluegrass
Poa saltuensis	bluegrass
Polemonium reptans	Greek valerian
Polemonium vanbruntiae	Jacob's ladder
Polygala incarnata	pink milkwort
Polygala senega	Seneca snakeroot
Polygonum densiflorum	stout smartweed
Polygonum glaucum	sea-beach knotweed
Polymnia uvedalia	bearsfoot
Potamogeton alpinus	northern pondweed
Potamogeton illinoensis	Illinois pondweed
Potamogeton obtusifloius	obtuse-leaved pondweed
Potamogeton pusillus var gemmiparis	budding pondweed
Potamogeton praelongus	white-stemmed pondweed
Potamogeton richardsonii	Richardson's pondweed
Potamogeton zosteriformis	flat-stemmed pondweed
Potentilla palustris	marsh cinquefoil
Potentilla tridentata	three-toothed cinquefoil
Prenanthes racemosa	smooth rattlesnake root
Prunus alleghaniensis	Alleghany plum
Prunus angustifolia	Chickasaw plum
Ptelea trifoliata	wafer ash
Pycnanthemum clinopodioides	basil mountain mint
Pycnanthemum torrei	Torrey's mountain mint
Quercus imbricaria	shingle oak
Quercus lyrata	overcup oak
Quercus nigra	water oak
Ranunculus allegheniensis	Allegheny mountain crowfoot
Ranunculus cymbalaria	sea-side crowfoot
Ranunculus fascicularis	early buttercup
Ranunculus reptans	creeping buttercup
Rhexia aristosa	awned meadowbeauty
Rhododendron atlanticum	dwarf azalea
Rhododendron canadense	rhodora
Rhynchospora capillacea	capillary beaked rush
Rhynchospora filifolia	thread-leaved beaked rush
Rhynchospora globularis	grass-like beaked rush
Rhynchospora glomerata	clustered beaked rush
Rhynchospora knieskernii	Knieskern's beaked rush
Rhynchospora microcephala	small-headed beaked rush
Rhynchospora rariflora	rare-flowering beaked rush
Ribes glandulosum	skunk currant
Ribes missouriense	Missouri gooseberry
Rubus canadensis	smooth blackberry
Ruellia caroliniensis	Carolina petunia
Sacciolepis striata	American cupscale
Sagittaria australis	southern arrow head
Sagittaria cuneata	arum-leaved arrow head
Sagittaria teres	slender arrow head
Salix pedicellaris	bog willow
Sanicula trifoliata	large-fruited sanicle
Scheuchzeria palustris ssp americana	arrow-grass
Schizachne purpurascens	purple oats
Schizaea pusilla	curly grass fern
Schwalbea americana	chaffseed
Scirpus longii	Long's bulrush
Scirpus maritimus	salt marsh bulrush
Scirpus microcarpus	barber pole bulrush
Scirpus pedicellatus	stalked bulrush
Scirpus torreyi	Torrey's bulrush
Scleria verticillata	whorled nut rush
Scutellaria leonardii	small skullcap
Silene nivea	snowy campion
Sisyrinchium montanum var crebrum	strict blue-eyed grass
Solidago rigida	stiff goldenrod
Sparganium angustifolium	narrow-leaved bur-reed
Sparganium minimum	small bur-reed
Spiraea alba	narrow-leaved meadow sweet
Spiranthes laciniata	lace-lip ladies'-tresses
Sporobolus neglectus	puff-sheathed dropseed
Stachys palustris var homotricha	marsh hedge-nettle
Stellaria calycantha	northern stichwort
Stellaria pubera	star chickweed
Streptopus amplexifolius	white twisted-stalk
Streptopus roseus	rosy twisted-stalk
Strophostyles leiosperma	smooth fuzzy bean
Stylosanthes riparia	riparian pencil flower
Thuja occidentalis	northern white cedar

Tiarella cordifolia	foamflower
Tofieldia racemosa	false asphodel
Tomanthera auriculata	eared false foxglove
Triadenum fraseri	Fraser's St. John's-wort
Triadenum walteri	Walter's St. John's-wort
Trichomanes sp 1	filmy fern
Tridens chapmanii	Chapman's redtop
Triglochin maritimum	sea-side arrow-grass
Triosteum augustifolium	narrow-leaved tinker's-weed
Triphora trianthophora	three birds orchid
Trollius laxus ssp laxus	spreading globe flower
Utricularia biflora	two-flowered bladderwort
Utricularia minor	lesser bladderwort
Utricularia olivacea	dwarf white bladderwort
Utricularia resupinata	reversed bladderwort
Uvularia pudica var nitida	pine barren bellwort
Valerianella radiata	beaked corn-salad
Verbena simplex	narrow-leaved vervain
Vernonia glauca	broad-leaved ironweed
Veronica catenata	speedwell
Viburnum alnifolium	witch hobble
Vicia caroliniana	Carolina wood vetch
Viola canadensis	Canada violet
Vitis novae-angliae	New England grape
Vulpia sciurea	squirrel fescue
Wolffiella floridana	Florida bogmat
Xyris fimbriata	fringed yellow-eyed grass
Xyris flexuosa	sand yellow-eyed grass
Xyris montana	northern yellow-eyed grass

(a)

DIVISION OF WATER RESOURCES

Bureau of Marine Water Classification and Analysis Soft Clam and Hard Clam Depuration

Proposed Amendments: N.J.A.C. 7:12-1 and 9
Proposed Repeal: N.J.A.C. 7:17

Authorized By: Christopher Daggett, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.
DEP Docket Number: 060-89-12.
Proposal Number: PRN 1990-41.

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

Friday, February 2, 1990 from 1:30 to 3:30 P.M.
Monmouth County Public Health Center
Route 9 and Campbell Court
Freehold, New Jersey

Submit written comments by March 17, 1990 to:

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

The agency proposal follows:

Summary

The Department of Environmental Protection's shellfish resource recovery programs increase the availability of shellfish to shellfishermen and consumers by enabling the utilization of this resource from waters that are classified as unapproved for harvest. Shellfish harvested in accordance with these programs can be used for scientific research and, after a purification process, human consumption. The shellfish resource recovery programs are cooperative programs involving the Department of Environmental Protection's Division of Water Resources and Division of Fish, Game and Wildlife, the New Jersey Department of Health and the New Jersey State Police Marine Bureau. Through the issuance of special permits, the Division of Water Resources' Bureau of Marine Water Classification and Analysis (BMWCA) allows individuals to participate in the various shellfish recovery programs. A fee of $25.00 is required by N.J.S.A. 58:24-1 et seq. for each permit issued pursuant to this program.

The Department of Environmental Protection (DEP or Department) and the Department of Health (DOH) propose to repeal the joint Hard Shell Clam Depuration Pilot Plant Program Rules at N.J.A.C. 7:17 and to amend the rules concerning four of the shellfish resource recovery permits associated with both the soft and hard clam depuration programs administered by DEP at N.J.A.C. 7:12 and the DOH's depuration program set forth at N.J.A.C. 8:13. (See this issue of the New Jersey Register for DOH's proposal.) The proposed changes are in response to the numerous regulatory infractions associated with the industry in the conduct of its business in the recent past. The direct threat to public health posed in some of the cases resulted in court ordered closures of depuration plants. The State's only hard clam depuration plant had its DOH certification suspended on July 28, 1988. Since that time the Shellfish Resource Recovery Steering Committee (SRRSC) has recommended the temporary suspension of all hard clam depuration until the rules governing that program could be revised and additional State personnel were made available to investigate violations and monitor compliance.

The amended rules, in conjunction with the rules concurrently proposed by DOH, represent a coordinated effort by both departments to create a workable program that would ensure the safety of the consuming public. The amended rules have been structured specifically to reduce the opportunity for continuation of the business practices that resulted in public health concerns in the past.

Accountability is the term that best describes the means by which both DEP and DOH will maintain the integrity of the program. For instance, it will be the responsibility of the depuration plant owner/operator to control the daily distribution and return of serially numbered containers and harvester allocation tags used for the day's harvest. Record keeping will be comprehensive and designed to encompass all phases of the operation including pre-harvest, harvest, landing, processing and distribution.

Other revisions contained in this proposal establish rules for the identification of harvester vessels and harvester reporting, accounting, transportation and landing procedures.

Currently, there is only one approved soft clam depuration plant in the entire State. The Department does not anticipate more than one or two more to be constructed, once these rules are in place.

Social Impact

The Department does not anticipate any negative social impact from the proposed amendments to the soft and hard clam depuration rules. While soft clam depuration is currently being performed on a small scale, adoption of amendments will be the first step toward re-establishing a viable hard clam depuration program which should result in a positive social impact. The program set forth in this proposal will increase the availability of both the hard clam and soft clam resource for harvest which will help to support this commercial fishery. In addition, the program increases the availability of shellfish to consumers in a manner designed to ensure that the resource remains a wholesome food product.

Economic Impact

It is anticipated that the amended rules will have a positive economic impact. The overall effect of the programs in the past years has been positive with respect to the general economy of the State and the shellfish industry. As discussed more fully below, there will be increased capital costs incurred by participation in the new program established by these rules. However, the re-establishment of controlled harvest and sale of shellfish from Special Restricted Waters improves the overall prosperity of the shellfish harvest and food preparation industry by increasing the amount of shellfish available to harvest, prepare and consume.

In order to implement this program, the various State agencies involved will continue to incur costs for enforcement, equipment and administration greatly in excess of the permit fees received by the State.

Environmental Impact

There are no adverse environmental impacts anticipated in association with the proposed amendments. Continuation of sustained harvests at levels experienced in past years is not expected to deplete or endanger this fishery.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will impose additional record keeping and other compliance requirements on small businesses. Small businesses affected by the

amended rules may need additional professional services in order to comply with the amended rules. In addition, while it is anticipated that the compliance monitoring requirements proposed in these rules will result in increased capital costs for owners/operators of depuration plants, the Department has no data from which to estimate the amount of such costs. In consideration of the history of compliance-related problems associated with the shellfish depuration industry, these updated and more restrictive rules are justified. These amended rules seek to promote and protect the public health and welfare and, therefore, do not contain exemptions or special provisions for affected small businesses.

Full text of proposed repeal of N.J.A.C. 7:17 may be found in the New Jersey Administrative Code.

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

7:12-1.2 Definitions

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

. . .

"Bureau" means the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

. . .

"Depuration[/] **or** controlled purification" **means the process that uses a controlled aquatic environment to reduce the levels of bacteria and viruses in live shellfish.** [the process of removing contamination from whole live shellfish taken from areas other than Approved by means other than purification in natural Approved areas (relaying). One such method currently in use is depuration which involves the placing of contaminated shellfish in tanks containing waters controlled to create optimum conditions for purification.]

"Depuration plant" means a premise or establishment in which clams obtained from waters officially sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted are subject to a process of controlled purification with the proper controls approved by the Department which will render the depurated clams alive, and bacteriologically and virally acceptable within the meaning of State statutes and regulations.

"Depuration process" means the procedure by which shellfish are harvested from waters sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted and are transported to a depuration plant for controlled purification.

"Designated enforcement unit(s)" means the Marine Enforcement Unit in the Division of Fish, Game and Wildlife, Marine Bureau in the Division of State Police, the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

"Division" means the Division of Water Resources in the Department of Environmental Protection.

"Hard clams" mean the species Mercenaria mercenaria.

"Harvester allocation tag" means the tag that is to be affixed to each container of shellfish at the time the container is allocated by the depuration plant operator to the individual clammer. The use, specifications and information requirements shall be in compliance with Department of Health rules at N.J.A.C. 8:13-2.24.

"Interstate Shellfish Sanitation Conference" or "ISSC" means the formal conference that establishes guidelines and procedures of the National Shellfish Sanitation Program (NSSP) for the sanitary control of the harvesting, processing and distribution of shellfish. Membership consists of Federal, State and local regulatory agencies responsible for shellfish sanitation, the shellfish industry and the academic community.

"Marina [is] **means** any structure (docks, **piers, bulkheads,** floating docks, etc.) that supports five or more boats, built on or near the water, which is utilized for docking, storing or otherwise mooring vessels and usually but not necessarily provides services to vessels such as repairing, fueling, security[, etc.] **or other related activities.**

"Monitoring system" means a video surveillance system which shall be remotely monitored via telephone lines in designated State offices. The surveillance system shall be so located as to monitor all critical control activities. The system must be approved by the SRRSC.

. . .

"Prohibited areas" means certain Condemned areas meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC)[, formerly the National Shellfish Sanitation Program].

. . .

Seasonal Special Restricted Area" means certain Condemned waters meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC)[, formerly the National Shellfish Sanitation Program,] during a portion of the year. The areas so designated will automatically, by operation of regulations according to the schedule in N.J.A.C. 7:12-[1.5]**5.1**, be available for use under the special permit programs sanctioned by the Department.

"Shellfish" means [those Mollusks commonly known as clams, oysters and/or mussels] **all edible species of oysters, clams or mussels, either shucked or in the shell that are fresh or fresh frozen and whole or in part.**

"Shellfish Resource Recovery Steering Committee" or "SRRSC" means a committee of representatives from the Department of Environmental Protection and the Department of Health who have the regulatory responsibilities for depuration programs.

"Soft clams" means the species Mya arenaria.

. . .

7:12-9.1 General provisions; **all programs**

(a)-(j) (No change.)

(k) It shall be unlawful for any person issued a special permit or license, or any person on board a vessel to which a permit or license has been issued, under the provisions of N.J.S.A. 58:24-1 et seq. and 50:2-1 et seq. to:

1. Throw or dump into the water or otherwise dispose of the contents of any pail, bag, basket, or any matter whatsoever after being hailed by any member of the designated enforcement unit(s), before the authorized officer has inspected the same; or

2. Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search of the vessel by any member of the designated enforcement unit(s).

(l) The operator of any vessel and all others onboard issued a special permit or license shall immediately comply with all lawful instructions issued by any member of the designated enforcement unit(s) to facilitate safe boarding and inspection of the vessel, its gear, and catch for the purpose of enforcing this chapter.

(m) The hours listed in this subchapter are Eastern Standard Time (EST) or Eastern Daylight Time (EDT) at date and are based on Trenton Time. Time tables for Trenton Time are published in the annual Summary of Game Regulations issued by the New Jersey Division of Fish, Game and Wildlife. Trenton Time shall be the Statewide official time.

7:12-9.2 General provisions; hard and soft clam depuration only

(a) Any person(s) wishing to construct and/or operate a soft or hard clam depuration plant shall comply with the Hard and Soft Shell Clam Depuration requirements set forth at N.J.A.C 8:13-2.4.

(b) Any person(s) wishing to construct and/or operate a soft or hard clam depuration plant shall be required to submit a detailed plan to the SRRSC outlining the means of transportation and the distance to the depuration plant from the landing site(s). The overland transportation system and site selection must be approved by the SRRSC and the designated enforcement unit(s). The criteria to be considered include, but are not limited to:

1. Security;

2. Pilferage prevention;

3. Travel time, for the purpose of increasing effective enforcement; and

4. Prevention of environmental stress and contamination of shellfish.

(c) If an overland transportation plan is approved, the SRRSC, in conjunction with the designated enforcement unit(s), will issue written approval containing specified guidelines which shall be followed. Violation of the conditions of this permit shall subject the holder to prosecution under the appropriate statutes and rules. The need for such enforcement shall be determined solely by the SRRSC and designated enforcement unit(s).

(d) In addition to compliance with N.J.A.C. 8:13-2.4 and (b) above, any person(s) wishing to operate a soft and/or hard clam depuration plant shall obtain the following:

1. Provisional certification to operate a soft and/or hard clam depuration plant issued by the New Jersey State Department of Health pursuant to N.J.A.C. 8:13-2.1 and a food/cosmetic license as required by N.J.S.A. 24:15-13;

2. Depuration plant possession permit No. 8b entitled "Special Permit For A Certified Depuration or Controlled Purification Facility To Possess Soft Clams (Mya arenaria) From Special Restricted And Seasonal Special Restricted Waters For Further Processing" issued by the Department's Bureau of Marine Water Classification and Analysis; and

3. Depuration plant possession permit No. 10 entitled "Special Permit For A Certified Depuration or Controlled Purification Facility To Possess Hard Clams (Mercenaria mercenaria) From Special Restricted And Seasonal Special Restricted Waters For Further Processing" issued by the Department's Bureau of Marine Water Classification and Analysis.

(e) All special permits are non-transferable and shall be valid only for the person named on such permit and only for the location stated on such permit.

(f) The following documents are required for soft and/or hard clam harvesters participating in the depuration program:

1. A valid commercial shellfish harvesting license to be issued by the Department's Division of Fish, Game and Wildlife pursuant to N.J.S.A. 50:2-1; and

2. Depuration Harvester Permit No. 4 entitled "Special Permit To Harvest Soft Clams (Mya arenaria) From Special Restricted And Seasonal Special Restricted Waters For Further Processing At A State Permitted And Certified Depuration or Controlled Purification Facility" issued by the Department's Bureau of Marine Water Classification and Analysis; or,

3. Depuration Harvester Permit No. 9 entitled "Special Permit To Harvest Hard Clams (Mercenaria mercenaria) From Specified Special Restricted And Seasonal Special Restricted Waters of New Jersey For Further Processing At A State Permitted Depuration or Controlled Purification Facility" issued by the Bureau of Marine Water Classification and Analysis.

(g) A person shall not receive a depuration harvester permit unless the depuration plan owner/operator has been issued a valid provisional or permanent shellfish certification by the New Jersey State Department of Health pursuant to N.J.A.C. 8:13-2.1.

(h) At such time as it may become necessary in the event of excessive depletion or threat thereof to the shellfish stocks, the Department may limit the harvest of soft and hard clams below total plant capacity, limit the total harvest of any harvester, restrict the harvest from specific clamming areas or terminate the program in its entirety.

Recodify existing N.J.A.C. 7:12-9.2 through 9.5 as **9.3 through 9.6** (No change in text.)

[7:12-9.6 Soft clam depuration harvester program

(a) The purpose of Permit 4 ("Soft Clam Depuration Harvester Permit") is to allow soft clams to be harvested from Special Restricted and Seasonal Special Restricted waters and ultimately marketed after processing through a State permitted and certified depuration/controlled purification facility.

(b) Permit No. 4 shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-1 et seq., (P.L. 1979, Chapter 321, Section 3).

1. Species limited under said permit to soft clams (Mya arenaria).

2. Sections of harvest are limited to specified Special restricted and Seasonal Special Restricted waters. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall orally notify, on a day to day basis, the designated enforcement unit(s) as to section(s) and hours they intend to work under the provision of this permit. All harvesters transferring clams to the same depuration/controlled purification are required to work in the same section as the associated mother craft or buy-boat at any given time.

3. This permit shall apply only to the waters noted above and further specified for reasons of public health protection or resource management, on a day to day basis by the designated enforcement unit(s).

4. The inclusive dates of the permit shall be January 1 through December 31 of the same year unless revoked or suspended prior to that date for cause.

5. The harvester shall possess a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife.

6. Harvesting from the specified sections shall be subject to all State laws and regulations applicable to the harvester of oysters, clams or mussels from approved waters.

7. Harvesting from the specified sections may be permitted Monday through Sunday of each week between the hours of sunrise and sunset, as listed in Trenton.

8. The harvester shall have this permit in his possession while working in the specified waters.

9. Boats used by special permit holders in harvesting shall be marked with signs which are a minimum of one foot by two feet (1'x2') having a white background with legible black lettering (minimum six inches in height) giving the participants first initial and last name, special permit number and depuration plant identification code letter on both sides (amidships) of the participant's harvest boat while participating in any phase of the program. Powered boats used in harvesting shall have the motors in the "tilt" position (except from December 1 through March 31 of each year) while harvesting any shellfish. However, the motor shall not be running while harvesting operations are underway at any time during the year. The harvester must be physically located in this harvest boat at all times while motor is running.

10. Sail boats and harvesters shall remain in the section reported to the designated enforcement unit(s) by the depuration/controlled purification plant owner or manager, during the time harvesting operations are underway. Harvesting and transportation of shellfish beyond the designated section is prohibited. Upon completion of the day's harvest and delivery thereof, the permittee may leave the area.

11. Harvesters may use their own boats to travel from home to the "motor craft" or "buy boat". No clams are to remain in the specially marked harvest boat(s) or transferred to other power boats except the designated "motor craft" or "buy-boat" or alternate craft.

12. Pumping and similar illegal methods of harvesting are prohibited, except as provided in N.J.S.A. 50:2-10 and 11.

13. All soft clams shall be immediately sold or sent to the depuration/controlled purification facility(s) for further processing. All other species of shellfish shall not be removed from the harvest site. Only "U.S. Standard" bushels shall be used in harvesting, transportation, and receiving of clams at the depuration/controlled purification facility(s). All reasonable measures shall be taken to assure that bushels of clams transported to the depuration/controlled purification facility(s) are filled to capacity.

14. Under adverse conditions of weather (e.g. bay and river icing), as determined by the New Jersey Department of Environmental Protection, alternative methods of harvest and transportation of clams may be developed jointly between that segment of the shellfish industry associated with the depuration program and the various State agencies involved in the program's control. Said alternative methods shall insure that the health, safety and welfare of the public is not compromised.

15. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.

16. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the soft clam depuration program. These permit conditions are hereby incorporated in this paragraph by reference, any violation(s) of said conditions shall be deemed violation(s) of these regulations. All permittees are also required to comply with all charts, applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).]

7:12-9.7 Soft clam and hard clam depuration programs

(a) The purpose of harvesters permit numbers 4 and 9 (Soft Clam Depuration Harvester's and Hard Clam Depuration Harvester's Permit, respectively) is to allow soft and hard clams to be harvested from Special Restricted and Seasonal Special Restricted Areas and ultimately marketed after processing through a State permitted and certified depuration or controlled purification facility. Permit numbers 4 and 9 shall be valid only under the following specific conditions:

1. Only soft clams (Mya arenaria) and hard clams (Mercenaria mercenaria) shall be harvested under harvester permit numbers 4 and 9 respectively.

2. Area(s) of harvest are limited to those specified on the charts attached to each permit or amended charts sent by the Bureau to the current mailing address of the permittee on record at the Bureau's Leeds Point office. These areas specified for harvest may consist of Special Restricted and Seasonal Special Restricted waters as classified by the Department. All harvesters transferring clams to a depuration or controlled purification plant shall at all times work within the designated areas.

3. The harvester permit shall be valid for the period set forth on the face of the permit and shall allow for harvesting only in the waters specified on the charts attached to the permit (as amended where applicable) and as further restricted on a day-to-day basis by the designated enforcement unit(s).

4. The harvester shall possess a valid commercial shellfish harvesting license issued by the Department's Division of Fish, Game and Wildlife pursuant to N.J.S.A. 50:2-1.

5. The harvester shall have the harvester permit in his possession while operating in the specified waters.

6. Vessels used by special permit holders shall be marked with signs having a daylight fluorescent orange background with legible black lettering (minimum six inches in height) giving the permittee's first initial and last name and special permit number on both sides (amidships) of the permittee's harvest vessel, while participating in all phases of the program.

7. The harvester shall also display on his vessel a color coded pennant assigned by the Department to the depuration plant which he is working for. This pennant shall be at least eight feet above the waterline and displayed during all phases of the program. This pennant shall meet the minimum dimensions as follows: 30 inches in length by 12 inches in height at its widest edge.

8. Harvesters shall report in person each day, prior to any harvest activities, to the depuration plant, to advise the owner/operator of their intentions to work that day and obtain the specific number of approved harvest containers.

i. The owner/operator of the depuration plant shall issue each harvester a specific number of Department of Health approved containers based on the plant capacity. A stamped/validated waterproof serially numbered harvester-allocation tag approved by the State Department of Health shall be issued by the plant and affixed to each harvest container in the plant as part of the daily harvest allocation. No other containers or bags may be possessed in or on the harvest vessels during any phase of the program.

ii. The owner/operator of the depuration plant shall notify the Marine Enforcement Office of the Department's Division of Fish, Game and Wildlife by telephone in order to provide the list of all harvesters' names, the areas they will be harvesting and number of containers issued each harvester. Notification shall be made to the Nacote Creek Office each day by 8:30 A.M., or prior to any harvesting activities, whichever earlier. Any subsequent harvest activity shall be also reported to the Marine Enforcement Office prior to that harvest activity commencing.

iii. Shellfish shall be transported directly from the harvest area to the designated landing site(s) by the most direct route without making any stops or landings along the way. Each participant shall land his entire day's catch at the designated landing site(s) and at the time(s) specified by the designated enforcement unit.

iv. Should an emergency arise or adverse weather conditions exist, the harvest vessels may dock at the depuration facility when necessary, except that off loading of shellfish shall not be initiated until the specified landing times.

v. Upon landing at the designated landing site(s) the harvester shall complete a State provided receipt in triplicate containing at least the following information: harvester name, date, harvest area, total number of containers and total number of clams. Receipts shall be date and time stamped upon receipt of shellfish by the plant owner/operator into the depuration plant. The plant owner/operator shall retain two copies of the receipt form, one for forwarding on a monthly basis to the Marine Enforcement Office of the Department's Division of Fish, Game and Wildlife, Nacote Creek Office. The harvester shall retain one copy of the receipt for his records.

vi. Once off-loading of the shellfish to the depuration plant commences, the containers of shellfish shall immediately be moved into the plant and the attached Harvester Allocation Tag shall be dated and time stamped for a second time upon receipt by the plant on that harvest day.

9. Harvesting by methods not permitted pursuant to any State laws and rules are prohibited.

10. All soft and hard clams harvested under this permit shall be landed at the depuration plant for further processing at the designated landing times. All other species of shellfish shall not be removed from the harvest site but shall be immediately deposited at the location from which they were harvested. Only Department of Health specified and approved serially numbered containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant. All reasonable measures shall be taken to assure that the containers of clams received at the plant are filled to capacity.

11. Under adverse weather conditions (for example, bay and river icing), as determined by the designated enforcement unit(s), alternative methods of harvest and transportation of clams may be developed jointly by the harvester and depuration industry and the Departments of Environmental Protection and Health for as long as the adverse weather conditions continue. Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained express written permission from the designated enforcement unit(s).

12. Violations of these permit conditions shall subject the violator to prosecution under N.J.S.A. 58:24-1 et seq. and any other applicable statute or rule and may result in immediate permit suspension or revocation. In the event of a suspension or revocation of the shellfish certificate issued by the Department of Health pursuant to N.J.A.C. 8:13-2.1, all permits issued under this subchapter will no longer be valid for the plant(s) that no longer holds a valid shellfish certificate.

13. Any change of permittee's home or mailing address shall be reported by the permittee in writing to the Bureau's Leeds Point office within one week of the change.

(b) The permittee harvesting from the specified area(s) shall be subject to all State laws and rules applicable to the harvest of oysters, clams or mussels from Approved waters.

(c) The harvesting of soft and hard clams from the specified area(s) shall be permitted Monday through Saturday of each week between the hours of sunrise and one hour before sunset. Depending on the location of the depuration plant, the harvesting may be further restricted by designated landing times established by the Department.

(d) The purpose of permit numbers 8b and 10 (Depuration Plant Permit To Possess Soft Clams and Hard Clams, respectively) is to allow a depuration or controlled purification facility to possess soft and hard clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration or controlled purification program at (a) above and the processing phase, which is regulated by the New Jersey Department of Health. Permit numbers 8b and 10 shall be valid only under the following specific conditions:

1. Only soft clams (Mya arenaria) and/or hard clams (Mercenaria mercenaria) shall be possessed under their respective permits.

2. The owner/operator shall notify the Marine Enforcement Office of the Department's Division of Fish, Game and Wildlife by telephone in order to provide the names of the designated harvesters names, the area(s) to be worked and the number of containers issued to each harvester. Notification shall be made to the Nacote Creek Office on each harvest day by 8:30 A.M. or prior to any harvest activities. Any

additions or changes to the initial notification must also be reported to the Marine Enforcement Office prior to any additions or changes to the harvesters working.

3. The depuration plant permit shall be valid for the period set forth on the face of the permit and shall apply only to the waters specified on the charts attached to the permit (as amended where applicable) and as further restricted on a day to day basis by the designated enforcement unit(s).

4. The harvester from which the shellfish are purchased shall possess a valid New Jersey Commercial Shellfish Harvesting License issued by the Department's Division of Fish, Game and Wildlife pursuant to N.J.S.A. 50:2-1 and a valid Permit No. 4 for soft clam depuration or No. 9 for hard clam depuration issued by the Bureau.

5. The permittee shall comply with all laws including rules promulgated by the Department and other agencies of the State of New Jersey.

6. Purchases of clams from the specified Special Restricted Waters shall be subject to all State laws including applicable to the purchaser of oysters, clams or mussels from approved areas.

7. All records of purchases, including the harvesters names, address, date, quantity of purchase, harvest site and all harvester allocation tags and harvester depuration receipts shall be maintained at the plant for a period of not less than one year and shall be available for inspection by any authorized agent of the State.

8. The plant operator shall provide monthly reports to the Department's Division of Fish, Game and Wildlife. Reporting forms and charts of the designated harvest area(s) shall be provided by the Division of Fish, Game and Wildlife. Such reports shall be submitted within five working days of month's end and shall contain the following information for each day:

i. The area(s) worked;

ii. The total number of men working each area;

iii. The total number of clams harvested from each area(s);

iv. The total number of clams depurated;

v. The total number of clams culled after depuration; and

vi. One copy of each harvester's daily receipt for the month shall be attached to the monthly report.

9. This permit and this subchapter do not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey.

10. Upon completion of the day's harvesting, all clams shall be offloaded at the depuration plant for storage and/or processing. Only Department of Health specified and approved serially numbered containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant.

11. All containers shall have attached to them a serially numbered harvester allocation tag which has been validated by the plant stamp prior to harvest showing the time and date. This shall again be stamped at the completion of harvest and landing by the plant showing the time, date, depuration harvester's permit number and number of clams in that container. These tags shall remain attached to specified serially numbered containers through the depuration process.

12. Once the depuration and bacteriological approvals are complete, all harvester allocation tags shall be removed from the specified serially numbered containers and maintained on file at the plant for one year.

13. All such tags and records shall be available for inspection by any authorized agent of the State.

14. Violation of these permit conditions shall subject the holder to prosecution under N.J.S.A. 58:24-1 et seq. and any other applicable statute and may result in immediate permit suspension or revocation. In the event of a suspension or revocation of the shellfish certificate issued by the Department of Health pursuant to N.J.A.C. 8:13-2.1, permits issued under this subchapter regulations will no longer be valid for the plant(s) that no longer holds a valid shellfish certificate.

15. Should overland transportation be utilized on a regular basis for the movement of soft or hard clams from State waters to the depuration plant site, the operational plan for such a movement shall be approved by the SRRSC.

Recodify existing N.J.A.C. 7:12-9.7 through 9.10 as **9.8 through 9.11** (No change in text.)

[7:12-9.11 Possession and/or processing plant program; depuration plant

(a) The purpose of permit No. 8b ("Depuration Plant Permit to Purchase Soft Clams") is to allow a depuration/controlled purification facility to purchase soft clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration/controlled purification program and the next or processing phase, the latter which is regulated by the New Jersey Department of Health.

(b) Permit No. 8 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. Species limited under said permit to soft clams (Mya arenaria.)

2. Purchases are limited to shellfish harvested from specified sections. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall orally notify, on a day-to-day basis, the designated enforcement unit(s) as to the section(s) and hours they intend to work under the provisions of this permit. All harvesters transferring clams to the same depuration/controlled purification plant are required to work in the same section as the associated mother craft or buy-boat at any given time.

3. This permit shall apply only to the waters delineated on a chart provided by the Bureau of Marine Water Classification and Analysis and further specified (for reasons of public health protection and resource management) as to the area of harvest, on a day-to-day basis by the designated enforcement unit(s).

4. The inclusive dates of the permit shall be from January 1 through December 31 of the same year unless revoked or suspended prior to that date for cause.

5. The harvester from which said shellfish are purchased shall possess a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife and a valid Permit No. 4 issued by the Bureau of Marine Water Classification and Analysis of the Division of Water Resources.

6. The permittee shall comply with all laws, rules and regulations promulgated by this and other agencies of the State of New Jersey.

7. Purchases of clams from the specified sections shall be subject to all State laws and regulations applicable to the purchases of oysters, clams or mussels from approved waters.

8. Records of harvests including the harvester's name, date, quantity of purchase and harvest site shall be maintained for a period of not less than one year, and shall be available for inspection by any authorized agent of the State.

9. This permit does not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey.

10. Boats used by special permit holders in harvesting shall be marked with signs which are a minimum of one foot by two feet (1' x 2') having a white background with legible black lettering (minimum six inches in height) giving the participant's first initial and last name, special permit number and depuration plant identification code letter on both sides (amidships) of the participant's harvest boat while participating in any phase of the program. Powered boats used in harvesting shall have the motors in the "tilt" position (except from December 1 through March 31 of each year) while harvesting shellfish. However, the motor shall not be running while harvesting operations are underway at any time during the year. The harvester must be physically located in this harvest boat at all times while motor is running.

11. Said boats and harvesters shall remain in the designated sections as reported to the designated enforcement unit(s) by the depuration/controlled purification plant owner or manager during the item harvesting operations are underway. Harvesting and transportation of shellfish beyond the designated section is prohibited. Upon completion of the day's harvest and delivery thereof the permittee may leave the area.

12. It shall be the responsibility of the depuration/controlled purification facility to provide a "mother craft" or "buy-boat" (and alternate craft if necessary) to be used for the direct supervision of

clamming operations, a central point for the collection of the day's harvest of soft clams, and the transportation of clams to the depuration/controlled purification plant. The identification of said boats shall be reported to the designated enforcement unit(s) on a daily basis, if necessary. The number of "mother craft" or "buy-boats" allowed for use by depuration/controlled purification plant shall be dependent upon the number of harvesters working at that plant at any given time during the day. One "mother craft" or "buy-boat" is allowed for each 10 harvesters. For example, for one to 10 harvesters one buy boat will be allowed, for 11 to 20 harvesters two buy boats will be allowed and so forth. This should not be interpreted to mean that one "mother craft" or "buy-boat" is required for every 10 harvesters. To the contrary, more than 10 harvesters can be assigned to or associated with one "mother craft" or "buy-boat". Said boats shall be so registered with the designated enforcement unit(s). To permit ready identification of same while harvesting operations are underway, a yellow pennant visible at a one nautical mile distance shall be flown. In addition, the "mother craft" or "buy-boat" or alternate craft, shall be identified with the name of the depuration facility painted in large letters, at least six inches high of contract color, above the water line of the vessel. The "mother craft", "buy-boat" or alternate craft shall be used for no other purposes.

13. One alternate craft is allowed for each designated "mother craft" or "buy-boat". Said alternate craft can function in the same manner as the designated "mother craft" or "buy-boat" in the absence of the latter. The designated "mother craft" or "buy-boat" or the alternate craft is required to be present at all times when harvesting operations are underway.

14. Upon completion of the day's harvesting, all soft clams shall be transferred to the "mother craft" or "buy-boat" or alternate craft. No clams are to remain in the specially marked harvest boat(s) or transferred to other power boats. Said clams shall be immediately transported by the "mother craft" or "buy-boat" or alternate craft, to the respective depuration/controlled purification facility for storage and/or processing. Only "U.S. Standard" bushels shall be used in the harvesting, transportation, and receiving of clams at the depuration facility. All reasonable measures shall be taken to assure that bushels of clams transported to the depuration/controlled purification facility(s) are filled to capacity. During the unloading procedures from the "mother craft" or "buy-boat" at the depuration/controlled purification facility(s), the bushels of clams shall be covered and shall be opened to view.

15. Under adverse conditions of weather (e.g., bay and river icing) as determined by the New Jersey Department of Environmental Protection, alternate methods of harvest and transportation of clams may be developed jointly between that segment of the shellfish industry associated with the depuration/controlled purification program and the various State agencies involved in the program's control. Said alternative methods shall insure the health, safety and welfare of the public are not compromised. When such conditions occur, they will be noted in the log of the designated enforcement unit(s) at the request of the respective depuration/controlled purification facility.

16. Harvesting from the specified sections may be permitted Monday through Sunday of each week between the hours of sunrise and sunset as listed in Trenton.

17. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.

18. This permit shows on its face specific conditions that are deemed necessary for the proper operations of the soft clam depuration program. These permit conditions are hereby incorporated in this paragraph by reference and violation(s) of regulations. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within estuaries that may be harvested on a particular day as determined by the designated enforcement unit(s).

(c) The State Department of Environmental Protection reserves the right to suspend or revoke this permit at any time its continued use may imperil the public health. Conviction of a shellfish violation as provided in N.J.S.A. 58:24-3 and N.J.S.A. 50-2 of the New Jersey statutes shall be adequate cause for the suspension and denial of all Special Permits issued by the New Jersey Department of Environmental Protection involving the purchase of shellfish from the waters of the State. The transport and processing of shellfish are also subject to New Jersey Department of Health regulations found at N.J.A.C. 8:13-2. Conviction of any violation of the certificate issued by the New Jersey Department of Health for depuration under N.J.A.C. 8:13-2, is grounds for suspension of special permits to possess (No. 8b) or harvest (No. 4) shellfish.]

[7:12-9.13 Hard clam depuration/harvester (pilot) program; depuration harvester permit

The Department may issue a SPECIAL PERMIT TO HARVEST HARD CLAMS (Mercenaria mercenaria) FROM SPECIAL RESTRICTED WATERS FOR FURTHER PROCESSING AT A STATE PERMITTED AND CERTIFIED DEPURATION/CONTROLLED PURIFICATION FACILITY (Permit no. 009), for purposes of the hard shall clam pilot program as set forth in N.J.A.C. 7:17.]

7:12-9.14 Hard clam possession and or processing plant (pilot) program; depuration plant

The Department may issue a SPECIAL PERMIT FOR A CERTIFIED DEPUTATION: CONTROLLED PURIFICATION FACILITY TO POSSESS HARD CLAMS (Mercenaria mercenaria) FROM SPECIAL RESTRICTED WATERS FOR FURTHER PROCESSING (Permit No. 010, for purposes of the hard clam pilot program as set forth in N.J.A.C. 7:17.]

7:12-[9.15]**9.13** (No change in text.)

(a)

DIVISION OF WATER RESOURCES

Emergency Water Supply Allocation Plan Regulations

Proposed Readoption with Amendments: N.J.A.C. 7:19A

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 58:1A-1 et seq., specifically 58:1A-4 and 5.
DEP Docket Number: 057-89-12.
Proposal Number: PRN 1990-40.

A **public hearing** concerning this proposed readoption with amendments will be held on:

February 6, 1990 at 10:00 A.M.
Hall of Records, Room 210
Main Street
Freehold, New Jersey

Submit written comments by February 15, 1990 to:

Thomas A. Borden, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection's ("Department") Division of Water Resources is responsible for the administration and management of the waters of the State during water supply emergencies and water quality emergencies severe enough to constitute a water supply emergency. Pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. ("Act"), and based on the experiences encountered during the severe 1980-81 drought, N.J.A.C. 7:19A, the Emergency Water Supply Allocation Plan Regulations, and N.J.A.C. 7:19B, the Water Emergency Surcharge Schedule Rules, were adopted effective February 19, 1985. N.J.A.C. 7:19A and 19B were effectively utilized during the 1985 drought, and are in part responsible for the relative success the Department had in dealing with this potentially disastrous emergency situation.

N.J.A.C. 7:19A provides for the imposition of water use restrictions during a declared state of a water emergency. The Commissioner is

empowered to order the reduction by a specified amount of the use of any water supply, to require the use of an alternate supply, to require emergency interconnections and the transfer of water between systems, to order the cessation of the use of any water supply, to require the alterations of passing flow requirements, and to order the imposition of bans on adjustable water uses.

In accordance with the requirements of Executive Order 66 (1978), N.J.A.C. 7:19A expires on February 19, 1990. The Department has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The proposed readoption of these rules includes both substantive and non-substantive amendments. Non-substantive amendments include items such as additions and alterations to further clarify the meaning of the rules as well as updating and adding agency names.

The following is a summary of each subchapter in N.J.A.C. 7:19A including the proposed amendments thereto:

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 7:19A-1 sets forth the scope, authority and purpose of N.J.A.C. 7:19A. The definitions for the entire chapter are included in N.J.A.C. 7:19A-1.4. The Department is proposing to amend N.J.A.C. 7:19A-1.1 to state that this chapter, in addition to constituting the rules governing the management of waters during a water supply emergency, also establish the rules governing a drought warning as set forth in N.J.A.C. 7:19A-5.1(d). The Department is also proposing to amend N.J.A.C. 7:19A-1.4 to alter and add definitions for the chapter.

The definition of "adjustable water uses" is proposed to be amended in order to clarify that both the commercial and noncommercial washing of cars during a drought, with certain exceptions, are adjustable water uses and are therefore subject to emergency water use restrictions. The proposed amendment clarifies that self-service car washes equipped with total recycle of both wash and rinse water are exempt from being an adjustable water use during a water emergency. The proposed amendment also specifies that for businesses engaged exclusively in car washing, in order to be exempt from being an adjustable water use, the car washing must take place at the site of the business. This amendment is designed to prevent a car washing business from operating a mobile car washing service during a drought. In addition, the washing of buildings or other structures, except for windows, is being added as an adjustable use of water. These amendments are being added in order to clarify the restrictions on water uses during a water emergency.

In addition, the Department is proposing amendments to the definition of "adjustable water uses" in order to replace the term "Water Emergency Task Force" with "Commissioner". In the existing definition of "adjustable water uses", the Water Emergency Task Force may designate any other uses of water as adjustable making them subject to drought restrictions and may also grant hardship exemptions from the adjustable water uses listed therein. The proposed amendment designates the Commissioner, rather than the Water Emergency Task Force, as the proper authority to make decisions on designated adjustable water uses and exemptions. The reason for this change is that the Task Force is only authorized to act in an advisory capacity to the Commissioner. The definition of "drought warning" is also being added in order to include a definition of a pre-emergency stage as provided under the existing N.J.A.C. 7:19A-5.1.

SUBCHAPTER 2. POWERS OF THE COMMISSIONER DURING A STATE OF WATER EMERGENCY

N.J.A.C. 7:19A-2 sets forth the restrictions and requirements that the Commissioner may impose on water purveyors and other departments and agencies within State government during a water emergency. In N.J.A.C. 7:19A-2.2(a)6, the Department is proposing an amendment stating that the alteration of passing flow requirements does not exempt the purveyor from paying appropriate excess diversion fees. This change is being proposed in order to provide a disincentive, through diversion fees, for water purveyors to exceed diversion limits. The diversion fees are established to help minimize environmental effects of water diversions and to provide an incentive to use other sources of water where the environmental effects of the use are less severe.

SUBCHAPTER 3. GENERAL POWERS OF THE DEPARTMENT

N.J.A.C. 7:19A-3 establishes the general requirements that the Commissioner may impose on water purveyors and users. Water purveyors, pursuant to N.J.A.C. 7:19A-3.2, must submit emergency response plans which establish procedures for water conservation, backup water supplies and emergency response teams. N.J.A.C. 7:19A-3.3 requires water purveyors to perform interconnection flow tests when ordered by the Department. Large water users are required in N.J.A.C. 7:19A-3.4 to submit contingency plans in order to plan for water conservation and alternative water supplies.

N.J.A.C. 7:19A-3.2(a) presently requires any purveyor to submit an emergency response plan upon the Department's request and specifically requires purveyors serving more than 50,000 people to submit an emergency response plan by February 19, 1986, one year after the original effective date of the rules. The proposed amendment in N.J.A.C. 7:19A-3.2(a) establishes a deadline for those purveyors serving more than 3,000 people to submit emergency response plans within one year of the effective date of this readoption. This amendment does not exempt those purveyors serving more than 50,000 people from the existing requirement to have submitted an emergency response plan by February 19, 1986.

The Department is also proposing to add in N.J.A.C. 7:19A-3.2(a)2 the required elements for the development of emergency response plans, including the organizational structure of the response team, notification procedures and interim water restrictions. In N.J.A.C. 7:19A-3.2(a)3, the Department is proposing to require revised and updated emergency response plans whenever there is a significant change to the procedures in the plan, but in any case a revised plan must be submitted at least every two years. Finally, the Department, in N.J.A.C. 7:19A-3.2(a)3, proposes to require that any change in emergency response personnel or their telephone numbers be reported to the Department within two weeks of such change. This will help insure effective coordination of emergency response by the Department and the water purveyor.

N.J.A.C. 7:19A-3.4 is being amended to have water purveyors require water users of 250,000 gallons per day or more to submit contingency plans to the purveyor. The existing provision, which requires the water users to submit plans to their purveyors, has not promoted a sufficiently active role by the purveyors in the solicitation of the contingency plans. This amendment will help to improve emergency response planning by water purveyors with respect to a number of heavy water using customers. N.J.A.C. 7:19A-3.5 is being added to establish the requirement that water purveyors and other users provide such additional information as the Department deems necessary to properly manage a water emergency. This will help to verify and supplement the information contained in the emergency response plans and contingency plans.

The Department is also proposing to add N.J.A.C. 7:19A-3.6 in order to clarify the Department's authority to impose requirements on water purveyors during a drought warning condition as established under N.J.A.C 7:19A-5.1(d). The drought warning requirements may include the use of alternative water supplies, the rehabilitation and use of interconnections, the transfer of water between systems and the performance of interconnection flow tests. The steps instituted during a drought warning condition should help prevent a water supply emergency from occurring or reduce the impact of an emergency should it occur.

SUBCHAPTER 4. WATER EMERGENCY TASK FORCE

N.J.A.C. 7:19A-4 establishes the Water Emergency Task Force which is composed of various inter-agency representatives who assist the Commissioner in the formulation of policy and assist in rendering decisions during a water emergency. N.J.A.C. 7:19A-4 also sets forth the membership and meeting requirements of the Task Force. N.J.A.C. 7:19A-4.1 is being amended to state that the purpose of the Water Emergency Task Force is to make recommendations to the Commissioner rather than to render decisions on hardship exemption applications and appeals of water purveyor's decisions.

SUBCHAPTER 5. THE PRIORITY-BASED PHASE SYSTEM OF WATER RESTRICTIONS

N.J.A.C. 7:19A-5 sets forth the actions to be taken to manage the State's water supply and the restrictions to be imposed on water purveyors and water users during a water emergency. This subchapter also defines the phases denoting the severity of the water emergency as well as providing the criteria to be considered in determining each phase. N.J.A.C. 7:19A-5.1(d) also provides that prior to an actual water emergency declaration by the Governor, the Department may declare a drought warning.

In N.J.A.C. 7:19A-5.1(d) the Department is proposing an amendment which will require notice and a public hearing prior to the imposition of the drought warning requirements in N.J.A.C. 7:19A-3.6. The Department, in N.J.A.C. 7:19A-5.1(d), is also proposing to amend the criteria for determining when a drought warning condition is to begin. The

Department is proposing that where a relative lack of precipitation and a lower than normal storage of water exists, the Department may identify either the affected area or the State as a whole to be in a drought warning condition prior to the actual declaration of a water emergency.

SUBCHAPTER 6. INDUSTRIAL CURTAILMENT STRATEGY

N.J.A.C. 7:19A-6 sets forth the components of the industrial curtailment strategy and the procedural steps to effectuate this strategy in phases III and IV of a water emergency. This subchapter also provides the basis of selective curtailment and the requirement that industrial users submit water supply information concerning water consumption and employment.

The Department is proposing to amend N.J.A.C. 7:19A-6.2 in order to clarify its authority to require the purveyors and water users to submit appropriate information upon request in order to prepare for possible water curtailment. The Department also proposes to include in N.J.A.C. 7:19A-6.4 water purveyors and water users other than industrial users among those who must submit information on consumption and employment as required by N.J.A.C. 7:19A-6.2 and 6.3. These changes will assure that the Department receives appropriate and adequate information from all appropriate water purveyors and users in advance of an emergency so that it can effectively respond to an emergency.

SUBCHAPTER 7. PENALTIES

N.J.A.C. 7:19A-7 provides that any person who violates the Act, this chapter or any order issued pursuant thereto shall be subject to the penalty provisions of the Act. The Department proposes to amend N.J.A.C. 7:19A-7 and refer to the existing penalty assessment procedures for the Act in N.J.A.C. 7:14-8. N.J.A.C. 7:14-8 sets forth the Department's procedures for assessing civil administrative penalties for violations of the Act or any rules adopted pursuant to the Act as well as the process for requesting adjudicatory hearings to contest penalty assessments.

SUBCHAPTER 8. EMERGENCY WATER TRANSFER PRICING

N.J.A.C. 7:19A-8 includes the general pricing procedures, and the criteria for pricing transferred water to be utilized by water purveyors relative to negotiated agreements concerning emergency water transfer pricing. The Department proposes to readopt this subchapter without change.

SUBCHAPTER 9. HARDSHIP EXEMPTION PROCEDURES

N.J.A.C. 7:19A-9 sets forth the application procedures to be followed by any person wishing to be exempt from the ban on the adjustable uses of water and water rationing. Also included in this subchapter are the procedures to be followed by the Water Emergency Task Force and the Commissioner in reviewing applications for exemptions and the procedure for notifying the applicant of the Department's and/or purveyor's decision.

The Department is proposing to amend N.J.A.C. 7:19A-9.1(a) to state that the Commissioner shall make the decision on an applicant's request to be exempt wholly or partially from the ban on adjustable water uses based on the recommendation of the Water Emergency Task Force, rather than having the Task Force render such a decision on its own. The proposed amendment is again based on the fact that the Water Emergency Task Force acts in an advisory capacity to the Commissioner.

N.J.A.C. 7:19A-9.2(a) is proposed to be amended to state that no application for an exemption from water rationing will be accepted by the water purveyor unless received within 30 days following the receipt of the surcharge bill. The Department is proposing to amend N.J.A.C. 7:19A-9.2(a) and (c) so that a denial by a water purveyor may be appealed to the Task Force. The Task Force will then make a recommendation for the Commissioner's decision. The Department is also proposing to amend N.J.A.C. 7:19A-9.2(b) to require that any appeal from an exemption from the decision of a water purveyor will not be accepted after 30 days following the date of the denial by the purveyor. These amendments are being proposed in order to ensure a timely adjudication of appeals.

SUBCHAPTER 10. DEPARTMENT ORDERS

N.J.A.C. 7:19A-10.1 sets forth the notice and hearing requirements for Departmental orders issued during a state of water emergency. The procedures for appealing orders of the Department and decisions by the Water Emergency Task Force are set forth in N.J.A.C. 7:19A-10.2. These procedures provide for a hearing before the Office of Administrative Law where attempts at settlement of the dispute fail. The Department proposes to amend N.J.A.C. 7:19A-10.2(a) to clarify that it is Department orders and decisions that may be appealed if requested within 20 days of receipt of the order or decision.

Social Impact

The readopted rules including the proposed amendments will assure the continuation of a net beneficial social impact by maintaining the management of the State's water supplies during a water emergency and by incorporating in this management the benefit of experience gained during the 1985 drought. This will further help to ensure an adequate supply of water for the citizens of the State during water supply/water quality emergencies as well as protecting the public health, safety and welfare of its citizenry. The readoption of this chapter will allow the Department to continue to be prepared to act in an efficient and effective manner to protect the waters of the State in a water supply/water quality emergency as well as to act expeditiously to prevent a water supply emergency from developing.

Economic Impact

The readopted rules will assure continuance of a net positive economic impact by minimizing the negative effects on business and labor during a water crisis. This should further serve to reduce the overall impact of a drought or other water emergency on the economic well-being of the State and to enhance the State's capability to properly manage and conserve water resources and help maintain a water supply for all users, thereby preventing a major loss of jobs. The conservation stimulated by these rule amendments will further serve to limit and reduce economic dislocations. It is only in the advanced phases of the water emergency and after supply and demand management strategies and other conservation efforts prove insufficient, that economic activities would be seriously affected by the stringent restrictions mandated under these rules. During these advanced phases, the Department's selection of industrial users whose water supply should be curtailed will be based on volume of water usage, the number of employees, and other pertinent data. Such selective curtailment will be critical in avoiding massive industrial closings due to exhausted water supplies. Selective curtailment will enable the Department to continue to manage the economic aspects of water emergency on a fair and equitable basis. The readoption of this chapter will also allow the Department to improve the management of the State's supplies during a water emergency period.

Environmental Impact

The readopted rules will seek to assure the most efficient use of water during a water emergency by further defining and refining water emergency response techniques and procedures such as alterations of passing flow requirements, reductions in demand on water supplies, transfer of water from areas of surplus to areas of need, as well as helping to assure that water purveyors have planned for response activities during water emergencies. The goal will be to continue, as in the past, to conserve water for the most essential uses and minimize the effect of the water emergency on the State as a whole.

Finally, the readoption of these rules will allow the Department to properly balance incentives and disincentives within the regulated community to maximize the conservation of water and minimize adverse environmental effects.

Regulatory Flexibility Analysis

The readoption of N.J.A.C. 7:19A applies to all businesses which use surface or ground water during a declared water emergency. The Department estimates that there are approximately 125 facilities in the State subject to the requirements of N.J.A.C. 7:19A which are considered to be a "small business" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In order to comply with these rules, all businesses during a water emergency will be required to submit certain plans and reports depending on the uses of the water, the amount of water used, and the source of the water. Small businesses which are water purveyors may have to submit Emergency Response Plans. Also required from water purveyors during Phase II Water Rationing are monitoring reports. During a water emergency, water users with a rate of 250,000 gallons per day or more will be required to submit contingency plans. The costs of compliance with the requirements in N.J.A.C. 7:19A will vary based upon the facility's water uses. However, small businesses which are water purveyors may be reimbursed for reasonable expenses incurred in the surcharge schedule implementation. In addition, the expenses which are not reimbursed from

the Water Emergency Fund can be included in any rate adjustment proceedings before the Board of Public Utilities. This would include expenses incurred as a result of the declared state of emergency.

The Department, in balancing the need to protect water supplies with the regulatory impact of N.J.A.C. 7:19A, has provided in N.J.A.C. 7:19A-9 procedures for exemptions for those businesses who may encounter economic hardship as a result of complying with the rule. In summary, the Department has found from its past experiences in the water emergencies of 1980-81 and 1985, that in order to protect the public health and welfare and the environment during the time of a declared state of water emergency, all individuals and businesses, whether they be large or small businesses, must be persuaded through water use restrictions and surcharges to reduce their demand for water.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:19A.

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

7:19A-1.1 Scope and authority

This chapter, adopted pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., constitutes the rules governing the management of the waters of the State during **drought warnings,** water supply emergencies, and water quality emergencies severe enough to constitute a water supply emergency. This chapter partially implements the emergency provisions under the Act[,]; however, it in no way limits the emergency powers now or hereafter vested in the Governor or the Commissioner.

7:19A-1.4 Definitions

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates a different meaning:

. . .

"Adjustable water uses" means, **but is not limited to, the following:**

1. (No change.)

2. The [noncommercial] washing of vehicles, except by businesses engaged exclusively in car washing **on its own business site, including self-service car washes equipped with total recycle of both wash and rinse water,** or in those instances where a threat to public health may exist;

3.-8. (No change.)

9. The washing of buildings or other structures, except for windows; and

[9.]**10.** Any other uses of [potable] water as may be designated by the [Water Emergency Task Force] **Commissioner** as adjustable. Such designations shall be made by rule or order and shall be effective immediately upon adoption by the Commissioner and shall be published in the New Jersey Register as soon thereafter as possible;

[10.]**11.** Exemptions from the adjustable water uses as listed herein may be designated by the [Water Emergency Task Force] **Commissioner** as provided for at N.J.A.C. 7:19A-9.1.

. . .

"Drought warning" means the status declared by the Department, pursuant to N.J.A.C. 7:19A-5.1, where there exists a relative lack of precipitation or a lower than normal storage of water supplies.

. . .

"Water Emergency Task Force" or "Task Force" means that State body consisting of inter-agency representatives whose purpose is to assist the Commissioner in the formulation of policy and [render decision] **make recommendations to the Commissioner** during a water emergency. The Task Force shall be composed of representatives of the following agencies: the Department of Environmental Protection, the Department of Commerce and Economic Development, the Department of Education, the Department of Labor, the Department of Law and Public Safety, the Department of Community Affairs, [the Department of Energy,] the Board of Public Utilities, the Department of Agriculture, **the Department of Health, the Department of Treasury** and other agencies as designated by the Commissioner.

. . .

7:19A-2.2 Restrictions and requirements placed on water purveyors

(a) The restrictions and requirements placed by the Commissioner on water purveyors during a water emergency may include the following:

1.-5. (No change.)

6. Alteration of passing flow requirements. **Such alteration in passing flow requirements does not exempt the purveyor from paying appropriate excess diversion fees;**

7-12. (No change.)

7:19A-3.2 Water purveyor emergency response plans and teams

(a) Water purveyors serving more than [50,000] **3,000** residents, and other purveyors when requested by the Department shall develop and submit to the Department:

1. Emergency response plans **by February 16, 1986, for water purveyors serving more than 50,000 residents or** within one year of the effective date of this [chapter] **readoption for water purveyors serving more than 3,000 residents but not more than 50,000 residents.** [, which shall identify relevant backup supplies and interconnections to be utilized and outline interim water restrictions and other proposed conservation measures; and submit any other information the Department deems necessary to respond to unforeseen water emergencies and long-term relatively predictable water emergencies.]

i. The plans shall include, but not be limited to:

(1) Organization structure including names of emergency response team members and telephone numbers;

(2) Emergency notification and communication procedures;

(3) Interconnections and backup supplies to be utilized;

(4) Interim water restrictions, conservation measures and alternate sources of water;

(5) Coordination procedures for emergency response with other agencies;

(6) Resources inventory;

(7) Vulnerability assessment; and

(8) Any other information the Department deems necessary to respond to unforeseen water emergencies and long-term relatively predictable water emergencies.

2. Revised and updated emergency response plans **whenever there is a significant change to the procedures in the plan, but in all cases at least every two years. Any change in emergency response personnel or their telephone numbers shall be reported to the Department within two weeks after such change.**

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

7:19A-3.4 Large user contingency plans

(a) Water **purveyors shall require all water** users with a rate of use of 250,000 gallons per day or more [shall] **to** submit contingency plans to their respective purveyors. Self-supplied users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to the Department. Such large user contingency plans shall include but shall not be limited to the following:

1.-2. (No change.)

7:19A-3.5 Other water use information

Water purveyors and water users shall provide any additional information necessary to properly manage a water emergency as required by the Department.

7:19A-3.6 Drought warning requirements

(a) During a drought warning condition identified in accordance with N.J.A.C. 7:19A-5.1(d), the Department may order water purveyors to comply with any or all of the following requirements:

1. Development of an alternative water supply where possible;

2. The rehabilitation and activation of interconnections between water supply systems;

3. Complete interconnection flow tests;

4. The transfer of water from any public or private system; and

5. Other modifications or measures to insure an adequate water supply.

7:19A-4.1 Scope

(a) This subchapter establishes the purpose of the Water Emergency Task Force which is created to:

1. Review and [render decisions] **make recommendations to the Commissioner** regarding applications for hardship exemptions from the ban on adjustable water uses;

2. Hear appeals of water purveyors' decisions regarding applications for hardship exemptions from the requirements of the water rationing plans **and make recommendations to the Commissioner**; and

3. (No change.)

7:19A-5.1 Scope

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

(d) Prior to actual declaration of a water emergency by the Governor, the Department may call for action to be taken under its non-emergency powers in order to reduce the likelihood or impact of any impending emergency. Where such situations involve a **relative** lack of precipitation **or a lower than normal storage of water supplies**, the Department may identify the affected area or the State as a whole as being in a "Drought Warning" condition. **The Department shall give notice of and hold a public hearing prior to implementing any of the drought warning requirements in N.J.A.C. 7:19A-3.6.**

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

7:19A-5.5 Phase III: Further rationing required

This stage requires further rationing of water supplies to all sectors [and] **or** the selective curtailment of industrial water users in accordance with N.J.A.C. 7:19A-6.

7:19A-6.2 Procedure for the selective curtailment during a water emergency situation

(a) The Department shall require the purveyors and [self supplied] water users to submit appropriate information [during Phase I,] **upon request** in order to prepare for possible water curtailment.

[(b) The data base shall be revised and updated to incorporate new data on consumption as appropriate.]

Recodify existing (c) and (d) as (**b**) **and** (**c**). (No change in text.)

7:19A-6.4 Submission of water supply information

Industrial users**, water purveyors and other water users,** shall submit to the Department, upon its request, all information relating to water consumption and employment required by N.J.A.C. 7:19A**-3.4, 3.5,** 6.2 and 6.3.

7:19A-7.1 Penalties

[Any person who violates this chapter or any order issued pursuant thereto or to the Act shall be subject to the penalty provisions of the Act.] **Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:14-8.**

7:19A-9.1 Application procedures for hardship exemption from the ban on adjustable water uses

(a) Any person wishing to be exempt wholly or partially from the ban on adjustable water uses may apply, during a water emergency, for a hardship exemption according to the following procedures:

1.-2. (No change.)

3. After **the Task Force's** review of the application **and the Task Force's recommendation to the Commissioner,** the [Task Force] **Commissioner** shall notify the applicant in writing of [the results of its review] **his or her decision** and the reasons for [its] **the** decision. Before making a [decision] **recommendation,** the Task Force may request the applicant to supply additional documentation. An exemption approved by the [Task Force] **Commissioner** may be rescinded should public health, safety and the welfare require further reduction in water use.

4. (No change.)

7:19A-9.2 Application procedures for hardship exemption from the requirements of water rationing

(a) Any person wishing to be exempt from the requirements of water rationing [shall] **may, within 30 days following the receipt of the surcharge bill issued pursuant to N.J.A.C. 7:19B,** file an application for a hardship exemption with the appropriate water purveyor on a form obtained from the water purveyor according to the following procedures:

1.-5. (No change.)

6. The water purveyor is required to notify the Task Force within seven days of all of its approvals. The Task Force may, at its discretion, review any approval granted and [decide] **recommend to the Commissioner** whether to uphold or deny said approval.

(b) An appeal to the Water Emergency Task Force shall contain the following documentation:

1.-2. (No change.)

3. No appeal from the decision of the water purveyor on an exemption application will be accepted unless received by the Task Force within 30 days following the date of the denial by the water purveyor.

(c) The Task Force shall review the request for appeal and all supporting documentation **and make a recommendation to the Commissioner.** [; and] **The Commissioner** shall notify the applicant in writing of **his or her** [the results of its review] **decision** and the reasons for [its] **the** decision. Before making a [decision] **recommendation,** the Task Force may request the applicant to supply additional documentation.

7:19A-10.2 Appeal procedure

(a) The party to whom an order has been issued, and/or aggrieved by a decision of the [Task Force] **Department,** shall have the right to request a hearing thereon, if requested in writing within 20 days of receipt of the order or decision.

(b)-(e) (No change.)

(a)

DIVISION OF WATER RESOURCES

Water Emergency Surcharge Schedule Rules

Proposed Readoption with Amendments: N.J.A.C. 7:19B

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

Authority: N.J.S.A. 58:1A-1 et seq., specifically 58:1A-4 and 5.

DEP Docket Number: 058-89-12.

Proposal Number: PRN 1990-39.

A **public hearing** concerning this proposed readoption with amendments will be held on:

February 6, 1990 at 10:00 A.M.
Hall of Records, Room 210
Main Street
Freehold, New Jersey

Submit written comments by February 15, 1990 to:

Thomas A. Borden, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection's ("Department") Division of Water Resources currently is responsible for the administration and management of the waters of the State during water supply emergencies and water quality emergencies severe enough to constitute a water supply emergency. The Water Emergency Surcharge Schedule Rules N.J.A.C. 7:19B, were developed pursuant to the Water Supply Management Act N.J.S.A. 58:1A-1 et seq. which provided for the development and adoption of a rate schedule to be utilized in the event of a future water supply emergency. Subsequent to the adoption of the rules on February 19, 1985, the State experienced its second worst water shortage in a decade. Fortunately, N.J.A.C. 7:19B was in effect and ready to be implemented when on April 17, 1985 Governor Kean declared a state of emergency after a determination that the water shortage was of a sufficient magnitude to pose a threat to the public's health and welfare.

The purpose of a water surcharge schedule is to provide a financial deterrent in order to encourage conservation, act as an incentive to reduce consumption, and reflect the decreased supply of water in a water emergency. As water supplies dwindle during a state of emergency, reduction of demand by every possible means is of paramount importance.

The Water Emergency Surcharge Schedule Rules, N.J.A.C. 7:19B, were developed concurrently with the Emergency Water Supply Allocation

Plan Rules, N.J.A.C. 7:19A, required under N.J.S.A. 58:1A-1 et seq. and uses many of the enforcement capabilities found in those rules. The Board of Public Utilities will adopt the rates established in N.J.A.C. 7:19B for the water supplies under their jurisdiction during declared water emergencies.

In accordance with the requirements of Executive Order 66(1978), N.J.A.C. 7:19B expires on February 19, 1990. The Department has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The proposed amendments serve to further enhance the original purpose of the water surcharge schedule which was to provide a financial incentive to conserve water at a time of decreased supply.

The following is a summary of N.J.A.C. 7:19B including the proposed amendments thereto:

SUBCHAPTER 1. ESTABLISHMENT OF WATER SURCHARGE SCHEDULE

N.J.A.C. 7:19B-1.1 sets forth the general policy considerations and the scope and authority governing the establishment of a water surcharge schedule applicable during a declared state of a water emergency. The purpose of the chapter is set forth in N.J.A.C. 7:19B-1.2. N.J.A.C. 7:19B-1.3 contains a definition section for the chapter. N.J.A.C. 7:19B-1.4 states the chapter is applicable to all water purveyors and their customers covered by an emergency. N.J.A.C. 7:19B-1.5 establishes a water emergency rate schedule for residential and non-residential water users based on the rate of water use. The requirement for the submission of a water emergency rate schedule and a quarterly report by water purveyors is set forth in N.J.A.C. 7:19B-1.6. N.J.A.C. 7:19B-1.7 includes the procedures governing the collection and disposition of surcharge revenues placed in the Water Emergency Fund. Lastly, N.J.A.C. 7:19B-1.8 includes a process whereby exemptions from the water emergency surcharge schedule may be granted in accordance with that section.

The Department is proposing to amend N.J.A.C. 7:19B-1.3 to define the "Act" as the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. and a "Customer of record" as any person, corporation, partnership, governmental subdivision, or agency receiving water service from a water purveyor. This will serve to identify those responsible for paying water emergency surcharges.

Amendments to N.J.A.C. 7:19B-1.5(a)1 and 2 are being proposed to specify that the Drought Coordinator has the authority to increase water emergency surcharge rates for residential users, up to a maximum of $10.00 for each 100 cubic feet, and for non-residential users, up to a maximum of .50 times the normal rate, should Phase II continue or should desired conservation levels not be met. This change is necessary to provide for timely and effective disincentives when water demand reduction goals are not being met in an emergency.

The Department is also proposing to add N.J.A.C. 7:19B-1.5(a)5 to allow owners of multiple dwelling unit buildings to pass through the surcharge to the occupants provided certain requirements are met. The requirements include the inspection and repair of fixtures, the installation of water conservation devices, the provision of information to occupants on conservation and the submission of a report to the drought coordinator on how the above requirements were implemented and how the proper collection of surcharges will be insured. This provision makes explicit the authority of the Department to allow the pass through of the surcharges to the tenants and will provide an incentive to the individual user to conserve water.

In N.J.A.C. 7:19B-1.6, the Department is proposing, for monitoring purposes, to require the purveyors to submit a bi-monthly report on the surcharge and rationing activities to the Water Emergency Task Force. These amendments will clarify the Department's authority to require bi-monthly purveyor reports on the rationing program and to obtain additional information and is necessary to provide improved verification of purveyor expenses for potential reimbursement as provided for under N.J.A.C. 7:19B-1.7(d)2.

The Department is proposing an amendment to N.J.A.C. 7:19B-1.7 requiring the customer of record to pay all surcharges within 30 days after receipt of the surcharge bill. This amendment is necessary to provide a more effective incentive to conserve water. Lastly, the Department is proposing to include a new penalty provision in N.J.A.C. 7:19B-1.9. The Department will be able to assess penalties for violations of N.J.A.C. 7:19B or the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. through the procedures found in N.J.A.C. 7:14-8.

Social Impact

The readoption of the rules with the proposed amendments will have a positive social impact by improving the State's ability to protect its water supply during a water shortage. By furthering the cause of conservation during times of critical or short water supply, the readoption of the rules with the proposed amendments will ensure the protection of the public health, safety and welfare.

Economic Impact

The emergency surcharge schedule is divided into two categories, residential users and non-residential users. No negative impact will be experienced by residential users who consume 50 gallons per day per person or less, which has been found by studies and surveys to be sufficient to maintain the necessary standard of living. Similarly, non-residential users who conserve 25 percent will also realize no increase in water costs by paying at a rate 1.33 times the rate normally charged. The adverse impact of not conserving water during a water emergency could be plant shutdown which would not only have an extreme negative impact but would be economically devastating.

The purpose of the surcharge is to encourage water conservation during the period when water is in short supply in order to prevent or at least minimize serious economic dislocations which could occur if the water emergency continues or worsens. The proposed amendments do not materially change the existing rules in N.J.A.C. 7:19B which were designed to produce a net positive economic benefit.

Environmental Impact

The readopted rules will seek to assure the most efficient use of water during a water emergency by the imposition of surcharges which will in turn encourage the conservation of water. The goal will be to conserve water for the most essential uses and minimize the negative impact of the water emergency on the State as a whole. The readoption of these rules will allow the Department to properly balance incentives and disincentives within the regulated community to maximize the conservation of water and minimize adverse environmental impacts.

Regulatory Flexibility Analysis

The readoption of N.J.A.C. 7:19B applies to all businesses which use surface or ground water during a declared water emergency. The Department estimates that there are approximately 125 facilities in the State subject to the requirements of N.J.A.C. 7:19B which are considered to be a "small business" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In order to comply with these rules, water purveyors must submit copies of their water surcharge schedules, bi-monthly reports on their rationing programs and quarterly reports on excess surcharge sums collected. However, water purveyors may be reimbursed for reasonable expenses incurred in the surcharge schedule implementation. In addition, the expenses which are not reimbursed from the Water Emergency Fund can be included in any rate adjustment proceedings before the Board of Public Utilities. This includes expenses incurred as a result of the declared state of emergency. The Department, in balancing the need to protect water supplies with the regulatory impact of N.J.A.C. 7:19B, has provided in N.J.A.C. 7:19B-1.8 a procedure for exemptions for those businesses who may encounter economic hardship as a result of complying with the rules. In summary, the Department has found from its past experiences in the water emergencies of 1980-81 and 1985, that in order to protect the public health and welfare and the environment during the time of a declared state of a water emergency, it is necessary to have all businesses and individuals reduce the demand for water.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:19B.

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

7:19B-1.3 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 Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

. . .

"Customer of record" means any person, corporation, company, partnership, firm, association, political subdivision of the State and any

state, or interstate agency or Federal agency receiving water service from an applicable water purveyor.

. . .

7:19B-1.5 Establishment of the water emergency surcharge schedule

(a) Once a water emergency has been declared, as provided at N.J.S.A. 58:1A-4, and at the initiation of Phase II, the Drought Coordinator shall cause to be implemented the following water surcharge schedules established for the retail cost of water:

1. During Phase II of a water emergency the normal water rate shall be charged residential users for the first 50 gallons per capita used daily. Any water used above the prescribed amount in each billing period shall be charged the normal rate plus a $5.00 surcharge for each additional 100 cubic feet or portion thereof (one cubic foot equals about 7.5 gallons). **This rate may be increased, up to a maximum surcharge of $10.00 for each additional 100 cubic feet or portion thereof, at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.**

2. During Phase II of a water emergency, non-residential users of water shall be charged the normal water rate plus 0.33 times the normal rate as a surcharge for all water purchased. This rate may be increased, **up to a maximum of 0.50 times the normal rate,** at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.

3.-4. (No change.)

5. The Drought Coordinator may authorize the owner of any building or complex with multiple dwelling units, where the individual dwelling units lack individual water meters, to pass through the surcharge to the occupants of the individual dwelling units. The pass-through shall be pro rated in proportion to the number of bedrooms served by the water meter. No political subdivision of the State shall enact or enforce any ordinance, rule, regulation, or order which shall prevent such a pass-through. Prior to the imposition of a pass-through, the owner of any building or complex with multiple dwelling units shall comply with the following requirements, including, but not limited to:

i. An inspection for leaks and the repair of water fixtures;

ii. The installation of water conservation fixtures and devices;

iii. The dissemination of information to the building's occupants on the need for water conservation; and

iv. The submission of a report to the Drought Coordinator detailing the owner's compliance with the above requirements and setting forth the procedures to be used to insure proper collection and payment of the surcharges.

(1) The Drought Coordinator may require owners to submit updated reports and may revoke an authorization to pass-through surcharges where the owner has failed to comply with the requirements of this paragraph.

7:19B-1.6 Submission of the water emergency surcharge schedule; quarterly report

(a) (No change.)

(b) For monitoring purposes, each applicable water purveyor shall submit a bi-monthly report on its surcharge and rationing activities to the Water Emergency Task Force using forms provided by the Department.

[(b)](c) (No change in text.)

(d) The purveyors shall submit any additional reports and submittals necessary to properly manage a water emergency as may be required by the Department.

7:19B-1.7 Collection of the emergency water surcharges; water emergency fund

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

(e) A customer of record shall pay the surcharge assessed pursuant to (a) above to its water purveyor within 30 days after receipt of a bill for such surcharge.

7:19B-1.9 Penalties

Failure by any person to comply with any requirement of the Act including but not limited to a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:14-8.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Notice of Withdrawal of Proposal Higbee Beach Wildlife Management Area Proposed Amendment Withdrawn: N.J.A.C. 7:25-2.20

Proposed: September 18, 1989 at 21 N.J.R. 2849(a).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 23:2A-7 and 23:7-9.

DEP Docket Number: 039-89-08.

Proposal Number: PRN 1989-493.

Take notice that on September 18, 1989, by authority of Christopher J. Daggett, Commissioner of Environmental Protection, a proposed amendment to N.J.A.C. 7:25-2.20 (DEP Docket Number 039-86-03) was published at 21 N.J.R. 2849(a). The amendment proposed a reduction in the time period during which hunting is prohibited at the Higbee Beach Wildlife Management Area (HBWMA) by changing the opening date from December 11, 1989 to November 20, 1989.

The Department has made the decision to withdraw the proposal based on comments received during the public comment period and a determination that there was not a sufficient basis at that time upon which to justify changing the existing opening date to the earlier date of November 20, 1989.

This "withdrawal of proposal" serves to give notice that the proposal at 21 N.J.R. 2849(a) is being withdrawn. Therefore, as in the previous year, hunting at HBWMA will commence at 12:01 A.M. of the first Monday after the white-tailed deer six day firearm season ends. That date, this year, will be December 11, 1989.

(b)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Pre-Proposed Rulemaking Resource Recovery Facility Combustion Residual Ash Management

Pre-Proposed Amendments: N.J.A.C. 7:26-2, 2A, 2B and 8

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

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6, N.J.S.A. 52:14B-4(e).

Pre-Proposal Number: PPR 1990-2.

Take notice that the New Jersey Department of Environmental Protection (Department), pursuant to its authority at N.J.S.A. 13:1E-6(a), will receive preliminary comments on contemplated changes to the Department's rules regarding the management of resource recovery facility combustion residual ash.

Interested parties may submit in writing data, draft rules, opinions, and other comments relevant to the pre-proposal on or before March 19, 1990 to:

Catherine Tormey, Assistant Director
Division of Regulatory Affairs
New Jersey Department of
Environmental Protection
CN 402
Trenton, NJ 08625

The Department is considering amending existing rules or promulgating new rules to establish specific requirements for the management of resource recovery facility combustion residual ash for reasons as generally discussed below.

Current New Jersey solid waste management rules, N.J.A.C. 7:26, require that prior to disposal, all residual ash from the combustion of solid waste be classified in accordance with the procedures set forth in N.J.A.C. 7:26-8.5 to determine the hazardous/nonhazardous nature of the residual ash. The permittee of a resource recovery facility is required to collect samples of the residual ash at a point in the residual ash handling system that is representative of the average properties of the residual ash slated for disposal. This sample is then analyzed to determine the characteristic of the average property of the residual ash stream. Both

the sampling and analyses must be performed in accordance with the procedures established in the U.S.E.P.A. guidance document publication number SW-846 entitled "Test Methods for Evaluating Solid Waste."

The results of the analytical testing are evaluated for classification in accordance with the procedure in the U.S.E.P.A. publication SW-846. The residual ash is disposed of in accordance with the established classification at either a hazardous waste facility or a solid waste facility which, in accordance with the federal regulatory definitions, are known as a Subtitle C or a Subtitle D facility, respectively. If classified as hazardous waste, the residual ash must be handled, stored, transported and disposed of in accordance with the requirements set forth in N.J.A.C. 7:26-1, 3, 7, 8, 9, 10, 11, 12, 13 and 13A. If classified as nonhazardous solid waste, the residual ash must be handled, stored, transported and disposed of in accordance with the requirements set forth in N.J.A.C. 7:26-1, 2, 2A, 2B, 3 and 6.

The current rules permit residual ash which is classified as nonhazardous solid waste to be disposed of in a Class I Sanitary Landfill in accordance with the requirements set forth in N.J.A.C. 7:26-2A. These requirements do permit the co-disposal of residual ash with all other solid waste types including I.D. 10, 13, 23, 25 and 27 or municipal, bulky, vegetative, animal and food processing and dry industrial waste in a Class I Sanitary Landfill. The containment system, and leachate collection and removal systems for a Class I Sanitary Landfill can range from a three-feet 1 x 10^{-7} cm/sec "clay" (low permeable soils) liner with a single leachate collection system to a double composite liner system and two separate leachate collection and removal systems based on the Class I Sanitary Landfill's geological location and the performance required to ensure environmentally sound operations.

At present the Department is considering the promulgation of new or revised rules which will ensure the proper management of residual ash from the combustion of solid waste at resource recovery facilities. One proposal being considered would declare solid waste resource recovery facility residual ash to be a "special waste" requiring proper management from the point of generation through handling, storage and transportation to final disposal or reuse.

The Department is hereby soliciting comments in regard to the following issues, but will accept comment on any other issues identified by commenters in regard to resource recovery facility combustion residual ash management:

1. How best to manage the residual ash at the resource recovery facility with particular regard to handling the residual ash from the various equipment generating residual ash and the storage of the residual ash at the facility;
2. The collection and sampling for analyses of the residual ash;
3. The analytical parameters to be tested for on the residual ash;
4. The classification system for the residual ash;
5. The performance requirements for residual ash management at the resource recovery facility;
6. The transportation of the residual ash from the resource recovery facility to the sanitary landfill;
7. The appropriate design and construction of the sanitary landfill receiving the residual ash for disposal (monofill versus cofill);
8. The proper operational techniques to be utilized at the sanitary landfill for disposal of the residual ash;
9. The performance requirement for residual ash management at the sanitary landfill; and
10. The potential reuse and recycling of the residual ash.

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Consumer Health Services

Depuration of Hard Shell and Soft Shell Clams

Proposed Repeal and New Rules: N.J.A.C. 8:13-2

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health.
Authority: N.J.S.A. 24:2-1.
Proposal Number: PRN 1989-645.

A **public hearing** concerning the proposed new rules will be held on:
Friday, February 2, 1990, from 1:30 P.M. to 3:30 P.M.
Monmouth County Public Health Center
Route 9 and Campbell Court
Freehold, New Jersey

Submit written comments by March 17, 1990 to:
Kenneth Kolano, Chief
Food and Milk Program
Consumer Health Services
Division of Community Health Services
New Jersey Department of Health
CN 364
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health is proposing the adoption of new rules and the consolidation of the existing rules concerning depuration of hard and soft shell clams. These rules would replace the requirements for depuration currently under N.J.A.C. 8:13-2, Depuration of Soft Shell Clams *(Mya arenaria)*. Also, a separate proposal will be made to repeal N.J.A.C. 7:17, Hard Shell Clam Depuration Pilot Plant Program, of the Department of Environmental Protection rules and that agency is simultaneously proposing new rules covering the harvesting and transportation aspects of the depuration program under their permit rules N.J.A.C. 7:12-1.1-2, 9.1, 9.6, 9.11, 9.13 and 9.14. Each department's rules are being harmonized and a permanent steering committee made up of representatives from each department having regulatory responsibility is being proposed in order to insure consistency in establishing shellfish depuration policies and developing enforcement procedures.

The new requirements for operating a shellfish depuration plant which are being proposed by the Department follow a review of the hard and soft clam depuration operations in the State, which indicated that the existing regulatory requirements could be easily circumvented without the knowledge of the Department. This review included consideration of the recommendations made by the U.S. Food and Drug Administration (FDA) following a New Jersey shellfish program evaluation in 1987-1988.

Regulatory actions taken by the Department have shown that depuration operators have disregarded the existing rules governing the depuration process and have directly marketed shellfish from marginally polluted waters. This places consumers of these shellfish at a significant risk of contracting viral and bacterial illness associated with raw shellfish consumption. Hearings held before an Administrative Law Judge in March 1988 substantiating serious regulatory infractions resulted in the Commissioner taking action to suspend and revoke the State's only hard shell clam depuration plant certification. In December 1988, the Shellfish Resource Recovery Steering Committee, made up of Department of Health and Department of Environmental Protection officials having shellfish regulatory responsibilities, recommended the temporary suspension of all hard clam depuration until the rules governing that program could be revised and additional personnel are made available for enforcement.

The proposed new rules would give the Department the tools to closely monitor the operations of shellfish depuration plants and provide the increased accountability for the shellfish that are harvested and processed. This would provide the consumer additional assurances that the shellfish are being safely depurated. The following summarizes the proposed new rules:

1. Proposed is a single set of Department of Health rules at N.J.A.C. 8:13-2 in order to simplify the regulatory process for depuration plants and provide potential applicants with a single comprehensive set of requirements for constructing and operating a shellfish depuration plant.
2. The hard clam depuration requirements would reflect full operational status of the program by both departments (as compared to the present pilot program status) based upon the comprehensive nature of the changes being proposed, including a plant verification study and stringent preoperational and operational requirements.

The following are the specific regulatory changes being proposed for the Department of Health hard and soft clam rules. Several other minor changes are included in the full text, which also includes text retained from the original rules.

N.J.A.C. 8:13-2.1 Definitions (New Definitions)

A definition for "certified depuration plant operator" (DPO) is being proposed and will be defined as a person who is responsible for maintaining complete and accurate records of all depuration processes and

controls all critical control activities of a depuration plant operation. A shellfish certification will be granted contingent upon the plant operator(s) receiving a passing score on an examination administered by the State Department of Health.

"Critical control activities" are defined and will include all the critical parameters for depurating shellfish to include, but not limited to: the allocation of process containers, the procedures for harvesting and landing of shellfish, treatment of process water, standard operating procedures for the depuration process, building, tank, and equipment maintenance and construction, process security and surveillance procedures and equipment, sanitation procedures, and required recordkeeping.

A definition for the "Shellfish Resource Recovery Steering Committee" (SRRSC) is being proposed which would include representatives from the Department of Environmental Protection and the Department of Health who have regulatory responsibilities for depuration programs.

Lastly, a definition for the "standard operating procedures" (SOP) is being proposed which the depuration plant operator must establish and will require a written manual that includes all depuration procedures and operations conducted in a depuration plant including identifying individuals responsible for critical control activities, and procedures to be employed by the depuration plant operator when critical control activities are not being met.

N.J.A.C. 8:13-2.2 General requirements

This section proposes that depuration plants be required to conform to N.J.A.C. 8:13, which are the general rules governing sanitation, shipping, and shucking of shellfish, and to the Food Laws established under N.J.S.A. 24:2.

N.J.A.C. 8:13-2.3 Prohibited acts

This section proposes that all clams harvested from special restricted waters must be depurated for at least 48 hours, but no more than 72 hours, and must meet the bacteriological standards set forth under N.J.A.C. 8:13-2.21 prior to being distributed and/or sold.

N.J.A.C. 8:13-2.4 Hard and Soft Shell Clam Depuration Program

This rule consolidates general program provisions from the Hard Shell Clam Depuration Pilot Plant Program rules, N.J.A.C. 7:17, which will be repealed under a separate proposal and sets forth the role of the Shellfish Resource Recovery Steering Committee (SRRSC); also provides the criteria for submitting a depuration plant application to the SRRSC for consideration by the Departments of Health and Environmental Protection.

N.J.A.C. 8:13-2.5 Provisional and final certification requirements

Identifies all the steps necessary to obtain a provisional shellfish certification for the purpose of depuration. The following major additions are being proposed to strengthen existing certification requirements:

1. A written standard operating procedure (SOP) is to be established by depuration plant operators before depuration can begin;
2. The new rule establishes requirements for a certified depuration plant operator (DPO);
3. The new rule establishes a plant verification study prior to receiving provisional certification; and
4. Final certification would be contingent upon completion of seasonal process verification studies and a history of satisfactory compliance with the established criteria control activities.

N.J.A.C. 8:13-2.6 Final certification requirements

This section proposes the requirements for final certification, which include:

1. Completion of a process verification study conducted during the winter and summer seasons.
2. A record of satisfactory compliance with the critical control activities established under N.J.A.C. 8:13-2.

N.J.A.C. 8:13-2.7 Certification restrictions, suspensions, and revocations

This section proposes that the certificate holder be restricted to the sale of depurated clams only and that violations of N.J.S.A. 24:2 and/or the critical control activities defined in this subchapter may result in suspension or revocation of the certificate.

N.J.A.C. 8:13-2.8 Plant location and site specification

This section proposes that the plant be located near the harvest site and adjacent to seawater of proper quality and quantity.

N.J.A.C. 8:13-2.9 Plant design

This section concerns installation of video surveillance systems and provisions for three-day storage areas, as well as process support requirements. These provisions are designed to increase accountability of the clams and help to insure the security of depuration processes and procedures.

N.J.A.C. 8:13-2.10 Transportation of clams

Under this proposed rule, shellfish can be brought directly to the depuration plant by individual harvester(s) rather than as under the previous rules which required clammers to transfer shellfish to a centrally located "mother craft" for transport to plant. This section establishes the use of harvester allocation tags which are designed to enable the department to monitor and control shellfish received for depuration.

N.J.A.C. 8:13-2.11 Shellfish storage

Under this rule, an additional refrigerated unit for the storage of shellfish awaiting laboratory analyses before release and sale can be used. The previous rule allowed shellfish, pending laboratory examination, to be stored in the "finished" product refrigerator unit which created a number of regulatory problems.

N.J.A.C. 8:13-2.12 Source seawater

This section establishes the paramaters for the source seawater and process water to ensure that bacteriological, chemical, and physical water quality standards are maintained.

N.J.A.C. 8:13-2.13 Plant depuration equipment

Under this rule, it is proposed that the process tanks have a lid, to prevent unauthorized removal of shellfish during depuration. This rule also sets forth the proposed requirements for the installation of the plant water piping network, valves, fittings, and flow measuring devices, and establishes the depuration tank specifications.

N.J.A.C. 8:13-2.14 Clam processing containers

This section proposes the requirements for the clam processing containers in that they shall be noncorrosive, nontoxic, and allow processed seawater to pass easily in all directions.

N.J.A.C. 8:13-2.15 Water purification system(s)

This section proposes the requirements for the seawater purification system, including design and monitoring controls. The section also establishes ultraviolet light cleaning and maintenance requirements.

N.J.A.C. 8:13-2.16 Water temperature recording devices

This section proposes the requirements and specifications for the process water temperature recording device. The device shall have a recording chart capable of recording water temperatures in a continuous reading for the 48 to 72 hour depuration process, and must be constructed so that the devices cannot be manipulated.

N.J.A.C. 8:13-2.17 Plant capacity control

Under this rule, the establishment of plant capacity controls is proposed in order to prevent overharvesting above the plant capacity through the use of harvester allocation tags. Also, the proposed rule will set limits on daily harvest to prevent the plant exceeding their rated capacity.

N.J.A.C. 8:13-2.18 Carryover

This section contains requirements regarding the carryover of clams for processing from one day to the next.

N.J.A.C. 8:13-2.19 Washing and culling of clams

This proposed rule sets forth the requirements to account for the destruction of "culled" shellfish which cannot be sold, and establishes culling and washing procedures.

N.J.A.C. 8:13-2.20 Cleaning and sanitizing treatment of equipment

This section proposes that all equipment shall be properly washed and sanitized within three hours after a process is completed. The seawater reservoirs shall be flushed after each process and shall be sanitized at least weekly.

N.J.A.C. 8:13-2.21 Bacteriological quality

Under this new rule, hard clam bacteriological standards which are consistent with U.S. Food and Drug Administration standards are added. Previously, these standards were not specifically included in the rules.

N.J.A.C. 8:13-2.22 Bacteriological sampling

This section proposes that a government laboratory be used for the bacteriological analysis of depurated shellfish, and that five samples of depurated shellfish per lot shall be taken between the 40th and the 48th hour of each depuration process for bacteriological testing. The rule additionally proposes that no clams shall be packed and shipped prior to the plant receiving acceptable laboratory results.

N.J.A.C. 8:13-2.23 Recordkeeping

A requirement, which includes recording and maintaining the following information: process batch number, clammer's name, number of bushels harvested per clammer, number of bushels culled after depuration, zero

hour, total hours depurated, ultraviolet light recorder tape, ultraviolet light daily log of tube intensity, temperature recorder charts, and sales information, is being proposed to augment the previous recordkeeping requirements, in order to assist in the verification of the number of bushels harvested by each clammer. The rule will require that copies of records be submitted by the plant operator via a telefacsimile machine, in order to prevent delays which would inhibit the Department's ability to discover discrepancies.

N.J.A.C. 8:13-2.24 Harvester allocation tag

The new rule sets forth specific requirements for the information to be provided by the harvester and establishes the use of a time clock for verification of date and time of harvesting and receipt of the shellfish.

N.J.A.C. 8:13-2.25 Harvester depuration record

Under this rule, the depuration plant operator shall provide each harvester with a receipt which must meet specifications established by the Department of Environmental Protection in order to increase accountability of the harvesters.

N.J.A.C. 8:13-2.26 Shellfish shipping tags

This proposed new rule requires the use of a waterproof shellfish shipping tag and establishes a specific designation for a depuration plant denoted by the letters DP which would be preprinted on the tags to enable better control of purified shellfish in the market place.

N.J.A.C. 8:13-2.27 Depuration plant monitoring/surveillance equipment

This proposed rule contains a requirement that a video surveillance system be installed and operated to observe the critical control activities of the plant. The monitors would need to be located in state shellfish regulatory offices (one in Department of Health and one in the Department of Environmental Protection). This system is deemed critical to ensuring the security and integrity of the depuration process. The cost of the purchase, installation, and maintenance of this equipment will be borne by each operating depuration plan.

Social Impact

The surveillance and inspection of shellfish depuration plants for compliance with the standards of operation established under these rules is an indispensable part of the Department's efforts to ensure that safe shellfish are being offered for sale. Shellfish have the ability to concentrate large numbers of disease causing organisms and shellfish are often eaten raw, thus increasing the likelihood of disease.

Failure on the part of a depuration plant operator to purify the shellfish that are being harvested from polluted shellfish growing areas could result in serious disease outbreaks such as hepatitis.

The proposed new rules will have a definite positive social impact upon the consumers that enjoy shellfish that are processed at depuration plants located in New Jersey. Consumers will be provided added assurances that they are being protected and the department will be better able to monitor these operations to ensure that safe shellfish are being offered for sale.

Economic Impact

The shellfish depuration industry will incur additional costs to comply with these new rules but the Department believes that the increased costs are justified due to the public health concerns and consequences. Also, the Department believes that economies of scale based upon past depuration plant capacities and marketing strategies should enable the industry to absorb the additional costs.

It is anticipated that the proposed new rules will have a positive economic impact on the shellfish industry in making the continuation of shellfish depuration programs more likely. The overall effect of the program over the years has been positive upon the economy of the State.

It is also anticipated that the proposed new rules could possibly increase the final market price of the shellfish to the consumer, but the assurance of safe, microbiologically cleansed product far outweighs the additional cost. In addition, the market confidence should improve which will have a positive effect on New Jersey's shellfish depuration industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these proposed rules will impose record keeping and other compliance requirements, such as water temperature and other process requirements, on small businesses. The small businesses affected by the proposed rules may not need additional professional services in order to comply with the proposed new rules. In consideration of the historical record of noncompliance that the shellfish depuration industry has exhibited over the years, updated and more restrictive rules are justified. Because these rules seek to promote and protect the public health and welfare through regulation, the Department has determined that there should be no exemptions or special provisions for affected small businesses. Additionally, the regulated plants are all, and are expected to be, small businesses.

Currently, there is only one approved depuration plant in the entire State. The Department does not anticipate more than one or two more to be constructed, once these rules are in place.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:13-2.

Full text of the proposed new rules follows:

SUBCHAPTER 2. DEPURATION OF HARD SHELL AND SOFT SHELL CLAMS

8:13-2.1 Definitions

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

"Certified depuration plant operator" (DPO) means a person who is responsible for maintaining complete and accurate records of all depuration processes and controls all critical control activities of the depuration plant. This certification will be granted based upon the plant operator(s) receiving a passing score of at least 70 on a standard examination administered by the State Department of Health.

"Critical control activities" means and includes all the critical parameters for depurating shellfish, including, but not limited to, the allocation of process containers, the procedures for harvesting and landing of shellfish, treatment of process water, standard operating procedures for the depuration process, building tank and equipment maintenance and construction, process security and surveillance procedures and equipment, sanitation procedures, and required recordkeeping.

"Department" means the State Department of Health.

"Depuration" or "controlled purification" means the process that uses a controlled aquatic environment to reduce the level of bacteria and viruses in live shellfish.

"Depuration plant" means a premises or establishment in which clams obtained from waters officially sanctioned and classified by the Department of Environmental Protection as special restricted or seasonal special restricted are subjected to a process of controlled purification with the proper controls approved by the Department which will render the depurated clams alive, and bacteriologically and virally safe within the meaning of State statutes and regulations.

"Depuration process" means the procedure by which shellfish harvested from waters officially sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted are transported to a depuration plant for controlled purification.

"Fecal coliform" means bacteria of the coliform group which will produce gas from EC medium when such medium is incubated for 24 hours plus or minus two hours at 44.5 degrees Celsius plus or minus 0.2 degrees Celsius in a water bath, or produce growth of colonies on a selected medium at an elevated temperature of 45 degrees Celsius and incubated for 24 hours.

"Hard shell clams" means the species *Mercenaria mercenaria.*

"Lot" means the number of bushels of clams which have been harvested on a particular day from the same area designated by the Department of Environmental Protection.

"MPN" means most probable number, which is an estimate of the numbers of bacteria per 100 milliliters or grams of sample.

"Person" means an individual, or a firm, partnership, company, corporation, trustee, association, cooperative, or any public or private entity.

"Process batch" means the number of lots of clams and the identification of each lot which makes up a process batch. A process batch can be one lot or more but cannot exceed two consecutive days harvest, nor exceed the number of bushels of clams the process tanks are capable of handling.

"Process tank(s)" means the tanks in which the controlled purification process is carried out.

"Sanitize" means an effective bactericidal treatment of clean surfaces of equipment and utensils, to effectively destroy microorganisms, including pathogens.

"Shellfish Resource Recovery Steering Committee" (SRRSC) means designated representatives from the Department of Environmental Protection and the Department of Health who have regulatory responsibilities for depuration programs.

"Soft shell calms" means the species *Mya arenaria.*

"Standard operating procedures" (SOP) means a written manual to include all depuration procedures and operations that will be conducted in a depuration plant including identifyting individuals responsible for critical control activities and procedures to be employed by the depuration plant when operations must be discontinued or when critical control activities are not being met.

"Total coliform" means bacteria of the coliform group which will produce gas from brilliant green bile lactose broth two percent when such broth is incubated for 51 hours or less at 35 degrees Celsius plus or minus 0.5 degrees Celsius.

"Turbidity" means particles in water which reduce light transmittance as measured by a Nephelometric turbidimeter. Units are usually given as Nephelometric turbidity units or as N.T.U.

"Ultra violet light, also referred to as UV" means the bactericidal wave length of light of 2,537 Angstrom units. The intensity is given as microwatts/cm.

"U.S. Standard Bushel" means United States dry measure of four pecks, or 2150.42 cubic inches.

"Zero hour (0 hour)" means the time at which a tank or tanks become full with process water and the container of the last lot of clams is placed into the tanks for depuration.

8:13-2.2 General requirements

Any person engaged in the depuration of clams shall conform to the rules governing sanitation, shipping and shucking of shellfish promulgated under N.J.A.C. 8:13, and provisions set forth under Title 24 of the Revised Statutes.

8:13-2.3 Prohibited acts

No person shall distribute or sell, offer for sale or have in his or her possession with the intent to distribute or sell any clams which have been harvested from special restricted waters and have not been depurated for at least 48 hours and which do not meet the bacteriological standards set forth under N.J.A.C. 8:13-2.21. Clams shall be depurated for a minimum of 48 hours, but not longer than 72 hours. Depuration shall be restricted to clams of the species approved by the Department. Only clams harvested from waters approved for this purpose by the Department of Environmental Protection pursuant to N.J.S.A. 58:24-1 et seq. may be depurated. Clams from other sources may not be stored on the premises of the depuration plant. The depuration plant shall be used for no purpose other than the depuration of clams.

8:13-2.4 Hard and Soft Shell Clam Depuration Program

(a) Any person(s) wishing to construct and/or operate a soft or hard shell clam depuration plant shall submit to the SRRSC a detailed proposal providing all pertinent information concerning the proposed plant on applications provided by the SRRSC. A detailed set of construction plans shall accompany the application. All depuration plant proposals shall be forwarded to:

New Jersey State Department of Health
Consumer Health Services
Shellfish Project
CN 364
Trenton, New Jersey 08625-0364

(b) The SRRSC shall only accept proposals for consideration which demonstrate that they will be in conformance with all local requirements, including zoning, building, and fire codes.

(c) The SRRSC will respond in writing to each proposal after all requested information has been submitted. Each response shall state the reason(s) for acceptance or denial of the proposal.

(d) If an applicant does not initiate construction within six months of its approval, the SRRSC reserves the right to withdraw its approval.

(e) The cost of construction, operation, and regulatory requirements of any depuration plant program shall be the responsibility of the individual(s) proposing same.

(f) The SRRSC shall have the right to limit the number of plant permits issued, based upon Department of Environmental Protection and Department of Health enforcement capabilities.

8:13-2.5 Provisional certificate requirements

(a) Upon approval by the SRRSC to initiate construction of a depuration plant, the issuance of a provisional shellfish certificate to operate on an interim basis until the final verification studies are completed is contingent upon the following:

1. Submission of a shellfish certificate application as required under N.J.A.C. 8:13-1.3 and a food/cosmetic license application with the required statutory fee as required under N.J.S.A. 24:15-13;
2. Final Department approval of construction plans;
3. Departmental approval of the clam processing containers as specified under N.J.A.C. 8:13-2.14;
4. Completion of plant construction;
5. Preoperational inspection conducted by the Department indicating satisfactory compliance with all of the provisions of this subchapter;
6. Filing the necessary permit applications required under Department of Environmental Protection (DEP) rules N.J.A.C. 7:12-9. The Department must receive verification from DEP that the applicant has shown proof that they can meet the DEP regulatory provisions;
7. A written SOP, which shall include all the critical control activities to include the plant's record keeping format for depurating shellfish, which must be submitted for approval to the Department prior to receipt of a provisional depuration plant certification;
8. The plant capacity shall be filed by the firm and approved by the Department utilizing the criteria specified in N.J.A.C. 8:13-2.13 prior to provisional certification approval by the Department;
9. Each plant must have at least one employee as a certified depuration plant operator prior to provisional plant certification. A standard examination which demonstrates a comprehensive knowledge of the principles and procedures of a depuration plant will be administered by the Department. Applicants of this standard test must obtain a passing score of at least 70. A certified depuration plant operator (DPO) will be present in the depuration facility during all critical control activities;
10. A plant verification study shall be conducted by the operator prior to receiving provisional certification. This verification study shall demonstrate to the Department that all critical control parameters meet the specifications as set forth within these requirements and are adequate to insure sufficient physiological activity of the shellfish for purification to occur at any point in the tank under maximum loading conditions; and
11. Plant verification studies will be determined by three consecutive processes which must meet all critical control activities as well as end point bacteriological requirements.

8:13-2.6 Final certificate requirements

(a) Considering the extremes of environmental conditions, an acceptable process verification study shall be conducted during the winter and summer seasons. Only after this additional process verification study indicating that all critical control activities have been met, including satisfactory bacteriological criteria, will final certification be considered by the Department.

(b) Final certification will be issued based upon a record of satisfactory compliance with the critical control activities and the requirements of (a) above.

(c) The certificate shall expire on June 30 of each year. Certificate renewal is required each year on forms supplied by the Department.

(d) Shellfish certification and food/cosmetic license are not transferable with respect to changes in location and/or ownership.

8:13-2.7 Certification restrictions, suspensions, and revocations

(a) Certification is limited to the depuration and sale of depurated clams.

(b) Any certificate issued by the Department pursuant to these rules may be suspended or revoked for any violation of Title 24 of the Revised Statutes or of any rule or regulation of the Department

or when bacteriological data shows that the depuration process is not reducing fecal coliform levels to the standards set forth. Any violation of a special permit to possess shellfish harvested from special restricted waters issued by the Department of Environmental Protection is grounds for suspension or revocation of the certificate issued by the Department.

(c) The Department, when in its judgment has determined that any of the critical control activities of the depuration regulations are violated, may, before a hearing, suspend the certification pending the hearing. When the certification has been suspended, the person shall have the right to an expedited hearing. In all other cases, the person shall be afforded the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, prior to the suspension or revocation of the license. When the special permit issued by the Department of Environmental Protection under N.J.A.C. 7:12-9 is suspended or revoked, the shellfish certificate issued by the Department will no longer be valid.

8:13-2.8 Plant location and site specification

The depuration plant shall be located in such an area where seawater of proper quality and sufficient quantity is available for the process. The plant shall be located close enough to the harvest site to minimize travel time, to prevent excessive bacterial multiplication, and to reduce stress in the clams. The plant shall be so located that it will not be subject to flooding by high tides.

8:13-2.9 Plant design

The plant shall be designed in such a manner as to prevent cross-contamination of untreated and treated clams and in order that a video surveillance system can effectively monitor all critical control activities. Washing and culling facilities, with a convenient supply of potable wash water which meets the requirements of N.J.A.C. 7:10 (Safe Drinking Water Act rules), shall be provided for untreated and treated clams. Three separate dry storage areas meeting the requirements of N.J.A.C. 8:13-2.11 shall be provided for untreated clams, clams treated pending laboratory approval, and treated approved clams. The plant shall be provided with potable running water, electricity, and sewage disposal sufficient to meet all the specifications and carry out all the requirements set forth in these rules.

8:13-2.10 Transportation of clams

(a) The vessel(s) or vehicle(s) used in the transportation of clams shall be kept in a clean and sanitary condition. The clams stored and transported in the vessel(s) shall be protected from undue environmental stress such as freezing in winter and overheating in direct sunlight during the summer months. Clams shall be protected from contamination at all times during harvesting and transportation to the depuration plant.

(b) A waterproof serially numbered harvester-allocation tag approved by the Department shall be issued by the DPO and affixed to each harvest container in the plant as part of the daily harvest allocation, as specified in N.J.A.C. 8:13-2.24, which tags shall be accounted for or used that day only.

(c) Only "U.S. Standard" bushel size containers shall be used in the harvesting, transportation, and receiving of soft shell clams at the depuration plant unless written approval is given to use an alternate standard type of container. Only containers specified in N.J.A.C. 8:13-2.14 shall be used in the harvesting, transportation, and receiving of hard shell clams at the depuration plant unless written approval by the Department is given to use an alternate standard type of container. All reasonable measures shall be taken to assure that containers of clams received at the plant are filled to capacity.

(d) During the unloading procedures from the harvesting vessels at the designated times and locations, the containers of clams shall not be covered and shall be open to view.

(e) Once off-loading commences, the containers of shellfish shall immediately be moved into the plant and the attached harvester allocation tag be date and time stamped upon receipt by the plant on that harvest day.

(f) Overland transportation must be approved by the SRRSC under the provisions of DEP rules N.J.A.C. 7:12-9.

8:13-2.11 Shellfish storage

(a) Shellfish received from harvesters shall be stored immediately in the untreated controlled storage unit prior to depuration. This location shall be cool and protect the shellfish from contamination. The internal temperature of the shellfish in the controlled storage unit shall be maintained within five degrees Fahrenheit of the processed water temperature, but shall not exceed 68 degrees Fahrenheit (20 degrees Celsius).

(b) After removal from the depuration process, shellfish shall be stored in the intermediate refrigerator at refrigeration temperatures of 45 degrees Fahrenheit or 7.2 degrees Celsius or below pending laboratory analysis.

(c) Upon receipt of satisfactory laboratory analysis, shellfish shall be packed in shipping containers and placed in the treated refrigerator at refrigeration temperatures.

8:13-2.12 Source seawater

(a) No seawater shall be used for depuration unless it meets the following requirements:

1. The source seawater total coliform counts expressed as MPN/100 ml shall not exceed the following level:

i. Median of samples equal to or less than 700: with not more than 10 percent of samples exceeding 2,300 for a five tube, three dilution test, and 3,300 for a three tube, three dilution test.

2. The source seawater shall be free of toxic chemicals, pesticides, detergents, dye stuffs, radioisotopes and marine toxins in concentrations which exceed established State/Federal regulations, or exist in concentrations deemed hazardous by State or Federal officials.

3. Salinity must be within 20 percent of the harvest area value, at the time of harvest, expressed in parts per thousand.

(b) The seawater in which the untreated clams are placed for controlled purification shall be of sufficient quality to assure optimal physiological activity. The following requirements shall be met either naturally or through treatment of the water;

1. A maximum of one total coliform per 100 ml;

2. The pH shall be between the range of 7.0 to 8.4;

3. The dissolved oxygen levels shall be a minimum of 5.0 mg/liter;

4. Turbidity shall not be more than 20 Nephelometric turbidity units; and

5. Temperature range shall be a minimum of 40 degrees Fahrenheit (4.4 degrees Celsius) to a maximum of 68 degrees Fahrenheit (20 degrees Celsius) for soft shell clams; and, a minimum of 50 degrees Fahrenheit (10 degrees Celsius) to a maximum of 68 degrees Fahrenheit (20 degrees Celsius) for hard shell clams.

i. Refrigeration units shall be installed of sufficient capacity to cool and maintain processing water 68 degrees Fahrenheit (20 degrees Celsius) or below.

ii. A system shall be established to raise and maintain the water temperature above 40 degrees Fahrenheit (4.4 degrees Celsius) for soft shell clams and 50 degrees Fahrenheit (10 degrees Celsius) for hard shell clams.

8:13-2.13 Plant depuration equipment

(a) Hydraulic seawater system design and material requirements are as follows:

1. The seawater pumping system shall include intake structures, intake pumps, distribution or piping network, valves, filling and flow measuring devices which shall be maintained in good working order at all times and shall be of sufficient size and design to supply the system with process seawater to meet the requirement set forth in (b) below.

2. The distribution piping network shall be constructed in such a manner so that the entire system can be cleaned.

3. Accurate flow control devices shall be installed in the process seawater system to assure that the flow requirements are being met and maintained.

4. Electrical hydraulic equipment such as pumps, ultraviolet unit(s) and other electrical components of the seawater circulation system shall be protected from water splash and corrosion.

5. The seawater hydraulic system shall be constructed of materials which are inert, noncorrosive and nontoxic to man or clams.

6. A minimum of five mg/liter of dissolved oxygen shall be maintained throughout the depuration processing system. An aeration system shall be installed if the oxygen level is below five mg/liter. The aeration system shall not produce excessive foaming. Bubble type aeration systems are prohibited. Accurate dissolved oxygen meters to measure the dissolved oxygen of the process water shall be provided.

(b) The process tank(s) in which controlled depuration is carried out shall be constructed of suitable sturdy material which is smooth, free of breaks and open seams. Materials used in process tank construction shall, under use conditions, be corrosion resistent, nontoxic, relatively nonabsorbent. The tank(s) shall be in good repair and shall be easily accessible for cleaning and inspection. The tank(s) shall be self-draining to facilitate tank cleaning. Tank design shall be approved by the Department prior to installation. Tank design shall insure that:

1. Uniform hydraulic flow is maintained throughout the tank(s);

2. The proper stacking and removal of shellfish process containers is carried out to insure a satisfactory flow of process seawater;

3. Vibrations and tank disturbances are not present;

4. The flow and quality of treated seawater shall be easily monitored. The volume flowing through each tank shall be at least one gallon per minute per U.S. bushel of clams;

5. The tank(s) are protected against chemical, microbiological, or other contamination;

6. The tanks shall be maintained in good repair at all times;

7. Process tank dimensions are as follows:

i. The tank(s) shall have the capacity to supply at least five cubic feet of seawater per U.S. bushel of clams at the overflow level for soft clams and at least eight cubic feet of seawater per U.S. bushel for hard shell clams; and

ii. A minimum space shall be provided to assure three inches in all directions around the clam processing containers submerged in the process tanks; and

8. If a rectangular tank design is utilized, the following specifications shall be met:

i. The length to width ratio shall be a minimum of 2:1 and not more than 4:1;

ii. The maximum depth of the tank shall be 36 inches; and

iii. The bottom of the tanks should be sloped longitudinally at least 1/4 to 1/2 inch per foot toward the outlet end.

(c) Storage facilities shall provide for physical separation of the treated approved clams from the treated clams pending laboratory analysis and also from the untreated clams and they shall be stored separately at all times.

(d) Process tanks are to be provided with hinged, durable, easily cleanable plastic mesh type lids with adequate openings for sampling. These lids shall have locking mechanisms and shall be sealed with tamper evident seals which are approved by the department and which are serially numbered. The seals shall be put in place at the zero hour of depuration and not removed until completion of the 48 hour process. If the required bacteriological analysis results in a process failure as defined in N.J.A.C. 8:13-2.21, the tank lids shall be in place and sealed at the start of the additional process time and not removed for 24 hours.

(e) The Department will consider alternate tank design specifications other than rectangular, subject to the requirements of 1 through 7 above, if there is adequate scientific information and testing to show that an alternate tank design will accomplish the same results. Utilization of non-rectangular design will require prior approval by the department.

8:13-2.14 Clam processing containers

(a) Clam processing container design must be approved by the Department in writing prior to receiving a provisional certificate. Clam processing containers used in the process tanks shall be constructed of materials which are noncorrosive, nontoxic, and of a suitable shape and size to allow processed seawater to pass easily in all directions; allow for intermediate washing of clams in or out of the process tanks; and be easily cleanable and constructed of materials which can be sanitized. Clam processing containers shall not be used for any other purpose other than for depuration.

1. The maximum depth of shellfish in the containers shall be three inches (76 mm) for hard shell clams and in increments of 1/2 U.S. bushels.

2. The maximum depth of shellfish in the containers shall be eight inches (20.3 cm) for soft shell clams and in increments of 1/2 U.S. bushels.

8:13-2.15 Water purification system(s)

(a) An ultraviolet (UV) bacteriological reduction system shall be installed to provide process seawater meeting a bacteriological quality of no more than one fecal coliform/100 ml sampled at the UV unit outlet unless this quality can be met naturally and the water is not recirculated. A recirculating seawater system shall be so designed, installed and operated to assure that the water receives UV treatment prior to entering the system.

1. The Department will consider alternate methods of bacteriological reduction units if adequate scientific information is presented showing that the unit will produce process water of the required bacteriological quality; proper testing is conducted; and the practicability of units can be demonstrated.

2. Chemicals such as chlorine or similar disinfecting compounds shall not be used to treat the process seawater, unless the water is dechlorinated just prior to use.

(b) The ultraviolet (UV) sterilization unit shall meet the following minimum requirements:

1. The unit shall be designed and operated to deliver at peak load at least one gallon per minute of treated water per U.S. bushel of clams;

2. The unit shall have water flow control device(s) to prevent the water flow exceeding the capacity of the unit regardless of the incoming pressure; and

3. A meter and recording chart shall be attached to the unit which will continuously monitor and record the following:

i. Any changes in ultraviolet transmission of the water to be treated; and

ii. Depreciation or reduction in the output of the intensity of the ultraviolet lamps;

4. The recorder chart shall be calibrated in hours and days and the chart shall be marked to indicate "0", "24", "48", and "72" hour intervals for each process batch;

5. The ultraviolet system shall have provisions for in-place cleaning of the interior of the purification chamber and ultraviolet tubes; and

6. The ultraviolet tubes shall be replaced when they reach a point of 60 percent efficiency or 7,500 hours old.

8:13-2.16 Water temperature recording device(s)

(a) A water temperature recording device or devices shall be installed in a position to accurately record the process water temperature. The device shall be installed to meet the following requirements:

1. The recorder case shall be moisture-proof under normal operating conditions;

2. The temperature recording device shall be graduated with a range between two degrees Fahrenheit and 100 degrees Fahrenheit;

3. The chart shall be graduated with not less than two degrees Fahrenheit divisions, with not more than 40 degrees Fahrenheit per inch of scale, graduated in time scale divisions of not more than one hour;

4. An accurate indicating thermometer shall be provided to check the temperature recording device;

5. The chart shall have a rotation period to record for 72 hours and indicate a continuous recording for the 48/72 hour depuration process;

6. The recorded elapsed time as indicated by the temperature recorder chart rotation shall not exceed the time elapsed as compared to an accurate watch; and

7. The chart support shall be provided with a pin or pins to puncture the chart in a manner to prevent improper or false rotation.

i. Temperature recording device operation is as follows:

(1) The temperature recording device shall be activated on the onset of the depuration process (0 hour);

(2) Charts shall identify the dates of process batch including lot number(s) and quantity of clams in each lot; and

(3) Any unusual occurrences shall be recorded on the chart, such as system breakdown or large temperature deviations.

8:13-2.17 Plant capacity control

(a) The maximum amount of clams in each tank shall not exceed the flow requirement of one gallon per minute of seawater per bushel of clams nor the physical size limits of the tank and other spacing criteria established in this subchapter.

1. The plant capacity shall be established as set forth in N.J.A.C. 8:13-2.5. Each process tank shall be posted to indicate the maximum tank capacity for that particular process. This posting shall be of size and legibility to allow for viewing by the required surveillance cameras.

2. If the flow rate of the system or individual tanks decrease, the plant operator shall adjust the number of bushels of clams in the tanks not to exceed the flow requirement and repost the new capacities.

3. The DPO shall employ all reasonable means to ensure that all tanks in the system have equal flow. If this cannot be achieved, then the operator shall post each tank with its rated capacity.

4. The DPO shall notify the Department by telephone at the beginning of the next working day if the total capacity of the system changes, either by an increase or decrease in flow capacity, and resubmit in writing the new rated capacity for departmental approval within five days after verbal notification.

5. The DPO will be responsible for allocating the processing containers and harvester allocation tags for harvesters on a daily basis. The allocation of containers and tags shall not exceed the approved capacity specified in the plant's SOP.

6. The number of bushels of clams harvested each day shall not exceed the amount which the plant is capable of processing on that day.

8:13-2.18 Carryover

(a) In the event that insufficient clams are harvested to make it a full process batch, no more than two consecutive days catch of clams can be combined to make up a process batch.

(b) Processing shall begin within 36 hours of receipt of clams at the depuration plant.

(c) If a plant carries over part of a day's catch, then the next day's harvest cannot exceed the number of bushels which the plant is capable of processing on that day.

(d) If a plant exceeds capacity due to a process failure, the plant shall notify the Department regarding the disposition of these clams by the next working day.

8:13-2.19 Washing and culling of clams

(a) Appropriate culling procedures will be employed at the point of harvesting to ensure that broken, cracked, dead, or gaping clams are removed and not placed into the process containers. Before depuration, clams shall be washed at the plant with water taken from a source approved by the department. During the depuration process, the tanks shall be drained whenever necessary and the tank and clams flushed of fecal material, sand, and debris to prevent an accumulation of these materials. After the depuration process is completed, the water shall be drained from the tanks before the clams are removed. Washing facilities shall be designed to prevent cross-contamination of untreated and treated clams.

(b) Final culling of shellfish shall be conducted after the shellfish have been processed and after laboratory results confirming acceptable bacteriological quality have been received by the DPO. Any culled product shall be stored in the intermediate refrigerator until the destruction of culled product can be witnessed by an appropriate regulatory official.

8:13-2.20 Cleaning and sanitizing treatment of equipment

(a) Adequate facilities shall be provided for the proper washing, cleaning, and sanitizing treatment of equipment, utensils, and building. All equipment and utensils utilized in the depuration plant shall be maintained in a clean condition. All clams and seawater contact surfaces shall be cleaned and sanitized, as defined under N.J.A.C. 8:24-5.5, at the frequencies listed as follows:

1. Process tanks and seawater distribution piping shall be drained of seawater after each process and tanks and racks shall be cleaned and sanitized within three hours after a process batch is removed from the system and rinsed of sanitizing residuals before another depuration process begins.

2. The seawater reservoir(s) used to hold incoming process seawater shall be drained and flushed after each process batch and cleaned and sanitized at least once a week.

3. Clam processing containers shall be cleaned and sanitized within three hours after removal of clams.

4. The ultraviolet or quartz tubes and tube chamber of the UV unit(s) shall be cleaned within three hours after each depuration process.

8:13-2.21 Bacteriological quality

(a) Depurated clams shall meet the following bacteriological quality standard:

1. A fecal coliform median value not to exceed 50 MPN/100 gms and not more than 20 percent of the samples shall exceed an MPN of 100 fecal coliform per 100 gms for soft shell clams.

2. A fecal coliform median value not to exceed 20 MPN/100 gms and not more than 20 percent of the samples shall exceed an MPN of 50 fecal coliform per 100 gms for hard shell clams.

(b) The SRRSC reserves the right to establish adjunct bacteriological testing in addition to the fecal coliform standards currently being utilized.

8:13-2.22 Bacteriological sampling

(a) Bacteriological sampling collection and analysis of depurated clams shall be conducted by a government-operated laboratory approved by the State of New Jersey shellfish laboratory evaluation officer, who is certified by the United States Food and Drug Administration under the latest version of the National Shellfish Sanitation Program manual of operations, Part I, Appendix E. The Department shall reserve the right to approve a nongovernment laboratory, preferably not affiliated with the plant(s) being regulated, on an interim basis when a government laboratory is not available.

(b) The following minimum sampling programs shall be followed:

1. Clams samples are to be taken randomly for each process batch of clams at the following intervals:

i. Zero hour samples shall be collected at a frequency established in writing by the Department. The frequency shall be based on levels of pollution, weather conditions, and seasonal changes with a minimum of two samples per lot when zero hours sampling is deemed necessary.

ii. Five samples per lot at a period of time between 40 and 48 hours. Samples taken prior to 48 hours which do not meet the bacteriological standards shall be resampled to show that the process batch meets the bacteriological standards before being offered for sale and results received by the DPO.

iii. Five samples per lot at "72" hours if found necessary.

2. A water sample of the ultraviolet (UV) treated water shall be taken directly from outlet of each UV unit each week.

(b) All bacteriological sampling results shall be forwarded to the Department's shellfish project in writing within five days of completion.

(c) Clam process batch(s) which do not meet the bacteriological standards set forth after 48 hours of depuration shall be further depurated for an additional 24 hours. Clam process batch(s) which do not meet the bacteriological standard after 72 hours of depuration cannot be further depurated and shall not be used for human food consumption and shall be disposed of in a manner approved by the Department. The certificate holder shall be responsible to notify the Department's shellfish project by telephone immediately upon receipt of bacteriological results which do not meet the standard after 48 or 72 hours of depuration.

(d) No clams are to be packed and shipped until laboratory results confirming acceptable bacteriological quality have been received by the plant.

8:13-2.23 Record keeping

(a) Each lot(s) of clams brought to the depuration plant shall be assigned a process batch number. A separate set of records shall be kept on the premises at all times for at least one year and be available for inspection upon request. All records shall be kept in indelible ink and shall indicate the following:

1. The proces batch number as well as the harvester allocation tag serial number(s) for each process;
2. The name of each clammer working each day along with the number(s) of his or her serialized harvester allocation tag;
3. The number of clams and bushels each clammer harvests each day;
4. The total number of bushels and clams in each process batch;
5. The number of bushels and clams culled after depuration;
6. The date and time of "0" hour entry for each process;
7. The number of hours the clams are depurated along with the date and time the process is terminated for each process;
8. The ultraviolet (UV) recorder tape corresponding to each process batch shall be attached to the records. A log tube intensity record shall be kept daily which indicates the date and intensity readings;
9. Temperature recorder charts corresponding to each process batch shall be attached to the records;
10. The sales information to include date, number of bushels of soft shell clams, number of hard shell clams, person and address to whom sold shall be recorded at the time of sale and identified to the process batch; and
11. A copy of the harvest depuration receipt as required in N.J.A.C. 7:12-9 shall be available for review and inspection upon request.

(b) Copies of the records required in this section shall be submitted via facsimile machine to the Department shellfish project no later than 12:00 noon of the next working day.

8:13-2.24 Harvester allocation tag

(a) Each container of shellfish shall have a harvester allocation tag affixed to it prior to the container being allocated by the depuration plant to the individual clammer.

1. This tag shall be approved by the Department prior to provisional certification.
2. This tag shall consist of waterproof material and shall be compatible with the time clock which has been approved by the Department.
3. This tag shall, at a minimum, contain the following information:
   i. The harvester name and permit number;
   ii. The date issued;
   iii. The time issued;
   iv. A serialized number;
   v. The DEP harvest area;
   vi. The process date;
   vii. The process "0" hour time; and
   viii. The date and time issued along with the date and time the shellfish are received by the plant, both of which shall be date and time stamped on this tag.
4. This tag shall remain affixed on each container from the time allocated through and including harvesting, transporting, holding prior to depurating, during the depuration process, while in the intermediate storage refrigerator awaiting process bacteriological evaluation approvals.
5. This tag, when removed prior to market packaging, shall be retained in an orderly fashion by the plant and shall be available at the plant for a period of time no less than one year.

8:13-2.25 Harvester depuration receipt

Upon landing of the shellfish at the approved landing site and time, each harvester shall be issued a receipt(s) by the DPO as required in N.J.A.C. 7:12-9.

8:13-2.26 Shellfish shipping tags

(a) The process batch shall be stamped on all shellfish shipping tags which shall be affixed to each container of clams sold as required by the regulations generally governing the tagging and sale of shellfish (N.J.A.C. 8:13-1.14(b)). Shellfish shipping tags shall be affixed to each shellfish shipping container as it is being packed. The shellfish shipping tags shall meet the following requirements:

1. Shellfish tags shall be at least 2⅝ inches wide and 5¼ inches long and constructed of a waterproof and tear resistant material;
2. The attachment point shall be reinforced, preferably with a metal and fiber eyelet; and
3. Shellfish tags shall be preprinted or stamped in waterproof ink with the shippers name, address, shippers permit number prefixed with NJ in capital letters, the common name of the shellstock, the harvesting area, the net weight, numerical count, and/or standard measure of the shellstock in the container, and the date shipped. The description of a New Jersey State harvesting area shall not be less specific than the descriptions set out in N.J.A.C. 8:13-1.14 or any revisions of these rules. A certification number shall be followed by the letters "DP" to indicate depurated product on the tag.

8:13-2.27 Depuration plant monitoring/surveillance equipment

(a) A video surveillance system shall be installed and operated to clearly monitor all critical control activities of the depuration plant and shall be in working order and operating at all times. The plant shall provide two monitors for remote viewing via telephone lines in state offices. This system shall be approved by the SRRSC prior to provisional certification.

(b) A video cassette recorder shall be provided and shall operate to record all surveillance camera sequences.

(c) The plant shall have an audible alarm and a visible alarm in plain view of surveillance cameras which is triggered when the electrical service is interrupted during a process.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Implementation of the Independent College and University Assistance Act
General Provisions
Proposed Readoption: N.J.A.C. 9:14

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:72B-22.
Proposal Number: PRN 1990-24.

Submit comments by February 15, 1990 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Independent College and University Assistance Act, N.J.S.A. 18A:72B-15 et seq., provides direct funding to 16 independent institutions with a public mission. This legislation was enacted in 1979 to reflect the State's commitment to the preservation of a diverse system of higher education encompassing both public and independent institutions. The legislation calls for the funding to the 16 independent institutions to be linked to aid to the public sector. The rules which are being considered for readoption set forth certain audit requirements which help to ensure that the aid is distributed under the requirements of the statute.

Social Impact

N.J.S.A. 18A:72B-15 et seq. was initiated to help assure maximum educational choice among colleges and universities through the preservation of the vitality and quality of independent institutions in the State. Of the sector's nearly 56,000 students, approximately 80 percent, or 45,000, are New Jersey residents. The proposed readoption continues a regulatory audit system to ensure the proper distribution of aid as required by statute.

Economic Impact

The proposed readoption will allow the Department of Higher Education to ensure that the aid to New Jersey's independent colleges and universities, which is required to be distributed for the support of such institutions of higher education, is accomplished in conformity with the requirements of the statute.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because these rules impact upon colleges and universities, all of which fail to qualify as small businesses as defined in the Regulatory Flexibility Act.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:14.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administrative Manual
Claim Processing
Proposed Amendment: N.J.A.C. 10:49-1.10

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-7, 7a, b, c and p, q, r.
DMAHS Control Number: 88-P-36.
Proposal Number: PRN 1990-42.

Submit comments by February 15, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

Summary

As used in the notice, the following terms are relevant:

The term "Medicare" refers specifically to Title XVIII of the Social Security Act.

The term "Medicaid" refers specifically to Title XIX of the Social Security Act.

The Division of Medical Assistance and Health Services shall be identified as "the Division".

The term "Prudential" refers to the Prudential Insurance Company of America.

The term "Blue Cross" refers to Blue Cross and Blue Shield of New Jersey.

It should be noted that many patients who are eligible for Medicaid also qualify for Medicare coverage. The proposed amendment is being submitted because there is one portion of the text of the current rule that is no longer in effect. The rule currently indicates that the Prudential Insurance Company of America (Prudential) is responsible for processing Title XVIII (Medicare) claims.

However, on or about January 1, 1989, Prudential ceased processing Medicare claims. Therefore, this reference needs to be deleted.

In addition, the providers' selection of the Medicare intermediary really has no bearing on the Medicaid Fiscal Agent that will process their Medicaid claims. At present, both Prudential and Blue Cross acting as Fiscal Agents for the Division are still responsible for processing the same types of Medicaid claims as they have done in the past.

The Division has added new language at subsection (b) indicating that Fiscal Agent(s) process and pay claims for providers of health services. The state of New Jersey negotiates contracts with the Fiscal Agent(s) to accomplish this objective. The proposed amendment recognizes that the program's relationship with a Fiscal Agent(s) is contractual and subject to change. This may impact on where providers will submit claims in the future.

Social Impact

This proposed amendment impacts indirectly on those Medicaid patients who also have Medicare coverage because these patients are interested in having their claims paid. However, Medicaid patients are not responsible for submitting claims to the Fiscal Agent(s).

This amendment does impact on Medicaid providers who are responsible for submitting claims to the appropriate Fiscal Agent for payment. The main impact is upon those hospitals and hospital-based home health agencies that had been submitting their Medicare claims to Prudential. These providers are now submitting their Medicare claims to a fiscal intermediary other than Prudential. However, these providers are still submitting their Medicaid claims to the same Fiscal Agent.

Economic Impact

This proposed amendment has no economic impact on Medicaid providers, because there is no change in reimbursement.

This amendment has no economic impact on Medicaid patients.

The economic impact on the Division would be the negotiated price of the contract with the Fiscal Agent.

Regulatory Flexibility Analysis

This proposed amendment impacts on hospitals, which are not considered small businesses under the terms of the Regulatory Flexibility Act because they employ more than 100 full-time employees. (See N.J.S.A. 52:14B-16 et seq.). The amendment also impacts on some hospital-based home health agencies which might be considered small businesses in that they might employ less than 100 full-time employees. Regardless of whether or not the provider is classified as a "small business," the reporting requirements for Medicaid are the same. Providers are required to submit claims to the appropriate Medicaid Fiscal Agent as they have done in the past. The purpose of claim submittal is to enable providers to be reimbursed by the New Jersey Medicaid Program. The type of information that is entered on the claim form is usually obtained from the patient's medical records which the providers are already required to keep pursuant to law. All Medicaid providers are required to keep and maintain individual patient records to fully disclose the name of the recipient to whom the service was rendered, the date the service was rendered, the nature and extent of each service rendered, and any additional information as may be required by regulation (N.J.S.A. 30:4D-12).

There are no capital costs associated with this amendment.

This rule is designed to minimize any adverse impact on small businesses because there is no change in the Medicaid claim processing system.

In addition, the purpose of the rule is to inform providers to submit claims to the appropriate Fiscal Agent so that payment can be made.

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

10:49-1.10 Bureau of Claims and Accounts; Fiscal Agents

(a) The Bureau of Claims and Accounts, Division of Medical Assistance and Health Services directly processes and makes payment of claims for services provided by long-term care facilities (skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, and residential treatment facilities) and eligible State and county governmental psychiatric hospitals.

[(b) Contracts have been negotiated on behalf of the State of New Jersey with Blue Cross and Blue Shield of New Jersey, Inc. and The Prudential Insurance Company of America to function as New Jersey Medicaid Fiscal Agents.

1. Blue Cross and Blue Shield of New Jersey, Inc. is responsible for the processing and payment of hospital inpatient, hospital outpatient and hospital-based home health agency claims for those providers who have selected Blue Cross and Blue Shield of New Jersey, Inc. as their intermediary under Title XVIII (Medicare). In addition, Blue Cross and Blue Shield of New Jersey, Inc. processes pharmaceutical services claims, claims for out-of-State hospitals and out-of-State hospital-based home health agencies.

Hospitals who have not participated in Title XVIII are assigned to Blue Cross and Blue Shield of New Jersey, Inc.

Telephone Numbers
Hospital Providers Services—1-201-456-2534
Recipient Eligibility—1-800-242-0861
Pharmacy Inquiry—1-800-242-0809

2. The Prudential Insurance Company of America handles the processing and payment of hospital inpatient, outpatient and certain hospital-based home health agency claims for those providers who have selected Prudential as their Intermediary under Title XVIII (Medicare), and all freestanding home health agency claims (In-State and Out-of-State). In addition, The Prudential Insurance Company of America processes claims for all other health services covered by the Program, with the exception of pharmaceutical services, SNFs, ICFs, ICFs/MR, State and some County Governmental Psychiatric Hospitals.

Telephone Numbers
General Inquiry—1-800-582-7052
Out-of-State Providers—1-609-293-2000]

(b) A contract(s) is(are) negotiated on behalf of the State of New Jersey with a fiscal agent(s) for the processing and payment to providers for all health services other than those listed in (a) above.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual
Patient Care and Reimbursement

Proposed Amendments: N.J.A.C. 10:63-1.2 through 1.5, 1.8, 1.14, 1.16, 3.3, 3.8 and 3.19

Proposed Repeals and New Rules: N.J.A.C. 10:63-1.6 and 1.7

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b, and c; 30:4D-12; N.J.S.A. 30:4D-17.10 et seq., specifically N.J.S.A. 30:4D-17.15 (P.L. 1988, c.97), approved August 5, 1988; 1919(e)(7) of Social Security Act; 42 CFR 440.40, 440.150.

Proposal Number: PRN 1990-35.

Submit comments by February 15, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625

A copy of the proposed changes may be obtained by contacting the Administrative Practice Officer at the above address. A copy of the proposed changes is also available for public review at any of the 17 Medicaid District Offices or at the 21 county welfare agencies.

The agency proposal follows:

Summary

The proposed amendments and new rules concern nursing services, social services, dietary services, and reimbursement to long term care facilities (LTCFs), which will now be referred to as nursing facilities (NFs). The purpose of these proposed rules is to define the criteria that will regulate and reimburse NFs for services provided to Medicaid-eligible individuals. The proposed criteria comply with the new standards for licensure adopted by the New Jersey Department of Health in 1988, which will become operative on April 1, 1990. The following terms and acronyms are being used in the summary:

DDD	Division of Developmental Disabilities
DOH	Department of Health
DMH&H	Division of Mental Health and Hospitals
ICF	Intermediate Care Facility
SNF	Skilled Nursing Facility
LTCF	Long Term Care Facility
NF	Nursing Facility
MI	Mental Illness
MR	Mental Retardation
PAS	Pre-Admission Screening
PASARR	Pre-Admission Screening and Annual Resident Review
RSN	Regional Staff Nurse

The amendments revise the definitions of skilled and intermediate care facility services that currently appear in N.J.A.C. 10:63-1.2, Definitions. There will still be a skilled nursing facility level of care (SNF). In order to qualify for SNF level of care, a patient must meet the criteria for 2.5 hours of nursing care plus one or more of the additional specified nursing services, such as tracheostomy, respirator, intravenous therapy, wound care, oxygen therapy, etc. (see N.J.A.C. 10:63-1.3(d)1 below). With respect to qualifications for ICF care, a patient must meet the criteria for 2.5 hours daily of nursing services, required because he or she has a physical and/or social dysfunction requiring substantial supervision for technical health needs and/or assistance with activities of daily living. The amendments create one level of ICF care. There will no longer be two levels of ICF care.

The Division of Medical Assistance and Health Services (the Division) will continue to prior authorize the need for nursing home care as they have done in the past. The patient will be assessed by the Division's Regional Staff Nurse (RSN), who will make a determination as to whether the patient qualifies for nursing facility services. The amendments do indicate a change in policy in that all admissions to NFs must be prior authorized or screened. Currently, patients being admitted from hospitals can be discharged directly from the hosital to the NF. The amendments will require prior authorization for hospitalized patients, if Medicaid is to become the payer for the nursing facility care. This change is being made pursuant to N.J.S.A. 30:4D-17.10 et seq. (P.L. 1988 c.97), and is in compliance with the Nursing Home Task Force Report submitted to the Governor by the Departments of Human Services, Community Affairs and Health, and the Office of the Public Advocate on July 21, 1983, which recommended that every individual who, at the time of application is eligible for Medicaid or will become eligible for Medicaid within six months, undergo a preadmission screening, commonly referred to as PAS.

As an adjunct to PAS, there is a Federal statutory requirement which took effect January 1, 1989 and which requires that patients who seek admission to an NF be screened if they have a condition of mental illness (MI) or mental retardation (MR) to determine if there is a need for active treatment for the MI or MR. The active treatment review for MI patients is made by DMH&H; the active treatment review for MR is made by DDD. (See 1919(e)(7) of the Social Security Act, codified as 42 U.S.C. 1396r).

The text of the rules as proposed describes the administrative procedures used by the RSN in conducting the assessment and notifying the patient, and providers when appropriate, of approval or denial of NF care. Patients denied NF care will have the right to a fair hearing.

With respect to reimbursement, certain sections of the Cost Accounting and Rate Evaluation (CARE) Guidelines are being amended to indicate that, operative April 1, 1990, the minimum nursing requirements in terms of hours in NFs will be calculated using the number of patient days during the base period and the patient mix related to specific nursing services which require additional minimum nursing hours. The New Jersey Department of Human Services and the New Jersey Department of Health will designate a base period to be used in establishing an interim rate, pursuant to N.J.A.C. 10:6-3. The basic intent of this reimbursement methodology is to pay the NF a single per diem rate that recognizes additional nursing staff costs associated with the additional nursing services.

There are additional changes associated with this proposal. The definitions of physical therapists, occupational therapists, and speech pathologists or audiologists are being amended to conform with Federal regulations (42 CFR 440.110). In addition, physical therapists, speech language pathologists and audiologists must now be licensed in accordance with New Jersey law. (The statute governing physical therapists is N.J.S.A. 45:9-37.13; the statute governing speech language pathologists and audiologists is N.J.S.A. 45:3B-1).

Social Impact

The proposed amendments and new rules impact on LTCFs, which will now be referred to as NFs (nursing facilities). Both skilled and intermediate care facilities are considered NFs. The amendments and rules impact upon nursing services, social services, dietary services and reimbursement.

Department of Health standards governing reimbursement in long term care facilities were duly promulgated, allowing for public comment. These proposed rules seek to apply the Department of Health Standards in a manner that would allow for reasonable and appropriate reimbursement through the Medicaid program.

The amendments and rules impact on Medicaid applicants and/or patients in that they will now be required to undergo pre-admission screening, pursuant to State law, prior to admission to a NF.

If, during the pre-admission screening process, a patient is found to have a diagnosis or condition that indicates the presence of mental illness or mental retardation, then the patient must be evaluated regarding the need for active treatment.

The rules and amendments also impact upon hospitals, who will not be able to transfer patients to nursing facilities without a PAS.

Economic Impact

Medicaid patients in NFs are required to contribute towards the cost of their care from their available income. This is not a change.

NFs will be reimbursed based on this amended methodology. The actual impact on an individual NF will depend on their patient mix and other factors contained in N.J.A.C. 10:63-3.

The estimated cost to the State of New Jersey of implementing these amendments and rules on an annualized basis will be $5.5 million. This is based on data provided by the New Jersey State Department of Health.

Regulatory Flexibility Analysis

Approximately 285 NFs participate in the New Jersey Medicaid program and are regulated by N.J.A.C. 10:63. The number of small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq, among these is unknown.

As a condition of participation the New Jersey Medicaid program, all NFs are already required to maintain medical, nursing, social service, patient activity and billing records on all Medicaid patients, in accordance with accepted professional standards and practices (see N.J.A.C. 10:63-1.14).

These amendments require NFs to document the standard services and any additional services so that the patients' nursing care needs will be adequately documented and the basis of reimbursement accurately determined. A nursing facility (NF) that does not maintain adequate documentation may have its rate adjusted downward, upon clinical audit.

Nursing facilities are also required to assess the patient upon admission and to review the need for nursing care periodically thereafter. These requirements have always been a part of the Medicaid program and are based on Federal and State law, rules and regulations. Amendments have been proposed which indicate a change in policy, in that all admissions to nursing facilities must now be screened by the Medicaid regional staff nurse pursuant to N.J.S.A. 30:4D-17.10 et seq., if Medicaid is to become the payer for the NF care.

In addition, all NFs will continue to be required to submit cost reports to the Department of Health within prescribed time frames. This is a Federal requirement which the Department of Human Services has no discretion to waive. In addition, cost reports are used as the basis of reimbursement to the NF.

The Department believes that the reporting, recordkeeping, and compliance requirements of these amendments are necessary for the general health, safety, and welfare of Medicaid patients in nursing facilities, and has determined, therefore, that no differentiation based upon business size shall be made.

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

10:63-1.2 Definitions

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

"Clinical audits" means a process of professional review performed by Regional Staff Nurses (RSNs) of the 2.5 hour/day patients at least once in a 12 month period and a professional review of individuals with one or more of the additional nursing services at least once every six months.

"Comprehensive Assessment and Care Plans" means a total evaluation and plan of care of a patient prepared by an interdisciplinary team in conjunction with the patient and his or her family or legal representative, as appropriate. This includes measurable objectives and timetables to meet the patient's medical, nursing, dietary, and psychosocial needs that are identified at the assessment.

. . .

"Department of Health" (DOH) means the New Jersey State Department of Health.

"Division of Developmental Disabilities" (DDD) means the Division of Developmental Disabilities within the New Jersey Department of Human Services.

"Division of Mental Health and Hospitals" (DMHH) means the Division of Mental Health and Hospitals within the New Jersey State Department of Human Services.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the RSN during the Pre-Admission Screening (PAS) assessment process. The HSDP reflects each patient's problems and required care needs, is forwarded to the authorized care setting and is attached to the patient's medical record upon admission to a nursing facility or when the patient receives services from certified home health care agencies.

"Initial Assessment and Care Plan" means the evaluation and plan of management of the patient developed on the day of admission which includes at the least: hygiene, immediate dietary needs, medication, level of activities, and special therapies.

"Intermediate care facility (ICF)" means a free-standing institution or an identifiable part of an institution which is [either] **both** licensed [or approved] **and certified** by the State Department of Health as an ICF, [and which meets] **meeting** all the State and Federal requirements for participating in the New Jersey Medicaid Program as an ICF.

"Intermediate care patient" means a patient who meets the criteria for 2.5 hours per day of nursing services and who has physical and/or mental and/or social dysfunction requiring substantial assistance on a daily basis with personal care needs involving activities of daily living. Such nursing services are provided 24 hours a day by licensed and nonlicensed personnel under the general direction of a registered professional nurse, pursuant to N.J.A.C. 10:63-1.3. These patients require continued restorative and psychosocial services pursuant to this chapter.

. . .

["Level III, skilled nursing patient" means a person with acute or sub-acute medical and/or mental dysfunction requiring skilled, nursing, psycho-social and restorative care during a 24 hour period. The Level III patient requires continuous 24 hour availability of nursing personnel at the licensed nurse level under the general direction of a registered professional nurse and will require other skilled services on an intensive basis including rehabilitation. The dysfunction may involve one or several physiological systems, may be stabilized or not, with symptoms subsiding or increasing. The patient may be bed fast, chair fast, semi-ambulant or ambulant (with or without assistive devices). Determination of this level of care requires an identification of skills required and evidence that as a practical matter such care can only be provided in a Long Term Care skilled nursing facility setting.]

["Level IV-A, intermediate care patient" means a person with physical and/or mental and/or social dysfunction requiring on a daily basis substantial assistance with personal care needs involving activities of daily living. Nursing care at Level IV-A must be provided 24 hours a day by licensed and nonlicensed personnel under the general direction of a registered professional nurse. These patients require continued restorative and psycho-social services which as a practical matter can only be provided in a Long Term Facility setting.]

["Level IV-B, intermediate care patient" means an ambulant or semi-ambulant person with physical and/or mental dysfunction requiring minimal assistance with personal care needs on a daily basis. The Level IV-B patient requires continuous on-site availability of licensed and nonlicensed personnel for each 24 hour period under the general direction of a licensed practical nurse. The patients at this level of care will require continuing restorative, preventive and maintenance care which as a practical matter can only be provided in a Long Term Care Facility setting. The Level IV-B patient is usually fairly self sufficient in activities of daily living with or without self help devices and his needs usually have greater social than medical significance.]

["Long Term Care Facility (LTCF)" means a Skilled Nursing Facility (SNF) and/or an Intermediate Care Facility (ICF) which exists as a free-standing institution or an identifiable part of an institution and which meets all the State and Federal requirements for New Jersey Medicaid Program participation as described in N.J.A.C. 10:63-1.15. LTCFs will be required to provide sufficient

professional and non-professional staff to comply with the regulations prescribed by the New Jersey State Department of Health.]

"Long Term Care Services for each patient" means an individually planned program of care and rehabilitation as appropriate, in addition to the basic requirements for food and shelter. The [plan included] **services address** medical, nursing, personal **care**, [rehabilitation] **rehabilitative**, recreational and social **needs** [services]. [Rehabilitation] **Rehabilitative** services and [restoration] **restorative** nursing **care** are provided as required by the individual needs of the patient with the degree of skill appropriate to [each level of care] **the provision of services required by this chapter**.

"Medical Director" means a physician licensed under New Jersey State law who is responsible for the direction and coordination of medical care in a [LTCF] **nursing facility**.

"Medical Evaluation Team (MET)" means a team consisting of a Medicaid [Regional or Local Medical] **Physician** Consultant, a [Medicaid] Regional [Nurse Supervisor or Regional] Staff Nurse, [and a Medicaid Social Worker] **a Regional Pharmaceutical Consultant, a Medical Social Care Specialist I (MSCS I) and a Medical Social Care Specialist II (MSCS II)** who are assigned to the Medicaid District Office (MDO). [In addition, a social worker from either the County Welfare Agency (CWA) or the Bureau of Transitional Services (BTS) may be invited to participate as a team member in specific instances.] A MET has the responsibility to review the medical, nursing, and social information obtained at the time of the patient's assessment as well as any other supporting data in order to evaluate the need for long term care, determine the [level of] care needed, the feasibility of alternate care, the quality of care given and the outcome of service. **Members of the MET may review each patient as individual team members or may perform the reviews as a multidisciplinary team.**

. . .

["Medicaid Medical Review Team (MRT)" means a team consisting of a Medical Consultant, Regional Nurse Supervisor and/or a Regional Staff Nurse and Regional Medicaid Social Worker or Social Worker Supervisor who carries out the Federal requirements for Periodic Medical Review.]

"Medical staff" means one or more duly licensed physicians who act as the attending physician(s) to Medicaid eligible patients in a [LTCF] **nursing facility**.

"Mixed Skilled Nursing Facility and Intermediate Care Facility" means a free-standing institution or an identifiable part of an institution which is **both** [either] licensed [or approved] **and certified** by the State Department of Health as a SNF/**ICF** and meets all the State and Federal requirements for participation in the New Jersey Medicaid Program as both a SNF and ICF.

["Multiple Occupancy in a LTCF" means the mixing of residents requiring various levels of care, i.e., Skilled Nursing, Intermediate A and Intermediate B care, in either the entire facility or in a distinct part of a facility which is certified for that Level of Care.]

"Nursing facility" means an institution (or a distinct part of an institution) certified by the State Department of Health for participation in Title XIX Medicaid and primarily engaged in providing:

1. Nursing care and related services for patients who require medical, nursing care, and social services;

2. Rehabilitative services for the rehabilitation of injured, disabled, or sick; or

3. Health-related care and services on a regular basis to patients who because of mental or physical condition require care and services above the level of room and board; the care and treatment of mental disease.

4. However, the nursing facility is not primarily for the care and treatment of mental diseases.

"Occupational therapist" means a person who is registered by the American Occupational Therapy Association or is a graduate of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

"Periodic Medical Review (PMR)" means a process of professional review at least once in a [twelve] **12** month period by the New Jersey Medicaid Program [MRT] **MET** of the adequacy and quality of [long term care] **nursing facility care** provided by the [LTCF] **NF** [for patients cared for by that facility].

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent; and, if practicing in the State of New Jersey, is licensed by the State of New Jersey, or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and also meets all applicable Federal requirements.

"Physician's Services" means those services provided within the scope of practice of his profession as defined by the laws of New Jersey and those services which are performed by or under the direct personal supervision of the physician.

1. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners.

2. "Direct Personal Supervision" means that the services must be rendered in the physician's presence. It is not the intent of the Program to reimburse a physician for history and/or physical examinations performed by [interns, residents, other house staff members or physician's assistants] **physicians in training such as interns, residents, other house staff members.**

"Pre-Admission Screening (PAS)" means that process by which all Medicaid eligible recipients and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified nursing facility who are seeking admission to a Medicaid certified nursing facility receive preadmission screening by the Medicaid District Office to determine appropriate placement prior to admission to a nursing facility, pursuant to N.J.S.A. 30:4D-17.10 (P.L. 1988, c.97).

"Prior authorization" means approval granted by the Division of Medical Assistance and Health Services through the appropriate Medicaid District Office (MDO) for payment for [LTCF] **NF** services rendered to a [Medical] **Medicaid** eligible patient for a specific time period.

["Qualified occupational therapist" means one who is registered by the American Occupational Therapy Association or is a graduate of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association and is engaged in obtaining the required supplemental clinical experience prerequisite to registration by the American Occupational Therapy Association.

"Qualified physical therapist", for program payment purposes means an individual who is licensed as a physical therapist by the state in which the physical therapist is practicing and who meets one of the following requirements:

1. Has graduated from a physical therapy curriculum approved by the American Physical Therapy Association, or by the Council on Medical Education and Hospitals of the American Medical Association, or jointly by the Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

2. Prior to January 1, 1966, was admitted to membership by the American Physical Therapy Association, or was admitted to registration by the American Registry of Physical Therapists, or has graduated from a physical therapy curriculum in a four year college or university approved by a State Department of Education; or

3. Has two years of appropriate experience as a physical therapist and has achieved a satisfactory grade on a proficiency examination approved by the Secretary except that such determinations of proficiency will not apply with respect to persons initially licensed by a state as a physical therapist after December 31, 1977, or seeking qualification as a physical therapist after that date; or

4. Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring physicians; or

5. If trained outside the United States, was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy, meets the requirements for membership in a member organization of the World Confederation for Physical Therapy, has one year of experience

under the supervision of an active member of the American Physical Therapy Association, and has successfully completed a qualifying examination as prescribed by the American Physical Therapy Association.]

"Regional Staff Nurse" means a registered professional nurse employed by the Division of Medical Assistance and Health Services who performs health needs assessments as required by this chapter.

"[Rehabilitation] **Rehabilitative** and/or restorative nursing care" means skilled nursing care provided by a registered professional nurse, or under the direction of a registered professional nurse qualified by experience in [rehabilitation] **rehabilitative** or restorative nursing care. This person acts both independently and as a member of a health care team directed toward rehabilitation and restoration of an individual to his **or her** maximum potential for self-care and independence, including skilled services in treatment, maintenance, prevention, teaching, emotional support, social stimulation and controls necessary to meet the established goals for physical, mental, emotional, behavioral and social levels of function.

"[Rehabilitation] **Rehabilitative** services" means physical therapy, occupational therapy, speech-**language pathology** [therapy] **services, and the use of such supplies and equipment as are necessary in the provision of such services. Rehabilitative services are made available to the Medicaid resident as an integral part of a comprehensive medical program. Rehabilitative services and** other restorative services are provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the resident to his **or her** best functional level. [They] **Rehabilitative services** do not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form, massage, routine calisthenics or group exercises, assistance in any activity or use of simple mechanical device not requiring the special skill of a qualified physical therapist. [Rehabilitation services in a LTCF must be made available to covered persons as an integral part of a comprehensive medical care program.] Such services include not only intermittent or part-time service to the patient, but also instructions to responsible members of the family in follow-up procedures necessary for the care of the patient.

"Skilled Nursing Facility (SNF)" means a free-standing institution or an identifiable part of an institution which is [either] **both** licensed [or approved] **and certified** by the State Department of Health as a Skilled Nursing Facility and which meets all the State and Federal requirements for participation in the New Jersey Medicaid Program as a Skilled Nursing Facility.

"Skilled nursing patient" means a person with acute or sub-acute medical and/or mental dysfunction requiring skilled nursing, psychosocial and restorative care during a 24 hour period. The skilled nursing patient is a person requiring one or more additional nursing services pursuant to N.J.A.C. 8:39-25.2(b)2. The patient requires continuous 24 hour availability of nursing personnel at the licensed nurse level under the general direction of a registered professional nurse and will require other skilled services on an intensive basis including rehabilitation. The dysfunction may involve one or several physiological systems, may be stabilized or not, with symptoms subsiding or increasing. The patient may be bed fast, chair fast, semi-ambulant or ambulant (with or without assistive devices). Determination of this level of care requires an identification of skills required and evidence that as a practical matter such care can only be provided in a facility setting.

"Social Services" means the identification of social and emotional needs of the patient(s) and the provision of services to meet those needs.

"Speech-**language** pathologist" means [an individual] **a person** who [is certified by] **has a certificate of clinical competence from** the American Speech and Hearing Association;[, or] has completed the [academic] **equivalent educational** requirements and [is in the process of accumulating the necessary supervised] work experience **necessary for the certificate,** [required] **or has completed the academic program and is acquiring supervised work experience to qualify for the certificate, and, if practicing in the State of New Jersey, is licensed by the State of New Jersey; or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable. The practitioner shall also meet all applicable Federal requirements.**

"Track of care" means the setting and scope of Medicaid services approved by the RSN following assessment of the Medicaid eligible or potentially eligible Medicaid patient, as follows:

1. "Track I" means long term nursing facility (NF) care.

2. "Track II" means short term nursing facility (NF) care.

3. "Track III" means long term care services in a community setting.

. . .

10:63-1.3 Required services

(a) The [following] services set forth in this section are included in the per diem rate.

Recodify (a)-(c) as (**b**)-(**d**) (No change in text.)

[(d)](e) Nursing services:

[1. Skilled nursing facility level III:

i. The SNF provides 24 hour nursing services in accordance with the minimum standards set forth by the New Jersey Department of Health.

ii. Nursing services are provided in accordance with an individual plan of care designed to ensure that each patient receives treatments, medications, and diet as prescribed, and rehabilitation nursing care as needed; receives proper care to prevent decubitus ulcers and deformities, and is kept comfortable, clean, well groomed and protected from accident, injury and infection, and encouraged, assisted, and trained in self-care and group activities.

iii. Nursing services personnel are assigned duties consistent with their education and experience and based on the patient load.

2. Intermediate care facility level IV-A:

i. The ICF IV-A provides 24 hour nursing service in accordance with the minimum standards set forth by the New Jersey Department of Health.

ii. Nursing services are provided in accordance with an individual plan of care setting forth measurable goals or behaviorally designed activities, experiences, or therapies necessary to achieve such goals or objectives. The overall objective of the plan is to attain and/or maintain the optimal physical, intellectual, social or vocational functioning of which the patient is presently or potentially capable.

iii. Nursing personnel are assigned duties consistent with their education and experience and based on the patient load.

3. Intermediate Care Facility Level IV-B:

i. The ICF Level IV-B provides 24 hour nursing services in accordance with the minimum standards set forth by the New Jersey Department of Health.

ii. Nursing services are provided in accordance with the patient's health care plan for medications, treatments, diet, and other health related services, notification of physician when changes are appropriate and coordination of the health care plan and services with the social plan of care and discharge plan.

iii. Nursing personnel are assigned duties consistent with their education and experience and based on the patient load.]

1. The nursing facility shall provide 24 hour nursing services in accordance with the minimum standards set forth by the New Jersey Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39, which is incorporated herein by reference. The nursing facility shall provide nursing services by licensed nursing personnel on the basis of the total number of patients multiplied by 2.5 hours/day; plus the total number of patients receiving each of the following services:

i. Tracheostomy	**1.25 hours/day**
ii. Use of Respirator	**1.25 hours/day**
iii. Head Trauma Stimulation/advanced neuromuscular/orthopedic care	**1.50 hours/day**
iv. Intravenous Therapy	**1.50 hours/day**
v. Wound Care	**0.75 hour/day**
vi. Oxygen Therapy	**0.75 hour/day**
vii. Nasogastric Tube feedings and/or gastrostomy	**1.00 hour/day**

2. The nursing facility provision of 2.5 hours/day means services provided to Medicaid patients who are chronically or sub-acutely ill and require care for these entities, disease sequela or related deficits.

i. Patients may have unstable medical, emotional/behavioral and psychosocial conditions which require ongoing nursing assessment, intervention and/or referrals to other disciplines for evaluation and appropriate treatment. Typically, nursing facility patients (requiring NF

placement) have severely impaired cognitive and related problems with memory deficits and problemsolving. These deficits severely compromise personal safety and therefore, require a structured therapeutic environment. Nursing facility individuals are dependent in several activities of daily living. Dependency in activities of daily living (ADL) may have a high degree of patient variability. Each separate ADL may be classified as being independent requiring some assistance, or totally unable to do for self. Inclusive in the 2.5 hours is the implementation of services (based upon a comprehensive assessment and plan of care) which addresses the medical, nursing, dietary and psychosocial needs that are essential to obtaining and maintaining the highest physical, mental, emotional and functional status of the individual patient. Care and treatment shall be directed toward restoration, maintenance or the prevention of deterioration. Care is delivered in a therapeutic health care environment with the goal of improving or maintaining overall function and health status. The therapeutic environment ensures that the individual does not decline (within the confines of the individual's right to refuse treatment) unless the individual's clinical condition demonstrates that deterioration was unavoidable.

3. The 2.5 hours of nursing care shall also include at least:

i. Rehabilitative and restorative measures such as:

(1) Supervision, direction, assistance or retraining in all phases of activities of daily living to promote independence and restore function to whatever extent the individual is able (bathing, dressing, toileting, transfers and ambulation, continence, and feeding);

(2) Proper positioning of the individual in bed, wheelchair or other accommodation to prevent deformities and pressure sores;

(3) Program of bowel and bladder retraining for incontinence, in accordance with the individual's potential for restoration;

(4) Range of motion exercises, active and passive, as necessary;

(5) Follow-up care as required for physical therapy, occupational therapy and/or speech-language pathology services when these therapies are ordered by the physician;

(6) Follow-up care as required for uncomplicated plaster care. Assistance with adjustment to and use of prosthetic and/or orthotic devices;

(7) Routine care and maintenance of ileostomy or colostomy. Care and instruction for self-care of colostomy or ileostomy. Uncomplicated care of ostomy (i.e., cleansing and appliance change);

(8) Instruction relative to special diet;

(9) Instruction in self-administration of medications if ordered by physician;

(10) Instruction in health care as clinically indicated; and

(11) Based on need, individual or group activities and therapies for psychosocial maintenance and restoration.

ii. Procedures, therapies and functions, including:

(1) Ongoing assessment of the individual's health status for the purpose of planning, implementing and evaluating individual care, with particular attention to unstable medical conditions;

(2) Safe and appropriate administration of medications;

(3) Emergency care (for example, oxygen, injections, resuscitation);

(4) Observation, recording, interpretation and reporting of vital signs;

(5) Intake and output recording, as clinically indicated;

(6) Catheter care including intermittent or continuous bladder irrigations, intermittent catherizations, and use of other drainage catheters;

(7) Preparations for laboratory procedures and collection of laboratory specimens;

(8) Telephone pacemaker or electrocardiogram checks;

(9) Terminal illness management, when there is need for supportive services and intensive personal care;

(10) Supervision and protection of individuals who are confused and have the propensity for wandering;

(11) Heat or cold treatments as ordered by the physician;

(12) Care of Stage I and II pressure sores, risk determination for pressure sores; using a standardized assessment instrument and implementation of necessary preventive measures as clinically indicated (for example, special mattress or cushions, positioning schedule, range of motion, nutrition support, skin care and skin checks).

(A) A Stage I pressure sore is an area of redness which does not respond to local circulatory stimulation. It involves the epidermis. No break in the skin is evident.

(B) A Stage II pressure sore is a partial thickness, loss of skin layers with dermis and possibly epidermis involvement. A shallow ulcer or blister appears, and the site is free of necrotic tissue.

Note: An individual who enters the nursing facility without pressure sores should not develop them unless the individual's condition demonstrates pressure sores were unavoidable. Treatment of superficial skin tears, wounds, excoriations and lesions shall be included in the 2.5 hours of care;

(13) The long term care of a simple stabilized tracheostomy with minimal care, and supervision by licensed staff;

(14) Uncomplicated self-administered respiratory therapies requiring minimal staff assistance and direction;

(15) Protection of individuals through the appropriate use of universal precautions, in accordance with Centers for Disease Control, guidelines published in the Morbidity and Mortality Weekly Report, volume 38, number 5-6, (Centers for Disease Control, Atlanta, GA 30333);

(16) Appropriate use of restraints, in accordance with the physician's order, and clinically appropriate measures to guarantee the safety of individuals (for example, side rails);

(17) Counseling, environmental manipulation, and emotional support necessary for the management of impaired physical and mental functioning; and

(18) Careful assessment for changes in affect or mood which may require special precautions, therapies, or appropriate referral.

iii. Diet and nutrition as follows:

(1) Provision of special diets and dietary instructions regarding recently diagnosed medical conditions;

(2) Observation, supervision and recording of special diet intake during adjustment to treatment regimen for stabilization of a medical condition; and

(3) Observation, supervision and recording of basic nutritional states for maintenance of current health status and prevention of deficiencies.

iv. Psychosocial needs as follows:

(1) Mental status impairment requiring nursing treatment, observation and/or direction (for example, marked confusion and/or disorientation in one, two, or three spheres (time, place and/or person), marked memory loss, severe impairments in judgment, necessitating nursing supervision and intervention; and

(2) Emotional support requiring counselling on an ongoing basis and during adjustment to impaired physical and mental states, including observation for changes in affect and mood which may require special precautions and/or therapies.

4. Nursing services requiring additional nursing hours above 2.5 hours/day are as follows:

i. Wound Care (.75 hours): Includes, but is not limited to, ulcers, burns, pressure sores, open surgical sites, fistulas, tube sites and tumor erosion sites. In this category are Stage II pressure sores encompassing multiple sites, Stage III and Stage IV pressure sores. Stage III and Stage IV are defined as follows:

(1) Stage III—The wound extends through the epidermis and dermis into the subcutaneous fat and is a full thickness wound. There may be inflammation, necrotic tissue, infection and drainage and undermining sinus tract formation. The drainage can be serosanguinous or purulent. The area is painful.

(2) Stage IV—The pressure wound extends through the epidermis, dermis and subcutaneous fat into fascia, muscle and/or bone. Eschar, undermining odor and profuse drainage may exist.

(3) Wounds in Stage IV include:

(A) Open wounds which are draining purulent or colored exudate or which have a foul odor present and/or for which the individual is receiving antibiotic therapy;

(B) Wounds with a drain or T-tube;

(C) Wounds which require irrigation or instillation of a sterile cleansing or medicated solution and/or packing with sterile gauze;

(D) Recently debrided ulcers;

(E) Wounds with exposed internal vessels or a mass which may have a proclivity for hemorrhage when dressing is changed (for example, post radical neck surgery, cancer of the vulva);

(F) Open wounds, widespread skin disease or complications following radiation therapy, or which result from immune deficiencies or vascular insufficiencies; and

(G) Complicated post-operative wounds which exhibit signs of infection, allergic reactions or an underlying medical condition that affects healing.

ii. Tube feedings (1.00 hr/day); which include nasogastric tube, and percutaneous feedings may be used if the feedings are required to treat the individual's condition after all non-invasive avenues to improve the nutritional status have been exhausted with no improvement. The clinical record shall document the non-invasive measures provided and the individual's poor response. The record should indicate the medical condition for which the feedings are ordered.

iii. Oxygen therapy (.75 hr/day); which includes complex provision of oxygen therapies due to the nature of the individual's condition, type or multiplexity of procedures required. Positive pressure breathing therapy, aerosol therapy, and the individual is dependent upon administration by licensed staff.

iv. Tracheostomy (1.25 hrs/day); which includes new tracheostomy sites and complicated cases involving infections, infection prevention and unstable respiratory functioning.

v. Intravenous therapy (1.25 hrs/day); which includes clinically indicated therapies ordered by the physician, such as central venous lines, Hickman/Broviac catheters, heparin locks, total parenteral nutrition, clysis, hyperalimentation and peritoneal dialysis. When clinically indicated, intravenous medications should be appropriately and safely administered within prevailing medical protocols. If intravenous therapy is for the purpose of hydration, the clinical record should document any preventive measures and attempts to improve hydration orally, and the individual's inadequate response.

vi. Respirator use (1.25 hrs/day); which includes care for individuals who are stable and no longer require acute or specialized respirator programs and who require mechanical ventilation to oxygenate their blood. Ongoing assessment and intervention by a licensed nurse is needed. The individual's treatment plan should include protocols for weaning the individual from assisted respiration and/or self care when clinically indicated and ordered by the physician.

vii. Head trauma stimulation/advanced neuromuscular/orthopedic care (1.5 hrs/day) as follows:

(1) Care of head trauma shall be directed toward individuals who are stable (have plateaued) and can no longer benefit from a rehabilitative unit or unit for specialized care of the head injured. Individuals shall have access to and periodic reviews by such specialists as a neuropsychologist, psychiatrist and Vocational Rehabilitation Specialist, in accordance with their clinical needs. There shall also be contact with appropriate therapies, such as physical therapy, speech-language pathology services and occupational therapy. The distinguishing characteristic for add-on hours for head trauma is the necessity for ongoing assessment and follow-up by licensed nursing personnel. Additionally, nursing protocols may be initiated which are specifically designed to meet individual needs of head injured individuals. The nurse may also supervise a coma stimulation program, when this need is identified by the multidisciplinary team.

(2) Advanced neuromuscular care needs shall be identified by the physician as needing advanced neuromuscular care in a long term care setting. Individuals identified as needing these services require intensive ongoing assessment and intervention by licensed nursing staff.

(3) Advanced orthopedic care shall be the care of plastered body parts with a pre-existing peripheral vascular or circulatory condition requiring observations for complications and monitoring and administration of medication to control pain and/or infection. Such care shall also involve additional measures to maintain mobility, care of post-operative fracture and joint arthroplasty, during the immediate subacute post-operative period involving proper alignment, teaching and counseling and follow-up to therapeutic exercise and activity regimes. Individuals in this group shall be identified by the physician as needing advanced orthopedic care. If the requirement for advanced orthopedic care exceeds 30 days, clinical need shall be demonstrated and clearly documented by the multidisciplinary team.

(e) Restorative nursing services: Restorative nursing is an active program of restorative care, which is an integral part of all nursing service, directed toward assisting each patient to achieve and maintain an optimal level of independence in self-care, and to assist him to achieve his maximum possible physical, mental, and social efficiency. Restorative nursing initiated prior to admission of persons transferred to [LTCFs] **NFs** from other health care delivery providers should be continued in the SNF and/or ICF. If no restorative care was initiated prior to admission the registered professional nurse should assess the patient or resident for restorative care needs and initiate a restorative plan of care.

1. (No change.)

(f)-(g) (No change.)

(h) Durable medical equipment: Routinely used equipment ordered for Medicaid eligible patients in a participating medical institution, **that is,** durable medical equipment ([e.g.] **(for example)**, walkers, wheelchairs, bedrails, crutches, traction apparatus, IPPB machine, electric nebulizers and electric aspirators) and other therapeutic equipment and supplies essential to furnish the services offered by the facility for the care and treatment of its patients is considered part of the institution's cost, and cannot be billed directly to the program by the supplier. In exception situations see N.J.A.C. 10:63-1.4 [(c)].

(i) Equipment necessary for the administration of oxygen: Equipment for administration of oxygen for patients in a [LTCF] **NF** is a required service. Oxygen itself must conform to United States Pharmacopoeia[l] Standards in order to be used as a medicinal gas.

(j) (No change.)

(k) Patient activities: An ongoing patient activities program shall be established as an adjunct to the treatment program. The program shall be a planned schedule of [recreational, social, spiritual, and other purposeful activities] **social, physical, spiritual, psychological, leisure, cognitive, vocational and educational activities** designed to meet the needs and interests of all patients, whether ambulatory, chairbound, or bedfast. It shall enable the patients to maintain a sense of usefulness and self-respect, and when possible, help to prevent regression. It shall encourage restoration to self-care and resumption of normal activities and stimulate and [support the patient's desire to use physical and mental capabilities to the fullest extent] **maximize the total functional ability of the patient**.

1. Staff:

i. Patient activities staff shall meet the qualifications for the positions of Patient Activities Coordinator and Patient Activities Consultant as defined [in the N.J. State Department of Health Manual Standards for Licensure of Long Term Care Facilities (see:] **by** N.J.A.C. 8:39-[1.1 and 1.21)]**7**. The facility shall appoint a patient activities coordinator who shall provide patient activity services in the facility [at least 10 hours per week for every 15 patients] **on an average of 45 minutes per week per patient**.

ii. Facilities of more than 60 patients shall have a full-time coordinator. Additional patient activity **staff** time shall be provided [proportionate] to the number of patients over 60 **at a ratio of 1:53 patients.**

iii. If the coordinator does not meet the qualifications[,] **required by N.J.A.C. 8:39-7, or if significant, unresolved or recurring problems are identified,** a patient activities consultant shall be appointed who shall provide at least four hours of consultation in the facility per month [until the coordinator meets the requirements, a period not to exceed two years].

iv. The use of volunteers should be encouraged and utilized to supplement full-time staff. Volunteers should be trained and supervised in this performance of their duties by qualified staff.

2. Program: A **monthly** written schedule of activities shall be established and **conspicuously** posted so that patients and staff are aware of daily programs. There shall be a diversity of activities seven days per week, including evenings. **Evening activities shall be scheduled after the evening meal.** Activities should be varied to include passive and active programs, individual and group sessions, totally reflecting the interests and needs of the population of each facility. There shall be input into the planning and carrying out of the programs by a Patient Council which meets [regularly] **monthly** with the coordinator.

3. Space and equipment:

i.-ii. (No change.)

iii. Adequate indoor and outdoor recreational areas shall be provided with sufficient equipment and materials available to support [all activities] **ongoing programs as well as self-directed activities.**

4. Patient utilization:
i.-ii. (No change.)
iii. All staff of the facility shall be trained **at least yearly** in the value of an activities program for overall effective patient care and shall cooperate with, and participate in, activities provided within the facility.
5. (No change.)
(l) Social services:
[1. Staff:
i. The LTCF may elect to either provide social services directly or arrange with an appropriate social service agency, usually the County Welfare Agency, for the provision of social services.
ii. Social Services staff shall meet the qualifications for Social Work Designee and Social Worker as defined in the Health Department Manual of Standards for Licensure of Long Term Care Facilities (see N.J.A.C. 8:39-1.1, entitled Definitions and/or Qualifications, and N.J.A.C. 8:39-12, entitled Social Services).
iii. The Division of Medical Assistance and Health Services hereby incorporates the definitions pertaining to "social worker" and "social work designee" and New Jersey Department of Health regulations (cited above) governing social services. A copy of these regulations may be obtained by writing to either one of the following:
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625
or
New Jersey Department of Health
Health Facilities Services
CN 367
Trenton, New Jersey 08625
2. In addition to the Health Department regulations, LTCFs who are licensed as skilled nursing facilities must either employ a qualified social worker or have an agreement with a qualified social worker or recognized social service agency for consultation and assistance on a regularly scheduled basis.
i. A qualified social worker is an individual who has, as a minimum, a Bachelor of Social Work degree from a school accredited by the Council on Social Work Education, and has one year of social work experience in a health care setting.
ii. The Federal regulations which are the basis for this requirement are Medicare Regulations 20 CFR 405.1101(s) and 20 CFR 405.1130.]

1. Staff employed by the facility shall provide social work services as follows:
i. Social services staff shall meet the qualification for social worker as defined in N.J.A.C. 8:39-39.
ii. Social work services shall be provided by one or more social workers who possess a bachelor's degree or a master's degree in social work, psychology, sociology, or counseling from an accredited university or education program or who on June 20, 1988 served in the facility as a social work designee, with consultation of at least 8 hours per month from an individual who holds a master's degree in social work. If the social worker has a bachelor's degree in psychology, sociology, or counseling, and no master's degree, then one year of social work experience in a geriatric setting shall also be required.
iii. The facility shall provide an average of at least 20 minutes of social work services per week for each patient. (This is an average. It is equal to one full-time equivalent social worker for every 120 patients.)
2. The purpose of a social service program is to maximize the patient's psychosocial adjustment and to resolve and reduce psychological and social problems that interfere with the patient's functioning and relationships.
3. Social services include:
i. Assessment, based on social history, and present psychosocial functioning and situation; monitoring and support; service planning and delivery; reassessment and discharge planning. Services encompass those to patient and family or other support systems.
ii. When social service needs are identified, they shall include the following areas:
(1) Concerns/problems related to illness, disability, physical function and limitations, sensory deficits, physical appearance and characteristics;
(2) Concerns/problems related to cognitive function including self concept, reality orientation, intellectual capacity, and judgment;
(3) Concerns/problems related to emotional, functional, including depression, anxiety, frustration, lack of appropriate affect or motivation;
(4) Concerns/problems related to behavior including problems in interpersonal relationships, social skills, personal habits including personal hygiene, self-expression, aggressive or self-isolating behavior;
(5) Concerns/problems relating to adjustment to placement;
(6) Concerns/problems regarding family and their availability and support;
(7) Family concerns about patient and family problems impacting on patient;
(8) Problems related to concrete needs, such as clothing, transportation, assistive devices and Personal Needs Allowance (PNA);
(9) Problems related to eligibility for services;
(10) Violation of patients' rights;
(11) Legal issues or problems; and
(12) Problems related to discharge, including physical capabilities and attitudes, informal supports and community resources;
4. Interventions include, but are not limited to:
i. Counseling of patient and family;
ii. Information and referral to other services and professionals;
iii. Advocacy in relation to facility staff or other service professionals;
iv. Assisting patients in understanding and asserting rights;
v. Support, education, and treatment groups for patient and/or family;
vi. Outreach and support to families, friends, and other informal systems;
vii. Consultation, education and support to staff in understanding patient needs and behavior;
viii. Obtaining needed services for patients; and
ix. Discharge planning, which is the coordination of all services required by the discharge plan, including, but not limited to, locating an alternate placement and preparing the patient for discharge.
5. The social worker should function as a member of the interdisciplinary team, to support the patient's quality of life and participate in the patient's plan of care.
6. Social service does not include:
i. Administrative, clerical or billing activity associated with admissions and discharge;
ii. Public relations activity that does not relate to social work services; or
iii. Medical records monitoring responsibilities.

10:63-1.4 Additional services
(a) As a condition for qualifying as a [LTCF] **NF** under the New Jersey Medicaid Program, the facility must maintain effective agreements in order to provide additional services which might be required by an individual patient. Additional services include chiropractic services; dental services; laboratory and x-ray services, including portable, and other disagnostic services; mental health services; podiatry services; [rehabilitation] **rehabilitative** services; special medical equipment; transportation services; **and** vision care[;].
1. It is the right of each Medicaid eligible patient in a [LTCF], **NF** in consultation with the attending physician, to exercise free choice with respect to a provider of additional services. If the patient does not choose to exercise such a right, or is unable by virtue of his[/]**or** her physical or mental condition to do so, a person authorized to act on the patient's behalf, in consultation with the attending physician, may designate a provider. In the absence of an authorized person, the facility, in consultation with the attending physician, may designate a provider.
2. The services listed in this section must be provided and/or be available to each Medicaid eligible patient in a [LTCF] **NF**, but are not part of the per diem rate paid to the [LTCF] **NF**.
3. (No change.)
(b)-(c) (No change.)

(d) Laboratory: X-ray, including portable, and other diagnostic services:

1. Laboratory services: A [LTCF must] **NF shall** have written agreements with one or more general hospitals or one or more clinical laboratories so that the facility can obtain laboratory services, including emergency services promptly. If the facility has its own laboratory capabilities, the services may not be billed on a separate fee-for-service basis. A laboratory must be:

i.-ii. (No change.)

2. X-ray services: A [LTCF must] **NF shall** have written agreements with one or more general hospitals or one or more Board certified or Board eligible radiologists so that the facility can obtain radiological services, including emergency services promptly.

i.-ii. (No change.)

3. Other diagnostic services ([e.g.] **for example**, ECG, EEG, etc.): A [LTCF must] **NF shall** have written agreements with one or more general hospitals or one or more qualified providers so that the facility can obtain such specified services including emergency services promptly.

(e) Mental [Health] **health** services: It is required that all facilities assist Medicaid eligible patients to obtain mental health care through a licensed psychiatrist or psychologist who shall provide or make provision for routine and emergency services.

1. An initial consultation for mental health services does not require prior authorization but shall be performed only upon a written order signed by the attending physician (on the order sheet) citing the reason(s) for the consultation.

i. If the attending physician telephones the order **for consultation** to an appropriate person designated by the [Long Term Care Facility] **NF**, the physician within [7] **seven** days must countersign the order on the order sheet, citing the reason(s) for the consultation, or must personally have signed and forwarded to the [Long Term Care Facility] **NF** an identical order on a prescription form, citing the reason(s) for the consultation.

2. If mental health services are recommended following a consultation, the individual who then will provide the mental health service must submit a completed FD-07 form, ("Request for Authorization of Mental Health Services"), to the Medicaid District Office (MDO) serving that particular [Long Term Care Facility] **NF**. Items #10, #11, and #12 need not be completed on the initial FD-07 inasmuch as a copy of the consultation must accompany this request.

3. The medical consultant in the MDO will discuss with the attending physician the request for services as identified on the FD-07.

i. If the service is authorized, the medical consultant will forward a copy of the FD-07 to the [Long Term Care Facility] **NF**. The FD-07 is to be made part of the "order section" of the patient's chart.

4. (No change.)

(f) (No change.)

(g) [Rehabilitation] **Rehabilitative** services: [Rehabilitation] **Rehabilitative** services include physical therapy, occupational therapy, speech-language [therapy] **pathology** services and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level. It does not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form; massage; routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to eligible recipients as an integral part of a comprehensive medical program.

1. If the attending physician orders an evaluation for physical **therapy,** speech-language **pathology services** or occupational therapy, an appropriate qualified physical therapist, speech-language pathologist, or occupational therapist, as appropriate, may make an initial visit to evaluate the need for physical, speech-language **pathology services,** or occupational therapy without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. Prior authorization by the Medicaid Medical Consultant of the Medicaid District Office is required for all subsequent therapy visits.

2. When prior authorized, reimbursement to a [LTCF] **NF** may be made for more than one type of therapy service performed on the same day, [e.g.] **for example**, physical therapy and speech-language [therapy] **pathology services.**

3. Where the same type of therapy is performed more than once on a given day, or the therapy rendered is a different modality within the same type of therapy, reimbursement will be made for one therapy treatment only. All therapy must be provided under the direct supervision and in the presence of a qualified therapist or [psychiatrist] **physiatrist.**

4. Providers of service:

i. [Rehabilitation] **Rehabilitative** services shall be provided by qualified therapists employed by or under contract to:

(1) An approved Home Health Agency; [or]

(2) A licensed or accredited general or special hospital; [or]

(3) An approved independent outpatient health facility; or

(4) A [LTCF] **Nursing Facility.**

ii. Reimbursement for [rehabilitation] **rehabilitative** services is made to the [LTCF] **NF**, not to the therapist, by this program. Prior authorization is required as outlined in (g)5 below.

(l) Outpatient physical therapy, speech-language [therapy] **pathology services** and occupational therapy services furnished by a Medicare Certified facility to its Medicare eligible inpatients may be billed by the facility to Medicare under Part B only when the beneficiary has exhausted his benefits under Part A or is otherwise ineligible for Part A benefits. When physical therapy, speech-language [therapy] **pathology services** or occupational services are furnished under arrangements to combination Medicare/Medicaid patients, these services should be billed to the provider's Part A Intermediary using Form HCFA-1483 (Provider Billing for Medical and Other Health Services, Exhibit No. 23).

(2) Outpatient physical therapy, speech-language [therapy] **pathology services** and occupational therapy services furnished only by a Medicaid [LTCF] **NF** to Medicaid eligible inpatients only may be billed by the facility to the Bureau of Claims and Accounts if prior authorization for the treatment visits has been given by the Medicaid District Office (MDO). The facility must state to the Medicaid District Office (MDO) that it is not a Medicare provider and, therefore, no Medicare denial letter is needed.

(3) Medicaid may reimburse Medicare certified facilities through their Part A Intermediary (Blue Cross or Prudential) for the unsatisfied deductible (Medicare Part B) when physical therapy, speech-language [therapy] **pathology services** or occupational therapy services are performed for patients eligible for both programs.

5. Billing Medicaid following Medicare decline:

i. If the HCFA-1483 (Exhibit No. 23) claim for physical therapy, speech-language [therapy] **pathology services** or occupational therapy is declined by Medicare and you wish to bill Medicaid for these services, a request for authorization must be made to the MDO. When submitting such a request for authorization to the MDO, the facility must attach a copy of the Medicare denial letter. Medicaid will not authorize payment for any claim for rehabilitation services including but not limited to physical therapy, occupational therapy, speech-language [therapy] **pathology services** or any other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level, which was denied by Medicare by reason of "not medically necessary." If authorization is granted by the MDO, the facility shall bill the Bureau of Claims and Accounts in accordance with established procedures, [e.g.] **for example**, therapy charges, Form MCNH-14 (Exhibit No. 5) plus Form FD-06 (Request for Authorization or Reauthorization for Prescribed Rehabilitation Treatment Program, Exhibit No. 1).

ii. When submitting requests for prior authorization of physicial therapy, speech-language **pathology services** or occupational therapy to the MDO on behalf of patients not covered by Medicare benefits, the facility must state that the "patient is not a Medicare beneficiary."

6. (No change.)

7. Procedure regarding the acquisition of prior authorization for prescribed rehabilitation services:

i. All [LTCFs] **NFs** requesting prior authorization for rehabilitation services for Medicaid eligible patients receiving care in their facilities will use the Form FD-06 [(Exhibit No. 1)].

ii. The [LTCF] **NF** will be responsible for the total completion of the "Patient Information" and "Medical Information and Therapy Requested" portions of the form, in triplicate. If the request is for initial authorization of rehabilitation services, it will not be necessary to complete No. 13 on the form. Note also that if the form is completed by the therapist rather than the attending physician, the latter's prescription must be attached to the request when it is submitted to the Medicaid District Office (MDO).

iii. Following the Medical Consultant's review and disposition, the billing and provider copies of the form will be returned to the [LTCF] **NF** by the MDO. The billing copy is to be submitted to the Bureau of Claims and Accounts along with the MCNH-14 form [(Exhibit No. 5)] for payment.

8. Therapy charges-billing procedures: Refer to N.J.A.C. 10:63-1.11(h) for detailed instructions.

(h) Special Medical equipment: When unusual circumstances require special medical equipment not usually found in a [LTCF] NF, such special equipment may be reimburseable with prior authorization from the Medicaid District Office serving the county where the facility is located.

1. (No change.)

i. Transportation services: [When a Medicaid eligible patient requires a service or care not regularly provided by the LTCF, arrangements to obtain these services are to be made by the facility with appropriate agencies or other responsible persons.] **The nursing facility shall assist a Medicaid resident in obtaining transportation when the resident requires Medicaid-covered service or care not regularly provided by the nursing facility.**

1. Transportation provided by [LTCF] **the nursing facility**: If a transportation service is provided by the [LTCF] **nursing facility** to an inpatient of the [LTCF] **nursing facility,** no additional reimbursement is allowed. Reimbursement is included in the per diem rate.

2. Ambulance service does not require authorization **from the MDO,** but is reimbursable **to the transportation provider** only when the use of any other method of transportation is medically contraindicated. (See N.J.A.C. [10:50-1.3(b)] **10:50-1.3(c)2** for specific [medical] conditions **for ambulance service reimbursement**).

3. [Invalid Coach: Invalid Coach Services] **Invalid coach services do not** require prior authorization from the MDO **when a resident is transported to or from a nursing facility.**

i. Invalid [Coach] coach services [must be rendered] **shall be provided** by [a certified] **an approved** transportation provider (**see N.J.A.C. 10:50-1.3(a)**).

ii. An [Invalid Coach] **invalid coach** may be utilized when a Medicaid [eligible person] **patient** requires transportation from place to place for [medical purposes] **the purpose of obtaining a Medicaid-covered service** and when the use of [a lesser form] **an alternative mode** of transportation, [i.e., cab, bus, or private vehicle] **such as a taxi, bus, livery, or private vehicle** would create a serious risk to life or health.

4.-5. (No change.)

(j) (No change.)

10:63-1.5 Utilization control

(a) Utilization control is a surveillance program established to ensure the quality and timeliness of services provided to eligible individuals, and to safeguard against unnecessary and/or inappropriate utilization of care and services. The utilization control program has as its components:

1.-6. (No change.)

7. Additional visits to long-term care facilities[.]; **and**

8. Clinical audit.

(b) Utilization review is a continuous program of review of the need for services to eligible individuals which includes:

1. Certification of medical necessity: [The Medicaid MET must determine necessity for long term care in all cases of a Medicaid eligible patient including transfer from a general or special hospital to a LTCF (See Appendix-A List of Special Hospitals.)] **The Medicaid Regional Staff Nurse (RSN) shall determine necessity for nursing facility services for Medicaid eligible patients and for individuals who will become Medicaid eligible within six months following admission to a Medicaid certified facility. The determination of necessity for nursing facility services shall be performed through Pre-Admission Screening (PAS) as mandated by New Jersey P.L. 1988, c.97.**

2. Assessment—reassessment of care requirements:

i. [The medical needs of all Medicaid eligible patients referred for long term care will be assessed and conferenced by the MET prior to authorization of long term care.] **The nursing facility (NF) needs of all Medicaid eligible and potentially Medicaid eligible patients referred for admission and continued stay shall be assessed and authorized by the RSN.**

ii. [Initial assessment of all patients admitted to LTCFs from a general or special hospital will be done within 30 days.] **Continuation of nursing facility services will be dependent on assessment and authorization by the RSN at intervals up to six months for patients with one or more additional nursing services as defined in N.J.A.C. 10:63-1.3 and not more than 12 months for patients receiving 2.5 hours per day of nursing services.**

[iii. Continuation of long term care will be dependent on authorization by the MET at intervals up to six months for Level III, and not more than 12 months for intermediate Levels IV-A and IV-B.]

3. [Alternate] **Alternative** care; discharge planning considerations:

i. [Alternate] **Alternative** care planning is the determination, initially and periodically as to whether or not each Medicaid eligible patient requires initial placement or continued placement in an institutional setting and whether or not their nursing, social and other health care needs can be met through alternative institutional or non-institutional services. **The Medical Care Specialist I (MSCS I) shall case manage nursing facility patients to facilitate discharge planning and promote appropriate placement to alternative care settings.**

(1) The [MET] **RSN** will authorize initial [long term care] **nursing facility services** after consideration and rejection of possible means of alternate care. Similarly, the possibility of alternate means of care will be a prime consideration in every reassessment of the [level of] care required by the patient.

(2) The facility shall maintain continued vigilance and effort to utilize [alternate] **alternative** means of care for all [long term care] **nursing facility** patients. The [MET] **MDO staff** will examine patients records for proof of continued vigilance and effort by the facility to utilize [alternate] **alternative** means of care for all long-term patients.

(3) If [alternate] **alternative** care is available, accessible, and appropriate to the needs of the patient, the [MET] **RSN** should deny the request for long-term care facility services.

(4) If an appropriate [alternate] **alternative** plan of care becomes available and accessible for a person already approved for [long-term] **nursing** facility care who is awaiting placement, the [MET] **RSN** should rescind the authorization [of the long-term care] **for nursing** facility services.

[(5) When the cost of the projected cost of alternate care is equal to or in excess of the cost of institutional care over a period of six months, the MET may opt to limit or deny the request for alternate care.]

ii. "Discharge planning" is a coordinated plan [promulgated] **developed** by the [LTCF Health Care Team] **nursing facility interdisciplinary team** at least [seven] **14** days after admission and revised thereafter as the patient's condition indicates.

(1) The [LTCF Health Care Team] **nursing facility interdisciplinary team** consists minimally of the attending physician, the nurse and social worker and should include as well other disciplines such as special therapists and dietitians where individually applicable.

(2) [The discharge plan will ensure that each patient has an appropriate plan for continuing care at another level at a specified projected time."] **The discharge plan will reflect appropriate time frames, will demonstrate patient and family participation and will ensure that the required discharge services are coordinated.**

[iii. Medical Review Team (MRT) Responsibilities (see (g) below).]

[iv. Long term care facility responsibilities:]

[(1)](3) The initial discharge plan shall be recorded in the [Medical] **Medicaid** eligible patient's record within [seven] 14 days of admission, and shall be reviewed periodically. The initial and periodic reviews shall be entered in the patient's medical record and shall specifically include consideration of possible [alternate] **alternative** care.

[(2)](4) At the time of discharge or transfer, the facility shall prepare a patient summary [(see Patient Information Transfer Form—Exhibit No. 30)] which will accompany the patient to the receiving facility or be available to his attending physician if the discharge is to be to the community. This summary shall include at a minimum the diagnosis, current treatment, relevant medical, nursing and social information and disposition of the patient.

(c) Certification and recertification: Certification is the process by which a physician who has knowledge of the case attests to an individual's need for a specific type of care; recertification is the processing by which a physician who has knowledge of the case attests to an individual's continued need for a specific type [or level] of care.

1. Certification: A physician must certify in the patient's medical record the need for SNF **or** ICF[-A or ICF-B level of care] services in a [LTCF] **nursing facility. SNF care is defined as one or more services (see N.J.A.C. 10:63-1.3). ICF care is defined as patients requiring 2.5 hours of nursing care per day.** This certification must occur on the date of admission or not more than 30 days prior to admission to a [LTCF] **nursing facility.** If the individual is already a patient in a [LTCF] **nursing facility,** the certification must be signed not more than 30 days prior to the authorization date for Medicaid payment.

i. Periodicity, or the start of a cycle, begins at the date of admission or readmission. The cycle must be started again should a discharge and subsequent readmission occur, or a change in the [level of] care **needs** within the same facility, or a transfer to a new facility [at] **with** either the same or different [level of] care **needs**.

2. Recertification: The need for care [at a given level] must be recertified [as follows:] **every 30 days.**

[i. Recertification for Skilled Nursing Facility Services, Level III shall be conducted at least:

(1) 30 days after the date of initial certification;

(2) 60 days after the date of initial certification;

(3) 90 days after the date of initial certification; and

(4) every 60 days thereafter.

ii. Recertification for Intermediate Care Facility services, Level IV-A or Level IV-B, shall be conducted at least:

(1) 60 days after the date of initial certification;

(2) 180 days after the date of initial certification;

(3) 12 months after the date of initial certification;

(4) 18 months after the date of initial certification;

(5) 24 months after the date of initial certification;

(6) every 12 months thereafter.]

[iii.]**i.** A recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required. When the patient's [level of] care **need** is scheduled for recertification during a therapeutic leave, the physician must recertify before the patient leaves the facility.

(1) The [long-term care] **nursing** facility must document "good cause" why such recertification did not meet the required schedule. Good cause shall include, but not be limited, to those situations beyond the long term care facility's control, [e.g.] **for example**, employee strike, severe weather conditions, flood, quarantine of the facility, isolation of the patient, illness of the attending physician.

3. Additional conditions for certification/recertification: The following conditions must be met in order for a certification/recertification to be considered valid:

i. The certification/recertification is in writing and identifies [a] specific [level of] care **needs**;

ii. The certification/recertification is signed or initialed by the Medical Director, staff physician or attending physician, using his[/]**or** her signature or initials. The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed the stamped signature. The physician must date the certification/recertification on the same day he **or she** signs it;

iii. The certification/recertification must demonstrate the need for the [level of] care that the individual will receive or is receiving[.]; **and**

iv. The facility must be approved to provide the [level of] care that the individual is certified/recertified as needing.

4. The certification/recertification for all Medicaid patients must be maintained in the patient's medical record.

5. Any days billed by the [long-term care] **nursing** facility that are not in compliance with the specific time frames and conditions for certification/recertification and plan of care will be considered non-certified days. The per diem reimbursement for these non-certified days will not be made to the [long-term care] **nursing** facility.

(d) (No change.)

(e) Regarding [alternate] **alternative** care-discharge planning, see (b)3 above.

(f) (No change.)

(g) Periodic medical review rules are:

1. Procedure:

i. [Following the nursing reassessment of each Medicaid eligible patient in the facility, a MET conference with a Medical Consultant and a Regional Staff Nurse is held. The patient's medical, nursing and social care Regional Staff Nurse is held. The patient's medical, nursing and social care services are evaluated in terms of the needs of that patient and a decision is made as to the level of care necessary and the most appropriate of the possible alternate care settings for the delivery of the health services required (see (b)3i above). If health care services are no longer required, see (b)3ii above.]. **The regional staff nurse shall complete the reassessment of all nursing facility Medicaid patients. Each Medicaid patient's medical, nursing and social care needs shall be evaluated and a decision shall be made regarding the most appropriate setting for the delivery of services required.**

[(1)]**ii.** The MET evaluates the quality of care which the individual patient has been receiving between an initial assessment and reassessment[; i.e.]. **At least one** [inspection of care] **PMR** evaluation will be done on [a] **each Medicaid** patient during a 12-month period, [according to the criteria for the level at which the patient has been maintained during the previous authorization period.] **according to the standard cited under N.J.A.C. 10:63-1.3 and 1.14.** [(Exhibits No. 19, No. 20, and No. 21).]

[ii.]**iii.** The MDO [Administrator] **Director** shall notify the administrator of the **nursing** facility of the scheduled visit **to present the MET's findings for the review period** no less than five working days beforehand and shall advise the administrator of those facility personnel whom the [MRT] **MET** expect to be present at the visit.

[iii.]**iv.** At the time of the visit for the purpose of PMR, the report for the specified period is reviewed with the facility staff in comparison with the current observations. [See MCNH-51 (Exhibit No. 12)]

[iv.]**v.** Following the visit, [a post-conference is held by the MRT during which] the Periodic Medical Review **Report** [Form MCNH-50C1 (Exhibit No. 11)] is completed in writing and forwarded to the facility administrator from the office of the Medical Director.

[v.]**vi.** [The Form MCNH-50C1 (Exhibit No. 11) signed by the MRT] **The PMR Report** becomes a useful guide so that each facility may constantly examine itself to assure continuity of compliance. The [Facility] **facility** (when requested) must submit a plan of correction of deficiencies to the Medical Director of the Division of Medical Assistance and Health Services within 30 days of receipt [of the MCNH-50C1 (Exhibit No. 11)].

(h) The New Jersey Medicaid Program reserves the right to make additional on-site visits by the Division staff as required.

10:63-1.6 Authorization process

[(a) If a Medicaid recipient has been prior authorized for admission, the LTCF must submit a Notification Form Long-Term Care Facility of Admission or Termination of a Medicaid Patient, Form MCNH-33 (Exhibit No. 7) to the MDO serving the county where the LTCF is located, within two working days of admission.

(b) If a Medicaid recipient did not require prior authorization for admission and was admitted directly from an approved general hospital, or a class "A" special hospital or a New Jersey Title XIX certified psychiatric hospital after a three-day inpatient stay, the LTCF must submit an MCNH-33 form (Exhibit No. 7 along with a copy of the Patient Information Transfer form, Exhibit No. 30) to the MDO serving the county where the LTCF is located, within two working days of admission.

(c) If a LTCF fails to notify the MDO of the admission of a Medicaid eligible recipient by submission of an MCNH-33 (Exhibit No. 7) and a hospital information transfer form (Exhibit No. 30) within 30 days and the time between the day of admission and the date of assessment may not be authorized for payment.

(d) The LTCF will be given written notification of any MET decision changing the patient's authorized level of care by distribution of the form Medical Authorization for Long Term Care MCNH-7 (Exhibit No. 3).

(e) Prior authorization rules are:

1. Whenever the term "prior authorization," "authorization," or "reauthorization" is used in this manual, it shall mean approval granted by the Division of Medical Assistance and Health Services through the appropriate MDO for payment for LTCF services rendered to an eligible recipient for a specific time period. Payment will be made only for periods when the recipient is Medicaid eligible.

2. Prior authorization must be obtained from the MDO for Medicaid recipients entering a LCTF from the patient's home or other place of residence, county mental institutions, Special Class B, Class C Hospital or Veterans Hospital. Medicaid patients admitted from an Acute Care Hospital, Class A Special Hospital or N.J.-Title XIX Certified Psychiatric Hospital do not require prior authorization for the first 30 days if the Medicaid patient had been admitted for three days immediately preceding the admission to the LTCF.

3. The maximum durations for a single authorization for long-term care are as follows:

i. Level III—6 months;

ii. Level IV-A—12 months;

iii. Level IV-B—12 months.

Note: Although an authorization may be given for a maximum period of time as indicated above the MET may give an authorization for a shorter period of time.

(f) A MET has the responsibility to review the medical, nursing and social information obtained at the time of the patient's assessment, as well as any other supporting data in order to evaluate the need for long term care, determine the level of care needed, the feasibility of alternate care, the quality of care given and the outcome of services. See N.J.A.C. 10:63-1.5(b) and (g).

(g) Authorization procedure rules are:

1. Following notification from a LTCF of admission of a Medicaid eligible patient or the change in patient status from private/Medicare or Medicaid or a request for assessment by receipt of a form PA-4 (Certification of Need for Patient Care in Facility Other Than Public or Private General Hospital)—(Exhibit No. 28), from the County Welfare Agency, a referral is made to the Regional Staff Nurse in order to initiate a nursing assessment. If the referral involves a patient residing in the community, a referral is also made to the Medicaid Social Worker for a social assessment.

2. When the assessment of the patient is complete, the Local Administrator schedules a conference of the MET.

3. The MET will render a decision either to authorize or deny, in the following fashion:

i. Authorize long term care:

(1) If the patient was assessed in a community setting (home assessment), written notification utilizing the Letter of Approval for Long Term Care Placement (MCNH-58 Exhibit No. 16) is sent to the patient/family.

(2) If placement in a LTCF has already been accomplished, written notification, (Form MCNH-34-C1) (Exhibit No. 8) is sent from the MDO to the county welfare agency. A copy of the Home Assessment MCNH-61 (Exhibit No. 17) is sent to the LTCF where the patient has been placed.

(3) An MDNH-7 (Exhibit No. 3 Medical Authorization for Long Term Care) is completed and copies are distributed to: Bureau of Claims and Accounts, LTCF, direct service agency.

ii. Deny long term care:

(1) Written notification utilizing the Letter of Denial for Long Term Care following Home Visit (MCNH-54 Exhibit No. 13) or Letter of Denial of Reassessment (MCNH-55 Exhibit No. 14) is sent to the Patient/Family/Sponsor with copies to the attending physician, county welfare agency, and LCTF when applicable.

(2) If the Medicaid patient has been currently authorized for long term care, an additional 20-day period of authorization from the date the written notice or denial is sent will be permitted in order to permit alternate placement. An MCNH-7 (Exhibit No. 3) covering this period is prepared and distributed in accordance with subsection (g)3i of this section.

(3) If, however, extenuating circumstances exist whereby placement cannot be made within the time frame defined in the Medicaid letter of denial, the facility may submit a request for a reveiw of the situation in writing to the Chief, Bureau of Local Administration, Division of Medical Assistance and Health Services, CN 712, Trenton, N.J. 08625.

(4) The request must be submitted prior to the end of the grace period, sufficiently describing special circumstances which surround the case and the efforts that have been extended to discharge the patient to a lesser level of institutional care before consideration will be given to extend the grace period of authorization.

(h) Reauthorization procedures are:

1. Within 45 days before the expiration of an authorized period of LTCF services, a Regional Staff Nurse shall assess the needs of the patient to determine the patient's current health status, continuing need for long term care and/or other appropriate alternatives.

2. The MET will reevaluate the available data to determine need of continued LTCF placement and the appropriateness of alternatives.

3. If the MET decision is to approve long term care, the MCNH-7 (Exhibit No. 3) will serve as notification to county welfare agencies, long term care facilities and the Bureau of Claims and Accounts.

(i) It is recognized that certain level of care decisions made by the Medicaid District Office MET will occasion disagreement from either the LTCF, the attending physician or the patient and/or patient sponsor. The disagreement may involve a challenge to a recent MET decision or a change in the patient's condition during a period of authorization. The procedures to be followed are as follows:

1. Challenge to a recent MET decision concerning a weekly authorized Medicaid eligible patient.

i. A written statement signed by the attending physician must be submitted within 30 days of receipt of the MDNH-7 to the Medicaid district office administrator requesting a reconsideration of the case.

(1) The request for a review must be specific to an individual patient, whether the disagreement is due to further evidence not available in the Medical record at the time of assessment or merely a general difference of opinion regarding the interpretation of the level of care criteria. It must identify medical information or evidence which justifies a difference in level of care decision.

ii. The MDO MET will review the case and render a decision in writing:

(1) To sustain the previous decision; or

(2) To modify the previous decision based on the new medical evidence.

2. Change in a Medicaid patient's condition during a period of authorization.

i. A written statement signed by the attending physician which describes the medical reasons for a change in level of care must be submitted to the Medicaid District Office within thirty (30) days of the change of condition. If a LTCF fails to notify the MDO within thirty (30) days of a change in condition, the time between the date of the change in condition and the date of assessment may not be authorized for payment. If the status of the patient is acute, the facility should discharge the patient to the hospital.

ii. The MDO MET will review the case and render a decision:

(1) To sustain the previous decision; or

(2) To modify the previous decision based on the new medical evidence.

(j) Denial of medical authorization rules are:

1. Before finalizing a decision to deny authorization for continued care in a LTCF, the Medical Consultant of the MDO shall discuss with the attending physician the basis of the tentative decision, and recommendations for alternate care or placement.

2. When a denial of a reauthorization is made, the patient/family/sponsor, the county welfare agency, the attending physician, the LTCF, and the Bureau of Claims and Accounts shall be officially notified in writing.

(k) When authorization for long term care has been terminated because of discharge, death, transfer, ineligibility, or change in Health Services Program number, the facility will receive the "Provider Copy" of the Termination of Medical Authorization for Long Term Care (MCNH-8-Exhibit No. 4) from the MDO. Concurrently, a copy of the MCNH-8 is submitted to the Bureau of Claims and Accounts to terminate the authorization in the computer system. The facility is to retain its copy for the record.

Note: It is the responsibility of the LTCF to notify the appropriate MDO at least 14 days in advance of a projected discharge of a Medicaid patient into the community (Form MCNH-33).

See N.J.A.C 10:63-1.16 Admission Policies.]

(a) A Medicaid participating nursing facility shall obtain authorization from the MDO prior to the admission of a Medicaid eligible or potentially Medicaid eligible patient, in accordance with the Pre-Admission Screening (PAS) provisions of P.L. 1988, c.97. A Notification from Long Term Care Facility of Admission or Termination Form, MCNH-33, shall be forwarded to the MDO serving the county where the nursing facility is located, within two working days of admission or termination.

1. Medicaid eligible patients already residing in Medicaid participating nursing facilities who are transferred to an acute care hospital and who are returning to the same nursing facility, do not require PAS authorization. However, if the patient is discharged to a different nursing facility, PAS authorization shall be required.

(b) PAS authorization shall be required for patients with Alzheimer's Disease and Related Dementia, patients with major mental illnesses and patients with mental retardation. Annual resident reviews (ARR) shall be required for patients who are diagnosed as mentally ill or mentally retarded, in accordance with the Federal P.L. 100-203.

1. Pre-Admission Screening and Annual Resident Review (PASARR) for patients with mental illness or mental retardation shall be subsumed within the State PAS authorization process.

(c) The RSN shall review the medical, nursing and social information obtained at the time of assessment, as well as any other supporting data, shall assess the need for NF care, evaluate the feasibility of alternative care, determine the more appropriate setting for those services, authorize nursing facility placement, and designate the track of care, pursuant to N.J.A.C. 10:63-1.3.

1. If a nursing facility admits a Medicaid eligible or potentially eligible patient without prior authorization, the effective date of the NF authorization, if the patient is subsequently approved for care in the NF, will be the date of the RSN's assessment.

2. Individuals with one or more additional nursing services will be reviewed every six months, and individuals meeting the minimum 2.5 hour requirements will be reviewed yearly.

(d) PAS procedure for NF placement from a hospital setting: The hospital discharge planner/social work staff shall be responsible for identifying a Medicaid eligible inpatient or a Medicaid applicant inpatient who may be at risk of nursing facility placement.

1. The identification process shall also include any inpatient in need of NF care who may become a Medicaid recipient within six months after NF admission. These patients shall be referred by the hospital to the MDO and the CWA on the basis of the "At-Risk Criteria for Nursing Facility Placement and Referral to the Medicaid Office for PAS Evaluation," incorporated herein by reference (see Appendix I).

2. The Medicaid RSN shall conduct a PAS assessment and shall inform the hospital discharge planner/social worker of the services authorized.

3. NF placement approval: The RSN shall verbally advise the hospital discharge planner/social worker and patient/family of the assessment decision. For a Track I or II determination, the RSN shall leave a copy of the HSDP and signed approval letter with the discharge planner/social worker. The original approval letter signed by the RSN, shall be sent by the MDO to the patient/family with copies to the CWA and the patient's attending physician.

i. A copy of the Health Services Delivery Plan (HSDP) shall be left with the hospital discharge planner/social worker by the RSN and shall be attached to the hospital discharge material forwarded with the patient to the admitting nursing facility.

ii. If the patient being transferred will be eligible for Medicare benefits, the transfer shall be made to a Medicare participating nursing facility.

4. NF placement denial: The RSN shall verbally advise the hospital discharge planner/social worker and patient/family of the assessment decision. For a Track III determination, the RSN shall leave a copy of the HSDP and a signed copy of the nursing facility placement denial letter with the discharge planner/social worker. The assessment decision may also result in a denial of any long term care services covered by the Medicaid Program. The original denial letter, signed by the RSN, shall be sent to the patient/family by the MDO, with copies to the CWA and the patient's attending physician.

(e) PAS procedure for NF placement approval for potentially Medicaid eligible patients: Individuals seeking admission to a Medicaid participating NF who may become eligible for Medicaid within six months of admission should be referred by the NF to the MDO for a PAS evaluation, utilizing Appendix I, the "At Risk Criteria for Nursing Facility Placement."

1. Approval of NF placement for potentially eligible patients: If the RSN approves NF placement, a copy of the HSDP and approval letter shall be given to the hospital discharge planner/social worker to be forwarded to the nursing facility, along with the hospital discharge material.

i. When the MDO receives the MCNH-33 Form (Notification from Long Term Care Facility of Admission or Termination of Medicaid Patient) indicating a change in the resident's status from private pay to Medicaid status, the MDO Director shall refer the case to the RSN for further assessment to determine the patient's continued need for nursing facility services.

2. Denial of NF placement for potentially Medicaid eligible patients: If the patient is denied nursing facility placement, a denial letter shall be issued to the discharge planner/social worker by the MDO.

i. If the MDO receives a subsequent referral for nursing facility placement for a previously denied patient, the RSN shall review the presenting evidence to ensure that a significant change in the patient's condition has occurred.

(f) PAS procedure for NF care placement from the community:

1. Upon receipt of a PA-4 Form (Certification of Need for Patient Care in Facility Other than Public or Private General Hospital), the Medicaid RSN conducts a PAS assessment on the patient. The patient will receive notification from the MDO, in writing, of approval or denial of NF placement. Copies of the letter will be sent by the MDO to the attending physician and the County Welfare Agency.

2. If NF placement is approved, the Medicaid social worker shall assist the patient and/or family in selecting an appropriate nursing facility.

(g) The nursing facility (NF) shall notify the MDO, via the MCNH-33 Form, of all instances involving the termination of nursing facility services, which include but are not limited to, discharge, death, transfer, and ineligibility.

10:63-1.7 Reimbursement by [Level of Care] **case mix patient classification**

[(a) The facility shall comply with the terms of its Provider Agreement MCNH-38 (Exhibit No. 10) in maintaining a minimum number of Medicaid patients, and is permitted to mix patients requiring various levels of care; i.e., skilled nursing and intermediate care in either the entire facility or in a distinct part of the facility which is approved for the level of care required. If a facility wishes to exceed its contractual minimum it is encouraged to do so. Reimbursement rates are established by the New Jersey State Department of Health for each level of care. The facility will be paid at the established rate for eligible patients authorized at the various levels.

(b) New Jersey Medicaid skilled nursing facility patients can be placed only in a distinct part(s) of a facility approved for this purpose. Placement of a patient assessed as needing skilled nursing care in a non-approved portion or unit of a SNF, other than in an emergency situation for a short period of time will warrant disapproval of payment for patients so placed.

(c) The MET will exercise its professional judgement in conforming with "The Manual of Standards Intermediate Care Facilities" published by the New Jersey State Department of Health, in determining the appropriate level of patient care, Level III, Level IV-A or Level IV-B (see N.J.A.C. 10:63-1.2).]

The facility shall comply with the terms of its Provider Agreement MCNH-38 (Exhibit No. 10) in maintaining a minimum number of Medicaid patients and shall be permitted to mix patients in either the entire facility or in a distinct part of the facility which is approved for the care required for each patient. If a facility wishes to exceed its contractual minimum, it is encouraged to do so. A single reimbursement rate shall be established by the New Jersey State Department of Health and approved by the Division of Medical Assistance and Health Services, pursuant to N.J.A.C. 10:63-3. The facility shall be paid on the basis of a case mix patient classification reimbursement methodology in accordance with the State Department of Health licensing standards, N.J.A.C. 8:39-25.2(b).

10:63-1.8 Medical services and clinical records

(a) Medical services rules are:

1. General requirements:

i. There shall be a Medical Director, retained by each [LTCF] **nursing facility** who will be responsible for the coordination and quality of patient care in that facility.

ii. All Medicaid eligible patients admitted to a [LTCF] **nursing facility** are admitted only upon the recommendation of a licensed physician **in written form.**

iii. Each patient's care is continuous under the supervision of a New Jersey licensed attending physician chosen by, or agreed to by, the Medicaid patient, or if the patient is incompetent, by the family or legal guardian.

NOTE: [if a physician who has admitted or referred a patient to a LTCF chooses not to act as the attending physician for such patient; or has failed to make appropriate arrangements for medical care of such patient; or due to his absence for any cause, then it shall be incumbent upon the facility to provide such care on an ongoing basis or if the patient is incompetent, by the family or legal guardian.] **The Medical Director shall ensure that for each patient there is a designated primary and alternate physician who can be contacted when necessary.**

iv. The [LCTF] **NF** shall maintain arrangements which assure that the services of a New Jersey licensed physician, who can act in case of emergency, are continuously available.

2. Standards for physicians in long term care facilities:

i. Medical Director: The [LCTF] **NF** must retain, pursuant to a written agreement, a physician licensed under [the] New Jersey State Law to serve as Medical Director on a part-time or full-time basis as is appropriate for the needs of the patients and the size of the facility. The Medical Director is responsible for the overall coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to patients and to monitor the health status of employees.

ii. Duties of Medical Director: The duties of the Medical Director include, among others, the following:

(1) Participation in the development of written policies, rules and regulations which are approved by the governing body[.];

(2) Delineation of the responsibilities of the attending physician(s) **and ensuring that visits by medical consultants occur as needed**[.];

(3) Acting as liaison between administration and medical staff for improving services and ensuring the carrying out of responsibilities of the medical staff[.];

(4) Surveying the execution of patient care policies which includes a periodic evaluation of the adequacy and appropriateness of the services of health professional and supporting staff. Monitoring the health status of the facility's employees[.];

(5) Participation in the review of incidents and accidents that occur on the premises to identify hazards to health and safety of employees and patients. The Medical Director is given appropriate information to help ensure a safe and sanitary environment for patients and personnel[.];

(6) Ensuring that the medical regimen is incorporated in the patient care plan[.];

(7) [Participation in staff meetings and department committees such as infection control, pharmaceutical services, credentials, patient care, etc.] **Participation in the facility's quality assurance program through meetings, interviews and/or preparation or review of reports regarding infection control, pharmaceutical services, credentials, patient care, etc.;**

(8) [Participation in in-service training program.] **Collaboration with administration in the planning of educational programs for facility staff;**

(9) Reviewing written reports of surveys and inspection and [makes] **making** recommendations to the administrator[.];

(10) Participation in special projects such as medical evaluation studies[.];

(11) Negotiating and resolving problems with the medical community; and

(12) Responding quickly and appropriately to medical emergencies which are not handled by another attending physician.

iii. Initial medical findings and physician's orders: There shall be available to the [LTCF] **NF**, prior to, or at the time of admission, patient information which includes current medical findings, diagnosis, medical care plan, rehabilitation potential and a transfer summary of the course of treatment including laboratory findings in the transferring health facility, if any. There shall be orders from a physician for the immediate care of the patient, **to include at least hygiene, dietary needs, medications, level of activity and special therapies, if applicable.**

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

(4) Each patient shall be examined by a physician within five days before or 48 hours of admission.

iv. Required documentation in patient's plan of care and treatment: The [LTCF] **nursing facility** shall require that the health care of every patient is under the supervision of a New Jersey licensed physician who, based on the evaluation of the patient's immediate and long term needs, prescribes on a designated form a planned regimen of medical care.

(1) (No change.)

(2) A physician involved in the care of the patient must establish the Plan of Care. [A] **An initial** Plan of Care must be established and signed on the date of or not more than [30] **five** days prior to an individual's admission **or 48 hours after** to a long-term care facility. [The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed and dated the stamped signature.]

(3) The comprehensive assessment and care plan shall be based on oral or written communication and assessments provided by nursing, dietary, patient activities, and social work staff, and, when ordered by the physician, assessments shall also be provided by other health professionals. The care plan shall include specific measurable goals, based on the patient's medical, nursing and psychosocial needs and means of achieving each goal.

(4) The interdisciplinary care plan shall be established and implementation shall begin within 14 days, and shall include, at least, rehabilitative/restorative measures, preventive intervention, and training and teaching of self-care.

(5) The assessment and care plan shall reflect the patient's medical history, the medical diagnosis, results of laboratory tests, a previous discharge summary if the patient has come from another facility, and patient information regarding smoking, substance abuse, allergies, behavioral problems, mental state, and rehabilitation potential.

[(3)]**(6)** For an individual who makes application for assistance while in a [long-term facility] **nursing facility**, the Plan of Care must be established on or not more than [30] **five** days prior to the date of authorization of Medicaid payment.

[(4)]**(7)** The Medical Plan of Care and Treatment shall be reviewed by the attending physician with documentation by date and signature

[as often as appropriate to the Medicaid patient's needs as specified, but documentation with date and signature confirming this must be done at least every 30 days for Level III patients; 60 days for Level IV-A patients; and every 90 days for Level IV-B patients] **at least every 30 days for SNF patients, and every 30 days for the first 90 days for ICF patients. With written justification, the interval for review may be up to 60 days for ICF patients. The above intervals are expected to be more frequent if there is a significant deterioration in the medical condition of the patient.**

[(5)](**8**) The charge nurse and other appropriate personnel involved in the care of the patient shall assist in planning the total program of care.

[(6)](**9**) Orders concerning medications and treatment are in effect for the specified number of days indicated by the physician, but in no case exceed a period of 30 days. [for Level III; 60 days for Level IV-A or 90 days for Level IV-B.] Vague and blanket orders are not acceptable and within the above time frame it shall be incumbent upon the physician to review all orders and re-confirm in writing with signature and date.

[(7)](**10**) Telephone orders are accepted only when necessary and only by a licensed nurse (registered professional nurse or licensed practical nurse). Telephone orders are written into the appropriate clinical record by the nurse receiving them and are countersigned by the physician within 48 hours, **except that non-prescription drug or treatment orders shall be countersigned within seven days.**

[(A) Exception: Telephone orders of minor medications given as a single dose do not require countersigning within 48 hours; e.g., antacids, laxatives, etc., but will be countersigned at time of next visit.]

[(8)](**11**) Emergencies: In the event of emergency phone orders where the life of the patient may be endangered or his clinical status may be compromised, such orders must be countersigned by the physician within 12 hours from time the order was given.

(A) Exception: If the patient has been transferred out of the facility within the 12 hour period the time limit is waived.

[(9)](**12**) Stop orders are to conform with regulations promulgated by the Formulary Committee of the facility.

[(10)](**13**) [Patients are to be examined by a physician at least once every 30 days for Level III, at least once every 60 days for Level IV-A and at least every 90 days for Level IV-B. The physician will record and sign in the clinical record:

(A) The date of the visit to and the time spent with the patient;

(B) Pertinent facts concerning the patient's current status, relevant findings and significant changes;] **Physician visits: Skilled nursing patients are to be visited and examined by a physician at least every 30 days.**

(A) For the first 90 days, the intermediate care patients shall be visited and examined every 30 days. Thereafter, with written justification, the interval between visits may be extended for up to 60 days.

(B) In both skilled and intermediate care patients, additional visits shall be made when significant clinical changes in the patient's condition require medical intervention.

(C) The physician shall record and sign immediately in the medical record the date of the visit to and the time spent with the patient; and pertinent facts concerning the patient's current status, relevant findings and significant clinical changes.

(D) Orders for non-prescription drugs or treatments shall be countersigned within seven days.

[(C)](**E**) Certification of the need for continued long term care.

[(11)](**14**) There is evidence that the attending physician has made arrangements for the medical care of the patient in his **or her** absence.

[(12)](**15**) At the time of discharge or transfer, the facility shall prepare a patient summary which will accompany the patient to the receiving facility or be available to his **or her** attending physician if the discharge is to be to the community. This summary shall include, at a minimum, the diagnosis, current treatment, relevant medical, nursing and social information and disposition of the patient.

v. Availability of physicians for emergency care: [The Long Term Care Facility shall have] **The Medical Director shall ensure** one or more physicians available to furnish necessary medical care in case of emergency, if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each is on call is to be posted in each nursing station. There shall be established procedures to be followed in an emergency, which covers immediate care of the patient, persons to be notified, and reports to be prepared.

(b) Clinical records rules are:

1. General requirements:

i. An individual record must be maintained for each patient covering his **or her** medical, nursing, social and related care in accordance with accepted professional standards. All entries on the patient's clinical record shall be current, dated and signed by appropriate staff members **readily available at the appropriate nurses' station for use by DMAHS staff.**

ii. The current part of each Medicaid patient's clinical record/chart which must be readily available at the appropriate nurses' station for use by DMAHS professional staff must contain:

(1) Initial social history;

(2) Initial nursing history;

(3) Initial activity assessment and plan;

(4) Professional clinical and progress notes for a period of one year**, including the most recent review of the patient's medical history and physical examination; and**

(5) [Patient] **Patient's interdisciplinary comprehensive** care plan and discharge plan for a period of one year.

2. Maintenance of clinical records: (See (a)2iv(2) [and (6)] above for records required within 48 hours.)

i. The [LTCF] **nursing facility** shall maintain a [separate] medical record for each patient admitted with all entries kept current, dated and signed by appropriate personnel. The record includes:

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

(4) Signed **and dated** physician's orders including all medications, treatments, diet and special therapies.

(5)-(6) (No change.)

(7) Progress notes written**, signed and dated** at the time of each visit.

(8)-(14) (No change.)

(15) Social service records [including signed documentation that patient's rights were explained].

(16)-(17) (No change.)

3.-6. (No change.)

7. Staff responsibility for records: If the [LTCF] **NF** does not have a full- or part-time medical records librarian, an employee of the facility shall be assigned the responsibility for assuring that records are maintained, completed and preserved in accordance with accepted procedures. The designated individual is to be trained by and must receive regular consultation from a medial records librarian who is under written contract with the facility.

10:63-1.14 Records

(a) As a condition for participation in the New Jersey Medicaid Program it is required that [LTCFs] **nursing facilities** maintain medical, nursing, social, patient activities and billing records on all [long term care] **nursing facility** Medicaid patients in accordance with accepted professional standards and practices. Financial and other records used to establish per diem rates must be maintained substantiating any and all costs for which Medicaid reimbursement is sought. In addition, all records relating to patient income, including patient's personal needs allowance accounts, must be maintained.

(b) (No change.)

(c) Required nursing records are:

1. Nursing evaluation:

i. The initial evaluation of the patient is begun on the day of admission to the [LTCF] **NF**. It is the complete, documented and identifiable appraisal of the patient's current health status and provides a data base for assessment of the existing and potential requirements for care.

ii. The tools utilized shall include a nursing history form, admission form(s), transfer form(s), **the health service delivery plan,** the medical plan of care, and narrative admission notes by all disciplines involved in therapy.

iii. (No change.)

iv. The nursing care plan ([i.e.] **that is**, the nursing diagnoses, patient goals, and nursing approaches) shall derive from the [evaluation] **assessment**.

v. (No change.)

vi. Reevaluation shall be documented in a consistently identifiable [manner] **summary** distinct from other content in the nurse's notes. Reevaluation shall be completed whenever there is a [noticeable] **significant** change in the patient's condition indicating a need for change in the **nursing services and the** nursing care plan [and minimally according to the level of care]. (See Nursing Care Plan (c)2 below).

[vii. From the information available selected pertinent information will be designated as the basis for continuing or revising the current plan of care.]

2. Nursing care plan:

i. This is an easily identifiable and accessible record of individualized nursing care to be provided to the Medicaid patient as part of the [total] **interdisciplinary** patient care plan. It is cognizant of the medical **social and dietary** plans of care, includes patient participation and directs the approaches of nursing staff in meeting the patient's needs for **restorative and rehabilitative** nursing care. [The plan contains short and long term goals; restorative and/or rehabilitative nursing care including follow-up of special therapies; personal, preventive and maintenance care requirements.] **The plan shall contain a realistic goal for each nursing diagnosis (problem) and an overall singular goal, when applicable, which endorses and supports the long term goal of the interdisciplinary care plan. The nursing care plan shall contain restorative and/or rehabilitative nursing care including follow-up of special therapies; personal, preventive, and maintenance care requirements. The plan shall recognize the patient's current or potential health problems and shall demonstrate responsive nursing interventions which prevent deterioration, maintain wellness, and promote maximum restoration.** The nursing care plan properly instituted by qualified staff and utilized by all nursing staff will provide the best method of ensuring effective nursing care.

ii. [For Intermediate Care, Levels IV-A and IV-B, the] **The** care plan will indicate [nursing-social care] **comprehensive assessment and** planning.

iii. The nursing care plan shall be reviewed regularly and revised as often as necessary according to **all significant** changes in patient's condition and to attainment of and/or revisions in goals as indicated. Revisions shall be based on appropriate documentation of the reevaluation procedures. Minimal review and documentation shall be [weekly for Level III, bi-weekly for Level IV-A and monthly for Level IV-B.] **a minimum of once every 30 days for a patient with one or more nursing services and a minimum of once every 60 days for a patient receiving 2.5 hours per day of nursing services. Documentation shall be required whenever there is a significant change in the patient's condition which reflects the problem, the intervention and the patient's response to treatment.**

3. Nurse's notes:

i.-ii. (No change.)

iii. Nursing entries shall be made as often as necessary based on the Medicaid patient's condition. **The additional nursing services required by N.J.A.C. 8:39-25.2(b) are as follows:** [The minimal requirements by level of care are:]

(1) Skilled Nursing Care [Level III] **(one or more nursing services)** Medicaid patients shall have daily summaries for the first five days after admission written by staff of each shift and thereafter summaries written, at least once every 30 days, or more frequently as necessary.

(2) Intermediate Care [Level IV-A] **(2.5 hours per day)** Medicaid patients shall have daily summaries for the first five days after admission written by staff of each shift and thereafter summaries written at least once every 60 days, or more frequently as necessary.

[(3) Intermediate Care (Level IV-B) Medicaid patients shall have daily summaries for the first five days after admission written by staff of each shift and thereafter summaries written at least once every 90 days, or more frequently as necessary.]

4.-6. (No change.)

(d) Social service record rules are as follows:

1. (No change.)

2. Confidentiality and accessibility:

i.-iii. (No change.)

iv. The social history and [three years] **one year** of progress notes (if appropriate) shall be on the medical chart.

3. Content and quality:

i. Social record is a documentation **by the social worker** on the patient chart of social history, progress notes, clinical notes and referrals. All notes shall be signed and dated.

ii.-iii. (No change.)

iv. Frequency of recording:

(1) Social record shall be completed within [seven] **14** days following admission and updated [regularly] **as required[;]**, at least every six months thereafter. **Readmission notes which summarize any changes in patient's psychosocial functioning must be completed within 14 days of readmission.** Significant changes in patient's situation shall be recorded. [Referrals to outside agencies shall be recorded on the day of the referral.] **The record should be kept current to reflect the provision of services and plan for services. A progress note shall be written every six months.**

[(2) Updated entries shall be made by the person responsible for providing social care to the patient, i.e., the facility social worker/social work designee, or a social agency staff person functioning under a contractual agreement with the facility.]

(e) Patient activities record rules are as follows:

1. (No change.)

2. Accessibility: An individual record must be kept on the medical chart. It should include the initial evaluation and [two years] **one year** of progress notes. The activity coordinator may keep a separate calendar of activities and record of general participation.

3. Content:

i. The activity record shall include the initial evaluation, [and] progress notes **and readmission notes**. The initial evaluation and all notes shall be signed and dated **in ink**. The initial evaluation shall identify patient background information, including patient interests, skills, past employment, hobbies, organizational memberships, **and** religious preferences. [Theses may be obtained from the social history and interviews with the patient and/or family upon admission.] **In addition, the patient's emotional, mental, social, physical and environmental functioning shall be assessed. This information shall be based on personal contact with the patient. Supplemental material may be obtained from the family and/or social history.** Initial goals shall be stated, and a plan formulated to engage patient in an activity program in keeping with his interests and medical condition.

ii. Progress notes shall summarize patient participation in individual and grow activities. Patient attitudes toward participation shall be noted together with changes in interest, medical condition, goals[,] and plans[, and discharge program].

iii. Readmission notes shall summarize any changes in the patient's physical and mental condition that will affect his or her ability to participate in activities. Goals and plans shall be re-evaluated by:

4. Frequency:

i. An initial evaluation of patient's needs and interests must be conducted and recorded in the patient's individual record within [seven] **14** days of the date of admission.

ii. There shall be a [quarterly] **six month** review of patient's activity plan, in cooperation with the patient, and a written evaluation of the patient's progress, identification of needs, and establishment of activity goals for the next quarter.

iii. Readmission notes shall be recorded in the patient's medical record within 14 days of the date of readmission.

(f) Billing and financial records rules are as follows:

1. [Chapter III of this manual] **N.J.A.C. 10:63-2** identifies the procedures required for the general use of the billing transaction forms and computer generated forms. All appropriate reports should be retained until audited by the Division.

2.-4. (No change.)

5. Six month time limitation on claims submitted by long term care facilities:

i. Claims for [LTCF] **NF** services and/or authorized therapies that are older than six billing months will be rejected.

ii. (No change.)

iii. For purposes of this time limitation, a claim is the submission of a properly completed transaction form(s) provided by the Division indicating a request for reimbursement for authorized [LTCF] NF services and/or authorized therapy services provided to an eligible recipient and which has been submitted to the Bureau of Claims and Accounts within the time limit specified.

iv. (No change.)

v. In exceptional cases where it was beyond the control of the [LTCF] NF to claim reimbursement within the six month period, a written request for payment may be submitted with documentation to the Bureau of Claims and Accounts, Division of Medical Assistance and Health Services, [324 East State Street, P.O. Box 2486] **CN-172**, Trenton, New Jersey 08625. Retroactive claims will not be approved for payment in those instances where it is judged that the claim could have been submitted or resubmitted within the time limitation as defined above.

10:63-1.16 Admission policies

(a) [In the Medically Needy Program long-term care services are not available to Medically Needy recipients.] **A Medicaid participating nursing facility shall not admit any individual who is Medicaid eligible or who may become Medicaid eligible within 180 days of admission to the facility, unless that individual shall have been prescreened by the Medicaid District Office (MDO) and determined appropriate for nursing facility placement.**

(b) Medicaid eligible patients already residing in Medicaid participating nursing facilities who are transferred to an acute care hospital and who are returning to the same nursing facility do not require preadmission screening. However, if the patient is discharged to a different nursing facility, preadmission screening shall be required.

[(b)](c) The agreement for participation in the New Jersey Medicaid Program stipulates that a facility will provide all [required] services **as required by N.J.A.C. 10:63-1.3.** [for specific levels of care. Under this agrement, there can be no discriminatory admission policies as to level of care.]

[(c)](d) Participation in the Medicaid Program will be limited to providers of service who accept, as payment in full, for covered services the amounts paid in accordance with the reimbursement policy. Providers who have an agreement with the Medicaid State agency and who solicit contributions, donations, or gifts directly from Medicaid patients or family members shall be deemed to be in noncompliance with this Federal requirement. Medicaid patients and their families should be fully informed that their right to [long-term care] **nursing facility (NF)** services is not contingent upon contributions.

[(d)](e) A Medicaid eligible recipient may be admitted to a [LTCF] **NF** only upon the recommendation of a physician which includes a written plan of care, and where applicable, a plan of rehabilitation. In order for payment to be made, each recipient admitted to a [LTCF must] **NF shall** have been prior authorized by [a medical consultant of] the MDO [except as indicated in (a) above].

[(e)](f) If [long-term care] **NF** placement is approved, a copy of the Authorization Form MCNH-7 [(Exhibit No. 3)] is sent to the County Welfare Agency, [LTCF] **NF**, and the Division's Bureau of Claims and Accounts.

[(f)](g) Payment will not be made by the New Jersey Medicaid Program for [long-term care] **NF** services provided to private paying patients who have applied for, and subsequently have been declared eligible for Medicaid benefits by a [County Welfare] **county welfare** agency or by the Social Security Administration while in a [LTCF] **nursing facility**, unless they have been found in need of, and authorized for, [long-term care] **NF services** by the [Medicaid Medical Consultant] **MDO**. (See N.J.A.C. 10:63-1.6).

[(g)](h) The [County Welfare Agency] **county welfare agency** shall furnish the MDO a statement of the recipient's budgetary information, PA-31 [(Exhibit No. 27)] using the appropriate format.

[(h)](i) [The County Welfare Agency, the attending or referring physician, the LTCF when appropriate, and the recipient's family or sponsor shall be promptly notified in writing of the decision to approve or deny long-term care placement.] **Notification of the approval or denial of nursing facility placement by the MDO shall be provided to the applicant and other individuals and agencies, as required in N.J.A.C. 10:49-1.16.**

[(i) Before decision to deny the request for long-term care placement, the Medical Consultant of the MDO shall discuss with the attending physician the basis of the decision and suggestions for alternate care or placement.]

(j) In the event that a [LTCF] **nursing facility** admits a Medicaid eligible recipient [from other than a general acute hospital or Special Class A Hospital, or N.J. Title XIX Certified Psychiatric hospital] without [prior authorization from] **preadmission screening by** the MDO, the effective ["beginning"] date of the initial authorization period will be the date of assessment [by the Medicaid nurse]. Facilities admitting such recipients without [prior authorization] **preadmission screening** will not be reimbursed by the New Jersey Medicaid Program for any care rendered before the assessment.

[1. Admission from an acute general hospital, class "A" special hospital, and N.J. Title XIX certified psychiatric hospital:]

[i.](k) When an inpatient is to be discharged from the hospital to a [LTCF] **nursing facility**, the transfer must be to a Medicare participating SNF if Medicare (Title XVIII) benefits are available.

[ii. Admission of an eligible recipient from one of these hospitals to a LTCF does not require prior authorization. Reimbursement will be made from the first day of care, provided that the eligible recipient had been duly admitted as a bed-patient in the hospital for three days immediately preceding the transfer. The Medicaid Regional Staff Nurse will visit the LTCF to assess the Medicaid recipient within 30 days of admission. Following assessment, if the patient has been found in need of long term care by the MET, an authorization will be given as to the actual level of care. In the event that the individual does not require long term care and the MET decision is to deny further authorization for long term care the LTCF will be reimbursed at the Level IV-B payment rate from the date of admission up to the date of discharge, if the discharge occurs not later than 20 days from the date of the MCNH-55 (Exhibit No. 14) denial letter.]

[iii.](l) When an inpatient is to be discharged from the hospital **to a Medicaid certified nursing facility (NF)** [and continuing medical care is required], a legible abstract or summary [(see Exhibit No. 30)] must be prepared by either the attending physician or the hospital and signed by the attending physician, covering the Medicaid recipient's care in the hospital [with recommendation for further medical care,] and [transferred with the patient to the LTCF] **forwarded to the nursing facility along with the HSDP and MDO authorization.**

[iv.](m) The [LTCF] **NF** must submit a Notification of the Admission of the Medicaid Eligible recipient, MCNH-33 Form, [(Exhibit No. 7)] along with a copy of the hospital transfer form [(Exhibit No. 30)] or its equivalent PA-4 Form [Exhibit No. 28)] to the MDO serving the county where the [LTCF] **NF** is located, within two working days of admission.

[2. Admission from a class "B" special hospital:

i. Admission of a Medicaid eligible recipient from an approved Class B Special Hospital to a LTCF requires prior authorization by a Medicaid Medical Consultant.

ii. A Medical Consultant in reviewing a request for continued authorization in the Class B Special Hospital, may determine that the patient requires long-term care and no longer needs care in a special rehabilitation hospital. In such case he may authorize a level of care for a maximum of 30 days by completing an MCNH-7 (Exhibit No. 3). The Medicaid Regional Staff Nurse will visit the LTCF to "Reassess" the Medicaid patient within these 30 days. When a Class B Special Hospital inpatient is to be discharged from the hospital and continuing medical care is required, a legible abstract or summary must be prepared either by the attending physician or by the hospital and signed by the attending physician, covering the patient's care, and transferred with the patient to the LTCF.

iii. The admitting LTCF must submit a notification of the admission of the Medicaid eligible recipient, form MCNH-33 (Exhibit No. 7), along with a copy of the hospital transfer form (Exhibit No. 30) to the MDO serving the county where the LTCF is located, within two working days of admission.

3. Admission from a special class "C" Hospital:

i. Admission of an eligible Medicaid recipient to a LTCF from an approved Class C Special Hospital requires prior authorization by a Medicaid Medical Consultant of the Division.

ii. When an inpatient is to be discharged from the hospital and continuing medical care is required, a hospital transfer form (Exhibit No. 30) must be prepared either by the attending physician or by the hospital and signed by the attending physician, covering the patient's care in the hospital with recommendations for further medical care, and must be transferred with the patient to the LTCF.

iii. The admitting LTCF must submit a notification of the admission of the Medicaid eligible recipient, form MCNH-33 (Exhibit No. 7) along with a copy of the hospital transfer form (Exhibit No. 30) to the MDO serving the county where the LTCF is located, within two working days of admission.

4. Admission from a recipient's home and all other places of residence:

i. Admission of an eligible Medicaid recipient from home and all other places of residence to a LTCF requires prior authorization by a Medicaid Medical Consultant of the Division. The following procedures are completed before authorization can be approved:

(1) Upon the receipt of a PA-4 (Exhibit No. 28) from the County Welfare Agency, a Regional Staff Nurse and Medicaid Social Worker visit the Medicaid eligible recipient and make assessments of the level of medical nursing and social care required by the individual, in addition to evaluating alternatives to Long-Term Care. See MCNH-4 (Exhibit No. 2).

(2) A MET (Medical Consultant, Regional Staff Nurse and/or Regional Nurse Supervisor, Medicaid Social Worker) reviews the medical-social information and other supporting data to evaluate need and determine appropriateness of placement in a LTCF.

(3) If long-term care placement is approved, the Medicaid Social Worker assists the recipient/family to make an appropriate placement. Either the patient or the Medicaid Social Worker will have in his possession an approval letter. See Letter of Approval for Long-Term Care Placement MCNH-58 (Exhibit No. 16) and MCNH-35 (Exhibit No. 9).

ii. The LTCF must submit a notification of the admission of the Medicaid eligible recipient form MCNH-33, (Exhibit No. 7) to the LMAU serving the county where the LTCF is located, within two working days of the admission.

iii. Following notification of placement, a copy of the Home Assessment (MCNH-61 Exhibit No. 17) and the Home Assessment Transfer (MCNH-76 Exhibit No. 18) will be sent to the LTCF and the County Welfare Agency by the MDO.

5. Transfer of a patient from one long term care facility to another during a current authorization period:

i. Admission of an eligible Medicaid patient from another LTCF requires prior authorization by a Medicaid Medical Consultant of the Division.

ii. Transfer requested by Medicaid patient:

(1) Such requests are to be submitted in writing to the MDO by the Medicaid patient and/or family or sponsor. In order to maintain the patient's freedom of choice, consideration will be given to authorization of the transfer when there is no medical contraindication.

(2) Upon receipt of a request for transfer, a Regional Staff Nurse and Medicaid Social Worker shall assess the Medicaid patient when indicated, to determine the current health status and appropriateness of the transfer, and his acceptance of this transfer.

(3) The MET will evaluate the information and if approved, will authorize the transfer. The Medicaid Social Worker will work with the Medicaid patient/family to arrange an appropriate transfer. Either the Medicaid recipient or the Medicaid Social Worker will have an approval letter in his possession at the time of transfer. See Letter of Approval for Long-Term Care Transfer (MCNH-57, Exhibit No. 15).

(4) The receiving LTCF must submit a notification of the admission of the Medicaid eligible recipient form MCNH-33 (Exhibit No. 7) to the MDO serving the county where the LTCF is located, within two working days of admission.]

[iii.](**n**) Involuntary transfer initiated by the facility: [Effective March 1, 1977, the Division implemented the following procedural guidelines which affect the involuntary transfer of the Medicaid patient from a LTCF.]

[(1)]**1.** Purpose:

[(A)]**i.** The Division recognizes that there may be problems in relocating [infirmed] **infirm** aged persons from a [LTCF] **NF**. The purpose of these regulations is to specify the circumstances in which the involuntary transfer of a Medicaid patient in a [LTCF] **NF** is authorized and to establish conditions and procedures designed to minimize the risks, trauma and discomfort which may accompany the involuntary transfer of a Medicaid patient from a [LTCF] **nursing facility**.

[(B)]**ii.** These regulations shall be interpreted consistent with the [federal] **Federal** requirement that care and service under the Medicaid program be provided in a manner consistent with the best interests of the patient.

[(2)](**1**) Applicability:

(A) These regulations shall apply to the involuntary transfer of a Medicaid patient at the request of a [LTCF] **NF** but not to the Division's utilization review process, except as indicated in [item (3) of this subparagraph] **(n)1ii(2) below**.

(B) An involuntary transfer of a Medicaid patient which was not consented to or requested by the patient or by the patient's family or authorized representative.

(C) Medicaid patient includes a Medicaid patient residing in a [LTCF] **nursing facility** which has a Medicaid provider agreement in effect, including patients over the minimum number stipulated in the agreement, and a patient who had entered the facility as a non-Medicaid patient and becomes a Medicaid patient or is awaiting resolution of Medicaid eligibility, except for a patient who enters the facility under a signed admission agreement for private payment and then converts to Medicaid within six months from the date of admission.

(D) These regulations shall not apply to the internal relocation of a Medicaid patient within a facility.

[(3)](**2**) (No change in text.)

[(4)](**3**) (No change in text.)

[(5)](**4**) Procedure for involuntary transfer:

(A) The [facility] **NF** shall submit to the Division a written notice with documentation of its intention to and reason for the involuntary transfer of a Medicaid patient from the facility.

(B) If the [Division's MET] **MDO** determines that an involuntary transfer is arranged, the patient and/or the patient's authorized representative, shall be given 30 days prior written notice by the Division that a transfer is proposed by the [facility] **NF** and will take effect upon completion of the relocation program specified in [item (6) of this subparagraph] **(n)1ii(5) below**, unless the patient requests a hearing within 30 days of the date of the written notice, in which case the transfer is stayed pending the decision following the hearing, except in instances where the Division determines that an acute situation or emergency exists.

(C)-(F) (No change.)

[(6)](**5**) Relocation procedure:

(A) (No change.)

(B) The staff of the transferring and receiving [LTCFs] **NFs** shall assist in the transfer process, although responsibility and authority for the coordination and transfer rests with the Division and shall include:

[(C)]**I.** [Medical evaluation] **Evaluation and** review by [Division medical, nursing and social service] **appropriate MDO** staff[.];

[(D)]**II.** Initial patient, family or authorized representative counseling[.];

[(E)]**III.** Involvement of the patient, family or authorized representative in the placement process with recognition of a patient's right to freedom of choice[.];

[(F)]**IV.** Patient preparation and site visit for all able to do so within the capability of the transferring agent[.];

[(G)]**V.** Unless the patient otherwise requests, the patient shall be accompanied on the transfer day by a family member, authorized representative or attendant[.];

[(H)]**VI.** Follow-up counseling at the new location[.]; **and**

[(I)]**VII.** There shall be no administrative hearing on a claim of failure to implement the requirements of this section for relocation counseling.

[(7)]**(6)** No owner, administrator or employee of a [LTCF] **nursing facility** shall attempt to have patients seek relocation by harassment or threats. Such action on behalf of the [facility] **NF** may be cause for the curtailment of future admission of Medicaid patients to the [facility] **nursing facility** or for termination of the Medicaid Provider Agreement with the [facility] **NF**.

[(8)]**(7)** Any complaints regarding the handling of patients relative to their transfer shall be referred to the Division for investigation and corrective action.

[6.]**(o)** Change from private status to Medicaid eligible status of a [long-term care] **nursing facility** patient:

[i.]**1.** The [LTCF] **NF** must submit an MCNH-33 notification form [(Exhibit No. 7)] directly to the MDO in all known instances of private patients making application for Medicaid eligibility[, as explained in the instruction section of the form] **for purposes of initiating the preadmission screening process**.

[ii.]**2.** Payment will not be made by the New Jersey Medicaid Program for [long-term care] **NF** services provided to private paying patients who have applied for, and subsequently been declared eligible for Medicaid benefits by a [County Welfare Agency] **county welfare agency** or Social Security Administration while in the [LTCF] **nursing facility**, unless said patient has been found in need of, and authorized for, [long-term care] **nursing facility services** by the [Medicaid Medical Consultant] **MDO** [following assessment by the MET].

[iii. If the authorization is approved, the case is referred to the local administrator to be retained until verification of financial eligibility is established. When established, beginning date of authorization will reflect the date of eligibility.

iv. If the authorization is to be denied, the Medical Consultant first attempts to confer with the patient's attending physician by telephone. Written notification of denial (MCNH-54, Exhibit No. 13) will be sent by the MDO to the Medicaid patient's family or sponsor with MDO copies to the attending physician, County Welfare Agency and LTCF.]

10:63-3.3 Compensation equalization and equalized costs

(a) In order to equitably develop and apply screens in those functions with employee compensation components, the following computation will be made:

1.-6. (No change.)

7. For [LTCF's] **NFs** which provide residential, sheltered or domiciliary care, equalized [ICF and SNF] **nursing facility** costs will be determined by apportioning equalizing cost in the same ratio as the apportionment of unequalized net expenses.

8. (No change.)

10:63-3.8 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. The minimum nursing requirements in terms of hours worked will be calculated for each [LTCF] **nursing facility** based upon the [patient] **case** mix **patient classification** and standards in effect during the base period[.], **except that, beginning April 1, 1990, minimum nursing requirements in terms of hours shall be calculated for each nursing facility based upon:**

i. The number of patient days during the base period;

ii. The patient mix related to additional nursing services requiring additional minimum nursing time during a sample period which will be February 1, 1990; and

iii. The State Department of Health nurse staffing standards which will be operative April 1, 1990, according to N.J.A.C. 8:39-25.2(b).

2.-6. (No change.)

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

10:63-3.19 Working capital provision and total rates

(a) Following the additions of the provision for inflation (N.J.A.C. 10:63-3.18), and approved legal and management changes, a working capital provision will be added to rates as follows:

1.-2. (No change.)

3. This result will be multiplied by the rates [developed for each class of patient] to develop the working capital provision [for the patient class].

4. Unless the Division of Medical Assistance and Health Services prescribed different limits for patient care services [other than for routine nursing care], the rate components for each class of patient will be the same [except for the nursing care component] and the related working capital provision as it is affected by this component **will be the same**.

[5. Rates will be limited to the certified lowest semi-private rate charged to private patients as reported to the Division of Medical Assistance and Health Services.]

5. The nursing care component of the rates shall be adjusted six months after the effective date of each facility's prospective rate (see N.J.A.C. 10:63-3.1) in order to allow for changes (if any) in the patient mix of each facility related to additional services requiring additional minimum nursing time. This adjustment shall be based upon the patient mix at each facility during a six month period ending three months prior to the effective date of the adjustment.

i. During the transition period for the revised minimum nurse staffing requirements of N.J.A.C. 8:39-25, which become operative April 1, 1990, facilities will receive an adjustment to the nursing component no less than once every six months. No provision of this chapter shall be interpreted to require an adjustment to the nursing component, as described in this section, more than once every six months.

APPENDIX I
AT-RISK CRITERIA FOR NURSING FACILITY PLACEMENT REFERRAL TO THE MEDICAID OFFICE FOR PAS EVALUATION

The following is a list of "at-risk" criteria to assist the hospital in determining if a referral for long term care services, either in a nursing facility or in the community, is indicated.

I. Medical—Has the patient experienced any of the following:

1. Catastrophic illness requiring major changes in lifestyle and/or living conditions, that is, Multiple Sclerosis, Stroke, Multiple Trauma, AIDS, Amputation, Neurological Disease, Cancer, Birth Defect(s), End Stage Renal Disease.

2. Debilitation and/or chronic illness causing progressive deterioration of self-care skills, that is, Diabetes, Fractures, Progressive Pulmonary Disease, Severe Chronic Diseases, Spina Bifida.

3. Multiple hospital admissions within the past six months. (Do not refer patients admitted directly from nursing facilities.)

4. Previous nursing facility admissions within the past two years.

5. Major health needs, that is, tube feedings, special equipment or treatments, rehabilitative/restorative services.

II. Social—Does patient meet any of the following social situations:

1. Homeless.

2. Lives alone and/or has no immediate support system.

3. Primary caregiver is not able to provide required care services.

4. Lack of adequate support systems.

III. Financial (operative 01/01/90)—Does the patient meet any of the following income/assets tests:

1. Currently eligible for Medicaid.

2. Monthly income at/or below the current Medicaid institutional cap specified at N.J.A.C. 10:71-5.6.

(a) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5.

(b) Has no spouse in the community and resources at/or below $20,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in a nursing facility as private pay), or

(c) Has a spouse in the community with combined countable resources at/or below $40,000. (This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988).

3. Monthly income at/or below the current New Jersey Care Special Medicaid Programs maximum monthly income limit specified at N.J.A.C. 10:72-4.1 and:

(a) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5.

(b) Has no spouse in the community and resources at/or below $22,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in a nursing facility as private pay), or

(c) Has a spouse in the community with combined countable resources at/or below $44,000. (This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988).

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Realizing Economic Achievement (REACH) Program; Post-AFDC Child Care

Proposed Amendment: N.J.A.C. 10:81-14.18

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-1 et seq.; Federal Family Support Act (FSA) of 1988, Public Law 100-485.

Proposal Number: PRN 1990-43.

Submit comments by February 15, 1990 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10:81-14.18 incorporate into New Jersey's Realizing Economic Achievement (REACH) program, Section 302 of the Federal Family Support Act (FSA) of 1988, Public Law 100-485, and regulations published October 13, 1989 in the Federal Register at 54 FR Page 42267 Part 256, which guarantee child care for 12 months for certain REACH participants who have lost eligibility for the Aid to Families with Dependent Children (AFDC) program due to increased earnings, increased hours of work, or the loss of the time-limited disregard of earnings. Amendments to N.J.A.C. 10:81-14 implementing in REACH, Title II of the FSA, the Job Opportunities and Basic Skills Training (JOBS) program, and Section 301 providing child care and other supportive services to REACH participants will be proposed at a later date.

The proposed amendments at N.J.A.C. 10:81-14.18(b) and (d) provide that, as required by the FSA, the participant must contribute a fee toward the cost of post-AFDC child care, that is, child care provided for the 12-month period after the loss of AFDC eligibility due to income from or increased hours of employment. The fee is effective for all individuals becoming ineligible for AFDC for those reasons on or after April 1, 1990.

N.J.A.C. 10:81-14.18(e) has been redesignated as the subsection concerned with post-AFDC child care and sets forth all provisions applicable as a result of the FSA and corresponding final regulations published at 54 FR Page 42267, Part 256. The subsection asserts the Federal guarantee of post-AFDC child care. To the extent necessary to permit an AFDC family member to accept or maintain employment, post-AFDC child care is guaranteed for a child under age 13, for a child who is physically or mentally incapable of caring for himself or herself, for children receiving Supplemental Security Income (SSI) benefits under Title XVI or foster care under Title IV-E, and is available for a child age 13 or older. The county welfare agency must provide written and oral notice, as appropriate, of eligibility for post-AFDC child care. Written notice is by Form R-10, REACH Benefit Letter, which advises a family of potential eligibility for 12 months of post-AFDC child care and extended Medicaid benefits (see N.J.A.C. 10:81-14.20) when such family becomes ineligible for AFDC as a result of employment. The form explains the steps necessary to apply for benefits and the family's rights and responsibilities.

The proposed amendments specify that a family is eligible for post-AFDC child care if the following conditions are met: the family ceases to be eligible for AFDC as a result of increased earnings or hours of employment or loss of time-limited earned income disregards at N.J.A.C. 10:82-4; the family received AFDC in the month preceding the first month of ineligibility (although Federal financial participation (FFP) is available only if the family received AFDC in at least three of the preceding six months); the family requests benefits and provides the necessary information to determine eligibility for post-AFDC child care, including verification of earnings; the family signs a REACH Agreement; and the family participates in post-AFDC REACH activities, and pays the required fee. The 12-month post-AFDC child care eligibility period starts with the first month of ineligibility for AFDC and continues for 12 consecutive months.

A family is ineligible for post-AFDC child care for any remaining portion of the 12-month period if the caretaker relative stops working without good cause, as defined at N.J.A.C. 10:81-14.8(b), or fails to cooperate in the establishment of paternity. Eligibility may be re-established for the remaining portion of the 12-month period of child care if the caretaker relative loses a job with good cause and complies with other eligibility requirments at N.J.A.C. 10:81-14.18(e)3. If the family once again receives AFDC benefits, they may be eligible for a new 12-month post-AFDC child care period provided AFDC benefits were received for at least three of the six months prior to loss of AFDC eligibility.

Each family receiving post-AFDC child care must contribute a fee toward the cost of care. The Department of Human Services (DHS) will establish a sliding fee scale which may consider certain family circumstances, including, but not limited to, income, family size, number of children, and number of children in care. Within guidelines established by DHS, each county must establish methods and procedures to collect fees, and may vary the period of fee collection. A sliding fee scale and process for collection for each county will be established when appropriate rules are promulgated. The fee scale and collection rules will be operative at the same time the amendments in this proposal are operative. Failure of the individual to pay the required fee will result in loss of eligibility for further post-AFDC child care, subject to notice and hearing requirements, for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

A mandatory REACH participant may refuse available appropriate post-AFDC child care if he or she can show that refusal will not prevent or interfere with employment. The county may infer refusal by participant inaction, including failure to request post-AFDC child care (failure to respond to Form R-10 by the end of the first month of AFDC ineligibility), failure to provide information necessary to determine eligibility for post-AFDC child care and failure to sign a REACH Agreement or report on post-AFDC activities.

Provision of post-AFDC child care is subject to timely and adequate notice and hearing requirements of N.J.A.C. 10:81-6, 10:81-7, and 10:90-2.5 (see N.J.A.C. 10:81-14.7). Notice and hearing requirements do not apply to changes in manner of payment, unless such changes result in discontinuance, suspension, reduction or termination of benefits or force a change in child care arrangements.

Social Impact

The social impact of the proposed amendment is positive. The effect of the Federal guarantee of child care for children under age 13 will ensure that AFDC families who become employed will have the benefits needed to support them during the first year of employment, which is often the most critical period in helping a family make the transition from dependence on the welfare system to self-support.

The Federal requirements of parents to contribute toward the cost of post-AFDC child care by payment of a fee may assist the family in budgeting for the cost of child care once the benefits expire. It is recognized, however, that mere payment of part of the cost of care may not offset the loss of benefits at the end of the 12-month period. Through the existing REACH program structure at the local level, counties and service providers are actively working to locate low cost care, and to coordinate post-AFDC child care arrangements with existing programs, such as Head Start. Child care available through the Social Services Block Grant (SSBG) may provide additional assistance as the post-AFDC period expires.

Economic Impact

Since October 8, 1987, when REACH began providing post-AFDC child care benefits, costs were funded by State-only funds. The proposed amendment changes the post-AFDC child care benefit from one that is completely paid by REACH (through State-only funds) to one that is largely subsidized by REACH (and the Federal FSA). Implementing these FSA provisions for post-AFDC child care, beginning April 1, 1990, will allow New Jersey to claim FFP in the amount of 50 percent of the total cost of heretofore State-only funded post-AFDC child care benefits. However, in those instances where families received AFDC for at least one month but less than Federal mandates, State funds will be used to provide post-AFDC child care to families if the other eligibility requirements for those benefits are satisfied. The FFP will be approximately $3.5 million in State fiscal year (SFY) 1990, and $6.5 million in SFY 1991.

The Federally-required change represents a slight reduction in total REACH post-AFDC child care dollar benefits available to a participant and his or her family. The FSA mandate that families make a co-payment toward the total cost of post-AFDC child care, which has not been required under existing rules, causes the reduction in child care benefits to families in the post-AFDC child care period. However, there should be minimal economic impact on the individual REACH family who loses AFDC eligibility due to earnings on or after April 1, 1990 and thereby becomes eligible for post-AFDC child care benefits.

It is planned that the co-payment sliding fee scale will parallel the scale used for SSBG subsidized child care. The sliding scale fee will be based on the amount of earnings of the participant, family size and level of care provided, which is determined by the age of the child, hours of care provided and/or any special need requirements of the child. Families will pay the full scale fee for the first child. Fees for the second child in the family requiring care are one-half the established scale rates. No fees are charged for additional children. Using those rates, for an average three person AFDC family (mother, one child in preschool care and one child in after school care) earning $6.00 per hour or $11,000 annually based on a 35 hour work week, the average fee will be $16.00 per week, or $832.00 for the 12-month post-AFDC period.

The proposed amendment will not result in an adverse economic impact on families currently receiving State-funded post-AFDC REACH child care benefits or families who become eligible for post-AFDC child care benefits prior to April 1, 1990. The eligibility of those families for post-AFDC child care benefits is based on existing rules which do not require payment of a fee toward the cost of child care.

Regulatory Flexibility Statement

This amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:81-14.18 REACH support services: child care

(a) The case manager, the participant, and the lead child care entity will mutually arrange for child care for the REACH participant's child(ren) while the individual is employed or participating in an employment-directed activity, as set forth in the REACH Agreement. Child care arrangements shall be in the best interests of the child. Additional responsibilities of the case manager and lead child care entity are set forth in [(g) and (h)] **(h) and (i)** below.

1. (No change.)

(b) Payment for the cost of child care to support participation is available through the REACH program at rates established by the Department of Human Services.

1. When child care that is in the best interests of the child has been arranged, the case manager has the responsibility to determine eligibility and authorize payment for the child care that will obtain the maximum Federal financial participation for the particular employment-directed activity. In determining payment of the cost of child care, the following sequence will be applied:

i.-ii. (No change.)

iii. Federally-matched child care costs while an individual is participating in training for employment or in a program of vocational rehabilitation; [and]

iv. The participant's funds for the amount of the required post-AFDC child care fee; and

[iv.]**v.** State REACH funds.

2. Payment for child care using State REACH funds may be made when the participant's own source or Federally matched child care are not available or not sufficient to pay for the cost of child care. The priority of funding sources in (b)1ii through [iv]**v** above will be automatically incorporated into every REACH child care payment through fiscal procedures and reporting from the CWA to DEA, unless otherwise specified.

3. Effective date: In all counties, REACH child care payments will be available as each begins the operation of the REACH program, as defined by the Department of Human Services. **Payment of the required post-AFDC child care fee will be effective for participants becoming ineligible for AFDC on or after April 1, 1990 in accordance with criteria at (e)3i below.**

(c) (No change.)

(d) Duration of payment: REACH child care benefits are routinely available to participants for one year of participation in a REACH employment-directed activity[,]; for the post-employment period after the commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, to supplement as necessary, child care paid by the participant as required by the Social Security Act (see [(f)4] **(g)4** below)[.]; and, [one year post-AFDC] after the commencement of employment that results in ineligibility for AFDC, **one year post-AFDC child care, subject to payment of a post-AFDC child care fee.**

1. (No change.)

2. Post-employment child care: The post-employment period shall start with the first week in which a participant is employed and receiving AFDC and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. State REACH funds shall be used for the cost of post-employment child care in any month in which the cost of child care exceeds $175.00 for any child age two or older and $200.00 for any child under age two (see [(f)3](**g)3** below).

i. If an employed participant becomes ineligible for AFDC for a reason other than a sanction or similar penalty for noncompliance with AFDC program requirements, the participant shall be eligible for payment of child care through the REACH program for the one year post-AFDC period while the participant is employed, subject to [(f)3](**e)3** below.

3. Post-AFDC child care: **Duration of post-AFDC child care benefits is set forth in (e)4 below.** [The one year post-AFDC period shall coincide with the 12 month period of extended Medicaid benefits at N.J.A.C. 10:81-14.20(d) to the extent possible. The one year period shall begin with the month AFDC is terminated due to income from employment, but no later than the payment month corresponding to the budget month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the one year period shall begin with the first month in which the family became ineligible for AFDC. State REACH funds shall be used for the cost of post-AFDC child care.

i. Only weeks during which the participant is employed and not receiving AFDC shall be counted toward the one year post-AFDC period. Employment shall be presumed unless the participant reports otherwise.

ii. The one year post-AFDC period shall consist of 52 consecutive weeks if the participant remains employed and does not receive AFDC during that year. If an employed participant loses employment and begins receiving AFDC during the one year post-AFDC period, payment of child care for the subsequent post-AFDC period shall be available for the number of weeks remaining in the one year post-AFDC period.

iii. Eligibility for post-AFDC child care: Before AFDC is terminated, the case manager shall evaluate the need for post-AFDC child

care. In addition to demonstrating need, in order to be eligible for post-AFDC child care the participant must:

(1) Sign a REACH Agreement covering the period during which the child care is to be provided;

(2) Participate in post-AFDC activities set forth in the Agreement; and

(3) Comply with REACH program requirements to report participation in post-AFDC activities.]

4.-5. (No change.)

(e) Post-AFDC child care pertains to child care available to families whose eligibility for AFDC has ceased due to increased hours of, or earnings from, employment including earnings from new employment, or as a result of the loss of earned income disregards due to the expiration of time limits at N.J.A.C. 10:82-4.

1. Availability of post-AFDC child care: Post-AFDC child care is available to the extent that post-AFDC child care is necessary to permit a member of an AFDC family to accept or retain employment.

i. Post-AFDC child care is guaranteed for the following:

(1) A child who is under age 13; or is physically or mentally incapable of caring for himself or herself, as verified by the county or county welfare agency, based on a determination by a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy; and

(2) A child who would be a dependent child, except for the receipt of benefits under Supplemental Security Income under Title XVI or foster care under Title IV-E.

ii. Post-AFDC child care is available for a child age 13 or older, determined on a case by case basis.

2. Notice of potential eligibility for post-AFDC child care: The county welfare agency must notify orally, as appropriate, and in writing all families whose AFDC eligibility has been or will be terminated due to the reasons in (e)3i below, of their potential eligibility for post-AFDC child care benefits by Form R-10, REACH Benefit Letter. Form R-10 advises a family who loses or may lose AFDC eligibility due to income from employment, of potential eligibility for post-AFDC child care and extended Medicaid benefits (see N.J.A.C. 10:81-14.20), and asks the family to request such benefits by contacting the REACH case manager whose name and telephone number are included in the letter. Form R-10 includes the steps the family must take to establish eligibility for post-AFDC child care benefits and their rights and responsibilities with regard to those benefits.

3. Eligibility for post-AFDC child care: A family is eligible for post-AFDC child care, provided the following conditions are met:

i. The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from employment, including earnings from new employment, or the loss of earned income disregards, due to the time limitations at N.J.A.C. 10:82-4;

ii. The family must have received AFDC in the month preceding the first month of ineligibility (although Federal financial participation for post-AFDC child care payments is available only if the family received AFDC in at least three of the six months preceding the first month of ineligibility);

iii. The family requests post-AFDC child care benefits and provides the information necessary, including verification of earnings, for determining eligibility and fees;

iv. The participant signs a REACH Agreement covering the period during which the child care is to be provided;

v. The participant cooperates in post-AFDC activities set forth in the Agreement;

vi. The family pays the required fee, if the family ceased to be eligible for AFDC on or after April 1, 1990; and

vii. The family complies with REACH program requirements to report participation in post-AFDC activities.

4. Period of eligibility for post-AFDC child care: Notwithstanding when the family requests post-AFDC child care, eligibility for post-AFDC child care begins with the first month for which the family is ineligible for AFDC for the reasons at (e)3i above, and continues for a period of 12 consecutive months. The 12-month post-AFDC period shall consist of 52 consecutive weeks, if the participant remains employed and does not receive AFDC during that period of time. Families may begin to receive post-AFDC child care in any month during the 12-month eligibility period.

i. The 12-month post-AFDC eligibility period shall begin with the month AFDC is terminated due to income from employment, but no later than the payment month corresponding to the budget month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the 12-month eligibility period shall begin with the first month in which the family became ineligible for AFDC.

ii. Only weeks during which the participant is employed and not receiving AFDC shall be counted toward the 12-month post-AFDC period. Employment shall be presumed unless the participant reports otherwise.

5. Ineligibility for post-AFDC child care: The family is not eligible for post-AFDC child care for any remaining portion of the 12-month period if the caretaker relative:

i. Terminates employment without good cause, as defined at N.J.A.C. 10:81-14.8(b);

ii. Fails to cooperate with the county welfare agency in establishing payments and enforcing child support obligations; or

iii. Fails to pay required fees (see (e)7iii below).

6. Reestablishing eligibility for post-AFDC child care: If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month post-AFDC child care eligibility period.

i. If the family reestablishes AFDC eligibility during this period, it may qualify for a new 12-month period of post-AFDC child care. To be eligible for a new 12-month period, the family must have received AFDC in at least three of the six months preceding the first month of ineligibility for AFDC, and must satisfy all other conditions of eligibility at (e)3 above.

7. Fee requirement for post-AFDC child care: Each family receiving post-AFDC child care is required to contribute a fee toward the cost of such care.

i. Sliding fee scale: A sliding fee scale established by the Department of Human Services will provide for some level of contribution by all recipients of post-AFDC child care. The sliding fee scale may consider family circumstances including, but not limited to: income, family size, number of children, and number of children in care.

ii. Collection of post-AFDC child care fees: Within guidelines established by the Department of Human Services, each county must establish methods and procedures for the collection of fees, and may vary the period of collection of such fees.

iii. Failure to pay the required fee: Individuals who fail to cooperate in paying the required fees will, subject to appropriate notice and hearing requirements, lose eligibility for post-AFDC child care benefits for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

8. Refusal of post-AFDC child care: A mandatory REACH participant may refuse available appropriate post-AFDC child care if the participant can arrange other child care or can show that such refusal will not prevent or interfere with employment.

i. Inference of refusal: Refusal of post-AFDC child care may be inferred if the participant does not request post-AFDC child care benefits, that is, fails to respond to Form R-10 by the end of the first month of AFDC ineligibility; does not provide the information necessary for determining eligibility and fee amount, including verification of earnings; does not sign a REACH Agreement for the period of post-AFDC child care; or, does not report participation in post-AFDC REACH activities.

9. Notice and hearings for post-AFDC child care: Provision of post-AFDC child care benefits is subject to timely and adequate notice and hearing requirements at N.J.A.C. 10:81-6, 10:81-7, and 10:90-2.5 (also see N.J.A.C. 10:81-14.7).

i. Timely and adequate notice must be given if post-AFDC child care benefits are reduced, discontinued or suspended due to nonpayment of the fee; or if a change in the manner of payment results in a discontinuance, suspension, reduction or termination of benefits; or forces a change in child care arrangements.

ii. Timely and adequate notice is not required for a change in the manner of payment that does not result in an action in (e)9i above.

[(e)](f) Provider requirements: REACH payments to providers of child care are available according to the following conditions:

1.-2. (No change.)

3. Family day care providers—approved homes: Providers of family day care who are not living in the home of the REACH participant and who are not registered under [(e)2](f)2 above shall be approved by the Department of Human Services in order to qualify for payment through the REACH program. Unregistered relatives, friends or neighbors are eligible for approved home status.

i.-ii. (No change.)

4. (No change.)

5. Providers of child care not in the categories [(e)1](f)1 through 4 above are not entitled to payment through the REACH program for child care provided to children of REACH participants.

[(f)](g) Payment Methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

1.-3. (No change.)

4. Special requirements for employed participants: The Social Security Act requires that for any employed AFDC recipient, the actual cost of child care up to and including $175.00 per month per child age two or older and $200.00 per month per child under age two shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first $175.00 or $200.00 in child care directly to the provider. The amount in excess of $175.00 or $200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider or as a direct payment to the participant, in accordance with [(f)1](g)1 and 2 above. However, any amount in excess of $175.00 or $200.00 per month per child that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.

i.-ii. (No change.)

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

[(h)](i) Lead child care entity responsibilities: The lead child care entity will assist the case manager and participant in obtaining appropriate child care based on the parent's and child's needs; will assist in identifying child care resources available for a participant during orientation, assessment, participation in employment-directed activities and employment; and shall verify and document that the child care arrangements meet the criteria as specified in [(e) and (f)](f) and (g) above.

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

(a)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program
Miscellaneous Program Requirements
Proposed Amendments: N.J.A.C. 10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.21, 2.23, 2.28, 2.31, 2.34, 2.35, 2.36, 2.37, 2.38, 3.1, 3.6, 3.7, 3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12 and 11.31
Proposed New Rule: N.J.A.C. 10:87-2.29
Proposed Repeal: N.J.A.C. 10:87-2.20

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4B-2, the Hunger Prevention Act of 1988 (P.L. 100-435), the Disaster Assistance Act of 1988 (P.L. 100-387), the Food Security Act of 1985 (P.L. 99-198), related Federal regulations at 7 CFR Parts 271 through 273, 54 FR 12169, 54 FR 24149, 54 FR 24510, and 54 FR 24518.

Proposal Number: PRN 1990-25.

Submit comments by February 15, 1990 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed repeal, new rule, and amendments is to facilitate and incorporate changes to the New Jersey Food Stamp Program, in response to the passage of Federal legislation and the issuance of Federal food stamp regulations.

In order to clarify the distinction between household information which the county welfare agencies (CWAs) must verify prior to certifying an applicant household, and information which the CWAs must verify only if questionable, a repeal and proposed amendment has been made at N.J.A.C. 10:87-2.20 and 2.21, respectively. The current language at N.J.A.C. 10:87-2.20 has been repealed, the mandatory verification elements found at N.J.A.C. 10:87-2.21 are being recodified under the new N.J.A.C. 10:87-2.20, and the remaining elements of N.J.A.C. 10:87-2.21 are also being recodified. In addition, language has been added at N.J.A.C. 10:87-2.20 to address the mandatory verification of disability, and failure to comply with quality control reviews. The repeal and amended language is consistent with 7 CFR 273.2(f).

N.J.A.C. 10:87-4.8, 5.4, and 5.9 are being amended, in accordance with the March 24, 1989 Federal regulatory change to 7 CFR 273.9(b) and subsequent clarification provided by the United States Department of Agriculture (USDA), to delete all reference to the Comprehensive Employment and Training Act.

N.J.A.C. 10:87-5.4 and 5.9 are being amended, in accordance with the March 24, 1989 edition of the Federal Register, to stipulate that only certain payments issued under the Job Training Partnership Act are to be treated as earned income for food stamp purposes.

N.J.A.C. 10:87-2.17 is being amended, in accordance with 7 CFR 273.2(d)2, to specify that households must cooperate with Federal and State quality control reviews, or otherwise lose eligibility for the Food Stamp Program.

The proposed amendment at N.J.A.C. 10:87-2.19(e) expands the categories of households that are entitled to have their food stamp eligibility interview conducted outside of the CWA office. This proposed amendment is consistent with regulatory changes at 7 CFR 273.2(e) which were published in 54 FR 12169 and 24518.

The proposed amendments at N.J.A.C. 10:87-5.9(a)2 and 6.3(b)3 exclude emergency general and public assistance vendor payments from countable income when issued to migrant or seasonal farmworker households, and eliminate the proration of the initial month's benefits when a migrant or seasonal farmworker household has participated in the Food Stamp Program within 30 days prior to application. The amendment is in conformity with Federal regulations at 7 CFR 273.9(c) and 273.10(a) which were published in 54 FR 24518.

The proposed amendments at N.J.A.C. 10:87-2.23 and 2.31 address regulations which were published in the June 7, 1989 edition of the Federal Register wherein it was mandated that State agencies assist households in obtaining verification, that they only require documentation which is not contained in the household's case record, and that the household be provided with a written statement which specifies what (if any) documentation the household must provide the State agency to complete the certification process.

The proposed amendment at N.J.A.C. 10:87-2.28 complies with the Hunger Prevention Act of 1988 by clarifying under what circumstances the household must report changes in deductible expenses.

The amendment at N.J.A.C. 10:87-2.35(a)5 has been proposed to reflect revised Federal regulations at 7 CFR 273.2(j), which were published in the June 7, 1989 edition of the Federal Register.

The proposed amendment at N.J.A.C. 10:87-2.36 reflects final Federal regulations which were published in 54 FR 24510 concerning the categorical eligibility for food stamp benefits of households receiving Aid to Families With Dependent Children and Supplemental Security Income.

In accordance with the Federal regulatory revision to 7 CFR 271.2, which was published in 54 FR 24518, N.J.A.C. 10:87-2.38 has been amended to expand the definition of disability for food stamp purposes.

The proposed amendments at N.J.A.C. 10:87-4.8 and 4.12 address a provision of the Hunger Prevention Act of 1988 which grants a one year resource exclusion to the income producing assets of a farming household which is in the process of transition to another form of employment.

Consistent with 7 CFR 273.11(a)(1)(v), the proposed amendment at N.J.A.C. 10:87-7.6 permits a household engaged in farming to annualize its costs of producing income for the purpose of arriving at net food stamp income.

The proposed amendment at N.J.A.C. 10:87-7.16 deletes language which denied food stamp eligibility to residents of drug or alcoholic

treatment facilities and group living arrangements when those facilities are disqualified from acting as retailers for the purpose of redeeming food stamp coupons.

The new rule at N.J.A.C. 10:87-2.29, which is consistent with 7 CFR 273.2(g)(3), addresses the process which CWAs must follow when denying an application for food stamp benefits.

The proposed amendment at N.J.A.C. 10:87-10.7(b) clarifies under what conditions an individual will be exempt from the food stamp work registration requirement when the individual is receiving another type of public assistance. Since recipients of non-Federally funded public assistance are subject to participation in the Realizing Economic Achievement (REACH) Program, they are exempt from food stamp work registration. Recipients of General Assistance shall be exempt only if they are participating in a work activity mandated by General Assistance regulations. This proposed amendment reflects waivers granted under the authority of 7 CFR 273.7(k) by USDA to this Department's Division of Economic Assistance.

The proposed amendment at N.J.A.C. 10:87-11.31 requires CWAs to suspend all actions to recover overissued food stamp benefits from a household that has filed for bankruptcy. The USDA's Office of General Counsel has advised that the automatic stay provision granted by a bankruptcy petition shall be honored by State and local food stamp administrative agencies. Cross references to amendments and new rules were updated throughout the text.

Social Impact

The proposed repeal, new rule, and amendments will have a positive impact upon CWA administrative procedures, because an accurate delineation of Federal food stamp requirements is fundamental to effective program administration. Additionally, some recipients will realize a slight increase in their food stamp benefits because of the expanded definition of disability, while others will retain their program eligibility due to the expanded resource exclusions afforded households previously engaged in a farming enterprise. The inclusion of certain GA recipients in the food stamp work registration process will enable those individuals to obtain the employment training benefits afforded other food stamp recipients through the Food Stamp Employment and Training Program. There will be no appreciable negative effect on the public.

Economic Impact

Significant economic impact is not anticipated as a result of the proposed amendments and new rule. Food stamp benefits are funded entirely by the Federal government, so any increase in benefits will not impose fiscal burden on the State or counties. Enactment of the amendments will ensure that the New Jersey Food Stamp Program is consistent with Federal statutes and regulations, thus avoiding the possibility of Federally-imposed fiscal sanctions due to noncompliance.

Regulatory Flexibility Statement

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, repeal and new rule impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for Food Stamp Program benefits to a low-income population by a governmental agency, rather than a private business establishment.

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

10:87-2.2 Household defined

(a) A household may be composed of any of the following individuals or groups of individuals:

1.-3. (No change.)

4. Elderly and disabled individual living with others: An individual who is 60 years of age or older (and the spouse of such individual) living with others who is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or suffers from some other physical or mental nondisease-related, severe, permanent disability may be a separate household (see definition of elderly or disabled in N.J.A.C. 10:87-2.38 and verification requirements in N.J.A.C. 10:87-[2.21(j)] **2.20(i)**). However, the gross monthly income of the household with which the individual resides cannot exceed the gross monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7. This income determination shall be made in accordance with the following procedures:

i.-ii. (No change.)

5. An applicant household that has customarily purchased and prepared food separately in the past but, because of changes in financial or other circumstances, is now temporarily buying and preparing food with others, shall be considered a separate household, providing it intends to return to its former status upon receipt of food stamps. The applicant household's statements on past and intended practices shall suffice, except when the information provided is questionable according to the criteria at N.J.A.C. 10:87-[2.21(j)] **2.20(i)**. If the applicant household does not return to its former status, the actual household composition will prevail and will be considered a client-reportable change in accordance with N.J.A.C. 10:87-9.5(a). The 10-day period for reporting that the applicant household has not returned to its former status will commence upon receipt of food stamp benefits.

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

10:87-2.3 Nonhousehold members, boarders and excluded household members

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

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1.-3. (No change.)

4. Questionable citizenship status: Individuals whose citizenship is questionable (see N.J.A.C. 10:87-[2.21(k)] **2.21(b)** regarding verification of questionable citizenship).

10:87-2.14 Household cooperation

To determine eligibility for program benefits, the application must be completed and signed, the household (or its authorized representative) interviewed, and certain information (see N.J.A.C. 10:87-**2.20 and** 2.21) must be verified. If the household refuses to cooperate with the CWA in completing this process, the application shall be denied at the time of refusal.

10:87-2.17 Refusal to cooperate with Quality Control reviews

(a) The household shall [also] be determined ineligible if it refuses to cooperate in a **State or Federal** Quality Control review [of its case]. If a household is terminated for refusal to cooperate with a quality control reviewer, the household may reapply but shall [remain ineligible] **not be determined eligible** until one of the following conditions is met:

1. The household [agrees to cooperate] **cooperates** with the reviewer[; or].

2. [If the household reapplies 96 days from the end of the annual quality control review period, the household may be determined eligible if it provides verification of all eligibility requirements. The annual review period corresponds with the Federal fiscal year, beginning October 1st and ending September 30th. Therefore, an ineligible household may not be determined eligible for food stamp benefits before January 4th of the following year.] **If a household that was terminated for refusal to cooperate with a State quality control reviewer reapplies after 95 days from the end of the annual review period, the household shall not be denied for its failure to cooperate with a State quality control reviewer during the completed review period, but must provide verification prior to certification, in accordance with N.J.A.C. 10:87-2.20(k). The annual review period ends on September 30 of each year.**

3. If a household that was terminated for refusal to cooperate with a Federal quality control reviewer reapplies after seven months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with N.J.A.C. 10:87-2.20(k) prior to

certification. The annual review period ends on September 30 of each year.

[(b) Any household which is determined ineligible for refusal to cooperate shall be notified by the CWA via Form PA-15 (for PA/FS cases) or Form FSP-15 (for NPA cases). The CWA shall also enclose a separate notice stating the following:

"Under Federal regulations, households who refuse to cooperate with a quality control review of their food stamp case will have their food stamp benefits terminated until the household cooperates with the reviewer, or until the 96th day after the end of the review period, whichever comes first. The annual review period begins October 1st and ends September 30th. Hence, in the latter case, households may not be determined eligible for benefits until January 4th of the next year, following the end of the review period. In addition, there is also the possibility that the case will be referred to investigation of willful misrepresentation."

(c) The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a quality control reviewer and who reapply 96 days from the end of the annual review period.]

10:87-2.19 Interview process

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

(e) Waiver of office interview: The office interview shall be waived for any household which is unable to appoint an authorized representative (see N.J.A.C. 10:87-2.7) and which has no household members able to come to the food stamp office because they are [65 years of age or older, or are mentally or physically handicapped] **elderly or disabled, as defined in N.J.A.C. 10:87-2.38**. The CWA shall waive the office interview on a case by case basis for any household which reports it is unable to appoint an authorized representative and has no members able to come to the Food Stamp office because of transportation difficulties or similar hardships.

1. Hardships: Hardship conditions include, but are not limited to: illness, care of a household member, **hardships due to residency in a rural area,** prolonged severe weather, or work hours which preclude an in-office certification. If a waiver is granted, the CWA shall document the reason for the determination in the case record.

2.-4. (No change.)

(f)-(h) (No change.)

[10:87-2.20 Verification

Verification is the use of third party information or documentation to establish the accuracy of statements on the application.]

10:87-[2.21] **2.20** Mandatory verification

(a) The CWA shall verify the following information in (b) through [(n)] (**k**) below prior to certification for households initially applying for food stamp benefits.

(b)-(h) (No change.)

[(i) Verification of questionable information: With the exception of liquid resources and loans, the CWA shall verify all other factors of eligibility prior to certification only if they are questionable and affect the household's eligibility or benefit level. Procedures for verifying loans and liquid resources are described in (m) below.

1. Questionable information defined: To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with information received by the CWA prior to certification. When determining if information is questionable, the CWA shall base the decision on each household's individual circumstances. The fact that a household's expenses exceed its income may be grounds for a determination that further verification may be required. However, this fact shall not, in and of itself, be grounds for a denial. The CWA shall instead explore with the household how it is managing, whether or not the household receives excluded income or has resources, and how long the household has managed under these circumstances. Certain special procedures described below shall be followed when information concerning one of the following eligibility requirements is questionable.]

[(j)] (**i**) Household composition: The CWA shall verify any factors affecting the composition of a household if questionable.

1. Individuals who [wish]**claim** to be a separate household from those with whom they reside shall be responsible for proving [a claim] that they are a separate household to the satisfaction of the CWA.

2. [Elderly or disabled individuals as described in N.J.A.C. 10:87-2.2(a)4 who wish to be a separate household, shall be responsible for obtaining the cooperation of the individuals with whom they reside in providing the necessary income information to the CWA and for providing (at the CWA's request) a physician's statement that they cannot purchase and prepare their own meals.] Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors at N.J.A.C. 10:87-2.38, shall be responsible for proving such claims **in accordance with (j) below**.

[3. For any surviving spouse or child of a veteran claiming a permanent disability that is questionable (not apparent) to the CWA, under N.J.A.C. 10:87-2.38(a)9 of the definition of "elderly or disabled member", the household shall provide (at the CWA's request) a statement from a physician or licensed or certified psychologist which substantiates the applicant's claim of disability.]

(j) Disability determinations shall be processed as follows:

1. The CWA shall verify disability, as defined in N.J.A.C. 10:87-2.38, as follows:

i. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)2, 3, and 4, the household shall provide proof that the disabled individual is receiving benefits under Titles I, II, X, XIV, or XVI of the Social Security Act;

ii. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)6, the household shall present a statement from the Veteran's Administration (VA) which clearly indicates that the disabled individual is receiving VA disability benefits for a service-connected or nonservice-connected disability and that the disability is rated or paid at the total rate by VA;

iii. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)7 and 8, proof by the household that the disabled individual is receiving VA disability benefits is sufficient verification of disability;

iv. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)5 and 9, the CWA shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under N.J.A.C. 10:87-2.38(a)5 and 9;

v. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)10, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare;

vi. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)11, the CWA shall verify that the individual receives the qualifying medical assistance identified at N.J.A.C. 10:87-2.38(a)11;

2. For disability determinations which must be made relevant to the provisions of N.J.A.C. 10:87-2.2(a)4, the CWA shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious that the individual is unable to purchase and prepare meals because he or she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious, the caseworker shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician or psychologist's opinion) is unable to purchase and prepare meals because he or she suffers from one of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he or she suffers from some other disease or nondisease-related disability. The elderly and disabled individual (or his or her authorized representative) shall be responsible for obtaining the

cooperation of the individuals with whom he or she resides in providing the necessary income information about the others to the CWA for purposes of this provision.

(k) The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

10:87-2.21 Verification of questionable information

(a) The CWA shall verify all other factors of eligibility not described at N.J.A.C. 10:87-2.20 prior to certification only if they are questionable and affect the household's eligibility or benefit level. To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with information received by the CWA prior to certification. When determining if information is questionable, the CWA shall base the decision on each household's individual circumstances. The fact that a household's expenses exceed its income may be grounds for a determination that further verification may be required. However, this fact shall not, in and of itself, be grounds for a denial. The CWA shall instead explore with the household how it is managing, whether or not the household receives excluded income or has resources, and how long the household has managed under these circumstances. Certain special procedures described in this section shall be followed when information concerning one of the following eligibility requirements is questionable.

[(k)](**b**) (No change in text.)

[(l)](**c**) Deductible expenses: Deductible expenses other than utility costs which exceed the standard [(see (d) above)] **or heating utility allowance** shall be verified [only] if questionable and if allowing the expense would actually result in a deduction. [For example, rent, even if questionable, would not be verified if the household's child care expenses exceed the limit on the combined dependent care/shelter deduction since the amount of the rent can not alter the amount of the deductions.] **In accordance with N.J.A.C. 10:87-5.10(a)5iv(1) and (2), the CWA shall verify that the household is entitled to a utility allowance.**

1.-3. (No change.)

[(m)](**d**) Liquid resources and loans: The CWA shall verify liquid resources and whether or not moneys received by the household are loans whenever such items are questionable [(see (i)1 above)].

1.-2. (No change.)

[(n)](**e**) (No change in text.)

10:87-2.23 Sources of verification

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

(d) Responsibility for obtaining verification:

1. The household has primary responsibility for providing documentary evidence to support [its income] statements **on the application** and to resolve any questionable information. **The CWA shall assist the household in obtaining this verification provided the household is cooperating with the CWA as specified in N.J.A.C. 10:87-2.14.** Households may supply documentary evidence in person, through the mail or through an authorized representative. However, the CWA shall not require the household to personally present verification at the food stamp office. The CWA shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. [If it would be difficult or impossible for the household to obtain the documentary evidence in a timely manner, the CWA shall offer assistance in obtaining the evidence, except as otherwise stated in this section.]

2. (No change.)

10:87-2.28 Verification subsequent to initial certification

(a) At recertification, the CWA shall verify a change in income[, medical expenses] or actual utility expenses [claimed by a household] if the source has changed or the amount has changed by more than $25.00 [since the last time they were verified]. **Previously unreported medical expenses and total recurring medical expenses which have changed by more than $25.00 shall also be verified at recertification.**

(b) Questionable information: [The CWA may verify income, actual utility expenses or medical expenses claimed by households which are unchanged or have changed by $25.00 or less, only if the information is questionable as defined in N.J.A.C. 10:87-2.21(i)1. All other changes reported at the time of recertification shall be subject to the same verification procedures that apply at initial certification.] **The CWA shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25.00 or less, unless the information is incomplete, inconsistent, or outdated. Other information which has changed may be reverified at recertification. Unchanged information shall not be verified unless the information is incomplete, inconsistent, inaccurate, or outdated. Verification under this section shall be subject to the same verification procedures as apply to initial verification.**

[1. Unchanged information: Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in N.J.A.C. 10:87-2.21(i)1.]

(c) Changes: Changes reported during the certification period shall be subject to the same verification procedures that apply at initial certification, except that the CWA [is not required to] **shall not** verify **changes in** income, **total** medical expenses or actual utility expenses if the [source has not changed and the] amount has changed by $25.00 or less [since the last time they were verified.] , **unless the information is incomplete, inconsistent, inaccurate, or outdated.**

1. Change in household composition: If the change reported is a change in household composition, the CWA shall verify through the ALFX system that no household member is participating in the Food Stamp Program as part of another household (see N.J.A.C. 10:87-2.21[(n)1](**e**).

(d) Social Security numbers: Newly obtained Social Security numbers shall be verified at recertification in accordance with verification procedures in N.J.A.C. 10:87-[2.21(h)] **2.20(h)**.

10:87-2.29 [(Reserved)] **Denial of the application**

Households that are found to be ineligible shall be sent a notice of denial as soon as possible, but not later than 30 days following the date the application was filed. If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the CWA to express an interest in pursuing the application, the CWA shall send the household a notice of denial on the 30th day following the date of application. The household shall file a new application, if it wishes to participate in the Program. In cases where the CWA was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the CWA may also deny the application on the 30th day if the CWA provided assistance to the household in obtaining verification when required, as specified in N.J.A.C. 10:87-2.23(d), but the household failed to provide the requested verification.

10:87-2.31 Delays in processing

(a) (No change.)

(b) Failure to appear for two interviews: If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the CWA to express interest in pursuing the application, the CWA shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. [(]See (c)5 below[)] for households which express interest in pursuing the application after failing to appear for two scheduled interviews.

(c) Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

1.-2. (No change.)

3. Incomplete verification: In cases where verification is incomplete, the CWA must have provided [assistance when required,

as specified in N.J.A.C. 10:87-2.23,] **the household with a statement of required verification, offered to assist the household in obtaining required verification,** and allowed the household sufficient time to provide the missing verification.

4.-5. (No change.)

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

10:87-2.34 Special procedures for expediting services

(a) The CWA shall use the following procedures when expediting certification and issuance.

1. Verification procedure: In order to expedite the certification process, the CWA shall use the following verification procedures:

i. (No change.)

ii. All reasonable efforts shall be made to verify, within the expedited processing standards, the household's residency, income statements (including a statement that the household has no income), liquid resources and all other verification factors required in N.J.A.C. 10:87-**2.20 and** 2.21 through collateral contacts or readily available documentary evidence;

(1) (No change.)

iii.-vii. (No change.)

2. (No change.)

3. Certification period: Households which are certified on an expedited basis and have provided all necessary verification required in N.J.A.C. 10:87-**2.20 and** 2.21 prior to certification shall be assigned a normal certification period (see N.J.A.C. 10:87-6.19). If verification is postponed, the CWA shall certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the option of the CWA, shall assign the normal certification period warranted by the household's circumstances. However, in no event will benefits be continued past the month of application if verification is not obtained. Federally mandated reduction, suspension, or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households.

i.-iv. (No change.)

4.-5. (No change.)

10:87-2.35 AFDC eligibility determination (PA households)

(a) Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that the AFDC eligibility determination has not been made.

1.-4. (No change.)

5. Denial of AFDC: A household whose AFDC application is denied shall not be required to file **a** new food stamp application but shall have its food stamp eligibility [determination] **determined** or continued on the basis of the original application **filed jointly for AFDC and food stamp purposes** and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

10:87-2.36 Categorically eligible AFDC/SSI households

(a) [Any household consisting solely of members who are receiving or are authorized to receive AFDC and/or SSI benefits shall be considered a "pure" AFDC/SSI household and, therefore, categorically eligible for the Food Stamp Program.] **Any household, except those listed in (c) below, in which all members are authorized to receive AFDC/SSI benefits shall be considered categorically eligible for the Food Stamp Program unless the household is institutionalized or disqualified for any reason from receiving food stamps.**

1. Residents of public institutions applying jointly for SSI and food stamp benefits shall not be categorically eligible upon a finding by the Social Security Administration (SSA) of potential SSI eligibility prior to release. Those individuals shall be considered categorically eligible when a final SSI eligibility has been made and the individual has been released from the institution.

Renumber 1. through 3. as **2. through 4.** (No change in text.)

(b) (No change.)

(c) No household shall be considered categorically eligible for food stamps if any member of that household is disqualified for:

1.-2. (No change.)

3. **The head of the household is disqualified for failure** [Failure] to comply with the work [and training] requirements contained in N.J.A.C. 10:87-10.

4. Such households are subject to all food stamp eligibility criteria and benefit determination provisions **and cannot be reinstated in the Program on the basis of categorical eligibility provisions.**

(d) The factors which are deemed for food stamp eligibility without the verification required by N.J.A.C. 10:87-**2.20 and** 2.21 because of AFDC/SSI status are:

1.-5. (No change.)

(e) If any of the following factors are questionable, the CWA shall verify, in accordance with N.J.A.C. 10:87-2.21, that the household which is considered categorically eligible contains[;]:

1.-3. (No change.)

4. Includes no person disqualified as specified in (c) above (see also N.J.A.C. 10:87-[3.20, and 10:87-]10 and 10:87-11.**1**).

(f)-(h) (No change.)

(i) The CWA shall conduct a single interview at initial application for both AFDC and food stamp purposes. AFDC households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs.

Renumber i. through ii. as **1. through 2.** (No change in text.)

(j) For households applying for both AFDC and food stamps, the verification procedures described in N.J.A.C. 10:87-**2.20 and** 2.21 shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both AFDC eligibility and food stamp eligibility, the CWA may use the AFDC verification rules.

[i.]**1.** (No change in text.)

(k)-(m) (No change.)

(n) For a household filing a joint application for food stamps and AFDC/SSI benefits, or a household that has an AFDC/SSI application pending and is denied food stamps but is later determined eligible to receive AFDC/SSI benefits and is otherwise categorically eligible, the CWA shall provide benefits using the original application and any other pertinent information occurring subsequent to that application, **except for residents of public institutions who apply for AFDC/SSI benefits prior to their release from the public institution**

Benefits shall be paid from the beginning of the period for which AFDC/SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later.

1. (No change.)

(o) Any household determined AFDC/SSI eligible which is categorically eligible within the 30-day food stamp processing time shall be provided benefits in accordance with N.J.A.C. 10:87-2.30. Benefits shall be prorated in accordance with current procedures. **However, no food stamp benefits shall be paid for a month in which such household is ineligible for receipt of AFDC/SSI benefits, unless the household is eligible as an NPA case.**

(p) Households that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable or the date of the original food stamp application, **whichever is later.**

(q) The CWA shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's AFDC and/or SSI eligibility. The household shall be informed on the notice of denial to notify the CWA if its AFDC or SSI benefits are approved. Households who file joint applications for food stamps and AFDC/SSI and are subsequently denied may be required to file a new food stamp application or have their food stamp eligibility determined **or continued** on the basis of the original applications.

(r) (No change.)

(s) Households whose AFDC/SSI applications are denied shall not be required to file a new food stamp application, but shall have their food stamp eligibility determined or continued on the basis of the original applications. The CWA may, in evaluating food stamp eligibility or benefit levels, use any other documented information obtained

subsequent to the application, which may have been used in the AFDC/ SSI determination.

(t) Categorical eligibility shall be assumed at recertification, in the absence of a timely AFDC redetermination. If a recertified household is subsequently terminated from AFDC benefits, the procedures in N.J.A.C. 10:87-9.5 shall be followed, as appropriate.

10:87-2.37 Procedures for SSI jointly processed households

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

(f) The CWA shall ensure that information required by N.J.A.C. 10:87-**2.20,** 2.21 and 2.22 is verified prior to certification for households initially applying for food stamps. Households shall be provided the opportunity to provide verification from another source if all necessary SSI benefit payment information is not available on/ through the State Data Exchange (SDX) or Beneficiary Data Exchange (BENDEX) (see N.J.A.C. 10:87-2.22 [above]).

(g)-(h) (No change.)

10:87-2.38 Elderly or disabled household members

(a) **An** [Elderly] **elderly** or disabled member of a food stamp household is defined as a member who:

1.-8. (No change.)

9. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; [or]

10. Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled, based upon the criteria used under Title XVI of the Social Security Act[.]; **or**

11. Receives medical assistance benefits as a disabled individual under:

i. Medicaid Only (Aged, Blind, and Disabled);

ii. AIDS Community Care Alternatives Program;

iii. Community Care Program for the Elderly and Disabled;

iv. Model Waivers I, II, or III (Medicaid Community/Home Care Waivers);

v. Home Care Expansion Program;

vi. Medically-Needy Program; or

vii. New Jersey Care Program.

10:87-3.1 Applicability

Nonfinancial eligibility factors in this section shall apply equally to all applicant households (see N.J.A.C. 10:87-**2.20 and** 2.21 for verification requirements).

10:87-3.6 U.S. citizen defined

For the purposes of N.J.A.C. 10:87-3.5, the United States shall be defined as the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Swain's Island, American Samoa, and the Northern Mariana Islands. Citizenship shall be verified only if questionable in accordance with N.J.A.C. 10:87-[2.21]**2.20**(c).

10:87-3.7 Eligible alien

(a) (No change.)

(b) Ineligible alien as a member of the household: The presence of a person in the household who is ineligible for participation in the program because of his or her alien status shall not prevent the remainder of the household from being certified for program benefits, if eligible (see also N.J.A.C. 10:87-[2.21]**2.20**(c)).

(c) (No change.)

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1. Immigrants: An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. (However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in (a)8 and 9 below) (see N.J.A.C. 10:87-[2.21]**2.20**(c) for verification);

2. Continuous residence: An alien who entered the United States prior to January 1, 1972, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (see N.J.A.C. 10:87-[2.21]**2.20**(c) for verification);

3. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act (see N.J.A.C. 10:87-[2.21]**2.20**(c) for verification);

4. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(a)(7) of the Immigration and Nationality Act (see N.J.A.C. 10:87-[2.21]**2.20**(c) for verification);

5. (No change.)

6. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General (see N.J.A.C. 10:87-[2.21]**2.20**(c) for verification);

7. Deportation withheld: An alien living within the United States from whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion (see N.J.A.C. 10:87-[2.21]**2.20**(c) for verification);

8.-11. (No change.)

10:87-3.11 Awaiting verifications

(a) If verification of eligible alien status or citizenship as required by N.J.A.C. 10:87-[2.21]**2.20**(c) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the alien(s) whose status is unverified or individual whose citizenship is questionable shall be treated in the same manner as an excluded member as specified in N.J.A.C. 10:87-7.14(c) and considered available in determining the eligibility of the remaining household members.

(b) (No change.)

10:87-4.3 Resources defined

(a) The resources of a household shall include the following which shall be recorded by the CWA in sufficient detail to permit verification if necessary (see N.J.A.C. 10:87-**2.20,** 2.21 and 4.5).

1.-3. (No change.)

10:87-4.5 Verification of resource information

Resource information shall be verified prior to certification only if questionable (see N.J.A.C. 10:87-2.21[(i)]).

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-7. (No change.)

8. Property essential for employment: Property, such as farm land, which is essential to the employment or self-employment of a household member. **Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his or her self-employment from farming.**

9.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal

statute. The following is a listing of resources excluded by Federal statute:

i.-iii. (No change.)

[iv. Payments from certain federal programs: Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524);]

Renumber v. through xiv. as **iv. through xiii.** (No change in text.)

18.-19. (No change.)

10:87-4.12 Treatment of licensed vehicles

(a) The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. Vehicles totally excluded: The entire value of any licensed vehicle shall be excluded if the vehicle meets any one of the criteria below. If found to apply, this exclusion shall continue when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

i.-ii. (No change.)

iii. Vehicle essential to employment: The vehicle is necessary for long distance travel, other than daily commuting, which is essential to the employment of a household member (or excluded individual whose resources are being considered available to the household); for example, the vehicle of a traveling salesperson or of a migrant farmworker following the work stream. **A licensed vehicle which has previously been used by a self-employed household member engaged in farming, but which is no longer used over 50 percent of the time in farming because the household member has terminated his or her farming self-employment, shall continue to be excluded as a resource for one year from the date the individual terminated the self-employment from farming.**

iv.-vi. (No change.)

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

10:87-5.1 Applicability

(a) All households which do not contain an elderly or disabled member, [including those in which all members are recipients of public assistance,] shall meet both the net and gross income eligibility standards set forth in N.J.A.C. 10:87-12.3 and 12.4, respectively, in order to be eligible for program participation, **with the exception of (b) below**. Households which contain an elderly or disabled member shall meet the net income eligibility standards in N.J.A.C. 10:87-12.3. Net food stamp income shall be determined in accordance with procedures contained in this subchapter.

(b) (No change.)

10:87-5.2 Responsibilities regarding the reporting of income

(a) Responsibilities for the reporting of income shall be as follows:

1. (No change.)

2. Responsibility of CWA: The CWA shall determine that the total income to the household, as reported by the applicant during the certification or recertification interview, is completely identified on the FSP-901, and in sufficient detail to permit verification (see also N.J.A.C. 10:87-[2.21]**2.20**(b)).

10:87-5.4 Earned income

(a) For the purposes of determining net food stamp income, earned income shall include:

1.-3. (No change.)

4. Training allowances: Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the Work Incentive Program (WIN)[,] **or** Realizing Economic Achievement (REACH) [or programs authorized by the Comprehensive Employment and Training Act (CETA)] to the extent they are not a reimbursement (see N.J.A.C. 10:87-5.9(a)9iii(1)).

5. (No change.)

6. Earnings to participants in on-the-job training programs under JTPA, provided that the participant is not under 19 years of age and under the parental control of another adult member **and the programs are administered under Section 204(5), Title II, of JTPA**. JTPA participants under 19 years of age who are under the parental control of another adult household member shall have their JTPA earnings treated as excluded income in accordance with N.J.A.C. 10:87-5.9(a)15xi[i].

10:87-5.6 Income of excluded individuals

(a) (No change.)

(b) Income of individual excluded for other causes: The earned or unearned income of individuals excluded from the household for failing to comply with the requirement to provide a Social Security number (see N.J.A.C. 10:87-[2.21]**2.20**(h)) or for being an ineligible alien (see N.J.A.C. 10:87-3.8(a) et seq. for listing of eligible aliens) or for having questionable citizenship status (see N.J.A.C. 10:87-2.21[(k)](**b**)) shall continue to be counted as income, less the pro rata share for that individual, to the remaining household members. Procedures for calculating this pro rata share are described in N.J.A.C. 10:87-7.14.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1. (No change.)

2. Vendor payments: A payment made in money on behalf of a household shall be considered a vendor payment when a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend who is not a household member pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

i.-v. (No change.)

vi. An emergency public or general assistance payment provided to a third party on behalf of a household containing a migrant or seasonal farmworker shall be treated as an excluded vendor payment, provided that the farmworker is in the jobstream.

3.-7. (No change.)

8. Loans: All loans, including loans from private individuals as well as commercial institutions, are excluded from income and resources. Additionally, deferred payment educational loans that provide income assistance beyond that used for tuition and mandatory fees shall be excluded if the lender/financial aid office of the school specifically designates portions of the loan as educational expenses rather than living expenses (see N.J.A.C. 10:87-2.21 [(m)](**d**)).

9.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-v. (No change.)

[vi. Payments from certain youth projects: Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524).]

Renumber vii. through xi. as **vi. through x.** (No change in text.)

[xii.]**xi.** Job Training Partnership Act: Any allowances or payments provided to individuals participating in programs under the Job Training Partnership Act of 1982 (Public Law 97-300). Earnings provided to individuals participating under JTPA on-the-job training programs shall be excluded if the participants are under 19 years of age and are under the parental control of another adult household member**, and the programs are administered under Section 204(5), Title II, of JTPA**.

Renumber xiii. through xv. as **xii. through xiv.** (No change in text.)

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-4. (No change.)

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1 unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i. (No change.)

ii. Shelter costs of unoccupied home: Shelter costs for a home not occupied temporarily by the household because of employment or training away from home, illness, or abandonment because of a natural disaster or casualty loss, shall be deductible (see N.J.A.C. 10:87-2.21[(l)](c) for verification requirement. The following conditions must be met in order to qualify for this deduction:

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

iii.-iv. (No change.)

10:87-6.3 Application for recertification

(a) (No change.)

(b) If an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with N.J.A.C. 10:87-6.2(c).

1.-2. (No change.)

3. If the household contains a member who is a migrant or seasonal farmworker, the household's allotment shall not be prorated, if the household participated in the Program within 30 days prior to the date of the application.

(c) (No change.)

(d) For all households that the CWA elects the timeframe for providing missing verification, as outlined in N.J.A.C. 10:87-[2.21] **2.20** through 2.28, and the end of the timeframe falls after the end of that household's current certification period, the household shall not be subject to proration for the first month following the end of its current certification period, if it has provided the missing verification and is otherwise eligible.

10:87-6.19 Certification periods

(a) The CWA shall establish a definite period of time or "certification period" within which a household shall be eligible to receive benefits. A [federally]**Federally** mandated reduction, suspension, or cancellation of allotments in a given month shall have no effect on the certification period assigned to a household. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and such verification as required by N.JA.C. 10:87-**2.20 and 2.21.**

(b) (No change.)

10:87-7.6 Determining monthly income from self-employment

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

(c) Determination of adjusted net monthly income: The monthly net self-employment income shall be added to any other earned income received by the household.

1.-4. (No change.)

5. Households who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income shall be afforded the option to annualize the allowable costs of producing self-employment income from farming, when the self-employment farm income is annualized.

10:87-7.16 Residents of drug/alcoholic treatment and rehabilitation programs and group living arrangements

(a)-(h) (No change.)

[(i) Disqualified treatment center or group living arrangement facility: If FNS disqualifies an organization, institution, treatment center, or group living facility as an authorized retail food store, the CWA shall suspend its authorized representative status for the same period. If the treatment center or group living arrangement facility loses its authorization from FNS to accept and redeem coupons or loses its certification from the appropriate State agency, the residents of the center or facility are no longer eligible to participate in the program and are not entitled to a notice of adverse action but shall receive a written notice explaining the termination and when it will become effective. However, residents of group living arrangements applying on their own behalf are still eligible to participate.]

10:87-7.18 Deeming of income and resources of alien sponsors

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

(f) Verification: The sponsored alien and his or her spouse are responsible for providing the CWA with any information necessary to determine the income and resources of the alien's sponsor and the sponsor's spouse. The alien and his or her spouse shall also be responsible for demonstrating to the CWA that the sponsor also sponsors other aliens, how many, and for obtaining any necessary cooperation from the sponsor.

1.-2. (No change.)

3. The CWA shall verify the information obtained pursuant to (f) above. The CWA shall verify the information which the CWA determines is questionable and which affects household eligibility and benefit level in accordance with procedures established at N.J.A.C. 10:87-2.21 [(h)] for verifying questionable information.

4. (No change.)

(g) (No change.)

10:87-9.5 Changes

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

(c) CWA responsibilities: The CWA shall not impose any food stamp reporting requirement on the household except as noted above. Neither shall the CWA treat the submission of the report of change as a waiver of the household's right to a notice of an adverse action.

1. (No change.)

2. Action on reported change: The CWA shall advise the household of its responsibilities to report changes within the required time period. The CWA is required to take prompt action on all changes reported by the household to determine if the change affects the household's eligibility or allotment. Even if there is no change in allotment, the CWA shall document the change in the case record, provide another change report form to the household, and notify the household of the receipt of the change report and effect of the change, if any, on its benefits. Restoration of lost benefits shall be provided to any household if the CWA fails to take action on a change which increases benefits within the time limits specified below.

i. (No change.)

ii. Changes which increase benefits and require issuance of a supplementary ATP: For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50.00 or more in the household's gross monthly income, the CWA shall make the changes effective no later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the CWA to adjust the following month's allotment, the CWA shall issue a supplementary ATP by the 10th day of the following month.

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

(3) Verification: Verification required by N.J.A.C. 10:87-[2.21] **2.20** through 2.23, must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level. In cases where the CWA has determined that a household has refused to cooperate, as defined in N.J.A.C. 10:87-2.14 through 2.17, the CWA shall terminate the household's eligibility.

iii. Changes that reduce benefits: If the household's benefit level decreases or the household becomes ineligible as a result of the change, the CWA shall issue a notice of adverse action within 10 days of the date the change was reported, unless one of the exemp-

tions to the notice of adverse action in (g) and (h) below applies. The decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. Verification required by N.J.A.C. 10:87-[2.21]**2.20** through 2.23, must be obtained prior to recertification.

3. (No change.)

(d)-(i) (No change.)

(j) Notice of adverse action: Prior to any action to reduce or terminate a household's benefits within the certification period, the CWA shall[,] provide the household timely and adequate advance notice before the adverse action is taken [(see N.J.A.C. 10:87-9.5(j))]

(k) Changes not requiring advance notice: Individual notices of adverse action are not required when:

1.-8. (No change.)

9. Disqualified drug/Alcoholic treatment center or group living arrangement facility: Residents of a treatment center or group living arrangement which lost its certification from the appropriate State agency [or habits status as an authorized representative suspended due to FNS disqualifying it as a retailer].

10.-12. (No change.)

10:87-10.7 Exemptions from the work registration requirement

(a) (No change.)

(b) The following persons shall be exempt from the work registration requirement:

1.-6. (No change.)

7. Persons subject to registration under other programs: Persons registered for work in accordance with program requirements of General Assistance are exempt, **provided that they are participating in a General Assistance work or training activity. AFDC recipients who are subject to and complying with any REACH work or training requirement shall be exempt.**

[i. Persons exempt from registration under other programs: Persons exempt from work registration in accordance with program requirements of AFDC and General Assistance are not necessarily exempt from registration in the Food Stamp Program. Such individuals shall be exempt only if they meet the exemption criteria in this section.

ii. Persons failing to comply with AFDC or GA work registration requirements: Persons who fail to comply with an AFDC or GA work registration requirement that is equivalent to a food stamp work registration requirement shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-10.20.

(1) Notification procedures for GA recipients who fail to comply with work registration requirements: Municipal welfare departments shall advise the CWA of each GA recipient who fails to comply with any work registration requirement and of the actual requirement with which the recipient failed to comply. If the GA recipient is participating in the food stamp program, the CWA shall determine if the failure to comply with the GA work requirement is equivalent to a food stamp work registration requirement.

(2) Persons registered for, but not actively participating in, a GA work program requirement through the General Assistance Employability Program (GAEP), may be subject to the work registration and employment and training requirements of the food stamp program.]

i. Recipients of GA are exempt from the food stamp work registration requirement while they are participating in any work or training activity mandated by GA regulations. GA recipients who are not participating in a GA work or training activity shall be subject to food stamp work registration, including FSETP participation, unless they are exempt from work registration under other exemptions in this subsection.

ii. Recipients of non-Federally funded AFDC benefits who are subject to and complying with REACH requirements are exempt from the food stamp work registration requirement.

iii. Recipients who are exempted from the food stamp work registration requirement either due to participation in a GA work activity, or receipt of non-Federally-funded AFDC benefits, shall be disqualified from the Food Stamp Program if they fail to comply with a comparable REACH or GA work or training requirement. Prior to terminating the recipient or household, the CWA shall verify that the individual failed to comply with a GA or REACH requirement which is the equivalent of the food stamp work requirements provided at N.J.A.C. 10:87-10.9 and 10.17 through 10.19. The disqualification procedures are outlined at N.J.A.C. 10:87-10.20.

iv. If the recipient failed to comply with a GA or REACH activity that is not comparable to a food stamp work or training requirement, then the household or individual shall not be disqualified. The individual, however, shall then be required to comply with food stamp work registration. An individual or household shall not be disqualified if the noncomplying member meets one of the other exemption criteria in this section.

8.-10. (No change.)

10:87-10.12 Verification of voluntary quit and good cause

(a) To the extent that the information given by the household is questionable as defined in N.J.A.C. 10:87-2.21[(i)], the CWA shall request verification of the household's statements.

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

10:87-11.31 Methods of collection

(a)-(h) (No change.)

(i) CWAs are prohibited from commencing or continuing the collection of a food stamp claim against an overissued household which is awaiting the outcome of a bankruptcy court petition.

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone
Inspection and Identification of Incoming Correspondence

Proposed Amendment: N.J.A.C. 10A:18-2.6

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

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

Proposal Number: PRN 1990-45.

Submit comments by February 15, 1990 to:

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

The agency proposal follows:

Summary

In order to comply with a *Matter of Inmate Mail to Attorneys,* 232 *N.J. Super.* 478 (App. Div. 1989), the proposed amendment modifies N.J.A.C. 10A:18-2.6 to specify that incoming legal correspondence and correspondence to inmates from public officials, governmental agency officials and news media representatives shall not be opened, read or censored, and such correspondence will not be inspected unless the inmate is present.

Social Impact

The proposed amendment will permit an inmate to receive legal correspondence and correspondence from public officials, governmental agency officials and news media representatives without such correspondence being opened, read, censored, or inspected out of the inmate's presence.

Economic Impact

The proposed amendments will have no significant economic impact because no additional financial resources are necessary to implement or maintain these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendment impacts on inmates and the New Jersey Department of Corrections, public officials, gov-

ernmental agency officials and news media representatives, and these amendments have no significant effect on small businesses.

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

10A:18-2.6 Inspection and identification of incoming correspondence

(a) Each piece of incoming correspondence shall be opened and inspected, **except legal correspondence and correspondence from public officials, governmental agency officials or news media representatives (see (i) below).**

(b)-(h) (No change.)

(i) Incoming correspondence shall not be opened, read, or censored and such correspondence shall not be inspected unless the inmate is present if the correspondence is considered legal correspondence or if the senders are:

1. Public officials, such as:
i. The President of the United States;
ii. The Vice-President of the United States;
iii. Members of Congress;
iv. The Governor;
v. Members of the State Legislature;
vi. Members of the County Board of Freeholders; or
vii. A Mayor;
2. Governmental agency officials, such as:
i. The Director of the Federal Bureau of Prisons;
ii. The Commissioner, New Jersey Department of Corrections;
iii. Members of the Federal Parole Board; or
iv. Members of the State Parole Board; or
3. News media representatives.

(j) Incoming correspondence from public officials, governmental agency officials and news media representatives to inmates may be held long enough to verify that the sender is a legitimate public official, governmental agency official or news media representative.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS
OFFICE OF WAGE AND HOUR COMPLIANCE
Payroll Deductions for Mass Transportation
Proposed New Rules: N.J.A.C. 12:56-16

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:11-4.4b(8).

Proposal Number: PRN 1990-36.

Submit comments by February 15, 1990 to:
Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Currently, a major problem plaguing employers throughout the State and especially in the suburbs and southern counties is the lack of an available workforce. In contrast, a major problem plaguing many individuals who are seeking new employment opportunities is the lack of convenient transportation to prospective workplaces.

Recently, New Jersey Transit has provided more mass transit services to areas such as Atlantic City which are in need of such services. Although the provision of mass transit services to areas such as Atlantic City has made mass transit more accessible, it would benefit both employers and employees to further encourage the use of this service.

In order to promote mass transportation, employers need to get involved in making it more affordable. One way to accomplish this is to allow employers to use payroll deductions on a voluntary basis to provide employees with commuter tickets. By using payroll deductions, employers can help employees spread the cost of a monthly pass over a four week period. Also, employers who want to attract employees can subsidize the cost of commuter tickets. Currently, there are two employers who have expressed interest in subsidizing the cost of their employees' commuter tickets.

Under New Jersey's Wage Payment Law, N.J.S.A. 34:11-4.4, payroll deductions for mass transportation commuter tickets are not listed as a permissible deduction. However, under N.J.S.A. 34:11-4.4b(8), the Commissioner of Labor has authority to authorize by regulation additional payroll deductions. Accordingly, the Commissioner of Labor believes that payroll deductions for mass transportation costs are proper and in keeping with the intent of the Wage Payment Law. Therefore, the Department of Labor is proposing new rules that authorize employers to use payroll deductions for mass transportation costs.

N.J.A.C. 12:56-16.1 sets forth the purpose and scope of the rules.

N.J.A.C. 12:56-16.2 sets forth the definitions.

N.J.A.C. 12:56-16.3 sets forth that any employer may use a payroll deduction as a means of paying for mass transportation commuter tickets. However, an employer utilizing the payroll deduction must make the payroll deduction available to all of its employees.

Social Impact

Payroll deductions for mass transportation commuter tickets make it easier for employees to obtain such tickets. The added convenience provided by payroll deductions may encourage more employees to use mass transportation.

Payroll deductions for mass transportation commuter tickets provide employers with a method to make commuting to work more convenient. In this regard, payroll deductions will help employers attract employees.

Economic Impact

Employers who use payroll deductions may elect to subsidize the cost of the mass transportation commuter tickets. This, in turn, will make the cost of commuting to work more affordable for current and potential employees. Lower commuter costs will enable employers in suburban locations and in other hard-to-reach areas to attract employees from urban locations. Thus, both employers and employees will benefit in that employers will have a much needed workforce while individuals in urban areas will be able to afford to commute to work.

Regulatory Flexibility Statement

The proposed new rules may affect small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, they do not impose any reporting, recordkeeping or other compliance requirements on small businesses. Thus, a regulatory flexibility statement is not required since the rules allow the use of payroll deductions which are beneficial to small businesses.

Full text of the proposal follows:

SUBCHAPTER 16. PAYROLL DEDUCTIONS FOR MASS TRANSPORTATION

12:56-16.1 Purpose and scope

(a) This subchapter sets forth the type of deduction that the Commissioner deems to be proper and in keeping with the intent and purpose of the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 et seq.

(b) This subchapter applies to every employer employing any person in this State.

12:56-16.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Labor.

"Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

"Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, the trustee or successor of any of the same, employing any person in this State.

"Mass transportation" means railroads operated by steam, electricity or other power, rapid transit lines and buses, or ferries.

12:56-16.3 Payroll deductions for mass transportation commuter tickets

(a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.

(b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.

LAW AND PUBLIC SAFETY
(a)

DIVISION OF STATE POLICE
Notice of Comment Period Extensions
Boat Safety Course
Motor Vehicle Race Track Rules
Proposed New Rules: N.J.A.C. 13:61 and 62
Proposed Repeal: N.J.A.C. 13:22

Take notice that the deadline for public comments on proposed new rules N.J.A.C. 13:61, Boat Safety Course, published in the New Jersey Register on November 6, 1989 at 21 N.J.R. 3434(a), and on proposed new rules N.J.A.C. 13:62, Motor Vehicle Race Track Rules, and the repeal of N.J.A.C. 13:22, published in the November 20, 1989 New Jersey Register at 21 N.J.R. 3646(a), has been extended to January 26, 1990.

Submit comments on the Boat Safety Course Rules by January 26, 1990 to:

Captain James Momm
Division of State Police
Marine Law Enforcement Bureau
River Road
P.O. Box 7068
Trenton, NJ 08628-0068

Submit comments on the Motor Vehicle Race Track Rules by January 26, 1990 to:

Colonel Clinton L. Pagano, Superintendent
c/o Lieutenant R. Avalone
Division of State Police
Special Projects Unit
River Road
P.O. Box 7068
Trenton, NJ 08628-0068

(b)

DIVISION OF CONSUMER AFFAIRS
Board of Dentistry
New Jersey Board of Dentistry Rules
Proposed Readoption with Amendments: N.J.A.C. 13:30
Proposed Repeals: N.J.A.C. 13:30-1.2 through 1.16, 2.2 through 2.8, 2.18, 5.2 through 5.14, 6.2 through 6.10, and 8.7 and 8.11

Authorized By: New Jersey Board of Dentistry, Samuel Furman, D.D.S., President.
Authority: N.J.S.A. 45:6-3, N.J.S.A. 45:6-50(h).
Proposal Number: PRN 1990-34.

Submit written comments by February 15, 1990 to:

William Gutman, Executive Director
Board of Dentistry, Room 510
110 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

With the impending expiration of its rules on April 15, 1990, pursuant to Executive Order No. 66(1978), the Board of Dentistry has reviewed all of its currently effective rules.

This proposal for readoption represents the results of that review, and constitutes a major simplification of the entire code, promulgated pursuant to N.J.S.A. 45:6-1 et seq., that governs the practice of dentistry in this State.

The Board's purpose is to eliminate confusion and contradictory regulations that no longer reflect the modern practice of dentistry or present Board procedure. In this updating effort, the Board has deleted inapplicable provisions and has substituted new wording to conform to current practice. For example, regulations concerning references to dental examinations that are no longer being given (the State now utilizes the Northeast Regional Board examination) were deleted, as was the obsolete requirement of fingerprinting for the completion of licensure applications. Other changes are for purposes of clarification in areas where the Board has perceived that need. No new fees have been added, but certain charges previously mentioned in scattered sections are now consolidated in the fee schedule.

Following are the Board's reasons for specific deletions and additions:

Subchapter 1. Applicants for License to Practice Dentistry

N.J.A.C. 13:30-1.1(b) spells out with greater specificity the professional educational requirements for licensure as a dentist. Subsections (c), (d), and (e) combine information regarding licensure requirements that was previously scattered throughout the current rules. References to examinations no longer given in New Jersey have been eliminated from the subchapter since the Board has substituted the Northeast Regional Board examinations for the State examination.

The present text of N.J.A.C. 13:30-1.2 through 1.16 has been deleted because the material contained herein is either confusing, contradictory or obsolete and, therefore, no longer applicable. Information which still remains pertinent has been moved to the appropriate subsection. New wording in N.J.A.C. 13:30-1.2 now details standards for a resident permit.

Subchapter 2. Applicants for License to Practice Dental Hygiene

N.J.A.C. 13:30-2.1(c) sets forth, more specifically than the present text, the professional education requirements for licensure as a dental hygienist.

N.J.A.C. 13:30-2.2 to 2.8 have been deleted because the material is, again, either confusing, contradictory or obsolete and therefore no longer applicable. Information which still pertains has been moved to the appropriate subsection.

N.J.A.C. 13:30-2.9 has been renumbered for sequential consistency and contains all information relevant to licensure in dental hygiene. That material which does not relate to licensure has been deleted and some words or phrases have been added for greater clarity.

N.J.A.C. 13:30-2.10 through 2.19 have been recodified within the subchapter and words or phrases have been changed for accuracy and for greater clarity. These sections govern dental hygienist duties, dental assistant qualifications and duties, continuing education requirements, application fee and resumption of active practice for inactive dental hygienists.

Subchapter 3. Applicants for Limited Teaching Certificate in a Dental School

N.J.A.C. 13:30-3.1(d) and 3.2(a)5 have been transferred to the section on fee schedules. This subchapter regulates the qualifications of such applicants, the application process, limitations on the certificate and requirements for educational institutions.

Subchapter 4. Industrial or Corporate Clinics

This subchapter sets forth the application process for industrial and corporate dental clinics, permit renewal, changes, qualifications, service and facility standards and inspections.

Subchapter 5. Standards for Approval of Dental Schools

N.J.A.C. 13:30-5.1(a) through (f) has been restated for accuracy and all other provisions of the subchapter have been deleted. Because all dental schools must be approved by the Commission on Dental Accreditation, it is no longer necessary to spell out all of the requirements as to faculty, curriculum, etc. The Commission on Dental Accreditation is sponsored by the American Dental Association and accredited by both the U.S. Department of Education and the Commission on Post-Secondary Education.

Subchapter 6. Standards for Approval of Schools of Oral Hygiene

The entire subchapter has been deleted and now consists of only one provision. Because all dental hygiene schools must be approved by the Commission on Dental Accreditation, it is only necessary to state that fact, as does the new wording of N.J.A.C. 13:30-6.1(a).

Subchapter 7. Forms

This subchapter continues to be renewed.

Subchapter 8. General provisions

N.J.A.C. 13:30-8.1: All information regarding fees has been transferred to and included in this subsection.

N.J.A.C. 13:30-8.2 is reserved.

N.J.A.C. 13:30-8.3 governs the use of general anesthesia in dental practice.

N.J.A.C. 13:30-8.4 contains the requirements for announcement of practice in a special area of dentistry.

N.J.A.C. 13:30-8.5: The complaint review procedure has been rewritten and renumbered for greater clarity and to avoid confusion. It accurately represents the procedures being used today in the adjudication of patient complaints.

N.J.A.C. 13:30-8.6 governs professional advertising.

N.J.A.C. 13:30-8.7: The section on jurisprudence examinations for licensure is repetitive because the substance is now contained in N.J.A.C. 13:30-1.1(d). It has therefore been deleted.

N.J.A.C. 13:30-8.8 through 8.10 concerning patient records, reporting of incidents or deaths, and display of names and identifying badges, respectively, have been recodified to reflect the deletion of N.J.A.C. 13:30-8.7.

N.J.A.C. 13:30-8.11: This section on intravenous sedation is proposed to be deleted because a new section which will expand on the definition and requirements of intravenous conscious sedation will be inserted as N.J.A.C. 13:30-8.2. The new rule was proposed on October 2, 1989 at 21 N.J.R. 3060(a).

N.J.A.C. 13:30-8.12 through 8.15, governing, respectively, dental insurance forms; professional misconduct, removable prosthesis identification, notification of change of address; service of process, and referral fees, remain as currently stated.

N.J.A.C. 13:30-8.16: The right to request a hearing prior to any suspension, revocation or refusal to renew a license has been specifically stated as a new rule, at the suggestion of the Office of Administrative Law.

N.J.A.C. 13:30-8.16, Dental x-rays; lead shields, and 8.17, Dentist of record; fee reimbursement, are not changed factually.

Social Impact

Readoption of its rules in this simplified revision will enable the Board of Dentistry to continue to fulfill its statutory mandate to protect the public health, safety and welfare. The benefit to consumers of dental services is obvious, since the rules ensure professional competence and adequate safeguards of the patient's health. The profession will also benefit, however, in that it will have a clearer, unambiguous and better-organized set of required actions, procedures, and prohibitions. Finally, readoption of its simplified rules will provide the Board with a modernized structure on which to base its regulatory operations.

Economic Impact

The readoption impacts economically upon licensees in that they must pay the various fees required to fund the Board's operation: the costs of licensing, examination, investigation, etc. No direct impact on consumers is anticipated as a result of this readoption, since all expenses to the licensee have been in place for some time and the readoption does not increase any amounts. Economic impact upon the board is favorable in that readoption will enable it to continue to perform its necessary regulatory functions. Failure to readopt would, in fact, jeopardize the Board's functioning, since the fee schedule represents its basic source of operating funds.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable.

The Board of Dentistry currently licenses approximately 19,500 individuals. The proposed readoption is needed in order for the Board to continue to perform its statutory duties and to ensure protection of the public health, safety and welfare. Because of these broad purposes, which affect the entire profession and all patients, no exemption from any of the rules is possible. However, as a business expense, the fee schedule that is reproposed will have minimal effect on licensees; the fees have been set at the lowest amount that will cover the Board's operating expenses. The intent of the Regulatory Flexibility Act to minimize adverse economic impact on small businesses has thus been implemented.

As for recordkeeping requirements, none go beyond the systems already in place in a well-managed professional practice. Reporting requirements—for example, reporting to the Board serious incidents or death of a patient while in treatment—are consistent with the Board's objectives as to the public welfare. Recourse to other providers of professional services is needed in order to satisfy certain educational requirements, especially continuing education, and to provide proper facilities and equipment.

The Board believes that all of these requirements and any attendant expenses are justified in view of their usefulness as protective measures or as measures that increase professional skills.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:30.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:30-1.2 through 1.16, 2.2 through 2.8, 2.18, 5.2 through 5.14, 6.2 through 6.10, and 8.7 and 8.11.

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

13:30-1.1 Qualifications of applicants

(a) (No change.)

(b) To qualify as a candidate for dental licensure, an applicant must present satisfactory evidence that he **or she** has [completed required professional education] **graduated with a dental degree from a dental school, college or department of a university approved by the Board and the Commission on Dental Accreditation.**

(c) To obtain a license to practice dentistry, the candidate must pass the Northeast Regional Board Examination [or a simultaneous examination (same in content as the former) of the New Jersey Board of Dentistry]. **The Board will recognize successful completion of the Northeast Regional Board examination for up to five years. After five years, the Board will review each request on a case by case basis.**

(d) All candidates for licensure in dentistry in the State of New Jersey shall, in addition to any and all other requirements for licensure, be required to take and pass to the satisfaction of the Board an examination which tests the candidate's knowledge of the rules, regulations and statutes pertaining to the practice of dentistry in New Jersey. Such examination shall be offered at least twice each year in the English language, at such time and place as the Board shall determine.

(e) To obtain a license to practice dentistry, the candidate must possess a National Board Certification showing that the applicant has successfully passed all phases of the National Boards of Dentistry.

13:30-1.2 Resident permit

Prior to obtaining licensure, a graduate of an approved dental school who has passed Part I and Part II of the National Board Dental Examination may serve as a resident in an approved hospital teaching program upon obtaining a resident permit from the Board.

13:30-2.1 Qualifications of applicants

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

(c) To qualify as a candidate for a license to practice dental hygiene, the applicant must first present satisfactory evidence of [the completion of the requirements in preliminary and professional education] **graduation from an educational program in dental hygiene approved by the Board and the Commission on Dental Accreditation.**

(d) Applicants for licensure to practice dental hygiene in New Jersey must possess National Dental Hygiene Board Certification. [No exception to this rule will be considered.]

13:30-[2.9]**2.2** Licensure of candidates in dental hygiene

[(a) All licensing of the candidates who appear before the Northeast Regional Board is done by the individual states. N.E.R.B. is not a licensing agency.]

[(b) Throughout the northeast region certain requirements are routine. However, there may be variations in the detailed require-

ments of each individual state. For this reason it is suggested that each candidate make an early inquiry to the Secretary of the specific State Board(s) in which licensure will be sought. Such inquiries may precede the actual N.E.R.B. examination.]

[(c)](a) (No change in text.)

[(d)](b) The New Jersey State Board of Dentistry may, in its discretion, grant a waiver of Northeast Regional Board performance testing, depending upon the record of the candidate. However, the candidate must be a graduate of a **dental** hygiene school approved by the [Joint] Commission on Dental Accreditation.

[(e) Acceptance of grades of Northeast Regional Board shall be retroactive to their initial examination in 1969.]

(c) The Board will recognize successful completion of the Northeast Regional Board for up to five years. After five years, the Board will review each request on a case by case basis.

13:30-[2.10]**2.3** Duties of licensed dental hygienist

(a) A licensed dental hygienist may perform the following duties under the direct supervision of a licensed dentist:

1.-3. (No change.)

4. Perform all those duties delegable to the dental assistant and the registered dental assistant as defined in N.J.A.C. 13:30-[2.13]**2.6** (a) and (b), subject to the requirements of N.J.A.C. 13:30-[2.14] **2.7**.

(b) A licensed dental hygienist practicing within an institution may perform those duties listed in (a)1, 2 and 3 above and those duties listed in N.J.A.C. 13:30-[2.13]**2.6** (b)1, 2, 4, 9, 10, subject to the supervision of a New Jersey licensed dentist in an institution in this State.

(c) A licensed dental hygienist who has met the requirements of N.J.A.C. 13:30-[2.14]**2.7** may perform the following duties under the direct supervision of a licensed dentist:

1.-4. (No change.)

(d) (No change.)

13:30-[2.11]**2.4** Qualifications of registered dental assistants

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

(c) The Board may grant registration to a dental assistant who submits:

1. (No change.)

2. Proof of competency of performance as defined in N.J.A.C. 13:30-[2.14]**2.7** in expanded functions;

3.-5. (No change.)

13:30-[2.12]**2.5** Professional education

(a) (No change.)

(b) The Board may approve dental assisting programs which have been accredited by the [American Dental Association's] Commission on Dental Accreditation or a program established in an institution of post-secondary education which has been accredited by a regional accrediting agency.

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

13:30-[2.13]**2.6**

(No change in text.)

13:30-[2.14]**2.7** Qualifications for performance of expanded functions

(a) A dental hygienist who desires to perform expanded functions as defined in N.J.A.C. 13:30-[2.10]**2.3**(c) and all registered dental assistants shall furnish the Board with proof of one of the following:

1. Certificate of graduation from an approved educational program in dental hygiene or dental assisting in which the expanded functions or duties as listed in N.J.A.C. 13:30-[2.10]**2.3** and 13:30-[2.13]**2.6** are taught. Instruction in expanded functions shall be a prerequisite to Board approval of Dental Auxiliary Educational Programs in the State beginning no later than the 1982-1983 academic year; or

2. (No change.)

3. Certificate of successful completion of an approved program in expanded functions in dental hygiene or dental assisting as defined in N.J.A.C. 13:30-[2.15]**2.8**.

(b) A dental hygienist who has graduated from an approved dental hygiene program in the State of New Jersey in 1984 or thereafter shall be qualified to perform expanded functions as defined in N.J.A.C. 13:30-[2.10]**2.3**(c), and shall be exempt from the provisions of (a) above.

13:30-[2.15]**2.8** Programs in expanded functions

[(a) An approved continuing education program in expanded functions shall meet the following minimal standards:

1. The level of instruction must satisfy essentially the same academic standards as that required at the post-secondary level; and

2. The agent responsible for providing the course or topic of instruction must demonstrate that:

i. The course or topic satisfies the standards of proficiency set forth in N.J.S.A. 45:6-50(g);

ii. An opportunity to enroll in the course or topic is available to all dental hygienists and dental assistants.]

[(b)](a) The Board may recognize the following as providers of approved programs in expanded functions:

1. An institution approved by the [American Dental Association's] Commission on Dental Accreditation;

2.-4. (No change.)

13:30-[2.16]**2.9** Continuing education requirements

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

(e) The Board may recognize as acceptable the courses of study and amount of hours credited in continuing education programs approved by:

1. The [New Jersey Dental Association] **American Dental Association and its constituents and components;**

2. The Academy of General Dentistry **and its constituents and components**;

3. The [New Jersey] **American** Dental Hygienists Association **and its constituents and components**;

4. The [Certifying Board of the] American Dental Assistants' Association **and its constituents and components**;

5. (No change.)

13:30-[2.17]**2.10** (No change in text.)

13:30-[2.19]**2.11** (No change in text.)

13:30-3.1 Qualifications of applicants

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

[(d) Every applicant for such a limited license shall pay to the Board for the use of the State, the sum of $10.00, and the limited license may be annually renewed on the payment of a fee in the amount of $5.00.]

13:30-3.2 Application procedure

(a) The applicant shall:

1.-2. (No change.)

3. Give two character references, preferably from reputable New Jersey dentists; **and**

4. Have the completed application notarized[; and].

[5. File a completed application with the Secretary of the Board, together with the fee of $10.00, made payable to the State of New Jersey, in care of the New Jersey State Board of Dentistry.]

13:30-5.1 Requisites for dental schools

[(a) The dental school must be affiliated with or a part of a university.

(b) The dental school must be recognized and accepted by the university of which it is a part or with which it is affiliated on equal terms with all other professional schools of the university.

(c) The school must require at least two years pre-dental education acceptable to our New Jersey State Department of Education.

(d) The school must have a dental dean of its own who is a dentist.

(e) The school must provide teaching in its dental course of at least those subjects which are set forth as the minimum by this Board.

(f) A four year course of study in dentistry shall be taught.]

(a) The Board will accept for licensure only graduates of dental schools approved by the Commission on Dental Accreditation.

(b) For purposes of granting limited teaching certificates, the Board will accept graduates of dental schools approved by the Commission on Dental Accreditation or graduates of dental schools approved at the discretion of the Board.

SUBCHAPTER 6. STANDARDS FOR APPROVAL OF SCHOOLS OF [ORAL] **DENTAL** HYGIENE

13:30-6.1 General requirements

[(a) A school of oral hygiene must either be associated with a dental school approved by the Board or be associated with an accredited college or university that will credit the dental hygiene course toward an academic degree.

(b) Any school established in New Jersey shall show proof that it has reasonable assurance of having sufficient funds available to establish and to continue to maintain the school in accordance with the standards set forth in this Subchapter.]

All dental hygiene schools must be approved by the Commission on Dental Accreditation.

13:30-8.1 Fee schedules

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

(d) Other fees:

1. Limited teaching certificate

i. Application $10.00

ii. Annual Renewal $5.00

2. Resident permit $10.00

[(d)](**e**) Except for the fees herein established, other fees prescribed by statute shall continue to be assessed by the Board in the lawful amount.

13:30-8.5 Complaint review procedures

(a) Complaints [of alleged neglect, malpractice or excessive pricing in the practice of dentistry] shall be in writing.

1. (No change.)

2. The [secretary] **Executive Director** of the Board shall review all complaints for sufficiency. When insufficient information is given, he **or she** shall notify the complainant to supply the needed information without delay. Complaints may be received by telephone, but shall be confirmed in writing as indicated above.

[(b) The Board shall review each complaint at the regular meeting next following its receipt in order to make one or more of the following determinations:

1. The information contained in the complaint is insufficient. In such cases, the Board shall notify the complainant and/or the dentist to provide the needed information without delay.

2. The complaint viewed most favorably to the complainant shows no case for Board action.

3. The complaint is of a nature that requires the complainant to be directly examined by another dentist to determine the state of the patient's dental health and the quality of the dentistry which is the subject matter of the complaint.

4. The complaint requires investigation.

5. Other direction of informal resolution as the Board shall deem appropriate.

(c) The secretary shall record in the complaint log the initial action of the Board and shall keep the Board advised as to the progress and state of all complaints requiring further action or review of the Board.

(d) The Board of Dentistry shall designate a sufficient number of licensed dentists to act as professional review consultants in connection with its review of complaints being processed under (b)3 above.

1. Dentists shall be selected in all areas of the State and shall include general practitioners and specialists.

i. Three dentists shall be designated for each county wherever possible. When not possible, combinations of counties shall be made.

ii. Specialty consultants will be designated on a regional basis. The Board will establish regions on a dentist-population ratio.

2. Dentists designated as consultants shall meet the following qualifications:

i. Licensed and practicing in the State of New Jersey for no less than five years, or licensed and practicing out-of-state for no less than five years and in this State for no less than two years;

ii. Recommended by three dentists or by a local component dental society to be a highly competent and highly respected practitioner;

iii. There exists no current or past Board record indicating professional misconduct.

3. Whenever possible, consultants within the immediate practice area of a dentist against whom a complaint has been made shall not be assigned to examine and review such cases.

4. The Board of Dentistry shall not assign a consultant to examine and report on a complaint when the consultant does not possess specialized knowledge necessary for the review of complaint, or where there exists the appearance of a personal or pecuniary conflict of interest.

5. The Board of Dentistry may appoint an ad hoc consultant if, due to unavailability, lack of expertise or existence of a conflict, a regular consultant cannot be assigned. Ad hoc consultants need not meet the qualifications as stated in (d)2 above if, in lieu therefore, the Board of Dentistry is satisfied as to the competence of the consultant.

6. Professional review consultants shall be designated to serve the Board for a period of three years, which period may be renewed at the discretion of the Board.

7. The Board shall hold at least one meeting each year to be attended by all of its professional review consultants.

(e) Whenever the Board determines to process a complaint under (b)3 above, the following procedure and rules shall be observed:

1. The Board shall acquire copies of all dental records relevant to the alleged misconduct.

2. The Board shall assign the complaint to an appropriate professional review consultant and shall forward to its consultant a copy of the complaint along with copies of all relevant dental records.

3. The Board shall not disclose to the dentist(s) against whom complaint has been made the identity of the consultant reviewing the case and the consultant shall not disclose to anyone, including the dentist against whom the complaint has been made, the identity of the dentist whose case is being reviewed and shall not disclose the subject matter of any such cases under review except as may be necessary to undertake and complete the examination and review as requested by the Board.

4. The Board shall advise the complainant of the name and address of its consultant, the purpose of the examination and review that shall be completed by the consultant, and shall advise the complainant to contact the consultant within 10 days from the receipt of its notice to arrange for the consultant's examination.

5. Failure of the complainant to contact a consultant pursuant to the request of the Board within 30 days following the receipt of the Board's notice may result in the dismissal of said complaint.

6. Consultants shall undertake and complete an examination and review of each case as instructed by the Board and shall within 14 days following such examination submit to the Board a report in writing and supplemented by such dental records as will aid the Board in its review of the complaint. Findings and conclusions of the consultant shall be submitted to the Board only; the consultant shall not in writing or orally disclose such information to any other person or persons.

(f) The Board shall review the complaint in light of the consultant's report at its next regular meeting, following its submission to the Board, in order to make one or more of the following determinations:

1. Formal hearing must be held regarding the complaint as provided by N.J.S.A. 45:6-7;

2. No cause for Board action;

3. Informal hearing must be held to resolve the complaint between the dentist and the complainant.

(g) Complaints handled by informal hearing shall not result in an order of the Board effecting the suspension or revocation of license to practice or in the assessment of a civil penalty. Informal hearings may result in one or more of the following determinations by the Board:

1. No cause for Board action;

2. Repair or re-treat to correct a deficiency found;

3. Reprimand;

4. Remedial course, study or internship to be undertaken by the dentist;

5. Such other resolution or direction as the Board shall deem appropriate.]

(b) The Executive Director shall then forward the completed complaint to the licensee(s) involved with a request for all records, X-rays, models, and any other pertinent materials as well as a complete narrative in response to allegations contained in the complaint. Should sensitive material be contained in the complaint, the Executive Director may, with the consent of the Board, withhold all or part of said complaint from forwarding to the licensee(s).

1. The Executive Director shall review all responses for sufficiency. When insufficient information is given, he or she shall notify the licensee(s) to supply the information without delay.

(c) All completed complaints along with the response of the licensee(s) shall then be forwarded to a member of the complaint review committee for review and to report for consideration at the next scheduled committee meeting.

1. The complaint review committee shall consist of no more than six members of the Board and shall be appointed by the president of the Board.

2. A chairman and vice-chairman of the complaint review committee shall also be appointed by the president of the Board and shall serve until a successor is appointed. The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.

(d) The complaint review committee shall review each complaint in order to make one or more of the following determinations:

1. That the information contained in the complaint and/or the response is insufficient. In such cases, the committee shall notify the complainant or the licensee(s) to provide the needed information without delay;

2. That the information contained in the complaint and/or the response is insufficient and requires information from a subsequent treating licensee(s). In such cases, the committee shall request needed information from said subsequent treating licensee(s) without delay;

3. That the complaint is of a nature that requires the complainant to be directly examined by another dentist to determine the state of the patient's dental health and the quality of the services which are the subject matter of the complaint; and/or

4. That the complaint requires an investigative hearing as provided by N.J.S.A. 45:1-18.

(e) Upon completion of its review of a complaint the committee shall report to the Board for Board consideration and final disposition one or more of the following determinations:

1. No cause for Board action;

2. Probable cause for action with attendant offer of settlement by mutual consent;

3. Referral to the Division of Law for preparation of formal complaint as provided by N.J.S.A. 45:6-7; and/or

4. Other direction or informal resolution as the Board shall deem appropriate.

Recodify N.J.A.C. 13:30-8.8 through 8.10 as **8.7 through 8.9** (No change in text.)

Recodify N.J.A.C. 13:30-8.12 and 8.13 as **8.10 and 8.11** (No change in text.)

13:30-[8.14]**8.12** Notification of change of address; service of process

(a) A licensee of the Board of Dentistry shall notify the Board in writing of any change of address from [that] **the address** currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 30 days following the change of address.

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

Recodify existing N.J.A.C. 13:30-8.15 through 8.17 as **8.13 through 8.15** (No change in text.)

13:30-8.16 Right to hearing

Prior to any suspension, revocation or refusal to renew a license, the licensee shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

STATE BOARD OF DENTISTRY

Electronic Claims Processing

Reproposed Amendment: N.J.A.C. 13:30-8.12

Authorized By: State Board of Dentistry, Samuel Furman, D.D.S., President.

Authority: N.J.S.A. 45:6-3.

Proposal Number: PRN 1990-30.

Submit written comments by February 15, 1990 to:
William Gutman, Executive Director
Board of Dentistry, Room 321
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

On August 7, 1989, at 21 N.J.R. 2226(a), the Board of Dentistry proposed an amendment to N.J.A.C. 13:30-8.12 which would require licensees to personally sign all forms to be submitted to a third party payor, thereby prohibiting the use of a rubber stamp or a mechanical signature. The Board wished to make clear that the treating dentist is responsible for the accurate completion of these forms.

During the official comment period, the Board received a comment from Delta Dental Plan of New Jersey, Inc. Delta expressed the concern that the proposed amendment to N.J.A.C. 13:30-8.12 would prohibit electronic claims processing, which it believes may offer substantial savings of time and money to the benefit of everyone involved in the claims submission process.

The Board agrees that some provision has to be made to take into consideration this newly developing area. It, therefore, is reproposing the amendment to N.J.A.C. 13:30-8.12 with two additional provisions concerning electronic claims processing. The reproposed amendment requires that when claims are submitted electronically, the treating dentist or the dentist of record must manually sign and submit to the third party payor, at least quarter-annually, a written confirmation of the claim data.

Social Impact

The reproposed amendment will ultimately benefit the public because the dentist who personally signs all insurance forms or, in the case of electronically submitted claims, a written confirmation of the accuracy of the claim data, will have reviewed all claims to ensure accuracy of the data and details of the treatment program that has or will be rendered. Also, clear delineation of responsibility, as expressed in the amendment, is necessary in order to maintain the high standards of professional practice that protect the consumer.

Economic Impact

The Board does not anticipate any economic impact upon the public, since the amendment only requires a personal signature by the dentist, a task involving minimal time. Most, if not all, dentists currently review the information submitted on third-party claim forms; the few additional seconds needed for a manual signature are economically insignificant.

Regulatory Flexibility Analysis

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

Approximately 10,000 of the licensees presently regulated by the Board of Dentistry are dentists in active practice. All of them will be affected by the proposed amendment. Since the sole compliance requirement is a personal, original signature on all third party insurance claim forms or, in the case of electronically submitted claims, on a written confirmation form, the only additional cost incurred by the treating dentist will be the value of a few additional minutes of his or her time. The amendment involves no capital costs or reporting or recordkeeping requirements, and no professional services are needed in order to comply. No exemptions, whether for small or large practices, are possible since this would frustrate the intent of the amendment.

Full text of the reproposed amendment follows (additions indicated in boldface **thus**).

13:30-8.12 Dental insurance forms; professional misconduct

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

(d) All submissions to a third party payor, including, but not limited to, predetermination forms, claim forms, bills, or governmental assistance forms, shall be manually signed by the patient's treating dentist. The form may be completed by an employee for the signature of the treating dentist, but the treating dentist shall be responsible for the accuracy of all information contained on the form. In the event the patient is treated by more than one dentist in a multi-dentist practice, the duty to verify the accuracy of the information on the form and to manually sign the form shall be that of the designated dentist of record pursuant to N.J.A.C. 13:30-8.17.

(e) Subparagraph (d) above notwithstanding, a treating dentist need not manually sign individual claim forms if the respective third party payors have agreed in writing to an electronic method for claims submission. In that case, the treating dentist (or the dentist of record if one is so designated pursuant to N.J.A.C. 13:30-8.17) shall review and manually sign a written confirmation of the accuracy of the claim data no less frequently than every three months. The dentist shall keep copies of such written confirmations on file for a period of seven years.

(f) Any dentist who verifies claim data pursuant to (e) above is responsible for all of the claim data submitted as if it were submitted and a form manually signed on an individual claim basis.

(a)

BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

State Board of Ophthalmic Dispensers and Ophthalmic Technicians Rules

Proposed Readoption: N.J.A.C. 13:33

Authorized By: Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, Jan C. Gavzy, Executive Director.

Authority: N.J.S.A. 52:17B-41.13.

Proposal Number: PRN 1990-29.

Submit written comments by February 15, 1990 to:

Jan C. Gavzy, Executive Director
Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, Room 501
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:33 is scheduled to expire on March 18, 1990. This chapter governs the practice of ophthalmic dispensers and ophthalmic technicians in this State and sets forth regulations vital to protection of the public health. The rules specifically concern the fabrication and dispensing of corrective eyewear and the requirements for licensure to engage in these activities.

The Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians has evaluated the rules contained in N.J.A.C. 13:33 and has found them to be necessary and responsive to the purposes for which they were promulgated. The Board therefore proposes to readopt the rules without change.

Subchapter 1 contains general rules and regulations, covering such topics as the supervision of apprentices, applications for examination, advertising and minimum standards and tolerances. Subchapter 2 details the minimum equipment necessary for the practice of ophthalmic dispensing, whether for facilities where appliances, eyeglasses or lenses are fabricated and apprentices registered or for other optical establishments. Subchapter 3 covers forms, and the dispensing of contact lenses is governed by Subchapter 4.

Social Impact

Readoption of N.J.A.C. 13:33 will ensure that the public continues to receive the highest quality services in the fabrication and provision of corrective eyewear. The rules proposed for readoption also set forth procedures for orderly administration by the Board so that it may fulfill its statutory duty to protect the public health, safety and welfare. Because the purpose of the rules is to maintain both high levels of professionalism and the proper functioning of the Board, this readoption will have a positive social impact.

Economic Impact

The rules proposed for readoption are essential for the effective and efficient governance of the practice of ophthalmic dispensing in this State. They do not economically impact directly on the general public. However, the fee schedule imposes a quantifiable impact on license applicants and licensees. Compliance with the licensure requirements for education, examination, etc., are also costs to be borne by those seeking licensure as ophthalmic dispensers and ophthalmic technicians in this State. The Board considers the fee schedule to be reasonable, however, and believes that detailed training and examination requirements are necessary in order to maintain high standards in the profession and to protect the public health. Because funding of the Board's operation is partially attained by the fee structure, these rules will have a positive economic impact on the Board; failure to readopt would place such operation in jeopardy.

Regulatory Flexibility Analysis

The Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians currently licenses approximately 2,000 individuals. Almost all of those licensees who operate optical establishments may be classified as "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because the rules proposed to be readopted seek to promote and protect the public welfare, they must be uniformly and consistently applied; no differential treatment can be accorded to small businesses.

Recordkeeping requirements include the maintenance for six years of all prescriptions filled by the licensee or the licensee's apprentices and a record of specific data identifying the preparation, verification, and dispensing of each pair of eyeglasses, frames, or lenses supplied to the consumer. The Board considers such records essential to the proper practice of ophthalmic dispensing. The reporting requirements, relating only to Board notification of change of address and registration of apprentices, are not burdensome. There is no need to resort to other professional services to comply with these rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:33.

(b)

STATE BOARD OF MEDICAL EXAMINERS

Pronouncement of Death

Reproposed Repeal and New Rule: N.J.A.C. 13:35-6.2

Authorized By: New Jersey Board of Medical Examiners, Michael B. Grossman, D.O., President.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1990-31.

Submit written comments by February 15, 1990 to:

Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

A proposed repeal and new rule at N.J.A.C. 13:35-6.2, relating to pronouncement of death, was initially published on July 17, 1989 at 21 N.J.R. 1969(b). The most significant difference from the current rule was the removal of the former absolute requirement that the pronouncement of death be made at the actual death scene; the physician would have been permitted to direct the transfer of the body to another location, such as a hospital or the physician's own office. The proposed new rule also established a working definition of the term "attending physician" for the limited purpose of death pronouncements and completion of death certificates.

Forty-three responses were received during the comment period, including 22 from the medical community, 15 from funeral directors and six from law enforcement and other governmental agencies. Based upon the responses, the Board determined that clarification of the proposed new rule was necessary and it now reproposes N.J.A.C. 13:35-6.2 in a substantially different form.

The majority of the physicians who responded supported the proposed new rule and expressed the opinion that allowing the transfer of the body to another location for pronouncement purposes was a practical approach to a difficult situation and would benefit both the private physician and the families of decedents. The physicians who objected to the proposed new rule were concerned primarily with the definition of "attending physician." They felt a single visit with a patient within six months prior to the patient's death does not create a doctor-patient relationship and would not enable them to accurately assess the cause of death. One physician questioned whether this definition would apply to emergency room physicians or clinic physicians who see a patient once. Another physician felt that specialists providing ongoing treatment should be responsible for pronouncing death rather than the "family physician" who might not have seen the deceased as frequently. The New Jersey State Nurses Association supported the continued authorization of registered nurses to make pronouncements of death.

All of the funeral directors who responded objected to the new rule as did the representatives of the law enforcement and other governmental agencies. The Board of Mortuary Science requested a public hearing. The comments regarding the new rule generally fall into several categories set forth below.

The most consistent concern about the proposed new rule was that it did not state who was responsible for transporting the presumed deceased to another location for pronouncement of death. Funeral directors and others were concerned about possible funeral director liability in transporting a body not declared dead, both in the event the person was not in fact dead and in the event of an accident en route. The Department of Health felt the use of ambulances for this purpose would burden the prehospital emergency medical services system. The Board of Mortuary Science was concerned that the public would be sensitive to using funeral livery vehicles for transportation before an official pronouncement of death is made. The Funeral Directors Association asserted that the Medical Board did not have statutory authority to promulgate a regulation which contained the implied necessity of a funeral director agent for such unpronounced removals.

Many writers objected to the proposed new rule on the grounds that transporting a body to another location for pronouncement purposes would create considerable extra cost to families of decedents. Some suggested that the physician should bear this cost.

Many commenters questioned who was responsible for determining death. It was felt that removing a person to another location before an official death pronouncement is made by a medically qualified person is dangerous to the public health since emergency medical treatment, in the event necessary, could not be rendered. Three commenters suggested that paramedics continue to be authorized to make official pronouncements of death through radio contact with a base station physician, as permitted by the present regulation, and one commenter suggested that medical investigators be allowed to make official pronouncements. A few commenters felt death pronouncements are the responsibility of the Medical Examiner.

Several commenters questioned where the body was to be transported. The Board of Nursing was concerned that using hospitals for this purpose would burden busy hospital emergency departments and a number of commenters felt the use of the physician's office was impractical and unrealistic.

Some writers expressed concern that permitting the pronouncement to be made at a location other than the death scene would delay official pronouncement and interment, causing emotional strain on the decedent's family.

The State Medical Examiner made several suggestions for modifying the proposed new rule to more closely track the pertinent statutes relating to reportable deaths. Several County Medical Examiners and law enforcement personnel, as well as the State Medical Examiner, were concerned that crime scenes might be disturbed if removal is permitted prior to an official pronouncement, hindering investigations. Concern was also expressed that if crime scenes were disturbed, families of decedents could not be assured of justice in the event the death was criminally caused, or of money damages if the death was accidental.

The New Jersey Medical Society felt the proposed new rule was vague in addressing the physician's obligation to make a pronouncement of death when a patient dies in a remote location.

The New Jersey Board of Nursing stated the proposed new rule did not clearly say that if the attending physician cannot be reached or is unknown, a registered nurse may make the death pronouncement. The Board of Nursing was concerned about an apparent deletion of language specifically identifying the role and responsibilities of the registered nurse in death pronouncements outside the licensed acute care facility. The Board also felt that a physician should not be permitted to remove a body from a nursing home or hospice for pronouncement purposes if other qualified individuals are available to make the pronouncement.

The Board of Medical Examiners wishes to stress at the outset that the proposed new rule was designed to be a relief to the families and friends of decedents, who in recent years have reported increasing difficulty in finding someone who is both authorized to make the pronouncement and willing to travel to the place of death to do so. The Board reiterates its belief that a change in the current rule relating to pronouncement of death will benefit the public as well as physicians.

In response to the concerns of those physicians who objected to the definition of "attending physician," the reproposed new rule hones that definition to include only those primary care physicians and specialists who have rendered ongoing medical treatment to the decedent for a significant chronic medical illness and who therefore are likely to have an understanding of the possible cause of death.

Further and most importantly, the reproposed new rule makes removal of a body to another location for pronouncement of death much more of an unusual situation; the body may be transported only in the event the physician is either unable to travel to the death scene or unable to arrange for a registered nurse to assume that responsibility. This will address many of the concerns raised by those who responded to the original proposal. In particular, making removal an unusual event will decrease the possibility of burdening the prehospital emergency medical services system or hospital emergency departments and will address the concern of the Board of Nursing that a physician not undertake to remove a body if a qualified individual is available to make the pronouncement. In addition, in response to those concerned that removal would delay pronouncement with a consequent delay in interment, the reproposed new rule makes clear that the physician is to proceed to the selected location to perform the pronouncement within a period of time which shall not unreasonably interfere with the disposition of the body.

In response to those who expressed concern that removal to an intermediate location would create extra charges to families of decedents, the Board wishes to state its belief that in many instances the body will be transported to the chosen funeral home and therefore no extra trip will be required. However, the reproposed new rule requires that in the event the physician directs the body to a location other than the chosen funeral home, he or she should discuss with the decedent's family the possibility that additional charges may be associated with the transport; this will enable the family to either proceed with the transport or find someone who will travel to the place of death to make the pronouncement. In any event, the Board reiterates that the reproposed rule makes removal an unusual situation.

In recognition of the concerns of Medical Examiners and law enforcement personnel regarding possible disturbance of crime scenes, the Board now proposes to add qualifying language which places significant obligations on the physician before the physician is permitted to remove a body from the death scene. In fact, reproposed subsection (c) tracks the reportable death statute, N.J.S.A. 52:17B-86. The physician is now required, prior to removal, to ascertain from a reliable person at the scene sufficient information concerning the circumstances surrounding the death to conclude that it need not be reported to the Medical Examiner. In addition, the physician must first consult with the Medical Examiner in the county in which the death occurred advising of his or her intention to direct a removal. The Board believes that the imposition of these additional obligations upon physicians will diminish the possibility that crime scenes will be disturbed.

The Board notes that the reproposed rule addresses a number of comments made by the State Medical Examiner regarding conformance of the rule to statutory requirements. Further, the Board points out that the reproposed rule does not permit paramedics and medical investigators to make official death pronouncements because the statute does not authorize them to do so (see N.J.S.A. 26:6-8.1 which authorizes registered nurses to make pronouncements in specified settings).

Finally, the Board has granted the request of the Board of Mortuary Science for a public hearing should it still wish to discuss the issues raised by this new proposal. The Board will establish the date for the public hearing, if necessary, following the comment period for this proposal.

Social Impact

New Jersey law requires that where there has been an apparent death, an actual determination and pronouncement of death should be made. When such a death occurs in the home or place of residence of the

deceased, in a hospice or in a long-term care facility or nursing home, a registered nurse is authorized to make a pronouncement (see N.J.S.A. 26:6-8.1). State law also requires that within a reasonable time, but not exceeding 24 hours, after the official pronouncement, a death certificate shall be completed and signed by specific categories of licensed professionals. The proposed new rule provides guidance as to the acts expected of the Medical Board's licensees in meeting these statutory duties.

The change from the prior text requiring the pronouncement of death to be made at the actual site of death is expected to be beneficial to the public as well as to physicians. In recent years, families and friends of decedents have reported increasing difficulty in finding someone who is both authorized to make the official pronouncement of death and willing to travel to the place of death in order to make that pronouncement. This appears to be the result of one or more of the following factors:

(1) In today's mobile society, many individuals do not have a personal attending physician.

(2) Even where the individual has had some contact with a physician, it may have been with a doctor who has a large practice and for whom the pronouncement task may be extremely disruptive to that doctor's responsibilities to be available for his or her living patients waiting to be treated.

(3) Similarly, the patient may have chosen to travel to a physician whose office is geographically distant, sometimes even in another state. It would be unreasonable to expect that the physician will travel at any hour of the day or night to perform the last professional service of making a pronouncement of death.

The Board has determined that this problem can be alleviated by permitting the pronouncement of death to be made at a more convenient location than the actual scene of death, and the proposed rule allows transfer of the body for that purpose in the unusual event that the physician cannot attend or arrange for the attendance of a nurse. This measure should decrease the strain on family or friends of the decedent by eliminating a pressured search for someone authorized to make the pronouncement who is willing to go to the site of death.

Since the rule also affirms a physician's responsibility, if unavailable, to make arrangements in advance to delegate to another physician the obligations of pronouncement and provision of death certificate information, patients and their families will be assured of the availability of a qualified person to handle these death services.

Economic Impact

The reproposed new rule is expected to have some economic impact on private physicians and on families of decedents in the event the physician is either unable to travel to the death scene or unable to arrange for a registered nurse to assume that responsibility. The attending physician or his or her designee will find it easier to comply with the responsibility to perform the pronouncement of death and to complete the death certificate at a convenient location, such as the funeral home, without the stress of the very short time constraint imposed by the prior rule, which mandated that the body could not be moved until the doctor had actually arrived at the scene. The resultant savings in physician time may be reflected in slightly reduced medical costs borne by the decedent's estate or family.

In some instances, a physician may direct removal of the body to a location other than the chosen funeral home in order to perform the pronouncement of death, and this may result in additional charges to the family of the decedent. However, the physician should discuss with family members, prior to such removal, that they may incur additional charges. This discussion will give the family the choice of incurring the additional charges or finding someone who will travel to the place of death to make the pronouncement.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physicians are deemed "small businesses" within the meaning of the statute, the following statement is applicable.

The proposed rule imposes certain reporting, record keeping and other compliance requirements on licensees of the Board of Medical Examiners, 27,783 of whom are plenary licensed physicians.

The proposed requirements relate to actions to be undertaken by a licensee upon notification of a patient's death. The rules must obviously apply to all of the Board's licensees, without differentiation as to size of practice, since they concern duties mandated by statute.

There are no compliance costs beyond those presently incurred in the standard practice of medicine.

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

[13:35-6.2 Pronouncement of death

(a) The official pronouncement of a death is a medical determination and the primary responsibility of the decedent's attending physician or designated covering physician.

(b) A Certificate of Death shall be prepared and completed by a physician. The factual date set forth in the Certificate shall be based to the greatest extent possible, upon personal knowledge of the physician preparing the Certificate. The physician may, however, exercise reasonable professional judgment and incorporate in the Certificate factual assertions ascertained by another health care professional, as set forth below.

(c) Upon notification of an apparent death, the attending physician or designated covering physician shall proceed without inordinate delay to the location of the presumed decedent and shall make the proper determination and pronouncement of the death.

(d) Where the apparent death has occurred outside a licensed hospital and the attending or covering physician has been notified but is unable to go to the location to make the determination and pronouncement, said physician may specify another physician or may arrange with a professional nurse (R.N.) or a paramedic certified by the Board of Medical Examiners to attend the presumed decedent and make the determination and pronouncement. In every such instance a written record, which may be contained within a police record, shall be prepared describing the circumstance and identifying the physician and any other person designated as above to perform the death pronouncement responsibility. Such report shall be promptly communicated orally to the attending physician for use in preparation of the death certificate. A copy of the report shall be provided to the physician as practicable.

(e) Where the probable death has occurred outside a licensed hospital and the attending or covering physician is known but cannot be reached after exercise of reasonable diligence, or no attending physician is known, then any physician, professional nurse or paramedic may proceed to the scene and make the determination and pronouncement of death. A written record shall be prepared as set forth in (d) above. Following pronouncement of death, the information shall be promptly communicated to the physician for preparation of the death certificate and a copy of the report provided as soon as practicable. If no attending physician is known, the death shall be immediately reported to the County Medical Examiner.

(f) In cases of death within the jurisdiction of the County Medical Examiner, the examiner shall without inordinate delay require the proper and established means for the determination and pronouncement of death, and shall arrange for the removal of the body and completion of the death certificate.

(g) Nothing contained in this section shall be deemed to impose an obligation upon any person not licensed by the Board of Medical Examiners to pronounce death.]

13:35-6.2 Pronouncement of death outside a hospital and completion of death certificate by attending physician

(a) The following terms shall have the following meanings unless the context in which they appear indicates otherwise:

1. "Attending physician" means any Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) who prior to the person's death had attended, supervised or directed ongoing medical treatment of that patient as a primary care physician or as a specialist undertaking to treat a significant chronic medical illness which could lead to death. A physician providing such ongoing treatment who has issued or renewed a prescription to the person within that six-month period will be deemed to be an attending physician, regardless of whether the physician has personally examined the person within the six-month period.

2. "Certificate of Death" means an official document prepared for filing pursuant to N.J.S.A. 26:6-6 et seq., which is signed by a physician and includes an immediate cause of death and contributing cause(s).

3. "Licensee" means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

4. "Pronouncement of Death" means the act of conducting an inquiry concerning the circumstances of a death, checking for vital signs, ascertaining pertinent history and, where appropriate, performing a complete external examination of the unclothed body and providing an opinion as to whether the death appears to have resulted from other than natural causes.

(b) Every physician licensed by the Board and engaged in the active practice of medicine in this State shall take measures to assure that the obligations set forth herein as they may relate to patients can be met. If the physician is unavailable, he or she shall arrange for another physician to assume these responsibilities. Any physician who assumes the responsibility for covering a practice for another shall be obligated to fulfill these responsibilities.

(c) Licensees shall assure that the Medical Examiner in the county in which the death occurred has been notified when they have been made aware that a patient has died in circumstances which suggest that the death:

1. Was violent (whether apparently homicidal, suicidal or accidental);
2. Resulted from a disease or disability not readily recognizable;
3. Was suspicious or unusual;
4. Occurred within 24 hours of admission to a hospital or other health care facility;
5. Was related to causes which may constitute a threat to the public health;
6. Was the result of a disease or accident related to employment; or
7. In the case of a child under the age of three, was sudden and unexpected.

(d) Licensees with knowledge concerning the physical scene of the death and/or the condition of the body shall cooperate with the Medical Examiner, providing verbal information (or a subsequent written submission, if requested) as may be needed by the Medical Examiner to determine whether the County Medical Examiner has jurisdiction over the case.

(e) When the Medical Examiner determines that a reported case does not fall within his or her jurisdiction and has released the body, the pronouncement of death and the completion of the death certificate shall be accomplished by the attending physician.

(f) Upon being advised of a death which need not be reported pursuant to (c) above or of a Medical Examiner's decision to decline jurisdiction, the attending physician, with reasonable dispatch, must pursue one of the following courses of action:

1. Proceed to the scene of the death to perform a pronouncement of death;
2. In the event the death occurred in the home or place of residence of the deceased or in a hospice, long-term care facility or nursing home, request that the responsibility for performing a pronouncement be undertaken by a registered nurse who has agreed to accept this responsibility; or
3. In the unusual circumstance that the physician is unable to either travel to the scene of a death which occurred outside of a licensed health care facility or arrange for a registered nurse to assume that responsibility, a direction may be given to transport the body to another location (that is, hospital, physician's office) but only after the physician has:

i. Ascertained from a reliable person at the scene sufficient information concerning the circumstances surrounding the death to conclude that the death need not be reported to the Medical Examiner;

ii. Consulted with the Medical Examiner in the county in which the death occurred advising of an intention to direct a removal and obtained a verbal release from that office;

iii. Made arrangements to proceed to the selected location to perform the pronouncement within a period of time which shall not unreasonably interfere with the disposition of the body; and

iv. Disclosed to family members that additional charges may be associated with the transport to the location at which the pronouncement will be performed.

(g) The attending physician performing a pronouncement shall so indicate in the space provided for that information on the Certificate of Death. When that task has been performed by a registered nurse at the attending physician's request, he or she shall ensure that the nurse's signature has been obtained.

(h) In the event the attending physician, in the course of performing the pronouncement and prior to removal of the body from a scene of death, has reason to believe the death resulted from unlawful, suicidal or accidental means or occurred in circumstances which are otherwise reportable, he or she shall contact the Medical Examiner and so advise.

(i) Within 24 hours of having received notification of the death, the attending physician shall sign the Certificate of Death, providing an immediate cause of death as well as such contributing causes as the physician can best determine from the medical history obtained from other physicians, family or friends of the decedent, the condition of the body when pronounced and the circumstances known concerning the death. If the physician lacks sufficient information to provide a specific immediate cause of death, he or she may indicate an underlying potentially fatal medical condition.

(a)

STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Notice of Comment Period Extension
Land Surveyors; Preparation of Land Surveys
Proposed Amendment: N.J.A.C. 13:40-5.1

Take notice that the State Board of Professional Engineers and Land Surveyors has extended the public comment period for the proposed amendment to N.J.A.C. 13:40-5.1, Land surveyors; preparation of land surveys, published in the December 4, 1989 New Jersey Register at 21 N.J.R. 3715(a), from January 3, 1990 to February 15, 1990.

Submit comments by February 15, 1990 to:
Cathleen A. McCoy, Executive Director
Board of Professional Engineers and Land Surveyors
Room 317
1100 Raymond Boulevard
Newark, New Jersey 07102

TRANSPORTATION

(b)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT

Notice of Pre-Proposed Rulemaking
Outdoor Advertising Tax Act
Outdoor Advertising on Limited Access Highways and Nonlimited Access Highways on the Federal Aid Primary System
Pre-Proposed Amendments: N.J.A.C. 16:41-8 and N.J.A.C. 16:41A

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7A, and 54:40-64.
Pre-Proposal Number: PPR 1990-1.

Submit comments in writing by March 15, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B et seq., as implemented by the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

The agency pre-proposal follows:

Summary

Outdoor advertising along roadways in the State is subject to regulations under the provisions of N.J.A.C. 16:41-8 for Interstate and Federal Aid Primary Highways and 16:41A for most other roadways. These rules have been in effect for more than a decade.

The Department of Transportation has created a task force to comprehensively review outdoor advertising regulations. The purpose of this task force is to identify how existing outdoor advertising programs may be improved. Given that there has been evolution in outdoor advertising technologies, the Department believes this initiative to be a worthwhile endeavor. The Department is seeking comments from the public regarding its outdoor advertising regulatory programs. Comments of the public and regulated persons are of interest to the Department.

The Department has initiated this pre-proposal to obtain public input and to assist in the fact finding efforts of the Outdoor Advertising Task Force. This pre-proposal seeks public comment on the existing provisions of N.J.A.C. 16:41-8 and N.J.A.C. 16:41A. All interested persons are requested to forward their comments to the Department. Persons should, wherever possible, cite those specific portions of the rules to which their comments pertain.

Although the Department welcomes public comment on any subject matter pertaining to outdoor advertising, the Department wishes to especially invite public comment on the following topics:

—Fees and penalties
—New and innovative technologies
—Size and spacing of signs
—Duration of permits
—Reduction of "paperwork"
—Setback from Right-of-Way
—"Unbuilt" sign permits
—Definitions of "on premise" signs
—Back up and back to back signs
—Zoning and other permit coordination (wetlands, pinelands, etc.)
—Enforcement

N.J.A.C. 1:30-3.3 requires a public comment period for pre-proposals of at least 30 days. To promote public input, the Department has decided to have a 60 day comment period for this pre-proposal. In addition to written comments, interested parties may request the opportunity to supplement written comments with oral presentations (see N.J.A.C. 1:30-3.2(b)4). The Department may also decide to hold a public hearing in conjunction with this pre-proposal. If a public hearing is held, notice of that hearing will be made in conformance with the provisions of N.J.A.C. 1:30-3.3(b).

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

Air Safety and Hazardous Zoning

Proposed Readoption: N.J.A.C. 16:62

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-32 and "Air Safety and Hazardous Zoning Act of 1983," P.L. 1983, c.260.

Proposal Number: PRN 1990-23.

Submit comments by February 15, 1990 to:

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

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66 (1978), N.J.A.C. 16:62, Air Safety and Hazardous Zoning, will expire on April 15, 1990. Additionally, the Department of Transportation (NJDOT) is required to review its existing rules periodically to determine their continuing usefulness and necessity. Accordingly, NJDOT has undergone such a review of its rules contained in N.J.A.C. 16:62, by the staff of the Office of Aviation, Division of Transportation Assistance, which revealed that the rules should be readopted as it was found to be necessary and required for the purpose for which promulgated.

The chapter establishes minimum standards and requirements of the New Jersey Department of Transportation governing the control of airport and aeronautical hazards, and standards for land use adjacent to airports to be implemented by municipalities in the State of New Jersey.

The chapter is summarized as follows:

N.J.A.C. 16:62-1 prescribes the definitions, general requirements, and provisions of the rules and their applicability.

N.J.A.C. 16:62-2 outlines requirements for municipalities to follow.

N.J.A.C. 16:62-3 describes the methodology to be used in delineating airport hazard areas, runway subzones, runway end subzones and clear zones.

N.J.A.C. 16:62-4 defines the minimum obstruction ordinance standards which a municipality must enact and describes the methodology used to define vertical development allowed within an airport hazard area.

N.J.A.C. 16:62-5 outlines the minimum land use standards to be used around airports.

N.J.A.C. 16:62-6 describes the procedures to be followed in the acquisition of a permit for creation or establishment of a prohibitive land use or vertical height development.

N.J.A.C. 16:62-7 outlines the provisions for amended and special airport standards.

N.J.A.C. 16:62-8 prescribes the general provisions for a permit for development immune to local ordinance.

N.J.A.C. 16:62-9 depicts the general provisions for existing land uses not conforming to the standards of this chapter.

N.J.A.C. 16:62-10 establishes deadlines for the implementation of the provisions of this chapter.

N.J.A.C. 16:62-11 outlines the penalty for violations of any provision of the chapter.

Social Impact

The proposed readoption will continue the minimum standards for the control of airport and aeronautical hazards, and standards for land use adjacent to airports, which the municipalities are required to implement. These standards are minimum State standards, and municipalities may adopt more rigorous standards for control of the areas and condition under the provisions of the Municipal Land Use Law. Municipalities are required to implement and maintain land use and aeronautical hazard control ordinances as required by this chapter. The rules do not apply to airports not licensed by this State or airports located within the Port of New York District. Although the specific provisions of this chapter may not apply to areas surrounding non-State licensed airports open to the public, this does not limit the power of municipalities to enact similar ordinances governing the areas in accordance with the Municipal Land Use Law.

Economic Impact

The rules proposed for readoption have an economic impact on a developer of a project requiring certain or establishment of a prohibited land use or vertical height development through the application and permit fees and the costs of site plans, specifications and construction drawings in compliance with the requirements of N.J.A.C. 16:62-6. Municipalities and developers have been operating under the fees established and will benefit because the fees have not been increased by this readoption. Additionally, municipalities are impacted since they are required to adopt ordinances. Any violation of any provision of this chapter will be grounds for fine, modifications, suspension or revocation of any license issued under N.J.S.A. 6. There is no direct impact on the public. The Department processing expenses are part of its administrative budget.

Regulatory Flexibility Analysis

The rules proposed for readoption impose no additional reporting or recordkeeping requirements. Compliance requirements are imposed by way of the application and permit requirements, including fees, and the application and permit conditions outlined in N.J.A.C. 16:62-6. These requirements are imposed on municipalities and developers in compliance with established standards. Some developers may be classified as small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For any new developers, these requirements may increase their start-up capital costs; for established businesses the compliance costs will have no impact. As the rule effectuates a statutory scheme and serves to promote the benefit of the general populace, no differentiation in requirements is provided for municipalities or developers.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:62.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organizational Rules
Advisory Opinions; Exemption Opinions; Tax Clearance Section; Status Section; Reinstatement Section; Conference Branch

Proposed New Rules: N.J.A.C. 18:1-1.3 through 1.8

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1, 52:14B-3.
Proposal Number: PRN 1990-28.

Submit comments by February 15, 1990 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN-269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

The following rules are proposed in order that the general public better understand the organization of the Division of Taxation. The Division believes these are organizational rules pursuant to N.J.S.A. 52:14B-4(b) as defined in N.J.S.A. 52:14B-3(1) which states such rules be "a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests." Accordingly, the rules set forth the Division's procedures for obtaining exemption opinions, advisory opinions and other information transmissions from the Division including Tax Status Reports, Tax Lien Searches and Tax Clearance Certificates. The Conference Branch and Reinstatement Section are also recognized by the rules.

Social Impact

The proposed new rules will allow the public to have more information and understanding about the structure of the Division of Taxation and its procedures and operations. The methods whereby the public may obtain certain types of information and make submissions or requests are set forth in detail. This increased understanding of Division operations as a result of the proposal is expected to be a positive social impact.

Economic Impact

The proposed new rules are not expected to result in increased costs to the public or to the Division of Taxation. The fees required to accompany Applications for Tax Clearance, Tax Lien Search and Release of Lien at N.J.A.C. 18:1-1.5 and 1.6 are minimal in amount and are required by statute.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or record keeping requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Those requesting information or opinions under these rules who may be small businesses must comply with the procedures set forth therein in order to provide for proper Division response. As this necessity is not related to the business size of the requestor, no differentiation in requirements or exemptions can be granted.

Full text of the proposal follows:

18:1-1.3 Advisory opinions

(a) In certain instances an individual or organization may desire an advisory opinion by the Division as to its status for State tax purposes and as to the State tax effects of its transactions or acts. In order to obtain such an advisory opinion, the applicant shall submit a written request which sets forth the following:

1. The name and address of the individual(s) or organization(s) seeking the opinion and to which the opinion would be applicable;
2. The individual's or organization's social security number and/or Federal tax identification number;
3. A complete statement of the facts to be considered and the opinion requested;
4. Any additional supporting information or legal references which the individual or organization may deem helpful; and
5. A statement that the taxpayer is not presently undergoing a Division of Taxation audit.

(b) When issued, such advisory opinion is not to be relied upon by other taxpayers. The advisory opinion may be revoked or modified at any time under appropriate circumstances. Except in rare or unusual circumstances, revocation or modification of an advisory opinion issued to a taxpayer whose tax liability was directly involved will not be retroactive, provided:

1. There has been no misstatement or omission of material facts;
2. The facts subsequently developed are not materially different from the facts on which the advisory opinion was based;
3. There has been no change in the applicable law;
4. The advisory opinion was originally issued with respect to a prospective or proposed transaction; and
5. The taxpayer directly involved in the advisory opinion acted in good faith in reliance upon the advisory opinion and the retroactive revocation would be to its detriment.

(c) Advisory opinions of the Division of Taxation are not declaratory rulings under N.J.S.A. 52:14B-8.

(d) Requests for advisory opinions should be submitted to the Tax Counselors Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.4 Exemption opinions

(a) To be considered for exempt status pursuant to the Corporation Business Tax Act, N.J.S.A. 54:10A-3(e), as a nonprofit corporation, the applicant organization shall submit the following:

1. An affidavit, signed by an officer of the corporation, indicating that the corporation is:

i. A nonprofit corporation that is not operated to make a profit, without regard as to whether there is profit or loss for a particular year;

ii. Organized without capital stock;

iii. Incorporated under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes of New Jersey or under a special charter or under any similar general or special law of this or any other state; and

iv. Not conducted for the pecuniary profit or benefit of any private shareholder or individual;

2. A copy of the organization's Certificate of Incorporation; and
3. A copy of the organization's bylaws.

(b) If the operations or activities of the corporation should change, the Division of Taxation must be notified. Unless the operations or activities make the taxpayer a profit making corporation, no further corporation business tax returns or Federal returns are required to be filed with the Division of Taxation. The Division of Taxation does not require the filing of a copy of Federal Form 990.

(c) A nonprofit organization properly exempted from filing corporation business tax returns may have other filing requirements with other agencies of the State of New Jersey including, for example, the following:

1. Responsibilities under the Charitable Fund Raising Act of 1971, N.J.S.A. 45:17A-1 et seq. and N.J.A.C. 13:48; or
2. The responsibility to file annual reports with the Office of the Secretary of State, N.J.S.A. 15A:4-5.

(d) To be considered for exempt status pursuant to the Sales and Use Tax Act, an application should be submitted containing information requested at N.J.A.C. 18:24-8.4 or, in lieu thereof, the following information:

1. A copy of the Certificate of Incorporation;
2. A copy of the Bylaws;
3. A copy of the IRC 501(c)(3) determination letter from the Internal Revenue Service;
4. Form ST-5B, Application for Exempt Organization Permit; and

5. Form CIS-1, Application for Registration.

(e) Requests for exemption opinions should be submitted to the Tax Counselors Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:1-1.5 Tax Clearance Section

(a) Requests for Tax Clearance Certificates may be initiated by completing and submitting an Application for Tax Clearance, Form A-5088-TC. A $25.00 payment is required with such application. An Estimated Summary Tax Return for the current tax year, Form A-5052-TC, bearing the signature of a corporate officer, as well as the appropriate deposit payment, may accompany this form. Delinquent tax returns, tax payment, penalty and interest due are also required. Instructions with the original application form detail the tax information necessary for completion of the application.

(b) After a determination is made that all information has been submitted and all taxes have been paid, a Certificate of Tax Clearance is issued. This certificate may be timely filed with the Secretary of State's Office together with payment of the applicable fee. Typically, the certificates are used in connection with dissolutions, withdrawals, reauthorizations, and mergers (when the survivor is a foreign non-authorized corporation). See also N.J.S.A. 54:50-15, N.J.A.C. 18:7-14.17, 18, 19 and 20.

(c) Additional information, applications and inquiries may be made by writing to the Division of Taxation, Tax Clearance Section, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

18:1-1.6 Status Section

(a) Requests for either Tax Lien Search or Release of Lien of Franchise Taxes may be initiated by completing an Application for Tax Lien Search, Form CS-152R ($25.00 fee) or an Application for Release of Lien ($5.00 fee) and remitting the appropriate fee. Information required to complete such applications includes the name of the corporation, the corporate serial number, the Federal identification number, the State and date of incorporation, dates title was held (for conveyance of real property) and the reason for making such application. Typically, applications are made in connection with a conveyance of real property out of a corporate entity, to obtain funding, to release escrow funds or release existing liens on void or inactive corporations. When the intended use pertains to conveyance of real property, information as to the location of the property, such as block, lot, township, and metes and bounds description, must be included. See also N.J.S.A. 54:10A-29 and N.J.A.C. 18:7-13.13 for tax lien search, and N.J.S.A. 54:10A-30 and N.J.A.C. 18:7-13.12 for release of lien of franchise tax.

(b) Additional information, applications and inquiries may be made to the Status Section, Division of Taxation, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

18:1-1.7 Reinstatement Section

(a) Requests for reinstatement of voided corporate charters may be initiated by completing and submitting an Application for Reinstatement of Corporate Charter, Form C-9021. No fee is required with such application. Information required includes the name of the corporation, trade name (if applicable), business address, corporate serial number, federal identification number, state and date of incorporation, date of voidance, nature of business and whether or not the corporation holds title to real property. All applications submitted should bear the signature of an authorized representative of the corporation.

(b) Such certificates must be approved by the Attorney General's Office and certified by the Secretary of State, and payment must be made of the applicable fee. This is accomplished after the Division of Taxation has determined all back taxes have been paid in full and a notarized petition of reinstatement has been signed by a corporate officer. See also N.J.S.A. 54:11-5, 54:49-13.1, and N.J.A.C. 18:7-14.8 and 18:7-14.9.

(c) Additional information, applications and inquiries may be made to the Reinstatement Section, Division of Taxation, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

18:1-1.8 Conference Branch

(a) A Conference Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director. A protest by a taxpayer to the Conference Branch generally must be made within 30 days of the giving of the notice or assessment sought to be reviewed. In the case of a petition for redetermination under the Gross Income Tax Act, however, the taxpayer may file a petition within 90 days after the mailing or the notice (or 150 days if the notice is addressed to a person outside of the United States), N.J.S.A. 54A:9-9(b). The administrative hearing or review results in a final determination of the matter which is then subject to judicial review in the New Jersey Tax Court, N.J.S.A. 54:51A-14, N.J.S.A. 54A:9-10.

(b) Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10.

(c) Protests, petitions for redetermination, or requests for administrative hearings should be submitted to the Conference Branch, Division of Taxation, University Office Plaza, 3635 Quakerbridge Road, CN 269, Trenton, NJ 08646-0269.

(a)

DIVISION OF TAXATION

Organizational Rules
Petitions for Rules
Proposed New Rules: N.J.A.C. 18:1-2

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1 and 52:14B-4(f).
Proposal Number: PRN 1990-26.

Submit comments by February 15, 1990 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

N.J.S.A. 52:14B-4(f) entitles interested persons to petition administrative agencies to make, amend or repeal any rule. That section requires each agency to prescribe the form and procedure for the submission, consideration, and disposition of a petition from an interested person. N.J.A.C. 1:30-3.6 outlines procedural requirements which agencies must follow upon receipt of such petitions and requires that each agency prescribe by rule the form of the petition and the procedures for its submission to the agency and to the Office of Administrative Law for publication.

The proposed new rules are made pursuant to these referenced provisions. In the past, the Division of Taxation has cooperated with various groups and entities including the State Society of Certified Public Accountants and the State Bar Association in an effort to make and publish rules that are clear and supply appropriate guidance for taxpayers and tax preparers in meeting their statutory obligations. The following proposed new rules, when adopted, will formalize the mechanics and procedures to be used when members of the public seek the adoption of a new rule or amendment. The proposed rules enumerate the elements required to be included and contained in a valid petition for rulemaking.

Social Impact

The proposed new rules will allow taxpayers and their advisers an additional formal mechanism to participate in the ongoing process of formulating rules related to the administration of State tax statutes. They supply members of the public a significant opportunity to contribute to the administrative law process.

Economic Impact

The proposed new rules will not result in increased costs to the public. They will result in increased administrative burdens on the Division of Taxation, however, in connection with responding to rulemaking petitions.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules do not impose mandatory reporting, recordkeeping or other compliance requirements on small businesses. The petition for rulemaking is a voluntary procedure available to the public. The proposed new rules do not impose new, different, or additional burdens on taxpayers or their advisers.

Full text of the proposal follows:

SUBCHAPTER 2. PETITIONS FOR RULES

18:1-2.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment, or repeal of any rule by the Division of Taxation pursuant to N.J.S.A. 52:14B-4(f).

18:1-2.2 Form of petition

(a) A petition for the promulgation, amendment or repeal of a rule shall be in writing, shall be legible and comprehensible, shall be signed by the petitioner, and shall be captioned "Petition for Rulemaking Action."

(b) Any such petition shall contain and set forth all of the following information:

1. The full name and address of the petitioner and of those on whose behalf the petitioner may be acting in a particular instance;
2. The reasons for the request;
3. A description of the substance or nature of the rulemaking which is requested and a draft text of the proposed rule or rules;
4. A description or analysis of the economic impact of adoption of the request;
5. A description or analysis of the social impact of adoption of the request;
6. The class or group affected by the proposed rulemaking and, if the proposal would impose reporting, recordkeeping, or other compliance requirements on small businesses, a description of the methods to be used to minimize any adverse economic impact on small businesses;
7. A complete disclosure of petitioner's interest in the request, including without limitation, any relevant organizational affiliation or economic interest and the financial effect upon petitioner if the request were brought into effect; and
8. The statutory authority under which the Division may take the requested action.

(c) Petitions shall be sent to the following address: Chief Tax Counselor, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646.

(d) Any document submitted to the Division of Taxation which is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

18:1-2.3 Procedures of the Division

(a) Within 15 days of receipt of a petition in compliance with N.J.A.C. 18:1-2.2, the Division will file a Notice of Petition with the Office of Administrative Law for publication in the New Jersey Register (Register) in accordance with N.J.A.C. 1:30-3.6(a). The notice will include the following:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Division will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include the following:

1. The name of the petitioner;
2. The Register citation for the Notice of Petition, if that notice appeared in a previous Register;
3. Certification by the Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Division's action upon the petition; and
5. A brief statement of reasons for the Division's action.

(c) The Division's action on a petition may include the following:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the Register.

(a)

DIVISION OF TAXATION

Savings Institution Tax Act Rules

Proposed Readoption with Amendments: N.J.A.C. 18:36

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1, 54:10D-14 and P.L. 1979, c.160, §4.
Proposal Number: PRN 1990-27.

Submit comments by February 15, 1990 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1979), N.J.A.C. 18:36 expires on February 4, 1990. The Division of Taxation has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order. The readoption of these rules becomes effective upon publication of a notice of readoption in the New Jersey Register.

In New Jersey, savings banks, savings and loan associations and building and loan associations were not subject to State taxation until the enactment of The Savings Institution Tax Act, P.L. 1973, c.31 (N.J.S.A. 54:10D-1 et seq.) The Act was amended by P.L. 1979, c.160.

Pursuant to statutory authority, the Division of Taxation promulgated rules cited as N.J.A.C. 18:36 in order to implement the statute and to set forth the Division's position with regard to certain transition provisions.

The Division of Taxation has reviewed these rules and has found them in need of revision and amendment due to the passage of time from the original filing date. Accordingly, the number of changes are proposed in this readoption.

In addition, regulatory changes affecting the industry have recently brought about the possibility of a taxpayer having business activities in more than one state. In order to address this situation in light of the current statutory framework, which does not contain provisions for allocation of income, the Division is supplying taxpayers with guidance for such situations. It must be noted that the new provision and the principle contained in it are applicable to the savings institution tax only and are not applicable to taxpayers under any other taxing statute.

Social Impact

Savings banks, building and loan associations and savings and loan associations are generally referred to as thrift institutions. They are generally depositories for small depositors, savers or customers. Deposits are often used by these institutions in the funding of mortgages on real property. The present tax rate of three percent upon net income will generally produce a lesser tax than would liability for tax payments under the Corporation Business Tax Act. Commercial banks are subject to the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. Legislation was enacted so that some of the tax burden of financial institutions be shared by savings banks, savings and loan associations, and building and loan associations, which are competitors of commercial banks.

Economic Impact

Based on the State of New Jersey's fiscal year, below appear State revenue collections for these taxpayers:

1985	$ 4,484,525
1986	16,940,087
1987	25,563,861
1988	23,420,233

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these amendments do not impose mandatory reporting, recordkeeping or other compliance requirements on small businesses within the meaning of the Regulatory Flexibility Act. The rules apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied to taxpayers uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

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

CHAPTER 36
SAVINGS INSTITUTION TAX ACT

SUBCHAPTER 1. [TRANSITION] GENERAL PROVISIONS

18:36-1.1 Rate of tax

[Each taxpayer must pay a tax at the rate of five percent for taxes payable through the calendar year 1979.] For taxes due in calendar year 1980 and each year thereafter, the **tax** rate is three percent.

18:36-1.2 Income of certain interest or dividends

[(a) Any income received from interest or dividends on obligations or securities of the State of New Jersey, its political subdivisions and authorities, as well as obligations of any authority, commission, instrumentality or territorial possession of the United States received before January 1, 1979, may be excluded from the tax base.]

[(b)] Any income received from interest or dividends on obligations or securities of the State of New Jersey, its political subdivisions and authorities, as well as obligations of any authority, commission, instrumentality or territorial possession of the United States received on or after January 1, 1979, must be included in the tax base [even though taxpayer reports on the basis of a fiscal year].

18:36-1.3 Partial payments

(a) With respect to fiscal or calendar accounting years ending after September 30, 1979, every taxpayer shall pay the excise tax due and such payment shall include a partial prepayment of eighty per cent of the tax liability as calculated under the provisions of the Savings Institution Tax Act.

(b) In succeeding accounting periods, taxpayer will be allowed a credit for such partial payment.

18:36-1.4 [Credit for overpayment] **Accounting method**

[(a) For any timely filed refunds presently pending or claimed within two years from the date of payment, such refunds shall be taken as a credit on the tax return which will be due in 1980, subject to audit.

(b) Such refunds may be taken as a credit by including them on line 14c, page 1, of the savings institution tax return due in 1980.]

(a) If a taxpayer under the Savings Institution Tax Act, N.J.S.A. 54:10D-1 et seq., has distinct business activities within and outside the State of New Jersey, the taxpayer may utilize a source based method to account for income and expense attributable to activities within New Jersey and may calculate its tax based upon such method. Such method shall accurately reflect the portion of income derived from sources within New Jersey and attributable to New Jersey.

(b) For purposes of administering this section, the Director or any employee of the Division may make such review or examination of taxpayer's records, papers, vouchers, accounts and documents as may be needed to support such calculation (see N.J.S.A. 54:50-2).

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Procedures for Granting Credit, and Recording Checks Exchanged, Redeemed or Consolidated

Proposed Amendment: N.J.A.C. 19:45-1.27

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-101.

Proposal Number: PRN 1990-32.

Submit comments by February 15, 1990 to:

James F. Schwerin
Senior Assistant Counsel
Legal Division
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendment would do no more than clarify what the Commission has already held is allowed under the current language. Specifically, a bank verification service such as Central Credit of New Jersey, Inc. (CCNJ), in obtaining information from a patron's bank, may do so by having another bank verification service make direct contact with the bank rather than being required to do so itself. While the Commission has ruled that the current language of the rule would allow this procedure to be utilized, because that was the subject of dispute between CCNJ and the Division of Gaming Enforcement (Division), the Commission desires to remove any doubt by having the rule state specifically that this is the case.

Social Impact

There will be no significant social impact as a result of this amendment. The Division has already stated its agreement with the concept of allowing this procedure to be utilized and the amendment will clarify that this practice is allowed but not result in any changes which might affect patrons.

Economic Impact

The proposed amendment is not expected to have any significant economic impact. There will be a savings expected to be realized by entities such as CCNJ by not having to directly contact each bank, but that is already allowable under the current version of the rule.

Regulatory Flexibility Analysis

The proposed amendment does not impose reporting or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A record keeping requirement is imposed on bank verification services, which may be small businesses, as they are required to record the date a patron's personal checking account information was obtained from a bank by the service. As this requirement and any administrative cost related thereto is very minor, and maintenance of the information is necessary for a proper casino credit process, no differentiation in or exemption from the requirement is granted.

Full text of the proposal follows (additions are indicated in boldface **thus**):

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(d) All verifications performed by the credit department in (c) above together with accurate and verifiable information received from the security and surveillance departments pursuant to N.J.A.C. 19:45-1.11(c) shall be recorded in the credit file and accompanied by the signature of the credit department representative who performed the required verifications or filed the relevant information. The date and time of the signature of the credit department representative shall be recorded either mechanically or manually contemporaneously

with the transaction. The casino licensee's credit department shall fill the requirements of (c) above as follows:

1.-3. (No change.)

4. Verification of the patron's personal checking account information, as required by (c)4 above, shall be performed by the casino licensee or a bank verification service directly with the patron's bank. **A bank verification service utilized by a casino licensee may make use of another bank verification service to make direct communication with the patron's bank.** If such information is not immediately available, the casino licensee may use an alternative source. The casino licensee shall record the source of the verification and the method by which each verification was performed in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee or bank verification service requests written documentation of all information obtained as soon as possible and such written documentation is included in the patron's credit file. All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained. No bank verification service may be used by a casino licensee **or another bank verification service** to perform the verifications required by this section unless the bank verification service has filed a completed application for an appropriate casino service industry license under N.J.S.A. 5:12-92 and N.J.A.C. 19:43. If a bank verification service is used as a primary source of verification, **either directly by a casino licensee or by another bank verification service, each service and** the licensee shall, in addition to complying with any other requirement imposed by this section, record the date that the patron's personal checking account information was obtained from the bank by the service.

(e)-(p) (No change.)

RULE ADOPTIONS

BANKING

(a)

DIVISION OF SAVINGS AND LOAN

Bookkeeping and Accounting

Readoption with Amendments: N.J.A.C. 3:28

Proposed: November 6, 1989, at 21 N.J.R. 3336(a).
Adopted: December 8, 1989 by Mary Little Parell, Commissioner, Department of Banking.
Filed: December 12, 1989 as R.1990 d.18, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 17:1-8.1; 17:12B-197.

Effective Dates: Readoption, December 12, 1989; Amendments, January 16, 1990.
Expiration Date: December 12, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The revision of N.J.A.C. 3:28-1.6 indicates that records of income and expense for real estate owned shall be maintained in a general ledger account rather than in a subsidiary ledger account. This would only serve to add unnecessary data to the major financial record. Instead, this information should be maintained in a subsidiary ledger account.

RESPONSE: The Department agrees with this comment and has made the appropriate change in this rule.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:28.

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

3:28-1.1 Bookkeeping system

Books and records of account shall be kept on an accrual basis of accounting.

3:28-1.2 Loan payments or deposits

Loan payments or deposits shall be made on payment slips and recorded in a daily cash receipt record, whether manually maintained or through a computerized system, which shall contain the customers' names and account numbers, dates of payments and other information necessary to give proper credit. The record of cash receipts shall be balanced and proved promptly. Provision should be made to account for electronic fund transfers.

3:28-1.3 Prompt posting of ledger accounts

Loan payments or deposits shall be posted to their individual subsidiary ledger accounts promptly.

3:28-1.4 Cash receipts record

A summary of the totals of the loan payments or deposits posted in the subsidiary ledger shall be entered in the record of cash receipts at least weekly.

3:28-1.5 Real estate

A subsidiary ledger account shall be kept for each parcel of real estate owned whether held for development/investment or acquired through repossession.

3:28-1.6 Real estate income and expense

Income and expense shall be recorded in a *[general]* ***subsidiary*** ledger account maintained for each parcel of real estate owned or acquired.

3:28-1.7 Reserve for uncollected interest

(a) Each association shall maintain a specific reserve for uncollected interest equivalent to all earned, uncollected interest in default more than 90 days. Suitable provision for this reserve shall be made at least monthly.

(b) The requirements of this section shall not apply to loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration.

3:28-3.1 Cash book journal

A cash book journal may be maintained either manually or through a computer system. Entries shall be recorded by use of both gross and net columns, thereby indicating actual net cash transactions.

3:28-3.2 General journal

If a cash book journal is not used, a computerized or manually maintained general journal shall be maintained.

3:28-3.4 General ledger

A general ledger shall be maintained either manually or on a computerized system. The general ledger shall be posted and balanced as frequently as circumstances require, but at least monthly. Accounts in the general ledger shall be segregated in groups under asset accounts, liability and reserve accounts, income accounts and expense accounts. All closing entries shall be posted to the general ledger.

SUBCHAPTER 4. SUBSIDIARY LEDGERS

3:28-4.1 Borrowers' and depositors' subsidiary ledgers

A subsidiary ledger account shall be maintained for each borrower's or depositor's account except for accounts maintained under the provisions of N.J.S.A. 17:12B-130.

3:28-4.2 Depositor ledger

The depositor ledger shall be proved and balanced at least monthly.

3:28-4.3 (Reserved)

3:28-4.4 Subsidiary ledgers for mortgages

A subsidiary record shall be maintained for each mortgage loan which shall be balanced and proved at least monthly.

3:28-4.5 Depositors' passbooks or other evidence of accounts

Passbooks or other evidence of accounts should contain an understandable record which will permit satisfactory reply to verification requests. Each entry should be initialed by or contain the symbol of the person making same. Where passbooks are posted by machine, each teller shall have a separate symbol.

3:28-4.6 Taxes and insurance

(a) If amounts advanced by the association for taxes and insurance are not charged directly to the mortgage loan accounts, they shall be entered in a subsidiary record maintained for this purpose which shall be balanced and proved at least monthly.

(b) If advance payments by borrowers for taxes and insurance are not credited directly to the mortgage loan accounts, they shall be entered in a subsidiary record maintained for this purpose which shall be balanced and proved at least monthly.

3:28-4.7 Account loans

A subsidiary record shall be maintained for each account loan which shall be balanced and proved at least monthly.

3:28-4.8 Real estate contracts

A subsidiary ledger account shall be maintained for each parcel of real estate sold on contract, which account shall be balanced and proved at least monthly. The accounts shall be kept on a basis which will permit application of charges and credits in accordance with the terms of the contracts.

3:28-4.9 Signature cards

Each association shall maintain a complete signature file of depositors, as well as a record of their names, addresses and account numbers.

3:28-4.10 Account numbers

Accounts shall be identified by a certificate number, account number, or both.

3:28-4.11 Other subsidiary records

All other subsidiary records not specifically mentioned above shall be balanced and proved at least monthly.

3:28-5.1 Procedure for election of loss deferral accounting

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

(c) The amortization of discounts and losses shall be matched as follows:

1. For purposes of this subsection (c) only:

i. The term "long-term, deep-discount security" means any loan, lease or security identified in (a) above that has a remaining term of maturity, at the time of purchase, of 10 years or more, and is purchased at a price of less than 90 percent of its stated (par) value or principal balance.

ii. The term "matching loss" is an amount determined by multiplying:

(1) The net amount of loss deferred in accordance with an election made pursuant to (a) above during a period beginning six months prior to the purchase of a long-term, deep-discount security, and ending six months after the date of such purchase, by

(2) A fraction (not to exceed one), the numerator of which is the total of amounts paid or other consideration given for long-term, deep-discount securities during the 12-month period described in (a) above, and the denominator of which is the total proceeds (in cash or any other consideration) from dispositions during the same period for which the election under (a) above is in effect.

2. When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to (a) above, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss, provided that:

i.-ii. (No change.)

3. (No change.)

(d)-(e) (No change.)

(f) It is intended that this rule parallel for State-chartered mutual savings and loan associations and mutual savings banks those regulations adopted by the Federal Home Loan Bank Board for Federal savings and loan associations and savings banks, or other appropriate Federal authority, so that any interpretation of these regulations shall refer to comments and interpretation of those Federal regulations unless otherwise determined by the Commissioner.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Administrative Correction

Appeals

Specific Appeals

N.J.A.C. 4A:2-1.7

Take notice that the Department of Personnel has requested, and the Office of Administrative Law has agreed, that N.J.A.C. 4A:4-1.7, Specific appeals, be administratively corrected to conform the rule language to adopted new rule N.J.A.C. 4A:4-6.5, effective November 6, 1989 (see 21 N.J.R. 3448(b)) and the new layoff rules adopted elsewhere in this issue of the New Jersey Register. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

4A:2-1.7 Specific appeals

(a) For specific appeal procedures see:

1.-5. (No change.)

6. Employment list removal for medical [unfitness] **reasons** (N.J.A.C. 4A:4-6.5);
7. Employment list removal for psychological [unfitness] **reasons** (N.J.A.C. 4A:4-6.5);
8.-9. (No change.)
10. Layoffs [in local service] (N.J.A.C. [4:3-16.2] **4A:8-2.6**);
[11. Layoffs in State service (N.J.A.C. 4:2-16.2);]
Recodify existing 12.-18. as **11.-17.** (No change in text.)
(b) (No change.)

(a)

MERIT SYSTEM BOARD

Compensation

Adopted New Rule: N.J.A.C. 4A:3-4.11
Adopted Repeal: N.J.A.C. 4:2-7.7(c)

Proposed: May 15, 1989 at 21 N.J.R. 1184(a).
Adopted: December 20, 1989 by the Merit System Board, Charles A. Nanry, Ph.D., Acting Commissioner, Department of Personnel.
Filed: December 21, 1989 as R.1990 d.45, **without change.**

Authority: N.J.S.A. 11A:2-6(d); 11A:3-7.

Effective Date: January 16, 1990.
Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: A State legislator, the Communications Workers of America (CWA) Vice President, the CWA Area Director, representatives from CWA Locals 1033, 1034 and 1040, a member of CWA Local 1039, the Assistant to the President of the New Jersey Industrial Union Council and several State employees expressed opposition to the proposed N.J.A.C. 4A:3-4.11. They generally voiced concerns that the rule would have a negative impact on the compensation of State employees.

COMMENT: The CWA Area Director commented that N.J.A.C. 4A:3-4.11 conflicts with CWA's union contract, because the rule will cause changes in the State compensation plan which will have a negative impact on the income of CWA members. A representative of CWA Local 1033 and a member of CWA Local 1039 also believed that the rule would side-step the negotiations process. The CWA Area Director added that N.J.A.C. 4A:3-4.11 violates N.J.S.A. 11A:1-2(e) and 11A:12-1, provisions of the Civil Service Act which were designed to protect union negotiation rights. He said that the now defunct Civil Service Personnel Manual contained a provision which recognized the role of union negotiations with respect to salary reevaluations.

RESPONSE: N.J.A.C. 4A:3-4.11 would not itself cause a reduction in employee salaries. Rather, it provides the procedural framework for avoiding a decrease in an employee's salary if the employee faces one of the two situations described in subsection (a). Also, the rule provides for input by employees and/or their negotiations representatives in paragraph (a)3, which provides for additional salary adjustments for affected employees.

COMMENT: A representative of CWA Local 1033 expressed concern that the Department of Personnel's title consolidation program would worsen the effect of N.J.A.C. 4A:3-4.11 by causing the salaries of all employees in a particular range to be red circled.

RESPONSE: As noted above, the rule provides a formula for maintaining salary levels and does not require or cause salaries to be decreased. It should be noted that if a review of title classifications results in a downward title reevaluation, an employee or negotiations representative can propose alternative measures as provided in paragraph (a)3.

COMMENT: The Chief of the Human Resources Development Program in the Department of Health noted that N.J.A.C. 4A:3-4.11(a)2 requires that the appointing authority give affected State employees a 45 day notice of a reduction in range, and asked whether the employees so notified also would be given lateral or demotional title rights.

RESPONSE: Although the rule gives affected employees and their negotiations representatives 45 days' notice of a downward title reevaluation, the rule does not trigger layoff procedures.

Full text of the adoption follows.

4A:3-4.11 Downward title reevaluation pay adjustments: State service

(a) When a title is reevaluated to a lower class code, or when a title is eliminated and incumbents are placed in a title having a lower class code, each employee in that title shall remain at his or her current base salary. The part of an employee's base salary that is above the nearest lower step in the lower range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is at the maximum step, the employee will remain at that salary until the maximum step of the lower range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the lower range.

1. The effective date of a downward title reevaluation shall be the first pay period that is 60 days after the date of the reevaluation determination by the Commissioner.

2. All employees affected by a downward title reevaluation and their negotiations representatives shall be given notice by the appointing authority of the reduction in range at least 45 days prior to the effective date.

3. When a title has been eliminated and incumbents placed in a title having a lower class code, the Commissioner, on his or her own initiative or upon the request of affected employees and/or their negotiations representatives, may provide for additional adjustments for affected employees.

(b)

MERIT SYSTEM BOARD

Intermittent Titles; Vacancy Review Board

Adopted Amendments: N.J.A.C. 4A:3-3.8, 4A:6-1.2, 1.3, 1.9 and 2.4
Adopted New Rule: N.J.A.C. 4A:4-1.11 and Appendix

Proposed: November 6, 1989 at 21 N.J.R. 3337(a).
Adopted: December 20, 1989 by the Merit System Board, Charles A. Nanry, Ph.D., Acting Commissioner, Department of Personnel.
Filed: December 21, 1989 as R.1990 d.48, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:3-1, 11A:3-7 and 11A:6; and Executive Order No. 10 (1982).

Effective Date: January 16, 1990.
Expiration Dates: N.J.A.C. 4A:3, September 6, 1993; N.J.A.C. 4A:4 and Appendix, June 6, 1993; N.J.A.C. 4A:6, January 4, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Support was expressed for Option A for N.J.A.C. 4A:6-2.4(b) by a representative of CWA Local 1033, an individual intermittent employee, and the Coordinator, Office of Personnel Services for the Division of Youth and Family Services (DYFS) in the Department of Human Services.

The CWA representative stated that Option A, which would provide for payment of holiday pay to intermittent employees on a bi-weekly basis, is consistent with the practice followed by the Division of Taxation prior to the issuance of salary administration memoranda (SAM) 15-87 in 1987. He further commented that intermittent employees would receive timelier and more complete holiday pay payments under Option A than they would under the quarterly method set forth in Option B. However, the CWA representative urged that (b)2 of Option A allow holiday pay for those intermittent employees who were in pay status immediately prior to the holiday without further restricting eligibility for such payments.

The DYFS personnel coordinator stated that Option A embodies the method used for regular part-time employees and, therefore, is preferable to Option B.

The Assistant Director, Office of Personnel and Training for the Department of Labor, expressed support for Option B, explaining that

calculation of holiday pay on a quarterly basis would more accurately determine the percentage of time during which an intermittent works.

RESPONSE: The Board has decided to adopt Option A for N.J.A.C. 4A:6-2.4(b), noting that its provisions are most consistent with the existing method of payment of holiday and other types of pay for State employees other than intermittents. The Board also notes greater support among commenters for this option than for Option B. Although the Board understands the objection voiced concerning (b)2 in Option A, it believes that the language should be adopted as proposed because it presents the only workable method for making holiday pay payments in the situations (b)2 presents.

COMMENT: The DYFS personnel coordinator stated with respect to N.J.A.C. 4A:4-1.11 that she has observed substantial delays in the issuance of Vacancy Review Board (VRB) decisions. She suggested that its review time be limited to 45 days and that criteria on the exemption of a position from review be included in the rule.

RESPONSE: The Appendix to the rule indicates that the Vacancy Review Board will make a determination about a vacancy from which an employee has retired within 30 working days of the retirement or within 30 working days of receipt from the appointing authority by the Office of Personnel Management Systems of necessary documentation concerning the vacancy.

The new rule does not include criteria for the VRB to follow in exempting a position from review because, in keeping with the Executive Order which created the VRB, that body needs the flexibility to implement policy based on all information available.

Full text of the adoption follows (deletions indicated in brackets with asterisks *[thus]*).

4A:3-3.8 Intermittent titles: State service

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

(e) The following chart indicates the amount of vacation, sick and administrative leave to which intermittent employees are entitled based on accumulated hours of work. See N.J.A.C. 4A:6-2.4(b) for holiday pay.

LEAVE ENTITLEMENTS—INTERMITTENT EMPLOYEES

VACATION LEAVE

Workweek	Employees with up to 10,440 hours of service (equivalent of 5 years)	After 10,440 hours of service (equivalent of 5 years)	After 25,056 hours of service (equivalent of 12 years)	After 41,760 hours of service (equivalent of 20 years)
40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.	1 day (8 hours) for each 104 hours in regular pay status.	1 day (8 hours) for each 84 hours in regular pay status.
Workweek	Employees with up to 9,135 hours of service (equivalent of 5 years)	After 9,135 hours of service (equivalent of 5 years)	After 21,924 hours of service (equivalent of 12 years)	After 36,540 hours of service (equivalent of 20 years)
NL, NE, 35 and 3E hour titles	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.	1 day (7 hours) for each 93 hours in regular pay status.	1 day (7 hours) for each 73 hours in regular pay status.

SICK LEAVE

Workweek	Through Dec. 31 of First Calendar Year of Employment	After Dec. 31 of First Calendar Year of Employment
40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.
NL, NE 35 and 3E hour titles	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.

ADMINISTRATIVE LEAVE

Workweek	
40, 4E and N4 hour titles	½ day (4 hours) for each 174 hours in regular pay status to a maximum of 3 days (24 hours) in any calendar year.
NL, NE, 35 and 3E hour titles	½ day (3½ hours) for each 152 hours in regular pay status to a maximum of 3 days (21 hours) in any calendar year.

4A:6-1.2 Vacation leave

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

(d) Part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. See N.J.A.C. 4A:3-3.8(e) for paid vacation leave to which State employees in intermittent titles are entitled.

(e)-(h) (No change.)

4A:6-1.3 Sick leave

(a) (No change.)

(b) Part-time and 10-month employees shall be entitled to a proportionate amount of paid sick leave. See N.J.A.C. 4A:3-3.8(e) for paid sick leave to which State employees in intermittent titles are entitled.

(c)-(h) (No change.)

4A:6-1.9 Administrative leave: State service

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

(c) Part-time employees shall be entitled to a proportionate amount of paid administrative leave. See N.J.A.C. 4A:3-3.8(e) for

paid administrative leave to which employees in intermittent titles are entitled.

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

[OPTION A]

4A:6-2.4 Holidays: State service

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.

(b) Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as follows:

1. Holiday pay shall be paid at the end of a bi-weekly pay period and shall be calculated by dividing the number of hours the employee was in regular pay status in that pay period by the number of hours which a full-time employee would work during that pay period, and then multiplying that amount by the number of holiday hours for that pay period.

2. An intermittent employee who has resigned, been removed or been laid off prior to the last day of the pay period shall not receive holiday pay for that pay period.

Recodify (b)-(c) as (c)-(d) (No change in text.)

*[OPTION B

4A:6-2.4 Holidays: State service

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.

(b) Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as follows:

1. Holiday pay shall be paid at the end of a calendar quarter and shall be calculated by dividing the number of hours the employee was in regular pay status in that calendar quarter by the number of hours which a full-time employee would work during that quarter, and then multiplying that amount by the number of holiday hours for that quarter.

2. An intermittent employee who has resigned, been removed or been laid off prior to the last day of the calendar quarter shall not receive holiday pay for that quarter.

Recodify (b)-(c) as (c)-(d) (No change in text.)]*

4A:4-1.11 Vacancy Review Board: State service

(a) The Vacancy Review Board in the Department of Personnel, established by Executive Order No. 10 (1982), shall review all positions from which employees retire, except as provided in (b) below, and determine which of the following actions shall be taken by the affected appointing authority with respect to each position:

1. Refilling the position in its present classification;

2. Abolishing and creating a new position in a different classification;

3. Transferring the position to a different unit;

4. Abolishing the position with funds lapsing to the General Treasury; or

5. Taking another appropriate measure.

(b) The Vacancy Review Board need not make the determination required by (a) above if the position is exempted from review by the Vacancy Review Board or the affected appointing authority abolishes the position.

(c) See Appendix to this rule for Executive Order No. 10 (1982) and Vacancy Review Board procedures.

APPENDIX TO N.J.A.C. 4A:4-1.11

EXECUTIVE ORDER No. 10

Whereas, There are positions in State government that become vacant through retirement each year; and

Whereas, Such vacancies should be reviewed to consider their continued need and proper classification; and

Whereas, Procedures should be established to effectuate such a review process;

Now, Therefore, I, Thomas H. Kean, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby ORDER and DIRECT:

1. A Vacancy Review Board is hereby established to review the duties of and continued need for positions in the Executive Branch of State government that become vacant upon retirement, to determine whether these positions should be eliminated, continued, reclassified or transferred. The Board shall establish procedures necessary to implement this process. All departments of the Executive Branch shall fully cooperate with and provide information and documentation as required to the Board.

2. The Vacancy Review Board shall consist of the State Treasurer, President of the Civil Service Commission and a representative of the Governor's Office or their designees.

3. The Vacancy Review Board shall be located in the Department of Civil Service and that Department shall provide necessary personnel and assistance to the Board.

4. This Order shall take effect immediately.

Issued July 13, 1982.

Vacancy Review Board Procedures

(a) When an appointing authority receives notice of an employee's impending retirement, it shall submit documentation to the Administrator, Office of Personnel Management Systems (OPMS), Department of Personnel, which states the effective date of the retirement and whether or not the appointing authority is requesting retention of the position, unless the provisions of N.J.A.C. 4A:4-1.11(b) apply. The following information shall also be submitted:

1. A completed DPF-487;

2. A completed DPF-44, which must contain a thorough description of the position's duties;

3. A completed DPF-510, indicating the retiring employee's most recent PAR;

4. A detailed organizational chart of the unit in which the position is located, including all position numbers in the unit; and

5. A statement of justification for retention or change in the classification of the position.

(b) OPMS will maintain records of all positions that have become vacant by an employee's retirement.

(c) OPMS will review the material submitted and, if necessary, conduct an audit of the position.

(d) Following this review, OPMS will make a recommendation to the Vacancy Review Board as to the course of action to be taken on the vacancy.

(e) The Board may defer a decision on the vacancy if a reorganization is pending or underway in the appointing authority, in which case the position shall remain vacant.

(f) Within 30 working days of the vacation of a position by an employee's retirement, or within 30 working days of receipt by OPMS of the appointing authority's materials concerning the vacancy, whichever occurs later, the Board will determine that the appointing authority may take one of the actions permitted in N.J.A.C. 4A:4-1.11(a).

(g) The Board will advise OPMS of its determination, and OPMS will notify the appointing authority.

(h) The Board will report annually to the Governor. The report will include the results of its review of vacated positions, and include resultant cost savings.

(i) At the request of the Governor, or on its own initiative, the Board may direct the study of any vacant position in order to determine its disposition.

(a)

MERIT SYSTEM BOARD

Layoffs

Adopted New Rules: N.J.A.C. 4A:8

Adopted Repeals: N.J.A.C. 4:1-16.1 through 4:1-16.6, 4:1-24.2; 4:2-16.1, 4:2-16.2; 4:3-16.1, 4:3-16.2.

Proposed: November 6, 1989 at 21 N.J.R. 3340(a).

Adopted: December 20, 1989 by the Merit System Board, Charles A. Nanry, Ph.D., Acting Commissioner, Department of Personnel.

Filed: December 21, 1989 as R.1990 d.49, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.SA. 11A:2-6(d), 11A:2-11(h), 11A:4-7, 11A:4-9, 11A:4-12, 11A:8-1 through 11A:8-4.

Effective Date: January 16, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Area Director of the Communications Workers of America (CWA), a representative of CWA Local 1037 and a representative of the International Federation of Professional and Technical Engineers (IFPTE) Local 195 stated that this proposal for Chapter 8 of Title 4A of the New Jersey Administrative Code constituted a significant improvement over earlier proposals for Chapter 8.

COMMENT: The New Jersey Area Director of CWA, a member of CWA Local 1031, representatives of CWA Locals 1033, 1037 and 1082, and a representative of IFPTE Local 195, all expressed support for the Option B version of N.J.A.C. 4A:8-1.2, which would require appointing authorities in State service to lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives to layoffs. The Camden Council No. 10 representative proposed adding language which would provide an expedited appeal process and place the burden of proof on an appointing authority to show it has no alternative but to lay off employees.

The Camden Council No. 10 representative and the representative of CWA Local 1033 stated that appointing authorities should be required, rather than encouraged, to consult with affected negotiations representatives prior to offering an alternatives to layoff program, as provided in subsection (e). Camden Council No. 10 also urged that subsection (f) be changed to require submission of an alternatives to layoff plan to affected negotiations representatives when it is submitted to the Department of Personnel.

The Coordinator of the Office of Personnel Services for the Division of Youth and Family Services (DYFS), the Newark Personnel Director and the Chief Personnel Officer for the Department of the Treasury all expressed support for the Option A version of N.J.A.C. 4A:8-1.2, which would encourage but not require appointing authorities in both State and local service to offer and implement, where appropriate, voluntary alternatives to layoffs.

The Newark Personnel Director asked that the word "should" in subsection (a) be changed to "may". He also suggested that one of the voluntary alternatives, in paragraph (c)1, of granting a leave of absence without pay to a permanent employee without a loss of seniority, be clarified to assure that the seniority is retained in the employee's present title only. He also urged that subsection (d), which would encourage appointing authorities to consult with affected negotiations representatives prior to offering alternatives to a layoff, be deleted. Finally, he proposed that subsection (e) be changed to permit, rather than require, appointing authorities to submit alternatives to layoff plans to, and obtain approval from, the Department of Personnel.

RESPONSE: After much deliberation, the Board has decided to adopt Option B for N.J.A.C. 4A:8-1.2. The Board believes that this is a proper balance based on all comments and recognizes the differences between State service and the separate programs in municipal and county service.

In response to the comment by the Newark Personnel Director, paragraph (c)1 has been amended to clarify that the seniority to which the section refers means seniority recognized by the merit system, rather than other forms of seniority recognized by local governments.

Finally, with regard to the proposal by the Camden Council No. 10 representative that an expedited appeal process be established for pre-layoff challenges, it is noted that interim relief may be requested, where appropriate, pursuant to N.J.A.C. 4A:2-1.2.

COMMENT: The DYFS Personnel Coordinator expressed support for the pre-layoff actions enumerated in N.J.A.C. 4A:8-1.3(a). The Newark Personnel Director proposed that subsection (a) encourage rather than require appointing authorities to take pre-layoff actions. The Chief Personnel Officer for the Department of the Treasury objected to the inclusion in subsection (a) of the separation of non-permanent employees as a pre-layoff action. She also said that certain non-permanent employees may possess unique skills, the loss of which could be detrimental to the appointing authority.

A representative of CWA Local 1033 stated that paragraph (a)5, which calls for assisting potentially affected employees in securing transfers or other employment, should be expanded to include certain obligations on both affected and unaffected appointing authorities.

A representative of Camden Council No. 10 urged that provisions also be included in N.J.A.C. 4A:8-1.3 establishing an expedited appeal process to determine whether an appointing authority should have implemented pre-layoff actions. She and the CWA Local 1033 representative also stated that subsection (b) should require, rather than encourage, consultation with affected negotiations representatives prior to the initiation of pre-layoff actions. However, the Newark Personnel Director urged deletion of language concerning such consultations. He also asked that subsection (d), which requires placing non-permanent employees and employees with the least seniority in positions being vacated, reclassified or abolished, be deleted.

RESPONSE: The requirement in N.J.A.C. 4A:8-1.3 that appointing authorities implement, as appropriate, pre-layoff actions, has been another key area in contention since the first set of layoff rules was proposed in 1987. The Board has made an effort to weigh management responsibilities and employee rights here, too, and has decided to adopt this rule as published, consistent with provisions in Title 11A which create a statutory responsibility to lessen the possibility of layoffs (see N.J.S.A. 11A:8-2).

COMMENT: The Newark Personnel Director proposed that the requirement in N.J.A.C. 4A:8-1.4(a), that appointing authorities submit to the Department of Personnel information itemized in the rule 30 days prior to the issuance of layoff notices, be changed to require submission of the information only 10 days in advance. He further proposed deletion of paragraph (a)8, which requires submission of a summary of consultations with affected negotiations representatives.

A representative of Camden Council No. 10 urged that language be added to paragraph (a)5 prohibiting the revision of the list of employees who are initially affected following the list's submission to the Department of Personnel. She also proposed that subsection (b) be amended to require that the appointing authority provide to the Department of Personnel any evidence that a grievance has been filed concerning an unsatisfactory PAR rating which an appointing authority submits to the Department of Personnel. A representative of CWA Local 1033 expressed objection to the use of ratings as a factor in layoff proceedings and therefore opposed the requirement that the appointing authority submit PAR information to the Department of Personnel.

The Newark Personnel Director proposed that only the names of permanent employees who may be affected by a layoff who have received unsatisfactory PAR ratings be submitted by the appointing authority. He also argued for the deletion of subsection (c), which requires that vacant positions be filled only through layoff procedures. Lastly, the Newark Personnel Director urged either deletion of paragraph (d)3, which permits the Commissioner of Personnel to direct implementation of appropriate alternative or pre-layoff measures under certain circumstances, or a change in language allowing the Commission to "coordinate," rather than "direct," such implementation.

RESPONSE: It should be noted that the requirement in N.J.A.C. 4A:8-1.4(a) that the appointing authority submit certain information to the Department of Personnel within 30 days of its issuance of 45 day notices is embodied in N.J.A.C. 4:1-24.2(c). The latter rule has been in effect for nearly eight years prior to repeal. The 30 day requirement is necessary for the Department of Personnel to conduct a full review of an impending layoff situation. Also, the Board believes that any inaccuracies which may be present in the list required by paragraph (a)5 may be addressed through the layoff appeals process provided for in N.J.A.C. 4A:8-2.6.

With regard to performance evaluations, a local jurisdiction's ratings may only be used in the layoff process if its performance evaluation program has been approved by the Department of Personnel. To date, no local service performance evaluation program has received such approval. Thus, the use of PAR ratings are not an issue in local layoffs at this time.

COMMENT: A representative of IFPTE Local 195 expressed support for the definition of a layoff unit in State service found in N.J.A.C. 4A:8-1.5(a). However, representatives of the Civil Service Association (CSA) and Camden Council No. 10 stated that the layoff unit in local service should be redefined to provide for jurisdiction-wide seniority, rather than seniority within a department, because some local departments have few employees who nevertheless have lengthy seniority. Barring such a change, the Camden Council No. 10 representative suggested that affected employees and negotiations representatives should be permitted to request the establishment of a different layoff unit. The Newark Personnel Director asked for the deletion of paragraph (b)2, which requires that a notice of a request to the Commissioner of Personnel by a local appointing authority for designation of a different layoff unit be submitted to affected negotiations representatives.

The CWA Area Director proposed that subsection (c) be amended to allow a job location to consist of named facilities or "an office or offices within a city, municipality, township or county." A representative of IFPTE Local 195 suggested that job locations not be comprised of "geographic areas," as provided in subsection (c).

RESPONSE: The Board believes that N.J.A.C. 4A:8-1.5 represents a substantial innovation in the area of layoff units. The prior rule provided that the layoff unit was the department within a political subdivision. Now, N.J.A.C. 4A:8-1.5(b) provides a procedure for the approval of a larger layoff unit.

In response to the comments on job locations, an amendment has been made to subsection (c) to clarify the Board's intent that no office or facility of a department may be excluded from the list of job locations established by the Commissioner of Personnel.

COMMENT: The Newark Personnel Director expressed opposition to the service of a copy of a 45-day notice to affected negotiations representatives, as required by N.J.A.C. 4A:8-1.6(a).

RESPONSE: The Board notes that negotiations representatives would simply receive a copy of the same 45 day notice received by the employees it represents.

COMMENT: A representative of CWA Local 1037 expressed support for the provisions in N.J.A.C. 4A:8-2, concerning departmental seniority and bumping rights which, she stated, were stronger in this rule proposal than they were in previous rule proposals.

COMMENT: A representative of Camden Council No. 10 stated that, with respect to local service, giving layoff rights to a permanent employee, as provided in N.J.A.C. 4A:8-2.1(a), at a "selected job location," contradicts the fact that the political subdivision is one job location, according to N.J.A.C. 4A:8-1.5(c). She also stated that subsection (c) should not restrict special reemployment rights of an employee of a local autonomous agency to that agency.

The Newark Personnel Director urged the deletion of subsection (d), which requires admission of affected negotiations representatives to any meeting with individual employees concerning these employees' layoff rights.

RESPONSE: Job locations are not a factor in local service layoffs since N.J.A.C. 4A:8-1.5(c) states that the entire political subdivision is the job location. The provisions of N.J.A.C. 4A:8-2.1(d) constitute the current practice in State government and need not be changed.

COMMENT: The CWA New Jersey Area Director commented that, to ensure that all job locations are offered to a permanent employee affected by a layoff, N.J.A.C. 4A:8-2.2(a) should be changed to state that the employee would receive title rights to "any" job location and that the list of job locations with which he or she is provided "include all job locations within the department or autonomous agency."

A representative of Camden Council No. 10 objected to restricting an affected local employee's title rights to the layoff unit, as provided in N.J.A.C. 4A:8-2.2(b), because the layoff unit in local service is defined as the department. She also expressed opposition to the provision in N.J.A.C. 4A:8-2.2(c)2 which permits the appointing authority to choose the position held by a provisional against which an affected employee may exercise lateral or demotional title rights. The Newark Personnel Director proposed that "specific position" in paragraph (c)3 be changed to "provisional employee to be displaced."

Representatives of CWA Local 1033 and Camden Council No. 10 expressed opposition to the exercise of an affected employee's lateral or demotional title rights against an employee with an unsatisfactory PAR rating before those rights are exercised against an employee with the least seniority, as provided in N.J.A.C. 4A:8-2.2(c)5.

RESPONSE: In response to the comments of the CWA Area Director, N.J.A.C. 4A:8-2.2(a) has been changed to ensure that employees can exercise lateral or demotional rights to any job location at which displacement opportunities exist. The Board has decided that paragraphs (c)2 and (c)3 should remain as proposed based on the appointing authority's ability to assign and reassign employees to different positions. With respect to concerns raised about the use of PAR ratings in the layoff process, the Board notes the statutory policy in N.J.S.A. 11A:1-2(c) that meritorious performance is to be rewarded and that employees are to be retained and separated from service based on their performance. Nevertheless, the Department of Personnel recognizes the need to review and improve the performance evaluation system.

COMMENT: The DYFS Personnel Coordinator expressed support for Option A for N.J.A.C. 4A:8-2.2(f) because it would prohibit an employee from exercising lateral or demotional title rights against a title he or she held prior to a break in service. The representative of Camden Council No. 10 also preferred Option A, but suggested that lateral and demotional title rights be based on seniority without restrictions on their exercise against vacant positions or positions held by provisionals.

Support for Option B was expressed by the Chief Personnel Officer of the Department of the Treasury, because it would expand opportunities for employees who earlier were promoted from clerical to professional titles. The Director of the Division of Human Resources for the Department of Transportation and a representative of IFPTE Local 195 also expressed support for Option B.

Two CWA representatives stated that they could support neither Option A or Option B because both options would cause employees to lose existing layoff rights. A representative of CWA Local 1082 asked why local service is not included in Option B.

The Newark Personnel Director proposed that subsection (f) be deleted, because both options give the impression that a permanent employee would be prevented from exercising his or her lateral or demotional title rights against permanent employees in lower or lateral titles.

RESPONSE: The Board has decided to adopt Option B to N.J.A.C. 4A:8-2.2(f) with certain modifications. These modifications clarify that an employee may exercise lateral or demotional title rights only against a title previously held within current continuous service. Special reemployment rights to a previously held lateral or demotional titles are addressed in a change made to N.J.A.C. 4A:8-2.3. With regard to the comment by the Newark Personnel Director, the displacement rights provided for in subsection (f) are additional to those already provided in the rule; they are not intended to replace those rights.

COMMENT: A representative of Camden Council No. 10 stated that N.J.A.C. 4A:8-2.3(b)2 should not allow a position reclassification within the layoff unit to take priority over a special reemployment list. A representative of CWA Local 1033 stated that subsection (e) should not restrict the special reemployment rights of intermittent employees to the department from which they are laid off, as two departments currently use intermittent titles.

RESPONSE: Any potential abuse by an appointing authority of the reclassification process could be addressed through the appeals process.

With regard to N.J.A.C. 4A:8-2.3(e), the suggested change would not expand intermittent employees' special reemployment rights, because the two departments which use such titles, the Department of the Treasury and the Department of Labor, use intermittent titles unique to each department.

COMMENT: A representative of Camden Council No. 10 stated that N.J.A.C. 4A:8-2.4(a) should not use the same formula for calculating seniority credit for both part and full-time employees; part-time service should receive prorated credit. She, and a representative of CWA Local 1033, stated that paragraph (g)2 should not allow a tie in seniority to be broken through the use of performance ratings.

RESPONSE: The formula for calculating seniority credit provided in N.J.A.C. 4A:8-2.4(a) reflects the current practice in both State and local service. It should be noted that the formula has a minimal impact on the layoff process.

COMMENT: A representative of Camden Council No. 10 stated that N.J.A.C. 4A:8-2.5 should include criteria for the Commissioner of Personnel to consider to determine whether or not an appointing authority has good cause to reassign a permanent or probationary employee.

RESPONSE: The Board believes it is not necessary to change the rule. "Good cause" exceptions are common in Title 4A. In general, good cause is determined based on the facts of individual cases.

COMMENT: A representative of CWA Local 1033 proposed that N.J.A.C. 4A:8-2.6(c) be amended to require that appointing authority violations of the rules on alternatives to layoff and pre-layoff actions be considered relevant to the determination of whether a layoff was instituted in good faith. A representative of Camden Council No. 10 urged that subsection (c) place the burden of proof in good faith appeals on the appointing authority.

RESPONSE: A challenge to the appointing authority's actions prior to layoff may be raised in a good faith appeal. However, the burden of proof in any layoff appeal must fall on the employee, as required by N.J.S.A. 11A:8-4.

Full text of the adoption follows (additions indicated in boldface ***thus*** and deletions indicated in brackets with asterisks *[thus]*).

CHAPTER 8
LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority and designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

[OPTION A]

*[4A:8-1.2 Alternatives to layoff

(a) Appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(b) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority:

2. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

3. Providing employees with optional temporary demotional title changes; and

4. Other appropriate actions to avoid a layoff.

(c) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(d) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(e) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employee's right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.]*

[OPTION B]

4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority ***for purposes of this Title***:

2. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

3. Providing employees with optional temporary demotional title changes; and

4. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employee's right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;

2. Separating non-permanent employees;

3. Returning provisional employees to their permanent titles;

4. Reassigning employees; and

5. Assisting potentially affected employees in securing transfers or other employment.

(b) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

(c) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

(d) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by taking pre-layoff actions which first place employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;

2. The projected effective date of layoff;

3. Sample copies of the layoff notice and the projected date for issuance;

4. Any seniority listings maintained including records of preferred seniority maintained by the appointing authority pursuant to N.J.A.C. 4A:8-2.4(b)2;

5. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;

6. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;

7. A summary of alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable; and

8. A summary of consultations with affected negotiations representatives.

(b) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received an unsatisfactory or equivalent rating in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)6 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;

2. Providing needed assistance to the appointing authority;
3. Directing implementation of appropriate alternative or pre-layoff measures; or
4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency.

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.
2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.
3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.
4. Thereafter, the Commissiner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:
i. The need for a unit larger than a department;
ii. The functional and organizational structure of the local jurisdiction;
iii. The number of employees, funding source and job titles in the proposed unit;
iv. The effect upon employee layoff rights; and
v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency. Job locations may consist of named facilities or geographical areas. The Commissioner of Personnel shall assign a job location *[for]* ***to*** every facility within a department or autonomous agency. In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice either personally or by certified mail. If service is by certified mail, the 45 days shall be counted from the date of mailing. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:
1. The effective date of the layoff action; and
2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially comparable duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially related duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.
i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.
ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Affected negotiations representatives shall be permitted to be present at any meeting with individual employees where layoff rights are discussed.

(e) See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

4A:8-2.2 Exercise of lateral and demotional rights

(a) In State service, a permanent employee in a position affected by a layoff action shall be provided title rights to *the* job locations selected by the employee within the department or autonomous authority. The employee shall select individual job locations in preferential order from the list of *all* job locations *[determined by the Commissioner of Personnel]* (see N.J.A.C. 4A:8-1.5(c)) and indicate:

1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(b) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be determined based on the level of the permanent title held and seniority in title;

4. The position held by the employee serving in a working test period with the least probationary time;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was an unsatisfactory or equivalent rating;

6. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4(a)).

(d) Employees serving in their working test periods shall be provided lateral title rights in the same order as (c)1 through 4 above.

(e) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, employees whose most recent (within the last 12 months) performance rating in their permanent title was an unsatisfactory or equivalent rating shall have lateral title rights only against vacant positions to be filled or against employees without permanent status.

[OPTION A]

[(f) An employee shall be provided with lateral or demotional rights to a previously held permanent title providing that the employee held the title within current continuous service. Such rights shall be exercised only against vacant positions or positions filled by provisional employees. In addition, the employee will be entitled to special reemployment rights to his or her previously held lateral or demotional title.]

[OPTION B]

(f) In State service, demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis ***within current continuous service.****[, but in]* ***In*** such cases, displacement may be made only on the basis of greater permanent continuous service.

(g) In State service, employees in intermittent titles shall have lateral and demotional rights only to intermittent titles.

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location*. **In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)).*** *[, with]* ***These rights are subject to*** the following limitations:

1. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where the original job location no longer exists, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

2. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where the original job location no longer exists, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over transfers and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) A special reemployment list shall not have an expiration date. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with a lower class code (State service) or lower level (local service).

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees in intermittent titles shall have special reemployment rights only to intermittent titles and only within the department or autonomous authority in which the layoff occurred.

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. Seniority shall be based on total calendar years, months and days in title regardless of work week, work year or part-time status; however, seniority for State employees in intermittent titles shall be calculated on the basis of hours in regular pay status.

(b) Preferred seniority, which means greater seniority than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred seniority.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred seniority. Records of preferred seniority shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred seniority, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(c) The following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(e) An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes.

(f) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(g) If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);
2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system, must have been approved by the Department of Personnel;
3. The employee with the greater seniority in the title before a break in service shall have priority;
4. The employee with greater continuous permanent service, regardless of title, shall have priority;
5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;
6. The employee who ranked higher on the same eligible list for the title shall have priority;
7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;
8. The employee with greater total service, regardless of title or status, shall have priority;
9. Other factors as may be determined by the Commissioner.

4A:8-2.5 Reassignments

For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be reassigned, except as permitted by the Commissioner for good cause.

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Merit System Board (see N.J.A.C. 4A:2-2.9 et seq.); and/or
2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Certification of School Business Administrators

Adopted Repeals: N.J.A.C. 6:3-1.18, 6:11-10.11 and 10.14

Adopted Amendment: N.J.A.C. 6:11-10.4

Adopted Repeal and New Rule: N.J.A.C. 6:11-10.10

Proposed: September 18, 1989 at 21 N.J.R. 2915(a).

Adopted: December 6, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: December 21, 1989 as R.1990, d.47, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-38.

Effective Date: January 16, 1990.

Expiration Date: December 12, 1990, N.J.A.C. 6:11 and July 8, 1993, N.J.A.C. 6:3.

Summary of Public Comments and Agency Responses:

Three individuals spoke at the October 25 public hearing provided by the State Board of Education and 13 letters with comments were received. Twelve commenters expressed full support for the proposal.

COMMENT: Two commenters suggested that the State should consider using qualifying examinations as an "alternate route" to certification.

RESPONSE: The proposed rules include a qualifying examination but that alone would be an insufficient basis for certifying school business administrators. These rules do create an alternate route by opening the door to a larger pool of persons who hold bachelor's degrees in business administration and who previously were excluded by education course requirements.

COMMENT: A commenter suggested that the five years experience requirement be eliminated as a condition for waiving the bachelor's degree.

RESPONSE: The provision to waive the bachelor's degree for job holders with five years experience is very permissive. The rationale for that provision is that persons with five years experience have demonstrated basic job competence over an extended period.

COMMENT: The same commenter felt that anyone currently serving as a board secretary should be "grandfathered."

RESPONSE: Persons serving as board secretaries need not possess certification unless they perform business administrator functions. Those who do may remain in their current position indefinitely without obtaining certification. Those who wish to change positions may obtain certification without earning a bachelor's degree if they have five years of successful experience. Therefore, board secretaries are "grandfathered" by any reasonable definition.

COMMENT: One commenter suggested that the certification requirements for school business administrator should include courses in ethics and constitutional law.

RESPONSE: N.J.A.C. 6:11-10.10(a)1i requires all candidates to complete study of, "The economic and legal environment as it pertains to profit and/or nonprofit organizations along with ethical considerations and social and political influences on organization." All candidates will be tested on these concepts as they apply to public school administrators.

Full text of the adoption follows.

6:3-1.18 (Reserved)

6:11-10.4 Authorization

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

(d) School business administrator: This endorsement authorizes the holder to perform duties at the district level in the areas of financial budget planning and administration, insurance/risk administration, purchasing and financial accounting and reporting, and may include other responsibilities such as: plant planning, construction and maintenance; personnel administration; administration of transportation and food services; and central data processing.

6:11-10.10 School business administrator

(a) Each candidate for the provisional certificate of school business administrator shall be required to:

1. Hold a bachelor's degree from an accredited college or university, including at least 15 credits of study in the following areas of business administration:

i. The economic and legal environment as it pertains to profit and nonprofit organizations along with ethical considerations and social and political influences on organizations;

ii. Concepts and applications of accounting, quantitative methods, and management information systems including computer applications;

iii. Organizational theory, behavior and interpersonal communications;

iv. Administrative processes under conditions of uncertainty including the integration of analyses and policy determinations at the overall management level; and

v. Concepts, processes and institutions in the production and marketing of goods and services and the financing of the business enterprise or other forms of organization.

vi. A bachelor's or master's degree in a recognized field of administration shall be accepted as meeting the requirements in (a)1i through v above.

2. Pass a written examination of knowledge that is acquired through study of the topics in (a)1i through v above and that is most directly related to the functions of school business administrators as defined in N.J.A.C. 6:11-10.4(d);

3. Obtain and accept an offer of employment in a position that requires the School Business Administrator endorsement; and

4. Applicants who meet the requirements in (a)1 and 2 above shall be issued Certificates of Eligibility which will permit them to seek and accept provisional employment in positions that require the School Business Administrator endorsement.

(b) Each candidate for the standard certificate of School Business Administrator shall be required to:

1. Possess a provisional certificate pursuant to (a)1.-4. above; and

2. Complete a one-year State-approved district residency program while employed under provisional certification. The district residency program shall:

i. Be conducted in accordance with a standard agreement issued by the State Department of Education and entered into by the Department, the employing school district, the candidate and the residency mentor;

ii. Be administered by a State-appointed mentor who is an experienced administrator who has completed a State-approved orientation and training program, and who shall supervise and verify completion of all required experiences and training by the candidate;

iii. Include a pre-residency component that shall emphasize professional experiences and training that must be completed before the candidate assumes full responsibility on a provisional basis for a position requiring the school business administrator endorsement. The Department shall, based on the recommendation of the mentor, prescribe the content and duration of each candidate's pre-residency. Such prescription shall be based upon a review of each candidate's academic records, assessment reports, background experiences and other information gathered by the mentor and the candidate. The content of each pre-residency shall be specified in the standard written agreement to be signed by the mentor, the district superintendent, the candidate and approved by the Department (see (b)2i above).

iv. Provide approximately 135 clock hours of training and instruction in the areas of school plant planning, construction and administration; school financial and legal practices including double entry-GAAP accounting; pupil transportation; labor relations and personnel; insurance/risk administration; and food service administration; and

v. Provide the mentor, candidate and school district with opportunities to propose modifications to the standard residency agreement for approval by the State Department of Education.

(c) Each candidate for the standard certificate shall be evaluated formally by the mentor on at least three occasions for purposes of certification.

1. The first two evaluations shall be conducted mainly for diagnostic purposes.

2. The final evaluation shall be the basis for issuance of the candidate's standard certificate.

3. The three evaluations required in this subsection shall be conducted using criteria and forms developed by the State Department of Education that will assess the candidate's ability to apply baccalaureate training (see (a)1i-iv above) and training acquired in the proposed residency (see (b)2i-v above) in performing essential duties listed in N.J.A.C. 6:11-10.4(d).

4. The mentor shall discuss each evaluation with the candidate, and the mentor and candidate shall sign each report as evidence of such discussion.

5. Upon completion of each evaluation, the report shall be sent to the Secretary of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (d) below.

(d) Standard certification of candidates shall be approved or disapproved pursuant to the following procedures:

1. Before the end of the residency year, the mentor shall submit to the Division of Teacher Preparation and Certification a comprehensive evaluation report on the candidate's performance using State-approval criteria and forms;

2. The final report shall include one of the following certification recommendations:

i. Approved: Recommends issuance of a standard certificate;

ii. Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to an additional residency for a maximum of one additional year; or

iii. Disapproved: Recommends that a standard certificate not be issued and that the candidate be prevented from continuing or reentering a residency.

3. Candidates who receive a recommendation of "approved" shall be issued a standard certificate. Candidates who receive a recommendation of "insufficient" or "disapproved" shall not be issued a standard certificate.

4. The mentor shall provide the candidate with a copy of the candidate's written evaluation report and recommendation before submitting it to the Division of Teacher Preparation and Certification.

5. If the candidate disagrees with the mentor's recommendation, the candidate may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the mentor written materials documenting the reasons why the candidate believes standard certification should be awarded. The mentor shall forward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification. The candidate may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.25.

(e) The requirements listed in (a) through (d) above are effective September 1, 1991. The requirements shall not apply to persons who earn any of the following endorsements to the Standard Certificate before that date: School Business Administrator, Assistant Superintendent for Business, or Assistant Executive Superintendent with Specialization in Business Administration. Holders of those endorsements shall be entitled prospectively to apply for all positions in the general category of business administration.

(f) Board secretaries who lack certification but were assigned prior to September 1, 1991 to perform business administration functions as described in N.J.A.C. 6:11-10.4(d) shall be permitted to retain their positions in the districts in which they were employed prior to September 1, 1991 indefinitely. However, after September 1, 1991, they shall be required to meet certification pursuant to (a) through (d) above in order to seek employment in new positions in other districts.

(g) The requirement of a bachelor's degree (see (a)1 above) shall not apply to already-employed but uncertified business administrators who, as of September 1, 1991, possess five or more years of school business administration experience.

(h) Persons who are enrolled in formal State-approved New Jersey college preparation programs prior to September 1, 1991 shall be

permitted five years to attain certification under requirements in effect prior to that date.

6:11-10.11 (Reserved)

6:11-10.14 (Reserved)

(a)

STATE BOARD OF EDUCATION

Bookkeeping and Accounting in Local School Districts

Double Entry Bookkeeping and GAAP Accounting in Local School Districts

Adopted New Rules: N.J.A.C. 6:20-2

Adopted Recodification with Amendments: N.J.A.C. 6:20-2A

Proposed: September 18, 1989 at 21 N.J.R. 2919(a).

Adopted: December 6, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: December 14, 1989 as R.1990 d.21, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-14, 18A:4-15, 18A:7A-19, 18A:7A-26, 18A:18A-4, 18A:18A-5, 18A:19-13, 18A:22-8, 18A:29-3, 18A:33-3 and 52:14-15.9(e).

Effective Date: January 16, 1990.

Expiration Date: August 9, 1990.

Summary of Public Comments and Agency Responses:

Two individuals spoke at the July and three individuals spoke at the October public testimony sessions provided by the State Board of Education, and one letter was received.

COMMENT: Three commenters support the amendments to N.J.A.C. 6:20-2A.2(m) which require all districts to utilize a uniform minimum chart of accounts based on Handbook 2R2.

RESPONSE: The Department of Education agrees and the amendments were proposed as a result of widespread support from State and national education associations, the U.S. Department of Education, the Government Finance Officers Association, the Commission on Business Efficiency in the Public Schools and the original sponsor of the double entry-GAAP law.

COMMENT: Two commenters oppose establishing building level budgeting, bookkeeping and reporting as a requirement of the uniform minimum chart of accounts based on Handbook 2R2 for the following reasons:

1. It will produce massive data at a substantial cost;
2. Such data may be compiled or manipulated more efficiently on an as needed basis from existing and proposed financial records;
3. Such data will distract from the important budgeting issues/decisions and may be misconstrued; and
4. Such a level of detail will burden the building level administrator with unnecessary paperwork and impede his or her instructional and administrative responsibilities.

The commenters recommended that decisions regarding building level detail including design and administration of such level of detail be left to local officials since such detail is not needed to meet existing State or Federal reporting requirements.

RESPONSE: The current proposed rules for the uniform minimum chart of accounts based on Handbook 2R2 do not require building level budgeting, bookkeeping and reporting at this time. However, the State Board of Education passed a resolution which obligates the Department to report on the initial district level implementation of the new accounting system at July 1, 1993 and make recommendations by July 1995 concerning building level detail after proper analysis of the initial implementation.

COMMENT: Two commenters support the timeline extension to July 1, 1993 which is presently before both chambers of the State's legislature for implementation of the new accounting system.

RESPONSE: The Department also supports the timeline extension to July 1, 1993 for implementation of the new accounting system. The timeline extension is essential for the development of the new accounting system for which the published rules will be the basis; the development of the statutory technical corrections package which will bring existing school finance laws into conformity with GAAP and the associated deliberation by the Department, State Board and Legislature; and the development and provision of a comprehensive training program for school business officials.

COMMENT: Four commenters urge the Department to develop and fund a comprehensive training program and technical assistance capacity for double entry, GAAP accounting and Handbook 2R2.

RESPONSE: The Department is taking steps to develop and fund a comprehensive training program and technical assistance capacity.

COMMENT: One commenter urges adherence to the existing July 1, 1991 implementation date for the new accounting system in order to alleviate the costly conversion of current data for Federal reporting purposes and to reclassify certain current expenses to capital outlay in accordance with GAAP and thereby reduce the amount of State aid generated by the existing formula.

RESPONSE: The Department anticipates that the formula for State aid will be amended to mitigate the impact of GAAP since the Legislature's intent was to improve accountability and management control and not to reduce State aid. For the reasons outlined in a previous response, the Department supports the timeline extension to July 1, 1993 and has taken steps to make the interim conversion of current data for Federal reporting purposes more efficient.

COMMENT: One commenter recommended that the Department fund computer software for the new accounting system.

RESPONSE: The Department does not plan to fund computer software for the new accounting system due to the prohibitive cost and the diversity of existing needs and hardware systems of local districts.

The Department has changed upon adoption an erroneous citation reference in N.J.A.C. 6:20-2.13(b).

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

6:20-2.1 Prescribed system of single entry bookkeeping

(a) It shall be the purpose of the bookkeeping and accounting system prescribed in this subchapter to provide a sound plan of general accounts that will serve to safeguard the expenditure of public funds; effect proper budgetary control; establish uniformity in the classification of expenditures; and furnish adequate financial information for use of the public, the district board of education administration and the Commissioner of Education.

(b) This subchapter is comprised of three major parts: records of cash receipt and cash expenditure accounts in accordance with recognized governmental accounting procedures; detailed budget and cost distribution records; and a schedule of physical property.

(c) A district board of education may operate a system of double entry bookkeeping consistent with the rules in this subchapter and accounting principles prescribed by the Commissioner.

6:20-2.2 Records of cash receipt and cash expenditure accounts

(a) The records of receipt and expenditure accounts shall be set forth in sufficient detail to determine the financial condition of the district board of education at any time.

(b) The major accounts shall be designated as follows:

1. Current expenses;
2. Capital outlay (sites, buildings and equipment); and
3. Debt service (bonds, authorized notes and interest on same).

(c) The necessary supplementary accounts shall be provided for non-revenue receipts and expenditures as follows:

1. Reserve for unpaid orders;
2. Sale of permanent bonds to redeem temporary loan bonds;
3. Temporary loans;
4. Sinking funds to pay term bonds; and
5. Clearing accounts.

(d) The forms to be prepared by the Commissioner for use in district boards of education shall include, but not be limited to, the following classifications:

1. Appropriations;
2. Cash receipts;
3. Cash expenditures;
4. Contractual orders;

5. Tuition ledger;
6. Bond register;
7. Extra-curricular activities; and
8. Food services.

6:20-2.3 Budget and cost distribution records

(a) Detailed budget and cost distribution records shall be kept in the form prescribed by the Commissioner to insure uniformity in the preparation of budgets and in the classification of costs in district boards of education.

(b) The budget and cost distribution records shall include, but not be limited to, the following classifications and such other classifications and sub-items as the Commissioner may prescribe:

1. Administration;
2. Instruction;
3. Attendance and health services;
4. Pupil transportation services;
5. Operation of plant;
6. Maintenance of plant;
7. Fixed charges;
8. Sundry accounts:
i. Food services;
ii. Student-body activities;
iii. Community services; and
iv. Special projects.
9. Capital outlay (sites, buildings and equipment); and
10. Debt service (bonds, authorized notes and interest on same).

(c) The Commissioner shall prepare directions to be used by school officials in the preparation of a program-oriented budget which will relate appropriations to the goals and objectives of the district board of education as established pursuant to N.J.S.A. 18A:7A-1 et seq.

(d) District boards of education may adopt, by district board of education resolution, the approved program-oriented budget format.

(e) The budget and cost distribution records of all district boards of education which adopt a program-oriented system of budget preparation shall include, but not be limited to, the following classifications:

1. Regular instruction;
2. Special instruction;
3. Adult/continuing instruction;
4. Other instruction;
5. Support services pupil;
6. Instructional staff;
7. General administration;
8. School administration;
9. Business/administrative;
10. Central;
11. Other support services; and
12. Community services.

6:20-2.4 Physical property records

(a) A record of the physical property of a district board of education shall be kept in the form prescribed by the Commissioner.

(b) The physical property records shall include, but not be limited to, the following classifications:

1. Property records;
2. Inventory record; and
3. Register of insurance.

6:20-2.5 Accounting directions

The Commissioner shall prepare directions to be used by school officials in keeping the bookkeeping and accounting system in this subchapter and shall from time to time prepare, publish and distribute handbooks, materials or circulars for the guidance of school officials.

6:20-2.6 Supplies and equipment

(a) The Commissioner shall prescribe a list of articles to be regarded as supplies and equipment for accounting purposes.

(b) For the purposes of this section, "food supplies" shall include only those supplies which are to be eaten or drunk and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

(c) Public notification of method of purchase:

1. Whenever any district board of education elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations.

2. This policy shall be adopted before the opening of schools in September and shall be made known to the public.

(d) Specifications and quotations shall be as follows:

1. Definite and uniform specifications governing standards of quality shall be given to each eligible vendor from which quotations are solicited.

2. Each time a purchase of food supplies is to be made, the person designated by the district board of education to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the adopted district board of education policy. Quotations for fresh or frozen fruits, vegetables and meats need not be solicited more than once in any two-week period.

3. The food supplies on which quotations are obtained shall be purchased from the vendor giving the lowest quotation unless the person or persons designated by the district board of education to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation; such justification, together with all quotations received, shall be in permanent record form, available to school officials, the district board of education and the Department of Education for review and for audit for a minimum of three years.

4. Contingent upon approval of the district board of education in its adopted policy, the person or persons designated by the district board of education to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than $250.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained; such record shall also be retained for review and for audit.

(e) Paragraphs (d)1, 2 and 3 above shall not apply to food supplies purchased by advertising for bids.

6:20-2.7 Bookkeeping and accounting forms

The Commissioner shall prepare and distribute the necessary forms for the bookkeeping and accounting system except to those districts boards of education which have received approval for mechanical or electronic data processing bookkeeping systems.

6:20-2.8 Mechanical bookkeeping systems

(a) All mechanical or electronic data processing bookkeeping systems to be used by district boards of education shall be approved by the Commissioner prior to usage.

(b) District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

6:20-2.9 Employee organizational dues

(a) Pursuant to provisions of N.J.S.A. 52:14-15.9(e), any person holding employment with a district board of education in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.

(b) Employees desiring payroll deductions of organizational dues should indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education, according to directions promulgated by the Commissioner.

(c) Any secretary of a district board of education making organizational payroll deductions shall submit to the designated employee organization all deductions made for such purposes.

6:20-2.10 Petty cash fund

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education may establish on July 1 of each year, or as needed, a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) A district board of education establishing a petty cash fund shall:

1. Indicate the amount or amounts authorized for each fund;

2. Set the maximum expenditure which may be made from each fund;

3. Designate an individual who will be responsible for the proper disposition of each fund;

4. Establish the minimum time period in which the designated person shall report to the district board of education on amounts disbursed from each fund; and

5. Approve a voucher prepared by the board secretary to replenish each fund.

(c) All unused petty cash funds are to be returned to the depository at the close of each fiscal year.

6:20-2.11 Summer payment plan

Funds withheld from employees' salaries for the summer payment plan prescribed by N.J.S.A. 18A:29-3 shall be deposited in a separate account in a depository designated by the district board of education, said account to be known as Board of Education of Summer Payment Plan Account. Withdrawals from this account shall be made by individual checks payable to the order of employees for the amount withheld from their salaries during the school year. A payment list shall be certified by the president and secretary of the district board of education and delivered to the treasurer of school moneys of the district board of education.

6:20-2.12 Debt service State support

In the budget year following the final payment of all school debt service, if all or any part of the debt service funds which are to be made available to a district board of education for that budget year pursuant to N.J.S.A. 18A:7A-19 and 18A:7A-26 are not necessary for debt service purposes in that budget year, the district board of education shall record such funds as capital outlay revenue to the district board of education.

6:20-2.13 Overexpenditure of funds

(a) A district board of education shall not incur any obligation or approve any payment in excess of the amount appropriated by the district board of education in the applicable line item account or program category account pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1.

(b) A district board of education anticipating an over-expenditure in either the current expense, capital outlay or debt service funds as designated in N.J.A.C. 6:20-2.2*[(c)1]**(b)* shall proceed in the following manner:

1. The district board of education shall direct the chief school administrator to immediately notify the county superintendent of schools of the following:

i. The projected amount of the overexpenditure;

ii. The reason or reasons for the projected overexpenditure; and

iii. The action being taken by the district board of education to avoid the projected overexpenditure.

2. The county superintendent shall immediately notify the Commissioner, in writing, if the projected amount of the over-expenditure exceeds five percent of the district's current expense budget or $100,000, whichever is lower.

3. The county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education is sufficient to avoid an overexpenditure. If necessary, the county superintendent shall assist the district board of education in determining what further corrective action can be taken, or request assistance from the Division of Finance.

4. The county superintendent shall immediately notify the Commissioner, in writing, should it appear that an overexpenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) A district board of education secretary shall report to the district board of education, at each regular meeting, the amounts appropriated, expended and transferred into or out of an item of appropriation, for each item of appropriation shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report shall be in addition to the report required by N.J.S.A. 18A:17-9.

(d) By August 15, the county superintendent shall report to the Commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(e) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the State's monitoring procedure. In those cases where the Commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the Commissioner shall recommend to the State Board of Education that the district's certification be rescinded.

(f) In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating State aid entitlements for the second year following the year in which the deficit occurred.

6:20-2.14 Appropriation of free balance

(a) A district board of education requesting to exceed the permissible rate of increase pursuant to N.J.S.A. 18A:7A-25 shall appropriate all available current expense free balance in excess of three percent of the current expense budget for the budget year such request is made.

(b) A district board of education, upon the advice of the chief school administrator, may request an exception, from the Commissioner, to the provision of (a) above.

(c) Any balance allowed pursuant to (a) or (b) above shall be exempt from the Commissioner's determination that a reallocation of resources is insufficient to meet the district board of education goals, objectives and standards.

SUBCHAPTER 2A. DOUBLE ENTRY BOOKKEEPING AND GAAP ACCOUNTING IN LOCAL SCHOOL DISTRICTS

6:20-2A.1 Prescribed system of double entry bookkeeping and GAAP accounting

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

(c) All school districts shall conform to the requirements of this subchapter on the date established by N.J.S.A. 18A:4-14.1.

6:20-2A.2 Summary statement of principles

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

(m) A common terminology and classification shall be used consistently throughout the budget, the accounts and the financial reports of each fund. District boards of education shall adopt a chart of accounts prepared in conformity with established guidelines as follows:

1. The Commissioner shall prepare, publish and distribute a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of all district boards of education and shall compel its use for financial reporting to the Department of Education.

2. The Commissioner shall publish and distribute Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of district boards of education selecting the program oriented budget system or those wishing to expand upon the minimum requirements for the function oriented budget system established in (m)1 above. Such expanded systems shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year.

3. Any modifications to the chart of accounts adopted by the district board of education must conform to the guidelines established in (m)1 and 2 above and shall be subject to the district board of education's approval.

(n) (No change.)

6:20-2A.3 to 2A.7 (No change in text.)

6:20-2A.8 Petty cash fund

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education may establish on July 1 of each year, or as needed, a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) A district board of education establishing a petty cash fund shall:

1.-5. (No change.)

(c) All unused petty cash funds are to be returned to the depository at the close of each fiscal year.

6:20-2A.9 and 2A.10 (No change in text.)

6:20-2A.11 Overexpenditure of funds

(a) A district board of education shall implement controls over budgeted appropriations as follows:

1. No encumbrance or expenditure (liability or payment) shall be approved which when added to the total of existing encumbrances and expenditures exceeds the amount appropriated by the district board of education in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6:20-2A.2(m)1. A line item account is defined as the lowest (most specific) level of detail in the appropriation/expenditure classification.

2. When a district board of education adopts an expanded chart of accounts pursuant to N.J.A.C. 6:20-2A.2(m)2, such district board of education shall adopt a policy concerning the controls over appropriations for line item accounts which exceed the minimum level of detail established pursuant to N.J.A.C. 6:20-2A.2(m)1. If a district board of education fails to adopt such a policy, the restrictions contained in (a)1 above shall apply to line item accounts which exceed the minimum level of detail.

3. A district board of education may transfer amounts necessary to effectuate the approval of encumbrances or expenditures prohibited in (a)1 and 2 above from line item accounts with available appropriation balances. These transfers shall be made prior to the approval of such encumbrances or expenditures and shall be made in accordance with N.J.S.A. 18A:22-8.1 and 18A:22-8.2.

(b) A district board of education anticipating an over-expenditure in either the current expense, capital outlay or debt service funds as designated in N.J.A.C. 6:20-2A.2(c)1 shall proceed in the following manner:

1.-4. (No change.)

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

6:20-2A.12 (No change in text.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plants Species Program

Adopted New Rules: N.J.A.C. 7:5C

Proposed: September 18, 1989 at 21 N.J.R. 2847(a).

Adopted: December 14, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: December 14, 1989 as R.1990 d.22, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-15.146 through 13:1B-15.150 and P.L. 1989, c.56 (to be codified at 13:1B-15.151 through 13:1B-15.158); and 13:1D-9.

DEP Docket Number: 038-89-08

Effective Date: January 16, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

These new rules were proposed on September 18, 1989 at 21 N.J.R. 2847(a). The Department received written comment from four commenters during the public comment period which closed on November 17, 1989.

COMMENT: The proposed rules should contain enforcement provisions and provide protection for listed plants.

RESPONSE: The proposed rules are mandated by the Endangered Plant Species List Act (Act), P.L. 1989, c.56, (to be codified at N.J.S.A. 13:1B-15.151 through 13:1B-15.158). The Act provides for the formation of an official list of endangered plant species, and contains several other provisions related to the administration of the endangered plant species program. However, the Act does not include enforcement authority or other protection for listed endangered plants. Therefore, it is not within the purview of these rules to address these issues.

COMMENT: Following adoption of the official Endangered Plant Species List, all other endangered plant species lists used for regulatory purposes should be rescinded.

RESPONSE: The Act mandates formation of the official Endangered Plant Species List (List), but does not require that all existing unofficial lists be rescinded upon adoption of the official list. Regulatory agencies which use existing unofficial lists may amend their rules to incorporate the List if doing so is consistent with their enabling legislation. The Department plans to discontinue the use of the various unofficial lists in its regulatory programs, effective upon the adoption of the List at N.J.A.C. 7:5C-5, and to encourage other regulatory agencies to incorporate the official Endangered Plant Species List in their regulatory programs to the extent possible.

COMMENT: The category of "endangered" contained in the proposed rules should be redefined to encompass all plants which have been assigned the following rankings by the Department in its list of the "Special Plants of New Jersey": G1, G2, G2Q, G2G3, G2G3Q, G2G4, S1, S2, S2SE, and S2Q. Also, S1 and S2 plants are equally as appropriate for listing as endangered as G1 and G2 species, since the definition of "endangered" in the proposed new rules expressly applies to plants endangered within New Jersey. These and all closely related categories should be placed on the List when it is promulgated.

RESPONSE: The definition of "endangered" in the proposed rules was obtained directly from the Act. The Natural Heritage ranking system is a tool which allows for the prioritization of the most critically imperiled species. The definition of "endangered" is complex and cannot be directly related to categories of species rank as used in the Natural Heritage Database. This is true even though the rules explicitly state that the Natural Heritage methodology will be used as the basis of evaluating the endangerment of native plant species. The Natural Heritage methodology used by the Nature Conservancy does not equate G1 ranked species with G2 ranked species, or S1 with S2 species, as the commenter seems to suggest.

COMMENT: All species that are ranked as either G1, G2, G3, S1 or S2 by the Natural Heritage program should be included on the List. The ranks of G1, G2, S1 and S2 are defined as endangered by the Nature Conservancy, and the Nature Conservancy definition for the rank of G3 meets the criterion at N.J.A.C. 7:2-2(a)1iii.

RESPONSE: The definition of "endangered" in the proposed rules was obtained directly from the Act. The Natural Heritage ranking system is a tool which allows for the prioritization of the most critically imperiled species. The definition of "endangered" is complex and cannot be directly related to categories of species rank as used in the Natural Heritage Database. This is true even though the rules explicitly state that the Natural Heritage methodology will be used as the basis of evaluating endangerment of native plant species. The Natural Heritage methodology used by the Nature Conservancy does not equate G1 ranked species with G2 and G3 ranked species, or S1 with S2 species, as the commenter seems to suggest.

COMMENT: The category of "rare" contained in the proposed rules should be redefined so as to encompass all plants which have been assigned the following rankings by the Department in its list of the "Special Plants of New Jersey": G3, G3?, G3?Q, G3T1Q, G3G4 and G3G4Q.

RESPONSE: The definition of "rare" contained in the proposed rules was provided in order to further refine the language of proposed N.J.A.C. 7:5C-2.2, which was obtained directly from the Act. Species meeting the

criteria at N.J.A.C. 7:5C-2.2 will be listed by the Department as endangered. Species in the Natural Heritage category of G3 (including its associated ranks) will not always qualify for listing because they may be locally common within the State and, therefore, not in jeopardy within the State or nation.

COMMENT: The definition of the term "rare" at proposed N.J.A.C. 7:5C-1.4 is inadequate and should be amended to more clearly define the term. Since the key word in the definition is "uncommon," which is a clear synonym for "rare," this definition should be expanded.

RESPONSE: The definition of "rare" contained in the proposed rules was provided in order to further refine the language of proposed N.J.A.C. 7:5C-2.2(c), which was obtained directly from the Act. The Department believes that the proposed definition of the term "rare" adequately addresses the criterion at N.J.A.C. 7:5C-2.2(c) and does not require further clarification.

COMMENT: The category of "threatened" contained in the proposed rules should be redefined so as to encompass all plants which have been assigned the ranking of S3 by the Department in its list of the "Special Plants of New Jersey." The Nature Conservancy's definition of the S3 rank parallels the definition of threatened plant species at proposed N.J.A.C. 7:5C-1.4.

RESPONSE: The Act does not require the Department to promulgate a list of "threatened" plants. Rather, the Department developed the concept of the "threatened plant list" to serve as a tool for monitoring the status of the State's flora and as a working list for transition of species to and from the Endangered Plant Species List. The Department intended the threatened plant list to include all species monitored by the Natural Heritage Database that are not included on the list of endangered plant species. However, the comments the Department received about the threatened plant list indicate that some confusion exists about whether plants included on the threatened plant species list would possess similar standing to plants on the Endangered Plant Species List mandated by the Act. This confusion arises in part from the fact that the Federal endangered plant species program and endangered plant species programs in other states utilize both endangered and threatened plant lists, to which different degrees of protection apply. To clarify that the Department did not intend to establish an official category of "threatened" species with standing equal to that of species on the Endangered Plant Species List, the references to threatened plant species in the proposed rules have been changed to "additional plant species of concern." The list of additional plant species of concern will include S3 plant species, since all S3 plants are tracked by the Natural Heritage program.

COMMENT: The proposed rules should contain a definition of the term "population."

RESPONSE: The Department agrees with the comment and has defined "population" at N.J.A.C. 7:5C-1.4 as follows: "'Population' means a group of individuals of the same species which occupy a specific geographic location."

COMMENT: The proposed rules should indicate how the Natural Heritage methodology currently used by the Department for ranking plants on the basis of their rarity will be integrated into the proposed new classification system set up by the rules, which establishes categories of "endangered," "rare," and "threatened" plants.

RESPONSE: The proposed rules establish criteria, based on the definition of "endangered species" in the Act, for listing native plant species as endangered. Under these rules, the Department's Natural Heritage Database will be the source of information on all plant species proposed for listing as endangered. The Department will prepare a basis and background document summarizing all supporting documentation used in selecting all species based on the criteria in these rules. This basis and background information will be made available to the public. "Rare" species do not encompass any specific category established by the Natural Heritage Database. A definition of "rare" was included in the proposed rules in order to further refine the language of proposed N.J.A.C. 7:5C-2.2(c), which was obtained directly from the Act. The Act does not require the Department to promulgate a list of "threatened" plants. Rather, the Department developed the concept of the "threatened plant list" to serve as a tool for monitoring the status of the State's flora and as a working list for transition of species to and from the Endangered Plant Species List. To clarify that the Department did not intend to establish an official category of "threatened" species with standing equal to that of species on the Endangered Plant Species List, the references to threatened plant species in the proposed rules have been changed to "additional plant species of concern." The list of additional plant species of concern will include all species monitored by the Natural Heritage Database that are not included on the list of endangered plant species.

COMMENT: The proposed rules set forth vague criteria for distinguishing "endangered," "rare," and "threatened" plants; this raises concerns that the ranking system can be applied in an arbitrary fashion.

RESPONSE: The criteria for listing plant species as endangered contained in the proposed rules are derived directly from the language of the Act. These criteria are based on determinations made by either the U.S. Fish and Wildlife Service or the Natural Heritage methodology as developed by the Nature Conservancy. The Department believes that given the diversity of biological and ecological life histories of New Jersey's flora, the criteria in the Act and the rules are as specific as can be practically applied to the entire flora of the State. "Rare" species do not encompass any specific category established by the Natural Heritage Database. A definition of "rare" was included in the proposed rules in order to further refine the language of proposed N.J.A.C. 7:5C-2.2(c), which was obtained directly from the Act. The Act does not require the Department to promulgate a list of "threatened" plants. Rather, the Department developed the concept of the "threatened plant list" to serve as a tool for monitoring the status of the State's flora and as a working list for transition of species to and from the Endangered Plant Species List. To clarify that the Department did not intend to establish an official category of "threatened" species with standing equal to that of species on the Endangered Plant Species List, the references to threatened plant species in the proposed rules have been changed to "additional plant species of concern." The list of additional plant species of concern will include all species monitored by the Natural Heritage Database that are not included on the list of endangered plant species.

COMMENT: Rather than create an "undetermined" status designation, the Department should adopt a policy of assigning a numerical Natural Heritage ranking to all plant species in the State suspected of being "endangered," "rare," or "threatened." This designation should be in the form of a numerical ranking expressed as a range or followed by a question mark to indicate uncertainty.

RESPONSE: The Department has not included an "undetermined" classification category as part of the proposed rules.

COMMENT: The Department should include not only vascular plants (plants possessing vessels which conduct water and nutrients), but also bryophytes (nonvascular plants, including mosses and liverworts), on the List when it is promulgated. The 20 bryophytes classified as S1 or S2 by Andrus and Karlin should be included on the List.

RESPONSE: The proposed rules do not preclude the listing of bryophytes as endangered plant species. Bryophytes will be evaluated for listing according to the criteria in these rules in the same manner as vascular plants are evaluated.

COMMENT: The Department has an obligation to fund research directed towards identifying all "endangered," "rare," and "threatened" native bryophytes in the State. This group of plants should be inventoried now to ensure proper representation on the List.

RESPONSE: The Act directs the Commissioner to conduct research and investigations to aid in determining the eligibility of plant species for inclusion on the List within the limits of funds appropriated or otherwise made available to the Department for this purpose. Within the limits of such funding, the Department will be conducting research on all plant species, including bryophytes, to determine their eligibility for listing.

COMMENT: Within one year, the Department should perform inventory work on those taxa of uncertain status so that they may be assigned an unambiguous ranking and be reviewed for possible inclusion on the List.

RESPONSE: The Department has not included an "uncertain" classification category as part of the proposed rules. The Act directs the Commissioner to conduct research and investigations to aid in determining the eligibility of plant species for inclusion on the List within the limits of funds appropriated or otherwise made available to the Department for this purpose. Within the limits of such funding, and in accordance with the ongoing inventory process conducted by the Natural Heritage program, the Department will be conducting research on all plant species to determine their eligibility for listing.

COMMENT: The Department should inventory all subspecies and varieties of plant species now so as to allow for the listing of taxa in these infraspecific designations.

RESPONSE: In accordance with the Natural Heritage methodology, inventory and review of all New Jersey taxa in infraspecific designations is an active, ongoing process. Because this review process depends on the long-term accumulation and availability of data, it is not possible for the Department to conduct an immediate assessment of all infraspecific taxa to allow for the potential listing of these species.

COMMENT: The Natural Heritage ranking system should, by express language in the new rules, be integrated into the categories established by the proposed rules. This integration would give the categories more detailed content, greater scientific credibility, consistency with the criteria used elsewhere in the nation and internationally, and improved legal defensibility.

RESPONSE: In order to more explicitly indicate that the Department will rely on information contained in the Natural Heritage Database in formulating the List, N.J.A.C. 7:5C-2.1(b) has been modified to read as follows (addition indicated in boldface): "On the basis of research and investigations described at (a) above and **information contained in the Natural Heritage Database,** the Department will propose and adopt, pursuant to the [Administrative Procedure Act] designation to the Endangered Plant Species List of those native plant species meeting the criteria at N.J.A.C. 7:5C-2.2, giving the common and scientific name for each listed species." The Department believes that this reference will provide the detailed content, scientific credibility, and national and international consistency referred to in the comment. However, the Department does not agree that the various categories of rarity contained in the proposed rules should in all cases be directly related to rankings used in the Natural Heritage Database (see responses above for further explanation.)

COMMENT: The proposed rules should require the Department to update the List on at least an annual basis.

RESPONSE: The Act does not require the Department to update the List on an annual basis. However, the Department agrees with the suggestion and has revised N.J.A.C. 7:5C-2.1(c) to require at least annual review of the List. If the Department's review indicates that additions to or deletions from the List are warranted, the Department will propose an update of the List.

COMMENT: So as not to unduly encumber the rights of individual property owners, plant species introduced to a site as a result of disturbed conditions beyond the control of the landowner should not be included on the List.

RESPONSE: The Act requires the List to be developed based on research, investigations and other available scientific data on plant species, and specifies that the List should contain species endangered because of both natural and man-made factors. The procedures proposed at N.J.A.C. 7:5C-2 for the development of the List take these considerations. Because the Act contains no provision for protection of listed plants or their habitats, the Department does not expect listing of plant species to unduly encumber the rights of individual property owners.

COMMENT: The proposed rules should contain criteria for determining when a plant population is deemed "vulnerable to decimation."

RESPONSE: The term "vulnerable to decimation" is meant to encompass both natural and man-made factors and to account for species-specific factors such as abundance, viability, and reproductive success, which must be used in assessing the status of species and populations. Because this determination must be made on a case-by-case basis, incorporating a wide range of factors, the Department does not believe that it is appropriate to include these factors as criteria in these rules.

COMMENT: The proposed rules should specify in mathematical terms the ratio between "apparently secure" plant populations and populations "vulnerable to decimation" which triggers a designation of endangered under N.J.A.C. 7:5C-2.2(a)1i. The rules should explicitly state that the Department must anticipate the "worst-case" eventualities for a plant species population in evaluating its degree of jeopardy.

RESPONSE: The Department does not use any general ratio between apparently secure populations and populations vulnerable to decimation to determine if a species is endangered. Establishing such an across-the-board ratio for all species would not be appropriate since any ratio would be subjectively based and would eliminate the species-specific factors which must be considered in assessing the status of species and populations. Further, it would be unrealistic to automatically assume the "worst-case" scenario for all populations, because such a scenario would always envision loss of the population. Instead, the Department considers current land use practices and population trends in its assessment of the jeopardy of populations.

COMMENT: Proposed N.J.A.C. 7:5C-2.2(a)1ii should specify how low the total number of individuals or number of individuals per population must be before the Department classifies a plant species as endangered.

RESPONSE: Establishing such a general limit would not be appropriate because it would necessarily be subjectively based and its use would prevent the Department from considering any of the species-specific factors which should be considered in assessing the status of species and populations.

COMMENT: Proposed N.J.A.C. 7:5C-2.2(a)1iii should clearly specify how the Department determines a species' inherent ability to perpetuate itself and how far this ability must be reduced before the Department lists a plant species as endangered.

RESPONSE: The Natural Heritage methodology uses a summary of numerous factors to assess the ability of a species or population to perpetuate itself, including, but not limited to: abundance, range, viability, establishment, threats, reproductive success and habitat considerations. This assessment depends upon a case-by-case evaluation of individual species; a single generalization of factors or an arbitrary limit would not be appropriate.

COMMENT: The criteria for designating plant species as endangered set forth at proposed N.J.A.C. 7:5C-2.2 are too stringent. The words "proposed, or under review" in proposed N.J.A.C. 7:5C-2.2(a)2 should be deleted; until the subject plant species have been appropriately documented as endangered or threatened they should not be listed. For the same reasons, the words "or believed" in N.J.A.C. 7:5C-2.2(a)3 should be deleted.

RESPONSE: The words recommended for deletion are obtained directly from the definition of "endangered species" contained in section 3 of the Act. As it is clearly the intent of the Act to use these terms as part of the criteria for listing endangered plants, the Department cannot delete them from the adopted rules.

COMMENT: Because the Act specifically states that the List should be a tool for conserving the genetic resources of the Plant Kingdom, the Department should abandon its determination that only species possessing five or fewer extant populations in the State be designated as endangered. Instead, to avoid listing species as endangered after the genetic viability of the species has already been lost, the Department should list a native plant species as endangered whenever the number of populations of the species falls below 20.

RESPONSE: While conservation of genetic resources of plants is part of the legislative mandate for these rules, the definition of endangered species contained in the Act specifically indicates that one criterion qualifying species for listing as endangered is the presence of five or fewer extant populations in the State (see proposed N.J.A.C. 7:5C-2.2(a)4). As such, the Department cannot alter the definition. However, species possessing more than five extant populations may also be listed as endangered if they qualify under any of the other three criteria specified in proposed N.J.A.C. 7:5C-2.2. It would be arbitrary for the Department to specify without consideration of species biology or degree of threat that all species possessing 20 or fewer extant populations should be listed as endangered.

COMMENT: The proposed rules should require the Department to make the list of "threatened" species available to the public.

RESPONSE: As explained above, the "threatened plant species list" has been renamed on adoption of these rules as "additional plant species of concern." Members of the public may obtain copies of the list of additional plant species of concern by contacting the Department's Office of Natural Lands Management, 501 E. State Street, 2nd floor, CN 404, Trenton, New Jersey 08625.

COMMENT: The proposed rules should include a protocol governing the analysis of information on plant species reported by the public and the proper documentation and verification of all recommendations to have an area or plant species included on the List.

RESPONSE: Only plant species, not areas, may be listed as endangered under these rules. Proposed N.J.A.C. 7:5C-4.1 provides for public participation in contributing information which will help the Department to determine which species should be listed as endangered. In addition, proposed N.J.A.C. 7:5C-2.1 specifies that only information contained in the Department's Natural Heritage Database will be used as a basis for the formation or revision of the List. The procedures used by the Department in developing the Natural Heritage Database are a matter of public information and include documenting and verifying information submitted by the public. Further, as part of the rulemaking process, the Department will prepare a basis and background document which provides justification for each species proposed for listing as endangered. With these specific procedures already in place, the Department does not believe it necessary to develop an additional protocol as suggested.

COMMENT: Notice of proposed changes in the status of plant species on the List should be published in the New Jersey Register, public

comment as to the scientific validity of the changes invited, and the reasons for the proposed changes made public.

RESPONSE: All additions to and deletions from the List will be made through rulemaking procedures in accordance with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq.

COMMENT: The proposed rules should provide a process for the public to appeal the Department's decisions regarding listing of species.

RESPONSE: Proposed N.J.A.C. 7:5C-4.1(a) provides for public participation in the Department's determination of whether a plant species qualifies as endangered. Through this mechanism members of the public may provide information on native plant species which may qualify for inclusion on the List. All additions to and deletions from the List will be made through rulemaking procedures in accordance with the APA. Appeals from rules adopted by the Department, including the listing of endangered plant species, are governed by the APA and the New Jersey Rules of Court, particularly R. 2:2-3.

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

CHAPTER 5C
ENDANGERED PLANT SPECIES PROGRAM

SUBCHAPTER 1. GENERAL INFORMATION

7:5C-1.1 Purpose and scope

This chapter constitutes the rules of the Department of Environmental Protection concerning the development and adoption of a State endangered plant species list, as authorized by P.L. 1989, c. 56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158), and contains the official Endangered Plant Species List. The purpose of this chapter is to provide detailed procedures, standards, and criteria for developing and adopting a list of endangered plant species native to the State, in order to eliminate the confusion resulting from various existing inconsistent unofficial lists and to efficiently incorporate the preservation of the State's natural diversity into government planning operations.

7:5C-1.2 Construction

This chapter shall be liberally construed to permit the Department to effectuate the purposes of P.L. 1989, c. 56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158).

7:5C-1.3 Severability

If any subchapter, section, subsection, provision, clause or portion of the chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:5C-1.4 Definitions

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

"APA" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Commissioner" means the Commissioner of the Department of Environmental Protection, or his or her designee.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Parks and Forestry in the Department of Environmental Protection.

"Endangered Plant Species List" means the official State list of native endangered plant species promulgated by the Department pursuant to P.L. 1989, c. 56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158) and the rules in this chapter.

"Endangered species" means any native plant species whose survival in the State or the nation is in jeopardy, including, but not limited to: plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened throughout its range in the United States pursuant to the "Endangered Species Act of 1973," P.L. 93-205 (16 U.S.C. section 1533 et seq.), as amended; any additional species known or believed to be rare throughout its worldwide range; and any species having five or fewer extant populations within the State.

"Native" means growing or living naturally in New Jersey without having been brought to or planted in New Jersey by any person.

"Natural Heritage Database" means the manual and computerized file maintained within the Division of Parks and Forestry which includes continually updated information on the location and status of native plant species of the State, as authorized by N.J.S.A. 13:1B-15.146 through 13:1B-15.150.

"Plant" means any member of the Plant Kingdom, including all roots, stems, leaves, flowers, fruits, seeds, spores, gametophytes, and other parts thereof.

"Population" means a group of individuals of the same species which occupy a specific geographic location.

"Rare" means extremely uncommon making it vulnerable to extinction throughout its range.

"Species" means any species, subspecies, or variety of plant.

["Threatened plant species" means any plant species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the State.]

"Under review by the Federal government as endangered or threatened" means plant species listed within the status categories of LE, LT, PE, PT, 1 and 2 in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service.

SUBCHAPTER 2. DEVELOPMENT AND ADOPTION OF ENDANGERED PLANT SPECIES LIST

7:5C-2.1 Development and adoption of Endangered Plant Species List

(a) The Commissioner will direct research and investigations related to historical records, populations, distributions, critical habitat needs, limiting factors, and other biological and ecological data that will aid in determining the eligibility of native plant species for inclusion on the Endangered Plant Species List. The Department will incorporate the results of research and investigations conducted under this section into the Division's Natural Heritage Database.

(b) On the basis of research and investigations described at (a) above ***and information contained in the Natural Heritage Database***, the Department will propose and adopt, pursuant to the APA, designation to the Endangered Plant Species List of those native plant species meeting the criteria at N.J.A.C. 7:5C-2.2, giving the common and scientific name for each listed species.

(c) The Department will, on the basis of new or updated information in the Natural Heritage Database, *[periodically]* review the Endangered Plant Species List ***at least annually*** to determine if additions or deletions to the list are needed based on the criteria at N.J.A.C. 7:5C-2.2. If the Department determines on the basis of its review that a listed plant species is no longer endangered, or that a plant species qualifies for listing as endangered, the Department may propose and adopt, pursuant to the APA, revision of the Endangered Plant Species List. The Department will not propose the removal from the Endangered Plant Species List of any native plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened.

7:5C-2.2 Criteria for designating plant species as endangered

(a) The Department will designate a plant species as endangered if it is a native plant species and it satisfies one or more of the following criteria:

1. The Department makes a determination that its survival in the State or nation is in jeopardy based on the best available scientific information, including, but not limited to:

i. The number of apparently secure populations in the State as compared to the number of populations vulnerable to decimation by natural or man-made factors;

ii. The total number of individuals or number of individuals per population of the species in the State; or

iii. The inherent ability of the species or population to perpetuate itself in the State;

2. It is listed, proposed, or under review by the Federal government as endangered or threatened throughout its range in the United States pursuant to the "Endangered Species Act of 1973," P.L. 93-205 (16 U.S.C. section 1533 et seq.), as amended;

3. It is known or believed to be rare throughout its worldwide range; and/or

4. It has five or fewer extant populations in the State.

SUBCHAPTER 3. *[THREATENED]**ADDITIONAL* PLANT SPECIES *OF CONCERN*

7:5C-3.1 *[Threatened]***Additional*** plant species ***of concern***

(a) The Department will maintain a list of *[threatened]* ***additional*** plant species for the purpose of monitoring the status of the State's flora and to serve as a working list for transition of species to and from the Endangered Plant Species List. *[The Division shall develop the threatened plant species list solely on the basis of the best scientific information.]* ***The list of additional plant species will be composed of those species not listed as endangered at N.J.A.C. 7:5C-5.1 and whose occurrences are monitored by the Natural Heritage Database.***

SUBCHAPTER 4. PUBLIC PARTICIPATION

7:5C-4.1 Public participation

(a) Persons with information that will help the Department in determining whether a plant species qualifies under the criteria at N.J.A.C. 7:5C-2.2 as endangered may submit specific information to the Division at the following address detailing how the species may qualify as endangered pursuant to N.J.A.C. 7:5C-2.2:

Office of Natural Lands Management
Division of Parks and Forestry
CN 404
Trenton, New Jersey 08625-0404

SUBCHAPTER 5. ENDANGERED PLANT SPECIES LIST

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

1. (Reserved)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries

Surf Clams

Adopted Repeal and New Rules: N.J.A.C. 7:25-12

Proposed: October 16, 1989 at 21 N.J.R. 3214(a).

Adopted: December 18, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: December 21, 1989 as R.1990 d.46, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-3 et seq.; 13:1D-9; 23:2B-9; 23:2B-14; 23:4-52; 50:1-5 et seq.; 50:2-6.1 through 50:2-6.3; 50:4-2; and 58:24-1 et seq.

DEP Docket Number: 041-89-09.

Effective Date: January 16, 1990.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

On October 16, 1989 at 21 N.J.R. 3214(a) the Department proposed to repeal N.J.A.C. 7:25-12 and replace these rules with new rules governing surf clam management. The Department did not receive any written comments on the proposal during the public comment period ending November 15, 1989.

Summary of Agency-Initiated Changes:

1. The definition of "land" at N.J.A.C. 7:25-12.5 has been modified to more fully explain the circumstances under which surf clams are considered to be landed in the State.

2. Language has been added to the definition of "season quota" at N.J.A.C. 7:25-12.5 to clarify that bait clam harvest is not a component of the annual season quota of surf clams.

3. The Department has amended N.J.A.C. 7:25-12.10(c) and 7:25-12.10(d) to indicate that the Department will send notice of the season quota for the upcoming surf clam harvest season to all license holders by October 15, not October 1, of each year. Because the size of the season quota does not affect the November 1 season opening date or the 512 bushel weekly vessel quota once the season is open, delaying notice of the size of the season quota is not expected to have a material impact on surf clam vessel license holders. The two week delay will, however, allow the Department sufficient time to make an accurate determination of the standing stock of surf clams, upon which the season quota is based.

4. The weekly harvest reporting requirements at N.J.A.C. 7:25-12.13(a)2 have been amended to include the requirement that license holders report number of bushels of surf clams or bait clams harvested on a weekly basis; this requirement was inadvertently omitted from the proposal.

5. The weekly harvest reporting requirements at N.J.A.C. 7:25-12.13(a)4 have been amended to clarify that an agent of the captain of a surf clam vessel or bait clam vessel may attest to the validity of weekly surf clam harvest reports.

6. The reference at N.J.A.C. 7:25-12.13(c) to the Division of Fish, Game and Wildlife in the address of the Nacote Creek Shellfish Office has been deleted as unnecessary.

7. The reference at N.J.A.C. 7:25-12.14(b) to the requirements for transfer of ownership of a surf clam vessel has been corrected from N.J.A.C. 7:25-12.18(b) to N.J.A.C. 7:25-12.18(a). Language has also been added to this section to clarify that the term "license" in this section refers to surf clam vessel licenses, not bait clam vessel licenses

8. Language has been added to N.J.A.C. 7:25-12.16(a) and 7:25-12.16(b) to clarify that the licensing fees listed in this section are set by statute at N.J.S.A. 50:2-6.3.

9. N.J.S.A. 7:25-12.17(a) has been amended to clarify that only surf clam vessel licenses, and not bait clam vessel licenses, will be retired from the fishery if not renewed by December 31.

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

SUBCHAPTER 12. SURF CLAMS

7:25-12.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection governing the protection, conservation, management, and improvement of the surf clam resource in New Jersey, as authorized by N.J.S.A. 50:1-5, 50:2-6.1 through 50:2-6.3, and 23:2B-14.

7:25-12.2 Purpose

The purpose of this subchapter is to regulate the harvest of surf clams from New Jersey waters in order to conserve, protect, manage, and improve the surf clam resource and industry. The surf clam harvest regulatory program includes a limitation on the number of available licenses, a limitation on weekly harvest, a limitation of harvest to specific fishing times and areas, and other control methods as may be necessary.

7:25-12.3 Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5, 50:2-6.1 through 50:2-6.3, and 23:2B-14.

7:25-12.4 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-12.5 Definitions

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

"Approved waters" means waters meeting established sanitary standards for approved shellfish harvesting, as delineated by N.J.A.C. 7:12.

"Bait clams" means surf clams taken from condemned waters, not for human consumption but only for use as bait.

"Bait clam vessel" means a vessel holding a bait clam vessel license issued pursuant to N.J.A.C. 7:25-12.15.

"Bushel" means 1.88 cubic feet of clams within the shell or its equivalent of shucked clams, 3.25 gallons.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designee.

"Condemned waters" means waters not meeting established sanitary standards for approved shellfish harvesting, including waters designated as Prohibited or Specially Restricted, as delineated by N.J.A.C. 7:12.

"Council" means the Atlantic Coast Section and the Delaware Bay Section of the New Jersey Shell Fisheries Council.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife in the Department of Environmental Protection.

"Land" means to *[offload]* ***transfer the catch of*** surf clams *[to shore from a harvesting vessel]* ***from any vessel to any other vessel or to any land, pier, wharf, dock, or man-made structure****.

"Licensee" means the holder of a surf clam vessel license or a bait clam vessel license, or his or her agent.

"Person" includes the captain, owner or other person responsible for the operation of a vessel.

"Season quota" means the total amount of surf clams***, excluding bait clams,*** that may be harvested by all ***surf clam vessel*** license holders from State waters during the annual surf clam harvest season.

"Surf clams" means the species of sea clam Mactra solidissima, also known as Spisula solidissima. Unless otherwise specified, the term "surf clams" includes bait clams.

"Surf clam vessel" means a vessel holding a surf clam license issued pursuant to N.J.A.C. 7:25-12.14.

"Standing stock" means the amount of the surf clam resource in State waters, measured in bushels, as determined by the annual surf clam inventory conducted by the Division.

"Vessel" includes the captain, owner or other person responsible for the operation of a vessel.

7:25-12.6 Applicability

(a) The rules in this subchapter shall apply to all taking, attempting to take, harvesting, or dredging of surf clams in State waters, except the following:

1. Research, inventory or educational activities involving surf clams conducted under a certificate issued by the Division pursuant to N.J.S.A. 23:4-52 or a permit issued by the Department pursuant to N.J.S.A. 50:2-6.1 for research, inventory or educational purposes;

2. Gathering from beaches of surf clams cast there by the sea, in areas adjacent to approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2 and a clamming license is required as described in N.J.A.C. 7:25-8; and

3. Harvest of surf clams for personal consumption, and not for sale, from areas in approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2 and a clamming license is required as described in N.J.A.C. 7:25-8.

(b) Compliance with this subchapter shall not exempt any person from compliance with shellfish regulations adopted to protect the public health by the Department, under authority of N.J.S.A. 58:24, or by any department of State government or any Federal agency.

7:25-12.7 General control methods

(a) Except as provided at N.J.A.C. 7:25-12.6(a), a person or vessel shall not take, attempt to take, harvest, or dredge for surf clams in any State waters without first obtaining a surf clam vessel license as described in N.J.A.C. 7:25-12.14, or bait clam vessel license as described in N.J.A.C. 7:25-12.15.

(b) The general methods by which the Department shall control the harvest of surf clams from State waters are as follows:

1. The captain of a licensed surf clam vessel or bait clam vessel, or his or her designee, shall notify the Department of the intended fishing location of the vessel each day it fishes in State waters. The notification shall be made by calling the Marine Enforcement Unit, Bureau of Law Enforcement, Division of Fish, Game and Wildlife, Department of Environmental Protection, at (609) 441-3474, prior to fishing in State waters and prior to change of location.

2. Except for bait purposes as provided in N.J.A.C. 7:25-12.11(e), surf clams may be harvested from State waters daily only between 6:00 A.M. and 6:00 P.M. Eastern Standard Time.

3. Any person fishing for surf clams at any time in State waters shall have the vessel's entire harvest of surf clams for that day counted as part of the vessel's weekly quota for surf clams.

4. A person shall not transfer surf clams from a licensed surf clam vessel or bait clam vessel to any other vessel. All surf clams harvested in State waters shall be landed in this State. A person shall not operate a licensed surf clam vessel or bait clam vessel to fish in or land surf clams from both State and Federal waters without first landing all surf clams or bait clams from the fishery (State or Federal) from which they were harvested.

5. All surf clams shall be landed in their shell, except that shucked clams may be landed pursuant to an applicable permit from the New Jersey Department of Health. If shucked clams are landed, the equivalent weekly harvest limit shall apply to the harvest.

6. A person shall not operate a vessel using more than a single dredge at any time while fishing for surf clams in State waters.

7. All surf clam cages or containers shall be tagged before leaving the vessel with tags furnished by the Division. Tags shall not be removed until the cages or containers are emptied at the processing plant, at which point said tags shall be destroyed and discarded.

7:25-12.8 Season

(a) Except for bait purposes as provided in N.J.A.C. 7:25-12.11, the annual season for taking surf clams in State waters shall begin on November 1 and extend through and including May 31.

(b) If the season quota is harvested before May 31, the Commissioner may terminate the surf clam harvest season before May 31 pursuant to the requirements of N.J.A.C. 7:25-12.10.

7:25-12.9 Prohibited fishing areas

(a) The areas in which surf clams may not be taken are as follows:

1. Those waters enclosed within the following description, as delineated by the Division by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12318 (35th Ed., August 11/84), available for inspection at the Nacote Creek Shellfish Office:

i. From the shore on the bay side of Little Beach, latitude 39 degrees 28.3 minutes N, longitude 74 degrees 19.4 minutes W;

ii. Thence seaward 090.5 degrees T one nautical mile to a point, latitude 39 degrees 28.3 minutes N, longitude 74 degrees 17.2 minutes W, LORAN C 9960-X-26958, 9960-Y-43099;

iii. And thence south following the line of the beach one nautical mile offshore to a point, latitude 39 degrees 21.0 minutes N, longitude 74 degrees 23.6 minutes W, LORAN C 9960-X-26983, 9960-Y-43020, (generally marked by a buoy charted as "1" Fl G 4s GONG);

iv. Thence 333 degrees T to latitude 39 degrees 21.5 minutes N, longitude 74 degrees 23.9 minutes W, LORAN C 9960-X-26986, 9960-Y-43026, (generally marked by a buoy charted as R "2" Fl R 2.5s); and

v. Thence 309 degrees T to the light charted as Fl G 4 sec. 29 ft. "7" at the end of the southernmost jetty in Absecon Inlet, latitude 39 degrees 21.8 minutes N, longitude 74 degrees 24.5 minutes W, LORAN C 9960-X-26990, 9960-Y-43029.

2. Those waters enclosed within the following description, as delineated by the Division by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12323 (19th Ed., November 15/80), available for inspection at the Nacote Creek Shellfish Office:

i. The area off Island Beach from a point on the southern boundary of the area closed for shellfishing by N.J.A.C. 7:12 with latitude 39 degrees 52.9 minutes N, longitude 74 degrees 3.6 minutes W, LORAN C 9960-X-26924, 9960-Y-43357;

ii. Thence south following the line of the beach one nautical mile off shore to a point; latitude 39 degrees 45.9 minutes N, longitude 74 degrees 4.5 minutes W, LORAN C 9960-X-26914, 9960-Y-43283;

iii. Thence to the shore 090 degrees T to the abandoned lighthouse with a latitude 39 degrees 45.8 minutes N, longitude 74 degrees 6.4 minutes W; and

3. Those areas closed to shellfishing by N.J.A.C. 7:12.

7:25-12.10 Harvest limitations; surf clam harvest quota and weekly vessel quota

(a) The Commissioner, with the advice of the Council, shall establish annually a season quota of between 250,000 and 700,000 bushels of surf clams. The season quota shall be set at approximately 10 percent of the State's estimated standing stock of surf clams.

(b) The weekly vessel quota for surf clam harvest from State waters shall be 512 bushels, or as modified by the Commissioner with the advice of the Council as provided in (e) below. A licensee or vessel shall not harvest from State waters more than the weekly vessel quota of surf clams per vessel during any week of the season. The week for weekly vessel quota purposes shall begin on Sunday and run through the following Saturday.

(c) By October *[1]* **15*** of each year the Department shall send notice to all license holders by first class mail, and file notice for publication in the New Jersey Register, of the season quota for the upcoming surf clam harvest season.

(d) If the Department does not give notice of the season quota for the surf clam harvest season pursuant to (c) above by October *[1]* **15*** of the year, the season quota for the upcoming surf clam harvest season shall be 500,000 bushels.

(e) Based on harvest reporting, the Commissioner, with the advice of the Council, may adjust the season length and weekly vessel quota for surf clams as follows:

1. On or about December 31, the Commissioner will determine the total State surf clam harvest for the season:

i. If less than 20 percent of the season quota has been harvested as of December 31, then the Commissioner may by public notice increase the weekly vessel quota so that the weekly vessel quota does not exceed 768 bushels of surf clams;

ii. If more than 50 percent of the season quota has been harvested as of December 31, then the Commissioner may by public notice reduce the weekly vessel quota so that the weekly vessel quota does not fall below 384 bushels of surf clams; and

iii. If between 20 percent and 50 percent of the season quota has been harvested as of December 31, then the weekly vessel quota will remain 512 bushels until February 28, when the Commissioner will again determine the total State surf clam harvest for the season;

2. On or about February 28, the Commissioner will determine the total State surf clam harvest for the season;

i. If less than 50 percent of the season quota has been harvested as of the time the Commissioner determines the total State surf clam harvest for the season under this paragraph (e)2, then the Commissioner may by public notice increase the weekly vessel quota for the remainder of the season so that the weekly vessel quota does not exceed 768 bushels of surf clams;

ii. If more than 70 percent of the season quota has been harvested as of the time the Commissioner determines the total State surf clam harvest for the season under this paragraph (e)2, then the Commissioner may by public notice reduce the weekly vessel quota for the remainder of the season so that the weekly vessel quota does not fall below 384 bushels of surf clams; and

3. If at any time during the season the Commissioner determines that the season quota has been harvested from State waters, the Commissioner may by public notice:

i. Close the State's waters to any further harvest of surf clams for the remainder of the season; or

ii. Increase the total surf clam season quota and adjust the weekly vessel quota to extend the season.

(f) The Department shall send notice of any change in the weekly vessel quota, season length, or season quota pursuant to (e) above by first class mail to each surf clam vessel license holder, and shall file notice of any such change for publication in the New Jersey Register. All such changes shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

7:25-12.11 Bait clams

(a) A person or vessel shall not take, attempt to take, harvest, or dredge for bait clams in any State waters without first obtaining:

1. A bait clam vessel license, N.J.A.C. 7:25-12.15; and

2. A special permit for bait clam harvest from the Division of Water Resources, as described by N.J.S.A. 58:24 and N.J.A.C. 7:12.

(b) Bait clam vessel licensees shall harvest bait clams only in condemned waters, but not in condemned waters located within the prohibited fishing areas delineated at N.J.A.C. 7:25-12.9(a)1 and 2 above.

(c) Bait clam vessel licensees shall report fishing area daily as provided at N.J.A.C. 7:25-12.7(b)1 and file weekly harvest reports as provided at N.J.A.C. 7:25-12.13.

(d) The season for taking bait clams shall extend throughout the year.

(e) The time for taking bait clams shall be as follows:

1. November 1 through May 31: Daily, between 6:00 A.M. and 6:00 P.M. Eastern Standard Time; and

2. June 1 through October 31: Monday through Saturday, between one half-hour before sunrise (Trenton time) and 4:00 P.M. Eastern Standard Time.

(f) The weekly bait clam vessel quota shall be the same number as the weekly surf clam vessel quota set pursuant to N.J.A.C. 7:25-12.10.

(g) A person shall not operate a vessel to take surf clams in the waters of this State for bait and for human consumption on the same day.

7:25-12.12 Landing fees

(a) Licensees shall pay a landing fee of 12.5 cents ($0.125) for each bushel, or its equivalent, of surf clams or bait clams harvested from the waters of this State.

(b) The Department shall use all money received from surf clam landing fees for the conservation, protection, management, and improvement of the surf clam resource and industry.

7:25-12.13 Weekly reporting

(a) All surf clam vessel licensees and bait clam vessel licensees shall provide to the Division weekly surf clam harvest reports on forms supplied by the Division. Weekly reports shall include the following:

1. The vessel name and New Jersey surf clam vessel or bait clam vessel license number;

2. The dates fished, and for each date fished the fishing time in hours**, the number of bushels harvested,*** and the number of the New Jersey Inshore Surf Clam Harvest Zone fished;

3. For each surf clam or bait clam landing, the port at which the clams were landed; and

4. The name and signature of the captain of the surf clam vessel or bait clam vessel**, or the captain's agent***, attesting to the validity of the report (see N.J.A.C. 7:25-12.20).

(b) The week for surf clam and bait clam harvest reporting purposes shall begin on Sunday and run through the following Saturday.

(c) Weekly surf clam or bait clam harvest reports shall be mailed, together with a check or money order for the proper amount of the landing fee, as determined pursuant to N.J.A.C. 7:25-12.12, made payable to the "Treasurer, State of New Jersey," to:

Nacote Creek Shellfish Office
[Division of Fish, Game and Wildlife]
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241

(d) Weekly surf clam harvest and bait clam harvest reports shall be submitted to the Division by Saturday, 6:00 P.M. of the week following the week fished.

(e) If a surf clam vessel or bait clam vessel does not fish in State waters during a given week, the licensee shall provide a weekly report to that effect.

(f) The Division will furnish total State surf clam harvest information to all licensees on an annual basis.

(g) Except for the total State surf clam harvest in bushels, information provided on weekly surf clam and bait clam harvest reports is confidential and shall not be available for public inspection.

7:25-12.14 Issuance of surf clam vessel licenses

(a) An applicant for a surf clam vessel license shall be the bona fide owner of the surf clam vessel and a resident of New Jersey, as required by N.J.S.A. 50:2-6.1.

(b) Except as provided at N.J.A.C. 7:25-12.19, an applicant may apply for a surf clam vessel license if that person had a ***surf clam vessel*** license in the preceding year or received a ***surf clam vessel*** license through transfer of ownership of a surf clam vessel as provided at N.J.A.C. 7:25-12.18*[(b)]**(a)*. Applicants shall submit the ***surf clam vessel*** license from the present year, proof of ***surf clam*** vessel ownership, and proof of residency as part of the surf clam vessel license application.

(c) Application for a surf clam vessel license shall be made in person by the surf clam vessel owner or agent of the owner to:

Nacote Creek Shellfish Office
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241
(609) 441-3284

(d) The license year for surf clam vessel licenses shall be the calendar year.

(e) The top and sides of the surf clam vessel shall be marked with the New Jersey surf clam vessel license number in markings at least 18 inches in size, clearly legible, in good repair and with no visual obstruction.

7:25-12.15 Issuance of bait clam vessel licenses

(a) An applicant for a bait clam vessel license shall be the bona fide owner of the bait clam vessel and a resident of New Jersey, as required by N.J.S.A. 50:2-6.1. Applicants shall submit proof of vessel ownership and proof of residency as part of the bait clam vessel license application.

(b) Application for a bait clam vessel license shall be made in person by the bait clam vessel owner or agent of the vessel owner to:

Nacote Creek Shellfish Office
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241

(c) The license year for bait clam vessel licenses shall be the calendar year.

(d) The top and sides of the bait clam vessel shall be marked with the New Jersey bait clam vessel license number in markings at least 18 inches in size, clearly legible, in good repair and with no visual obstruction.

7:25-12.16 Licensing fees

(a) The annual fee for a surf clam vessel license shall be $5.00 per gross ton of harvesting vessel, with a minimum fee of $35.00 per vessel***, as established by N.J.S.A. 50:2-6.3****.

(b) The annual fee for a bait clam vessel license shall be $5.00 per gross ton of harvesting vessel, with a minimum fee of $35.00 per vessel***, as established by N.J.S.A. 50:2-6.3****.

7:25-12.17 Renewal of surf clam vessel licenses and bait clam vessel licenses

(a) Except for casualty loss, as governed by N.J.A.C. 7:25-12.19, surf clam vessel licenses and bait clam vessel licenses shall be renewed annually by payment of the annual license fee on or before December 31. If a ***surf clam vessel*** licensee has not paid the annual license fee on or before December 31, the Department shall retire that ***surf clam vessel*** license from the surf clam fishery.

(b) Surf clam vessel and bait clam vessel license renewal is specifically conditioned on the continuing compliance of the licensee with all the requirements of this subchapter and all statutory criteria for vessel licensing and surf clam harvest. The Department shall not renew a surf clam vessel license or a bait clam vessel license for a licensee who by December 31 has not filed the required weekly reports, as specified at N.J.A.C. 7:25-12.13, or paid the required landing fee, as specified at N.J.A.C. 7:25-12.12, for any part of the preceding license year.

7:25-12.18 Transfer of surf clam vessels

(a) A person transferring ownership of a licensed surf clam vessel may:

1. Apply for a new surf clam vessel license for a replacement surf clam vessel, pursuant to N.J.A.C. 7:12-14 and subject to the following:

i. Application for a replacement surf clam vessel license shall be made within one year of the date of vessel transfer;

ii. The applicant shall demonstrate compliance with all rules and statutory criteria applicable to surf clam vessel licensing and surf clam harvest; and

iii. Upon issuance of the license the applicant shall pay the full annual surf clam vessel licensing fee of $5.00 per gross ton of harvesting vessel, with a minimum fee of $35.00 per vessel; or

2. Transfer all rights incident to the surf clam vessel license to the transferee of ownership of the surf clam vessel by filing a notarized Statement of Intent with the Department indicating that he or she will waive all the rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the vessel to its new owner who shall meet all statutory criteria for licensing, and indicating the person to whom the transfer is being made, subject to the following:

i. The new owner shall, within seven calendar days of the vessel transfer, apply to the Department to relicense the surf clam vessel in his or her name;

ii. The new owner shall demonstrate compliance with all rules and statutory criteria applicable to surf clam vessel licensing and surf clam harvest; and

iii. Upon issuance of the license, the new owner shall pay the full annual surf clam vessel licensing fee of $5.00 per gross ton of harvesting vessel, with a minimum fee of $35.00 per vessel.

(b) A person shall not transfer ownership of a licensed surf clam vessel while an enforcement action by the Department for violation of this subchapter is pending. The Department shall deem an enforcement action pending against a license holder from the time it issues a Summons or Notice of Violation to the license holder until such time as a final legal disposition of the enforcement action has been rendered. If the final legal disposition of the enforcement action requires that a monetary penalty be paid or orders a suspension of the surf clam vessel license, the licensee shall not transfer the surf clam vessel license or ownership of the licensed surf clam vessel until the monetary penalty has been paid or the suspension time has run, whichever is later.

7:25-12.19 Casualty loss

(a) A licensed surf clam vessel lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, indicating that the owner intends to replace the vessel.

(b) Application for a replacement surf clam vessel license shall be made pursuant to the procedures at N.J.A.C. 7:25-12.14, upon proof of loss and of replacement of the previously licensed vessel.

7:25-12.20 Signatories; certification

(a) All applicants and licensees shall, upon submission of initial, renewal, or replacement applications, transfer applications, or weekly harvest reports, sign the following certification on the application or report forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or in-

complete information and significant criminal penalties, including fines and/or imprisonment, for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

(b) Penalties for false swearing or false reporting may include the penalties set forth in N.J.S.A. 2C:28-3, and the penalties set forth in N.J.A.C. 7:25-12.21.

7:25-12.21 Penalties

Violation of any section of this subchapter, or any license or order issued pursuant to it, shall subject the violator to the penalties set forth in the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of $100.00 to $3,000 for a first violation, and $200.00 to $5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation, and revocation of any license issued under this subchapter and N.J.S.A. 50:2-6.1 through 50:2-6.3. The Department may compromise and settle any claim for a penalty under this subsection in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT
DIVISION OF SOLID WASTE MANAGEMENT

Civil Administrative Penalties and Adjudicatory Hearings

Adopted New Rules: N.J.A.C. 7:26-5

Proposed: September 5, 1989 at 21 N.J.R. 2734(a).

Adopted: December 20, 1989 by Christopher, Department of Environmental Protection.

Filed: December 21, 1989 as R.1990 d.50, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6 and 13:1E-9, and N.J.S.A. 13:1E-48.1 et seq., particularly 13:1E-48.20 (P.L. 1989, c.34).

DEP Docket Number: 037-89-08.

Effective Date: January 16, 1990.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

These rules were proposed on September 5, 1989 at 21 N.J.R. 2734(a). Three commenters submitted written comments during the public comment period which ended on November 6, 1989. A public hearing was held on October 17, 1989, for which notice was published in two newspapers of general circulation, The Newark Star Ledger and the Trenton Times. A hearing date of October 16 was erroneously given in the proposal published in the New Jersey Register. On October 16, a notice was posted at the hearing location given for that date in the Register, stating that the hearing was being held at the Department's office at 401 East State Street, and providing notice that a second hearing would be held the following day and that comments could be submitted until November 6. No comments were received on either day.

COMMENT: The civil administrative penalty structure is overly complex and lacks consistency in the base penalty amounts for violations of equivalent severity. For example, a base penalty of $10,000 has been set for shipment of an acutely hazardous waste to land disposal and for failure to send copies of a manifest to a disposal facility. The Department should provide a detailed regulatory analysis on how the base penalties were established.

RESPONSE: The Department disagrees that the new penalty schedule is overly complex. The commenter has not offered a specific example of how the rules could be simplified, and the Department disagrees that the rules could in fact be simpler while still achieving the objectives of the Solid Waste Management Act. The base penalty listing is a straightforward assignment of certain penalty amounts for specified violations, with certain specified adjustments provided for factors required to be considered under the Act.

The Department established the base penalty amounts by first creating a ranked order of all potential violations of the State's hazardous waste management rules, based on the severity of actual or potential harm resulting from the violation to human health or the environment and to the integrity of the overall hazardous waste management program. Base penalties for the most severe violations were established at the maximum amount of $50,000 as directed by the Legislature, and, for the least serious violations, at the minimum amount thought to have a deterrent effect for those violations, $300.00. Base penalties for other violations were established by considering the penalty range established by the Legislature, the severity of the violation, and the Department's past experience in determining reasonable penalties that provide effective deterrence to violations of the rules. For example, the penalty for failure to ensure that a proper manifest accompanies hazardous waste shipments reflects the Department's determination of the importance of proper use of manifests. The manifest must accompany a shipment of hazardous waste in order for the Department to determine that the waste is lawfully and safely transported and disposed of. Failure to properly use the manifest undermines the integrity of the entire hazardous waste management program.

COMMENT: The base penalty amounts are excessive. Many of the base penalty amounts represent anywhere from a 50 percent to a 500 percent increase over those penalties assessed under the existing regulations.

RESPONSE: Prior to these rules, the Act allowed for penalties of up to $25,000, with the maximum penalty increased to $50,000 upon promulgation of these rules. Penalties for violations of hazardous waste management rules are currently determined by using a penalty assessment guidance document. The new penalties are, for the most part, higher than what was commonly assessed in the past for the same violation, and are for certain violations significantly greater than what was commonly assessed in the past. For example, past guidelines indicated that the fine for shipment of hazardous waste to an unauthorized facility was $2,000. The Department believes that such a violation is one of the most serious, and that the former penalty did not provide an adequate deterrent. Accordingly, under the new penalty schedule, this violation is subject to the maximum penalty of $50,000. The penalty amounts are within the range set by the Legislature, and reflect the Legislature's determination that higher penalties are necessary to serve as an effective deterrent to violations of the State's hazardous waste management rules. The new penalties also result from the Department's reevaluation of appropriate penalty levels in response to the statutory amendment.

COMMENT: The proposal did not provide any information on how the funds from the penalties will be distributed. The Department should provide a complete economic analysis on these rules.

RESPONSE: Unlike money collected under fee programs, which is used to fund specific programs within the Department, all penalties collected pursuant to these rules are currently required by statute to be deposited in the general fund of the State Treasury. The new rules do not affect how the penalty funds are distributed. Therefore, an economic analysis justifying the need for or use of those funds is not required.

COMMENT: The assertion in the economic statement of the proposal that the penalty schedule should decrease the Department resources devoted to assessment and collection of penalties may be in error. Due to the likelihood that more and greater dollar value penalties will be assessed, the number of adjudicatory hearing requests to contest those penalties will commensurately increase as well. The Department will, in effect, devote more time to the assessment and collection of penalties because of the adjudicatory hearing reviews.

RESPONSE: The statement in the proposal was intended to mean that, because the determination of a penalty amount would be simplified, the relative resources required for each individual penalty assessment would be reduced under the new schedule. Adjudicatory hearing requests are currently submitted in response to virtually all significant penalty assessments. If more and larger penalties are assessed under the new schedule, there may be an increased number of hearing requests requiring additional departmental resources in response. However, less resources will be needed for each hearing because the base penalty assessment will no longer be at issue. The Department does believe that higher penalties will have a greater deterrent effect and will ultimately result in fewer violations.

COMMENT: The assertion in the economic impact statement of the proposal that the new penalty schedule will result in fewer penalty assessments by the Department seems very unlikely. Because of the fee schedule proposed in N.J.A.C. 7:26-5.4(b) and the relative ease associated with calculating penalties for each alleged infraction, the hazardous waste compliance inspections may be looked upon as revenue generating

sources for the Department. The goal of attaining maximum monetary penalties from an inspection may take precedence over the intended purpose of ensuring that hazardous wastes are managed in a manner that protects human health and the environment.

RESPONSE: The commenter is incorrect. The new schedule under N.J.A.C. 7:26-5.4(b) contains penalty amounts and not fees. All penalties collected are currently required by statute to be deposited in the general fund of the State Treasury. Funding provided to the Department is based on the Department's needs and is not related to the amount of penalties collected.

COMMENT: N.J.A.C. 7:26-5.1(f) should be rewritten to more clearly state the intent that a contractor may also be liable for the civil administrative penalties.

RESPONSE: Under N.J.A.C. 7:26-5.1(f), a contractor or any other person meeting the standards contained in that subsection may be subject to civil administrative penalties. The Department believes that further specification within the rule is unnecessary.

COMMENT: The adjudicatory hearing process proposed in N.J.A.C. 7:26-5.3 allows the Department and the violator to effectively resolve a problem. However, over the past year, the Department has started issuing summonses in lieu of the normal administrative order or notice of civil administrative penalty. This results in an appearance in municipal court, where the municipal court judge and the local prosecutor have no understanding of environmental regulations. It is requested that the Department adopt the adjudicatory hearing process as proposed and eliminate the summons program.

RESPONSE: The rules being promulgated herein do not create or amend the summons program. Accordingly, the comment is outside the scope of the current rulemaking. Nevertheless, the Department believes that a summons can be an effective enforcement tool in certain circumstances.

COMMENT: N.J.A.C. 7:26-5.3(b) should be amended to require that adjudicatory hearing requests be postmarked within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment or administrative order, instead of requiring that hearing requests be received by the Department within 20 days, because the requester should be provided 20 full days to prepare the request and the requester cannot control the delivery date to the Department.

RESPONSE: The Department disagrees. The requirement that adjudicatory hearing requests be received by the Department within 20 days is established by statute, and under current case law the Department does not have authority to extend such a requirement established by the Legislature. N.J.S.A. 13:1E-9c states, "The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing."

COMMENT: The use of the severity factor and the corresponding multiplier to compute the civil administrative penalty fails to take into consideration the measures taken by the violator to mitigate or prevent further violations or whether or not the penalty will maintain an appropriate deterrent.

RESPONSE: The severity factors under N.J.A.C. 7:26-5.4(f)3 are intended to take into consideration a facility's operational history and efforts made to prevent violations. The severity factors are intended to quantify these considerations. Penalties are increased to a relatively greater degree for more recent violations of the same rule, which is evidence of failure to take effective measures to prevent the violation, and penalties are increased to a relatively lesser degree for violations of different rules or less recent violations. Past violations are considered relevant indications of a facility's operational history for the purpose of penalty assessment. The Department does not believe that a penalty should be reduced because a violation is corrected after being discovered by the Department. This would in effect be an incentive to correct violations only after prior warning by the Department. The appropriate deterrent effect is factored into the initial base penalty determination.

COMMENT: No justification is provided as to why the base penalty should be multiplied for violators who have violated different rules. If an ower or operator corrects a violation to the satisfaction of the Department, this should not have any bearing on an unrelated violation uncovered during a subsequent inspection. The Department already has authority under N.J.A.C. 7:26-5.5 to assess additional penalties for facilities that have multiple, serious violations of different rules.

RESPONSE: The Solid Waste Management Act requires that the Department take into consideration the operational history of a facility in assessing penalties under the new schedule. The Department believes that past violations of the State's hazardous and solid waste management rules are the most relevant factor of a facility's operational history to be considered in assessing a penalty for a current violation, whether or not the past violations were of the same provision of the rules. Repeated violations, even of different requirements, are evidence that previous enforcement action has not been an effective deterrent.

COMMENT: The Department would have better discretionary powers if the schedule was used as a guideline instead of as a mandatory penalty assessment for each rule violation. N.J.A.C. 7:26-5.4(g)7 through 12 should be amended to state that the civil administrative penalty amounts for each violation are set as guideline values in the table following.

RESPONSE: The Department disagrees with this comment. The new penalty schedule under N.J.A.C. 7:26-5.4 provides notice to the regulated community of the penalties that will be imposed for specific violations and ensures that different parties are assessed the same penalty for the same violation. Also, the regulated community has indicated to the Department that it, for the most part, desires just such a published, standardized penalty schedule.

COMMENT: The Department should include a discretionary provision within the rules to allow for base penalties to be reduced.

RESPONSE: The Department disagrees. Allowing for discretionay reduction of penalties not in accordance with published standards would be inconsistent with the purpose of the penalty schedule to provide consistency in the assessment of penalties and prior notice of penalty amounts.

COMMENT: It is unclear when the discretionary determination listed in N.J.A.C. 7:26-5.5 will be used instead of the base penalty and severity factor listed in N.J.A.C. 7:26-5.4 for determining penalty amounts.

RESPONSE: The Department agrees and has on adoption included a clarifying statement at N.J.A.C. 7:26-5.5(a) explaining that N.J.A.C. 7:26-5.5 discretionary penalty determination will be used for violations not listed in N.J.A.C. 7:26-5.4 or where, because of the specific circumstances of a violation, the Department in its discretion believes that the base penalty is too low to provide an effective deterrent.

COMMENT: Under the matrix used to determine discretionary penalties at N.J.A.C. 7:26-5.5(f), the terms "major, moderate and minor" should be defined with more particularity and clarity to enable the regulated community to determine the degree of seriousness of the conduct in which they might be engaging. The Department might issue a guidance document to field inspectors. "Serious harm" could be defined as that constituting irreversible or long-term illness or damage to the environment. "Substantial harm" could be defined as that constituting short-term recoverable illness or damage to the environment. "Seriously deviates from the requirements of the Act," under N.J.A.C. 7:26-5.5(g)ii could be defined as willful and knowledgeable violations where feasible alternatives existed and having the potential to cause serious harm.

RESPONSE: The Department disagrees. The purpose of N.J.A.C. 7:26-5.5 is to provide for an effective penalty where complex and unforeseen factors do not allow for the prior publication of a standardized penalty. Given this purpose, the Department believes that the standards under N.J.A.C. 7:26-5.5 do provide sufficient guidance to the regulated community.

COMMENT: The wording in N.J.A.C. 7:26-5.6 indicates that any time a person submits inaccurate information to the Department he or she is subject to a penalty, even if the mistake is corrected; for example, if a manifest discrepancy is corrected with a follow-up letter. The wording of N.J.A.C. 7:26-5.6 should be changed so that it would only apply to a person who knowingly submits inaccurate information.

RESPONSE: The Department makes an effort to use its enforcement discretion so as to avoid assessing penalties for good faith, inconsequential errors that are voluntarily corrected by the regulated party. The new penalty schedule assesses a higher penalty under N.J.A.C. 7:26-5.6(c)1 for knowing submission of inaccurate information. However, the Department maintains that penalties must be available for submission of inaccurate information even if unintentionally done. The hazardous waste management system depends on the self-reporting of accurate and complete information and the rules must ensure that a certain level of care is exercised in gathering and submitting that information. Inaccurate information undercuts the entire regulatory program, whether that information is submitted to the Department intentionally or through carelessness or lack of effort in gathering the information or is otherwise submitted inadvertently. Additionally, the Solid Waste Management Act creates a standard of strict liability for violations of the Act or rules promulgated pursuant thereto, under which lack of knowledge or intent is not available as a defense.

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

SUBCHAPTER 5. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26-5.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., including the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, amending and supplementing the Solid Waste Management Act (hereinafter "the Act"), including violation of any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act. This subchapter shall also govern the procedures for requesting adjudicatory hearings on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than $50,000 for each violation of each provision of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 13:1E-1 et seq. or any other statute, in connection with the violation for which the assessment is levied.

(e) Nothing in this subchapter is intended to affect the Department's authority to revoke or suspend any permit, license or other operating authority issued under the Act. Specifically, the Department may revoke or suspend a permit, license or other operating authority, without regard to whether or not a civil administrative penalty has been or will be assessed pursuant to this subchapter.

(f) For purposes of this subchapter, any person who undertakes or performs an obligation imposed upon another person pursuant to the Act, or any rules promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act, may at the discretion of the Department be subject to a civil administrative penalty pursuant to this subchapter in the same manner and in the same amount as such other person.

7:26-5.2 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act, the Department shall, by means of notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one violation in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. This notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, administrative order, permit, license, district solid waste management plan or Part A permit application violated;

2. Concisely state the facts which constitute the violation;

3. Specify the amount of the civil administrative penalty to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing, pursuant to the procedures in N.J.A.C. 7:26-5.3.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order of a contested case or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:26-5.3, the notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt by the violator of the notice of civil administrative penalty assessment;

2. If a hearing is requested pursuant to N.J.A.C. 7:26-5.3 and the Department denies the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of notice of such denial; or

3. If a hearing is requested pursuant to N.J.A.C. 7:26-5.3 and an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order of a contested case.

7:26-5.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department:

1. The name, address, telephone number and EPA Identification Number (if applicable) of the violator and its authorized representative;

2. The violator's defenses, to each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding which the violator denies, the violator shall allege the fact or facts as the violator believes such fact or facts to be;

4. Information supporting the request and specific reference to or copies of all written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26-5.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of each requirement of any rule listed in N.J.A.C. 7:26-5.4(g).

(b) Each violation of a rule listed in N.J.A.C. 7:26-5.4(g) shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of any rule listed in N.J.A.C. 7:26-5.4(g) may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall determine the amount of a civil administrative penalty for each violation of any rule listed in N.J.A.C. 7:26-5.4(g) on the basis of the provision violated, according to the following procedure. For a violation of a requirement or condition of an administrative order, permit, license or other operating authority, the Department may in its sole discretion identify the corresponding requirement of any rule summary listed in N.J.A.C. 7:26-5.4(g) and determine the amount of the civil administrative penalty on the basis of the rule provision violated.

1. Identify the rule violated as listed in N.J.A.C. 7:26-5.4(g)7 through 12;

2. Identify the corresponding base penalty dollar amount for the rule violated as listed in N.J.A.C. 7:26-5.4(g)7 through 12;

3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

SEVERITY FACTOR	MULTIPLIER
i. Violator had violated the same rule less than 12 months prior to the violation	1.00
ii. Violator had violated a different rule less than 12 months prior to the violation	0.50
iii. Violator had violated the same rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.50
iv. Violator had violated a different rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.25

4. To obtain the civil administrative penalty, add all of the severity penalty components pursuant to (f)3 above, to the base penalty. If the sum total exceeds $50,000, then the civil administrative penalty shall be $50,000.

EXAMPLE:		
Base penalty (for violation of N.J.A.C. 7:26-7.4(a)6)	=	$1,000
Subparagraph (f)3iii applies: 0.50 x 1000	=	500
Subparagraph (f)3iv applies: 0.25 x 1000	=	+ 250
Civil administrative penalty		$1,750

5. For the purpose of this section, violation of the "same rule" means violation of the same specific requirement of a rule. Where a rule has a list of specific requirements, the same item on the list must be violated to be considered violation of the "same rule"; and

(g) The rule summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12, is provided for informational purposes only. In the event that there is a conflict between the rule summary in N.J.A.C. 7:26-5.4(g) and a provision in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12, then the provision in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12 shall prevail. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:26.

1.-6. (Reserved)

7. The violations of N.J.A.C. 7:26-7, Labeling, Records and Transportation Requirements, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

RULE	RULE SUMMARY	BASE PENALTY
N.J.A.C.		
7:26-7.1(a)	Failure to placard vehicle containing hazardous waste.	$5,000
7:26-7.1(b)	Hazardous waste facility accepting hazardous waste in a vehicle not properly placarded.	$2,000
7:26-7.2(a)	Failure to label containers containing hazardous waste with manifest numbers.	$500
7:26-7.2(b)	Failure of generator to ensure all containers are of proper construction type or properly labeled.	$2,000
7:26-7.2(c)	Removal of container markings prior to emptying and cleaning.	$3,000
7:26-7.2(d)	Transfer of hazardous waste to new container (in transit) without labeling with manifest numbers.	$500
7:26-7.2(e)	Hazardous waste facility accepting hazardous waste containers that are not properly labeled or marked.	$2,000
7:26-7.3(a)1	Failure to use manifest forms from the Department for hazardous waste originating in New Jersey.	$300
7:26-7.3(a)2	Failure to use approved manifest forms for hazardous waste originating in another state and destined for New Jersey.	$300
7:26-7.3(a)3	Failure to use approved manifest forms for hazardous waste originating in New Jersey and destined for another state.	$300
7:26-7.4(a)1	Failure of generator to have EPA identification number before it treats, stores, transports, offers for transportation, or disposes of hazardous waste.	$2,000
7:26-7.4(a)2	Failure of generator to have EPA identification number before it offers hazardous waste to a hazardous waste hauler or TSD facility.	$2,000
7:26-7.4(a)3	Failure of generator to prepare a manifest before transporting or offering for transport hazardous waste off-site.	$10,000
7:26-7.4(a)4i	Failure of generator to supply generator's name, mailing address, site address, or phone number on the manifest.	$300
7:26-7.4(a)4ii	Failure of generator to supply generator's EPA I.D. number on the manifest.	$300
7:26-7.4(a)4iii	Failure of generator to supply hauler(s) name, phone number, or New Jersey registration number on the manifest.	$300
7:26-7.4(a)4iv	Failure of generator to supply hauler(s) EPA I.D. number on the manifest.	$300
7:26-7.4(a)4v	Failure of generator to supply designated facility's name, address or phone number on the manifest.	$1,000
7:26-7.4(a)4vi	Failure of generator to supply designated facility's EPA I.D. number on the manifest.	$1,000
7:26-7.4(a)4vii	Failure of generator to list name, type, or quantity of waste being shipped on the manifest	$1,000
7:26-7.4(a)4viii	Failure of generator to list special handling instructions on the manifest.	$300
7:26-7.4(a)ix	Failure of generator to supply waste reuse facility identification number on the manifest.	$300

7:26-7.4(a)5i	Failure of generator to sign manifest.	$2,000
7:26-7.4(a)5ii	Failure of generator to obtain signature of initial hauler and date of acceptance on the manifest.	$1,000
7:26-7.4(a)5iii	Failure of generator to retain one copy of manifest or to forward one copy to state of origin or one to state of destination.	$1,000
7:26-7.4(a)6	Failure of hauler, unable to deliver hazardous waste to designated facility, to notify generator for instructions; or failure of generator to provide further instructions to hauler unable to deliver hazardous waste to designated facility.	$1,000
7:26-7.4(a)7	Failure of generator shipping hazardous waste within the U.S. solely by railroad or solely by water to send three copies of approved manifest form signed and dated to owner or operator of designated facility.	$1,000
7:26-7.4(a)8	Failure of generator to send at least three copies of signed and dated manifest for rail shipments of hazardous waste within the U.S. to next non-rail hauler, designated facility, or last rail hauler.	$10,000
7:26-7.4(a)10	Generator offering acute hazardous waste or toxic waste for final land disposal in New Jersey.	$10,000
7:26-7.4(c)	Failure of generator to comply with requirements for shipping hazardous wastes out of the U.S.	$10,000
7:26-7.4(d)	Failure of generator shipping wastes out of the U.S. to file an exception report.	$10,000
7:26-7.4(e)2	Failure of generator to utilize a properly registered hauler.	$5,000
7:26-7.4(e)2	Failure of generator to utilize transporter with registration number properly displayed.	$500
7:26-7.4(e)3	Generator designating an unauthorized facility, or a waste reuse facility which had not received a waste reuse identification number, on the manifest.	$1,000
7:26-7.4(e)4	Generator shipping or permitting the shipment of hazardous waste to an unauthorized facility, or to a waste reuse facility which had not received a waste reuse identification number.	$25,000
7:26-7.4(f)1	Failure of generator to keep copy of manifest for three years.	$1,000
7:26-7.4(f)2	Failure of generator to keep copy of annual report or exception report for three years.	$500
7:26-7.4(f)3	Failure of generator to keep copy of manifest during course of unresolved enforcement action or as requested by the Department.	$1,000
7:26-7.4(f)3	Failure of generator to keep copy of annual report or exception report during course of unresolved enforcement action or as requested by the Department.	$500
7:26-7.4(g)1	Failure of generator to submit annual report of manifest activities by March 1.	$500
7:26-7.4(g)2	Failure of generator who stores hazardous waste for more than 90 days to submit annual report summarizing treatment and disposal activities by March 1.	$500
7:26-7.4(h)	Failure of generator to comply with exception reporting requirements.	$1,000
7:26-7.4(j)1	Generator offering hazardous waste, to waste reuse facility, without complying with applicable requirements.	$25,000
7:26-7.5(b)3i	Failure of hauler to compile list of sites corresponding to each manifested shipment of X700-series hazardous waste.	$1,000
7:26-7.5(b)3ii	Failure of hauler to include name, address, quantity, or ID number of manifest on list.	$300
7:26-7.5(b)3iii	Failure of hauler to attach list to copy of manifest and forward to the Department.	$1,000
7:26-7.5(b)3iv	Failure of hauler to obtain a signed receipt from each site at which he accepts X-700 series hazardous waste.	$1,000
7:26-7.5(c)1	Failure of hauler to obtain hazardous waste hauler license prior to operation.	$10,000
7:26-7.5(c)5	Failure of hauler to update license information prior to October 1 of each year.	$500
7:26-7.5(c)6	Failure of hauler to notify Department of change of information on license.	$500
7:26-7.5(d)1	Failure of hauler transporting hazardous wastes to have EPA identification number.	$1,000
7:26-7.5(d)2	Hauler accepting hazardous waste from a generator when it is not accompanied by a properly completed manifest.	$1,000
7:26-7.5(d)3	Hauler accepting improperly labeled hazardous waste.	$1,000
7:26-7.5(d)3	Hauler accepting hazardous waste that does not reasonably fit the description of the manifest.	$3,000
7:26-7.5(d)4	Failure of hauler to sign or date manifest.	$2,000
7:26-7.5(d)4	Failure of hauler to return a signed copy of manifest to generator before transporting.	$500
7:26-7.5(d)5	Failure of hauler to ensure that manifest accompanies hazardous waste.	$10,000
7:26-7.5(d)6i	Failure of hauler to obtain date of delivery and handwritten signature of other hauler or of owner or operator of designated facility.	$2,000
7:26-7.5(d)6ii	Failure of hauler to retain copy of manifest.	$1,000
7:26-7.5(d)6iii	Failure of hauler to give remaining copies of manifest to the accepting hauler or designated facility.	$1,000
7:26-7.5(d)8i(1)	Failure of rail hauler accepting hazardous waste from non-rail hauler to sign or date manifest.	$2,000
7:26-7.5(d)8i(2)	Failure of rail hauler accepting hazardous waste from non-rail hauler to return a signed copy of manifest to non-rail hauler.	$500
7:26-7.5(d)8i(3)	Failure of rail hauler accepting hazardous waste from non-rail hauler to forward manifest to next non-rail hauler, designated facility, or last rail hauler in United States.	$1,000
7:26-7.5(d)8ii	Failure of rail hauler to ensure appropriate shipping paper accompanies hazardous waste at all times.	$10,000

7:26-7.5(d)8iv(1)	Failure of rail hauler delivering hazardous waste to designated facility to obtain date of delivery or handwritten signature of owner or operator of designated facility.	$2,000
7:26-7.5(d)8iv(2)	Failure of rail hauler delivering hazardous waste to designated facility to retain copy of manifest.	$500
7:26-7.5(d)8v(1)	Failure of rail hauler delivering hazardous waste to non-rail hauler to obtain date of delivery or handwritten signature of non-rail hauler.	$2,000
7:26-7.5(d)8v(2)	Failure of rail hauler delivering hazardous waste to non-rail hauler to retain copy of manifest.	$500
7:26-7.5(d)8vi	Failure of non-rail hauler accepting hazardous waste from rail hauler to sign or date manifest.	$2,000
7:26-7.5(d)8vi	Failure of non-rail hauler accepting hazardous waste from rail hauler to return signed copy of manifest to rail hauler.	$500
7:26-7.5(d)9	Failure of hauler transporting waste out of U.S. to indicate date waste left U.S.	$2,000
7:26-7.5(d)10	Failure of hauler to deliver entire quantity to designated facility, next designated hauler or place outside U.S.	$5,000
7:26-7.5(d)11	Failure of hauler to contact generator for instructions and to revise manifest in case of undeliverable shipment.	$2,000
7:26-7.5(d)12	Failure of hauler to provide complete program of instruction for hauler employees.	$2,000
7:26-7.5(d)13	Failure of hauler to comply with 49 CFR 391.	$2,000
7:26-7.5(d)14	Failure of hauler to operate their vehicles in conformance with 49 CFR 392.	$2,000
7:26-7.5(d)15	Failure of hauler to equip vehicle with emergency equipment in conformance with 49 CFR 393.	$500
7:26-7.5(d)16	Failure of haulers to transport hazardous waste in accordance with 49 CFR 397.	$1,000
7:26-7.5(d)17	Failure of hauler to prevent registered vehicle from being used by another hauler not properly licensed by the Department.	$10,000
7:26-7.5(d)18	Failure of hauler to have in possession a list of agencies to notify in event of discharge.	$500
7:26-7.5(d)19	Failure of hauler to display registration decal.	$1,000
7:26-7.5(e)	Failure of hauler to allow the Department to enter and inspect any vehicle.	$5,000
7:26-7.5(f)1i	Failure of hauler to immediately notify the Department and the generator concerning an unauthorized discharge of hazardous waste during transportation.	$5,000
7:26-7.5(f)1ii	Failure of hauler to take appropriate immediate action to protect human health and environment from a discharge of hazardous waste during transportation.	$10,000
7:26-7.5(f)1iii	Failure of hauler to take any action required by N.J.A.C. 7:1E-2.3.	$10,000
7:26-7.5(f)1iv	Failure of hauler to clean up the discharge and take action as may be required or approved.	$10,000
7:26-7.5(f)3	Failure by air, rail, highway or water hauler having a discharge to comply with State and federal notice and report requirements.	$3,000
7:26-7.5(g)1	Failure of hauler to properly complete manifest.	$2,000
7:26-7.5(g)2	Hauler accepting hazardous waste from generator who failed to properly complete manifest.	$2,000
7:26-7.5(g)3	Hauler transporting hazardous waste to unauthorized facility.	$5,000
7:26-7.5(h)1	Failure of hauler to maintain signed copy of manifest for three years.	$1,000
7:26-7.5(h)2	Failure of water bulk shipment hauler to maintain copy of shipping paper for three years.	$1,000
7:26-7.5(h)3	Failure of rail hauler to maintain copy of manifest and shipping paper for three years.	$1,000
7:26-7.5(h)5	Failure of hauler to maintain copy of manifest and date shipment left U.S. for three years.	$1,000
7:26-7.5(h)6	Failure of hauler to maintain copy of manifest during the course of unresolved enforcement action or as requested by the Department.	$1,000
7:26-7.5(i)	Failure by hauler to submit annual report of transportation activities by May 1 of each year.	$1,000
7:26-7.6(a)1	Failure of facility owner or operator to obtain EPA identification number.	$5,000
7:26-7.6(a)2	Failure of facility operator to accept waste only if properly labeled and marked.	$2,000
7:26-7.6(a)2	Facility operator accepting hazardous waste not accompanied by properly completed manifest.	$10,000
7:26-7.6(a)3	Failure of facility operator when accepting waste other than that described in manifest to notify Department of discrepancy within one week.	$1,000
7:26-7.6(a)4	Failure of facility operator when, after acceptance, waste is other than described, to reconcile discrepancy with generator or hauler, or to notify Department within one week.	$1,000
7:26-7.6(a)5	Failure of facility to obtain written generator approval or to execute manifests before shipping waste to another facility.	$10,000
7:26-7.6(b)1	Failure of facility owner or operator to sign or date manifest.	$2,000
7:26-7.6(b)2	Failure of facility owner or operator to note any significant discrepancies in the manifest on each copy of the manifest.	$1,000
7:26-7.6(b)3	Failure of facility owner or operator to give hauler a copy of manifest.	$1,000
7:26-7.6(b)4	Failure of facility owner or operator to send copy of manifest to generator within thirty days after delivery of hazardous waste.	$1,000
7:26-7.6(b)5	Failure of facility owner or operator to forward copy of manifest to Department or to generator's State agency by next business day.	$1,000
7:26-7.6(b)6	Failure of facility owner or operator to retain copy of manifest for three years.	$1,000

7:26-7.6(c)	Importing hazardous waste from a foreign country without notifying the Department or the EPA at least four weeks in advance of expected delivery.	$10,000
7:26-7.6(d)1	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to sign or date manifest or shipping paper.	$2,000
7:26-7.6(d)2	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to note any significant discrepancies in manifest or shipping paper on each copy of manifest or shipping paper.	$1,000
7:26-7.6(d)3	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to give hauler a copy of manifest or shipping paper.	$1,000
7:26-7.6(d)4	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to send copy of manifest or shipping paper to generator within thirty days after delivery.	$1,000
7:26-7.6(d)5	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to retain copy of manifest for three years.	$1,000
7:26-7.6(e)1	Facility operator accepting waste other than that authorized by Department.	$25,000
7:26-7.6(e)2	Facility operator accepting waste from an unauthorized hauler.	$5,000
7:26-7.6(e)3	Facility operator accepting waste from a hauler failing to display Department registration number.	$500
7:26-7.6(f)1	Failure of facility owner or operator to maintain daily operating record.	$1,000
7:26-7.6(f)2	Failure of facility owner or operator to prepare and submit two copies of an annual report by March 1 of each year or failure of report to meet requirements.	$1,000
7:26-7.7(d)	Generator exempt pursuant to N.J.A.C. 7:26-7.7(b) or (c) offering hazardous waste to unregistered hauler.	$3,000
7:26-7.7(d)	Failure of generator exempt pursuant to N.J.A.C. 7:26-7.7(b) or (c) to obtain written receipt from hauler or to retain receipt on file for three years.	$500

8. The violations of N.J.A.C. 7:26-8, Hazardous Waste Criteria, Identification and Listing, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

RULE	RULE SUMMARY	BASE PENALTY
N.J.A.C.		
7:26-8.5(a)	Failure of generator of solid waste to determine if waste is hazardous.	$10,000
7:26-8.5(c)	Failure of generator, on request by Department, to submit plan for analyzing the waste to detect presence of hazardous waste constituents listed in N.J.A.C. 7:26-8.16.	$10,000
7:26-8.5(d)	Failure of generator to keep records of any test results, analysis or other determinations for three years.	$2,000

9. The violations of N.J.A.C. 7:26-9, Requirements for Hazardous Waste Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

RULE	RULE SUMMARY	BASE PENALTY
N.J.A.C.		
7:26-9.2(a)2	Handling hazardous waste in a manner that causes or may cause an unauthorized discharge of pollutants.	$5,000
7:26-9.2(b)1	Installation or use of new underground storage tanks containing hazardous waste.	$10,000
7:26-9.2(b)2	Conversion of underground storage tanks in use or ready for use for storage of hazardous waste.	$10,000
7:26-9.2(b)3	Use of existing underground storage tanks for hazardous waste without monitoring pursuant to N.J.A.C. 7:14A-6 or not within time limitation or without managing pursuant to N.J.A.C. 7:26-10.5(e)6.	$10,000
7:26-9.2(b)4	Use of hazardous waste piles.	$25,000
7:26-9.2(c)	Discharging of hazardous waste into a sewer system without approval or not in conformance with such approval.	$25,000
7:26-9.2(d)	Final land disposal of acute hazardous waste or toxic waste not exempted by N.J.A.C. 7:26-9.2(d)1 and 2.	$50,000
7:26-9.3(a)1	Failure of generator to ship waste off site within 90 days or to place it in an on-site authorized facility.	$2,000
7:26-9.3(a)2	Failure of generator to place waste in containers that meet required standards or are properly managed.	$2,000
7:26-9.3(a)3	Failure of generator to clearly mark container with date when accumulation period begins or to make mark visible for inspection.	$5,000
7:26-9.3(b)	Failure of generator accumulating hazardous waste in above ground tanks for 90 days or less without receiving Department approval, to comply with each requirement of N.J.A.C. 7:26-9.3(b)1 through 9.	$2,000
7:26-9.3(d)1	Failure of generator accumulating hazardous waste on-site without a permit to ensure that quantity of waste in each area is less than 55 gallons of hazardous waste or less than one quart of acutely hazardous waste.	$1,000
7:26-9.3(d)2	Failure of generator accumulating hazardous waste on-site without a permit to place waste in containers meeting standards of N.J.A.C. 7:26-7.2 or to appropriately manage containers.	$1,000
7:26-9.3(d)3	Failure of generator accumulating hazardous waste on-site without a permit to have accumulation area at or near any point of generation where wastes initially accumulate in a process.	$1,000
7:26-9.3(d)4	Failure of generator to mark container with the words "HAZARDOUS WASTE".	$1,000
7:26-9.3(d)5	Failure of generator to mark container with the date the quantity reaches the volume indicated in N.J.A.C. 7:26-9.3(d)1.	$1,000

7:26-9.3(d)6	Failure of generator to comply with N.J.A.C. 7:26-9.3(d)6i, ii, or iii, within three days after quantity of waste reaches the volume identified in N.J.A.C. 7:26-9.3(d)1.	$1,000
7:26-9.4(a)1	Failure of a facility owner or operator who receives a new hazardous waste stream from an off site source to notify generator in writing, of permit, and acceptance of new waste stream.	$2,000
7:26-9.4(a)3	Failure of facility owner or operator to notify the Department or comply with each requirement of N.J.A.C. 7:26-9.1(c)13 before accepting an off-site waste stream for waste reuse.	$2,000
7:26-9.4(b)1i	Failure of facility owner or operator to obtain detailed chemical analysis of representative sample before treating, storing or disposing of any hazardous waste.	$10,000
7:26-9.4(b)1iii	Failure of facility owner or operator to repeat analysis as necessary to ensure that it is accurate and up to date.	$5,000
7:26-9.4(b)1v	Failure of owner or operator of an off site facility to inspect each hazardous waste shipment received or analyze to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.	$3,000
7:26-9.4(b)2	Failure of facility owner or operator to develop or follow a written waste analysis plan, or to comply with each of the requirements of N.J.A.C. 7:26-9.4(b)2.	$5,000
7:26-9.4(b)3ii	Failure of facility owner or operator to conform waste analysis with provisions of proposed plan pending final approval by Department.	$5,000
7:26-9.4(c)1	Facility owner or operator accepting waste it is not authorized to handle.	$25,000
7:26-9.4(c)2	Failure of facility owner or operator to follow each of the requirements of N.J.A.C. 7:26-9.4(c)2 if offered waste of a type it is not authorized to handle.	$1,000
7:26-9.4(d)1i	Facility owner or operator storing hazardous waste in inadequate container.	$2,000
7:26-9.4(d)2	Failure of facility owner or operator to handle hazardous waste as required by N.J.A.C. 7:26-9.4(d)2.	$2,000
7:26-9.4(d)3	Failure of facility owner or operator to use container compatible with hazardous waste stored.	$2,000
7:26-9.4(d)4	Failure of facility owner or operator to comply with any of the requirements for management of containers.	$1,000
7:26-9.4(d)5	Failure of facility owner or operator to perform daily inspection of each area where containers are stored.	$1,000
7:26-9.4(d)6	Failure of facility owner or operator to store containers holding ignitable or reactive wastes at least 50 feet from property line.	$2,000
7:26-9.4(d)7	Failure of facility owner or operator to comply with each of the special requirements for incompatible wastes.	$2,000
7:26-9.4(e)1i	Failure of facility owner or operator to keep ignitable, reactive or incompatible wastes separated and protected from sources of ignition or reaction.	$5,000
7:26-9.4(e)1ii	Failure of facility owner or operator to confine smoking or open flame to specially designated locations while handling ignitable or reactive waste.	$2,000
7:26-9.4(e)1iii	Failure of facility owner or operator to conspicuously place "No Smoking" signs wherever there is a hazard from ignitable or reactive waste.	$500
7:26-9.4(e)2	Failure of the facility owner or operator to treat, store, or dispose of ignitable, reactive or mixtures of incompatible wastes in accordance with each of the requirements of N.J.A.C. 7:26-9.4(e)2i through v.	$2,000
7:26-9.4(f)1	Failure of facility owner or operator to inspect for malfunctions, deterioration, errors or discharges.	$2,000
7:26-9.4(f)2	Failure of facility owner or operator to perform frequent inspections pursuant to N.J.A.C. 7:26-9.4(f)2.	$2,000
7:26-9.4(f)3	Failure of facility owner or operator to develop or follow written schedule for inspecting monitoring, safety, emergency, security equipment, etc.	$2,000
7:26-9.4(f)4	Failure of facility owner or operator to follow proposed schedule for inspecting monitoring equipment pending Department approval.	$2,000
7:26-9.4(f)5	Failure of facility owner or operator to remedy any deterioration or malfunction immediately or on an appropriate schedule.	$5,000
7:26-9.4(f)6	Failure of facility owner or operator to record inspections in log or to retain required information for three years.	$2,000
7:26-9.4(g)	Failure of facility owner or operator to provide required classroom or on-the-job training for facility personnel.	$2,000
7:26-9.4(h)1	Failure of facility owner or operator to have adequate surveillance system, or adequate artificial or natural barrier or means to control entry.	$25,000
7:26-9.4(h)3	Failure of facility owner or operator to post signs meeting each requirement of N.J.A.C. 7:26-9.4(h)3.	$2,000
7:26-9.4(i)	Failure of facility owner or operator to keep written operating records meeting each requirement of N.J.A.C. 7:26-9.4(i)1 through 9.	$2,000
7:26-9.4(j)	Failure of facility owner or operator to prepare or submit two copies of annual report to Department by March 1 in accordance with N.J.A.C. 7:26-7.6(f)2.	$1,000
7:26-9.4(k)1	Failure of facility owner or operator to furnish upon request, or make available for inspection, any record.	$5,000
7:26-9.4(k)2	Failure of facility owner or operator to keep any record during course of any unresolved enforcement action or as requested by the Department.	$2,000
7:26-9.4(k)3	Failure of facility owner or operator to submit copy of waste disposal locations or quantities to Department or local land authority upon closure of facility.	$25,000

7:26-9.4(l)	Failure of facility owner or operator to provide, when requested, work space at the facility for a Department inspector and equipment overseeing monitors and analysis.	$1,000
7:26-9.4(n)	Failure of facility owner or operator to post a warning sign provided by the Department in work areas.	$1,000
7:26-9.5	Failure of facility owner or operator to provide facility with ground water monitoring system in accordance with N.J.A.C. 7:14A-6.	$50,000
7:26-9.6(a)	Failure of facility owner or operator to design, construct, maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents.	$5,000
7:26-9.6(b)	Failure of facility owner or operator to equip facility with emergency equipment.	$10,000
7:26-9.6(c)	Failure of facility owner or operator to test and maintain emergency equipment.	$5,000
7:26-9.6(d)	Failure of facility owner or operator to maintain access to communications or alarm system.	$5,000
7:26-9.6(e)	Failure of facility owner or operator to maintain sufficient aisle space for the unobstructed movement of personnel or equipment in an emergency.	$2,000
7:26-9.6(f)	Failure of facility owner or operator to make required arrangements with police or fire departments, emergency response contractors, equipment suppliers, or local hospitals, or to document any such authority's refusal of such arrangements.	$5,000
7:26-9.7(a)	Failure of facility owner or operator to have contingency plan designed to minimize hazards to human health and environment.	$10,000
7:26-9.7(b)	Failure of facility owner or operator to carry out provisions of the plan immediately if there is a fire, explosion or release.	$25,000
7:26-9.7(c)	Failure of contingency plan to describe actions to be taken to comply with N.J.A.C. 7:26-9.7(a), (b), or (e).	$5,000
7:26-9.7(d)	If facility has SPCC (40 CFR 112 or 151) or DPCC (N.J.A.C. 7:1E) plan, failure of facility owner or operator to amend that plan to incorporate hazardous waste management provisions.	$5,000
7:26-9.7(e)	Failure of contingency plan to describe arrangements agreed to by local police or fire departments, hospitals, contractors, or State or local emergency response teams.	$1,000
7:26-9.7(f)	Failure of contingency plan to list name, addresses or phone numbers of persons qualified to act as emergency coordinator.	$2,000
7:26-9.7(g)	Failure of contingency plan to list emergency equipment, updated as required, with its location, description, or capabilities specified.	$2,000
7:26-9.7(h)	Failure of contingency plan to include evacuation procedure for personnel including signals, evacuation routes or alternate evacuation routes.	$2,000
7:26-9.7(i)	Failure of contingency plan to be maintained at facility with a copy sent to local police or fire departments, hospitals or State or local emergency response teams.	$2,000
7:26-9.7(j)	Failure of facility owner or operator to review or amend contingency plan as necessary.	$2,000
7:26-9.7(k)	Failure of facility owner or operator to make emergency coordinator thoroughly familiar with plan or available at all times.	$5,000
7:26-9.7(l)1	Failure of emergency coordinator to identify character, source, amount or areal extent of discharged materials, or to activate alarms or communications systems, or to notify appropriate State or local agencies if necessary.	$5,000
7:26-9.7(l)2	Failure of emergency coordinator to assess possible hazards to human health and environment.	$5,000
7:26-9.7(l)3	Failure of emergency coordinator to notify appropriate emergency response agency in situation threatening health and environment.	$5,000
7:26-9.7(l)4	Failure of emergency coordinator to take reasonable measures to ensure hazards are minimized.	$5,000
7:26-9.7(l)5	Failure of the emergency coordinator to monitor leaks, pressure buildup, gas generation, or ruptures, if the facility stopped operating due to fire, explosion or discharge.	$5,000
7:26-9.7(l)6	Failure of emergency coordinator to provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or other material.	$5,000
7:26-9.7(l)7	Failure of emergency coordinator to insure that in affected area of facility no incompatible waste is treated, stored or disposed of until cleanup procedures are complete, or to insure that emergency equipment is cleaned and fit for intended use before operations are resumed.	$5,000
7:26-9.7(l)8	Failure of facility owner or operator to notify DEP and local authorities that facility is in compliance before operations are resumed.	$5,000
7:26-9.7(l)9	Failure of facility owner or operator to submit incident report to DEP within 15 days after the incident.	$2,000
7:26-9.8(b)	Failure of facility owner or operator to close in a manner that minimizes further maintenance and controls to the extent necessary to protect human health and environment.	$50,000
7:26-9.8(c)	Failure of facility owner or operator to have written closure plan with plan.	$25,000
7:26-9.8(c)	Failure of facility owner or operator to keep copy of closure plan, or any revisions, at the facility.	$1,000
7:26-9.8(f)	Failure of facility owner or operator to amend or request modification of closure plan within 60 days of change.	$2,000
7:26-9.8(g)	Failure of facility owner or operator to notify DEP 180 days prior to anticipated commencement of closure.	$10,000

7:26-9.8(h)1	Failure of facility owner or operator to submit closure plan pursuant to the provisions of N.J.A.C. 7:26-9.8(h).	$10,000
7:26-9.8(i)	Failure of facility owner or operator to treat, remove or dispose of waste within 90 days after final volume of wastes received or closure plan approved.	$10,000
7:26-9.8(j)	Failure of facility owner or operator to complete closure within 180 days after final volume of wastes received or closure plan approved.	$10,000
7:26-9.8(k)	Failure of facility owner or operator, when closure is complete, to have disposed of or decontaminated all facility equipment or structures.	$10,000
7:26-9.8(l)	Failure of facility owner or operator, when closure completed, to submit its own certification or that of an independent registered professional engineer to the Department.	$10,000
7:26-9.9(b)	Failure of facility owner or operator to continue proper post-closure care for 30 years and to comply with N.J.A.C. 7:26-9.9(b).	$10,000
7:26-9.9(e)	Failure of facility owner or operator to ensure that post-closure activity does not disturb final cover, liner(s), or containment or monitoring system.	$10,000
7:26-9.9(f)	Failure of facility owner or operator to perform post-closure care activities in accordance with post-closure plan.	$10,000
7:26-9.9(g)	Failure of facility owner or operator to have written post-closure plan.	$10,000
7:26-9.9(g)	Failure of facility owner or operator to keep copy of post-closure plan, or any revisions, at the facility.	$1,000
7:26-9.9(j)	Failure of facility owner or operator to amend or request modification of post-closure plan when necessary.	$2,000
7:26-9.9(k)	Failure of facility owner or operator to submit post-closure plan 180 days in advance of closure and pursuant to N.J.A.C. 7:26-9.9(k).	$10,000
7:26-9.9(m)	Failure of facility owner or operator, within 90 days after closure, to submit to local authorities and DEP detailed information on site.	$25,000
7:26-9.9(n)	Failure of facility owner or operator to comply with requirements for notice in deed to property.	$5,000
7:26-9.10(e)1	Failure of facility owner or operator to have a written estimate of the cost of closing facility.	$5,000
7:26-9.10(e)2	Failure of facility owner or operator to adjust closure cost estimate for inflation within 30 days after each anniversary of the preparation of the first closure cost estimate.	$5,000
7:26-9.10(e)3	Failure of facility owner or operator to revise the closure cost estimate whenever a change in the closure plan increases the cost of closure.	$5,000
7:26-9.10(e)4	Failure of facility owner or operator to keep the latest closure cost estimate and adjusted closure cost estimate at the facility.	$5,000
7:26-9.10(f)	Failure of facility owner or operator to establish financial assurance for closure of facility.	$10,000
7:26-9.11(c)1	Failure of facility owner or operator to have a written estimate of the cost of post-closure care.	$5,000
7:26-9.11(c)2	Failure of facility owner or operator to adjust cost estimate of post-closure care for inflation within 30 days after each anniversary of the preparation of the first post-closure care cost estimate.	$5,000
7:26-9.11(c)3	Failure of facility owner or operator to revise the post-closure care cost estimate whenever a change in the post-closure plan increases the cost of post-closure care.	$5,000
7:26-9.11(c)4	Failure of facility owner or operator to keep the latest post-closure care cost estimate at the facility.	$1,000
7:26-9.11(d)	Failure of facility owner or operator to establish financial assurance for post-closure care of facility.	$10,000
7:26-9.13(a)	Failure of facility owner or operator to meet liability requirements for sudden accidental occurrences.	$10,000
7:26-9.13(b)	Failure of facility owner or operator to meet the liability requirements for nonsudden occurrences.	$10,000
7:26-9.14(a)	Failure of facility owner or operator or guarantor to notify Department of commencement of proceeding under Title 11 of the Bankruptcy Code.	$25,000
7:26-9.14(b)	Failure of facility owner or operator to establish other financial assurances or liability coverage pursuant to N.J.A.C. 7:26-9.14(b).	$10,000

10. The violations of N.J.A.C. 7:26-10, Additional Operational and Design Standards for Hazardous Waste Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

RULE	RULE SUMMARY	BASE PENALTY
N.J.A.C.		
7:26-10.4(b)1	Failure of container storage area to have a containment system capable of collecting and holding spills, leaks and precipitation.	$5,000
7:26-10.4(b)1i	Failure of container storage area to have an underlying base free of cracks or gaps; sufficiently impervious with permeability rating no greater than 10^{-7} cm/sec.	$5,000
7:26-10.4(b)1ii	Failure of container storage area to consist of material compatible with material stored.	$5,000
7:26-10.4(b)1iii	Failure of container storage area to be sloped or designed and operated to drain efficiently, and for containers to be protected from contact with accumulated liquids.	$5,000
7:26-10.4(b)1iv	Failure of container storage area to have capacity to contain 10 percent of volume of all containers or volume of largest container whichever is greater and additional capacity for rainwater.	$10,000
7:26-10.4(b)2	Failure of container storage area to be protected from run-on, unless this requirement is waived.	$5,000

7:26-10.4(b)3	Failure of facility owner or operator to protect container storage area by removing accumulated precipitation from sump or collection area in a timely manner to prevent blockage or overflow.	$3,000
7:26-10.4(b)4	Failure of facility owner or operator to remove spilled or leaked waste daily from sump or collection area.	$5,000
7:26-10.4(c)1	Failure of facility owner or operator to remove all hazardous wastes and residues from containment system at closure or failure to remove or decontaminate remaining containers, liners, bases and soil containing or contaminated with hazardous waste.	$10,000
7:26-10.4(c)2	Failure of facility owner or operator at closure, to treat waste as a hazardous waste unless proven to be non-hazardous.	$10,000
7:26-10.5(b)1	Failure of tanks to have sufficient strength or to meet other specified requirements.	$10,000
7:26-10.5(b)2	Failure of facility owner or operator to have shell thickness reports at facility for life of the tank.	$1,000
7:26-10.5(c)1	Facility owner or operator placing waste or other material in tank incompatible with such material.	$10,000
7:26-10.5(c)2i	Failure of tank to have controls to prevent overfilling.	$2,000
7:26-10.5(c)2ii	Failure of facility owner or operator to maintain sufficient freeboard for uncovered tanks to prevent overtopping by wave or wind action or precipitation.	$2,000
7:26-10.5(d)1	Failure of above-ground tank storage areas to have a containment system capable of collecting and holding spills, leaks and precipitation.	$10,000
7:26-10.5(d)1i	Failure of above-ground tank storage area to have an underlying base free of cracks or gaps, or to be sufficiently impervious.	$5,000
7:26-10.5(d)1ii	Failure of containment system to consist of material compatible with material stored.	$10,000
7:26-10.5(d)1iii	Failure of containment system to be sloped or designed and operated to drain efficiently or to have tanks protected from contact with accumulated liquids.	$5,000
7:26-10.5(d)1iv	Failure of containment system to have capacity to contain 10 percent of volume of all tanks or volume of largest tank, whichever is greater, and additional capacity for rainwater.	$10,000
7:26-10.5(d)2	Failure of facility owner or operator to prevent run-on into containment system unless requirement waived.	$5,000
7:26-10.5(d)3	Failure of facility owner or operator to remove accumulated precipitation from sump or collection area in a timely manner.	$3,000
7:26-10.5(d)4	Failure of facility owner or operator to remove spilled or leaked waste daily from sump or collection area.	$5,000
7:26-10.5(e)1i	Failure of facility owner or operator to inspect overfilling control equipment each operating day.	$1,000
7:26-10.5(e)1ii	Failure of facility owner or operator to inspect data gathered from monitoring equipment each operating day.	$1,000
7:26-10.5(e)1iii	Failure of facility owner or operator to monitor monitoring equipment continuously during use if no automatic alarm.	$1,000
7:26-10.5(e)1iv	Failure of facility owner or operator to inspect level of waste in uncovered tanks each operating day.	$1,000
7:26-10.5(e)1v	Failure of facility owner or operator to inspect construction materials of aboveground portions of a tank for erosion or corrosion and leaking of pipes, seams or fixtures.	$2,000
7:26-10.5(e)1vi	Failure of facility owner or operator to inspect area immediately surrounding tank for signs of leakage.	$1,000
7:26-10.5(e)2	Failure of facility owner or operator to develop and implement schedule and procedure for assessing condition of tank.	$1,000
7:26-10.5(e)3	Failure of facility owner or operator to specify procedures to respond to tank spills or leakage as part of contingency plan.	$2,000
7:26-10.5(e)4	Failure of facility owner or operator to remedy any leak, crack or wall thinning or any equipment or process malfunction discovered during inspection.	$5,000
7:26-10.5(e)5	Failure of facility owner or operator to subject above ground tank to periodic integrity testing on appropriate schedule.	$1,000
7:26-10.5(e)6	Failure of facility owner or operator to subject underground tank to periodic integrity testing.	$2,000
7:26-10.5(h)1	Failure of facility owner or operator at closure to remove all hazardous wastes and residues from tanks, discharge control equipment, discharge confinement structures and the containment system.	$10,000
7:26-10.5(i)1	Failure of facility owner or operator to meet specific requirements before placing ignitable or reactive waste in a tank.	$5,000
7:26-10.5(i)2	Failure of facility owner or operator treating or storing ignitable or reactive wastes in covered tanks to comply with NFPA's buffer zone requirements for tanks.	$5,000
7:26-10.5(j)1	Failure of facility owner or operator to prevent placing incompatible wastes in the same tank.	$5,000
7:26-10.5(j)2	Failure of facility owner or operator to prevent the placing of hazardous waste in an unwashed tank which previously held incompatible waste.	$5,000
7:26-10.6(a)3	Failure of facility owner or operator to design and operate surface impoundments used as TSDs in such a way as to prevent discharges.	$50,000
7:26-10.6(a)4	Failure of facility owner or operator to obtain permit pursuant to N.J.A.C. 7:14A for surface impoundments.	$25,000
7:26-10.6(b)	Failure of surface impoundment used as TSD to have liner system that prevents migration of waste during active life of impoundment.	$50,000

7:26-10.6(b)1i	Failure of surface impoundment to have two liners installed to cover all surrounding earth likely to be in contact with the waste or leachate.	$50,000
7:26-10.6(b)1ii	Failure of primary liner synthetic material to be at least 30 mils thick to prevent flow of liquid through liner during active life of facility.	$25,000
7:26-10.6(b)1iii	Failure of secondary liner to consist of at least three feet of soil or synthetic material at least 30 mils thick to prevent liquid from flowing through during life of facility.	$25,000
7:26-10.6(b)1iv	Failure of facility owner or operator to place lower liner on foundation capable of providing support.	$50,000
7:26-10.6(b)1v	Failure of each liner to be suitable for purpose intended and compatible with waste placed in impoundment.	$50,000
7:26-10.6(b)1vi	Failure of liner to have properties that prevent failure due to pressure head, contact with the waste, climatic conditions, and stress of installation.	$50,000
7:26-10.6(b)1vii	Failure of bottom surface of secondary liner to be no less than five feet above seasonally high water table.	$50,000
7:26-10.6(b)1ix	Failure of surface impoundment to have secondary collection system between primary and secondary liner.	$50,000
7:26-10.6(b)1x	Failure of facility owner or operator to obtain certification of system by licensed engineer.	$10,000
7:26-10.6(c)1	Failure of surface impoundment to be designed and constructed to prevent discharge during active life.	$10,000
7:26-10.6(c)2	Failure of surface impoundment to be designed and constructed to prevent overtopping and to provide at least 60 centimeters of freeboard.	$5,000
7:26-10.6(c)3	Failure of surface impoundment to be designed with dikes.	$5,000
7:26-10.6(c)4	Failure of earthen dikes to have protective covers.	$5,000
7:26-10.6(c)5	Failure of surface impoundments to be designed in such a way that flow of waste into impoundment can be immediately shut off.	$25,000
7:26-10.6(c)6	Failure of surface impoundments to be designed with a run-on control system.	$5,000
7:26-10.6(c)7	Failure of facility owner or operator to obtain certification of system by licensed engineer.	$10,000
7:26-10.6(d)	Failure of owner or operator of surface impoundment to implement a groundwater monitoring system.	$10,000
7:26-10.6(e)1	Failure to maintain and operate surface impoundments to prevent overtopping, so as to comply with N.J.A.C. 7:26-10.6(c)2.	$5,000
7:26-10.6(e)2	Failure to operate surface impoundment with at least 60 centimeters of freeboard.	$5,000
7:26-10.6(e)3	Failure to maintain and operate earthen dikes in accordance with N.J.A.C. 7:26-10.6(c)3 or to keep free of burrowing animals.	$5,000
7:26-10.6(e)4	Failure to divert run-on away from surface impoundment.	$5,000
7:26-10.6(e)5	Failure to meet requirements for placing ignitable or reactive waste in surface impoundment.	$5,000
7:26-10.6(e)6	Failure to prevent incompatible wastes and/or materials from being placed in same surface impoundment.	$5,000
7:26-10.6(e)8	Failure of facility owner or operator of surface impoundment to conduct a groundwater decontamination program if groundwater is contaminated.	$25,000
7:26-10.6(e)9	Failure to operate surface impoundment in such a way that odors cannot be detected off-site.	$2,000
7:26-10.6(e)10	Failure of facility owner or operator to meet requirements before placing acute hazardous waste in surface impoundment.	$50,000
7:26-10.6(e)11	Failure of facility owner or operator to comply with each requirement of N.J.A.C. 7:26-10.6(e)11 before placing F020-series waste into surface impoundment.	$50,000
7:26-10.6(f)1	Failure of facility owner or operator to comply with inspection requirements for surface impoundments prior to and following construction.	$5,000
7:26-10.6(f)2	Failure of facility owner or operator to comply with inspection requirements during operation and closure of surface impoundments.	$2,000
7:26-10.6(f)3	Failure of facility owner or operator of surface impoundment to remedy deterioration or malfunction or condition of permit noncompliance.	$5,000
7:26-10.6(f)4	Failure of facility owner or operator of surface impoundment to have liners certified by registered professional engineer upon completion of construction.	$10,000
7:26-10.6(g)1	Failure of facility owner or operator to remove surface impoundment from service if liquid level suddenly drops or if dike leaks.	$25,000
7:26-10.6(g)2	Failure of facility owner or operator to comply with requirements necessary when surface impoundment is removed from service.	$25,000
7:26-10.6(g)3	Failure of facility owner or operator of surface impoundment to comply with requirements if liquid leaks into leak detection system.	$25,000
7:26-10.6(g)4	Failure of facility owner or operator to have requirements for surface impoundment in contingency plan.	$2,000
7:26-10.6(g)5	Failure of facility owner or operator to comply with requirements for placing surface impoundments back into service.	$25,000
7:26-10.6(g)6	Failure of facility owner or operator to close surface impoundment that is not being put back into service in accordance with (h)1 through 6.	$25,000
7:26-10.7(b)2	Failure of facility owner or operator, throughout normal operation of incinerator, to conduct sufficient waste analyses to verify compliance with permit.	$5,000
7:26-10.7(f)1	Failure of facility owner or operator to operate incinerator in accordance with operating requirements of permit.	$5,000

7:26-10.7(f)3	Feeding hazardous waste into the incinerator during start up and shut down when it is not operating within the conditions of operation in the permit.	$10,000
7:26-10.7(f)4i	Failure of facility owner or operator to keep combustion zone of incinerator totally sealed against fugitive emissions.	$3,000
7:26-10.7(f)4ii	Failure of facility owner or operator to maintain combustion zone of incinerator at lower pressure.	$3,000
7:26-10.7(f)4iii	Failure of owner or operator of incinerator to provide approved alternate means of control of fugitive emissions.	$3,000
7:26-10.7(f)5	Failure of owner or operator to operate incinerator with automatic feed cut off.	$3,000
7:26-10.7(f)6	Failure of facility owner or operator to cease operation of incinerator if change in waste feed or operating conditions exceed permit limits.	$5,000
7:26-10.7(f)7i	Failure of owner or operator of incinerator to fulfill all the conditions of N.J.A.C. 7:27-8 permit.	$5,000
7:26-10.7(f)7ii	Failure of all components connected or attached to the equipment or control apparatus of the incinerator to be functioning properly or to be used in accordance with N.J.A.C. 7:27-8 permit.	$5,000
7:26-10.7(h)1	Failure of owner or operator of incinerator to conduct the following monitoring while incinerating hazardous waste:	
7:26-10.7(h)1i	Combustion temperature, waste feed rate, auxiliary fuel feed rate, continuously;	$2,000
7:26-10.7(h)1ii	Carbon monoxide or oxygen, continuously;	$2,000
7:26-10.7(h)1iii	Upon request by DEP, sampling or analyses of waste or exhaust emissions.	$5,000
7:26-10.7(h)1iv	Upon request by DEP, monitoring on continuous basis of sulfur dioxide, total organics, opacity or other contaminant or parameter specified by the Department.	$5,000
7:26-10.7(h)2	Failure of facility owner or operator to completely inspect incinerator or associated equipment at least daily, or to check emergency waste feed cut-off controls or alarm systems daily.	$2,000
7:26-10.7(l)1	Failure of facility owner or operator to remove all hazardous waste and hazardous waste residues from incinerator site.	$10,000
7:26-10.7(l)2	Failure of owner or operator of incinerator to have scrubber water tested and approved by DEP before discharge to POTW or to navigable water.	$5,000
7:26-10.8(b)	Failure of hazardous waste landfill to be in compliance with N.J.A.C. 7:14A and applicable provisions of N.J.A.C. 7:26-13.	$5,000
7:26-10.8(d)3	Failure of owner or operator of hazardous waste landfill to establish gas monitoring system, gas venting program and to notify Department within 30 days of gas detection.	$10,000
7:26-10.8(e)1	Failure of owner or operator of hazardous waste landfill to manage run-on, runoff system after storm.	$5,000
7:26-10.8(e)2	Failure of owner or operator of hazardous waste landfill to collect run-off.	$5,000
7:26-10.8(e)3	Failure of owner or operator of hazardous waste landfill to remove, treat or dispose of leachate in accordance with N.J.A.C. 7:26 and N.J.A.C. 7:14A.	$10,000
7:26-10.8(e)4	Failure of owner or operator of hazardous waste landfill to prevent migration of pollutants into surface waters or groundwater.	$10,000
7:26-10.8(e)6i	Failure of facility owner or operator to cover hazardous waste landfill.	$10,000
7:26-10.8(e)6ii	Failure of owner or operator of hazardous waste landfill to apply daily or intermediate cover to landfill.	$5,000
7:26-10.8(e)7	Operating a hazardous waste landfill within 200 feet of property boundary.	$10,000
7:26-10.8(e)8	Failure of owner or operator of hazardous waste landfill to render ignitable, corrosive or reactive waste to no longer meet definition before placing in hazardous waste landfill.	$10,000
7:26-10.8(e)9	Owner or operator of hazardous waste landfill placing incompatible wastes and materials in same landfill cell.	$10,000
7:26-10.8(e)10	Owner or operator of hazardous waste landfill placing prohibited wastes in hazardous waste landfill:	
7:26-10.8(e)10i	Bulk liquids;	$10,000
7:26-10.8(e)10ii	Non-containerized liquid waste; or	$10,000
7:26-10.8(e)10iii	Waste containing free liquid;	$10,000
7:26-10.8(e)10iv	Acute hazardous waste (H) as listed in N.J.A.C. 7:26-8.15(a)5 and toxic waste (T) as listed in N.J.A.C. 7:26-15(a)6.	$10,000
7:26-10.8(e)11	Failure of owner or operator of hazardous waste landfill to meet criteria before placing containerized waste in landfill.	$10,000
7:26-10.8(e)12	Failure of owner or operator of hazardous waste landfill to comply with requirements for containers placed in landfill. Unless they are very small, such as an ampule, containers must be either:	
7:26-10.8(e)12i	At least 90 percent full when placed in landfill; or	$2,000
7:26-10.8(e)12ii	Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of landfill.	$2,000
7:26-10.8(e)13	Owner or operator of hazardous waste landfill placing hazardous waste in landfill without Department approval if liquid is detected in secondary collection system.	$25,000
7:26-10.8(e)13i	Failure of owner or operator to comply with any conditions contained in DEP authorization.	$2,000
7:26-10.8(e)14	Failure of owner or operator of hazardous waste landfill to pump out and properly dispose of leachate collected in secondary system.	$10,000
7:26-10.8(e)15	Failure of owner or operator of hazardous waste landfill to operate leachate collection system so that leachate depth over primary liner does not exceed one foot.	$5,000
7:26-10.8(e)17	Failure of owner or operator of hazardous waste landfill to prevent odors from being detected off-site.	$2,000

7:26-10.8(e)18	Failure of owner or operator of hazardous waste landfill to control insects and rodents.	$500
7:26-10.8(e)19	Failure of owner or operator of hazardous waste landfill to control dust.	$500
7:26-10.8(e)21	Failure of owner or operator of hazardous waste landfill to comply with requirements for F020, F021, F022, F023, F026, and F027 wastes.	$10,000
7:26-10.8(e)22	Failure of owner or operator of hazardous waste landfill to use test for determining presence of free liquids before accepting waste.	$5,000
7:26-10.8(g)1i	Failure of owner or operator of hazardous waste landfill to prevent overpacked drums to be made of material that will react with, or be decomposed or ignited by waste contained from being placed in landfill.	$5,000
7:26-10.8(g)1ii	Failure of owner or operator of hazardous waste landfill to tightly seal overpacked drums before placing in landfill.	$2,000
7:26-10.8(g)1iii	Failure of overpacked drums to meet DOT regulations being placed in landfill.	$2,000
7:26-10.8(g)2	Failure to meet requirements for inside containers of overpacked drums before placing in a hazardous waste landfill.	$5,000
7:26-10.8(g)2i	Failure of metal outer container to be full after packing with inside containers and absorbent material.	$5,000
7:26-10.8(g)2ii	Failure to have absorbent material that is not capable of reacting dangerously with, being decomposed by, or being ignited by the contents inside the containers in accordance with N.J.A.C. 7:26-9.4(e).	$5,000
7:26-10.8(g)3	Failure to prevent incompatible wastes from being placed in same outside container.	$5,000
7:26-10.8(g)4	Failure to meet requirements for overpacked reactive wastes before placing in hazardous waste landfill.	$5,000
7:26-10.8(h)2	Failure to meet inspection requirements for hazardous waste landfill.	$2,000

11. The violations of N.J.A.C. 7:26-11, Additional Requirements for Hazardous Waste Facilities Operating Under Existing Facility Status, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

RULE	RULE SUMMARY	BASE PENALTY
N.J.A.C.		
7:26-11.2(a)2	Failure of facility owner or operator to prevent hazardous wastes or treatment reagents from being placed in tank if they can cause its inner liner to rupture, leak, corrode, or otherwise fail.	$10,000
7:26-11.2(a)3	Failure of facility owner or operator to operate uncovered tanks to ensure at least two feet of freeboard, unless tank is equipped with a containment structure, drainage control system or diversion structure.	$2,000
7:26-11.2(a)4	Failure of facility owner or operator to provide stop in flow mechanism where hazardous waste is continuously fed into tank.	$2,000
7:26-11.2(b)1	Failure of facility owner or operator to provide additional waste analyses or documentation when substantially different waste is stored in tank.	$5,000
7:26-11.2(b)1i	Failure to conduct waste analyses and trial treatment or storage tests; or	$5,000
7:26-11.2(b)1ii	Failure to obtain written, documented information on similar storage or treatment of similar waste under similar operating conditions to show that all applicable requirements are met.	$5,000
7:26-11.2(c)1	Failure of facility owner or operator to inspect tank discharge control equipment at least daily.	$1,000
7:26-11.2(c)2	Failure of facility owner or operator to inspect data gathered from tank monitoring equipment at least daily.	$1,000
7:26-11.2(c)3	Failure of facility owner or operator to inspect level of waste in tank at least daily during operation.	$1,000
7:26-11.2(c)4	Failure of facility owner or operator to inspect construction materials of the tank for corrosion, leaks, etc. at least weekly.	$2,000
7:26-11.2(c)5	Failure of facility owner or operator to inspect construction materials and areas surrounding confinement structures weekly.	$1,000
7:26-11.2(d)	Failure of facility owner or operator at closure, to remove all hazardous waste and residues from tanks, discharge control equipment, etc;	$10,000
7:26-11.2(e)1	Failure of facility owner or operator to meet requirements before ignitable or reactive waste is placed in a tank.	$5,000
7:26-11.2(e)2	Failure of facility owner or operator to comply with NFPA requirements for buffer zones for treatment or storage in covered tanks.	$5,000
7:26-11.2(f)	Failure of facility owner or operator to comply with requirements for incompatible wastes.	$5,000
7:26-11.2(f)1	Failure of owner or operator to prevent the placing of incompatible wastes, or wastes and materials, in same tank, except in compliance with N.J.A.C. 7:26-9.4(e)2.	$5,000
7:26-11.2(f)2	Failure of owner or operator to prevent the placing of hazardous waste in an unwashed tank which previously held incompatible waste or material, except in compliance with N.J.A.C. 7:26-9.4(e)2.	$5,000
7:26-11.3(a)	Failure of surface impoundments to have at least two feet of freeboard.	$2,000
7:26-11.3(b)	Failure to provide protective cover for earthen dikes of grass, shale, or rock.	$5,000
7:26-11.3(c)	Failure to meet waste analyses and trial test requirements for surface impoundments.	$5,000
7:26-11.3(d)1	Failure of owner or operator to inspect freeboard level at least once each operating day.	$1,000
7:26-11.3(d)2	Failure of owner or operator to inspect the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.	$2,000

7:26-11.3(f)	Facility owner or operator placing ignitable or hazardous waste in surface impoundment without meeting requirements of N.J.A.C. 7:26-11.3(f).	$5,000
7:26-11.3(g)	Facility owner or operator placing incompatible wastes in same surface impoundment without compliance with N.J.A.C. 7:26-9.4(e)2.	$5,000
7:26-11.4(a)2	Failure to conduct collection and handling of run-off as a solid waste.	$5,000
7:26-11.4(a)3	Failure to prevent wind dispersion of hazardous waste.	$10,000
7:26-11.4(a)4	Failure to prohibit disposal or disposal operation within 200 feet of property boundary.	$10,000
7:26-11.4(a)5	Failure of owner or operator of hazardous waste landfill to meet the requirement of daily or intermediate cover in accordance with N.J.A.C. 7:26-2.	$5,000
7:26-11.4(a)6	Failure of owner or operator of hazardous waste landfill to treat ignitable or reactive waste before placing in landfill.	$10,000
7:26-11.4(a)7	Placing incompatible wastes in same hazardous waste landfill cell.	$10,000
7:26-11.4(a)8	Placing bulk or non-containerized liquids in landfill without treating liner and liquids and stabilizing liquids.	$10,000
7:26-11.4(a)9	Placing containerized liquids in hazardous waste landfill.	$10,000
7:26-11.4(a)10	Failure to have container, unless very small, such as an ampule, to be either:	
7:26-11.4(a)10i	At least 90 percent full when placed in landfill; or	$2,000
7:26-11.4(a)10ii	Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of landfill.	$2,000
7:26-11.4(a)11	Failure of owner or operator of hazardous waste landfill to cease disposal if liquid detected in secondary collection system unless authorization from Department for continued disposal has been obtained.	$25,000
7:26-11.4(b)1	Failure of facility owner or operator to maintain in operating record details of location and dimensions of each hazardous waste landfill cell.	$10,000
7:26-11.4(b)2	Failure of facility owner or operator to maintain in operating record the contents of each hazardous waste landfill cell and location of each hazardous waste type.	$2,000
7:26-11.4(c)1	Failure of owner or operator of hazardous waste landfill to place final cover over landfill as required by Department.	$50,000
7:26-11.4(c)4i	Failue of owner or operator of a hazardous waste landfill to maintain the function and integrity of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events.	$5,000
7:26-11.4(c)4ii	Failure of facility owner or operator to maintain and monitor the leachate collection, removal, and treatment system to prevent excess accumulation of leachate in the system.	$10,000
7:26-11.4(c)4iii	Failure of facility owner or operator to maintain and monitor the gas collection and control system to control the vertical and horizontal escape of gases.	$10,000
7:26-11.4(c)4iv	Failure of facility owner or operator to protect and maintain surveyed benchmarks used in complying with N.J.A.C. 7:26-10.4(b)1.	$5,000
7:26-11.4(c)4v	Failure of facility owner or operator to restrict access to the hazardous waste landfill as appropriate for its post-closure use.	$10,000
7:26-11.4(c)4vi	Failure of facility owner or operator to maintain and monitor groundwater monitoring system as per N.J.A.C. 7:26-9.5 or N.J.A.C. 7:14A-6.	$25,000
7:26-11.4(c)4vii	Failure of facility owner or operator to prevent run-on and run-off from eroding or otherwise damaging the final cover.	$3,000
7:26-11.5(b)1	Failure of facility owner or operator, before adding hazardous waste, to bring incinerator to normal operating conditions.	$10,000
7:26-11.5(c)1	Failure of facility owner or operator to meet waste analysis requirements for hazardous waste incinerators.	$10,000
7:26-11.5(d)1	Failure of facility owner or operator when incinerating hazardous waste to monitor instruments relating to combustion and emission control at least every 15 minutes.	$2,000
7:26-11.5(d)2	Failure of facility owner or operator when incinerating hazardous waste to observe stack plume at least hourly.	$2,000
7:26-11.5(d)3	Failure of facility owner or operator to inspect complete incinerator and associated equipment for leaks, spills, etc. at least daily.	$2,000
7:26-11.5(e)	Failure of facility owner or operator to remove all hazardous wastes and residues from the incinerator at closure.	$10,000
7:26-11.6(b)	Failure of facility owner or operator to bring thermal treatment process to normal operating conditions before adding hazardous waste.	$10,000
7:26-11.6(c)	Failure of facility owner or operator to meet waste analysis requirements for thermal treatment of hazardous waste.	$10,000
7:26-11.6(d)1	Failure of facility owner or operator when thermally treating hazardous waste to monitor and inspect instruments relating to temperature and emission control at least every 15 minutes.	$2,000
7:26-11.6(d)2	Failure of facility owner or operator when thermally treating hazardous waste to monitor and inspect stack plume, at least hourly.	$2,000
7:26-11.6(d)3	Failure of facility owner or operator when thermally treating hazardous waste to monitor and inspect process equipment and associated equipment for leaks, spills, etc; at least daily.	$2,000
7:26-11.6(e)	Failure of facility owner or operator at closure to remove all hazardous waste and residues from thermal treatment process.	$10,000

7:26-11.6(f)	Failure of facility owner or operator to prevent open burning and detonation of waste explosives and highly reactive wastes too close to property line or the open burning of any other hazardous waste.	$5,000
7:26-11.7(a)2	Failure of facility owner or operator to prevent placing of hazardous wastes in treatment process if they could cause process to leak, corrode or fail.	$5,000
7:26-11.7(a)3	Failure of facility owner or operator to provide continuously fed treatment process with a mechanism to stop inflow.	$3,000
7:26-11.7(b)	Failure of facility owner or operator to provide additions to waste analysis required by N.J.A.C. 7:26-9.4(b) for substantially different waste.	$5,000
7:26-11.7(c)1	Failure of facility owner or operator to monitor and inspect discharge control and safety equipment at least once each operating day.	$2,000
7:26-11.7(c)2	Failure of facility owner or operator to gather data from monitoring equipment at least once each operating day.	$2,000
7:26-11.7(c)3	Failure of facility owner or operator to inspect construction materials at least weekly.	$2,000
7:26-11.7(c)4	Failure of facility owner or operator to monitor and inspect discharge confinement structures for erosion, leakage, etc. at least weekly.	$1,000
7:26-11.7(d)	Failure of facility owner or operator to remove all hazardous waste and residues at closure.	$10,000
7:26-11.7(e)	Failure of facility owner or operator to prevent placing ignitable or reactive waste in treatment process unless it is treated according to 7:26-11.7(e).	$10,000
7:26-11.7(f)1	Failure of facility owner or operator to prevent the placing of incompatible wastes, which are not in compliance with N.J.A.C. 7:26-9.4(e), in the treatment process.	$5,000
7:26-11.7(f)2	Failure of facility owner or operator to prevent the placing of hazardous waste in an unwashed tank which previously held incompatible waste or material, except in compliance with N.J.A.C. 7:26-9.4(e)2.	$5,000

12. The violations of N.J.A.C. 7:26-12, Hazardous Waste Facility Permit Requirements, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

RULE	RULE SUMMARY	BASE PENALTY
N.J.A.C.		
7:26-12.1(a)	Construction, installation, modification or operation of hazardous waste facility, without submitting Part A or Part B of permit application.	$50,000
7:26-12.3(b)1	Treating, storing or disposing of hazardous waste types not specified in Part A.	$25,000
7:26-12.3(b)2	Employing processes not specified in Part A application.	$50,000
7:26-12.3(b)3	Exceeding design capacities or operational limits specified in Part A of the permit application.	$50,000
7:26-12.3(c)4	Change in ownership or operational control without receiving approval by Department.	$50,000
7:26-12.3(c)5	Facility owner or operator making changes to existing facility, prior to final disposition of permit application, which amount to reconstruction of facility.	$50,000
7:26-12.3(g)	Failure of facility owner or operator, no longer eligible to continue operation prior to final disposition of permit application, to commence closure immediately.	$10,000
7:26-12.4(a)4	Failure of permittee to take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with permit.	$10,000
7:26-12.4(a)8	Failure of permittee to furnish to the Department within a reasonable time, any information which the Department may request and copies of records required to be kept.	$10,000
7:26-12.4(a)9ii	Failure of permittee to allow an authorized representative of the Department to enter and have access to and copy any records that shall be kept under the conditions of the permit.	$5,000
7:26-12.4(a)9iv	Failure of permittee to allow authorized representative of the Department to enter and to sample or monitor any substances or parameters at any location.	$25,000
7:26-12.4(a)10i	Failure to retain records with each piece of required information regarding monitoring sampling and measurements.	$5,000
7:26-12.4(a)11	Failure to sign and certify all applications, reports or information submitted to DEP.	$2,000
7:26-12.4(a)12i	Failure of permittee to give notice to DEP as soon as possible of any planned physical alterations or additions to permitted facility.	$5,000
7:26-12.4(a)12ii	Failure to give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.	$5,000
7:26-12.4(a)12iv	Failure to report monitoring results at intervals specified in permit.	$5,000
7:26-12.4(a)12v	Failure to submit compliance reports on interim or final requirements in any compliance schedule within 14 days after schedule date.	$1,000
7:26-12.4(a)12vi	Failure to report any noncompliance which may endanger health or environment, orally within 24 hours or in writing within five days.	$10,000
7:26-12.4(a) 12vii	Failure to report all instances of noncompliance not reported under N.J.A.C. 7:26-12.4(a)12iv, v or vi, at time monitoring reports submitted.	$2,000
7:26-12.4(a) 12viii	Failure of permittee who becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or report to the Department, to promptly submit such facts or information.	$2,000

7:26-12.4(a)14	Failure of permittee to maintain records from each required monitoring well, and for disposal facilities for post closure care period.	$5,000
7:26-12.4(a)15	Permittee commencing treatment, storage, or disposal of hazardous waste at new or modified portion of facility, without certifying that facility has been constructed or modified in accordance with permit, or without Department inspection.	$50,000
7:26-12.4(a)16i	Failure to report, orally within 24 hours, information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.	$25,000
7:26-12.4(a)16ii	Failure to report, orally within 24 hours, information concerning a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste facility which could threaten the environment or human health outside the facility.	$10,000
7:26-12.5(b)	Failure of permittee to give Department required notification in advance of any proposed change of ownership or operational control.	$50,000

7:26-5.5 Civil administrative penalty determination—discretionary

(a) Notwithstanding N.J.A.C. 7:26-5.4, the Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act. ***The Department will assess penalties under this section in lieu of N.J.A.C. 7:26-5.4 when the violation is not listed under N.J.A.C. 7:26-5.4 or when, because of the specific circumstances of a violation, the Department in its discretion believes that the penalty amount under N.J.A.C. 7:26-5.4 would be too low to provide a sufficient deterrent effect as required by the Act.***

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) Notwithstanding N.J.A.C. 7:26-5.4, and unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:26-5.6 through N.J.A.C. 7:26-5.8, the Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	$40,000-$50,000	$30,000-$40,000	$15,000-$25,000
	Moderate	$30,000-$40,000	$10,000-$20,000	$3,000-$6,000
	Minor	$15,000-$25,000	$3,000-$6,000	$1,000-$2,500

(g) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which:

i. Has caused or has the potential to cause serious harm to human health or the environment; or

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

i. Has caused or has the potential to cause substantial harm to human health or the environment; or

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. Minor seriousness shall apply to any violation not included in (g)1 or 2 above.

(h) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may, in its discretion, adjust the amount determined pursuant to (f), (g) and (h) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (f) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and/or severity of violation(s) by the violator;

3. The measures taken by the violator to mitigate the effects of the current violation or prevent future violations;

4. The deterrent effect of the penalty; and/or

5. Other specific circumstances of the violator or the violation.

7:26-5.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written

correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the mid-point of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be in an amount of not more than $50,000 nor less than $40,000 per act or omission; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of $1,000 per violation.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and/or severity of violation(s) by the violator;

3. The measures taken by the violator to mitigate the effects of the current violation or prevent future violations;

4. The deterrent effect of the penalty; and/or

5. Other specific circumstances of the violator or the violation.

7:26-5.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section at the mid-point of the following ranges except as adjusted pursuant to (d) below as follows:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the Act, the civil administrative penalty shall be in an amount of not more than $30,000 nor less than $20,000 per violation; and

2. For any other refusal, inhibition, or prohibition of immediate lawful entry and inspection the civil administrative penalty shall be in an amount of not more than $5,000 nor less than $3,000 per violation.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and/or severity of violation(s) by the violator;

3. The measures taken by the violator to mitigate the effects of the current violation or prevent future violations;

4. The deterrent effect of the penalty; and/or

5. Other specific circumstances of the violator or the violation.

7:26-5.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) For violations described in this section, the amount of the civil administrative penalty shall be equal to the unpaid fee, up to a maximum of $50,000 per violation.

7:26-5.9 Civil administrative penalty for economic benefit

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, in its discretion include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act. If the total economic benefit was derived from more than one violation, the total economic benefit may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $50,000 per violation.

7:26-5.10 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this subchapter are declared to be severable.

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

State Sanitary Code—Chapter III Veterinary Public Health

Readoption: N.J.A.C. 8:23

Proposed: October 16, 1989 at 21 N.J.R. 3274(a).
Adopted: December 11, 1989 by the Public Health Council, Milton Prystowsky, M.D., Chairperson.
Filed: December 13, 1989 as R.1990 d.20, **without change.**

Authority: N.J.S.A. 26:1A-7.

Effective Date: December 13, 1989.
Expiration Date: December 13, 1994.

Summary of Public Comments and Agency Responses:

A public hearing concerning subchapters 1, 2, and 4 of the State Sanitary Code, Chapter III Veterinary Public Health was held on November 13, 1989 at the Health and Agriculture Building, Commissioner's Conference Room, 8th Floor, John Fitch Plaza, Trenton, NJ 08625 at 1 P.M. No members of the public presented comment at the public hearing. The Department received one written comment during the public comment period ending November 15, 1989.

COMMENT: The Department of Agriculture maintains a program of milk and herd testing surveillance which is part of a nationwide state and Federal program. Hence, N.J.A.C. 8:23-1.6, Herd testing program, is unnecessary and should be deleted.

RESPONSE: The Department of Health concurs with this comment and will delete this section of N.J.A.C. 8:23, when revisions to the N.J.A.C. 8:23-3, Shelters, Kennels, Pet Shops, and Pounds rules are completed. Due to inspectional exigencies, it is imperative that N.J.A.C. 8:23 be readopted without change.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:23.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Plan Review Fee Schedule

Readoption: N.J.A.C. 8:31-31

Proposed: August 21, 1989 at 21 N.J.R. 2447(a).
Adopted: December 19, 1989 by David L. Knowlton, Acting Commissioner, Department of Health, (with approval of the Health Care Administration Board).
Filed: December 21, 1989 as R. 1990 d.39, **without change.**

Authority: N.J.S.A. 26:2H-5.

Effective Date: January 1, 1990.
Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption follows.

SUBCHAPTER 1. UNIFORM CONSTRUCTION CODE PLAN REVIEW FEE

8:31-31.1 Architectural and mechanical plan review fee

(a) The Department of Health shall charge a fee to sponsors of health facility construction projects for the review of architectural and mechanical plans for such projects. The fee shall be 20 percent of the local municipality fees established by N.J.A.C. 5:23-4.20, multiplied by 3.

(b) All checks for fees shall be made payable to "Treasurer, State of New Jersey" and forwarded to:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, N.J. 08625

(c) No health care facility shall be issued a building permit until the plans for that facility have been reviewed, approved and stamped by the office of Health Facilities Construction.

(b)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Standard Costs per Case

Adopted Amendment: N.J.A.C. 8:31B-3.22

Proposed: October 16, 1989 at 21 N.J.R. 3275(a).
Adopted: December 20, 1989 by David Knowlton, Acting Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: December 21, 1989 as R.1990, d.36, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: January 16, 1990.
Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENTER: Department of Human Servies, Division of Medical Assistance and Health Services

COMMENT: The Division of Medical Assistance and Health Services supports the current proposal to retain the existing 11 Labor Market Areas because it will allow for continuation of the current hospital reimbursement methodology and practice.

RESPONSE: The Department appreciates this comment.

COMMENTER: Cathedral Healthcare System

COMMENT: The Department is asked to state its commitment to the industry to review the issue of labor market areas.

RESPONSE: Such a review was suggested by the Labor Market Area Subcommittee of the Joint Hospital Payer Task Force last year, and will be on the Department's 1991 agenda if it continues to be a high priority of the Task Force.

COMMENTER: Morrisy & Company, Inc.

COMMENT: Existing Labor Market Areas should not be used for rate setting in 1990 and subsequent years because no minimum number of hospitals is stipulated, and recent economic and social changes may not be captured in the current designations.

RESPONSE: For some of the same reasons cited by the commenter, the LMA Subcommittee of the Joint Hospital Payer Task Force attempted to redefine LMAs for 1990 rate setting. Largely because of the complexity of the problem and the extensive research needed to substantiate proposed changes, the group could not agree on a solution. It therefore recommended that no changes be made until the Department has been able to model the impact of all proposed changes on all hospitals in the State.

The Department agrees with the Subcommittee's recommendation and proposes to continue using existing LMAs because they reflect the best information currently available. While it is true that two areas now contain only four, rather than five hospitals as in the past, this development is not considered a significant change; both the Sussex-Warren and Atlantic City-Capy May LMAs had reductions in the number of hospitals due to mergers, so numbers of facilities did not change so much as organizational patterns.

Additional Comments Received on Portions of the Reimbursement System Not Specifically Addressed by the Proposed Amendments to N.J.A.C. 8:31B-3.22, 3.24, 3.27 and 3.51

COMMENTERS: Robert Wood Johnson/University Hospital, Norris, McLaughlin & Marcus on behalf of University Health System of New Jersey, St. Francis Medical Center, Deborah Heart and Lung Center

COMMENT: The current indirect cost reimbursement methodology is flawed because: (1) it creates inequitable windfalls and shortfalls; and (2) it does not appropriately reimburse hospitals with high teaching loads, high uncompensated care, and specialty status. The Department of Health's analysis on the 1989 indirect cost reimbursement methodology was not submitted to the industry for comment.

RESPONSE: A broad-based committee of the Joint Hospital Payer Task Force reviewed the current indirect cost reimbursement methodology and recommended to the Commissioner that no change be proposed for the 1990 rate year. Since no regulation has been proposed, industry comment on the analysis would not be pertinent to the proposed regulations; however, any hospital may obtain a copy of the Department's analysis by contacting the Department.

COMMENTERS: St. Francis Medical Center, Robert Wood Johnson/University Hospital, University Health System, Elizabeth General Medical Center

COMMENT: Corridors protecting hospitals from reimbursement changes from 1988 to 1989 should not be removed.

RESPONSE: Current regulations indicate that the 1988-1989 corridor will not be continued into 1990. In the absence of additional significant regulation change, no change has been proposed to this rule since it was intended to be a transitional device.

COMMENTER: New Jersey Hospital Association

COMMENT: The negative financial impact of indirect cost reimbursement should be limited to −1% of each hospital's Preliminary Cost Base.

RESPONSE: As noted above, there is no proposed change to the rule which indicates that corridors should not be continued into 1990. Additionally, the Department would not propose a unilateral corridor. The Department's position on corridors remains that any mechanism should provide downside protection coupled with limitation of gains.

COMMENTERS: St. Joseph's Hospital and Medical Center, New Jersey Hospital Association, Healthcare Financial Management Association, University Health Systems

COMMENT: Reimbursement of indirect costs allocated to outpatient services should be volume variable.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTERS: St. Joseph's Hospital and Medical Center, University Health Systems, Jersey Shore Medical Center

COMMENT: GROUPER 7 may be an insufficient measure of Severity of Illness (SOI). A continuing examination is needed to improve the reimbursement system's recognition of SOI.

RESPONSE: The Task Force considered what SOI adjustment would be optimal for 1990 rates and recommended use of the Yale refined DRGs through GROUPER #7. A study group is evaluating the use of additional SOI systems to further adjust rates in future years.

COMMENTERS: St. Joseph's Hospital and Medical Center
COMMENT: The GME methodology for direct patient care costs does not properly identify true teaching costs nor appropriately distribute reimbursement.
RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.
COMMENTERS: Healthcare Financial Management and New Jersey Hospital Association
COMMENT: The current operating margin is insufficient.
RESPONSE: There is no proposal to change this section of the rules.
COMMENTER: University Health Systems
COMMENT: 1989 rates for AIDS patients and neonatal patients are flawed.
RESPONSE: The Department is reviewing these rates and will issue an addendum to the 1989 final reconciliation methodology to improve them. There is no proposal to change this section of the rules.
COMMENTER: New Jersey Hospital Association
COMMENT: The 1990 Final reconciliation methodology should be issued concurrent with implementation of 1990 rates.
RESPONSE: The Department's goal is to issue this methodology as soon as possible; however, this does not relate to any of the proposed amendments.
COMMENTER: New Jersey Hospital Association
COMMENTS: (1) The system should provide a process to expedite final reconciliation adjustments within the rate year; (2) the prompt payment discount schedule should be revised; and (3) the system should provide a trim point efficiency incentive.
RESPONSE: The Department is reviewing these proposals; however, they do not relate to any of the proposed amendments.
COMMENTERS: Health Care Finance Authority, Robert Wood Johnson/University Hospital, Norris, McLaughlin & Marcus on behalf of University Health Systems, Jersey City Medical Center
COMMENT: The length of stay adjustment should be continued.
RESPONSE: As part of the 1989 Final Reconciliation methodology presented to the Hospital Rate Setting Commission, the Department has proposed deletion of this adjustment, although hospitals will be made whole for length of stay adjustments through 1988. The length of stay adjustment is not established by regulation and there is no current proposal on this matter.
COMMENTER: St. Joseph's Medical Center
COMMENT: Issuance of 1990 proposed schedules of rates prior to final action on the regulations inhibits due process for comment and necessitates response to rates prior to final adoption of regulations.
RESPONSE: N.J.A.C. 8:31B-3.9 of the Procedural and Methodological Regulations permits the Commissioner to issue the rates on a conditional basis subject to final adoption of pertinent regulations. Such a step was taken in order to meet the Commissioner's commitment that the industry would be able to implement its 1990 rates on time. If final action on the proposed regulatory changes results in changes to these rates, the Department will re-issue them and hospitals' timeframes for response will begin again.
COMMENTER: Besler & Co.
COMMENT: Regulations regarding reimbursement for transfer patient should be reviewed for consistency with the rate-setting and reconciliation methodologies.
RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.
COMMENTER: Jersey City Medical Center
COMMENT: The Medicare shortfall calculation should be estimated early in the year to provide for a more moderate impact on the mark-up factor.
RESPONSE: The Department will present its recommendation for the 1990 Medicare shortfall calculation to the Hospital Rate Setting Commission in December. No regulatory change on this matter is proposed.
COMMENTER: Health Care Finance Authority
COMMENT: 1987-1989 coding changes should be addressed.
RESPONSE: Adjustment for these changes is not regulatory but is being addressed through the final reconciliation methodology.
COMMENTER: Health Care Finance Authority
COMMENT: The industry requires clarification of the mechanics of implementation of the capital reimbursement regulations.
RESPONSE: The mechanics of the new capital reimbursement calculations will be addressed through a subcommittee of the Joint Hospital Payer Task Force and released for informational purposes shortly. No regulatory change is involved.

Full text of the adoption follows.

8:31B-3.22 Standard costs per case review
(a)-(c) (No change.)
(d) Determination of labor equalization factor to calculate Statewide standard costs per case:
1. (No change.)
2. Labor Market areas recognized in 1988 rate setting at N.J.A.C. 8:31B-3.22(d)3 will be used for rate setting in subsequent years.
3.-7. (No change.)
(e) (No change.)

(a)

HOSPITAL REIMBURSEMENT

Reasonable Direct Cost Per Case Emergency Room Patients

Adopted Amendment: N.J.A.C. 8:31B-3.23

Proposed: October 16, 1989 at 21 N.J.R. 3275(b).
Adopted By: David L. Knowlton, Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).
Filed: December 21, 1989 as R.1990 d.38, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1).

Effective Date: January 16, 1990.
Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:
GENERAL COMMENTS
COMMENT: We are supportive of this proposal as long as approved revenues for these visits match the resource consumption costs at each level established.
COMMENTER: St. Joseph's Hospital and Medical Center
RESPONSE: Matching of revenues and resource consumption would be the Department's intent.
COMMENT: Provided both primary care rates and non-primary care rates have been developed in the same fashion as the existing singular emergency room rate, there should be no economic impact to the institution other than administrative cost of compliance.
COMMENTERS: Healthcare Financial Management Association (HFMA), Jersey Shore Medical Center
RESPONSE: The Department concurs that this would be the case as it gathers data in the short run. In the long run, revenues will be affected with changes in the ratio of non-urgent to urgent care.
COMMENT: A significant amount of additional effort and cost will be required due to the amendment including: (1) training/hiring of staff; (2) education of public; (3) triage of patients; and (4) implementation of CPT coding.
COMMENTERS: Morrisy & Company, Inc.; Robert Wood Johnson University Hospital
RESPONSE: The reasonable costs associated with compliance with the new provisions in the rule will be treated as a legal change and thus are appealable under any option.
COMMENT: Hospitals should be allowed to appeal any (excessive) administrative costs incurred in complying with this regulation.
COMMENTERS: Besler & Company, Inc.; Healthcare Financial Management Association (HFMA); Jersey Shore Medical Center; Raritan Bay Medical Center; Wayne General Hospital
RESPONSE: Bona fide new costs attributed to this pricing system are appealable as a legal change.
COMMENT: A multilevel pricing system for emergency room care can be accomplished. To the extent that uncompensated care patients tend to utilize primary care services, there will be a lessening of the charges submitted to the Uncompensated Care Trust Fund which would comply with legislative intent.
COMMENTER: HFMA
RESPONSE: The Department concurs.
COMMENT: The intent of the legislation was to discourage inappropriate emergency room visits, and to reduce the financial impact of

these services on the Uncompensated Care Trust Fund. Contrary to this desired outcome, the proposed amendment significantly reduces the amount that can be charged for primary care and, therefore, encourages increased utilization. Given the higher overhead costs in hospitals versus physicians' offices, this increase in utilization would undoubtedly have a negative financial impact on the hospitals.

COMMENTER: Morrisy & Company, Inc.

RESPONSE: The language of the legislation requires that non-emergent services be reimbursed at a level "appropriate for primary care." It is only reasonable to conclude that this means at a level lower than that of other emergency room services.

COMMENT: The proposed new rule does not address any constraints on the physician portion of an emergency room charge, or the emergency room physician's charge, if separate. The purpose of such constraints is to prevent physicians from competitively setting rates for services that are unfavorable to hospital-based emergency rooms, yet favorable to Urgicenters, which they also own and operate.

In other words, if a hospital can demonstrate that it is being negatively impacted by a competitive transfer of emergency room volume to competing Urgicenters, the hospital's indirect cost per emergency room visit should be protected, since the hospital's costs are being based on fewer units of service.

COMMENTER: Chilton Memorial Hospital

RESPONSE: This amendment does not affect reimbursement of hospital indirect costs.

COMMENT: The New Jersey Chapter of the American College of Emergency Physicians can well appreciate the Department of Health's attempt to implement the regulation; however we do not believe that Proposed New Rule: N.J.A.C. 8:31B-3.23(e), as formulated, is an appropriate or logical means of accomplishing that objective.

COMMENTER: American College of Emergency Physicians—New Jersey Chapter

RESPONSE: The Department believes that this amendment appropriately implements the law.

COMMENT: The Division of Medical Assistance and Health Services supports the proposed amendment. Implementation of this two tiered payment mechanism should reduce the uncompensated care burden to payers. As you are aware, reimbursement for outpatient hospital services rendered to Medicaid eligible recipients has been in accord with Medicare principles of reimbursement since January 1, 1987 when the outpatient Medicare waiver was lost. We support the concept of the multi-tiered emergency room pricing system.

COMMENTER: Division of Medical Assistance and Health Services, N.J. Department of Human Services

RESPONSE: The Department is appreciative of the support.

COMMENTS ON THE SUMMARY

COMMENT: The Summary contains an inaccurate statement. The CPT is published solely by the American Medical Association (AMA). The American College of Emergency Physicians is not involved in its publication.

COMMENTERS: American College of Emergency Physicians—New Jersey Chapter, Robert Wood Johnson University Hospital

RESPONSE: The Department appreciates this corrective information.

COMMENT: The most recent CPT (1989) delineates six levels of service, not five.

COMMENTER: American College of Emergency Physicians—New Jersey Chapter

RESPONSE: The Department appreciates this corrective information.

COMMENTS ON THE SOCIAL IMPACT STATEMENT

COMMENT: A proposed reason for the rule is to "give hospitals an incentive to more appropriately triage the persons who present in the emergency room." Triage them to where? Is the Department of Health setting up some alternative healthcare delivery system which has not yet been disclosed? Does the Department of Health expect physicians to accept these "triaged" persons as office visits on a large scale? Even after the State has reneged upon the full scope of reimbursement increases originally committed for just such physician services?

COMMENTER: American College of Emergency Physicians—New Jersey Chapter

RESPONSE: The Department is not establishing an alternative healthcare system. The Department is aware, however, that there are hospitals which do triage patients from the emergency room to their outpatient clinics or to family health centers. The Department hopes that this amendment will encourage hospitals to develop more appropriate patient care sites.

COMMENT: Apparently the Department of Health wants to encourage hospitals to "appropriately triage" patients, presumably away from the Emergency Department. But in the very next sentence is the statement that "uninsured, self-pay individuals will pay a more reasonable price for primary care services received in the emergency room." Given the broad accessibility to, and unlimited availability of, medical services in Emergency Departments this proposed rule obviously sets up a diabolical tension between hospitals and patients. But the Department of Health has attempted to address this tension by including the following in the proposed Rule: "At no time will hospitals be permitted to refuse the provision of emergency room services to any patient not requiring the services on an emergency basis." This inclusion is superfluous since hospitals are mandated by federal law to evaluate all patients presenting to an Emergency Department. However, its presence in the proposed rule does bring into question the Department of Health's actual intent in proposing the Rule as structured, since the Department indicates that it wants hospitals to "appropriately triage" "Primary Care" patients and yet specifically prohibits hospitals from utilizing an efficacious means of effecting that end.

COMMENTER: American College of Emergency Physicians—New Jersey Chapter

RESPONSE: The amendment simply underscores the language of the enabling Trust Fund legislation, that is, "Nothing in this section shall be construed to permit a hospital to refuse to provide emergency room services to a patient who does not require the services on an emergency basis." However, the Department is also directed to ensure that a reasonable cost is paid for those services. These directives are the impetus for this amendment.

COMMENT ON THE ECONOMIC IMPACT STATEMENT

COMMENT: The statement that the uninsured and the Uncompensated Care Trust Fund are being "overcharged" for care in the Emergency Department is inflammatory and substantively arguable. If the point which was intended to be made, was that a visit to the Emergency Department costs more than a visit to a physician's office then that should have been so stated. But it is also vividly pertinent that acute care hospitals are mandated by N.J. State law to provide non-scheduled medical care 24 hours a day, 7 days a week, 52 weeks a year. Also, hospital Emergency Departments are prohibited by State law from refusing medical care to anyone who enters seeking such care, regardless of the patient's ability to pay. Hospitals are further mandated by federal law to evaluate all patients who enter the Emergency Department. In short, if a hospital Emergency Department could function in a manner similar to that of a private physician's office then perhaps it would be more reasonable to make simplistic comparisons of the cost of medical care between these two delivery systems.

COMMENTER: American College of Emergency Physicians—New Jersey Chapter

RESPONSE: The statement being referenced here is prefaced by the phrase, "Given the tendency of the uninsured population to utilize emergency rooms for primary care services." In other words, the paragraph in the Economic Impact statement discusses the use of the emergency room by persons without insurance for nonemergent services and the resulting financial burden this practice places on the Uncompensated Care Trust Fund. Because of the current reimbursement system, it may be more appropriate to indicate that the Trust Fund has "overpaid" for primary care delivered in the emergency room setting. This refinement will ensure that the Trust Fund pays a more appropriate primary care rate.

COMMENTS ON THE REGULATORY LANGUAGE

N.J.A.C. 8:31B-3.23(e)1

COMMENT: Does the Department anticipate any loss in volume due to the establishment of these rates?

COMMENTER: Besler & Company, Inc.

RESPONSE: The Department of Health has no information to suggest either a positive or negative answer to this question.

COMMENT: The increasing number of "medi-merges" has put pressure on hospitals to suppress their emergency room changes to control volume. Will the hospital maintain control over the establishment of charges in the emergency room, or will the charge structure be determined by the direct rates?

COMMENTER: Besler & Company, Inc.

RESPONSE: The amendment provides for the establishment of two rates to replace a single emergency room rate. The hospital will retain control over the establishment of charges in the emergency room.

COMMENT: Will the Department entertain appeals for losses in reimbursement due to decreases in the ancillary emergency room volumes?

COMMENTER: Besler & Company, Inc.

RESPONSE: Hospital appeal rights are defined under N.J.A.C. 8:31B-3.51.

N.J.A.C. 8:31B-3.23(e)3

COMMENT: The constraint on the primary care rate in that it cannot exceed 50% of the rate which would have been in place under the methodology in effect prior to January 1, 1990, should be adjusted to assure that the total statutory revenue calculated at final reconciliation would be the same under either the proposed or current methodology. Mercer Medical Center is in agreement that all attempts should be made at reducing the amount of uncompensated care; however, we feel that the primary care rate should not result in loss of revenue to hospitals.

COMMENTER: Mercer Medical Center

RESPONSE: The amendment would prevent such a loss in revenue in the short run. In the long run, ratios of non-urgent to urgent care will determine revenue levels.

COMMENT: UHS objects to the unclear intention and possibly undesirable impact of the limit on the primary care rate to 50 percent of the current 1989 methodology. It must be noted that in 1989, the Department of Health calculated the rate only for the Direct Patient Care (DPC) portion of an average outpatient emergency room visit. Hospitals then established the commensurate charge for emergency room visits. A charge limited to one-half of the DPC rate is undesirable. Such a low charge would encourage inappropriate utilization of a hospital's emergency room. It would also necessitate a tremendous shift of charges to the non-primary care patient. A more appropriate limit on the primary care rate would be 50 percent of the average outpatient emergency room rate using the proposed methodology.

COMMENTER: University Health System of New Jersey (UHS)/ Norris, McLaughlin & Marcus

RESPONSE: The amendment does not limit the charge to one-half of the previous DPC rate. It limits the new primary care rate to one-half the previous DPC rate. Hospitals retain discretion over their charges in the emergency room. However, it would be reasonable to expect the primary care charge would not be more than half of the emergency room charge used under the previous methodology in many hospitals.

N.J.A.C. 8:31B-3.23(e)5

COMMENT: The use of one month's data, Febraury 1990, to set the rates may not be representative of the year's case mix. A possibility may be to use the year of 1989 for data collection.

COMMENTERS: Raritan Bay Medical Center, Robert Wood Johnson University Hospital

RESPONSE: The Department is cognizant that one month's data may not be representative of an entire year's case mix. However, the regulations provide a uniform, interim methodology for calculating the primary and nonprimary care rates until a sufficient amount of annual data is available. Use of 1989 data is not feasible since a multi-level emergency room pricing system was not being used during the year by all acute care hospitals.

COMMENT: In order for the Hospital to fully understand the data requirements and to comment on such, the Hospital requests that a sample collection form be issued with an appropriate comment period. It is currently unclear as to the impact the forms will have on the Medical Record department. In order to formulate a response we need to be provided with the specific data requirements.

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: The Department has provided the required comment period for the amendment prior to release of the data form because of the legislation's requirement for implementation. The data collection forms will consist of simple, clearly identified columns of requested information. Department staff will be available to respond to questions by the hospital staff concerning the forms.

N.J.A.C. 8:31B-3.23(e)6

COMMENT: The new rates will be issued for July 1, 1990, but will be made retroactive to January 1, 1990. Again, this causes hospitals to have two systems in place during the year, and creates more confusion in an already complicated environment.

COMMENTER: Raritan Bay Medical Center

RESPONSE: The amendment requires hospitals to implement two-level (at least) charging on January 1, 1990 because the law requires this pricing system be implemented by that date. Those charges will be used for the setting of rates. When the new rates are issued for July 1, 1990, the rates will be made retroactive to the beginning of the year—January 1, 1990. The hospitals may then adjust their charges to be consistent with those rates.

COMMENT: Since rates will be retrospective to January 1, 1990, any cross sub-penalties in the emergency room should be waived as part of the implementation of this regulation. A waiver of cross sub-penalties should also take place due to the difficulty in monitoring this major adjustment to a hospital's charge structure.

COMMENTERS: Besler & Compnay, Inc.; Jersey Shore Medical Center

RESPONSE: Since hospitals have the ability to appeal cross sub-penalties to the Hospital Rate Setting Commission, the Department of Health does not see a need to grant a blanket waiver for this.

COMMENT: UHS objects to the subsection which states that the new rates will be retroactive to January 1, 1990. If this clause relates to approved reconciliation revenues, it conflicts with subsection (9) which defines the reconciliation process. If the clause relates to billed rates and means that all emergency room patients from January through June must be rebilled, it is an onerous and expensive requirement without benefit to the system. UHS recommends that this clause be deleted.

COMMENTER: University Health System of New Jersey (UHS)/ Norris, McLaughlin & Marcus

RESPONSE: Hospitals will not be required to rebill patients. The clause concerning retroactivity does not conflict with paragraph (e)9. The rates set retroactively are necessary for the first step of the reconciliation process, and are not intended to be billed retroactively.

COMMENT: The Department needs to clarify whether or not CPT-4 codes will be required on the Hospital's Emergency bill.

COMMENTER: St. Peter's Medical Center

RESPONSE: The amendment does not require placing CPT-4 codes on the hospital's emergency bill.

COMMENT: Will the CPT codes be required to bill third party payers on 1/1/90?

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: The individual payers may decide if they will require CPT codes for billing purposes.

N.J.A.C. 8:31B-3.23(e)7

COMMENT: The regulation proposes that both the primary care rate and the non-primary care rate be approved by the Commission. However, the regulation does not state when the rates are to be approved—prior to the implementation?

COMMENTER: Besler & Company, Inc.

RESPONSE: The proposed amendment calls for the primary care and nonprimary care rates to be calculated from one month's data submitted to the Department of Health by April 1, 1990. According to the amendment, new rates will be issued for July 1, 1990 and made retroactive to January 1, 1990. January 1, 1990 is the date when hospitals will be required to begin (at least) a two level charging system in the emergency room. This means the Department will present the methodology for calculating the rates to the Hospital Rate Setting Commission after April 1, 1990 but prior to June 1, 1990 (that is, at least 30 days before the new rates are issued).

N.J.A.C. 8:31B-3.23(e)8

COMMENT: The CPT codebook does not define "Primary Care" which means that a future definition is necessary. Proper implementation and analysis of the impact of this regulation can not be completed without knowing in advance how to categorize different cases.

COMMENTER: University Health System of New Jersey (UHS)/ Norris, McLaughlin & Marcus

RESPONSE: The regulatory language indicates that primary care will be defined as those categories described in the Physicians' Current Procedural Terminology (1989 edition) under "Emergency Department Services" as either minimal service, brief service or limited service.

COMMENT: Assignment of the emergency room CPT codes is dependent upon identification of levels of care or service. Determining levels of care has been the purview of physicians or utilization personnel, and should remain so in order to accurately collect the information desired. In addition, the Department should be aware that CPT codes are subject to change each year, which will further complicate training, data collection and data comparisons.

COMMENTER: Medical Record Association of New Jersey

RESPONSE: The amendment does not represent an attempt by the Department to undermine the work of physicians or utilization personnel in emergency rooms. Rather, the Department wants to ensure that services provided in the emergency room are reimbursed appropriately. The

Department is aware that CPT codes are subject to annual revisions and will monitor this situation.

COMMENT: It seems inappropriate and inconsistent to utilize CPT levels of service to define "Primary Care" or "Nonprimary Care". There is not, nor is there meant to be, any linkage between CPT levels and definitions of "Primary" or "Nonprimary" medical care. Primary Care is one of those well known nebulous terms, i.e., it is sometimes difficult to define but everyone knows it when they see it. If a patient were to visit his/her family physician in the physician's office, and if the physician performed a routine complete physical examination, this activity could be delineated as comprehensive under CPT. Of course, using the definition scheme proposed by the N.J. Department of Health, such an examination would be considered "Nonprimary Care". And yet, most healthcare professionals and even non-professionals would consider such a medical service as the very essence of primary care.

Perhaps it might be instructive and useful for the Department to be cognizant of the definition of a bona fide emergency which ACEP's Board of Directors adopted on October 23, 1982:

"We feel that a patient has made an appropriate visit to an emergency department when: An unforeseen condition of a pathophysiological or psychological nature develops which a prudent layperson, possessing an average knowledge of health and medicine, would judge to require urgent and unscheduled medical attention most likely available, after consideration of possible alternatives, in a hospital emergency department. (A list of 13 conditions included in this definition followed, but will not be printed here.)

COMMENTER: American College of Emergency Physicians—New Jersey Chapter

RESPONSE: The ACEP's Board of Directors' definition it not related to resource consumption which makes its use difficult from a reimbursement standpoint. The CPT codes are issued by the American Medical Association and they are used by Medicare for reimbursing physicians. Using the CPT level of service codes to define primary care offers, in the Department's estimation, the most widely used and consistently identifiable method for defining primary care visits in the emergency room.

COMMENT: The separation of cases based on primary and non-primary services is not an equitable way of reimbursing for resource consumption. The diagnosis, and not the service level, should drive the payment for the services because some very complex diagnosis fall under the primary category. Under this methodology, reimbursement for such cases would be limited.

COMMENTER: University Health System of New Jersey (UHS)/ Norris, McLaughlin & Marcus

RESPONSE: There are diagnosis-driven outpatient reimbursement systems, but they are either developmental or experimental, and would require an overhaul of the existing outpatient billing system. The CPT codes are issued by the American Medical Association and they are used by Medicare for reimbursing physicians. Using the CPT level of service codes to define primary care offers, in the Department's estimation, the most widely used and consistently identifiable method for defining primary care visits in the emergency room. In addition, at the end of the year, a hospital's approved revenue for services provided to emergency room patients not admitted as inpatients shall be reconciled to the amount that would have been reimbursed under the methodology in effect prior to January 1, 1990.

COMMENT: The proposal to reimburse nonemergent services (primary care) received by emergency room patients has a basic flaw. Nowhere in the regulations or CPT codebook is primary care defined. The proposed regulations assume that patients in levels one (minimal), two (brief) and three (limited) are utilizing the Emergency Department for primary care. This is not always the case. The CPT describes levels of service pertaining to the effort involved in caring for the patient. There is no relationship in the CPT between levels of service and the corresponding diagnosis being of a primary or non-primary nature.

The Hospital supports a multi-tiered pricing scheme in the Emergency Department based on resource consumption. To use primary care as a payment criteria, the diagnosis rather than service levels, should be utilized. This would involve additional resources to accomplish. A primary care diagnosis reimbursement scheme may not be reflective of actual resources consumed.

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: The amendment does not assume which patients are utilizing the emergency room. Primary care is defined in the amendment as those categories described in the Physicians' Current Procedural Terminology (1989 edition) under "Emergency Department Services" as either minimal service, brief service or limited service. Those CPT Service level codes do relate to resource use—at least as far as use of some professional resource.

COMMENT: Since the desired outcome of the proposed method is to establish a "primary" care and a "non-primary" care rate, we question the necessity of collecting six codes (new patient minimal, brief, limited and established patient minimal, brief, limited) when these six codes will later be collapsed into the "primary" category. Collecting the information desired could be simply accomplished by the emergency room physician designating either "primary" or "non-primary" for each ER visit. Clerical staff could translate this designation into a simple code (such as "01" and "02") for data collection.

COMMENTER: Medical Record Association of New Jersey/North Jersey Physicians Review

RESPONSE: It is appropriate to collapse the six codes (new patient minimal, brief, limited and established patient minimal, brief, limited) into one category as long as the hospital stays within the parameters for primary care and non-primary care that are defined by the rules.

COMMENT: The Department's proposal requires that emergency room patients be classified using Current Procedural Terminology coding (CPT) into either one of three "primary care" categories or three "non-primary care" categories as follows:

Primary Care	Non-Primary Care
90500—Minimal	90515—Intermediate
90505—Brief	90517—Extended
90510—Limited	90520—Comprehensive

The proposal provides that patients classified "into a primary care category will be based on levels one (minimal), two (brief) and three (limited) of the five emergency department levels of service . . ." (The Department's reference to "five" levels of service should be corrected to "six".)

The term "primary" care is confusing as referenced in this regulatory proposal. Primary is defined in Tabers' Cyclopedic Medical Dictionary as "first in time or order," which, applied to the emergency room setting, would seem to indicate the more acutely ill patient or life-threatening situation. The Association recommends that the confusing "primary," "non-primary" care references be deleted from the proposed regulations in favor of "non-acute" and "acute" care, respectively. The terms acute and non-acute are more clearly understood by both clinicians and the hospital's support staff and more closely relate to the six "levels of service" definitions contained in the 1989 Current Procedural Terminology, Fourth Edition (CPT-4) Manual.

Of the six categories, only one, the minimal level of service definition, is void of the reference to the "acute" condition of patients being categorized. Therefore, the Association recommends that basic emergency room care be identified as "non-acute" care, be representative of only those patients categorized into the "minimal" level of service, and be reimbursed at a "non-acute" care payment rate. Patients classified into the remaining five levels of service categories (brief, limited, intermediate, extended, or comprehensive) should be considered to have received "acute" care and these cases should be paid at the "acute care emergency room payment rate."

COMMENTER: New Jersey Hospital Association

RESPONSE: The CPT codes are issued by the American Medical Association and they are used by Medicare for reimbursing physicians. Using the CPT level of service codes to define primary care offers, in the Department's estimation, the most widely used and consistently identifiable method for defining primary care visits in the emergency room. In addition, physician input played a part in the Department's decision of which CPT service levels to include in the definition of primary care.

COMMENT: What type of data collection will the Hospital be required to implement?

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: As stated in paragraph (e)5 of the amendment, the Department issued forms by December 15, 1989 to collect the data needed to calculate the primary care and non-primary care rates. Determining those rates requires knowledge of the estimated number of primary care visits and the estimated number of non-primary care visits in the emergency room, respectively. The CPT codes will be used as a standard definition of what is meant by the terms "primary care visits" and "non-primary care visits."

COMMENT: In what form will this data be required to be reported to the Department of Health for reconciliation and audit purposes?

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: A year end summary (for 1990) of data similar to that supplied for February 1990 will be necessary for reconciliation and audit purposes.

COMMENT: In addition to these methodological issues, it should not be overlooked that a "Primary Care" case in an inner city environment is not necessarily the same as in a suburban hospital. Many of the "Primary Care" cases in the average suburban hospital are related to the availability of services from the patient's private physician and the diagnosis is not complicated by any untreated illness. The inner city case most likely will require the treatment of multiple diagnosis in one event to bring the patient to a healthy status. Also, all the inner city non-health complications (drugs, indigence, malnutrition, etc.) aggravate the resource consumption of the "Primary Care" cases and should not be limited by a methodological calculation.

COMMENTER: University Health System of New Jersey (UHS)/ Norris, McLaughlin & Marcus

RESPONSE: The Department of Health does not foresee this amendment having an adverse effect on inner city hospitals. This is due to the amendment's specifying that, in at least 1990, a hospital's approved revenue for services provided to emergency room patients not admitted as inpatients shall be reconciled to the amount that would have been reimbursed under the methodology in effect prior to January 1, 1990.

N.J.A.C. 8:31B-3.23(e)9

COMMENT: A multi-level pricing system for emergency room care can be accomplished, provided both primary care and non-primary care visits are reconciled to an appropriate rate at Final Reconciliation which has been developed in the same fashion as the existing singular emergency room rate.

COMMENTER: Wayne General Hospital

RESPONSE: The Department appreciates this concurrence.

COMMENT: The Association understands that this regulatory proposal will accomplish the goal of reducing Uncompensated Care Trust Fund expenditures to the extent patient accounts paid through the Trust Fund represent minimal, non-acute care. The Association also understands that there will be no direct negative payment impact on hospitals as a result of this proposal, since the hospital "approved revenue for these services shall be adjusted at reconciliation to the amount that would have been reimbursed under the methodology in effect prior to January 1, 1990".

COMMENTER: New Jersey Hospital Association

RESPONSE: The Department agrees with this interpretation for 1990.

COMMENT: Robert Wood Johnson University Hospital supports a multi-level pricing system for emergency room care. We also support the Department of Health's intent to reconcile hospitals to a single rate as was done in the past for 1990. We believe this should be done in all future years. The multi-level pricing system complies with legislative intent thereby reducing charges submitted to the Uncompensated Care Trust Fund while the single rate reconciliation ensures no economic impact to the hospital.

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: The Department appreciates the expression of support. Reconciliation in future years will be dependent on future developments in this area.

COMMENT: The budget neutrality component of this proposed regulation should be extended to beyond the first year of implementation of this regulation. Since hospitals will not be notified of the new rates until July 1990, it may not be possible to make any changes necessary to adjust operations to reflect the new method of reimbursement. The Department of Health should therefore change the language in Section 9 of the proposed regulations to reflect the adjustment period needed.

COMMENTER: Cathedral Healthcare System, Inc.

RESPONSE: The Department does not feel it appropriate to commit to "budget neutrality" in future years. The methodology for 1990 will, however, remain in effect until the Department adopts an alternative regulation.

N.J.A.C. 8:31B-3.23(e)10

COMMENT: One of our criticisms of this regulation is: the amendment specifically prohibits hospitals from refusing to provide services to any patient for the reason that such patients do not require services on an emergency basis.

COMMENTER: Morrisy & Company, Inc.

RESPONSE: The amendment has been revised to reflect the language of Section 12 of the Trust Fund legislation (P.L. 1989, c.1; N.J.S.A. 26:2H-18.4 et seq.).

COMMENT: Hospitals can suggest alternative sites of care, if available, but if a patient wishes to remain in the hospital's emergency room he/she must be treated there. Hospitals should not be penalized in those situations.

Additionally, the Hospital is unclear from the proposed regulations as to what type of documentation, on the part of the hospital, will be required. For example, will we be required to document the suggestion of alternative care and if applicable, the refusal? The Hospital believes this additional documentation is burdensome and unreasonable.

COMMENTER: Robert Wood Johnson University Hospital

RESPONSE: There is no requirement in the amendment for such documentation.

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

8:31B-3.23 Reasonable direct cost per case

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

(e) Emergency room patients:

1. The Department will propose and the Commission approve a primary care rate and a nonprimary care rate for hospital emergency rooms. These rates are intended to reimburse for direct patient care costs of emergency room patients not admitted as inpatients. Costs of emergency room patients admitted as inpatients are allocated to the inpatients rates, and will not be reimbursed through this methodology. Indirect costs will not be addressed through this methodology and will continue to be reimbursed in the customary manner.

2. The base year emergency room cost of the hospital (for patients not admitted) which will be used to establish rates will be specific to the institution and the two rates will be determined by the following formulas:

Step 1: $TC = (P)(C_1) + (E)(C_2)$

where
- TC = the total hospital specific emergency room charges to patients not admitted;
- P = the number of estimated primary care visits in the emergency room;
- C_1 = charge per primary care visit;
- E = the estimated number of nonprimary care visits in the emergency room of patients not admitted; and
- C_2 = charge per nonprimary care visit.

The sum of the estimated number of primary care visits in the emergency room, P, and the estimated number of nonprimary visits, E, is specific to the institution and equals the total annual visits to the hospital's emergency room of patients not admitted. The total visits will be an actual, hospital specific number taken from the most recent, reliable data reported by the hospital. The number of estimated primary care visits (P) and the estimated number of nonprimary care visits (E) will be determined by the Department using one month's data supplied by the hospital.

Step 2:
- C/TC = cost/charge ratio
- $(C/TC)(C_1)$ = primary care direct patient care rate
- $(C/TC)(C_2)$ = nonprimary care direct patient care rate

where
- C = base year direct patient care cost of patients not admitted.

3. A constraint on the primary care rate is that it cannot exceed 50 percent of the emergency room rate that would have been set under the methodology in effect prior to January 1, 1990.

4. Any increase in the nonprimary care rate may not be solely for the purpose of replacing the revenue differential resulting from the reduced rates for primary care provided in the emergency room, but must reflect the emergent nature of the service as well.

5. The primary care rate and the nonprimary care rate represent the hospital specific average prices for services rendered in the emergency room. During 1990, both rates will be calculated from one month's (February 1990) data provided to the Department by April 1, 1990 from the State's acute care hospitals. The Department will issue forms by December 15, 1989 to collect the data needed for the calculations. The Department will refine the rate calculations annual-

ly to reflect changes, or more accurate data, regarding the primary/nonprimary patient mix.

6. New rates will be issued for July 1, 1990, which will cover services rendered since January 1, 1990. In addition, hospitals will implement two-level (at least) charging on January 1, 1990, using CPT criteria. These charges will be part of the basis for setting of rates.

7. The primary care rate and the nonprimary care rate must meet Commission approval.

8. After January 1, 1990, all emergency room patients shall be coded by the hospital as needing primary care or non-primary care. Primary care shall be defined as those categories described in the *[Physician's]* ***Physicians'*** Current Procedural Terminology as either minimal service, brief service or limited service. Non-primary care shall be defined as those categories described in the *[Physician's]* ***Physicians'*** Current Procedural Terminology as either intermediate service, extended service, or comprehensive service. (See *[Physician's]* ***Physicians'*** Current Procedural Terminology, American Medical Association, P.O. Box 10946, Chicago, Illinois 60610.)

9. Emergency room visits of patients not admitted as inpatients shall be reconciled to the rates set as described in this section. In addition, however, in at least 1990, hospital approved revenue for these services shall be adjusted at reconciliation to the amount that would have been reimbursed under the methodology in effect prior to January 1, 1990. The Department shall propose a different methodology for reconciliation of 1991 emergency room visits if it deems it appropriate.

10. Hospitals shall not refuse to provide ***emergency room*** services to any patient for the reason that such patient does not require services on an emergency basis.

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Capital Facilities

Adopted Amendment: N.J.A.C. 8:31B-3.27

Proposed: October 15, 1989 at 21 N.J.R. 3278(a).

Adopted: December 20, 1989 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: December 21, 1989 as R.1990 d.40, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: January 16, 1990.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENTER: Department of Human Services, Division of Medical Assistance and Health Services

COMMENT: The commenter supports this amendment as a necessary change since the Dodge Report, which was previously used in the CFFA calculations, is no longer published.

RESPONSE: The Department concurs.

COMMENTERS: Besler & Company, Inc., Healthcare Financial Management Association, Jersey Shore Medical Center, Morrisy & Company, Inc., New Jersey Hospital Association, Raritan Bay Medical Center, Wayne General Hospital

COMMENT: The detailed, clearly defined method to be used by the Division of Health Facilities for calculating CFFA should be supplied to the industry for review and comment.

RESPONSE: The Department concurs. The Division of Health Facilities computed a State average square foot cost of $175.00. This is based on contract cost agreements for work commencing with 1989, for: inpatient beds, ICU/CCU suites; O.R./same day surgery; radiology, emergency; laboratory; mechanical areas; education/auditorium; administrative/lobby; other support services; labor/delivery; LDRP; and storage. These costs ranged from $100.00 per square foot to $350.00 per square foot. Average square foot per bed of 1,200 multiplied by $175.00 results in $210,000 average cost per bed.

COMMENTERS: Cathedral Healthcare System, Morrisy & Company, Inc., New Jersey Hospital Association

COMMENT: The Department should seek an alternative, outside source for the calculation index such as the R.S. Means index.

Using Division of Health Facilities information ". . . is inappropriate because it gives the Department of Health the authority to develop factors as well as the responsibility of utilizing them for rate setting purposes." (Morrisy & Company, Inc.). An independent source should be responsible for developing construction costs per bed.

RESPONSE: The R.S. Means index was considered when choosing a replacement for the Dodge Report. It was not suitable because the costs per square foot are reported in quartile and median statistics, whereas the Dodge Report measure was mean cost per square foot. Statistically, a mean is not equivalent to a median. The Dodge Report mean was compared to the R.S. Means Index median for several past rate years. The median score was considerably different from the mean. Substituting the R.S. Means index median score for the Dodge Report mean would have resulted in significant changes in CFFA reimbursement. The Department rejected this alternative because a component of Option 1 capital reimbursement would have been impacted. Several hospitals which chose this option presumably considered the CFFA calculation in making this option selection.

No other independent construction index was identified. The Department is generally opposed to use of the New Jersey specific indexes in the rate-setting process. However, in this case no useable alternative currently exists. Should another index become available in the future, the Department would be most interested in evaluating its appropriateness for use in the CFFA calculation.

Additional Comments Received on Portions of the Reimbursement System Not Specifically Addressed by the Proposed Amendments to N.J.A.C. 8:31B-3.22, 3.24, 3.27 and 3.51

COMMENTERS: Robert Wood Johnson/University Hospital, Norris, McLaughlin & Marcus on behalf of University Health System of New Jersey, St. Francis Medical Center, Deborah Heart and Lung Center

COMMENT: The current indirect cost reimbursement methodology is flawed because: (1) it creates inequitable windfalls and shortfalls; and (2) it does not appropriately reimburse hospitals with high teaching loads, high uncompensated care, and specialty status. The Department of Health's analysis on the 1989 indirect cost reimbursement methodology was not submitted to the industry for comment.

RESPONSE: A broad-based committee of the Joint Hospital Payer Task Force reviewed the current indirect cost reimbursement methodology and recommended to the Commissioner that no change be proposed for the 1990 rate year. Since no regulation has been proposed, industry comment on the analysis would not be pertinent to the proposed regulations; however, any hospital may obtain a copy of the Department's analysis by contacting the Department.

COMMENTERS: St. Francis Medical Center, Robert Wood Johnson/University Hospital, University Health System, Elizabeth General Medical Center

COMMENT: Corridors protecting hospitals from reimbursement changes from 1988 to 1989 should not be removed.

RESPONSE: Current regulations indicate that the 1988-1989 corridor will not be continued into 1990. In the absence of additional significant

regulation change, no change has been proposed to this rule since it was intended to be a transitional device.

COMMENTER: New Jersey Hospital Association

COMMENT: The negative financial impact of indirect cost reimbursement should be limited to -1% of each hospital's Preliminary Cost Base.

RESPONSE: As noted above, there is no proposed change to the rule which indicates that corridors should not be continued into 1990. Additionally, the Department would not propose a unilateral corridor. The Department's position on corridors remains that any mechanism should provide downside protection coupled with limitation of gains.

COMMENTERS: St. Joseph's Hospital and Medical Center, New Jersey Hospital Association, Healthcare Financial Management Association, University Health Systems

COMMENT: Reimbursement of indirect costs allocated to outpatient services should be volume variable.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTERS: St. Joseph's Hospital and Medical Center, University Health Systems, Jersey Shore Medical Center

COMMENT: GROUPER 7 may be an insufficient measure of Severity of Illness (SOI). A continuing examination is needed to improve the reimbursement system's recognition of SOI.

RESPONSE: The Task Force considered what SOI adjustment would be optimal for 1990 rates and recommended use of the Yale refined DRGs through GROUPER #7. A study group is evaluating the use of additional SOI systems to further adjust rates in future years.

COMMENTER: St. Joseph's Hospital and Medical Center

COMMENT: The GME methodology for direct patient care costs does not properly identify true teaching costs nor appropriately distribute reimbursement.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTERS: Healthcare Financial Management and New Jersey Hospital Association

COMMENT: The current operating margin is insufficient.

RESPONSE: There is no proposal to change this section of the rules.

COMMENTER: University Health Systems

COMMENT: 1989 rates for AIDS patients and neonatal patients are flawed.

RESPONSE: The Department is reviewing these rates and will issue an addendum to the 1989 final reconciliation methodology to improve them. There is no proposal to change this section of the rules.

COMMENTER: New Jersey Hospital Association

COMMENT: The 1990 Final reconciliation methodology should be issued concurrent with implementation of 1990 rates.

RESPONSE: The Department's goal is to issue this methodology as soon as possible; however, this does not relate to any of the proposed amendments.

COMMENTER: New Jersey Hospital Association

COMMENTS: (1) The system should provide a process to expedite final reconciliation adjustments within the rate year; (2) the prompt payment discount schedule should be revised; and (3) the system should provide a trim point efficiency incentive.

RESPONSE: The Department is reviewing these proposals; however, they do not relate to any of the proposed amendments.

COMMENTERS: Health Care Finance Authority, Robert Wood Johnson/University Hospital, Norris, McLaughlin & Marcus on behalf of University Health Systems, Jersey City Medical Center

COMMENT: The length of stay adjustment should be continued.

RESPONSE: As part of the 1989 Final Reconciliation methodology presented to the Hospital Rate Setting Commission, the Department has proposed deletion of this adjustment, although hospitals will be made whole for length of stay adjustments through 1988. The length of stay adjustment is not established by regulation and there is no current proposal on this matter.

COMMENTER: St. Joseph's Medical Center

COMMENT: Issuance of 1990 proposed schedules of rates prior to final action on the regulations inhibits due process for comment and necessitates response to rates prior to final adoption of regulations.

RESPONSE: N.J.A.C. 8:31B-3.9 of the Procedural and Methodological Regulations permits the Commissioner to issue the rates on a conditional basis subject to final adoption of pertinent regulations. Such a step was taken in order to meet the Commissioner's commitment that the industry would be able to implement its 1990 rates on time. If final action on the proposed regulatory changes results in changes to these rates, the Department will re-issue them and hospitals' timeframes for response will begin again.

COMMENTER: Besler & Co.

COMMENT: Regulations regarding reimbursement for transfer patients should be reviewed for consistency with the rate-setting and reconciliation methodologies.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTER: Jersey City Medical Center

COMMENT: The Medicare shortfall calculation should be estimated early in the year to provide for a more moderate impact on the mark-up factor.

RESPONSE: The Department will present its recommendation for the 1990 Medicare shortfall calculation to the Hospital Rate Setting Commission in December. No regulatory change on this matter is proposed.

COMMENTER: Health Care Finance Authority

COMMENT: 1987-1989 coding changes should be addressed.

RESPONSE: Adjustment for these changes is not regulatory but is being addressed through the final reconciliation methodology.

COMMENTER: Health Care Finance Authority

COMMENT: The industry requires clarification of the mechanics of implementation of the capital reimbursement regulations.

RESPONSE: The mechanics of the new capital reimbursement calculations will be addressed through a subcommittee of the Joint Hospital Payer Task Force and released for informational purposes shortly. No regulatory change is involved.

Full text of the adoption follows:

8:31B-3.27 Capital Facilities

(a) Capital facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i.-iii. (No change.)

iv. The Capital Facilities Formula Allowance is calculated as follows:

(1) (No change.)

(2) The number of target beds is multiplied by an estimated current construction cost per bed. This amount shall be the average construction cost per square foot multiplied by gross square feet per bed, determined by the New Jersey Department of Health, Division of Health Facilities, based on Statewide costs per bed (as updated annually).

(3)-(4) (No change.)

v.-vii. (No change.)

2. (No change.)

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Notification Appeal and Review

Adopted Amendment: N.J.A.C. 8:31B-3.51

Proposed: October 16, 1989 at 21 N.J.R. 3278(b).

Adopted: December 20, 1989 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: December 21, 1989 as R.1990 d.41, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: January 16, 1990.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENTER: Morrisy & Company, Inc.

COMMENT: The commenter supports the proposal to allow post base-year continuing adjustments approved by the Hospital Rate Setting Commission as an accept option appeal.

RESPONSE: The Department acknowledges the comment.

Additional Comments Received on Portions of the Reimbursement System Not Specifically Addressed by the Proposed Amendments to N.J.A.C. 8:31B-3.22, 3.24, 3.27 and 3.51.

COMMENTERS: Robert Wood Johnson/University Hospital, Norris, McLaughlin & Marcus on behalf of University Health System of New Jersey, St. Francis Medical Center, Deborah Heart and Lung Center

COMMENT: The current indirect cost reimbursement methodology is flawed because: (1) it creates inequitable windfalls and shortfalls; and (2) it does not appropriately reimburse hospitals with high teaching loads, high uncompensated care, and specialty status. The Department of Health's analysis on the 1989 indirect cost reimbursement methodology was not submitted to the industry for comment.

RESPONSE: A broad-based committee of the Joint Hospital Payer Task Force reviewed the current indirect cost reimbursement methodology and recommended to the Commissioner that no change be proposed for the 1990 rate year. Since no regulation has been proposed, industry comment on the analysis would not be pertinent to the proposed regulations; however, any hospital may obtain a copy of the Department's analysis by contacting the Department.

COMMENTERS: St. Francis Medical Center, Robert Wood Johnson/University Hospital, University Health System, Elizabeth General Medical Center

COMMENT: Corridors protecting hospitals from reimbursement changes from 1988 to 1989 should not be removed.

RESPONSE: Current regulations indicate that the 1988-1989 corridor will not be continued into 1990. In the absence of additional significant regulation change, no change has been proposed to this rule since it was intended to be a transitional device.

COMMENTER: New Jersey Hospital Association

COMMENT: The negative financial impact of indirect cost reimbursement should be limited to -1% of each hospital's Preliminary Cost Base.

RESPONSE: As noted above, there is no proposed change to the rule which indicates that corridors should not be continued into 1990. Additionally, the Department would not propose a unilateral corridor. The Department's position on corridors remains that any mechanism should provide downside protection coupled with limitation of gains.

COMMENTERS: St. Joseph's Hospital and Medical Center, New Jersey Hospital Association, Healthcare Financial Management Association, University Health Systems

COMMENT: Reimbursement of indirect costs allocated to outpatient services should be volume variable.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTERS: St. Joseph's Hospital and Medical Center, University Health Systems, Jersey Shore Medical Center

COMMENT: GROUPER 7 may be an insufficient measure of Severity of Illness (SOI). A continuing examination is needed to improve the reimbursement system's recognition of SOI.

RESPONSE: The Task Force considered what SOI adjustment would be optimal for 1990 rates and recommended use of the Yale refined DRGs through GROUPER #7. A study group is evaluating the use of additional SOI systems to further adjust rates in future years.

COMMENTERS: St. Joseph's Hospital and Medical Center

COMMENT: The GME methodology for direct patient care costs does not properly identify true teaching costs nor appropriately distribute reimbursement.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTERS: Healthcare Financial Management and New Jersey Hospital Association

COMMENT: The current operating margin is insufficient.

RESPONSE: There is no proposal to change this section of the rules.

COMMENTER: University Health Systems

COMMENT: 1989 rates for AIDS patients and neonatal patients are flawed.

RESPONSE: The Department is reviewing these rates and will issue an addendum to the 1989 final reconciliation methodology to improve them. There is no proposal to change this section of the rules.

COMMENTER: New Jersey Hospital Association

COMMENT: The 1990 final reconciliation methodology should be issued concurrent with implementation of 1990 rates.

RESPONSE: The Department's goal is to issue this methodology as soon as possible; however, this does not relate to any of the proposed amendments.

COMMENTER: New Jersey Hospital Association

COMMENTS: (1) The system should provide a process to expedite final reconciliation adjustments within the rate year; (2) the prompt payment discount schedule should be revised; and (3) the system should provide a trim point efficiency incentive.

RESPONSE: The Department is reviewing these proposals; however, they do not relate to any of the proposed amendments.

COMMENTERS: Health Care Finance Authority, Robert Wood Johnson/University Hospital, Norris, McLaughlin & Marcus on behalf of University Health Systems, Jersey City Medical Center

COMMENT: The length of stay adjustment should be continued.

RESPONSE: As part of the 1989 Final Reconciliation methodology presented to the Hospital Rate Setting Commission, the Department has proposed deletion of this adjustment, although hospitals will be made whole for length of stay adjustments through 1988. The length of stay adjustment is not established by regulation and there is no current proposal on this matter.

COMMENTER: St. Joseph's Medical Center

COMMENT: Issuance of 1990 proposed schedules of rates prior to final action on the regulations inhibits due process for comment and necessitates response to rates prior to final adoption of regulations.

RESPONSE: N.J.A.C. 8:31B-3.9 of the Procedural and Methodological Regulations permits the Commissioner to issue the rates on a conditional basis subject to final adoption of pertinent regulations. Such a step was taken in order to meet the Commissioner's commitment that the industry would be able to implement its 1990 rates on time. If final action on the proposed regulatory changes results in changes to these rates, the Department will re-issue them and hospitals' timeframes for response will begin again.

COMMENTER: Besler & Co.

COMMENT: Regulations regarding reimbursement for transfer patient should be reviewed for consistency with the rate-setting and reconciliation methodologies.

RESPONSE: Although this issue has been identified for future evaluation, there is no current proposal to change this section of the rules.

COMMENTER: Jersey City Medical Center

COMMENT: The Medicare shortfall calculation should be estimated early in the year to provide for a more moderate impact on the mark-up factor.

RESPONSE: The Department will present its recommendation for the 1990 Medicare shortfall calculation to the Hospital Rate Setting Commission in December. No regulatory change on this matter is proposed.

COMMENTER: Health Care Finance Authority

COMMENT: 1987-1989 coding changes should be addressed.

RESPONSE: Adjustment for these changes is not regulatory but is being addressed through the final reconciliation methodology.

COMMENTER: Health Care Finance Authority

COMMENT: The industry requires clarification of the mechanics of implementation of the capital reimbursement regulations.

RESPONSE: The mechanics of the new capital reimbursement calculations will be addressed through a subcommittee of the Joint Hospital Payer Task Force and released for informational purposes shortly. No regulatory change is involved.

Full text of the adoption follows.

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient case costs. The amount will be fixed and included as an indirect cost in the mark-up factor. Rates accepted will also include an increase in direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26 and the operating margin as described in N.J.A.C. 8:31B-3.38. Prior to obtaining a Certified Revenue Base, a hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies.

A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:

i.-viii. (No change.)

ix. Commission-approved continuing adjustments that were not captured in the base year because they were approved between the base year and the initial year of implementation.

x.-xi. (No change.)

2. (No change.)

(a)

PUBLIC HEALTH COUNCIL

Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health

Cardiovascular Disease Services; Health Services for Older Adults

Adopted Amendments: N.J.A.C. 8:52-6.3 and 6.4

Proposed: October 16, 1989 at 21 N.J.R. 3282(a).

Adopted: December 11, 1989 by the Public Health Council, Milton Prystowsky, M.D., Chairperson.

Filed: December 13, 1989 as R.1990 d.19, **without change.**

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

Effective Date: January 16, 1990.

Expiration Date: December 15, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

8:52-6.3 Cardiovascular disease services

(a) The local board of health shall provide cardiovascular disease control services according to the Department of Health "Adult Health Services Guidelines" and shall:

1. Provide hypertension screening services yearly to one percent of the high risk population;

2.-5. (No change.)

8:52-6.4 Health services for older adults

(a) The local board of health shall provide for a health program at locations selected by the health department which identifies the health needs of adults age 65 and older, and shall:

1. Provide health needs assessments on one percent of the non-institutionalized elderly in accordance with "Guidelines for Health Services for Older Adults" contained in the Adult Health Services Guidelines (available at the New Jersey Department of Health);

2.-6. (No change.)

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 3, 1989 at 21 N.J.R. 1790(a).

Adopted: December 18, 1989 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: December 21, 1989 as R.1990 d.37, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: January 16, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received regarding the products affected by this notice of adoption.

The following products and their manufacturers were **adopted:**

Carisoprodol/aspirin tabs 200/325	**Par**
Metoclopramide tabs 10 mg	**Invamed**

The following products were **not adopted:**

Fluocinolone acetonide cream 0.01, 0.025%	G&W
Fluocinolone acetonide oint 0.025%	G&W
Metoclopramide tabs 10 mg	Sidmak
Procainamide ER tabs 500 mg	Invamed

The following products were **not adopted but are still pending:**

Albuterol tabs 2, 4 mg	Purepac
Albuterol tabs 2, 4 mg	Danbury
Amantadine caps 100 mg	Invamed
Amiloride/HCTZ tabs 5/50	Danbury
Amiloride/HCTZ tabs 5/50	PharmBasics
Amoxapine tabs 25, 50, 100, 150 mg	Chelsea
Amoxapine tabs 25, 50, 100, 150 mg	Watson
Atenolol/chlorthalidone tabs 50/25, 100/25	Par
Betamethasone diprop. crm, oint, lot 0.05%	Clay-Park
Clindamycin HCl caps 75, 150 mg	Danbury
Clonazepam tabs 0.5, 1, 2 mg	PharmBasics
Cyclopentolate ophth soln 1%	Paco
Dexamethasone/neomycin/polymyxin B ophth	Paco
Doxepin caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Doxycycline tabs 100 mg	Pharbita
Erythromycin ER caps 250 mg	AmerTher
Folic acid tabs 1 mg	Charlotte
Ibuprofen tabs 400 mg	Pharbita
Ibuprofen tabs 400, 600, 800 mg	Invamed
Indomethacin caps 25, 50 mg	Danbury
Loperamide caps 2 mg	Mylan
Lorazepam tabs 0.5 mg	PharmBasics
Methyldopa/HCTZ tabs 250/15, 250/25	Invamed
Metoclopramide inj 5 mg/ml	Lemmon
Minocycline caps 100 mg	Danbury
Nifedipine caps 20 mg	Purepac
Oxazepam caps 10, 15, 30 mg	Danbury
Prazepam caps 20 mg	PharmBasics
Prazosin caps 1, 2, 5 mg	Chelsea
Prednisolone acetate ophth sol 1%	Paco
Propranolol ER caps 60, 80, 120, 160 mg	Inwood
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Invamed
Ritodrine inj. 10 mg/ml, 15 mg/ml	TEVA
Sulfacetamide sodium ophth soln 10%	Paco
Thiothixene caps 20 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Mylan
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Timolol tabs 5, 10, 20 mg	Chelsea
Tobramycin ophth soln 0.3%	Paco
Trazodone tabs 150 mg	Chelsea
Tropicamide ophth soln 1%	Paco
Verapamil tabs 40 mg	Purepac
Vincristine inj. 1 mg/ml	TEVA

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 21 N.J.R. 2997(a) and 3664(a).

(c)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: October 16, 1989 at 21 N.J.R. 3292(a).

Adopted: December 14, 1989, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: December 21, 1989 as R.1990 d.43, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: January 16, 1990.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were **adopted**:

Albuterol tabs 2, 4 mg	**Amer.Ther.**
Clindamycin caps 75, 150 mg	**Biocraft**
CPM/PE/PPA/phenyltoloxamine ped. syrup	**LuChem**
CPM/PE/PPA/phenyltoloxamine syrup	**LuChem**
Doxepin caps 10, 25, 50, 75, 100, 150 mg	**Lederle**
Fluocinonide soln 0.05%	**Thames**
Fluorometholone ophth susp 0.1%	**Iolab**
Gentamicin ophth soln 0.3%	**Iolab**
Hydrocodone/PPA 5/25 liquid	**LuChem**
Hydrocodone/PPA 2.5/12.5 liquid	**LuChem**
Hydrocodone/pseudoephedrine 5/60 liquid	**LuChem**
Hydrocodone/pseudoephedrine/guaifen. liq.	**LuChem**
Lactulose syrup 10 g/15 ml	**Duphar B.V.**
Metoclopramide tabs 5 mg	**Invamed**
Metoclopramide syrup 5 mg/5 ml	**Roxane**
Neomycin, polymyxin, dexameth. ophth susp	**Iolab**
Nystatin oral tabs 500,000 U.	**Mutual**
Phenylephrine/pyrilamine/CP tannates sol	**Mikart**
Phenylephrine/pyrilamine/CP tannates tab	**Mikart**
Pilocarpine ophth soln 0.5, 1, 2, 3, 4, 6%	**Iolab**
Salsalate tabs 500, 750 mg	**Mutual**

The following products were **not adopted**:

Betamethasone sod. phos. inj. 4 mg/ml	Steris
Brompheniramine maleate inj. 10 mg/ml	Steris
Brompheniramine maleate inj. 100 mg/ml	Steris
Chlorpheniramine maleate inj. 100 mg/ml	Steris
Chlorpheniramine maleate inj. 10 mg/ml	Steris
Corticotropin for inj. 40 U/vial	Steris
Diazepam inj. 5 mg/ml	Steris
Dimenhydrinate inj. 50 mg/ml	Steris
Diphenhydramine inj. 10 mg/ml, 50 mg/ml	Steris
Edetate disodium inj. 150 mg/ml	Steris
Furosemide inj. 10 mg/ml	Steris
Gentamicin sulfate inj. 40 mg/ml	Steris
Glycopyrrolate inj. 0.2 mg/ml	Steris
Morphine sulfate inj. 15 mg/ml	Steris
Naloxone inj. 0.4 mg/ml	Steris
Neomycin and polymyxin B for irrigation	Steris
Oxycodone/APAP tabs 5/500	Roxane
Probenecid/colchicine tabs 500 mg/0.5 mg	Zenith
Procainamide inj. 100 mg/ml, 500 mg/ml	Steris
Procaine HCL inj. 1%, 2%	Steris
Promazine HCl inj. 50 mg/ml	Steris
Promethazine HCl inj. 25 mg/ml, 50 mg/ml	Steris
Quinidine gluconate ER tabs 324 mg	Mutual
Trimethobenzamide inj. 100 mg/ml	Steris

The following product was **withdrawn** by its manufacturer, who no longer markets it:

Timolol maleate tabs 5, 10, 20 mg	Quantum

The following products were **not adopted but are still pending:**

Albuterol tabs 2, 4 mg	Copley
Albuterol tabs 2, 4 mg	Lemmon
Albuterol tabs 2, 4 mg	Superpharm
Aspirin ER tabs 800 mg	Sidmak
Betamethasone valerate lotion 0.1%	Clay-Park
Chlordiazepoxide/amitrip. 5/12.5, 10/25	Par
Clonidine/chlorthal. tabs 0.1, 0.2, 0.3 mg	Cord
Cyclobenzaprine tabs 10 mg	Par
Cyclobenzaprine tabs 10 mg	Superpharm
Disopyramide ER caps 100, 150 mg	Chelsea
Divalproex EC tabs 125, 250, 500 mg	Par
Erythromycin EC tabs 250, 333 mg	Upjohn
Erythromycin topical soln 2%	Clay-Park
Fenoprofen tabs 600 mg	Barr
Fluocinonide soln 0.05%	Copley
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Iodinated glycerol elixir 60 mg/5 ml	PharmBasics
Loperamide caps 2 mg	Cord
Loxapine caps 5, 10, 25, 50 mg	Cord
Minocycline caps 50, 100 mg	W-C
Oxazepam caps 10, 15, 30 mg	Zenith
Potassium Cl ER tabs 10 mEq	Adria
Probenecid tabs 500 mg	Zenith
Quinine sulfate tabs 260 mg	Zenith
Sulfacet./prednisolone 10%/0.2% oph. sol	Iolab
Sulfanilamide vaginal cream 15%	Clay-Park
Sulindac tabs 150, 200 mg	Amer. Ther.
Sulindac tabs 150, 200 mg	Danbury
Sulindac tabs 150, 200 mg	Mutual
Sulindac tabs 150, 200 mg	Par
Verapamil ER tabs 240 mg	Invamed
Verapamil tabs 40, 80, 120 mg	Invamed

HUMAN SERVICES

(a)

OFFICE OF EDUCATION

Instructional Staff; Tenure

Adopted New Rules: N.J.A.C. 10:11

Proposed: September 18, 1989 at 21 N.J.R. 2849(b).
Adopted: December 15, 1989 by William Waldman, Commissioner, Department of Human Services.
Filed: December 18, 1989 as R.1990 d.25, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12; 18A:1-1; 18A:60-1 and 18A:60-1.1 et seq. (P.L. 1986, c.158).

Effective Date: January 16, 1990.
Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

Three letters with comments were received from the Communication Workers of America. They stated:

1. N.J.A.C. 10:11-1.4, Scope of tenure: The break in service aspect is so general in nature it is subject to misinterpretation.

2. N.J.A.C. 10:11-1.6, Notice of reemployment; non-reemployment: This section is unclear as to who has the authority to determine recommendations for reemployment or non-reemployment.

3. N.J.A.C. 10:11-1.7, Performance assessment for tenure purposes: The Office of Education has developed a separate Performance Assessment Review system for Department of Human Services' instructional staff.

4. N.J.A.C. 10:11-1.8, Disciplinary action—tenured staff: This section should reflect current collective bargaining agreements and categorize Department of Human Services Administrative Order 4:08 as a "guide" for setting disciplinary penalties.

5. The proposed rule is in conflict with Department of Education rule proposal N.J.A.C. 6:24-5.4.

The response of the Department of Human Services to these comments are as follows:

1. Upon adoption, the Department has amended this section to better clarify the term break in service.

2. N.J.S.A. 18A:60-1 et seq. provides the conditions that must be met to acquire tenure in State facilities. The Office of Education is the Department of Human Services' designated educational agency. The Office of Education employs staff who possess appropriate educational certification, as required by New Jersey Administrative Code. The Office of Education provides technical and practical assistance to DHS facilities and participates in the decisions regarding employment.

3. The Office of Education's Performance Assessment Review system does not deviate from established procedures regulating the PAR system. The Office of Education provides technical educational expertise and appropriate educationally certified staff to assist DHS facilities in evaluating tenure-eligible instructional staff.

4. The Department of Human Services cannot regulate collective bargaining agreements and will continue to subscribe to Department of Human Services Administrative Order 4:08.

5. To the contrary, the rule proposed by the Department of Human Services was developed in collaboration with the Department of Education to meet the requirements of P.L. 1986, c.158, to specify the administrative alignment in respective Administrative Code provisions, and to organize for simultaneous publication.

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

CHAPTER 11
INSTRUCTIONAL STAFF

SUBCHAPTER 1. TENURE

10:11-1.1 Authority

This subchapter implements the provisions of N.J.S.A. 18A:60-1 and 18A:60-1.1 (P.L. 1986, c.158), which grants tenure rights to instructional staff of the Department of Human Services.

10:11-1.2 Scope

(a) This subchapter applies to all individuals employed by the Department of Human Services who:

1. Are required to possess educational certification as a condition of employment; and,

2. Are not otherwise included in the New Jersey Department of Personnel classified system.

10:11-1.3 Definitions

When used in this subchapter, the following terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Instructional staff member" means a member of the professional staff of any facility in the Department of Human Services, holding office, position, or employment of such character that the qualifications require him or her to hold a valid and effective standard certificate issued by the State Board of Examiners, appropriate to his or her instructional assignment, as determined by the Director, Office of Education. Applications of time earned during possession of emergency or provisional certifications are described in N.J.A.C. 10:11-1.5.

"One year of service" means, for seniority purposes only, 12 months of employment in pay status in a tenure applicable title in the Department of Human Services. A service period commences on the date of appointment into a tenure-applicable title. Examples of tenure-applicable titles are Teacher I; Teacher II; Supervisor of Educational Programs I and II; Assistant Supervisor of Educational Programs I and II; Instructor, Commission for the Blind and Visually Impaired; School Psychologist; Learning Disabilities Specialist; School Social Worker; Supervising Consultant, Curriculum Services; and educational titles that require staff to hold valid and effective standard certificates, issued by the State Board of Examiners appropriate to the instructional function as determined by the Director, Office of Education.

"Supervisory or administrative staff" means a member of the staff of any Department of Human Services facility or the Office of Education in the Department of Human Services holding a position or employment that requires him or her to hold a valid and effective standard certificate, issued by the State Board of Examiners appropriate to his or her function as determined by the Director, Office of Education.

10:11-1.4 Scope of tenure

Once tenure is acquired by an employee, such standing shall apply throughout the Department of Human Services. If, however, the employee experiences a break in service, he or she will forfeit tenure rights. ***A break in service for tenure purposes is defined as resigning or leaving a tenured position to enter a career service, unclassified, non-tenured or Senior Executive Service position.*** *[Leaving a tenured position to enter a classified, unclassified, non-tenured or Senior Executive Service position will be viewed as a break in service for tenure purposes.]*

10:11-1.5 Eligibility

(a) In addition to fulfillment of the requirements set forth in N.J.A.C. 10:11-1.2, and pursuant to N.J.S.A. 18A:60-1 et seq., those individuals who have been continuously employed for at least two academic years in an instructional capacity within the Department of Human Services as of July 1, 1986 and have completed at least two years of instructional services with satisfactory evaluations shall acquire tenure upon completion of one additional year of satisfactory service.

(b) Those individuals who do not meet the requirements set forth in (a) above, but were employed on or after July 1, 1986, shall be eligible for tenure:

1. After continuous employment for three consecutive years; or

2. After employment for the equivalent of more than three years within a period of four consecutive academic years.

(c) Employment experience obtained under emergency or provisional certification may be applied towards tenure eligibility. However, tenure may be acquired only when standard certification is issued. Appropriate standard certification must be obtained *[within four years of the effective date of these rules]* ***by January 16, 1994***.

10:11-1.6 Notice of reemployment; non-reemployment

(a) All notices under this section, including the recommendation for reemployment or the 60-day notice of non-reemployment, shall be made:

1. By the appointing authority, in conjunction with the facility Supervisor of Education, for non-supervisory or non-administrative instructional staff;

2. By the Director, Office of Education, for all supervisory or administrative staff.

(b) A written notice of non-reemployment shall be provided to an individual not to be granted tenure at least 60 days prior to such individual's date of tenure eligibility pursuant to N.J.A.C. 10:11-1.5.

(c) All non-tenured instructional staff not recommended for tenure shall be dismissed prior to the otherwise effective date of tenure.

(d) Any instructional staff member who receives a notice of non-reemployment, as noted in (b) above, may, within 15 days of receipt of the notice, request, in writing, a statement of the reasons for such action from the appointing authority (N.J.S.A. 18A:27-3.2), which statement of reasons shall be given to the instructional staff member in writing within 30 days after the receipt of such request.

10:11-1.7 Performance assessment for tenure purposes

(a) Educationally certified supervisory personnel or the Director, Office of Education, as appropriate, shall conduct performance assessment reviews in compliance with the standards and criteria promulgated by the *[Director]* ***Commissioner*** of the Department of Personnel pursuant to N.J.S.A. 11A:6-28 and N.J.A.C. 4A:1-1, and set forth fully at N.J.A.C. 6:3-1.19 and 1.21.

(b) Supervision and evaluation of instructional staff shall be conducted by educationally certified supervisors employed in an educational capacity within the Department of Human Services.

(c) Supervision and evaluation of administrative or supervisory staff shall be conducted by the Director, Office of Education, or his or her appropriately qualified designee, in conjunction with the appointing authority.

(d) For purposes of evaluation of non-tenured instructional staff, the following provisions shall apply notwithstanding the schedule of evaluations set forth in N.J.A.C. 6:3-1.19:

1. The Performance Assessment Review system shall consist of a minimum of three observations/conferences conducted for the duration of at least one class period or lesson period.

(e) For purposes of evaluation of tenured instructional staff, the following provisions shall apply notwithstanding the schedule of evaluations set forth in N.J.A.C. 6:3-1.21:

1. The Performance Assessment Review system shall consist of a minimum of two observations/conferences annually.

(f) A non-tenured or tenured instructional staff member will be observed through visitation to his or her classroom or work station by an appropriately certified supervisor for the purpose of observing the staff member in the educational process.

(g) Each observation shall be followed within a reasonable period of time by a conference between the Supervisor of Educational Programs and the instructional staff member or the Supervisor of Educa-

tional Programs, and the Director, Office of Education or his or her designee. Each party to the conference will sign the Performance Assessment Review instrument and retain a copy for his or her records.

(h) The instructional staff member shall have the right to submit his or her comments to such an evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the instrument.

10:11-1.8 Disciplinary action—tenured staff

(a) In a case where disciplinary action is recommended or implemented, which does not result in dismissal or reduction in salary, as a result of charges made against a tenured employee of the Department of Human Services, the appointing authority (in conjunction with the Supervisor of Education, for all instructional staff) shall act in accordance with Department of Human Services Administrative Order 4:08, a copy of which may be obtained from the employing facility.

(b) In a case where disciplinary action will result in dismissal or reduction in salary, the charges shall be filed with the Director of Employee Relations. The charges shall be accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

(c) Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee within three working days of the date they were filed with the Director of Employee Relations. Proof of mailing or hand delivery shall constitute proof of transmittal.

(d) The affected tenured employee shall have the opportunity to submit to the Director of Employee Relations a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

(e) Within 45 days of receipt of the charges, the Director of Employee Relations shall determine whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.

(f) The Director of Employee Relations shall immediately notify in writing the affected employee against whom the charge has been made of its determination, in person or by certified mail to the last known address of the employee.

(g) If the Director of Employee Relations determines that there is probable cause, he or she shall file a finding of probable cause, together with accompanying documentation, with the Commissioner of the Department of Education, together with proof of service upon the employee.

(h) Procedures governing processing and hearing provisions for subsequent activity under this chapter may be found at N.J.A.C. 6:24 ***-5.4***.

10:11-1.9 Reduction in force

Nothing contained in N.J.S.A. 18A shall be held to limit the right of the Commissioner of Human Services in the case of any State institution conducted under his or her jurisdiction, supervision or control, to reduce the number of instructional staff in any such institution or institutions when the reduction is due to natural diminution of the number of students or pupils in the institution or institutions, subject to N.J.A.C. 6:3-1.10.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services; Manual for Special Hospital Services; Long Term Care Services Manual

Bed Reserve

Adopted Amendments: N.J.A.C. 10:52-1.2, 10:53-1.2, 10:63-1.13 and 1.16

Proposed: June 19, 1989 at 21 N.J.R. 1634(a).

Adopted: December 15, 1989 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 18, 1989 as R.1990 d.26, **without change.**

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14), 6.7, 6.8, 6.9, 7a, b and c; 30:4D-12; 42 CFR 447.250, Subpart C.

Effective Date: January 16, 1990.

Expiration Date: N.J.A.C. 10:52, February 19, 1990; N.J.A.C. 10:53, April 29, 1990; N.J.A.C. 10:63, November 28, 1994.

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

Full text of the adoption follows.

10:52-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital and services shall include:

1.-18. (No change.)

19. Inpatient hospital services rendered after the day it is medically necessary only under the following conditions:

i.-ii. (No change.)

iii. For patients awaiting placement in a long-term care facility (Skilled Nursing Facility, Intermediate Care Facility A or B) if the hosital can demonstrate that:

(1) All possible third party liability, including Medicare benefits, have been utilized.

(2) The care and services provided are medically necessary, that is, the patient requires skilled nursing or intermediate levels A or B care in a long-term care facility:

(3)-(5) (No change.)

iv. Upon satisfaction of all the conditions set forth in (a)19iii(1) through (5) above, payment will be made at the rate of the appropriate level of care of Medicaid participating long-term care facilities as determined on January 1, of each year. Payment will be made at the Statewide weighted average skilled or intermediate care rate determined by the patient's level of care as assessed by the division of Medical Assistance and Health Services or its authorized agents.

v. When the patient is admitted to the hospital under the LTCF bed reserve policy, which requires the facility to reserve the same room and the same bed of the LTCF resident (see N.J.A.C. 10:63-1.13), the hospital will:

(1) Involve the long-term care facility in the preparation of the hospital's discharge planning;

(2) Advise the facility of an anticipated dishcarge date;

(3) Keep the long-term care facility informed of the patient's progress, particularly if something unexpected happens which causes a revision to the discharge plan; and

(4) Give the long-term care facility as much advance notice as possible to prepare for the return of the patient.

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

10:53-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital care and services shall include:

1.-18. (No change.)

19. Inpatient hospital services rendered after the day it is medically necessary only under the following conditions:

i. (No change.)

ii. For patients awaiting placement in a long-term care facility (Skilled Nursing Facility, Intermediate Care Facility A or B) if the hospital can demonstrate that:

(1) All possible third party liability, including Medicare benefits, have been utilized;

(2) The care and services provided are medically necessary, that is, the patient requires skilled nursing or intermediate levels A or B care in a long-term care facility:

(3)-(5) (No change.)

iii. Upon satisfaction of all the conditions set forth in (a)19ii(1) through (5) above, payment will be made at the rate of the appropriate level of care of Medicaid participating long-term care facilities as determined on January 1, of each year. Payment will be made at the Statewide weighted average skilled or intermediate care rate determined by the patient's level of care as assessed by the Division of Medical Assistance and Health Services or its authorized agents.

iv. When the patient is admitted to the hospital under the LTCF bed reserve policy which requires the facility to reserve the same room and the same bed of the LTCF resident (see N.J.A.C. 10:63-1.13), the hospital will:

(1) Involve the long-term care facility in the preparation of the hospital's discharge planning;

(2) Advise the facility of an anticipated discharge date;

(3) Keep the long-term care facility informed of the patient's progress, particulary if something unexpected happens which causes a revision to the discharge plan; and

(4) Give the long-term care facility as much advance notice as possible to prepare for the return of the patient.

(b) (No change.)

10:63-1.13 Absence from facility

(a) Bed reserve policy for hospital admission is as follows:

1. The LTCF shall reserve and hold the same room and the same bed of the Medicaid-eligible patient transferred to a general or psychiatric hospital for a period not to exceed 10 days. It is the LTCF's responsibility to determine the patient's status or whereabouts during or after the 10 day bed reserve period.

i. If the patient is not readmitted to the same room or the same bed or the same LTCF, the LTCF requesting bed reserve reimbursement shall record on the patient's chart and make available for Division review, a justification for the action taken.

2. Reimbursement, not to exceed 10 days, shall be at the rate the LTCF received for the same level of care authorized for the patient prior to the transfer to the hospital.

i. The patient's available monthly income shall be applied against the per diem cost of care pursuant to N.J.A.C. 10:63-1.11(d)2i.

3. If readmission to the LTCF does not occur until after the 10 day bed reserve period, the next available bed shall be given to the Medicaid patient. This means the patient's name shall be placed on a chronological listing of persons waiting readmission to the LTCF. The discharged patient shall have priority for the next available bed in the facility.

4. The bed reserve policy applies to any person in the LTCF eligible to receive Medicaid benefits; for example, a Medicare/Medicaid recipient who, at the time of transfer to the hospital, might be eligible for long-term care services under Medicare benefits.

5. Admission procedures (see N.J.A.C. 10:63-1.16) shall be followed when the Medicaid recipient has been readmitted following a period of hospitalization.

(b) (No change.)

10:63-1.16 Admission policies

(a)-(i) (No change.)

(j) In the event that a LTCF admits a Medicaid eligible recipient from other than a general acute hospital or Special Class A Hospital, or N.J. Title XIX Certified Psychiatric Hospital without prior authorization from the MDO, the effective "beginning" date of the initial authorization period will be the date of assessment by the Medicaid nurse. Facilities admitting such recipients without prior authorization will not be reimbursed by the New Jersey Medicaid Program for any care rendered before the assessment.

1. Admission from an acute general hospital, class "A" special hospital, and N.J. Title XIX certified psychiatric hospital:

i.-iii. (No change.)

iv. The LTCF shall submit an MCNH-33 form, Notification From Long-Term Care Facility of Admission or Termination of a Medicaid Patient, along with a copy of the hospital transfer form or its equivalent PA-4 Form to the MDO serving the county where the LTCF is located, within two working days of admission.

v. When a patient is transferred to a hospital, there is no change in the policy for readmission to the LTCF or the termination from the LTCF (see N.J.A.C. 10:63-1.13(a)). The MCNH-33 form, Notification From Long-Term Care Facility of Admission or Termination of a Medicaid Patient, shall be completed, dated and signed for each readmission and termination of a Medicaid patient. The MCNH-33 form shall reflect the room number and bed number to which the Medicaid patient has been readmitted. For the termination of a Medicaid patient, an MCNH-13 form, (Termination) shall be submitted to the Bureau of Claims and Accounts, reflecting the proper termination code.

2.-6. (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Manual

General Provisions, Administrative Responsibilities, Eligibility, Payments, Medical Care, Fiscal Procedures, Notices and Hearings, Referral to Other Agency Programs, Legally Responsible Relatives, Employability Program, and Glossary

Readoption with Amendments: N.J.A.C. 10:85

Proposed: October 16, 1989 at 21 N.J.R. 3221(b).

Adopted: December 19, 1989 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 20, 1989 as R.1990 d.33, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-111(d).

Effective Date: December 20, 1989, Readoption;
January 16, 1990, Amendments.

Expiration Date: December 20, 1994.

Summary of Public Comments and Agency Responses:

No written comments were received by the end of the comment period (November 15, 1989).

Summary of Agency Initiated Changes:

The changes upon adoption to N.J.A.C. 10:85-1.2(e), 2.2(c), and 3.2(g) are corrections of publication errors. The changes to N.J.A.C. 10:85-8.5 and 11.1 provide the correct titles for certain departments and delete obsolete material. The change to N.J.A.C. 10:85-7.6(e)5 brings the rule in alignment with the amendment at N.J.A.C. 10:85-7.6(e)4. This was done in consultation with the Office of Administrative Law. The proposed amendments at N.J.A.C. 10:85-8.3, concerning the Federal Medicare Catastrophic Coverage Act of 1988, are not being adopted, inasmuch as the U.S. House of Representatives voted to repeal that measure in November, 1989 and sent it to the Senate which is also expected to take similar action.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:85.

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

10:85-1.2 Administration of municipal welfare

(a) (No change.)

(b) Each municipality shall have a director of welfare, who has been legally appointed by the local assistance board as the salaried employee responsible for the administration of the municipality's

General Assistance program. Appointments to the position of welfare director shall be approved by the Division of Economic Assistance prior to consideration for State aid. (See also N.J.A.C. 10:85-2.2(d).) The director of welfare shall be the chief executive and administrative officer of the board, but shall not be a member of such board. A permanently appointed director of welfare shall, therefore, not concurrently serve as a member of the local assistance board (LAB) and hold the position of welfare director. This provision is not applicable to temporary appointees as set forth at N.J.A.C. 10:85-2.2(d)3ii.

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

(e) Regardless of state financial participation, municipalities shall administer general assistance in conformance with standards, policies, procedures, and rules developed by the Division of Economic Assistance. This requirement shall include adherence to additional policy directives as distributed by official letter signed by the Director of the Division of Economic Assistance, as well as to the rules set forth in this manual.

10:85-1.4 Policy of nondiscrimination

(a) Eligibility for program benefits shall be determined without regard to race, color, sex, religious creed, marital or birth status, national origin, or political beliefs.

1. Purchase of services: The municipality shall not purchase services for beneficiaries of the program from any organization, agency, or institution which practices discrimination.

i. (No change.)

ii. Evidence of noncompliance by vendor: If the municipal welfare director should become aware of the employment of discriminatory practices by any vendor with whom general assistance business is conducted, the matter shall be promptly referred to the Director of the Division of Economic Assistance.

2. Notification of staff: The director of welfare shall inform his or her staff of the policy of nondiscrimination in the administration of the general assistance program.

3. Complaint procedure: Any person seeking or receiving general assistance, who feels that he or she has been discriminated against, shall be given the opportunity to file a complaint.

i. Filing the complaint: The aggrieved person may file his or her complaint directly with the Division of Economic Assistance, CN 716, Trenton, New Jersey 08625. If a complaint has been filed with the local agency, it shall be forwarded immediately to the Division of Economic Assistance. All complaints are to be addressed to the attention of the Division Director.

ii. Action by the Director of the Division of Economic Assistance (DEA): Upon receipt of a complaint, the director shall take whatever action he or she deems appropriate. This action may include, but is not limited to, the securing of reports from whatever sources may have knowledge pertinent to the situation, and/or referral to the Division on Civil Rights of the Department of Law and Public Safety for investigation, evaluation and recommendation.

iii. (No change.)

iv. Final disposition of the complaint: The Director of the Division of Economic Assistance shall be responsible for the final disposition of any complaint involving discrimination. In rendering a final decision, the Director shall take into consideration relevant decisions or actions on the part of a court or government agency.

v. (No change.)

10:85-1.5 Disclosure of information

(a) (No change.)

(b) Allowable disclosure of information: The municipal welfare department shall release information concerning an applicant or recipient in the following situations only:

1.-4. (No change.)

5. Quality control reviews: Information in connection with a quality control review shall be furnished to authorized representatives of the Division of Economic Assistance.

6. (No change.)

10:85-1.6 Purpose of the manual

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

(c) Each holder of the manual shall be responsible for maintaining a current and up-to-date manual. The Division of Economic Assistance shall issue revisions and changes, as necessary; the manual holder shall insert new material and remove obsolete pages promptly.

1. (No change.)

(d) This manual is a public document and shall be made accessible in the following manner:

1. Available for review: Copies of the manual are available for review in the State office of the Division of Economic Assistance and in each municipal welfare department for examination and review during regular office hours on normal working days.

2.-4. (No change.)

5. Service organizations: Welfare, social service, and other nonprofit organizations shall be furnished with a copy of this manual, at no cost, upon receipt by the Division of Economic Assistance of an official, written request.

6. Individuals: A current up-to-date copy of the manual, or any part of it, shall be available from the Division of Economic Assistance, at the cost of printing and mailing, to anyone who requests such in writing.

(e) All supplementary State policy directives shall be routinely sent to those who have been supplied with the manual. A mailing list shall be maintained by the Division of Economic Assistance.

10:85-2.2 Establishment of local assistance board

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

(c) Certification to the Division of Economic Assistance (DEA)/General Assistance Program (GAP) Unit (DEA/GAP Unit): Each municipality, whether or not applying for State aid, shall submit annually a certification form, Status Report and Request for State Aid for Calendar Year (Form GA-15), to the DEA/GAP Unit signed by the municipal clerk and attesting to the appointment of the board members, if any, and the director of welfare. The director of welfare shall be responsible for informing the municipal clerk and other appropriate local officials regarding the required certification, and arranging for the completion of the Status Report and Request and filing same with the DEA/GAP Unit on or before March 1 of the year to which the certification applies.

1. Participating municipalities: Prior to January 1 of the next calendar year, three copies of Form GA-15, with necessary instructions, will be distributed by the DEA/GAP Unit to welfare directors in municipalities currently participating in the State-aid program.

2. Nonparticipating municipalities: Municipalities which did not receive State aid for the year immediately prior to January 1 will receive instructions and Form GA-15 ***forwarded*** by the DEA/GAP Unit to the municipal clerk.

3. (No change.)

(d) Rules concerning the appointment of the director of welfare are as follows:

1. Power to appoint: Under law, the LAB is solely responsible for the appointment and reappointment of a director of welfare. Appointment shall be by formal action of the board at a regular or special meeting and such action duly recorded in the minutes. All appointments and reappointments to the position of director of welfare require the approval of the DEA as a condition for receiving State aid (see (d)4 below).

2. (No change.)

3. Terms of appointment: The director of welfare shall be appointed for a full term of five years or a temporary term not to exceed 90 days. Appointment for any other period is prohibited.

i. (No change.)

ii. Temporary appointments: In case of a vacancy in the office of director of welfare, one temporary or acting director may be appointed for a term not to exceed 90 days. Such appointment is not subject to extension or renewal.

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

(3) The appointment of a temporary director of welfare is an interim measure to ensure the efficient functioning of the welfare agency until a full-term director can be appointed by the LAB and approved by the DEA. The LAB is required to notify the DEA immediately, in writing, of the name and address of the temporary designee and the date he or she has or will take office. If the temporary director is not to be selected for a full five-year term, it is not

necessary to submit Form GA-14, Request for State Approval of Municipal Welfare Director.

iii. Reappointments: Reappointment of an incumbent director at the expiration of a current five-year term is solely the responsibility of the LAB. Upon decision of the board to reappoint the incumbent for a full five-year term, the secretary of the LAB will notify the DEA. After receipt of DEA approval, formal action will be taken at a regular or special board meeting and duly recorded in the minutes. In such case, submittal of another Form GA-14 to the DEA is not necessary.

(1) Should the LAB decide not to reappoint the incumbent director, or should he or she decline reappointment, it shall be the responsibility of the board to select promptly a new full-term candidate and to secure approval of the DEA (as described in (d)4 below) or to designate a temporary director while a qualified full-term candidate is being sought.

(2) (No change.)

iv. (No change.)

4. Procedure for State approval of new appointees: Formal appointment to the position of director for a full term is valid only after the candidate's qualifications have been submitted to and approved by the DEA/GAP Unit.

i. Submittal of Form GA-14, Request for State Approval of Municipal Welfare Director: For purposes of securing State approval of a full-term candidate designated by the LAB, the individual shall prepare, in triplicate, Form GA-14, Request for State Approval of Municipal Welfare Director, which is certified by the secretary of the LAB. The original shall be submitted to the DEA/GAP Unit for approval. Copies will be retained in the board's personnel file and by the candidate. (Form GA-14 is available upon request from the DEA.)

ii. After receipt of Form GA-14 by the DEA/GAP Unit, the candidate will be interviewed by a representative of that unit. Questions relevant to the candidate's qualifications will be reviewed with the chairperson of the LAB. A written decision regarding the candidate's qualifications and the DEA/GAP Unit's approval or disapproval will be sent to the secretary of the LAB.

iii. While it is preferable that a candidate for the position of full-term director possess all of the requisite education and experience, the LAB, after failure to find a properly qualified person (see(d)2 above), may recommend an otherwise qualified individual. In such instance, the secretary of the LAB shall submit the Request for State Approval of Municipal Welfare Director, accompanied by a letter which includes an account of the efforts made to locate a qualified candidate, the reasons for which the candidate merits consideration, and indication of his or her intention to take advantage of available opportunities for additional training or study.

iv. If the qualifications of a new candidate for the full-term position of director have been duly approved by the DEA prior to the expiration date of the term of the incumbent director, the LAB may formally appoint the candidate for the full term of office without making an initial "temporary appointment."

5. Duties and responsibilities of the director of welfare: The municipal director of welfare is responsible for ensuring equitable and efficient administration of General Assistance within the community, in accordance with standards and policies set forth in this chapter. The director of welfare is acountable to the LAB. His or her duties and responsibilities include the following:

i.-v. (No change.)

vi. Functioning as liaison officer between the LAB and the DEA.

vii. Maintenance and protection of all records and appropriate documents required by the DEA.

6. (No change.)

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

(g) The LAB shall act as a body in discharging its duties. A board member shall not individually take upon himself or herself the responsibility for creation of policy, investigation of a client or disclosure of data contained in a case record. Actions taken by the LAB on all matters pertaining to the administration of general assistance shall be discharged by the board at regular or special meetings and recorded in the secretary's minutes. Functions and activities of the LAB include the study of employment possibilities in local industry, health, housing, and social conditions of the community. Analysis of municipal financial needs, insofar as they are related to General Assistance, shall also be a matter of concern to the LAB.

1. (No change.)

2. Duties described: Specific duties of the local assistance board include, but are not limited to, the following:

i. Maintenance and protection of records: The LAB shall provide space within the MWD office for the proper protection and maintenance of all reports, case records and any other materials essential to the administration of general assistance.

(1) Access to case records shall be granted by the LAB, through the director of welfare, only to the following persons: employees of the MWD acting in an official capacity; representatives of another recognized public or private health or welfare agency, organization or institution for the purpose of obtaining information relevant to providing service to a current or former recipient of general assistance or to a member of his or her family; the client or his or her representative, in accordance with N.J.A.C. 10:85-7.3(b)5; and authorized representatives of the DEA relevant to State audits and quality control review, (see also N.J.A.C. 10:85-1.5(b)).

(2)-(3) (No change.)

ii. (No change.)

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

10:85-2.4 Establishment of public assistance trust fund account

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

(c) The municipal welfare director shall arrange for a duplicate check to be issued within five working days of receipt of notification from the client that his or her assistance check has been lost or stolen, unless extraordinary circumstances are present and a longer period of time is approved by the Division of Economic Assistance. The client shall complete an affidavit stating that he or she did not receive or endorse the check. The agency shall file a stop payment order with the bank.

10:85-2.5 Request for State administration

(a) A municipality may request the DEA to assume administration of its General Assistance program when the preceding year's public assistance millage exceeds 7.0 mills. For this purpose, the municipality shall submit a written application on or before March 1 of the year in which it is requesting administration.

(b) Detailed information regarding duties of a municipality under State control and fiscal procedures are available upon request from the DEA.

10:85-2.7 Reporting criminal offenses to law enforcement authorities

(a) Investigation of new applications or investigations for redetermination of eligibility may indicate to the municipal welfare department that a crime may have been committed. Allegations of the suspected commission of a crime may also be made known through various other sources, for example, phone calls, written communications, verbal communications from individuals, etc. In matters of reporting of criminal offenses, the municipal welfare agency shall, at all times, maintain full compliance with the provisions of N.J.A.C. 10:85-1.5, dealing with basic principles for safeguarding of information.

1. (No change.)

2. Procedures: When the MWD becomes aware of facts that would indicate that one of the above mentioned crimes has been or may have been committed or receives a direct allegation in any form, written, verbal or anonymous, that such a crime has been committed, it shall proceed as follows:

i.-iii. (No change.)

iv. The MWD shall cooperate fully with any subsequent investigation initiated by the law enforcement agency within the limits of the policy and regulations of the Division of Economic Assistance. An MWD staff member may sign a written complaint only upon a written request from the law enforcement agency, provided his or her information of the facts to be stated in such complaint is based upon his or her own personal knowledge and belief.

10:85-3.1 Persons eligible for General Assistance

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

(e) Rules concerning eligibility of young people are as follows:

1. Single persons under age 18: Assistance is provided through the AFDC program for needy families with children under age 18 (or in certain situations under age 19 if the child is attending secondary school/vocational training). Therefore, when an unmarried individual under age 18 applies for General Assistance, the MWD shall make every effort to locate the family and refer it and the child to the appropriate county welfare agency.

i. An unmarried, unattached child under the age of 18, although not legally an adult, may in fact be emancipated. That he or she is under age 18 is not, of itself, a bar to eligibility for assistance; it is, however, reason for additional action relating to eligibility. The MWD will provide assistance to any such person who applies and is eligible, based on the following action:

(1) (No change.)

(2) If such efforts are not successful within one week of the first grant of assistance or if no such efforts are possible, the MWD will immediately refer the case to the appropriate district office of the Division of Youth and Family Services (DYFS).

(A) (No change.)

(B) For all cases under age 16, it is expected that DYFS will act promptly to accept responsibility for services and maintenance. The MWD will continue assistance until the date on which DYFS assumes responsibility. The MWD will notify DEA/GAP Unit of any case under age 16 which is still active on the GA rolls 30 days after referral to DYFS.

(C) (No change.)

ii. (No change.)

2.-3. (No change.)

(f) (No change.)

10:85-3.2 Application process

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

(e) Rules concerning verification and sources of evidence are:

1.-3. (No change.)

4. Verification of income and resources:

i. (No change.)

ii. Unearned income: All unearned income shall be verified by examination of benefit check or by contact with the company or agency granting such benefit. (Note: The Social Security Administration will release information only with written consent of the client.)

(1) For situations of incomplete or inconsistent information about Unemployment/Disability Insurance benefits from the client himself or herself, or, where the agency experiences difficulty in securing verification, the MWD may send Form PA-24 (Verification of Unemployment/Disability Insurance) to the DEA, Attn: Integrity Control Section.

iii.-v. (No change.)

5. (No change.)

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, a person who did maintain such a home prior to entering a medical facility, or a person who enters a New Jersey medical facility from out of state and qualifies as a resident in accordance with (f)1iii. below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or, in accordance with (f)1iii. below, in a residential medical facility.

1. (No change.)

2. Nonresidents/transients: Persons in a municipality who are neither residents nor medical facility patients by the above definitions shall, if otherwise eligible, be granted assistance while in the municipality according to the same standards as for residents.

i. For any person in a municipality who is away from the municipality of his or her customary home and wishes to return but cannot, because of lack of funds, the MWD shall grant sufficient funds to allow the individual to travel to his or her own municipality or to the nearest place at which it has been confirmed that help from nonassistance funds may be expected. Travel costs shall be estimated or ascertained, as appropriate, according to the least expensive method of travel which is appropriate. The travel grant shall be sufficient to allow payment for the fare and such food, clothing, or shelter as may be essential during the trip.

(1) (No change.)

(2) Assistance for travel purposes in any amount over $100.00 shall be granted only with prior approval from the DEA.

3.-4. (No change.)

5. Determination of municipal responsibility: Municipal welfare directors will attempt to resolve matters of payment responsibility among themselves. Any agreement reached between municipalities will be promptly reduced to written form. In event of dispute or unresolved question, the MWD of the servicing municipality will help the client/applicant complete an affidavit showing the recent residence history of the client/applicant in sufficient detail to establish municipal responsibility. The client/applicant will, as a condition of eligibility, sign under oath, three copies of the affidavit. Form GA-9 is available for this purpose. The MWD of the servicing municipality will, within 30 days of the identification of an unresolved question, send one copy of the affidavit with any appropriate documentation to the alleged chargeable municipality, send one copy, with documentation, to the DEA/GAP Unit for determination and retain one copy. The alleged chargeable (respondent) municipality may, within the next subsequent 15 days, supply to the DEA/GAP Unit such information and/or documentation as it deems appropriate. Promptly thereafter, the GAP Unit will render a decision designating as responsible that municipality in which the applicant most recently lived or that municipality which most recently granted assistance to the applicant as a resident, whichever represents the more recent municipality of residence. The municipality so designated may, within 30 days of the GAP Unit decision, request a hearing by the Bureau of Administrative Review and Appeals, decision of which shall be final.

(g) Work requirement: Eligibility for public assistance in New Jersey is directly related to an individual's willingness to work when he or she is able to do so. It is, therefore, a part of the application process to explain the work requirement to the applicant and to record in the case file the reasons for any exemption from this requirement.

1.-2. (No change.)

3. Exemptions from work requirement: An individual shall be exempt from the work requirement if any of the following exist:

i.-iv. (No change.)

v. The individual is unemployable: For purposes of General Assistance, unavailability of employment cannot be the basis of a determination of unemployability. Only persons included in any of the following groups are unemployable:

(1) (No change.)

(2) Persons whose presence is required at home to care for one or more children under age six or for disabled family member(s). No more than one person in a household may be exempt for this reason without written authorization from the DEA/GAP Unit;

(3)-(8) (No change.)

(9) Persons determined by the MWD to be *[umemployable]* ***unemployable*** when such determination is supported by any of the following:

(A)-(C) (No change.)

(D) Written Record of Action (Form GA-38) from the DEA/GAP Unit. Such may be applied for by MWD submission of such documentary material as the MWD finds appropriate. This may include medical or hospital reports and the MWD's own statement of specific observations and recommendations with reasons. Form PA-5 may be used. Social information submitted should include as a minimum the client's age, education, experience, and general description of applicant, especially as it may relate to employment. The DEA/GAP Unit will consider the individual's age, experience, education, vocational training, and work history as well as physical or mental defects, diseases or impairments in determining whether an individual is able to engage in any useful occupation for which he or she has competence or ability to engage in retraining.

(10) (No change.)

4.-9. (No change.)

(h) Persons released from an institution (see also N.J.A.C. 10:85-3.1(f))

1. (No change.)

2. Methods of referral: Referrals for general assistance of persons released or about to be released from State institutions or V.A. hospitals may be made to the MWD by the Bureau of Field Services, Division of Developmental Disabilities, by the Disability Determination Review Section (DDRS) of the Division of Mental Health and Hospitals, or by the institution or hospital itself.

i.-ii. (No change.)

3.-7. (No change.)

(i) Procedures for individuals released from a State psychiatric hospital are:

1. If the individual is under care in the institution and plans are to be made to locate a placement for him or her, prior to discharge to the community, the DDRS in the Division of Mental Health and Hospitals (DMHH) will have the responsibility to contact the municipality where the person was living at the time he or she entered the institution.

i. In the event the person indicates that he or she wishes to locate in a specific municipality, the DDRS will make referral to that municipality.

ii. In any event, placement in the community will be the responsibility of the DDRS worker.

iii. Under the contractural agreement between the United States Department of Health and Human Services and the State of New Jersey, DMHH may be reimbursed for interim assistance it grants to individuals while eligibility for SSI is being determined. If the individual is receiving such interim assistance, the DDRS will not refer the individual for GA until notified by the Social Security Administration that the client's application for SSI has been denied. The DDRS worker will notify the MWD that interim assistance is being terminated and GA is now required.

2. The DDRS worker will fully complete Form GA-1 (Application and Affidavit for General Assistance), prior to discharge, for the person needing assistance.

3. The DDRS worker will arrange for completion of a Social Service Plan and a physician's report or medical abstract and will forward both together with the PA-7 (Report of Findings by Psychiatric Diagnostic Group), PA-12 (Referral by State Mental Institution to Public Assistance Agency) and GA-18 (Certification of Need for Patient Care in Facility Other than Public or Private General Hospital), if applicable, to the MWD.

4. The municipal welfare director or an authorized case worker will receive the material, review it for completeness and determine eligibility for assistance as soon as possible, but shall, in any event, make a decision within 30 days of receipt of such material, pursuant to N.J.A.C. 10:85-7.1(c).

i. If the individual has been referred for SSI by DMHH/DDRS but is not receiving interim assistance from that agency, prior to granting GA the municipal welfare director or authorized case worker shall ensure that the applicant has signed Form GA-30 in accordance with the procedures outlined in N.J.A.C. 10:85-6.5(c).

5. If placement must be made before a final decision as to eligibility can be rendered by the MWD, or the DDRS worker is not in a position to have the appropriate material prepared and submitted before discharge to the community, both agencies will retain their respective responsibilities as defined above and shall keep the other agency fully informed of any action taken on behalf of the discharged persons. However, in accordance with N.J.A.C. 10:85-3.3(a), no person shall be denied assistance if in immediate need, if he or she is otherwise apparently eligible, because necessary material identified above as coming from the DDRS has not been completed and submitted.

6. The provision of social services incident to discharge of individuals from the State institution shall be the responsibility of the DDRS social worker, at least until such time as a decision with respect to SSI eligibility is made or eligibility for GA is determined. Thereafter, either the CWA or MWD will provide social services independently or in conjunction with the DDRS staff.

7. All disputes shall be referred to the Division of Economic Assistance, General Assistance Program (GAP) Unit (DEA/GAP Unit) field representative assigned to the specific area wherein the dispute occurs for appropriate resolution. The field representative shall render a decision and notify the DDRS and MWD within five working days after the dispute has been referred.

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows:

1.-3. (No change.)

4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:

i. Residential health care facility: When an individual who is in need of extensive personal services on a regular and continuous basis is purchasing a room and board living arrangement in a residential health care facility (licensed by the N.J. Department of Health for purposes other than the care or treatment of drug or alcohol abuse), the monthly assistance payment, including a personal allowance, shall not exceed the rate approved by the New Jersey Department of the Treasury, less any countable income. When a rate increase is approved, a public notice to that effect will be published in the New Jersey Register. Information about the current rate may also be obtained by contacting the Division of Economic Assistance. However, the cost of purchasing such living arrangement shall not exceed the minimum amount which the establishment customarily charges to or for other guests not dependent on public assistance, for the same accommodations and/or services.

ii.-iv. (No change.)

v. Maternity homes: When an eligible individual has been found by the Division of Economic Assistance, General Assistance Program (GAP) Unit (DEA/GAP Unit) to be in need of the services provided by a maternity home approved by the Division of Youth and Family Services (DYFS) and the individual is receiving such services, the monthly allowance shall be the rate established by DYFS. The MWD may obtain current rate information by communicating with the DEA/GAP Unit. However, the MWD shall not accept responsibility for payment at that rate prior to receipt of a report of affirmative findings from the DEA/GAP Unit. Until the report is received, the allowance shall be that for a single individual as given in Schedule I or II, as appropriate, less any countable income. For the DEA/GAP Unit approved cases, the DYFS rate shall apply with retroactive adjustment, if necessary, from the date of application or the date of admission to the maternity home, whichever is later.

(l) The submittal to the DEA/GAP Unit may be in any appropriate form or format. It shall consist of the objective recommendation of the MWD with supporting documentation. The DEA/GAP Unit will consider the individual's age, mental and physical health, family circumstances, and other conditions peculiar to the situation. Form PA-5 (Examining Physician's Report) and/or Form PA-6 (Medical-Social Information Report) may be used in presenting the documentation.

5. (No change.)

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for the General Assistance, AFDC or Refugee Resettlement Program because their income exceeds the standards established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for inpatient hospitalization or for medical services rendered to an inpatient. The MWD shall refer to the county welfare agency those persons who appear to be potentially eligible for the Medically Needy Program

administered by that agency. Except as stated in (g)li below, any person found eligible under the provisions of that program is not eligible for benefits under this subsection.

i.-ii. (No change.)

iii. Income levels: For the purpose of determining excessive medical costs, the total available monthly income (see (g)liv below) of individuals, couples, or families with children is measured against the appropriate allowance standard. (See N.J.A.C. 10:85-3.1(b) regarding eligible unit concept.) For elderly, blind, or disabled persons, the Medically Needy Program standard applies. For families with children, the AFDC (C and F) standard applies. (See N.J.A.C. 10:82-1.2 for current AFDC standard.) For all others, the General Assistance standard (Schedule I or II as appropriate) applies. Information about the standards may be obtained by contacting the Division of Economic Assistance.

iv.-vi. (No change.)

2. (No change.)

3. Inpatient hospitalization: Eligibility for payment of inpatient hospital costs described in N.J.A.C. 10:85-5.2 is limited to situations which exist in (g)3i, ii, and iii below.

i.-iii. (No change.)

iv. Any disputes with respect to the above which cannot be resolved between the parties involved are to be referred to the General Assistance Program (GAP) Unit, DEA for adjudication.

4. (No change.)

10:85-3.4 Resources

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

(f) The following are not subject to repayment to the MWD: Retroactive Social Security (RSDI) payments, Veteran's benefits, workers' compensation, temporary disability benefits, and SSI payments not repayable to the DEA/MWD in accordance with a valid Form GA-30. However, when such monies are received, they shall be recognized as countable income and the client's eligibilty shall immediately be redetermined.

1. (No change.)

(g) (No change.)

10:85-4.1 State and local responsibilities

(a) In order to achieve equity among individuals and with other public assistance programs within the State, the State Division of Economic Assistance has been given responsibility for establishing, in accordance with State law and regulations, the conditions under which and procedures by which all payments of general assistance are to be made.

1. The standards set forth herein (Scehdules I and II below) have been established by the DEA as the amounts to which eligible individuals are entitled, less countable income and other available resources.

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

10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the rules in this manual when circumstances set forth in (a)1-3 below exist. In addition, these rules shall apply to an emergency (as described in (a)1-3 below) which occurred within the 30 calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1.-2. (No change.)

3. Where there is official documentation of a pending eviction, such as a tenancy complaint filed by the landlord, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, emergency assistance shall be authorized in accordance with (a)3i and ii below.

i. Payment may be authorized for three calendar months of retroactive utility, rental or mortgage payments if it will prevent actual eviction or foreclosure.

ii.-iii. (No change.)

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

10:85-4.9 (Reserved)

10:85-5.1 General provisions

(a) The municipal director of welfare shall authorize payment for medical and hospital care and services to General Assistance recipients and eligible applicants when such care and services are deemed necessary and appropriate. The MWD may seek the advice of the DEA/GAP Unit in determining whether particular elements or programs of care or service are necessary and appropriate.

1.-3. (No change.)

10:85-5.2 Inpatient hospital care

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

(d) Expenses not covered: The MWD shall not authorize payments for any of the following:

1.-9. (No change.)

(e) (No change.)

(f) Payment for hospitalization: Upon certification of hospitalization, the director of welfare shall approve payment as approved by the DEA/GAP Unit which shall cover all items listed in (c) above.

1. (No change.)

2. Amount of payment: Payment for hospital services by the municipal department of welfare shall be at the Diagnosis Related Group (DRG) rate if such a rate is applicable. The MWD shall submit all inpatient hospital bills to the DEA/GAP Unit for costing before making payments. If a DRG rate is not applicable, payment shall be authorized at the least of the following:

i.-iii. (No change.)

3. Reporting requirements: Each month the municipal director of welfare shall submit Form GA-6 (Report of Assistance Commitments) to the Division of Economic Assistance, recording actual payments to hospitals for inpatient care made from the Public Assistance Trust Fund Account. Starting July 1, 1988, State Aid matching will be available for the payment of inpatient hospital bills for a period not to exceed six months from the date in which the General Assistance Program (GAP) Unit approval is granted. Payments made after six months from the approval date will be denied General Assistance State Aid matching unless an extension for good cause has been granted. Written requests for extension may be directed to the DEA.

i. (No change.)

10:85-5.3 Other medical payments

(a) (No change.)

(b) Physicians, dentists and other health care providers: The director of welfare shall authorize payment for services provided by licensed physicians (M.D. or D.O.), dentists and other health care providers including podiatrists, optometrists, pharmacists, opticians, prosthetists and orthotists who have not been deleted for cause from the current list of approved Medicaid providers, unless such services are specifically prohibited under (b)2 below. The DEA/GAP Unit will advise all MWDs of deletions from the approved list and of any reinstatements.

1. Amount of payment: The amount of the payment which the MWD shall authorize for any medical product or service shall be the lowest amount for which the service or product or a comparable service or product can be reasonably supplied to the recipient but in no event shall total payment for each service or product be more than the rate indicated as a maximum by the DEA/GAP Unit.

i. (No change.)

2.-4. (No change.)

(c) Outpatient facility services are as follows:

1.-3. (No change.)

4. Mental health services: For all mental health services, the payment shall be deemed to cover all services of the provider. It does not cover prescription costs. If the MWD has negotiated a rate with the mental health agency or provider which is no higher than the rate which would otherwise be payable and which takes into account any funding by the municipality or county, that rate shall be used for all participants receiving services from that provider. In all other instances, payment to hospital-based mental health facilities shall be at the rate regularly charged and payment to all other providers shall be at the Medicaid rate.

1. Partial Care Program (see N.J.A.C. 10:37-5.46 through 5.51): Partial Care is a program serving people who need more than hourly outpatient services and less than inpatient hospitalization. Some clients are served to avoid inpatient hospitalization; for others the program serves as a transition from institutional to community living. Clients usually receive services five days per week. This level of service is reduced as the client becomes more independent. Minimum attendance is one-half day per week. Services offered usually include case management, medication supervision, group therapy, activities of daily living (ADL), socialization, skill development, and prevocational activities. Program participants are divided into two Target Groups:

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

(3) Referral procedures: Proper referral is the responsibility of the mental health agency which seeks payment. It is in two parts:

(A) The agency will, within five working days of the acceptance of an individual for partial care, so notify the MWD in writing. Form PA-14, Referral for Services, or any substantially similar document may be used for this purpose.

(B) The agency will, within 30 calendar days of the acceptance of an individual for Partial Care, submit Medicaid Form FD-07 to the MWD. The Target Group classification shall appear on the form. The MWD will record receipt of the form and send it promptly to the DEA/GAP Unit for approval.

(4) Service periods are as follows:

(A) (No change.)

(B) For Target Group I clients the expected term of service is two years from the date of acceptance into this program. For Target Group II clients the expected term of service is one year from the date of acceptance into the program. The MWD will authorize no payments beyond these periods without the specific written authorization of the DEA/GAP Unit.

ii. Other mental health services are as follows:

(1) Mental health clinics:

(A) (No change.)

(B) For all other clinics, payment shall be authorized as described in (c)4 above for an initial period of 30 days or until receipt by the MWD of a completed Medicaid Form FD-07, whichever occurs first. The MWD will record receipt of the form and forward it promptly to the DEA/GAP Unit. The DEA/GAP Unit will return the form indicating any further services which are approved. For services beyond the initial period, payment shall be authorized only for services approved by the DEA/GAP Unit.

(2)-(3) (No change.)

(d) (No change.)

(e) Care for the chronically ill: The director of welfare shall authorize payments for patient care and a personal incidental allowance in a skilled nursing home or intermediate care facility when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client.

1. Physician certification (completion of GA-18): Physician certification shall be accomplished by means of Form GA-18, Certification of Need for Patient Care in Facility Other than Public or Private General Hospital. This form shall be completed in duplicate, by the attending, or staff physician and the operator or superintendent of the appropriate facility. One copy shall be submitted by the DEA/GAP Unit for level-of-care determination and subsequently, filed in the case record and the other copy shall be retained by the nursing home or institution.

i. (No change.)

2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities by the DEA/GAP Unit. The MWD may contact the DEA/GAP Unit to obtain the per diem rate for room, board and nursing care. A personal incidental allowance of $35.00 per month shall be allowed to the patient.

i. In determining the amount the MWD will be authorized to pay the facility for room, board and nursing care, the Medicaid rate times the number of days of care less the payment by or on behalf of the client shall be used. Each month the MWD will obtain a current bill for all services rendered during the previous month and will submit it to the DEA/GAP Unit for costing prior to payment.

(1) (No change.)

ii. (No change.)

(f) The director of welfare shall authorize payment for physical, occupational, or speech therapy under the conditions and in the amounts indicated in (f)1 through 2 below.

1. Conditions:

i.-iii. (No change.)

iv. The therapy has been approved in advance by the DEA/GAP Unit. Request for the DEA/GAP Unit approval shall be submitted via Form GA-18A with any other documentation which is appropriate and available or is requested by the DEA/GAP Unit. Approvals by DEA/GAP Unit will be made for a maximum of three months. Requests for approval for an additional three-month period shall be made prior to the commencement of the additional period. Such a request shall include a new Form GA-18A if appropriate or a written statement by the supervising physician describing all changes since the previous submittal.

2. Amount of payment: The MWD will authorize no payment for therapy which is available or could have been provided to the client without cost. The amount of payment shall be at the rate established for the service by the Medicaid program. The DEA/GAP Unit will ascertain the rate and indicate it in the notice of approval. Welfare directors in need of rate information before submitting an approval request may communicate with the DEA/GAP Unit.

(g) Miscellaneous services: The director of welfare shall authorize payment for drugs, blood, blood plasma, infusions, hearing aids, prosthetics, oxygen, dental services or dentures, eyeglasses and other visual prosthetics, braces and appliances, if recommended in writing by an appropriately licensed practitioner and if not otherwise available without cost to the patient.

1. Maximum fee: The DEA/GAP Unit will determine an appropriate fee for the services provided as stated in (b)1 above.

2.-3. (No change.)

(h) Persons eligible for Medicare Part B (medical insurance) benefits must have health care services billed to the appropriate carrier (for New Jersey Medicare, the carrier is Medicare/Pennsylvania Blue Shield, Harrisburg, Pennsylvania) by the practitioner or other provider before submitting bills to the MWD for consideration. Recipients eligible for Medicare Part B benefits shall submit the statement, "Explanation of Benefits", from the Medicare carrier before the MWD determines if additional payment may be allowed.

(i) Resident treatment for drug or alcoholic abuse: When the director of welfare authorizes payment for room and board, and personal incidentals in amounts as specified in N.J.A.C. 10:85-3.3(f)4iv, the payment shall be considered as inclusive of all goods and services.

1. When laboratory tests necessary for admission to drug treatment programs are performed by independent laboratories, payment procedures are as follows:

i. For costs incident to admission to methadone maintenance outpatient drug treatment facilities, laboratories will submit their charges on the appropriate Medicaid form and send that form to the responsible MWD for submittal to the DEA/GAP Unit for costing.

ii. For costs incident to admissions to residential drug treatment facilities, servicing MWDs are to advise the facility to provide the laboratory with the GA recipient's case number and the name and address of the responsible MWD. Laboratories will then submit charges on the appropriate Medicaid form to the responsible MWD for forwarding to the DEA/GAP Unit for costing and processing in customary manner. Where the responsible municipality is also the servicing MWD, laboratory charges should be directed to that MWD.

10:85-5.4 Procedure for payment of medical bills

(a) This section does not apply to prescription bills except for medical supplies and equipment in those municipalities which pay prescription charges through Medicaid.

(b) Rules concerning determination of Medicaid rate are as follows:

1. MWD responsibility: The MWD shall submit bills received from providers of health services, or requests for authorized fee levels, to the DEA/GAP Unit. Such bills and/or requests should be submitted on official Medicaid vendor voucher forms which all providers servicing Medicaid recipients utilize. The forms shall contain the following: signature of the vendor and client, date, and description of the commodity delivered or service rendered with full Medicaid product and procedure codes. Exception: The signature of the client/designee is not required on bills for residential services such as Long Term Care Facilities (see (b)4 below for requirement of client/designee signature).

i. Bills/requests shall include age of the patient, diagnosis, and whether or not he or she is receiving disability insurance benefits. The signature of the MWD director, preceded by the words "approved by", is required on the bottom or on the reverse side of the Medicaid vendor form. This signature may be affixed either before or after submission to the DEA/GAP Unit for rate approval but prior to payment.

ii. (No change.)

iii. In instances of repeated submission of a Medicaid vendor form showing the same client, same vendor, same commodity or service and same price, the MWD may, for audit purposes, attach a photocopy of the previous rate-approved form to each resubmittal in lieu of submission to the DEA/GAP Unit as required above.

2. State responsibility: It is the responsibility of the DEA/GAP Unit to authorize appropriate rates in accordance with those established by the State Medicaid Program insofar as feasible. The DEA/GAP Unit will return disapproved, any voucher submitted from a provider who has been deleted for cause from the current list of approved Medicaid providers. Such disapproval will prevent State matching on the payment, but will not eliminate any responsibility for payment which the MWD may have incurred by prior authorization.

i. The DEA/GAP Unit will enter the appropriate fee for each service listed, mark the bill or voucher as approved for amount of payment and return it to the MWD. The MWD shall retain this form in file for audit purposes.

3.-4. (No change.)

(c) (No change.)

10:85-5.6 Medical care for recipients with chronic renal failure

(a) Most patients with chronic renal failure requiring dialysis or transplantation are eligible for Medicare coverage the first day of the third month following the first dialysis treatment, or immediately upon hospitalization for transplantation. Medicare provides payment for the hospitalization. Medicare Part B shall be purchased to provide payment for 80 percent of the cost of outpatient care, including dialysis treatment. Drugs not prescribed as part of the dialysis treatment are not eligible for payment by Medicare.

1. (No change.)

2. MWD responsibility: When utilization of benefits from other sources leaves a medical cost deficit, the municipal welfare director will determine eligibility for hospitalization payment through General Assistance, if needed, in accordance with N.J.A.C. 10:85-5.2. The MWD will determine eligibility for payment for other medical costs, if needed, in accordance with N.J.A.C. 10:85-5.3 with due regard for the medically needy provisions of N.J.A.C. 10:85-3.3(g)1. Maximum fees will be determined by the DEA/GAP Unit in accordance with N.J.A.C. 10:85-5.3(b)1.

i. (No change.)

10:85-5.8 Pharmaceutical payments through DMAHS

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

(c) Form MC-24, GA prescription claim form: Each MWD will maintain in a secure location a supply of Form MC-24. Forms are available from the Bureau of Management Services, Division of Economic Assistance. The MWD will enter its four-digit municipality code in the first four of the 10 blocks over "Patient's First Name" on each form upon receipt and record the receipt of the serially numbered forms on a MC-24 Record Log (Form GA-20). In cases which cover the needs of more than one person, the "Person No." blocks on the MC-24 Form must be completed. The number 01 shall apply to adult males; 02 to adult females; the numbers 20, 21, 22, etc. shall apply to children. All person numbers must be recorded by the MWD to ensure that the assigned numbers are applied consistently to the same individual. The MWD will supply forms without charge to pharmacies which provide services to GA recipients, recording on a separate MC-24 Control Log (Form GA-20A), the serial numbers of forms supplied to each pharmacy.

(d)-(e) (No change.)

10:85-6.3 Public Assistance Trust Fund Account

(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account.

1. Calendar-year continuation of Trust Fund Account: A municipality which has received State aid in the year last preceding shall not close out its Public Assistance Trust Fund Account at the end of that calendar year. Municipalities which have filed with the Division of Economic Assistance reports of commitments (Form GA-6) made by them for assistance during the year last preceding, in anticipation of receiving State aid in succeeding years, shall maintain existing Public Assistance Trust Fund Accounts in order to qualify for State aid. Such accounts and any balance used for public assistance only, exclusie of administrative costs, shall be carried over to the next calendar year.

2. (No change.)

3. Deposit of refunds and receipts: All payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" and duly accounted for on a monthly basis.

i. Preparation of statement of refunds and receipts: Each municipal welfare department is required to prepare Form GA-12, General Assistance Program—Statement of Refunds. Refunds are separated according to items eligible and ineligible for State participation. Form GA-12 shall be prepared as follows:

(1) (No change.)

(2) A copy forwarded to the Bureau of Business Services/Division of Economic Assistance (BBS/DEA) as follows:

(A) With the exception of (B) below, a copy is due every December and is to be submitted with Form GA-6, observing the December deadline for receipt of Form GA-6 by the BBS/DEA.

(B) If at any time prior to the December submittal the MWD's reimbursement amount reaches $500.00, Form GA-12 is to be completed at such time. A copy of the completed Form GA-12 is to be forwarded to the BBS/DEA and the original retained by the municipal welfare department. Such submittal does not replace the December deadline for submittal of the final Form GA-12 for the entire calendar year.

(3)-(4) (No change.)

ii. Adjustment of Statement reimbursement: Following the DEA's receipt of Form GA-12 at the close of each calendar year, appropriate adjustment is made to State reimbursement for committed refunds received during the year. Failure to submit reports will be deemed sufficient cause to withhold State aid in the future.

(b) Disbursements may be made from the Public Assistance Trust Fund Account only for payment of public assistance costs, exclusive of administrative costs. Disbursements will be made on the authority of the municipal treasurer or other authorized official.

1. Types of disbursements authorized: Disbursements from this account are limited to:

i.-ii. (No change.)

iii. Payment to establish or replenish the Public Assistance Petty Cash Fund Account.

NOTE: Disbursements from this account to another municipal account are prohibited without the written approval of the Director, Division of Economic Assistance.

2. (No change.)

10:85-6.4 Fiscal and statistical reporting requirements

(a) General completion and submittal requirements: Forms described below shall be completed and either submitted to the Division of Economic Assistance, as indicated, or retained by each municipality approved to receive State aid in the General Assistance Program. Use of the forms described herein is required.

1. Application Register (Form GA-7): Each application shall be entered on the Application Register (Form GA-7) and shall be maintained by the MWD on an updated basis. The Application Register is subject to review by representatives of the Division of Economic Assistance.

2. Report of Assistance Commitments (Form GA-6): Form GA-6, accompanied by Form GA-6A, will be submitted on a monthly basis to the DEA/BBS within 10 days after the end of the assistance month. Cases are to be listed in sequential order according to case number and employability status. Case numbers for all employable cases are to be identified with an "E" prefix and all unemployable cases are to be identified with a "U" prefix. Cases that are classified as employable are to be listed first, followed by the unemployable cases. At the end of each page, totals must be indicated for the number of cases opened, the number of cases closed, the number of single persons aided, family case persons aided, and the commitments reported for each category (Maintenance, Hospitalization, Nursing Home, etc.). On the bottom section of any GA-6 page that lists both "E" prefixed and "U" prefixed cases and on the final page, totals must be segregated for employables and unemployables, and be followed by a combined page total (grand totals on final page).

i. (No change.)

3. (No change.)

10:85-6.5 Reimbursement of assistance for cases pending SSI entitlement

(a) A contractual agreement between the Social Security Administration (SSA) and the State of New Jersey provides for reimbursement to the State Division of Economic Assistance for assistance granted to individuals while awaiting an initial Supplemental Security Income (SSI) eligibility determination or during the period of time in which a client is awaiting a reinstatement of terminated or suspended SSI eligibility. In such instances, the SSA/District Office (DO) may refer such persons to the MWD for General Assistance.

(b) When the SSA/DO refers an individual to the MWD, such referral will be made on the form entitled Social Security Referral for Services, two copies of which will be given to the client to take to the MWD.

1. If the application for General Assistance results in denial, the MWD will file both copies of the referral form in the case record and take no further action. If the application for General Assistance is approved, one copy of the referral form will be retained by the MWD in the case record, and the other returned to the SSA/DO with a letter stating that the individual concerned is receiving General Assistance.

(c) When an individual is about to apply, or has already applied for SSI, or is awaiting a reinstatement of terminated or suspended SSI eligibility, the MWD will require that he or she sign Form GA-30, "Authorization for Reimbursement of Initial Supplemental Security Income (SSI) Payment, or Initial SSI Posteligibility Payment (GA-30)—General Assistance", and Form GA-30A, "Agreement to Repay Assistance from Initial SSI Payment", before granting assistance. These forms pertain to the client's obligation to repay the municipal welfare agency for assistance granted during the interim pending the client's SSI initial or posteligibility entitlement. The GA-30 is prepared in triplicate and forwarded to the Social Security Administration as described in (c)1 below. This form authorizes the SSA to forward a client's initial or initial posteligibility SSI benefit award payment directly to the treasurer of a municipality so that repayment of assistance may be accomplished. A copy of Form GA-30A is prepared at the time of application and is retained in the case record. This form contains a repayment agreement which is to be enforced in cases in which, for whatever reason, the initial, or initial posteligibility SSI payment is sent directly to the client.

1. Properly completed and signed GA-30 forms shall be submitted by registered mail to SSA within 24 hours of the date the client signs the authorization form and routed in accordance with the following provisions.

i. Form GA-30 shall be prepared in triplicate, with the front side of each copy signed by the client and the reverse side signed by the director of welfare;

ii. The original form shall be submitted to SSA/DO;

iii. The first copy shall be retained in the MWD files; and

iv. The second copy shall be given to the SSI client.

2. When both spouses are applying for SSI, separate sets of the GA-30 and the GA-30A shall be completed for each individual.

3. In any case in which the retroactive SSI check is sent directly to the client, the MWD will compute the reimbursement due in accordance with (d) below and will seek repayment from the client on the basis of the GA-30A agreement. The GA-30A is to be prepared in duplicate. The client is to receive a copy. The original is to be retained in the agency's file.

(d) Since the initial check received by the municipal treasurer will cover the initial retroactive or initial posteligibility SSI award for one eligible person only, deductions when both spouses are involved shall be computed as follows:

1. When both spouses filed and both are found eligible for SSI, the amount of Interim Assistance previously granted to each individual is deducted from his or her separate SSI award;

2. When both spouses filed and only one is determined eligible, the amount of the eligible person's portion of the Interim Assistance payment will be deducted from the SSI award;

3. When only one spouse is found eligible and the other spouse is designated as an "essential person", the amount of Interim Assistance received by both persons will be deducted from the amount of the SSI award.

(e) Rules concerning remittal of balance of SSI award to clients are:

1. Form SSA-(L)8125, Social Security Administration Supplemental Security Income Notice of Interim Assistance Reimbursement provides the necessary information (SSI eligibility date, payment summary, client's address) to permit distribution of any proceeds due the client from the initial SSI award check, which shall be done as follows:

i. If a month is not listed on the "Payment Summary" segment of the SSA-(L)8125 form, the MWD shall not recoup payment of interim assistance provided for that month.

ii. Form SSA-(L)8125 shall be appropriately completed, signed, dated and mailed to the New York SSA office no later than 30 calendar days after the Municipal Treasurer's receipt of the SSI award check.

iii. If Form SSA-(L)8125 is not received prior to Municipal Treasurer's receipt of the SSI award check, the local SSA/DO shall be promptly contacted to obtain the necessary information to permit distribution of the proceeds due the client from the SSI award check.

(1) Problems encountered in obtaining the necessary information from SSA/DO shall be referred to the DEA/BBS.

(2) Disbursements of SSI funds to which a client is entitled, however, shall not be delayed due to non-receipt of Form SSA-(L)8125.

2. Form GA-31, Repayment of Interim Assistance Authorization (GA-31) General Assistance, delineates distribution of retroactive and initial SSI or initial SSI posteligibility payments and shall be completed and transmitted in accordance with the following provisions:

i. Within 10 working days of the municipal treasurer's receipt of the SSI award check from SSA, the MWD shall deduct any and all Interim Assistance payments provided in addition to Interim Assistance granted by any other MWD who has remitted to the agency by certified mail a copy of a signed GA-30 form for that client.

(1) Interim Assistance shall only be deducted in accordance with the calendar date on which the client became eligibile for SSI, as indicated on Form SSA-(L)8125. Proration may be necessary if General Assistance was provided for any days during the month prior to the effective date of SSI eligibility.

ii. Form GA-31 delineating the computation of the client's net benefit and a check equal to the net SSI benefit due the client, if any, shall be forwarded to the client pursuant to the time frame in (e)2i above.

iii. The client has a right to appeal the computation results in accordance with the provisions of N.J.A.C. 10:85-7.3 and 7.4.

3. A copy of the completed Form GA-31 together with a copy of Form SSA-(L)8125, as received from SSA, shall be forwarded to the DEA/BBS immediately following the issuance of Form GA-31 and the net benefit check to the client.

(f) The Certificate of Authority identifies municipal personnel who are authorized to sign documents in conjunction with reporting the receipt and distribution of Interim Assistance Reimbursement received from SSA. The Certificate shall be completed and processed as follows:

1. Names, signatures and titles of the current Director of Welfare and his or her designee(s) (if appropriate) are to be identified on the Certificate;

2. Although the Certificate is to be addressed to the SSA, it is to be mailed to the DEA; and

3. Each newly appointed director (temporary or permanent) shall complete and submit a Certificate of Authority.

10:85-6.6 Establishment of Petty Cash Fund Account

(a) The LAB shall request the municipal governing body to establish a General Assistance Petty Cash Fund for use by the municipal department of welfare, unless the MWD is able to make direct payments to clients from the Public Assistance Trust Fund Account.

1. (No change.)

2. Application procedure: To establish a petty cash fund, Form GA-32, Application to Establish a Petty Cash Fund for Direct Payment of General Public Assistance, must be completed in triplicate, signed and dated by the clerk of the municipality and submitted to the Director of Local Government Services, 363 W. State Street, CN 800, Trenton, New Jersey 08625.

i. (No change.)

3. (No change.)

4. Existing petty cash funds: In those municipalities where a general assistance petty cash fund account is already in existence, additional funds may be deposited in order to meet an anticipated increase in expenditures from this account. In order to increase the amount in the account, a new application (Form GA-32) must be completed and submitted to the Director, Division of Local Government Services.

5. (No change.)

10:85-6.7 Retention and destruction of case records

(a) The MWD director shall have the responsibility of determining which case records may be destroyed. In selecting these cases, he or she shall follow the procedures set forth in this section and shall not destroy or otherwise dispose of any case record before the expiration of the retention requirement as specified in (c) below.

1. (No change.)

2. The file of closed cases will be reviewed annually until the record retention period has expired.

i. Cases which have been closed for a period exceeding that indicated in (c) below will be removed and destroyed after authorization has been received from the Division of Archives and Records Management (see (b) below).

(b) Rules concerning request and authorization for records disposal are:

1. Requests for destruction of case records will be submitted on Form CR-AA-0005, Request and Authorization for Records Disposal (formerly Form ED-6) to the Division of Archives and Records Management.

i. Supplies of the Request and Authorization for Records Disposal form may be obtained from the DEA/BMS. All copies of the completed form shall be forwarded to the Division of Archives and Records Management for approval;

ii. A follow-up copy will be returned to the municipal welfare office by the Division of Archives and Records Management with recommendation for suitable action.

2. The MWD shall not destroy any records until written approval has been received. After records are destroyed, the MWD will maintain a list of the names and case numbers of the cases destroyed. This list shall be made available for inspection by representatives of the Division of Archives and Records Management upon request.

(c) Cases shall be selected for destruction in accordance with the following schedule:

Record	Retention period
Inactive case records	6 years
Denied cases	10 years
Copies of relief orders or vouchers	6 years
General correspondence not relating to policy or active cases	3 years
Form GA-6, Report of Assistance Commitments	6 years
Form 100, Original Invoice for Expenses	6 years

The current year shall not be counted when determining the retention period.

10:85-6.8 Phamaceutical payments

(a) (No change.)

(b) Each month Blue Cross will provide to the DEA, through DMAHS, a detailed statement of pharmacy bills paid for General Assistance recipients. The DEA will forward this report to the respective municipal welfare departments. The monthly statement will show:

Municipal Code	Amount dispensed
Provider (Medicaid I.D. No.)	Number of days' supply
Sequential claim No.	Prescription (Rx) No.
Recipient No.	Individual Medicaid Practitioner (IMP) No.
National Drug Code	Date of Service
Name of Drug	Amount paid
Metric quantity	

1.-3. (No change.)

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

10:85-7.3 Local hearing

(a) (No change.)

(b) Request for local hearing: A request for a local hearing may be either oral or written. However, if the request is oral, it shall be the responsibility of the MWD staff to assist the individual in preparing the request in writing.

1.-5. (No change.)

6. Conduct of local hearing:

i.-iii. (No change.)

iv. Report and decision: Within 10 working days following the hearing, the hearing officer will prepare a brief written report. This report shall include a summary of facts presented at the hearing and the findings (decision) of the hearing officer; it will also state the regulation(s) upon which the decision is based. The final sentence on the report shall advise the appellant of the availability of a State fair hearing.

(1) This report and decision will be filed with the Local Assistance Board, a copy mailed to the appellant, and a copy forwarded to the State Division of Economic Assistance's Bureau of Administrative Review and Appeal (BARA).

7. (No change.)

10:85-7.4 State fair hearing

(a) Request for State fair hearing: Any client who wishes to appeal the decision resulting from a local hearing is entitled to request a State fair hearing within 10 days of the mailing date of the local hearing decision. Such request shall be written and may be made to the municipal welfare department or directly to the Division of Economic Assistance. State fair hearing requests pertaining to inaction or delay (see N.J.A.C. 10:85-7.1(e)2) by the MWD shall be processed as emergency fair hearings in accordance with N.J.A.C. 10:85-7.6, providing the request is made within 15 days of the date of inaction by the MWD.

1. (No change.)

2. Request to State Division of Economic Assistance: When a request for a State fair hearing is received by the Division of Eco-

nomic Assistance, it shall be immediately registered as of that date. The municipal welfare department shall be informed by telephone within one working day of the receipt of the request.

(b) All hearing requests which involve a contested case shall be transmitted to the Office of Administrative Law (OAL) for a hearing before an Administrative Law Judge (ALJ). Requests for hearings which do not constitute a contested case, as defined by N.J.A.C. 1:1-2.1, may be subject to an administrative review by the Division of Economic Assistance (DEA) in accordance with N.J.A.C. 10:6-2.

(c) Responsibilities of the Office of Administrative Law: The OAL shall schedule the contested case hearing and send any necessary notices to the parties. The hearing shall be conducted by an ALJ who shall issue an initial decision.

1. Adjournments: Any adjournment of a scheduled OAL hearing requested by an applicant or recipient and granted by the OAL may not operate to extend the deadlines for a final decision and implementation of the final decision.

2. Disposition by withdrawal or failure to appear. If an applicant/recipient or his or her representative fails to appear for a scheduled hearing without proper notice, and fails to submit an explanation for the non-appearance within 10 days of the scheduled hearing date, an initial decision shall be issued. The MWD may amend or reverse its decision at any time before or during the OAL hearing, or the hearing may be withdrawn at any time before or during the hearing upon satisfactory clarification or explanation of the matter at issue.

(d)-(e) (No change.)

(f) Decision by Director, Division of Economic Assistance: A final administrative hearing decision shall be rendered by the Director of the DEA. The applicant or recipient, his or her representative and the MWD shall be notified by mail of any decision or order.

1. Unless otherwise indicated, the decision by the Director of DEA shall be effective on the date of issuance.

2.-3. (No change.)

10:85-7.6 Emergency fair hearings

(a) Definition and criteria: An emergency fair hearing is one conducted by the MWD within accelerated time frames. It is in all other respects conducted in accordance with the provisions applicable to other fair hearings. It will be convened when and only when either or both of the following exists:

1. (No change.)

2. The DEA/BARA determines that there exists a threat to physical health and safety sufficiently compelling and imminent to require accelerated procedures or the request pertains to failure by the MWD to act on a timely request for a local hearing or inaction by the MWD on an application for assistance.

(b) (No change.)

(c) Decision: The decision of the hearing officer may be announced at the close of the hearing or later but must be made known to the MWD and the appellant before 12 noon of the next working day. The hearing officer will file a written report and decision with the DEA/BARA within two working days of the hearing, sending copies to the MWD and to the appellant.

(d) State emergency hearing: An appellant who wishes to appeal the decision in an emergency local fair hearing may do so within two working days of the date on which the appellant receives initial notice of the decision of the local hearing. An emergency State fair hearing may be requested when the MWD fails to process a final decision on an application within 30 days of the date of the application or when immediate assistance is denied and the applicant can demonstrate to the DEA/BARA the existence of a threat to physical health and safety.

(e) When it is determined that a request for a hearing should be scheduled as an emergency fair hearing:

1.-2. (No change.)

3. Notice of the time, date and place of the hearing shall be transmitted by telephone to the BARA within one business day after the OAL is notified of the hearing request. BARA shall notify the MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing by telephone.

4. The ALJ shall file an Initial Decision with the Director of the DEA and the parties no later than the business day following the date of the hearing.

5. The petitioning applicant/recipient, his or her representative or the MWD may, by telephone, make exception or objection to the Initial *[(mailgram)]* Decision, to the DEA no later than the first business day following the issuance of the Initial Decision.

6. The Director of the DEA shall issue a final decision no later than three business days following the date the Initial Decision is received which shall accept, reject or modify the Initial Decision. On the day the final decision is issued, the DEA shall notify the MWD, the OAL and the peititioner or the petitioner's representative by telephone of the final decision and any relief ordered shall be provided by the MWD on the day notice of the final decision is received.

10:85-8.2 Referral to county welfare agency

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

(c) County welfare agency programs: Programs administered by the county welfare agency include the following:

1. Aid to Families with Dependent Children (AFDC): The Aid to Families with Dependent Children Program provides cash benefits to eligible families with children under three segments:

i.-ii. (No change.)

iii. "N" segment—through State funding only to children and both parents when the father is underemployed.

(1) Eligibility requirements: Eligibility requirements for the AFDC program are described in detail in the Public Assistance Manual (N.J.A.C. 10:81) and the Assistance Standards Handbook (N.J.A.C. 10:82). These manuals are available from the Division of Economic Assistance.

2. Medicaid Only: This Federal/State program offers payment for medical care to persons who qualify for participation in the AFDC or SSI program, but who do not receive cash maintenance payments available under the program for which they qualify. Also eligible are certain persons under age 21 and certain pregnant women, regardless of age, who have income below the AFDC standard but are not eligible for cash AFDC payments.

i. Eligibility requirements: Eligibility requirements for the Medicaid Only program are described in detail in the applicable program manual available from the Division of Medical Assistance and Health Services.

3. Food Stamps: This Federal program provides eligible households with food stamps which are redeemed at face value for food.

i. Eligibility requirements: Eligibility requirements for this purpose are described in detail in the Food Stamp Manual (N.J.A.C. 10:87), available from the Division of Economic Assistance.

(1) (No change.)

Renumber existing 5. and 6. as 4. and 5. (No change in text.)

10:85-8.3 Referral to SSA district office

(a) Referral shall be made to the appropriate Social Security Administration district office when the General Assistance applicant appears eligible for the programs identified in (c) below. The Social Security Administration may be contacted directly, 24 hours a day, by calling toll free, 800-2345-SSA.

(b) Referral shall be made via Form PA-14 (Referral for Services). This form shall be given to the client, one copy shall be sent to the SSA district office, and the remaining copy shall be kept on file in the municipal department of welfare. Referral for SSI benefits shall be made in accordance with (c)3ii below.

(c) Programs administered by the Social Security Administration include the following:

1. Retirement, Survivors, Disability and Health Insurance (RSDHI):

This Federal program protects workers and their families from loss or stoppage of earnings resulting from retirement at age 62 (or older), death or disability.

i. Eligibility requirements: In order to receive benefits, an employed or self-employed individual must first have accumulated credits for a certain amount of work under Social Security up to a maximum of four credits per year. The amount of earnings required for these credits increases each year as general wage levels rise.

ii. (No change.)

2. *[The Medicare program is a Federal health insurance program for individuals 65 or over and certain disabled people. Effective January 1, 1989, the Medicare Catastrophic Coverage Act of 1988 introduced the first changes mandated by the Act which provide new and expanded benefits. There are two parts to the Medicare program—Hospital Insurance (Part A) and Medical Insurance (Part B).]* ***The Medicare program is a Federal health insurance program available to all individuals over age 65 and those under 65 who either have received Social Security disability benefits for two consecutive years or who are insured under the Social Security system and need dialysis or a kidney transplant due to chronic kidney disease. The dependents of an insured individual are also entitled to Medicare if they require dialysis or kidney transplant. The program has two parts:***

i. Hospital insurance: *[This coverage helps pay for inpatient hospital care, some inpatient care in a skilled nursing facility, home health care, and hospice care.]*

(1) The following are eligible for hospital insurance coverage:

(A) Individuals 65 or over who are entitled to Social Security or Railroad Retirement benefits;

(B) (No change.)

(C) *[Insured workers and their eligible family members who need dialysis treatment or kidney transplant because of permanent kidney failure are also eligible.]* ***An individual or his or her dependent who needs dialysis or kidney transplant, beginning either the first day of the month following two full months of dialysis or immediately upon admission to the hospital for transplant surgery.***

(2) Benefits: Medicare helps to pay the cost of room and meals in a semiprivate accommodation, regular nursing service and service in intensive care, drugs, supplies, appliances, and equipment for:

(A) *[Unlimited number of days of inpatient hospital care;]* ***90 days of inpatient care in each benefit period;***

(B) (No change.)

(C) *[Blood after the first three pints;]* ***Lifetime reserve of 60 inpatient hospital days;***

(D) *[One-hundred fifty]* ***One-hundred*** days of care in each *[calendar year]* ***benefit period*** in a participating skilled nursing facility if the individual's medical condition is determined by the physician as warranting extended care***, and provided the individual has been hospitalized at least three consecutive days and is admitted to a skilled nursing facility for further treatment of a condition for which he or she was hospitalized within 14 days of discharge from the hospital***;

(E) *[Unlimited]* ***One hundred*** home health visits from a participating home health agency for each *[calendar Year]* ***benefit period***, but only if a physician determines that the continuing care needed includes part time skilled nursing care or physical or speech therapy, and individual is confined to his or her home*[;]* ***after having been hospitalized for three consecutive days, or the health care is for further treatment of a condition for which individual was hospitalized.***

[(F) Unlimited hospice care for the terminally ill as certified by a physician.]

ii. Medical insurance: *[This coverage helps to pay the cost of physician's services and certain other medical items and services not covered by hospital insurance.]*

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

(3) Amount of coverage: *[Medical insurance generally pays 80 percent of the Medicare approved amount after a deductible is satisfied each calendar year.]* ***Medical insurance pays 80 percent of the reasonable charges exceeding the first $60.00 in each calendar year, with the exception of laboratory and radiology services which are covered at 100 percent of charge, and home health services which are covered at 100 percent after the first $60.00 deductible. Additionally, medical insurance pays for physical therapy after an expenditure of $80.00 each year, and for physician psychiatric services after $250.00 each year.***

3. Supplemental Security Income (SSI): This Federal program provides cash benefits to eligible individuals who are aged (65 or older), blind, or disabled.

i. Eligibility requirements: In addition to the age or disability requirement, an individual must be a citizen of the United States, a lawfully admitted alien or a person from a foreign country who is allowed to remain by the Immigration and Naturalization Service and satisfy certain income and resource standards. (See N.J.A.C. 10:85-3.1(d)1 regarding eligibility for General Assistance to meet immediate need.)

ii. Referral procedures: An individual who appears to be eligible for SSI shall be referred to the appropriate Social Security Administration district office (SSA/DO). Referrals for blind and disabled individuals shall be made via Form GA-41 (Supplemental Referral Form) which shall be completed in duplicate, with the original sent to the SSA/DO and a copy retained in the case record. All aged individuals shall be referred via Form PA-14. If a client who appears to be ineligible for SSI requests a referral, this shall also be made via Form PA-14 or GA-41 as deemed appropriate by the MWD.

iii. (No change.)

10:85-8.4 Referral to State agencies

(a) Referral shall be made to the appropriate State agency when the General Assistance applicant appears to be eligible for any of the programs identified in this section.

(b) (No change in text.)

(c) The New Jersey State Department of Health administers the programs and services described in (c)2 below.

1. General eligibility requirements: Eligibility requirements vary from program to program; however, many of the programs have no financial eligibility criteria and are given without charge to anyone needing service. In general, persons who are not eligible for medical assistance through the AFDC or Medicaid Only (see county welfare agency programs) or through SSI (see SSA programs) programs are eligible for services funded through the Department of Health.

2. Description of programs: The Department of Health administers the following programs:

i. Home Health Agencies: Throughout the State of New Jersey there are 65 licensed Home Health Agencies which provide an array of home health services; for example, intermittent skilled nursing care, physical, speech, or occupational therapy and home health aid services. A list of these agencies may be obtained by writing to the Department of Health, Division of Licensing, CN 367, Trenton, NJ 08625.

ii. (No change.)

iii. Maternal and child health: This program provides maternity services and consultation and a referral network to child health conferences. The program provides follow-up on newborn screening currently PKU, hypothyroidism and risk of hearing impairment. The Women, Infant and Children (WIC) supplementary foods program is also administered under this general program heading as well as Family Planning Services. Complete information on the various services available under this Maternal and Child Health Program may be found in the Directory of Preventive Health Services which gives the location of publicly funded Family Planning, Prenatal and Child Health Supervision Services, including those which are WIC sites throughout the State. Copies of the directory may be obtained by writing to the Maternal and Child Health Program, New Jersey State Department of Health, 363 W. State Street, CN 364, Trenton, New Jersey 08625.

iv. (No change.)

(d) Division of Unemployment and Disability Insurance: This State agency, which is a division of the New Jersey Department of Labor, administers the following programs:

1. New Jersey temporary disability insurance program: This program pays cash benefits to a person who cannot work because of sickness or injury not caused by his or her job.

i. Eligibility requirements: A person must have at least 20 base weeks of employment in the 52 weeks immediately preceding the week in which he or she became disabled, in order to have a valid claim. (A base week is one in which a person earned at least $92.00 working for a New Jersey covered employer.) In addition, a physician, dentist, osteopath, chiropractor, or chiropodist must certify that the claimant is too disabled to continuously do the regular work which he or she was doing immediately before becoming disabled.

ii.-iii. (No change.)

2. State unemployment insurance: This program pays cash benefits to covered workers who have lost their jobs through circumstances beyond their control, or who are working less than full-time because of lack of full-time work.

i. Eligibility requirements: A person must have wages of at least $92.00 in each of 20 weeks, or have earned $5,500 or more during the base year in employment covered by the unemployment compensation law of New Jersey. (A base year is the first 52 of the 53 weeks preceding the date of the filing of the claim.) In addition, the claimant must register for work with the Division of Employment and Training, be able and available for work at all times, make an active search for work, and report to the unemployment office as directed.

ii.-iii. (No change.)

(e) Division of Youth and Family Services (DYFS): This State agency, which is a division of the New Jersey Department of Human Services, administers foster care, homemaker services, adoption, counseling, residential placement, parole supervision, and child abuse services.

1. (No change.)

2. How to apply for services: Information and application for adoption services may be made at one of the Division's four regional offices. The DYFS regional offices are listed below:

Northern Regional Office
100 Hamilton Plaza
Paterson, N.J. 07505
201-977-4000

Central Regional Office
719 Alexander Rd.
Princeton, N.J. 08540
609-452-7728

Central Regional-
Newark Office
1180 Raymond Blvd.
18th Floor
Newark, N.J. 07102
201-648-4100

Southern Regional Office
302 North White Horse Pike
P.O. Box 594
Hammonton, N.J. 08037
609-567-0010

Information and application for all other services may be made at the DYFS district office serving the area in which the MWD is located. The DYFS district offices are listed below.

DIVISION OF YOUTH AND FAMILY SERVICES
DISTRICT OFFICES

NORTHERN REGION

BERGEN DISTRICT OFFICE
60 State Street
Hackensack, NJ 07601
(201) 487-5380

CENTRAL PASSAIC DISTRICT OFFICE
2 Market Street
Paterson, NJ 07501
(201) 977-4525

BAYONNE DISTRICT OFFICE
690 Broadway
Bayonne, NJ 07002
(201) 823-5000

SOUTH PASSAIC DISTRICT OFFICE
925 Clifton Avenue
Clifton, NJ 07013
(201) 472-4949

JERSEY CITY DISTRICT OFFICE
2815 Kennedy Boulevard
3rd Floor
Jersey City, NJ 07306
(201) 915-3500

NORTH PASSAIC DISTRICT OFFICE
223 Wanaque Avenue, 2nd Floor
Pompton Lakes, NJ 07442
(201) 831-7405

NORTH HUDSON DISTRICT OFFICE
8901 Bergen Line Avenue
North Bergen, NJ 07407
(201) 854-7100

SUSSEX DISTRICT OFFICE
15 Route 306 North
Newton, NJ 07860
(201) 383-8400

MORRIS DISTRICT OFFICE
855 Route 10 East
Randolph Twp., NJ 07801
(201) 927-0931

WARREN DISTRICT OFFICE
5 West Washington Avenue
P.O. Box 148
Washington, NJ 07882
(201) 689-7000

CENTRAL REGION—NEWARK

SUB ESSEX-ORANGE DISTRICT OFFICE
240 South Harrison Street
East Orange, NJ 07018
(201) 414-4200

NEWARK SOUTH DISTRICT OFFICE
1100 Raymond Boulevard,
Room 101-C
Newark, NJ 07102
(201) 648-2400

NEWARK CENTRAL DISTRICT OFFICE
1100 Raymond Boulevard,
Room 305
Newark, NJ 07102
(201) 648-4200

PLAINFIELD DISTRICT OFFICE
700 Park Avenue
3rd Floor
Plainfield, NJ 07060
(201) 499-5825

NEWARK WEST DISTRICT OFFICE
1180 Raymond Boulevard,
Room 1522
Newark, NJ 07102
(201) 648-2960

UNION DISTRICT OFFICE
208 Commerce Place,
2nd and 3rd Floors
Elizabeth, NJ 07201
(201) 820-3000

NEWARK NORTH/EAST
DISTRICT OFFICE
1180 Raymond Boulevard,
9th Floor
Newark, NJ 07102
(201) 648-6150

SUB ESSEX-MAPLEWOOD
DISTRICT OFFICE
2040 Millburn Avenue
Maplewood, NJ 07040
(201) 761-7127

CENTRAL REGION—PRINCETON

HUNTERDON DISTRICT OFFICE
84 Park Avenue, 2nd Floor
Flemington, NJ 08822
(201) 782-8784

MIDDLETOWN DISTRICT OFFICE
225 Highway #35
Red Bank, NJ 07701
(201) 747-7655

MERCER DISTRICT OFFICE
Princess Road
Building 9F
Lawrenceville, NJ 08648
(609) 895-0400

HOWELL DISTRICT OFFICE
220 Route 9, Suite 100
Howell, NJ 07731
(201) 577-9210

EDISON DISTRICT OFFICE
100 Metroplex Drive
Suite 400
Edison, NJ 08817
(201) 819-7003

LONG BRANCH DISTRICT OFFICE
1 Main Street, 1st Floor
Eatontown, NJ 07724
(201) 389-2700

PERTH AMBOY DISTRICT OFFICE
275 Hobart Street, 2nd Floor
Perth Amboy, NJ 08861
(201) 324-1700

OCEAN DISTRICT OFFICE
954 Route 166
Toms River, NJ 08876
(201) 244-4300

EAST BRUNSWICK DISTRICT OFFICE
105 Old Matawan Road
Old Bridge, NJ 08857
(201) 390-2100
(4/12—for 6 months)

SOMERSET DISTRICT OFFICE
75 Franklin Street
Suite 202
Somerville, NJ 08876
(201) 722-2224

ASBURY PARK DISTRICT OFFICE
601 Bangs Avenue
2nd, 3rd & 4th Floors
Asbury Park, NJ 07712
(201) 988-2161

SOUTHERN REGION

ATLANTIC DISTRICT OFFICE
10-14 South New York Avenue
Atlantic City, NJ 08401
(609) 441-3232

CAMDEN ADOLESCENT SERVICES DO
518 Market Street—Lower Level
Camden, NJ 08101
(609) 757-4603

BURLINGTON DISTRICT OFFICE
50 Rancocas Road
Mt. Holly, NJ 08060
(609) 267-7550

CAPE MAY DISTRICT OFFICE
Route 47 and 9
Social Services Building
P.O. Box 222
Rio Grande, NJ 08242
(609) 886-1105

NORTH CAMDEN DISTRICT OFFICE
808 Market Street
P.O. Box 738
Camden, NJ 08101
(609) 757-2700

CUMBERLAND DISTRICT OFFICE
106 West Landis Avenue
Vineland, NJ 08360
(609) 696-6590

SOUTH CAMDEN DISTRICT OFFICE
2 Echelon Plaza
Laurel Road
Suite 210
Voorhees, NJ 08033
(609) 757-2903, 2911, 2921, 2924

GLOUCESTER DISTRICT OFFICE
251 North Delsea Drive
Suite 100
Deptford, NJ 08096
(609) 848-6604

SALEM DISTRICT OFFICE
Five Woodstown Road
Salem, NJ 08079
(609) 935-6350

(f) Division of Medical Assistance and Health Services: The Division of Medical Assistance and Health Services, which is a division of the New Jersey Department of Human Services, administers the following programs:

1. (No change.)

2. Medicaid program: This program provides purchase of medical care and services rendered to eligible persons.

i. Eligibility requirements: To be eligible for Medicaid, an individual must qualify for SSI or for the AFDC, RRP, or Medicaid Only program. Children under the care of the Division of Youth and Family Services are also eligible for Medicaid benefits.

ii. How to apply: Application and inquiry for the AFDC, RRP, or Medicaid Only programs should be directed to the county welfare agency. Information regarding the SSI program may be obtained from the SSA district office. General information about the Medicaid program is available from the Medicaid District Offices.

Recodify existing (h) through (j) as (g) through (i) (No change in text.)

(j) Division of Mental Health and Hospitals: This State agency, which is a division of the New Jersey Department of Human Services, operates four psychiatric hospitals, a child residential treatment center, and an adult diagnostic and treatment center.

1.-2. (No change.)

3. How to make inquiry: Inquiry regarding type and/or cost of services (if any) may be obtained by directly contacting the appropriate institution. The locations and telephone numbers of the Division's facilities are as follows:

i. Trenton Psychiatric Hospital, P.O. Box 7500, West Trenton, New Jersey 08628, telephone 633-1500, area code 609;

ii. (No change.)

iii. Marlboro State Hospital, Station A, Marlboro, New Jersey 07746, telephone 946-8100, area code 201;

iv. Ancora Psychiatric Hospital, Spring Garden Road, Hammontown, New Jersey 08037, telephone 561-1700, area code 609;

v. Arthur Brisbane Child Treatment Center, P.O. Box 625, Farmingdale, New Jersey 07727, telephone 938-5061, area code 201;

vi. Adult Diagnostic and Treatment Center, 8 Production Way, Avenel, New Jersey 07001, telephone 574-2250, area code 201.

(k) Division of Developmental Disabilities: The Division of Developmental Disabilities, which is a component of the New Jersey Department of Human Services, administers the programs and services from regional offices throughout the State.

1. Services available: Specific functional services provided by Field Services of the Division of Developmental Disabilities include:

i.-ii. (No change.)

iii. Day training for persons 21 years and younger and adult training programs for persons over age 21 who need a daytime program in training and adjustment;

iv. (No change.)

v. Guardianship, a protective service for adults and eligible orphaned or abandoned children who have been evaluated as "mentally deficient" and do not have a legal guardian;

vi. Residential care through purchase of care in a private facility, admission to a State school or guest placement; and

vii. Foster Grandparent Program, to provide personal care, education and training, and companionship to mentally retarded persons 21 and under (a similar program is available for mentally retarded persons who are 22 and over).

2.-3. (No change.)

[10:85-8.5 and 8.6 (No change in text.)]

10:85-8.5 Referral to *[Veterans Administration]* ***Department of Veterans Affairs***

(a) Referral shall be made to the *[Veterans Administration]* ***Department of Veterans Affairs*** when the General Assistance applicant appears to be eligible for veterans benefits.

(b) (No change.)

(c) Description of program: The *[Veterans Administration]* ***Department of Veterans Affairs*** operates the Federal program of benefit payments and health and welfare services to veterans and certain of their dependents or survivors. The details of all benefits and services are clearly outlined in a fact sheet entitled "Federal Benefits for Veterans and Dependents", which is issued by the *[Veterans Administration]* ***Department of Veterans Affairs***.

1. (No change.)

10:85-8.6 (No change in text.)

10:85-11.1 Acronyms

The acronyms used in this manual are as follows:

"AFDC" means Aid to Families with Dependent Children.

"ALJ" means Administrative Law Judge.

"ATP" means authorization to purchase (food stamps); (Form FSP-906).

"CWA" means county welfare agency.

"DARM" means Division of Archives and Records Management.

"DDD" means Division of Developmental Disabilities.

"DDRS" means Disability Determination Review Section.

"DEA" means Division of Economic Assistance.

"DEA/BARA" means Bureau of Administrative Review and Appeals, Division of Economic Assistance.

"DEA/BBS" means Bureau of Business Services, Division of Economic Assistance.

"DEA/GAP Unit" means General Assistance Program Unit, Division of Economic Assistance.

"DEA/BMS" means Bureau of Management Services, Division of Economic Assistance.

"DEA/BQC" means Bureau of Quality Control, Division of Economic Assistance.

"DES" means Division of Employment Security.

"DHS" means Department of Human Services.

"DIB" means disability insurance benefits.

"DMHH" means Division of Mental Health and Hospitals.

"DVA" means Department of Veterans Affairs.

"DVRS" means Division of Vocational and Rehabilitation Services.

"DYFS" means Division of Youth and Family Services.

"EA" means Emergency Assistance.

"EPSDT" means early periodic screening diagnosis and treatment.

"ES/GAEP" means Employment Service/General Assistance Employability Program.

"FNS" means Food and Nutrition Service, United States Department of Agriculture.

"FSP" means food stamp program.

"GA" means general assistance.

"GAP Unit" means General Assistance Program Unit.

"IM" means income maintenance (county welfare agency programs).

"INS" means Immigration and Naturalization Service, United States Department of *[State]* ***Justice***.

"IRS" means Internal Revenue Service, United States Department of the Treasury.

"LAB" means Local Assistance Board.

"LRR" means legally responsible relative.

"MA" means medical assistance (Medicaid).

"MDTA" means Manpower Development and Training Act.

"MWD" means municipal welfare department.

"MWSA" means Municipal Worksite Agreement.
"NJAC" means New Jersey Administrative Code.
"NJES" means New Jersey Employment Service.
"NJSA" means New Jersey Statutes Annotated.
["NJSES" means New Jersey State Employment Service, New Jersey Department of Labor.]
"NPA" means nonpublic assistance.
"OAL" means Office of Administrative Law.
"PA" means public assistance.
"PAAD" means Pharmaceutical Assistance to the Aged and Disabled.
"RRP" means Refugee Resettlement Program.
"RSDHI" means Retirement, Survivors, Disability and Health Insurance (social security).
"RSVP" means retired senior volunteer program.
"SMI" means supplemental medical insurance (Medicare part B).
"SSA" means Social Security Administration.
"SSA/DO" means Social Security Administration district office.
"SSI" means supplemental security income.
"TDB" means temporary disability benefits.
"UIB" means unemployment insurance benefits.
"USDA" means United States Department of Agriculture.
["VA" means Veterans Administration.]
"VISTA" means Volunteers in Service to America.
"WIC" means special supplemental food program for women, infants, and children.

10:85-11.2 Definitions

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

. . .

"Aid to Families with Dependent Children (AFDC)" means assistance program administered by county welfare agencies for financially eligible children and parent(s), or parent person(s) where there is death, absence, or incapacity of one or both natural or adoptive parents; or when both parents are in the home and the father is unemployed or underemployed.

"Appeal" means the process by which an individual exercises his or her right to have an agency action reviewed; a local or State fair hearing.

. . .

"Application process" means all activity performed by the municipal welfare department prior to the official disposition of an application.

"Authorized representative" means an individual (or agency) whom a client designates orally or in writing to act on his or her behalf.

. . .

"Deficit" means the difference between client's adjusted income and the applicable allowance standard.

. . .

"DEA (Division of Economic Assistance)" means the office, within the State Department of Human Services, which is responsible for the supervision of the General Assistance Program.

. . .

"Eligible unit" means the number of persons applying for assistance as a unit (see N.J.A.C. 10:85-3.1(b)1).

"Exempt resource" means a resource which is not to be considered in computing extent of need and is not subject to required liquidation.

. . .

"Fair hearing" means the formal procedure through which a recipient or applicant may protest the municipal welfare department's action or inaction.

. . .

"Household size" means the numbers of related persons living together as a family unit.

. . .

"Medicaid" means Federal/State program administered by Division of Medical Assistance and Health Services which provides payment of claims for and evaluation of health services; eligibility is generally limited to persons who are receiving or who are eligible to receive AFDC or SSI.

. . .

"Policy" means guidelines, limited by and consistent with law, which control MWD and Division of Economic Assistance staff in carrying out public assistance programs.

. . .

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline
Chronic Violator

Adopted Amendments: N.J.A.C. 10A:4-6, 6.3 and 6.4

Proposed: October 16, 1989 at 21 N.J.R. 3240(a).
Adopted: December 21, 1989 by William H. Fauver, Commissioner, Department of Corrections.
Filed: December 21, 1989 as R.1990 d.34, **without change.**

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

Effective Date: January 16, 1990.
Expiration Date: July 21, 1991.

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

Full text of the adoption follows.

SUBCHAPTER 6. CHRONIC VIOLATOR

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

(a) Disciplinary charges lodged against an inmate during the time he or she is currently serving a 30 day term for other disciplinary violations shall be given directly to the administrator in charge of the Administrative Close Supervision Unit (ACSU). A copy of each charge shall be given to the inmate within 48 hours unless there are exceptional circumstances.

(b) The administrator in charge of the Administrative Close Supervision Unit (ACSU) shall be responsible for ordering that each charge be investigated and the administrator shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff that is deemed necessary to clarify facts or circumstances, the administrator in charge of the Administrative Close Supervision Unit (ACSU) concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from lockup, the administrator shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

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

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer/Adjustment Committee concludes that the inmate cannot safely be released from lockup at the expiration of the inmate's 30 day term, the inmate shall be designated a chronic violator. The Disciplinary Hearing Officer's/Adjustment Committee's decision shall be referred to the appropriate Institution Classification Committee (I.C.C.) for review and approval. The inmate shall remain in Disciplinary Detention until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that he or she will control his or her behavior and will refrain from repetitive acts of assault or destruction of property.

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

10A:4-6.4 Appeal procedure

(a) (No change.)

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner, Division of Adult Institutions, shall confer with the administrator in charge of the Administrative Close Supervision Unit (ACSU) concerning the inmate's conduct. Alternative means for

control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the decision of the Assistant Commissioner, Division of Adult Institutions, and the reasons therefor within five working days.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Credit Life Insurance and Credit Accident and Health Insurance

Premium Rate Standards

Adopted Amendments: N.J.A.C. 11:2-3.1 and 3.12

Proposed: October 2, 1989 at 21 N.J.R. 3052(a).
Adopted: December 21, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.
Filed: December 21, 1989 as R.1990 d.44, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:29-1.

Effective Date: January 16, 1990.
Operative Date: March 18, 1990.
Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: The "combined aggregate loss ratio" may be skewed by the large amount of insurance coverage written by automobile dealerships. The loss ratios on those policies are considerably lower than other sources.

RESPONSE: The Department receives credit insurance loss ratio experience from insurer annual statements and from the National Association of Insurance Commissioners (NAIC). This information is provided on an aggregate basis; auto dealer experience is not segregated from other business. Presumably, auto loan business is included in the experience of banks, finance companies, and credit unions.

COMMENT: How do the rules affect insurance on open-ended credit lines and second mortgage loans written in excess of 10 years?

RESPONSE: The proposed revision in the rules does not change the Department's treatment of open-ended credit lines and second mortgage loans written in excess of 10 years.

COMMENT: Based upon a prima facie loss ratio of 89 percent in credit disability insurance, one insurer recommends that the premium rates for credit accident and health insurance not be decreased.

RESPONSE: The proposed rate change is based on the experience of all credit insurers in the State, not on the experience of one insurer. N.J.A.C. 11:2-3.12(d) allows an insurer to submit rates which deviate from the standard. N.J.A.C. 11:2-3.12(e) allows the Commissioner to consider previous experience when reviewing a rate submission.

COMMENT: Credit insurance should be permitted to cover the payment stream of leases.

RESPONSE: N.J.S.A. 17B:29-4 limits the amount of credit insurance to the amount of the indebtedness. The amount required to be paid at early termination of an auto lease (death or otherwise) is the early termination charge. Beyond the termination fee, no credit transaction exists as required by statutes.

COMMENT: Lowering rate standards will bring credit insurance loss ratios more into conformance with loss ratios on other types of insurance.

RESPONSE: Increasing the actual loss ratio is the intent of the proposed amendments to the rules. Loss ratio standards do not exist for ordinary or group life insurance. The loss ratio standard for collectively issued individual health insurance is 60 percent; for limited underwriting policies such as Medicare supplements, it is 65 percent; for group Medicare supplements, it is 75 percent. Since credit insurance is group or group-type insurance, loss ratios in the 65 percent to 75 percent range are appropriate.

COMMENT: The applicability of the rules should be expanded to include insurance on first mortgage loans to individuals for the purpose of purchasing residential real estate. What possible rationale can the Department offer for not protecting the average homeowner from overcharges and unconscionably high profit standards on these coverages?

RESPONSE: There is no rationale for not protecting homeowners from overcharges and unconscionably high profit standards on first mortgage insurance. Since different marketing arrangements and banking laws exist for first real estate loans, a separate appropriate regulation needs to be drafted and promulgated.

COMMENT: One commenter observes that the five-year term limitation under N.J.A.C. 11:2-3.1 as proposed appears to be consistent with the enforcement practices of the Department, but fails to understand how this exclusion addresses "real" consumer needs, citing areas of concern to be truncation and critical period type products as well as leasing transactions. Another commenter asserts that the Department should recognize and allow the sale of truncated credit insurance plans in New Jersey.

RESPONSE: The exclusion of the five-year term limitation is intended to bring the rule into conformance with the statute, not to address consumer needs. The Department feels that the rate changes proposed address consumer needs. Truncation and critical period products are areas of concern expressed by insurers, not consumers, and were not intended to be addressed by the Department as part of the proposed amendment. Consumers have not complained about the lack of these products.

COMMENT: The principal amendment to N.J.A.C. 11:2-3.1 removes the five-year limit on the scope of the rule, consistent with the 1982 change in the scope provision of the underlying statute. Insurance for which no identifiable charge is made to the insured debtor should be excepted. The rule is written with the problems of debtor-paid coverage in mind and, in many instances, is neither appropriate nor necessary for noncontributory coverage. Subjecting noncontributory coverage to these rules merely adds a nonproductive, inefficient layer of cost to noncontributory coverage.

RESPONSE: The amendment to N.J.A.C. 11:2-3.1 brings the scope of the rule into conformity with the scope of N.J.S.A. 17B:29-1 which provides the authority to promulgate the rule. The Department does not agree that insurance for which there is no identifiable charge should be exempt from regulation. The rule addresses other areas, such as the term of coverage, policy form content, and notification of coverage, which are appropriate subjects of regulation for all credit insurance.

COMMENT: The prima facie rates suggested in proposed N.J.A.C. 11:2-3.12(f) and (g) appear to be inadequate to support present loss ratios and also to cover administrative expenses by insurers and lenders incurred in providing this service to borrowers. This commenter states that current loss experience at three of its subsidiary institutions over the last three years exceeds the published ratio (46 percent) by more than 52 percent.

RESPONSE: The Department does not agree that the proposed rates are inadequate to cover the administrative expenses of insurers and lenders, nor has the Department ever seen a detailed study of the expenses incurred by insurers and lenders in providing the service to debtors. The amendment is based on the aggregate information submitted to the NAIC by the credit insurance writers in New Jersey.

The commenter mentions the experience of three subsidiary institutions which exceeds the published ratio, but does not indicate whether it is all or only a portion of its total business. The procedure for requesting deviations from standard rates when warranted by loss experience is noted above in the response to the third comment.

COMMENT: The proposed amendments will lower New Jersey premium rate standards for both credit life and credit accident and health insurance by approximately five percent to 10 percent resulting in increased loss ratios. In assessing the economic impact, the Commissioner promotes the fact that New Jersey consumers will save millions of dollars each year as a result. There is a corresponding acknowledgement that credit insurers will experience a decrease in expense and profit margins. The reduction in insurer expense and profit margins will challenge the insurers' ability to market and service the credit insurance product. The expenses associated with operating the credit insurance business, as with any business, are continually subject to inflationary pressures. Inasmuch as the prima facie rates for credit insurance have not changed for many years, the inflationary pressures have compelled credit insurers to strive for optimum operating efficiency. If additional efficiency cannot be achieved, the reduced margin for expenses will, unfortunately, result in diminished service. With regard to insurer profit margins, the annual statement data on file with the Department is sufficient evidence that credit insurer profits are not excessive. Prima facie rate standards should establish a rate that is neither excessive nor inadequate. The reduced prima facie rate standards are being proposed without any study or assurance that the resulting expense margin is adequate to both service the business and offer credit insurers some reasonable expectation of profit.

RESPONSE: The commenter states "Prima facie rate standards should establish a rate that is neither excessive nor inadequate." N.J.S.A. 17B:29-7e(1) does not use the "neither excessive nor inadequate" standard; it states that the disapproval may be on the ground that "the premium rates charged or to be charged are excessive in relation to benefits." The Department finds that premiums which return only 46 percent in benefits are excessive. Insurance that has such high expenses is of limited economic value. Further, as stated in the preceding response, insurer/lender expenses have not received the scrutiny necessary to justify even the level proposed.

COMMENT: The proposed amendment at N.J.A.C. 11:2-3.12(f) would reduce the prima facie credit life insurance rates by amounts ranging from 10.1 percent to 38 percent and eliminate the volume-based variability of the rates. The commenters are happy to see that the variable rate is to be discounted. Further, the proposed monthly rate of $0.62 per $1,000 is within (albeit at the low end of) the range of rates that the commenters believe make reasonable allowance for claims, expenses and some profit. While the commenters do not object to this rate reduction in and of itself, the reduction will eliminate profit that the commenters have heretofore used to partially offset the substantial losses the commenters have sustained on credit disability insurance in New Jersey. It will also increase the number of rate filings the commenters will be required to make on noncontributory credit life plans. Thus, the commenters' support of the proposed reduction in the prima facie credit life insurance rate is not without qualification.

RESPONSE: The level of rates set forth for credit life insurance and credit disability insurance should reflect the expected experience of the two coverages separately. Debtors who buy credit life insurance only should not be expected to subsidize those who buy credit disability insurance. It is not clear why the proposed rate change will increase the number of noncontributory life insurance rate filings. The number of rate filings required is related to the number of forms filed, since N.J.S.A. 17B:29-7a requires schedules of rates for all forms submitted.

COMMENT: The proposed amendment at N.J.A.C. 11:2-3.12(g) would reduce the prima facie credit disability insurance rates by approximately five percent and expand the table of single premium rates to 120 months. Based solely on the Statewide experience of all insurers combined that was previously published, the proposed five percent reduction does not appear unreasonable. The commenters continue to believe that the overall credit disability insurance claim levels in New Jersey are artificially low—a result of exceedingly low rates forcing insurers to apply stringent underwriting standards that eliminate a major portion of New Jersey debtors from coverage.

RESPONSE: The Department agrees that the disability rate change proposal is reasonable since it is based on the Statewide experience of all insurers. The Department does not agree that the disability rates are artificially low, that stringent underwriting standards are used, or that a major portion of New Jersey debtors are excluded from coverage. The submissions made to the Department do not give evidence of stringent underwriting, nor have complaints been received from New Jersey debtors who are unable to obtain credit disability coverage.

COMMENT: The commenters' problems with credit disability insurance in New Jersey are not with the level of the prima facie rates but with the arbitrary, unreasonable and unlawful manner in which the rate and form approval process is administered (merely reducing prima facie rates will not solve this problem). All of the commenters' credit disability rate filings in New Jersey in recent years have been experience-justified upward deviated rates. These rates are routinely disapproved and the commenters are informed in the disapproval letter what rates they are to use. These Department-made rates are the product of either (a) arbitrary cutbacks of the rates we submitted for approval, or (b) a "desk drawer" formula not properly adopted as a rule. In either instance, these Department-made rates are patently unlawful. The commenters' use of these Department-made rates has caused them to have an actual loss ratio on their New Jersey credit disability insurance business of approximately 87 percent over the past three years. Over this three-year period, their New Jersey credit disability insurance business has produced a loss exceeding $1.5 million, yet the effect of the Department action is to say that any higher rates are "excessive" under the law. This is beyond the bounds of any reasonable interpretation of the law and must be stopped.

RESPONSE: N.J.A.C. 11:2-3.12(e) specifies the criteria to be used in considering rate deviations. The Department uses this information in a consistent manner in reviewing rate deviation requests. Each case is reviewed on its own merits.

COMMENT: The commenters are concerned that the table of rates is extended only to 120 months, while the scope of the rule is without durational limit. Historically, the Department has not approved single premium rates for duration in excess of 120 months, effectively prohibiting the use of single premium plans for longer durations with no legal basis for such action. The absence of rates in the rule for longer durations will undoubtedly result in the continuation of this practice by the Department.

RESPONSE: The Department's position on financed single premium rates has not changed. Single premium rates for durations longer than 120 months will not be approved. Such rates result in charges that are unfair and excessive.

COMMENT: The proposed amendments make no provision for the use of a composite-term (level) premium rate on monthly premium plans. Duration-specific rates on monthly premium plans require the use of sophisticated computer application programs that are expensive to design and use. As a result, the vast majority of creditors are dissuaded from making monthly premium plans available to consumers. Since monthly premium plans are generally less costly to consumers than are financed single premium plans, the insistence by the Department that monthly premium plans must use duration-specific rates has a decidedly anti-consumer effect. It is also anomalous that duration-specific rates are required to be used on open-end credit plans where repayment periods do not have set durations.

RESPONSE: N.J.A.C. 11:2-3.12(g)3 states that premium rates for installments other than as specified shall be consistent with the regulatory standards. The Department has allowed the use of a composite-term premium rate for monthly premium disability plans. The rate permitted depends on the plan of insurance and the duration used to determine the minimum monthly loan installment.

COMMENT: One commenter questioned directly and another by inference the accuracy of the study used to establish the proposed rates.

RESPONSE: Each year, the NAIC publishes aggregate loss ratios for credit life and credit accident and health insurance which are based on a compilation of data submitted by credit insurers to the states as part of their annual statements and to the NAIC. Based on 1988 information, the combined ratio for credit life and credit accident and health insurance in New Jersey was 46 percent.

Full text of the adoption follows:

11:2-3.1 Scope

All life insurance and all accident and health insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this subchapter except such insurance sold in connection with first mortgage loans made to individual borrowers for the purpose of purchasing residential real estate.

11:2-3.12 Standards for premium rates

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

(f) Standards for premium rates for credit life insurance shall be as follows:

1. If premiums are paid monthly on outstanding balances, the monthly premium rate per $1,000 of insurance in force is $0.62.

2. If premiums are paid in one sum for the entire duration of the indebtedness:

Single Premium Rates (Discounted for Interest and Mortality) Per $100.00 of Initial Insured Indebtedness Repayable in Indicated Number of Equal Monthly Installments

6	$0.22
12	0.40
24	0.75
36	1.09
48	1.42
60	1.74
72	2.05
84	2.35
96	2.64
108	2.92
120	3.19

3.-6. (No change.)

(g) Standards for premium rates for credit accident and health insurance shall be as follows:

1. If premiums are paid in one sum for the entire duration of the indebtedness, the following rates per $100.00 of initial indebtedness repayable in indicated number of equal monthly installments:

Number of Equal Monthly Installments	Single Premium Rates per $100.00 of Initial Indebtedness	
	Column I	Column II
6	$1.28	$1.43
12	1.71	1.90
24	2.05	2.28
36	2.26	2.52
48	2.49	2.76
60	2.66	2.95
72	2.80	3.12
84	2.95	3.29
96	3.11	3.45
108	3.24	3.60
120	3.35	3.72

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

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration

Readoption with Amendments: N.J.A.C. 12:90

Proposed: October 16, 1989 at 21 N.J.R. 3247(a).
Adopted: December 15, 1989 by Charles Serraino, Commissioner, Department of Labor.
Filed: December 15, 1989 as R.1990 d.24, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1-47, 34:1A-3(e), and 34:7-18.

Effective Date: December 15, 1989, Readoption;
January 16, 1990, Amendments.
Expiration Date: December 15, 1994.

Summary of Public Comments and Agency Responses:

The Department received 13 comments concerning the proposed readoption of N.J.A.C. 12:90, Boilers, Pressure Vessels and Refrigeration, which appeared in the October 16, 1989 New Jersey Register at 21 N.J.R. 3247(a). Several commenters, including the Department of Community Affairs (DCA), requested a public hearing on the proposed readoption.

With regard to the requests of the commenters other than DCA concerning the public hearing, the Department believes that the deletion of the proposed language concerning dual purpose vessels alleviates the concern of these commenters and obviates the need for a public hearing.

With regard to DCA's request for a public hearing, DCA did not submit its comments during the comment period, and thus the request for a public hearing was not timely. Furthermore, the Department is unable to hold a public hearing prior to the expiration date for the rule, and, therefore, denies DCA's request. However, the Department has contacted DCA to discuss its concerns, and believes that the changes upon adoption are satisfactory to both agencies and adequately address the problems raised by DCA.

COMMENT: N.J.A.C. 12:90-7.5(a)2 and 7.6(a)2 address the eligibility for a low pressure vessel boiler operator examination and a high pressure boiler operator in charge examination. According to the rules as proposed, the program shall be "established by the Chief Engineer and approved by the Office of Boiler and Pressure Vessel Compliance." If the proposed amendment is to be adopted, the commenter requested that each of the training programs for these two types of operators be established by way of a proposed rulemaking setting forth program content, as this would allow licensed operators to offer input and would relieve the Division of Workplace Standards from having to establish and review individual programs for each licensed operator.

RESPONSE: The Department is merely codifying existing Departmental procedures concerning the intensive training program, and thus intends to adopt the amendment as proposed.

COMMENT: Amend N.J.A.C. 12:90-4.1(c) to include language which will exempt water heaters in residences.

RESPONSE: The Department has decided to delete the proposed language concerning water heaters upon adoption. Water heaters which meet the following standards are not currently regulated: Heat input not exceeding 200,000 Btu/hour, water temperature not exceeding 210 degrees Fahrenheit and a normal water containing capacity not exceeding 120 gallons that are equipped with safety devices in accordance with the requirements of HLW 800 of Section 4 of the ASME Code.

COMMENT: Amend N.J.A.C. 12:90-4.2(b), 5.2(b) and 8.1(a) to update the ASME Boiler and Pressure Vessel Code from 1986 to 1989.

RESPONSE: The Department agrees with the comment, and has amended the adoption to update the ASME code reference.

COMMENT: Amend N.J.A.C. 12:90-4.2(c), 4.8(a)3 and 8.1(a)3 to update the National Board Inspection Code from 1987 to 1989.

RESPONSE: The Department is not prepared to effect this change at the present time, as the entire version of the new code has not yet been approved for adoption by the Division of Workplace Standards.

COMMENT: Delete the language "except that the following sections shall not apply" from N.J.A.C. 12:90-4.2(c). The commenter states (1) that the third paragraph of the purpose and scope pertains to pressure vessels, and thus does not need to be referenced in this subchapter; and (2) that the other excepted section permits authorized owner/user inspectors to inspect repairs made by their employer, and that New Jersey is the only jurisdiction that takes exception to this practice, which has been shown, by industry experience, to be safe.

RESPONSE: The Department has previously considered these concepts, and has decided that the existing language is more protective for the public than the commenter's suggested language.

COMMENT: Amend N.J.A.C. 12:90-5.2(c) to include:

> The National Board Inspection Code 1989 and API 510-1989 are adopted as safety standards under this subchapter and shall apply according to the provisions thereof.

Delete "except that the following section shall not apply." According to the commenter, API 510 is intended for the chemical and petroleum industries for maintenance of pressure vessels. The NBIC is intended for all industries for maintenance of boilers, and for industries other than chemical and petroleum for the maintenance of pressure vessels. The paragraph which is excepted recognizes API 510, which pertains to pressure vessels of chemical and petroleum industries. Another commenter suggested the same change. The second excepted paragraph is safe and reasonable according to industry standards.

RESPONSE: The Department has previously considered these concepts, and has decided that the existing language is more protective for the public than the commenter's suggested language.

COMMENT: Add "API 510-1989, Pressure Vessel Inspection Code" to N.J.A.C. 12:90-8.1(a).

RESPONSE: Since the Department does not intend to use this standard in the rule, it need not be referenced.

COMMENT: One commenter requested that in N.J.A.C. 12:90-4.1(b) and 4.2(a) the rationale for the proposed changes state that the changes will result in the denial of economic advantages and comfort to the people of New Jersey, and that the changes are in conflict with BOCA, SBCCI, IAPMO, and ANSI Z21.10.1a-1988.

RESPONSE: The Department has decided to delete this section.

COMMENT: Add a definition of "dual purpose," and "water heater," to clarify N.J.A.C. 12:90-4.1(b), 4.2(b) and 5.1(b), respectively.

RESPONSE: The Department has eliminated all references to dual purpose and water heaters, so no definition of these terms is necessary.

COMMENT: Amend N.J.A.C. 12:90-8.1(a) to read "Latest ASME Boiler and Pressure Vessel Code."

RESPONSE: The Department prefers to amend the code citations when new codes have been issued and approved to avoid any uncertainty as to which code is currently in use.

COMMENT: Several commenters suggested that the Department delete the amendments to N.J.A.C. 12:90-4.1, 4.2 and 5.1 concerning the dual purpose vessels, as they would effectively prohibit the use of water heaters to provide both potable hot water and space heat in combination by making their construction, installation, registration and repair subject to excessive boiler regulation without furthering any legitimate safety concern. If some regulation is still required, adopt the ANSI standards for gas water heaters.

RESPONSE: The Department agrees with the several commenters' suggestions, and has deleted the suggested language from the adoption.

COMMENT: Two commenters stated that the economic impact statement did not accurately reflect the adverse economic impact on the public.

RESPONSE: As the Department is not planning to adopt the text of the Economic Impact Statement, no changes need to be made.

COMMENT: Amend N.J.A.C. 12:90-4.2(c) to include the following:

3. The first sentence of Section R.-308.2, which for the purpose hereof shall instead be deemed to read: "A pressure test as required pursuant to R-308.3 shall be applied."

This commenter states that the above language would permit alternate pressure tests to be used on altered boilers and pressure vessels, and that the alternate tests used be those in Section R-308.3 of the 1987 NBIC.

RESPONSE: The Department disagrees with the commenter's suggestion. Hydrostatic pressure testing shall be done in accordance with the requirements for new construction for altered vessels.

COMMENT: The Department should not use standards other than those which are in force in effect in the State, specifically BOCA Mechanical Code 1987 and the ASME-89 standards.

RESPONSE: The Department agrees with the commenter, and has amended the language upon adoption to reflect the suggested changes.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:90.

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

12:90-2.1 Definitions

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

. . .

"Examiner" means an individual identified as a member of the examining board pursuant to N.J.S.A. 34:1-38.1.

. . .

"Fireman" means a boiler operator.

. . .

"Long boom crane" means a hoisting machine with a boom length of over 99 feet.

. . .

"Mechanical Inspection Bureau" means the bureau established pursuant to N.J.S.A. 34:1-38.1 et seq. (1917) and is synonymous with the Office of Boiler and Pressure Vessel Compliance.

. . .

12:90-3.2 Right of entry

(a) For the purpose of examination or inspection of any boiler, pressure vessel, refrigeration system, power plant or other equipment, the Commissioner may enter such premises at all reasonable hours in accordance with N.J.S.A. 34:1-15.

(b) Any person, corporation or firm violating any provision of this section shall, for each offense, be liable for a penalty of $50.00 pursuant to N.J.S.A. 34:1-16.

12:90-3.3 Equipment requiring a licensed operator

(a) No person shall operate the equipment listed below without the appropriate license as specified in N.J.A.C. 12:90-3.4 through 3.8.

1.-3. (No change.)

4. Any refrigerating system using a refrigerant which is either flammable or toxic and rated over 24 tons of refrigerating capacity;

5. Any hoisting machine with a boom length exceeding 99 feet; or

6. (No change.)

12:90-3.4 Licenses for high pressure boilers

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

Table 3.4
Licenses for High Pressure Boilers

Boiler horsepower over	Boiler horsepower not over	Chief Engineer's License (1)	Shift Engineer's License
3,000		1-A gold seal 1st class engineer	1-C blue seal 3rd class engineer
1,000	3,000	1-B red seal 2nd class engineer	1-C blue seal 3rd class engineer
500	1,000	1-C blue seal 3rd class engineer	black seal boiler operator in charge
100	500	black seal boiler operator in charge	black seal boiler operator in charge
6	100(2)	—	boiler operator special

Notes to Table

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

(c) A fireman's special license for electric, coil or waste heat boilers may be issued for unlimited horsepower use, and may not be used for the operation of other types of boilers.

12:90-3.5 Licenses for low pressure boilers

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

(c) A person with a low pressure license may operate low pressure boilers of unlimited horsepower.

12:90-3.7 Licenses for power generating plants

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

Table 3.7
Licenses for Power Generating Plants

Power Generating Plant Prime Mover horsepower over	horsepower not over	Chief Engineer's License (1)	Shift Engineer's License	Boiler Operator's License
500 and over		1-A gold seal 1st class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge
100	500	1-B red seal 2nd class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge
6	100	1-C blue seal 3rd class engineer	1-C blue seal 3rd class engineer	black seal boiler operator in charge (2)

Notes to Table

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

12:90-3.8 Licenses for refrigeration systems
(a)-(b) (No change.)

Table 3.8
Licenses for Refrigeration Systems

Refrigeration Plant Capacity tons over	tons not over	Chief Engineer's License (1)(2)	Shift Engineer's License (2)
300 and over		2-A gold seal 1st class engineer	2-C blue seal 3rd class engineer
65	300	2-B red seal 2nd class engineer	2-C blue seal 3rd class engineer
24	65	2-C blue seal 3rd class engineer	2-C blue seal 3rd class engineer

Notes to Table

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

12:90-3.9 Chief engineer and scope of certain licenses
(a)-(b) (No change.)
(c) The engineer designated as chief engineer shall be permitted to serve as chief engineer in one plant location only and must be a full-time employee of the company responsible for the operation of the boilers, power generating or refrigeration systems.
(d)-(j) (No change.)

12:90-3.10 Duties of licensed persons
(a)-(b) (No change.)
(c) Each licensed person shall remain on the premises and shall determine how long he can stay away from his equipment and not jeopardize the safe operation of a low pressure heating boiler.
(d) The length of time during which a licensed person can properly be away from the equipment of (c) above varies according to its nature, size and load conditions.
(e) (No change.)

12:90-4.1 Scope of subchapter
(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of steam or hot water boilers, except as provided in *[(c)]**(b)* below.

[(b) Vessels used for dual purposes shall satisfy the requirements of the most stringent standards of the ASME Code to which either of its uses is identified. The vessel shall also meet all of the requirements of both sections of the ASME Code to satisfy its use as a dual purpose vessel.]

*[(c)]**(b)* This subchapter shall not apply to:
1.-2. (No change.)
3. Any steam or hot water boiler having less than 10 square feet of heating surface;
4.-6. (No change.)
7. Any steam or hot water boiler used solely for building service regulated by the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.20 (Mechanical Subcode).*

12:90-4.2 Compliance with referenced standards
(a) ***Steam or hot water boilers used solely for building service are regulated by the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.20, Mechanical Subcode.** *[Boilers]* ***Other boilers**[, water heaters, and similar equipment]* shall be constructed, installed, maintained, altered, repaired and inspected in accordance with the standards referenced in (b) and (c) below.
(b) The applicable sections of the ASME Boiler and Pressure Vessel Code—198*[6]**9* are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.
1.-9. (No change.)
(c) The National Board Inspection Code—1987 is adopted as the safety standard under this subchapter and shall apply according to the provisions thereof, except that the following sections shall not apply:
1.-2. (No change.)
(d)-(g) (No change.)

12:90-4.5 Low pressure boilers
(a)-(d) (No change.)
(e) When low pressure boilers are connected to a common header, the connections from each boiler having a manhole opening shall be fitted with two stop valves having adequate free-blow drains which shall be located between the stop valves.
1.-2. (No change.)

12:90-4.7 Steam boiler blowdown tanks and receivers
(a)-(d) (No change.)
(e) Centrifugal type separators:
1. Centrifugal type separators shall be built and stamped in accordance with the ASME Code and may be used as provided in (e)2 and (e)3.
2.-3. (No change.)
(f) (No change.)

12:90-4.8 Welded repairs and alterations to boilers
(a) Welded repairs and alterations to boilers shall comply with:

1.-2. (No change.)
3. The National Board Inspection Code—1987 edition.
(b)-(g) (No change.)

12:90-4.9 Qualification authorized repair firms
(a) This section shall apply to the procedures required to obtain a New Jersey R symbol as a New Jersey authorized repair firm.
(b) A letter of application shall be addressed to the Office of Boiler and Pressure Vessel Compliance by a responsible officer of the firm requesting repair authorization. The letter of application shall identify the New Jersey address and location of the repair firm to be considered for authorization, and shall include evidence that an authorized inspection agency has agreed to provide inspection service as required.
(c)-(h) (No change.)
(i) Repair shops shall be located within jurisdictional New Jersey.
(j) Nothing herein shall be intended to prohibit repair by an appropriate qualified ASME authorized shop or National Board repair firm or to require additional qualification of such shop under these rules.

12:90-4.12 Fee for shop inspection
(a)-(c) (No change.)
(d) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-4.14 Registration of boilers
(a) Boilers shall be registered with the Office of Boiler and Pressure Vessel Compliance, and a State boiler inspection certificate shall be issued.
(b) Every boiler approved for use in the State shall be assigned a registration number, which shall be located in the upper left-hand corner of the boiler certificate.
1. This number shall be attached to the front of the boiler in such a manner as to be plainly visible.
(c) The State boiler inspection certificate shall be properly framed and posted in the boiler room, engine room, engineer's office, or plant office and be readily available for examination.
(d) Damaged, altered, defaced or lost certificates must be replaced by request through the Office of Boiler and Pressure Vessel Compliance for replacement. The fee for replacement shall be $8.00.

SUBCHAPTER 5. UNFIRED PRESSURE VESSELS

12:90-5.1 Scope of subchapter
(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of unfired pressure vessels, except as provided in *[(c)]**(b)* below.
[(b) Vessels used for dual purposes must satisfy the requirements of the most stringent standards of the ASME Code to which either of its uses is identified. The vessel must also meet all of the requirements of its use as a dual purpose vessel.]
*[(c)]**(b)* This subchapter shall not apply to:
1.-5. (No change.)
6. Any unfired pressure vessel that does not exceed a design pressure of 300 psi and a design temperature of 210 degrees Fahrenheit containing water with air under pressure, the compression of which serves only as a cushion; and
7. (No change.)

12:90-5.2 Compliance with referenced standards
(a) (No change.)
(b) The applicable sections of the ASME Boiler and Pressure Vessel Code-198*[6]**9* are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.
1.-7. (No change.)
(c) The National Board Inspection Code—1987 is adopted as a safety standard under this subchapter and shall apply according to the provisions thereof, except that the following section shall not apply:
1.-2. (No change.)
(d)-(g) (No change.)

12:90-5.4 Class I unfired pressure vessels
(a)-(c) (No change.)
(d) Class I unfired pressure vessels may also be stamped and registered as designated by the National Board.

12:90-5.6 Class III unfired pressure vessels
(a) Unfired pressure vessels designated as Class III unfired pressure vessels may in the future be either new or used non-code pressure vessels and will be identified as New Jersey Approved Pressure Vessels meeting the requirements of N.J.A.C. 12:90-5.9.

12:90-5.7 Class III unfired pressure vessels—New Jersey Standard
(a) Pressure vessels identified as New Jersey Standard shall retain their identification through their life period. No additional fabrication of this standard shall be allowed.

12:90-5.8 Class III unfired pressure vessels—New Jersey Special
Pressure vessels identified as New Jersey Special shall retain their identification through their life period. No additional fabrication to this classification shall be allowed.
[Pressure vessels identified as New Jersey Special shall retain their identification through their life period. No additional fabrication to this classification shall be allowed.]

12:90-5.9 Class III unfired pressure vessels—New Jersey Approved
(a) (No change.)
(b) The application for a New Jersey Approved unfired pressure vessel shall meet the following requirements:
1. To expedite handling of a request for non-code construction review, all materials shall be gathered and submitted, in as complete a form as possible, by the user;
2. When it is necessary to defer filing of some material, such omission shall be prominently noted in the letter of application;
3. All written material shall be in the English language;
4. All letters of application shall be accompanied by payment of $500.00 for each non-code design. Additional fees shall be required for designs submitted for a single project and shall be repetitive for each user-application of the design;
5. Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey certified number; and
6. Reference to conformance to the ASME Code shall be deleted where such appears on the form. The completed form, in duplicate, together with a facsimile of the stamping, shall be filed for registry with the Office of Boiler and Pressure Vessel Compliance.
Recodify existing (d) through (n) as (c) through (m) (No change in text.)

12:90-5.11 Design criteria
(a) (No change.)
(b) Impervious graphite materials may be used in the fabrication of heat exchangers under the New Jersey Approved classification pending acceptance of this material under the ASME Code.
(c) Manufacturers desiring to fabricate vessels utilizing impervious graphite materials shall be required to substantiate the design of such vessels and the composition of the graphite material under the New Jersey Approved classification.

12:90-5.12 Welded repairs and alterations to unfired pressure vessels
(a) Welded repairs and alterations to unfired pressure vessels shall comply with:
1.-2. (No change.)
3. The National Board Inspection Code—1987 edition.
(b)-(e) (No change.)

12:90-5.13 Inspection of unfired pressure vessels
(a)-(c) (No change.)
(d) Vessels exempted from ASME Code inspection by this section shall be stamped with the "UM" symbol, or as otherwise provided for construction other than Class I pressure vessel.
(e) Shell and tube heat exchangers, jacketed vessels and other type vessels which may be subject to differential pressures shall be shop inspected by an authorized inspector.

12:90-5.14 Fee for shop inspection
(a)-(c) (No change.)
(d) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-5.15 Registration of unfired pressure vessels and fees
(a) (No change.)
(b) Unfired pressure vessels registered with the National Board need not be registered with the Office of Boiler and Pressure Vessel Compliance if the owner has been provided with a legible copy of the original National Board registered manufacturers' data report and retains it on file for the life of the unit.
(c) (No change.)
(d) In instances other than (b) or (c) above, the data reports of the manufacturer, in duplicate, with a registration fee of $2.00 for each unfired pressure vessel, shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.
1. (No change.)
2. If reports are not filed, the unfired pressure vessel shall be subject to State inspection and State inspection fees shall be assessed.

12:90-6.1 Scope of subchapter
(a) (No change.)
(b) This subchapter shall not apply to:
1.-2. (No change.)
3. Systems using refrigerants of nonflammable and nontoxic nature of 18 tons refrigerating capacity or less;
4. Systems using refrigerants of nonflammable and nontoxic nature requiring 36 driving horsepower or less; and
5. Systems using refrigerants of a nontoxic and nonflammable nature of 15 psig or less, regardless of capacity.

12:90-6.3 Relief devices
(a) (No change.)
(b) A relief device shall also be installed to relieve from the vapor space of the liquid receiver, condenser, and other pressure vessels in the system.
(c)-(d) (No change.)

12:90-6.4 Inspection of refrigeration systems
(a)-(d) (No change.)
(e) Damaged, altered, defaced or lost certificates must be replaced by request through the Office of Boiler and Pressure Vessel Compliance. The fee for replacement shall be $7.50.

SUBCHAPTER 7. LICENSING OF OPERATING ENGINEERS AND FIREMEN

12:90-7.2 Application for licenses
(a) The application shall be typewritten or neatly and legibly printed in ink. Only one application may be submitted at a time.
(b)-(d) (No change.)
(e) An application for a license shall be made on forms provided by the Office of Boiler and Pressure Compliance. Only one classification or change of grade may be requested per application.
(f)-(p) (No change.)

12:90-7.5 Eligibility for low pressure boiler operator's license
(a) To be eligible for a low pressure boiler operator's examination, the applicant shall:
1. (No change.)
2. Have had intensive training for 30 full working days in a program established by the Chief Engineer and approved by the Office of Boiler and Pressure Vessel Compliance, prior to the start of the training period. A log shall be established with the licensed operator doing the training, which shall be one-on-one, and the trainee shall have written verification of such training from the chief engineer.
(b) (No change.)

12:90-7.6 Eligibility for high pressure boiler operator's license
(a) To be eligible for a high pressure boiler operator in charge examination, the applicant shall:
1. (No change.)
2. Have had intensive training for six weeks in a program established by the Chief Engineer and approved by the Office of Boiler and Pressure Vessel Compliance, prior to the start of the training period. A log shall be established with the licensed operator doing the training, which shall be one-on-one, and the trainee shall have written verification of such training from the chief engineer.
(b) If the applicant has had six months experience as a licensed low pressure fireman, the six week period referenced in (a) above may be reduced to 30 calendar days.
(c) (No change.)

12:90-7.7 Eligibility for third grade steam engineer's license
(a) (No change.)
(b) Experience obtained outside the State of New Jersey may be considered if the applicant has served at least two years as a boiler operator of high pressure boilers of over 1,000 horsepower.

12:90-7.8 Eligibility for third grade refrigeration engineer's license
(a) To be eligible for a third grade refrigeration engineer's (2-C) examination, the applicant shall have had at least:
1.-3. (No change.)
4. Six months experience as an operator of a nontoxic refrigeration unit of at least 250 tons capacity and three months experience as an assistant to the licensed operator of flammable or toxic refrigeration system; or
5. Six months experience as an operator of a nontoxic refrigeration unit of at least 250 tons capacity and satisfactory proof of completion of sufficient education in the operation of a flammable or toxic refrigeration system in an educational program approved by the Division of Vocational Education of the New Jersey Department of Education.

12:90-7.10 Eligibility for long boom crane operator's license
(a) (No change.)
(b) At least three months of the experience of (a) above shall be documented as being cranes with boom length of over 99 feet.

12:90-7.12 Eligibility for first grade engineer's license
(a) To be eligible for a first grade engineer's examination in any classification, the applicant shall have:
1. (No change.)
2. A second grade license with two years subsequent practical experience as an operating engineer in a plant requiring supervision by a first grade engineer; or
3. Experience of an equivalent amount for grade or classification from some other jurisdiction.

12:90-7.13 Other eligibility considerations
(a) (No change.)
(b) When an applicant's operating engineer experience and training warrants, the Office of Boiler and Pressure Vessel Compliance may determine the classification and grade of license most suitable.
(c) The Office of Boiler and Pressure Vessel Compliance may consider an applicant's experience of an equivalent amount for grade or classification from some other jurisdiction.

12:90-7.14 Examinations
(a) Examinations shall be held on the first Wednesday of each month at Trenton, and at various other times and places throughout the State when warranted, and shall be conducted by an examiner.
(b) (No change.)
(c) Failure to appear for the examination shall be considered sufficient cause to void the application, unless a satisfactory explanation is given for failing to appear.
(d)-(h) (No change.)

12:90-7.15 Granting of license
(a)-(e) (No change.)
(f) License merely bearing the impression of the seal of the Department of Labor shall be issued as special licenses and are limited to the operation of equipment specified on the face thereof. Special licenses may be issued to operators of non-conventional boilers, such as, but not limited to, electric, coil, or waste heat or conventional high pressure boilers of over six to 100 horsepower. These licenses may be transferred to similar equipment when approved following written request by the applicant or employer.

(g) Duplicate licenses for part-time employment may be issued at the discretion of the Commissioner.

1.-3. (No change.)

4. A Chief Engineer may not request a duplicate part-time license for secondary location employment.

12:90-7.16 Re-examination

(a) The applicant may not be re-examined for a period of at least three months, but may be allowed one re-examination, without additional charge, within six months of the original examination. If again unsuccessful, the applicant may request an additional examination, provided that the request is accompanied by a fee of $7.50.

(b) Upon failing the examination for the third time, an applicant who wishes to retake the examination shall wait three months prior to reapplication, at which time a new application form shall be fully completed.

12:90-7.19 Renewal of license

(a) (No change.)

(b) A license may be renewed within 60 days prior to the date of its expiration.

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

(e) An altered, defaced or otherwise mutilated license shall be replaced only after review by the Office of Boiler and Pressure Vessel Compliance. Photostats, photographs or reproduction of a license shall have no status and shall not be recognized. A fee of $5.00 shall be submitted for a replacement license.

12:90-7.20 Employment of unlicensed person

(a) Employers shall immediately request permission from the Office of Boiler and Pressure Vessel Compliance, in writing, if for any reason of emergency it becomes necessary to employ an unlicensed person temporarily for a period not to exceed 15 days explaining fully the circumstances.

(b) Continuation requests for emergency operating permission must be received in the Office of Boiler and Pressure Vessel Compliance prior to the expiration date of the granted permission.

(c) Late requests for continuation are subject to penalties which must be satisfied prior to permission being granted.

(d) The Office of Boiler and Pressure Vessel Compliance shall again be notified when a licensed person is employed, giving the name, address, and license classification, grade and number of such employee.

12:90-8.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. ASME—198*[6]**9*, Boiler and Pressure Vessel Code
2. BOCA—1987, Basic National Mechanic***al*** Code
3. NBBPVI—1987, National Board Inspection Code.

4.-5. (No change.)

6. New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.20, Mechanical Subcode.

12:90-8.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:90-8.1.

. . .

***New Jersey Uniform Construction Code—**
Bureau of Technical Services
New Jersey Department of Community Affairs
Division of Housing and Development
CN 816
Trenton, New Jersey 08625-0816*

ENERGY

(a)

BOARD OF PUBLIC UTILITIES DIVISION OF ENERGY PLANNING AND CONSERVATION

Grants and Loans Programs

Adopted New Rules: N.J.A.C. 14A:6

Proposed: July 17, 1989 at 21 N.J.R. 2005(a).

Adopted: December 12, 1989 by the Board of Public Utilities, Christine Todd Whitman, President.

Filed: December 19, 1989 as R.1990 d.28, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-11q and 48:2-12.

Effective Date: January 16, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

While N.J.A.C. 14A:6 was proposed for repeal and replacement with new rules, the chapter expired on August 6, 1989 in accordance with Executive Order No. 66(1978). Therefore, adoption of the repeal is not necessary, and the new rules are adopted herein.

The proposed new rules are changed upon adoption to reflect the transfer of the Division of Energy Planning and Conservation to the Board of Public Utilities, effective August 14, 1989, pursuant to Governor's Reorganization Plan No. 002-1989.

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

CHAPTER 6
GRANT AND LOAN PROGRAMS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT PROGRAM

14A:6-2.1 Scope and purpose

This subchapter establishes the rules governing the Business Energy Improvement Program. The Program provides funds to eligible applicants for the purpose of fostering energy conservation. The intent of the funds is to encourage investment in, and to provide cost reduction for, renovations, equipment replacement, energy conservation construction, alternative energy production facilities, resource recovery projects and energy demonstration projects.

14A:6-2.2 Definitions

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

"Alternative energy production facility" includes, but is not limited to, a facility that produces energy by using cogeneration, hydro power, wind power, solar technologies, resource recovery methods, or district heating/cooling.

"Applicant" means the owner or lessee of an eligible facility who applies for funds pursuant to this subchapter.

"Application" means a Business Energy Improvement Program document.

"Avoided costs" means the annual cost savings, based on improved efficiencies using the differences between the normal annual purchased energy costs, and the cost of equivalent energy production by the facility for which an application is made.

"Closely held company" means a business organization in which ownership and control are vested in 10 or fewer individuals.

["Commissioner" means the Commissioner or the Assistant Commissioner of the Department of Commerce, Energy and Economic Development, Division of Energy Planning and Conservation, or its successor.]

"Demonstration program" means an on-site installation of a state-of-the-art energy conservation measure, or integrated system of energy conservation measures, under the direction and control of a Division approved organization which serves to illustrate, by example, the practical application of energy conservation measure(s). The intent and purpose of such demonstration projects is to induce widespread adoption of the energy conservation measure(s) as a normal operating practice.

"Division" means the Division of Energy Planning and Conservation.

"District heating and cooling" means a system supplying heating and/or cooling for more than one facility when the energy source is remote from one or more user.

"Eligible applicant" means a person who qualified for one or more types of funding defined in this chapter; however, such person may not receive funds from more than one program category for a given project.

"Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations or an alternative energy production facility, which meets the requirements of N.J.A.C. 14A:6-2.6 and 2.7.

"Energy audit" means a study of a building(s) or facilities conducted by an engineer or an architect/engineering firm or other Division approved party to determine operating and maintenance procedures and renovations which would result in reduced energy consumption. The energy audit shall provide the estimated costs of implementation and the expected dollar and energy savings for the recommended project and maintenance procedures. The energy audit shall include, but not be limited to, the energy conserving renovations listed in N.J.A.C. 14A:13-1.11.

"Energy conservation renovation" means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible applicant that would reduce energy consumption or increase energy efficiency, and which have been approved by the Division pursuant to N.J.A.C. 14A:6-2.11, but shall not include new construction or energy conservation renovations installed prior to receipt of a completed Business Energy Improvement Program application by the Division.

"Energy conserving construction" means materials, practices or equipment that exceeds the energy efficiency of those required under the Energy Subcode, N.J.A.C. 14A:3-4 as amended.

"Energy service company" (ESCO) means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for, or acting on behalf of, the vendor.

"Family-owned farm" means a farm which is any place producing agricultural or horticultural or other food products worth $2,500 or more annually and meets the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.).

"Feasibility planning for future energy conservation techniques" means projects undertaken by eligible applicants to make their own facilities, or the facilities of other eligible applicants, energy efficient by utilizing the construction of alternative energy production facilities, demonstration programs, energy audits, energy conservation renovations, energy conserving construction or other conservation techniques as will be specified by the Division as these technologies reach commercial application.

"Incremental grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those materials, practices and equipment required under the "Energy Subcode", N.J.A.C. 14A:3-4 as amended.

"Interest subsidy" means funds provided by the Division to reduce the effective interest rate on an eligible loan.

"Lessee" means a person or business operation to whom property or equipment is leased or loaned for a fee.

"Lender" means State chartered banks, savings banks, savings and loan associations, national banks, Federally-chartered savings and loan associations, approved out-of-State banks, economic development agencies, and other Division approved corporations authorized to transact the business of financing.

"Matching grant" means the one-time provision of funds by the Division to an eligible applicant to assist in the implementation of an approved project.

"Multi-family buildings" means buildings used for residential occupancy and containing five or more dwelling units.

"Municipal facility" means a facility owned and operated by either an incorporated unit of local government or a designee of the incorporated unit under contract to the unit for a specific energy conservation purpose.

"Payback" means the calculated number of years required for the first year energy cost savings, or avoided costs, to equal the capital cost of the renovation or alternative energy facility. It is calculated by the following formula:

Payback = Total estimated capital cost of renovation(s) or alternative energy facility divided by estimated net annual energy cost savings or avoided costs accruing to the applicant for the first year following installation of the energy conservation measure or alternative energy facility.

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code of 1954 which:

1. Is exempt from taxation under Subtitle A of the code;
2. Has an accounting system and a voluntary Board of Directors; and
3. Practices nondiscrimination in providing assistance.

"Program" means the Business Energy Improvement Program established by this subchapter.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of municipal solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or disposal or for energy production.

"Revolving Loan Fund" means a pool of money available at zero-interest or low interest to accommodate individually owned businesses, closely held companies, family farms, multifamily buildings, counties and municipalities which are unable to use either conventional lending sources or an energy service company (ESCO), for energy conservation projects whose principal repayments are structured around the energy savings generated.

"Subsidy" means funds furnished by the Division for energy conservation projects.

"Urban Enterprise Zone" or "Enterprise Zone" means an area that has been designated by the Commissioner of Community Affairs as an "area in need of rehabilitation" under the five-year tax abatement process (P.L. 1977, c.12 (N.J.S.A. 54:4-3.95) et seq.) or is qualified for that designation, and meets the criteria established by the Enterprise Zone Authority.

14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover subsidies previously approved by the Division and to provide sufficient funds for further subsidies.

(b) The *[Commissioner]* ***Board of Public Utilities*** may suspend the Program with respect to new applicants in the event that funds are exhausted or the anticipated demand for subsidies exceeds available funds.

(c) Upon notification of an award, the applicant shall have 120 days to obtain all State, Federal or local permit approvals or petition the Division for an extension with full explanation for the request.

14A:6-2.4 Requests for applications

The Division shall make available Business Energy Improvement Program applications on request, until the Program is suspended pursuant to N.J.A.C. 14A:6-2.3. Application requests may be addressed to the *[Division of Energy Planning and Conservation, 101 Commerce St.]* ***Secretary, Board of Public Utility Commissioners, Two Gateway Center***, Newark, N.J. 07102.

14A:6-2.5 Submission requirements

(a) Each program application submitted to the Division for interest subsidies, revolving loan funds, or grants shall include the following information:

1. Name and address of the applicant;

2. A precise description of each energy conservation renovation, energy conserving construction, alternative energy production facility or demonstration programs for which the application is made;

3. For all projects, except demonstration programs, the following information shall be submitted:

i. A reasonable construction bid, including itemization of the component costs. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto;

ii. Engineering calculations and energy savings or avoided costs calculations for each project; and

iii. The simple payback period for each energy conservation renovation or energy conserving construction.

4. Such additional information as may be required by the Division to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

14A:6-2.6 Interest subsidies

(a) Eligibility for interest subsidies will be limited to:

1. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);

2. Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 C.303;

3. Multi-family buildings of five or more units, condominiums, and cooperatives;

4. Private non-profit institutions, but not including facilities which are used for worship or in which the sanctuary area directy benefits from the improvement;

5. Family-owned farms;

6. Municipal facilities.

(b) For the purpose of calculating possible subsidy, the Division will participate in projects where the maximum principal amount, interest term and simple payback are as follows:

1. For energy conservation renovations and alternative energy production facilities: the principal not to exceed the lesser of the actual project cost or $500,000, the term shall not exceed the lesser of the lender loan term or the estimated time for payback of the project; and a simple payback of 10 years or less.

2. For resource recovery facilities: the principal not to exceed the lesser of the actual project cost or $2,000,000; the term not to exceed the lesser of the lender loan term or the estimated time for payback of the project; and a simple payback of 20 years or less.

(c) Applicants shall supply a copy of their loan application of loan commitment from the lending institution with supporting documentation specifying principal, interest and penalties with respect to all projects.

(d) Applicants shall execute an agreement with the Division to establish the conditions associated with the interest subsidy loan, and shall include among others:

1. The loan term;

2. The rate of interest which can be fixed or floating;

3. That the loan is amortized according to a predetermined monthly schedule;

4. That the loan does not obligate or render the Division liable to pay, at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

i. The default or late payment of the eligible loan by the applicant;

ii. Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Division;

5. That the loan was or will be reviewed and approved by the lender in accordance with standard procedures; and

6. That the Division does not guarantee the approval by lenders of loans or that the Division will not participate in any manner in any aspect of the lender's loan review process.

14:6-2.7 Revolving loan funds

(a) Eligibility will be limited to private non-profit institutions, family owned farms, individually owned or closely held companies, and municipal facilities.

(b) Eligible applicants with an annual energy bill in excess of $150,000 which have been denied energy conservation project funding by an Energy Service Company (ESCO), and/or have been denied energy conservation project funding by a lending institution shall supply proof of that denial.

(c) Revolving loan funds shall be at zero interest or low interest to eligible applicants where the maximum principal amount term, and simple payback are as follows:

1. For energy conservation renovations or alternative energy production facilities:

i. $200,000 in principal;

ii. The loan term not to exceed the lesser of 10 years, or twice the estimated payback in years; and

iii. A simple payback of 10 years or less.

2. For resource recovery facilities:

i. $3,000,000 in principal;

ii. The loan term not to exceed the lesser of 20 years, or twice the estimated payback in years; and

iii. A simple payback of 20 years or less.

(d) Repayment of Revolving Loans shall be based on a percentage of the annual energy cost savings or avoid energy costs with a balloon payment, if any, due at the end of the term.

(e) Applicants shall execute an agreement with the Division to establish the terms and conditions associated with the loan.

14A:6-2.8 Incremental grants

Eligibility for new construction projects and/or major renovations will be limited to resource recovery facilities, district heating and cooling systems or qualified Urban Enterprise Zone Business Applicants.

14A:6-2.9 Matching grant

(a) Eligibility for matching grants shall be limited to family owned farms.

(b) The Division's percentage of match will be based on the farm operation income in relation to the median farm operation income of the farm location and will not exceed 80 percent of the cost of the project.

(c) Energy conservation projects or alternative energy projects with a maximum simple payback of 10 years will be eligible.

(d) The maximum grant amount will be $100,000.

14A:6-2.10 Demonstration program fund

(a) Eligibility for demonstration program funds is limited to non-profit organizations, educational institutions, colleges, universities.

(b) The Division may, at its discretion, allot funds in the form of grants up to a maximum of $200,000 per project for demonstration programs.

14A:6-2.11 Grant agreement

All applicants shall execute an agreement with the Division to establish the terms and conditions associated with the grant. No charges for indirect costs will be allowable charges under the grant.

14A:6-2.12 Application and review procedures

(a) Applicants shall submit to the Division a completed Business Energy Improvement application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Division's

Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

(b) The Division shall conduct a review of the applications, commencing with the application bearing the earliest submission date. The Division may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Division shall review the applications to determine whether:

1. The application is made on behalf of an eligible applicant;
2. The application covers energy conservation renovations, energy conserving construction or alternative energy production facilities, or Demonstration Programs;
3. The application is complete as to form (required documentation is present and complete);
4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;
5. The engineering calculations and other technical matters with respect to the energy conservation renovations, energy conserving construction, alternative energy production facilities, or Demonstration Programs are accurate and correct;
6. The energy conservation renovations or energy conserving construction are appropriate.
7. For energy conserving construction, evidence that capital expenditures are sufficient to cover the construction cost estimate provided under 14A:6-2.5(a)3.

(c) Upon completion of the review of an application pursuant to (b) above, the Division shall notify the applicant in writing whether the application has been approved, approved with modification, or denied. Subsidies, revolving loan funds or grants shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved, an agreement shall be executed with the Division to establish the terms and conditions associated with subsidies, revolving loan funds or grants.
2. In the event that an application is approved with modification, the Division shall:

i. Indicate preliminarily in writing, the terms under which a subsidy, revolving loan or grant will be extended to the applicant, and the amount of the subsidy, revolving loan or grant.

3. In the event that an application is denied, the applicant shall be ineligible to receive a subsidy for the particular energy conservation renovations, energy conserving construction, alternative energy production facilities or Demonstration Programs included in the application and shall not be permitted to submit another application for the same project under the same program.

14A:6-2.13 Payment of subsidies

(a) The Division shall pay subsidies directly to an approved applicant or, where applicable, to a lending institution in the name of an approved applicant.

(b) The Division will pay the entire subsidy in a single discounted lump-sum payment when the project is installed and inspected. The discount rate shall be no lower than six percent. The total value of the subsidy will be the same as if the prepaid subsidy were invested at the negotiable discount rate compounded semi-annually over the term of the subsidy.

14A:6-2.14 Revolving loan funds

(a) The applicant shall be solely responsible and liable for repayment of the principal, and any interest, interest accruals, or penalties which may be assessed or result from the loan.

(b) Revolving loan funds shall be secured by property liens where applicable until loan repayment is completed.

(c) Where the project scope necessitates, the services of an interim lender may be engaged as an experienced construction lender to assume responsibility for monitoring the construction phase and timely completion of the project, to minimize non-performance risk, and monitor costs to preclude cost overruns. When an interim lender is not used, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project.

(d) Repayment of principal by the applicant shall be made from the value of energy savings that accrue as a result of the energy conservation measure implemented with the borrowed money;

(e) An annual accounting, on an agreed calendar or fiscal year basis, shall be made for reconciliation of energy savings or avoided costs realized and loan repayment due; and

(f) Repayment of the loan shall commence six months after the project is operational, and on an annual basis thereafter, with repayment not to exceed a maximum of 10 years, or 20 years for a resource recovery project.

14A:6-2.15 Grant funds

(a) For incremental grants, the Division will make a single lump sum payment when the project is installed and inspected.

(b) For matching grants, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project. Grantees must demonstrate that their matching funds are being spent at the same rate as their spending of Division funds.

(c) For demonstration program grants, the Division will reimburse grantees based on an approved line item budget for eligible expenses incurred. Requests for payment shall not be made more than once per calendar quarter.

14A:6-2.16 Monitoring

(a) The Division shall monitor all work related to energy conservation renovations, energy conserving construction or alternative energy production facilities that are the subject of a subsidy, revolving loan, or grant agreement by the Division.

(b) Monitoring shall include, but not be limited to, reviewing plans, specifications, other documents and information, and conducting on-site inspections to assess the progress and completion of work as well as the final disposition of equipment being replaced under the program.

(c) The applicant shall comply promptly with all requests by the Division to conduct monitoring activities; for example, supply periodic fuel consumption figures to validate energy savings, as required.

(d) Authorization from the applicant to the Division for the direct receipt of utility bill information may be required for monitoring purposes. Where exercised, confidentiality will be maintained; utility data shall be treated as proprietary information.

14A:6-2.17 Rescission and withholding of funds

(a) The Division, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment of a subsidy, revolving loan, or grant or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Division to make further payments of funds to the applicant. The term "good cause" shall include, but not be limited to, the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the subsidy agreement;
3. Submission of false or misleading information, or failing to submit relevant information to the Division;
4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan;
5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant;
6. Use of the subsidy for any purpose other than as specified in the agreement;
7. Inability or failure to install the energy conservation renovations, energy conserving construction, alternative energy production facility, or conduct the Demonstration Program, in a timely manner, absent force majeure or other exigent circumstances;
8. Failure to provide documentation with respect to the installation of energy conservation renovations, energy conserving construction, the building of an alternative energy production facility, or the conduct of the Demonstration Program; and
9. Modification of the terms of the eligible loan without express written consent of the Division.

(b) Subsidies, revolving loans, or grants shall be withheld or rescinded according to the following procedures:

1. The Division shall give written notice to the applicant of its intent to withhold or rescind a subsidy in whole or in part;

2. Prior to the withholding or rescission of the subsidy the Division shall afford the applicant a period of 30 days, commencing on the date of written notice, to consult the Division in the matter, and cure the issues forcing rescission. The Division may, thereafter, withhold or rescind the subsidy in whole or in part. The withholding or rescission determination shall be in writing and shall be effective on the date such action is taken. The determination will be provided to the applicant; and

3. The determination to withhold or rescind a subsidy, revolving loan, or grant shall be solely within the discretion of the Division and is not subject to further review by the Division.

(c) In the event that a subsidy, revolving loan, or grant is withheld or rescinded by the Division, the applicant shall refund immediately the total amount of funds paid by the Division as of the date of rescission or withholding.

(d) The Division shall return all rescinded monies to the Business Energy Improvement Program.

14A:6-2.18 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Energy Facility Review Board

Adopted New Rules: N.J.A.C. 14A:8

Proposed: July 17, 1989 at 21 N.J.R. 2009(a).

Adopted: December 12, 1989 by the Board of Public Utilities, Christine Todd Whitman, President.

Filed: December 19, 1989 as R.1990 d.29, **with technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-11q and 15(c); 48:2-12.

Effective Date: January 16, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

While N.J.A.C. 14A:8 was proposed for readoption with amendments, the chapter expired on September 20, 1989 in accordance with Executive Order No. 66(1978). Therefore, pursuant to N.J.A.C. 1:30-4.4(f), the expired chapter with amendments is adopted here as new rules.

The proposed amendments are changed upon adoption to reflect the transfer of the Division of Energy Planning and Conservation to the Board of Public Utilities, effective August 14, 1989, pursuant to Governor's Reorganization Plan No. 002-1989.

Full text of the readoption adopted as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 14A:8.

Full text of the amendments to the readoption, adopted as new rules, follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

14A:8-1.2 Definitions

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

. . .

"Department" means the *[Department in which the Division of Energy Planning and Conservation is jurisdictionally located]* ***Board of Public Utilities***.

. . .

14A:8-1.6 Correspondence with the Board

All correspondence with the Board shall be addressed to:

*[Secretary, Energy Facility Review Board
Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07012]*

***Secretary to the Board of Public Utility Commissioners
Two Gateway Center
Newark, N.J. 07102***

(b)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Periodic Reporting by Energy Industries of Energy Information

Adopted New Rules: N.J.A.C. 14A:11

Proposed: July 17, 1989 at 21 N.J.R. 2009(b).

Adopted: December 12, 1989 by the Board of Public Utilities, Christine Todd Whitman, President.

Filed: December 19, 1989 as R.1990 d.30, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-11q and 18: 48:2-12.

Effective Date: January 16, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received

While N.J.A.C. 14A:11 was proposed for readoption with amendments, the chapter expired on September 20, 1989 in accordance with Executive Order No. 66(1978). Therefore, pursuant to N.J.A.C. 1:30-4.4(f), the proposed readoption with amendments is adopted herein as new rules.

The proposed readoption with amendments, adopted herein as new rules, are changed upon adoption to reflect the transfer of the Division of Energy Planning and Conservation to the Board of Public Utilities, effective August 14, 1989, pursuant to Governor's Reorganization Plan No. 002-1989.

Full text of the proposed readoption adopted as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 14A:11.

Full text of the proposed amendments adopted as new rules and changes upon adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

14A:11-2.2 Definitions

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

"Department" means the *[New Jersey Department of Energy]* ***Board of Public Utilities***.

. . .

14A:11-2.3 Reporting

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

(d) The above information should be sent to:

*[Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07102
Attention: Date Center]*

***Secretary to the Board of Public Utility Commissioners
Two Gateway Center
Newark, N.J. 07102***

14A:11-3.2 Definitions

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

. . .

"Department" means the *[New Jersey Department of Energy]* ***Board of Public Utilities***.

. . .

14A:11-3.3 Reporting

(a) (No change.)

(b) The tabulation of bulk terminal stocks shall be in the form of EIA-811, Bulk Terminal Stocks of Finished Petroleum Products. This information shall be sent to:

*[Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07102
Attention: Date Center]*
***Secretary to the Board of Public Utility Commissioners
Two Gateway Center
Newark, N.J. 07102***

14A:11-5.2 Definitions

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

"Division" means the Division of Energy Planning and Conservation within the *[New Jersey Department of Commerce and Economic Development]* ***Board of Public Utilities***.

. . .

TRANSPORTATION

(a)

THE COMMISSIONER
POLICY AND PLANNING

Office of Regulatory Affairs
Zone of Rate Freedom

Adopted Amendment: N.J.A.C. 16:53D-1.1

Proposed: September 18, 1989 at 21 N.J.R. 2914(a).

Adopted: December 28, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: December 29, 1989 as R.1990 d.66, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.20 through 2.25.

Effective Date: January 16, 1990.

Expiration Date: May 3, 1994.

Summary of Public Comments and Agency Response:

A public hearing was held on October 12, 1989, before Administrative Law Judge Oliver B. Quinn. There were no comments received and no participation from the public. Representatives from the Office of Regulatory Affairs testified as to the purpose of the proposed zone of rate freedom and the manner in which the rate has been calculated. The Administrative Law Judge in his decision of December 21, 1989 recommended that the proposal as set forth in the New Jersey Register at 21 N.J.R. 2914(a) for the 1990 ZORF be adopted in its entirety.

No other comments were received.

Full text of the adoption follows.

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this regulation shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to consumers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest $.05.

1. The following chart sets forth the 1990 percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest $.05
$.55-.85	5.65%	$.05
$.90-$1.75	5.65%	$.10
$1.80 upward	5.65%	$.15+

2. The following chart sets forth the 1990 percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest $.05
$.55-$1.00	10%	$.10
$1.05 upward	10%	$.15+

(b)

FINANCE AND ADMINISTRATION
DIVISION OF PROCUREMENT

Construction Services
Receipt of Bids

Adopted Amendment: N.J.A.C. 16:44-5.1

Proposed: November 6, 1989 at 21 N.J.R. 3437(b).

Adopted: December 7, 1989, Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: December 19, 1989 as R. 1990 d.31, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1.1 and 14:15-2.

Effective Date: January 16, 1990.

Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

CHAPTER 44
CONSTRUCTION SERVICES

SUBCHAPTERS 1.-4. (No change.)

SUBCHAPTER 5. RECEIPT OF BIDS

16:44-5.1 Requirements

(a) (No change.)

(b) The following Department personnel, or their authorized representatives, shall participate:

1.-3. (No change.)

4. A member of his auditing staff, as bid opener; and

5. A microfilm machine operator, from the records office.

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

(j) The deputy attorney general within two working days shall determine that the proposal has been properly signed, that the non-collusion affidavit is in proper order; and that the proposal guarantees meet the Department's requirements.

(k)-(l) (No change.)

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Consultant Selection Procedures

Adopted Amendments: N.J.A.C. 17:19-10

Proposed: October 2, 1989 at 21 N.J.R. 3074(a).
Adopted: December 20, 1989 by Thomas H. Bush, Director, Division of Building and Construction, Department of the Treasury.
Filed: December 22, 1989 as R.1990 d.51, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:18A-30 and 52:18A-151 et seq.
Effective Date: January 16, 1990.
Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:

The Division received two comment letters concerning the proposal. The two letters contained the recommendation that the Division modify its Consultant Selection Procedures to defer cost (fee) proposal considerations until after the consultant has been selected, based upon competence and qualifications.

RESPONSE: The amendment was intended to establish procedures which would accomplish that recommendation. Therefore, the Division has clarified the amendment and has provided more detailed description of the process. The essence of the clarification is contained in N.J.A.C. 17:19-10.7, with minor clarification made elsewhere to provide consistency in terminology and process.

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

SUBCHAPTER 10. CONSULTANT SELECTION PROCEDURES

17:19-10.1 Purpose

The consultant selection procedures are established to allow qualified architectural, engineering, construction management or other consultant firms an open opportunity for selection for State project assignments on the basis of demonstrated competence and experience. The selection of consultants based upon a combination of technical qualifications and cost proposals enables the public interest to be best served.

17:19-10.2 Scope

(a) The principal elements of the consultant selection procedures provide for:

1. Verification of the qualifications of firms interested in providing consultant services to the State;
2. Project initiation and advertisement and/or other solicitation requirements;
3. Screening of all interested and qualified firms;
4. Selection Board evaluation procedures; and
5. Final selection approval authority.

17:19-10.3 Definitions

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

"Administrator" means the Administrator, General Services Administration.

"Chairperson" means the principal member of the Board so appointed by the Administrator, General Services Administration, who will be responsible for the management and operations of the Board.

"Classification" means a process of reviewing information and experience data to determine the classification level and professional disciplines of consultant firms.

"Classification level" means the maximum construction cost estimate dollar and/or fee level for which a consultant is classified. Classification rating levels are established and periodically adjusted by administrative procedure authorized by the Director.

"Construction cost estimate" for the purpose of these procedures means the estimated construction cost of a specific project.

"Consultant" means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction project.

"Consultant Selection Board" (Board) means the body appointed by the Administrator, General Services Administration to review and evaluate competing consultant firms ***or any committees thereof***.

"Cost proposal" means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

"Director" means the Director of the Division of Building and Construction or his or her duly authorized representative.

'Division" means the Division of Building and Construction in the Department of the Treasury, General Services Administration.

"Exempt assignment" means an assignment which, due to its nature or circumstances, is awarded outside of the normal selection procedures.

["Initial Screening Committee" (Committee) means the body appointed by the Board to perform initial screening of consultants.]

"Intermediate project" means a project which has a construction cost estimate less than $5,000,000 where public notification is not required.

"Major project" means a project which has a construction cost estimate of $5,000,000 and higher where public notification may be appropriate.

"Member" means an individual appointed by the Administrator, General Services Administration, to serve on the Board.

"Negotiation Team" means the body of professional staff assigned by the Chairperson to meet with one or more of the competing firms to negotiate proposals for a specific project.

"Screening" or "ranking" means the process of evaluation utilized by the Committee and Board to determine those firms to be given final consideration from among the total applicants for a specific project.

"Secretary" means the full time administrator of the day-to-day Board operations and procedures who is responsible for overseeing classification records, advertising of projects, scheduling of meetings, preparing agendas, recording board scores, preparing minutes of Board meetings and similar administrative activities.

"Technical scoring" means the process of developing numerical ratings of consultants by individual Board members in their evaluation of those firms seeking assignments.

"Using agency" means that Department or other element of State government for which the Division provides consultant selection services for design and construction projects.

17:19-10.4 Classification of consultant firms

(a) Firms desiring to be considered for consultant work with the Division must submit classification forms as specified by the Division. These forms provide comprehensive information on the management of the firm, its financial history, the type and value of past project work and other related information. This information is used by the Board members to assist in the evaluation of firms for Division work and to establish the maximum construction cost estimate dollar level and/or fee level and professional disciplines for which the firm is qualified. The result of this evaluation is the firm's "classification".

(b) Review of the firm by the Division shall be completed within 30 calendar days of receipt of the classification forms, and a notification of results shall be mailed to the firm within the same time period.

(c) If a classification or any part of a requested classification is denied, the firm will be notified in writing of the reasons for denial.

Measures that the firm may take in order to become qualified will be identified by the Division.

(d) If a firm does not agree with its classification as assigned by the Division, it may appeal to the Chairperson for reconsideration. If resolution is not achieved, the Chairperson shall request the Board's evaluation of the firm's qualifications. The Board will review the records and consider a reclassification. Results of this review will be made known to the firm in writing by the Secretary of the Board. If the firm still does not agree with its classification, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update and keep current all classification forms. Major changes occurring in the firm's status should be brought to the attention of the Division in order that the classification record is always current.

(f) Any firm seeking classification must have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for classification.

(g) Any firm wishing to introduce its capabilities and experience to the Board is encouraged to request an appearance before the Board. This appearance is not associated with a specific project but is solely for the purpose of familiarizing the Board with the firm's background and project accomplishments. Such appearances are of benefit to Board members in their subsequent evaluations for specific projects.

(h) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their classification files which will be reviewed during the selection processes.

(i) The classification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. The Board endeavors to assign a level which is justified by applicable overall experience, length of time in business, prior Division experience, staffing, and management depth.

(j) State project workload shall be determined by deducting the proportionate value of incomplete work on other State projects from the assigned classification level. The Board shall not make assignments which exceed the amount of maximum State project workload of a given firm without the written approval of the Director.

(k) Firms may increase eligibility for a specific project by a joint-venturing with other firms. To be approved as a joint-venture firm, the venture must be classified as an entity. In addition, each individual firm of the joint-venture shall have been classified.

(l) Firms may apply for a specific project on a joint-venture basis without prior classification as a joint-venture by simultaneous submissions of classification forms.

17:19-10.5 Public notification

(a) The Chairperson may publicly solicit the interest of classified consultant firms for certain project classifications based on administrative policy authorized by the Director. The Chairperson will direct the Secretary to advertise these projects.

1. In design and construction publications and trade journals covering the construction industry in New Jersey and contiguous areas or other areas as required;
2. In local newspapers;
3. By written notice to New Jersey professional societies;
4. By use of direct mailings to classified firms; and
5. By other direct mailings.

(b) Public notification shall include instructions to specify any special information or experience that a firm must submit by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

17:19-10.6 Project initiation

(a) The selection procedure may be initiated upon the receipt by the Division of a request from a State client using agency. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate (if applicable) of the proposed project for both the design and the construction of the project. Information regarding the availability of funding *[should]* ***shall*** also be included.

(b) The Chairperson or his or her appointed representative shall evaluate the agency request and determine whether the scope of work and other provided information are adequate. The Chairperson shall authorize the consideration of a project by the Board.

(c) The Chairperson will ensure that all major projects are advertised or otherwise solicited as expeditiously as possible.

(d) The Director may authorize the initiation of the consultant solicitation process without first receiving the complete funding for the consultant services*, **in which case the solicitation will indicate that funding has not yet been provided***.

17:19-10.7 Project Assignment Procedures

(a) Major projects are usually those with a construction cost estimate of $5,000,000 and higher, and/or with estimated professional fees of $300,000 and higher. Major projects shall be subject to public notification and/or highly competitive solicitation procedures as follows:

1. Verification of qualifications and *[initial]* screening as follows:

i. The consideration of the assignment of a consultant for a major project by the Board shall commence as expeditiously as possible after the close of the advertisement or solicitation period.

ii. The Secretary shall tabulate a list of all firms which have compiled with the public notification or other solicitation requirements upon verification that each firm is classified in reference to the project requirements. The Secretary shall distribute said list to all members of the *[Initial Screening Committee]* ***Board*** in addition to making available the files and other submissions of each of the firms for evaluation.

iii. The *[Committee]* ***Board*** will evaluate and rate the firms on the basis of a predetermined rating system. The Secretary will tabulate the results and list the finalists in alphabetical order. The Board may adjust the number of final firms as projects warrant.

[iv. Prior to the scheduled meeting of the Board, each member shall have the responsibility to review the files and other submissions of the final listed firms in order that they may evaluate and rank each firm. The evaluations by each member shall be submitted to the Secretary who will tabulate the individual and total and the number of place preference vote scores for all of the firms being considered. Members of the Committee or Board whose scores indicate below average performance or capabilities of any firm, must attach an explanation to their screening sheets prior to submission to the Secretary.]

2. Procedures for interviews and technical proposals as follows:

i. The Chairperson shall then convene a meeting of the Board for the purpose of reviewing the results of the screening process. The Board shall, after full review and evaluation of all the firms, select firms for interview. If it is determined that the interview procedure would not be beneficial, the Board may exercise its authority to waive the interviewing process and select firms to submit *[cost]* ***technical*** proposals. Regardless of whether pre-interview and/or interview conferences are held, the Board has the responsibility to furnish those firms preparing interview presentations and/or cost proposals a complete description of the project and scope of work and also to arrange for the time and access to the project site.

ii. The Chairperson or his or her designee shall conduct a pre-interview conference on all major projects when it is deemed appropriate. The purpose of the pre-interview conference is to allow all of the firms to be interviewed an opportunity to review the scope of work for the project and to question and/or be guided by the Board, Division staff and agency representatives on the particulars of the project.

iii. At a pre-interview conference, attendance by at least one principal of the firm is mandatory. Non-attendance by a principal may result in disqualification of the firm from further consideration on the project. The order and time of appearance of the firms for the selection interviews will be determined by lottery at the end of the pre-interview conference. The Chairperson or his or her designee will attempt to establish a date for the selection interviews acceptable to all parties.

iv. ***Prior to the interviews, firms may be required to submit technical proposals to the Board.*** The selection interview may take place during a regularly scheduled meeting of the Board or at another time specified by the Chairperson. Upon completion of the interviews, the firms shall be technically rated individually by each member based on a predetermined standard list of criteria. As required, additional technical and/or *[organizatonal]* ***organizational*** information may be requested from the firms before a final technical rating is prepared.

v. *[The Secretary shall tabulate the technical scores and after open discussion a vote will be taken to determine the firms to be invited to submit cost proposals.]* ***Prior to the receipt of cost proposals, the Chairperson shall collect the technical scores from all evaluators.***

3. Procedures for cost proposals as follows:

i. The Chairperson or his or her designee shall call for and conduct a preproposal conference if it is deemed necessary. The purpose of the preproposal conference is to ensure that the firms submitting cost proposals have a clear and equal understanding of both the scope of work and the contractual agreement. Attendance by appropriate representatives of the competing firms, the using agency and the Division is required.

ii. Sealed cost proposals will be accepted on a pre-determined day and time by the Secretary. The Secretary shall *[open and record]* ***deliver*** the ***sealed*** proposals *[received and prepare a tabulation for distribution to the Board members for evaluation at the next regularly scheduled Board meeting]* ***to the Chairperson who shall make them available to the Negotiation Team***. If ***the technical*** proposals are still under evaluation ***by the Board***, cost proposal data *[may]* ***shall*** be kept confidential ***by the Chairperson*** until the evaluations are completed*.* *[at which time they]* ***At the conclusion of negotiations, all proposals*** will be made a matter of public record and open to public scrutiny.

iii. The *[Board]* ***Negotiation Team*** shall then convene at a time and date determined by the Chairperson and shall review the *[technical scores of the firms in conjunction with the cost proposals and other pertinent data which]* ***proposals. If the top-ranked firms have insignificant differences in their technical scores, the Negotiation Team may opt to meet with each of those firms to review its proposal. This review*** may include, but not be limited to, the quality of the consultant team proposed for assignment, experience of the firm and proposed team with similar projects, past performance of the consultant ***team*** and the consultant's proposed approach to the project and design schedule. *[The Board will deliberate for another vote in making its final selection and recommendation.]* As required, the *[Board]* ***Negotiation Team*** may conduct *[(an)]* additional *[interview(s)]* ***meetings*** or request additional technical, organizational or cost data from one or more of the firms submitting a *[cost]* proposal before the final selection and recommendation is made. The *[Board]* ***Negotiation Team*** shall have the responsibility *[of determining which]* ***to recommend to the Board that*** selection ***which*** will be most advantageous to the State, technical qualifications, cost and other factors considered. ***Thereon, the Board shall convene at a time and date determined by the Chairperson and shall review the final negotiated technical proposals before making a final selection for recommendation to the Director.***

(b) Intermediate projects are those with a construction cost estimate of less than $5,000,000 and usually with professional fees of less than $300,000. Intermediate projects are assigned to the Board by the Director; in some cases the Director may assign alternate Division selection procedures. Usually projects of $1,000,000 or less will not be assigned to the Board for selection.

1. The Board shall have full authority to waive public notification. Based upon such relevant factors as the location, size and nature of the project, and under the guidance of the Chairperson, the Board Secretary shall develop a list of classified firms in sufficient number to ensure adequate competition. Due consideration will be given to assignments of work to small, minority-owned and women-owned businesses.

2. Solicitation and evaluation of technical and cost proposals shall, thereafter, follow procedures as described under major projects.

(c) Exempt assignments are those which are of an urgent, critical or special nature, as may be identified and substantiated in writing by a using agency and/or the Director. With the Director's approval, the Board may evaluate and recommend project assignments in the following categories:

1. Emergency projects: Such projects are of an emergency or critical nature, normally involving life-safety considerations, loss of property, or disruption of a vital State program (for example, storm or fire damage, equipment and/or systems failures in occupied facilities, jeopardized funding of a project, potential loss of an agency's program funding, etc.).

2. Contiguous projects: Where the nature of a project is closely related to another ongoing project, or where a new project at the same facility is minor in nature as related to an ongoing project, it may be in the State's best interest to continue with a consultant already working on an existing contiguous assignment.

3. Repetitive projects: Where a consultant has designed a project which the State wishes to have repeated at the same site or adapted to another site, utilizing in a general manner the same basic documents, the substantial reduction in time required and in consultant costs for site adaptation may make assignment to the same consultant advantageous to the State.

4. Facility consultant services: Where authority is delegated to a using agency to issue work orders for professional services under administrative procedures sanctioned by the Director.

5. Special services: Where the nature of the project or the service is such that it does not fall within one of the categories listed elsewhere herein, the assignment may be considered a special service. Assignments in this category may include, but are not limited to, surveying, soils engineering, and photogrammetry. These services normally complement basic design and construction services on an ongoing project and may seriously affect and/or delay the ongiong project if immediate and expeditious selection is not made.

17:19-10.8 Final Selection Approval

(a) The Chairperson shall submit in writing all selections and recommendations of the Board to the Director for approval including all fees for any given project. The Director shall specify the format and generic content of this submission including minimal evaluation criteria.

(b) The Director may, for substantial and justifiable reasons, reject the recommendations of the Board and request reconsideration. The Board will deliberate and reconsider the matter and resubmit its recommendations taking into account the Director's concerns and/or reasons for rejection. In the event of disagreement, the decision of the Director is final pending the approval of the Administrator and the State Treasurer through the waiver of advertising process described hereinafter.

(c) Although the selection procedure may include the elements of public notification, technical evaluation, competitive negotiation and cost proposal, all selections and assignments must be approved by the State Treasurer through a waiver of advertising pursuant to N.J.S.A. 52:34-8.

17:19-10.9 Consultant Board composition

(a) The Administrator has full authority and responsibility to appoint and replace personnel serving as permanent members or alternates on the Board. The permanent five-member Board shall be constituted as follows:

1. Chairperson, who shall be the State Architect, of the Division, unless another Division employee is designated by specific action of the Administrator;

2. Three other Division members, who shall be staff professionals; and

3. One member from the Administrator's staff or other designee.

(b) Of the five members identified above, due consideration will be given to minority and/or female participation on the Board.

(c) Board participation by members is paramount. Every effort will be made to consider Board participation in relation to other assigned duties within the activities of the Division and the General Services Administration.

(d) The Administrator shall also have the authority and the responsibility to appoint alternate members from his or her or the Division's staff.

(e) When the Board is considering the selection of a consultant for a specific project, composition of the Board shall be increased to include two voting representatives of the sponsoring using agency. The using agency may send more than two representatives to the Board sessions; however, the multiple representation shall be limited to a combined vote of two.

(f) In certain instances where a project is extremely complex, or is unusual in nature, or involves special considerations that require expert advice and assistance, the Administrator or the Director may add other voting participants to the Board. The total Board composition, however, shall never exceed nine voting members.

(g) Representatives of the using agency will be notified of those Board meetings where their projects will be considered in order that they may participate in the selection process. The Board shall proceed in its deliberations even if the using agency representatives fail to appear, providing the record indicates they were given proper notice.

17:19-10.10 Board rules of order

(a) On questions of parliamentary procedure not covered within these rules, the Board shall be governed according to the provisions of the latest edition of "Roberts Rules of Order". Those rules shall govern the parliamentary conduct of the Board in all cases to which they are applicable and in which they are not inconsistent with these rules and regulations. On matters of procedure of a minor nature, which are covered neither in the rules nor in "Roberts Rules of Order", the Board, by three-fifths majority vote, may adopt its own rules of conduct. If agreement cannot be reached, the dispute shall be referred to the Director for his or her decision, which will be final.

(b) The minimum number of Board members including the Chairperson required to conduct business is four.

(c) The Board shall establish procedures to comply with the requirements of P.L. 1983, c.482 and P.L. 1985, c.384, the Minority Business Enterprise, Women's Business Enterprise and Small Business Enterprise set-aside programs.

(d) All meetings and deliberations of the Board shall be conducted in full accordance with the New Jersey Open Public Meeting Act, P.L. 1975, c.231.

(e) Although all of the meetings and deliberations of the Board are open to the public, the Board may request that representatives of firms having completed their presentations or waiting to make them, not sit in on the interviews of their competitors.

(f) The Board shall have authority, when it deems it is in the best interest of the State, to restrict a firm to a single assignment when several projects are being considered at the same time, providing all firms involved are so advised at the time of final interview or prior to the submission of cost proposals.

(g) The Board shall have the authority to reject or disqualify a firm, if a review of performance of the firm on current or past projects demonstrates the inability of the firm to maintain project development schedules and/or appropriate staffing and/or other contractual requirements.

(h) The Board shall have the authority to restrict a firm receiving its first assignment(s) from receiving any subsequent assignment prior to substantial completion of its initial assignment(s).

(i) The Board shall have the authority to appoint committees to perform technical, cost and/or other evaluations as necessary on its behalf to ensure effective and efficient selection of consultants.

(j) The Director shall appoint a Vice Chairperson from among the permanent members. The Vice Chairperson shall assume the authority and responsibility of the Chairperson in *[his/her]* ***his or her*** temporary absence or until a permanent replacement is appointed by the Administrator.

(k) The Secretary shall report to the Chairperson and shall have the responsibility under the Chairperson's supervision for the maintenance of records for consultant classification and the Board's deliberations. The Chairperson shall have the responsibility to ensure that the minutes of the deliberations of the Board and a record of its decisions and recommendations are retained for a period of no less than two years following the completion of construction of any project or the completion of design of those projects which are abandoned.

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

Control of Traffic on the New Jersey Turnpike
Limitations on Use of Turnpike
Adopted Amendment: N.J.A.C. 19:9-1.9

Proposed: October 16, 1989 at 21 N.J.R. 3272(b).
Adopted: November 21, 1989 by the New Jersey Turnpike Authority, Frank B. Holman, Executive Director.
Filed: December 19, 1989 as R.1990 d.32, **without change.**

Authority: N.J.S.A. 27:23-1, specifically 27:23-29; P.L.1989, c.36.

Effective Date: January 16, 1990.
Expiration Date: October 17, 1993.

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

Full text of the adoption follows.

19:9-1.9 Limitations on use of turnpike

(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:

1.-24. (No change.)
25. (No change in text.)

(b) (No change.)

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack Surrender
Procedure for Dealing of Cards
Adopted New Rule: N.J.A.C. 19:47-2.8
Adopted Amendment: N.J.A.C. 19:47-2.6

Proposed: November 6, 1989 at 21 N.J.R. 3447(a).
Adopted: December 21, 1989 by the Casino Control Commission, Walter N. Read, Chair.
Filed: December 21, 1989 as R.1990 d.35, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69(c) and 5:12-70(f).

Effective Date: January 16, 1990.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Roberto Rivera-Soto, Vice President and Corporate Counsel of Sands Hotel and Casino, supports new rule N.J.A.C. 19:47-2.8 and the proposed amendment to N.J.A.C. 19:47-2.6.

RESPONSE: Accepted.

COMMENT: Mr. James Gangale, gaming patron, supports new rule N.J.A.C. 19:47-2.8 and the proposed amendment to N.J.A.C. 19:47-2.6.

RESPONSE: Accepted.

COMMENT: Mr. James J. McFaque, gaming patron, supports new rule N.J.A.C. 19:47-2.8 and the proposed amendment to N.J.A.C. 19:47-2.6.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement supports new rule N.J.A.C. 19:47-2.8 and the proposed amendment to N.J.A.C. 19:47-2.6.

RESPONSE: Accepted.

Note that the text of N.J.A.C. 19:47-2.6(f) contained in this notice of adoption varies from that appearing in the notice of proposal due to the adoption of an amendment to that subsection published in the December

4, 1989 New Jersey Register at 21 N.J.R. 3788(b). The text published herein represents the current text of the rule with the instant amendment adopted.

Full text of the adoption follows.

19:47-2.6 Procedure for dealing cards

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

(f) After two cards have been dealt to each player and the appropriate number to the dealer, the dealer shall, beginning from his left, announce the point total of each player. As each player's point total is announced, such player shall indicate whether he wishes to surrender, double down, split pairs, stand or draw, as provided for by this chapter.

(g)-(n) (No change.)

19:47-2.8 Surrender

(a) After the first two cards are dealt to the player and the player's point total is announced, the player may elect to discontinue play on his hand for that round by surrendering one-half his wager. All decisions to surrender shall be made prior to such player indicating as to whether he wishes to double down, split pairs, stand, and/or draw as provided for in this subchapter.

1. Should the first card dealt to the dealer be other than an ace or 10-value card, the dealer shall immediately collect one-half of the wager and return one-half to the player.

2. Should the first card dealt to the dealer be an ace or 10-value card, the dealer will place the player's wager on top of the player's cards. When the dealer's second card is revealed, the hand will be settled by immediately collecting the entire wager should the dealer have blackjack or collecting one-half of the wager and returning one-half of the wager to the player should the dealer not have blackjack.

(b) If the player has made an insurance wager and then elects to surrender, each wager will be settled separately as provided for above and in accordance with N.J.A.C. 19:47-2.9 and one will have no bearing on the other.

(c) Each casino licensee may, at its discretion, offer its patrons the surrender option authorized in this section. If a casino licensee elects to offer the surrender option, it shall be made available to all players at all blackjack tables. A casino licensee may, upon prior written notice to the Commission and the Division, initiate the use of the surrender option at the start of any gaming day or terminate its use at the end of any gaming day. Any casino licensee offering the surrender option shall post a sign, as approved by the Commission, on each blackjack table in its casino.

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only
New Eligibility Computation Amounts
Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:71-5.4, 5.5, 5.6 and 5.7

Emergency Amendment Adopted: December 22, 1989, by William Waldman, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 26, 1989.

Emergency Amendment Filed: December 26, 1989 as R.1990 d.55.

Authority: N.J.S.A. 30:4D-3i(7)a, b, and c; 42 CFR 435.210 and 435.1005.

Concurrent Proposal Number: PRN 1990-53.

Emergency Amendment Effective Date: December 26, 1989.

Emergency Amendment Operative Date: January 1, 1990.

Emergency Amendment Expiration Date: February 24, 1990.

Submit comments by February 15, 1990 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, New Jersey 08625

This amendment 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 amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon the acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the expiration of the emergency period.

The agency emergency adoption and concurrent proposal follow:

Summary

The amendments to N.J.A.C. 10:71 increase the Medicaid Only eligibility computation amounts at N.J.A.C. 10:71-5.4(a)12, 5.5(g) and 5.7(e) and the income eligibility standards at N.J.A.C. 10:71-5.6(c)5. The amendments align Medicaid Only eligibility for the aged, blind, and disabled with those of the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility be determined using the same criteria as applies in the SSI program. The revised income eligibility and computation amounts reflect the 4.7 percent Federal cost-of-living increase in the SSI payment levels effective January 1, 1990. The Medicaid "cap", the income standard applicable for persons in Title XIX long term care facilities, is set at 300 percent of the Federal SSI benefit (not including any State supplement amount) for an individual, the maximum level authorized by the Social Security Act. The amendments must be implemented effective January 1, 1990 to maintain compliance with Federal law.

Social Impact

The increase in the standard and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experiences with increases in the Medicaid "cap", little, if any, increase in the Medicaid caseload because of this amendment is anticipated.

The Medicaid "cap" income eligibility standard is used to determine eligibility for the Community Care Program for the Elderly and Disabled and other home and community-based waiver programs, as well as for persons in Title XIX long term care facilities. The increase in the "cap" standard will help preserve the eligibility of persons who are receiving a 4.7 percent cost-of-living increase in their Social Security benefits also scheduled for January 1, 1990.

Economic Impact

Past experience with similar increases in these standards has demonstrated that there will be an insignificant economic impact on the public, the State and county agencies administering the program. These increases affect only eligibility for Medicaid and do not result in receipt of cash assistance.

Regulatory Flexibility Statement

The increase in these income standards affects only the eligibility of individuals for Medicaid. Because program eligibility is determined by the state and county governments, these rules have no effect on small businesses. Therefore, the Department concludes that no regulatory flexibility impact analysis is necessary.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]);

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

$[142.67] **148.67** for an individual
$[204.33] **213.00** for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

(a)-(f) (No change.)

(g) A table for deeming computation amounts follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child [$185.00] **193.00**

2. Remaining income amount	Head of Household	Receiving Support and Maintenance
	$[184.00] **193.00**	$[122.67] **128.67**

3. Spouse to Spouse Deeming—Eligibility Levels

a. Residential Health Care Facility	$[703.05] **729.05**
b. Eligible individual living alone with ineligible spouse	$[763.36] **796.36**
c. Living alone or with others	$[584.25] **610.25**
d. Living in the household of another	$[412.98] **430.31**

4. Parental Allowance—
Deeming to Child(ren)

Remaining income is:	1 Parent	Parent & Spouse of Parent
a. Earned only	$[736.00] **772.00**	$[1,064.00] **1,158.00**
b. Unearned only	$[368.00] **386.00**	$[553.00] **579.00**
c. Both earned and unearned	$[368.00] **386.00**	$[553.00] **579.00**

10:71-5.6 Income eligibility standards
(a)-(b) (No change.)
(c) Non-institutional living arrangements
1.-4. (No change.)
5. Table B follows:

TABLE B

Variations in Living Arrangement	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	$[518.05] **536.05**	$[1,017.36] **1,053.36**
II. Living Alone or with Others	$[399.25] **417.25**	$[578.36] **604.36**
III. Living alone with Ineligible Spouse	$[578.36] **604.36**	
IV. Living in the Household of Another	$[289.65] **301.65**	$[461.76] **479.09**
V. Title XIX Approved Facility: Includes persons in acute general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	$[1,104.00] **1,158.00**†	

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap".

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

10:71-5.7 Deeming from sponsor to alien
(a)-(d) (No change.)
(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:
1. (No change.)
2. Subtract $[368.00] **386.00** for the sponsor, $[553.00] **579.00** for the sponsor if living with his or her spouse, $[736.00] **772.00** for the sponsor if his or her spouse is a co-sponsor.
3. Subtract $[184.00] **193.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.
4. (No change.)
(f) (No change.)

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Amendment to the Areawide Water Quality Management Plans

Take notice that on December 21, 1989, the New Jersey Department of Environmental Protection (Department) adopted an amendment to the Water Quality Management (WQM) plans for the following areas: Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan. Wherever these WQM plans contain language restricting development in freshwater wetlands, that language has been replaced with the following:

> Development requiring wastewater facilities shall not be permitted in freshwater wetlands. This ***prohibition*** applies to all infrastructure associated with the proposed development including utilities, roads, stormwater facilities, recreational and other structural facilities, with the exception of those facilities which have been found by the Department to be unavoidable, ***either through the issuance of a permit addressing the activity's impact on freshwater wetlands, or through a Departmental determination of unavoidability. This prohibition applies only to projects and activities exempted from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., specifically N.J.S.A. 13:9B-4, and the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, specifically N.J.A.C. 7:7A-2.7 and 2.8.*** In general, unavoidable development shall be limited to access roads and utility crossings that are necessary to service upland development and that have no practicable alternative. Where such unavoidable development in freshwater wetlands is allowed, the wetlands encroachment shall be minimized to the maximum extent practicable.

This notice is being given to inform the public that the Department has amended the Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan WQM Plans. The intent of this amendment is to provide uniformity in implementing the wetlands aspects of the WQM Plans. The portion of the above language located between the asterisks was added to this amendment in order to clarify how the unavoidable determination would be implemented by the Department.

A number of public comments were received requesting that the Department hold a public hearing on the proposed amendment. In accordance with N.J.A.C. 7:15 (which expired on October 2, 1989), a public hearing will be held only if the Department determines that there is a significant interest in holding a public hearing. Most of the comments received reflected a great misunderstanding of the proposed amendment and its application. The Department has addressed these comments by clarifying the wetlands restriction language (as shown above) and by providing the attached response document. The response to comments, provided below, provides a clear record of the Department's intended application of this amendment which should clarify most of the concerns and misconceptions expressed in the public comments. Additionally, this amendment does not propose any new restrictions to the WQM plans, nor does it add any new elements to the WQM plan review process. This amendment serves only to modify existing elements of the WQM plans, as they relate to wetlands, to provide more uniform and predictable implementation of the WQM plan wetlands restrictions. Therefore, the Department has determined that there is not significant interest in holding a public hearing on this amendment.

Background

This amendment was proposed by the Department of Environmental Protection (Department) in response to numerous complaints from developers and other applicants for Department permits regarding the complexity of the wetlands related aspects of the consistency review process. Pursuant to the Water Quality Planning Act (see N.J.S.A. 58:11A-10), the Department cannot issue a permit or approval for a project that is inconsistent with the Water Quality Management (WQM) plans. The process of reviewing projects requiring Department permits or approvals for consistency with the WQM plans is known as the consistency review process.

Since the adoption of The Water Quality Management Planning and Implementation Process Rules (see N.J.A.C. 7:15, effective April 2, 1984 and expired April 2, 1989) in 1984, the consistency review process has always addressed proposed activities in freshwater wetlands. Many of the areawide WQM plans contain language that restricts development in freshwater wetlands. However, that language is not uniform throughout the WQM plans. Some WQM plans have wetlands language that is very restrictive; other WQM plans contain little or no wetlands restriction language. This lack of uniformity created a problem in the permit application process because without detailed information about the particular WQM plan and any wetlands restriction language contained therein, it was difficult for a prospective developer or public agency to design projects that would conform with the wetlands related aspects of the WQM plans.

In order to remedy this situation, the Department first proposed a plan amendment that would invalidate all wetlands restrictions in the WQM plans; wetlands restrictions would only be implemented through the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). A public notice announcing the proposed amendment was published in the July 18, 1988 New Jersey Register at 20 N.J.R. 1746(f). This amendment proposal was never adopted, and was withdrawn by the Department on June 19, 1989 (see 21 N.J.R. 1747(b)).

The Freshwater Wetlands Protection Act requires the Department to "consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands . . . with the freshwater wetlands permit process established herein so as to provide a timely and coordinated process consistent with the Federal Act." However, projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules cannot be consolidated with the freshwater wetlands permit process. The Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.6(e)) state that "For projects exempted under the Act and this chapter's wetlands requirements under N.J.A.C. 7:7A-2.7(d) or (g), the final decision on the application will be based on the requirements of other applicable permit programs as they existed on June 30, 1988". The Water Quality Management Planning program (under N.J.A.C. 7:15 and N.J.S.A. 58:11A-1 et seq.), including WQM plan wetlands restrictions, existed prior to June 30, 1988. Therefore, projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules must still be consistent with the wetlands restrictions in the appropriate WQM plans in order for a Department permit or approval to be issued for the project.

The Department determined that the originally proposed plan amendment was not in conformance with N.J.A.C. 7:7A-1.6(e), or with the intent of the Freshwater Wetlands Protection Act, as it would eliminate WQM wetlands restrictions for projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, resulting in even less wetlands restrictions for these projects than existed prior to the operative date of the Freshwater Wetlands Protection Act Rules. The Department does not believe that the Freshwater Wetlands Protection Act intended to exempt certain projects from all State wetlands restrictions, only from the requirement of a freshwater wetlands permit and transition area requirements contained in the Freshwater Wetlands Protection Act. Therefore, the original plan amendment proposal described earlier was withdrawn and a new amendment, the subject of this notice, was proposed and subsequently adopted.

This amendment will provide more uniform and predictable implementation of the WQM plan wetlands restrictions. This amendment does not add wetlands restrictions where they did not previously exist before the plan amendment was proposed, nor does it provide a "new" program for regulating activities in freshwater wetlands. It merely modifies wetlands restriction language where it already exists in the WQM plans in order to make WQM plan wetlands restrictions more uniform in their interpretation and implementation. This amendment will also greatly accelerate the WQM plan wetlands review process for projects with unavoidable encroachments in freshwater wetlands, since under the

previous wetlands restriction language in some of the WQM plans any encroachment in freshwater wetlands would have required a WQM plan amendment in order for the project to be found consistent with the WQM plan and be issued a permit by the Department. The revised wetlands restriction language approved in this amendment will eliminate delays of four to eight months of administrative processing time currently required for such plan amendments.

This amendment was given preliminary approval on May 24, 1989 and was noticed in the New Jersey Register on June 19, 1989 (see 21 N.J.R. 1747(b)). Notice was also published as a legal notice in three New Jersey newspapers: The Star Ledger, The Courier Post and The Trenton Times. The Department received comments from 20 persons, 12 of whom requested a public hearing on the matter. The comments and the Department's responses are summarized below:

AMENDMENT TO REVISE WQM PLAN WETLANDS RESTRICTION LANGUAGE SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

NOTE: Several commenters object to the plan amendment because they allege it is inconsistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). The following seven comments summarize the issues raised by these commenters.

1. COMMENT: The plan amendment is inconsistent with the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules because it would require applicants to obtain a letter of interpretation from the Bureau of Freshwater Wetlands, even though this process was intended to be voluntary and the Bureau of Freshwater Wetlands is presently backlogged beyond the 30-day review period mandated by law.

RESPONSE: The plan amendment does not require applicants to obtain a letter of interpretation. N.J.A.C. 7:7A-8.1 states that "A person proposing to engage in a regulated activity in a freshwater wetlands may, prior to applying for a freshwater wetlands permit, request from the Department a letter of interpretation to establish whether the site of a proposed activity is located in a freshwater wetland". There is nothing in the amendment that requires applicants to comply with this provision in order to be consistent with the WQM plans. As part of a consistency review, projects exempt from N.J.A.C. 7:7A wetlands requirements under N.J.A.C. 7:7A-2.7(d) or (g) may still require verification of wetlands delineations shown on project plans. The Department would accept written verification of the wetlands delineation (based on an on-site field investigation) from the Bureau of Freshwater Wetlands, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, or the New Jersey Pinelands Commission. A verification of a wetlands delineation performed by the Bureau of Freshwater Wetlands as part of a consistency determination does not constitute a letter of interpretation and is not subject to a 30-day review deadline.

2. COMMENT: The plan amendment is inconsistent with the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules because a showing of "unavoidability" or a practicable alternatives test is not required as a condition of receiving a statewide general permit under either the Freshwater Wetlands Protection Act or the Freshwater Wetlands Protection Act Rules. The amendment will have the effect of amending the Freshwater Wetlands Protection Act by qualifying the issuance of statewide general permits with "unavoidable fill" language. This language is more consistent with the requirements for individual freshwater wetlands permits than Statewide general permits.

The amendment will result in another level of review for Statewide general permit applications to determine the "unavoidability" of certain proposed minor fills or disturbances envisioned as minimal under the Freshwater Wetlands Protection Act. Not only would this review require additional staff (of which none is available at the Department), but there is no statutory or regulatory framework to provide consistent guidance to staff in order to conduct alternatives analyses. Alternatives analyses are typically complex reviews, sometimes requiring broad planning or engineering expertise which is generally lacking in the staff that would be looking at these applications (the Bureau of Freshwater Wetlands and the Bureau of Water Quality Planning).

There may also be situations where an activity eligible for a Statewide general permit under the Act is not "unavoidable" under this amendment and would be deemed inconsistent with the Areawide WQM plan, resulting in denial of the project's 208 and/or 201 endorsement and sewer extension permit. This situation would be at variance with Section 30 of the Freshwater Wetlands Protection Act, which states that the Act is to be the sole law governing the regulation of activities in freshwater wetlands, and the express provisions of the Freshwater Wetlands Protection Act Regulations, specifically "N.J.A.C. 7:7A-16(d)".

The plan amendment should be abandoned because it would be both inconsistent and more stringent than certain provisions of the regulations adopted by the Department for the freshwater wetlands permit program, including the provisions for statewide general permits. As there is no need to regulate wetlands on top of the existing Freshwater Wetland Protection program now in place within the Department, the plan amendment should be withdrawn and reproposed to simply eliminate any regulation of activities affecting freshwater wetlands under the 12 WQM plans.

RESPONSE: This amendment does not conflict with or amend the Freshwater Wetlands Protection Act or the Freshwater Wetlands Protection Act Rules. The wetlands restrictions in the WQM plans apply only to projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. N.J.A.C. 7:7A-1.6(e) states that "For projects exempted under the Act and this chapter's wetlands requirements under N.J.A.C. 7:7A-2.7(d) or (g), the final decision on the application will be based on the requirements of other applicable permit programs as they existed on June 30, 1988". The requirement that all Department permits or approvals be consistent with applicable WQM plans is found in the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), which was enacted on April 25, 1977. The wetlands restriction language in the WQM plans (which is being revised under this amendment) also existed prior to June 30, 1988.

Section 30 of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-30) refers exclusively to preemption of local regulation of activities in freshwater wetlands (regulation by a municipality, county, or political subdivision thereof). There is nothing in this provision to indicate that the Freshwater Wetlands Protection Act preempts all other State regulation of activities in freshwater wetlands, especially where such regulation applies only to projects expressly exempted from the permit requirements of the Act.

N.J.A.C. 7:7A-16(d), as cited by the commenter, does not exist. Subchapter 16 of the Freshwater Wetlands Protection Act Rules pertains to fees and does not address the issue of other State regulation of freshwater wetlands. Even if the commenter intended to cite N.J.A.C. 7:7A-1.6(d), this provision states that ". . . except pursuant to (e) below, those [preexisting State regulatory] programs [which affect regulated activities in freshwater wetlands] will not use freshwater wetlands concerns as a basis for regulation, and any such regulation by these programs of projects in freshwater wetlands will be limited to that based on other . . . concerns." Thus, N.J.A.C. 7:7A-1.6(e) provides that projects exempted from the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules are still subject to the requirements of other applicable permit programs as they existed on June 30, 1988. As the WQM plan wetlands restriction language applies only to projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, and as WQM plan wetlands restrictions existed prior to June 30, 1988, the plan amendment does not conflict with N.J.A.C. 7:7A-1.6(d).

Projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules must still be consistent with the wetlands restrictions in the appropriate WQM plans in order for a Department permit or approval to be issued for the project. This amendment will replace the wetlands restriction language where it already exists in WQM plans with standard uniform wetlands restriction language. The new language, as provided in the preceding notice, would allow unavoidable development (generally limited to access roads and utility crossing) necessary to service upland development and that have no practicable alternative.

Prior to the operative date of the Freshwater Wetlands Protection Act Rules, the Bureau of Water Quality Planning staff was responsible for reviewing activities in freshwater wetlands under both the consistency determination program and the Section 401 water quality certification program. Both programs involved review of alternatives analysis, and other "complex" issues involving freshwater wetlands. The Bureau of Water Quality Planning staff conducted these reviews since 1985.

Projects that require a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules are not subject to a WQM plan wetlands review and are not required to conform with the WQM plan wetlands restriction language.

Activities in freshwater wetlands that have been authorized through the issuance of a freshwater wetlands permit (Statewide general or individual) will not be subject to an "unavoidability review", nor will they be found to be inconsistent with the WQM plans because of wetlands. (Projects that have received freshwater wetlands permits may still be denied for treatment works approval or other Department permits if they are inconsistent with the permit requirements or with non-wetland aspects of the WQM plans.)

Projects that have already been reviewed for impacts to freshwater wetlands through other Department permit programs will not have that review duplicated under the WQM plans. The WQM wetlands restriction language in the amendment has been revised to clarify this issue. The amended language now states, "Development requiring wastewater facilities shall not be permitted in freshwater wetlands . . . with the exception of those facilities which have been found by the Department to be unavoidable, either through the issuance of a permit addressing the activity's impact on freshwater wetlands, or through a Department determination of unavoidability".

As the WQM plan wetlands restriction language applies only to projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, the plan amendment does not conflict with or duplicate the regulation of activities in freshwater wetlands under the Freshwater Wetlands Protection Act or the Freshwater Wetlands Protection Act Rules. The Department does not agree that the amendment should be reproposed to eliminate any regulation of activities affecting freshwater wetlands under the 12 WQM plans. To do so would result in even less regulation of activities in freshwater wetlands that are exempt from freshwater wetlands permit requirements pursuant to the Freshwater Wetlands Protection Act than existed prior to the operative date of the Freshwater Wetlands Protection Act Rules. This would be contrary to the intent of the Freshwater Wetlands Protection Act, as explained in the background section of this document.

3. COMMENT: The plan amendment is inconsistent with the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules because it will effectively eliminate the opportunity for certain statewide general permits. Without the ability to tailor development projects to the minor permitted disturbances normally associated with the infrastructure-related activities such as road crossings, utility installations and stormwater management facilities, many developers will be forced to apply for a formal freshwater wetlands permit for minor types of construction activities. This will encourage and result in land plan proposals that will include greater amounts of wetlands disturbance than is necessary, simply because a formal freshwater wetlands permit must be obtained. This would also mean additional staff permit review time for projects that should be handled through the statewide general permit process.

RESPONSE: The plan amendment will not eliminate the opportunity for certain statewide general permits, nor will it force developers to apply for individual freshwater wetlands permits for activities that would otherwise be authorized through the issuance of Statewide general permits under N.J.A.C. 7:7A-9. As discussed in response to the comments above, the WQM plan wetlands restrictions apply only to projects that are exempt from the requirement of a freshwater wetlands permit or are otherwise not regulated under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. Projects that are subject to the permit requirements of the Freshwater Wetlands Protection Act and which have been authorized through the issuance of a Statewide general permit under N.J.A.C. 7:7A-9 are not subject to the WQM plan wetlands restrictions language or the "unavoidability" review.

There is nothing in the amendment that requires developers to obtain individual freshwater wetlands permits for projects that would be authorized under a Statewide general permit. An individual freshwater wetlands permit is required for any activity that is subject to the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules but does not qualify for a Statewide general permit under N.J.A.C. 7:7A-9. In order to obtain an individual freshwater wetlands permit, an activity in freshwater wetlands must still result in the minimum feasible alteration or impairment of the aquatic ecosystem (see N.J.A.C. 7:7A-3.4(a)). Any site plan proposal that would "include greater amounts of wetlands disturbance than is necessary, simply because a formal wetlands permit must be obtained" would never meet the requirements of N.J.A.C. 7:7A-3, specifically N.J.A.C. 7:7A-3.4, and would not be approved by the Department.

4. COMMENT: The plan amendment is inconsistent with the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules because it seeks to provide further regulation of freshwater wetlands through the 208/areawide water WQM planning process. Projects that are exempt from the Freshwater Wetlands Protection Act and are not required to obtain a general permit should not be subject to an independent review of freshwater wetlands impacts as part of the WQM process. Any attempt to regulate the activities specifically exempted under Section 4 of the Act through the 208 process is beyond the scope of authority granted to the Department of Environmental Protection.

Without considerable revision and clarification this proposal will cause mass confusion as it has already done within the development community. One commenter suggested that in order to comply with the Act, the WQM plans should be amended to stipulate that "any provisions in this WQM plan shall have no regulatory force" as the Department originally proposed on July 18, 1988. Another commenter suggested that the plan amendment be revised to state:

> "Development requiring wastewater facilities shall not be permitted in freshwater wetlands with the exception of those facilities or activities for which a permit has been issued by the Department or which have been determined to be exempt from the requirements of the Freshwater Wetlands Protection Act."

The balance of the language as proposed by the Department is unnecessary since standards and conditions referred to are incorporated into the Freshwater Wetlands Protection Act.

RESPONSE: The plan amendment does not seek to provide further regulation of freshwater wetlands through the WQM planning process. The wetlands restrictions in the WQM plans existed prior to the operative date of the Freshwater Wetlands Protection Act Rules and apply only to projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. There is nothing in the plan amendment that requires projects exempt from the requirement of a freshwater wetlands permit to obtain a statewide general permit under N.J.A.C. 7:7A-9. Section 4 of the Freshwater Wetlands Protection Act provides only that certain categories of activities in freshwater wetlands are "exempt from the requirements of a freshwater wetlands permit and transition area requirements . . ." (see N.J.S.A. 13:9B-4). There is nothing in this section to indicate that projects exempt from these requirements under the Freshwater Wetlands Protection Act are also exempt from any other State rules or requirements regulating activities in freshwater wetlands, including requirements that existed prior to the operative date of the Freshwater Wetlands Protection Act Rules.

As explained in the background section of this notice, activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules are still subject to the WQM plan wetlands restrictions. The regulation of such activities in freshwater wetlands through the WQM planning process is not beyond the scope of the authority granted the Department. Regulation of activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules is expressly authorized at N.J.A.C. 7:7A-1.6(e). Freshwater wetlands are natural resources of the State. Freshwater wetlands are also waters of the State and serve to protect the chemical, physical and biological integrity of other waters of the State. Statutory authority for the use of WQM plans to protect freshwater wetlands exists under N.J.S.A. 13:1D-1 et seq., in the Department of Environmental Protection Act of 1970; N.J.S.A. 58:10A-1 et seq., the Water Pollution Control Act; and N.J.S.A. 58:11A-1 et seq., and the Water Quality Planning Act.

The background section of this notice, along with the responses to the public comments, is intended to clarify the plan amendment. Additionally, as discussed in response to comment number 1, the wetlands restriction language has been revised to state that a project can be determined to be unavoidable through either a Department finding of "unavoidability" or through the issuance of a permit addressing the activity's impact on freshwater wetlands. As discussed in response to comment number 2, amending the WQM plans to stipulate that "any provisions [regarding activities in freshwater wetlands] in this WQM plan shall have no regulatory force" would be contrary to the intent of the Freshwater Wetlands Protection Act.

Similarly, revising the wetlands restriction language in the WQM plans to state that "Development . . . shall not be permitted in freshwater wetlands with the exception of those facilities or activities for which a permit has been issued by the Department or which have been determined to be exempt from the requirements of the Freshwater Wetlands Protection Act" would also be contrary to the intent of the Freshwater Wetlands Protection Act. Under such language, any project or activity that is exempt from the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules would also be exempt from the wetlands restriction language in the WQM plans. As discussed above, there is nothing in the Freshwater Wetlands Protection Act to indicate that projects or activities exempt from the requirement of a freshwater wetlands permit under N.J.S.A. 13:9B-4 are also exempt from any other State regulation of activities in freshwater wetlands, especially any preexisting regulation; the Freshwater Wetlands Protection Act Rules expressly provide for continued State regulation of activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit under N.J.A.C. 7:7A-2.7(d) or (g).

5. COMMENT: The proposed amendment is inconsistent with Section 5A of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), which requires the Department to "consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands, including but not limited to, sewer extension approvals . . . with the freshwater wetlands permit process established herein so as to provide a timely and coordinated permit process consistent with the Federal Act". This provision was intended to consolidate all statewide programs and to remove any inconsistent elements from any other state, county or local regulatory programs regarding freshwater wetlands "from the adoption date of the Act forward". One intent of the Act was to remove the water quality plan certification process from the wetlands regulation process. Accordingly, the Department amended their water quality plans to accomplish that goal last July.

If the amendment is adopted as proposed, an independent review of wetlands related aspects of many projects may be required as part of the WQM consistency determination. This unnecessary review is contrary to the intent of the Act. It is inconsistent with this Act to place any regulatory function regarding freshwater wetlands in any other agency besides the Bureau of Freshwater Wetlands, including Areawide Water Quality Management Plan planning entities. All freshwater wetlands issues were to be determined and decided solely by the Bureau of Freshwater Wetlands. The purpose of this is to promote efficiency in State government, eliminate needless redundancy and eliminate overlapping and contradictory jurisdictions.

The proposed amendment is not in the spirit or intent of the Freshwater Wetlands Protection Act and is merely a needless creation of bureaucracy which is a poor use of taxpayers money. No further benefits to environmental protection will be derived from this proposed rule; therefore, the amendment should be withdrawn.

RESPONSE: The plan amendment is consistent with Section 5 of the Freshwater Wetlands Protection Act. Section 5 requires that "The Department shall consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands . . . with the freshwater wetlands permit process . . .". The WQM plan wetlands restriction language, which will be revised under this amendment, applies only to projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules; therefore, the WQM plan wetlands review cannot be consolidated with the freshwater wetlands permit process.

It is not clear what the commenter meant by "water quality plan certification process". If the applicant meant "water quality certification", the Freshwater Wetlands Protection Act was never intended to remove water quality certifications from the wetlands regulation process. As N.J.S.A. 13:9B-27 expressly provides for the Department to eventually assume the 404 permit process from the U.S. Army Corps of Engineers, it is clear that the Freshwater Wetlands Protection Act was not intended to supersede or eliminate the 404 permit or water quality certification from the wetlands regulation process.

If the commenter meant "water quality management plan consistency determination", this response explains that the WQM plan wetlands restriction language applies only to projects and activities that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. The Freshwater Wetlands Protection Act Rules expressly provide for the application of other regulation of freshwater wetlands through existing permit programs for projects that are exempt from the requirement of a freshwater wetlands permit. While an amendment was proposed by the Department on July 18, 1988 to repeal the wetlands restrictions in the WQM plans, that amendment was withdrawn (as explained in the background section of this notice) and was never adopted by the Department.

As explained above, the Freshwater Wetlands Protection Act Rules expressly provide for other regulation of freshwater wetlands through existing permit programs for projects that are exempt from the requirement of a freshwater wetlands permit. Thus, an independent review (under the WQM plans) of activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit is not contrary to the intent of the Freshwater Wetlands Protection Act.

The proposed amendment will benefit the environment by maintaining the restriction of development in freshwater wetlands for projects and activities that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, and by providing uniform, standard wetlands restrictions to be implemented through the WQM plans.

6. COMMENT: On its face, the amendment would allow the water quality management agencies to deny sewer connections to development and all related infrastructure affecting freshwater wetlands, even if exempt or permitted under a Nationwide permit or Statewide general permit. If this interpretation is not the intent of the amendment, it should be rewritten and clarified. The only uniformity of approach that could be included in the WQM plans is that the Freshwater Wetlands Protection Act program is the sole vehicle for wetlands regulation in the State.

RESPONSE: The WQM plan wetlands restriction language applies only to projects and activities that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. If a project is required to obtain a freshwater wetlands permit, then the project is not subject to the WQM plan wetlands restrictions. A project or activity that is subject to the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules and has received a Statewide general permit under N.J.A.C. 7:7A-9 would not be denied a sewer connection permit because of wetlands restriction language in the WQM plans. (Such projects may still be denied if they are inconsistent with N.J.A.C. 7:14A or non-wetlands aspects of the WQM plans.)

The issuance of a Nationwide Permit by the U.S. Army Corps of Engineers to authorize activities in freshwater wetlands for a specific project does not automatically deem that project exempt from the requirement of a freshwater wetlands permit. N.J.A.C. 7:7A-2.7(g) states that "Activities authorized under United States Army Corps of Engineers Nationwide Permits prior to July 1, 1988 shall not require a freshwater wetlands permit from the Department provided the property owner can demonstrate that a Nationwide Permit provided authorization for a particular site and use prior to July 1, 1988". Activities that fulfill the requirements of this provision or are otherwise exempt from the requirement of a freshwater wetlands permit or not regulated under the Freshwater Wetlands Protection Act are still subject to the WQM wetlands restrictions under N.J.A.C. 7:7A-1.6(e). There is nothing in the Freshwater Wetlands Protection Act to indicate that the issuance of a Nationwide Permit by the U.S. Army Corps of Engineers exempts an activity from all State regulation of freshwater wetlands.

Section 5 of the Freshwater Wetlands Protection Act requires the Department to "consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands . . . with the freshwater wetlands permit process . . .". This indicates that the Legislature understood that other State regulatory programs would continue to affect projects in freshwater wetlands after the Freshwater Wetlands Protection Act took effect. This provision does not require that those programs cease to exist, but rather that the Department's processing of reviews of the wetlands related aspects under these programs be consolidated and coordinated with the wetlands review under the Freshwater Wetlands Protection Act, so as to minimize redundancy and delay.

As discussed in response to previous comments, projects that require a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules are not subject to the WQM plan wetlands restrictions. The review of projects that are exempt from the requirements of a freshwater wetlands permit pursuant

to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules for conformance with any applicable WQM plan wetlands restrictions is coordinated with the Bureau of Freshwater Wetlands; thus, the Department has complied with this provision.

7. COMMENT: The plan amendment is duplicative and unnecessary. The amendment serves no useful purpose since any project subject to the Water Quality Management Plan wetlands restrictions would also be subject to the Bureau of Freshwater Wetlands permitting process. The Freshwater Wetlands Act (N.J.S.A. 7:7a) already closely regulates development in and around freshwater wetlands.

RESPONSE: As explained in the previous responses, the WQM plan wetlands restrictions apply only to projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. The plan amendment does not duplicate the freshwater wetlands permit process and is needed to provide more uniform, standard regulation, under the WQM plans, of activities that are exempt from requirement of a freshwater wetlands permit.

8. COMMENT: Several commenters object to the plan amendment because it does not specify that the wetlands restriction language would apply only to projects that are exempt from the Freshwater Wetlands Act.

RESPONSE: The Department agrees with the commenters. As indicated in this final notice, the following sentence was added to the wetlands restriction language for clarification:

> This prohibition applies only to projects and activities exempted from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., specifically N.J.S.A. 13:9B-4, and the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, specifically N.J.A.C. 7:7A-2.7 and 2.8.

9. COMMENT: Several commenters objected to the proposed plan amendment because it contradicts both the changes to the Water Quality Management Planning and Implementation Process Rules (N.J.A.C. 7:15) proposed in a January 13, 1988 letter, and the WQM plan amendment proposed by the Department on July 18, 1988 that would have removed any regulatory force from the wetlands provisions in the WQM plans. Contrary to this earlier policy, the Bureau is now taking the position that WQM plans should continue to regulate freshwater wetlands in a manner inconsistent with, and in addition to, the Freshwater Wetlands Protection program, administered by another Division of the Department.

RESPONSE: As explained in the background section of this document, the Department withdrew a previous amendment that would have removed any regulatory force from the wetlands provisions in the WQM plans. The previous amendment, proposed on July 18, 1988, never took effect; therefore, it has no regulatory force. The January 13, 1988 letter referred to by the commenter provided a preliminary outline of basic concepts in the Department's proposed revisions to the Water Quality Management Plannng and Implementation Process Rules (N.J.A.C. 7:15). The January 13 letter presented the Department's policy at that time regarding the wetlands provisions in the WQM plans and how they would be addressed in the proposed rule. However, both the Department's policy and the provisions in the proposed rule regarding wetlands restrictions in the WQM plans have changed since the issuance of the January 13, 1988 letter. A clear and updated record of the Department's position regarding WQM plan wetlands restrictions is provided in this document. As discussed in response to the comments above, since the wetlands restrictions in the WQM plans apply only to projects and activities that are exempt from requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, the plan amendment is consistent with both N.J.S.A. 13:9B-1 et seq. and N.J.A.C. 7:7A.

10. COMMENT: Several commenters object to the plan amendment because certain terms contained in the wetlands restriction language need to be further defined or clarified. These comments are summarized in the following paragraphs.

The term "development with no practicable alternative" should be deleted. The Department should clarify that "unavoidable development" includes stormwater conveyance structures. The Department should also clarify what is meant by "permit addressing the activity in wetlands". What about those activities occurring in freshwater wetlands that do not require a permit?

The standards for determining when an impact will be classified as unavoidable are too vague. The amendment should clearly state that in order to be considered, an alternative must be technically feasible using current engineering, cost-effective, and presently available. The review of alternatives should be limited to alternatives to the wetlands encroachment, not alternatives to the entire development.

The exemption for facilities which have freshwater wetlands permits should be expanded to include projects which qualify for Federal wetlands permits, Statewide general permits, State individual permits, State transition area waivers, and exemptions from the permit provisions of the Act.

RESPONSE: While the plan amendment does not specifically define the term "practicable alternative", it is a commonly used regulatory term meaning any alternative to the proposed activity that could reasonably be pursued, taking into account other relevant factors including cost, available technology, land use regulations (such as zoning), environmental impacts, and engineering feasibility. The Department does not agree that the term "development with no practicable alternative" should be deleted from the wetlands restriction language because it clarifies that avoidable development in freshwater wetlands is prohibited; development in freshwater wetlands is avoidable if there is a practicable alternative to the wetlands encroachment.

In general, stormwater conveyance structures are not considered to be unavoidable, except under certain circumstances as determined by the Department on a case-by-case basis.

"Permit addressing the activity in wetlands" means that if a Department permit has already been issued for the project and that permit specifically considered the project's impact on freshwater wetlands and authorized all activities in freshwater wetlands associated with that project, then it is presumed that the Department determined the activities in freshwater wetlands to be unavoidable through the issuance of the permit, and the WQM wetlands issues are thus resolved. For instance, if an application for a stream encroachment permit proposed activities in freshwater wetlands that were exempt from the requirement of a freshwater wetlands permit but were within the jurisdiction of the Flood Hazard Area Rules, the Bureau of Flood Plain Management would review that project's impacts on freshwater wetlands as part of the stream encroachment permit review. Based on this amendment, the issuance of a stream encroachment permit for this project would be considered a determination of unavoidability under the applicable WQM plan.

The Flood Hazard Area Regulations (N.J.A.C. 7:13) which regulate stream encroachment permits, the Coastal Resource and Development Policies (N.J.A.C. 7:7E) which regulate CAFRA permits, and the Waterfront Development Permit Program (N.J.S.A. 12:5-3), all contain provisions for reviewing and approving activities in freshwater wetlands within the established jurisdictions. The Department may also authorize activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit through the issuance of water quality certifications under Section 401 of the Clean Water Act.

It is not clear what the commenter meant by the question "What about activities occurring in freshwater wetlands that do not require a permit?". Except for activities that are expressly exempted from the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, any regulated activity in freshwater wetlands, as defined at N.J.A.C. 7:7A-2.3, will require a freshwater wetlands permit, either a Statewide general permit or an individual freshwater wetlands permit. The WQM plan wetlands restrictions apply to all projects that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act or the Freshwater Wetlands Protection Act Rules, but which require other Department permits or approvals. The WQM plan wetlands restrictions are implemented through the consistency review process; the Department can only issue permits or approvals for projects that are consistent with the applicable WQM plans. A project that does not require any State permits or approvals is not subject to the WQM plan consistency review and is not subject to the WQM plan wetlands restrictions.

The standards for unavoidable determinations are provided in the wetlands restriction language of the plan amendment. The wetlands restriction language applies only to activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. The definition of "practicable alternatives" is provided above and applies to the activity in freshwater wetlands, not the entire development.

Projects that are subject to the requirement of a freshwater wetlands permit under the Freshwater Wetlands Protection Act and the Freshwater

Wetlands Protection Act Rules and have been authorized through the issuance of either a Statewide general permit or an individual freshwater wetlands permit under N.J.A.C. 7:7A are not subject to the WQM plan wetlands restrictions. However, as explained in response to comment number 4, there is nothing in the Freshwater Wetlands Protection Act requiring that projects receiving a permit from the Federal government authorizing activities in freshwater wetlands be exempted from all other State regulation of freshwater wetlands.

Transition area waivers issued under N.J.A.C. 7:7A-7 authorize activities in transition areas; they do not authorize activities in freshwater wetlands and are not relevant to the WQM plan wetlands restriction language, which applies only to activities in freshwater wetlands that are exempt from the requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules. (Projects and activities exempt from the requirement of a freshwater wetlands permit under N.J.S.A. 13:9B-4 are also exempt from transition area requirements.)

As explained in response to comments number 2 and 4, the Freshwater Wetlands Protection Act Rules expressly provide for the regulation of activities in freshwater wetlands through other existing permit programs for projects that are exempt from the requirement of a freshwater wetlands permit. It would be contrary to this provision of the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.6(e)) for the Department to "exempt" from the WQM plan wetlands restrictions all projects that are exempt from the freshwater wetlands permit requirements. Doing so would result in less protection of freshwater wetlands than what existed prior to the effective date of the Freshwater Wetlands Protection Act Rules, which would be contrary to the intent of the Freshwater Wetlands Protection Act.

11. COMMENT: Wetlands regulation through the WQM plans has always been fraught with confusion and inconsistent application of policy. Questions of jurisdictional nature cause severe problems and add time and cost to the approval process. In the past year, there has been much confusion in the Treatment Works Approval process due to the "jurisdictional turf war" over wetlands issues. This amendment will only serve to continue the confusion, which will result in treatment works applications being improperly denied, creating unnecessary increases in development costs.

RESPONSE: The Department agrees that some confusion existed within other permit programs that had previously addressed activities in freshwater wetlands after the Freshwater Wetlands Protection Act Rules became operative. However, much has been done since July 1, 1988 to alleviate this confusion, including the proposal of this amendment. As this amendment applies only to projects that are exempt from requirement of a freshwater wetlands permit pursuant to the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, and as this amendment provides a single, standard wetlands restriction to replace the variety of wetlands restrictions that previously existed in the WQM plans, this amendment should resolve any remaining confusion or "jurisdictional turf war" that may still exist within these other permit programs. Additionally, as discussed in the background section of this notice, this amendment will greatly reduce the time involved in issuing treatment works approvals and other permits for certain unavoidable activities in freshwater wetlands that would have required a separate WQM plan amendment in order to find the project consistent with the wetlands restrictions in the WQM plan. This reduction in administrative processing time should result in lower, not higher, development costs.

12. COMMENT: The proposed amendment improperly focuses on development itself rather than associated water quality impacts. The Department assumes that any development which requires wastewater facilities will result in material adverse impacts to freshwater wetlands. We know of no scientific or technical support for this position. In order to present a balanced, equitable approach, WQM plans must allow applicants to demonstrate, on a case-by-case basis, that proposed projects will not result in material adverse impacts to water quality.

RESPONSE: The purpose of this amendment is to replace existing WQM wetlands restriction language with a standard, uniformly applied wetlands restriction. The wetlands restriction language in the WQM plan is only one means of addressing water quality impacts in the WQM plans. The WQM plans themselves do not focus on development but on all aspects of water quality that can be addressed through water quality management planning.

The Department does not assume that any development requiring wastewater facilities will result in adverse impacts to freshwater wetlands. The Department does assume that any development in freshwater wetlands will have an adverse impact on water quality. As the WQM plans have historically been used to address water quality issues through wastewater management planning, the wetlands restriction language applies to development requiring wastewater facilities. The assumption that wetlands encroachments result in adverse impacts on water quality is the basis for all permit programs for activities in freshwater wetlands and is expressly declared in the Freshwater Wetlands Protection Act at N.J.S.A. 13:9B-2.

There is no legal requirement that the WQM plans must allow applicants to demonstrate that proposed projects will not have an adverse impact on water quality. Any information the applicant wishes to submit with a permit application would be considered during the consistency review.

NOTE: Several commenters support the plan amendment provided that specific changes are made. The following four comments summarize specific changes recommended by these commenters.

13. COMMENT: The revised proposed language (of the plan amendment) should be modified to specifically reference the need for either an NJDEP or Army Corps of Engineers wetlands permit prior to any wetlands disturbance.

RESPONSE: The WQM plans are planning documents; they are not vehicles for identifying all required permits for individual projects or activities. Whether or not a freshwater wetlands permit is required for a particular project or activity is determined by the Department through a pre-application conference with the Bureau of Freshwater Wetlands and through the issuance of a Letter of Interpretation by the Department under N.J.A.C. 7:7A-8, not under the WQM plans. Similarly, a jurisdictional determination regarding activities in freshwater wetlands is made by the U.S. Army Corps of Engineers under 33 CFR Parts 320 through 330.

14. COMMENT: The proposed amendment is not strict enough in prohibiting development in freshwater wetlands. The Department's putting a limit on the building of infrastructure associated with proposed development including utilities, roads, stormwater facilities, recreational and other structural facilities in the freshwater wetlands is appreciated, but the Department should go "all out" and not allow any development in freshwater wetlands even through an unavoidable determination by the Department in certain instances. That section of the proposed rule making should be removed.

RESPONSE: The Freshwater Wetlands Protection Act was enacted for the purpose of vigorously protecting the State's inland waterways and freshwater wetlands. However, Section 4 of the Freshwater Wetlands Protection Act expressly exempts certain activities in freshwater wetlands from the requirement for a freshwater wetlands permit. N.J.A.C. 7:7A-1.6(e) provides that projects exempt from the requirement of a freshwater wetlands permit under N.J.S.A. 13:9B-4 and N.J.A.C. 7:7A-2.7(d) or (g) are still subject to other permit requirements as they existed prior to June 30, 1988. Since the WQM plans already allowed for activities in freshwater wetlands, either through an unavoidable determination or a WQM plan amendment approved by the Department, it would not be appropriate for the Department, at this time, to amend the WQM plans to prohibit any and all development in freshwater wetlands. The purpose of this amendment is not to eliminate existing WQM plan wetlands restrictions, but to implement them in a more uniform fashion.

15. COMMENT: The plan amendment will "open a giant can of worms" by providing a loophole for developers to use in the courts and with the DEP. No facilities should be exempted because they are "unavoidable" by DEP standards. Every applicant will have their own definition of "unavoidable".

RESPONSE: As discussed in response to the comment above, the purpose of this plan amendment is to provide more uniform implementation of the WQM plan wetlands restrictions, not to eliminate them. The definition of "unavoidable" is provided in the wetlands restriction language in this amendment. This definition of unavoidable is the only one accepted by the Department.

16. COMMENT: The passage of the amendment is encouraged with a deletion as follows:

With the exception of those facilities determined by the Department, through the issuance of a permit addressing the activity in wetlands, to be unavoidable. In general, unavoidable development shall be limited to access roads and utility crossings that are necessary to service upland development and that have no practicable alternative. Where such development in freshwater wetlands is allowed, the wetlands encroachment shall be minimized to the maximum extent practicable.

The word "unavoidable" in the plan amendment is too broad a term and must be better defined. One means to avoid wastewater facilities from entering freshwater wetlands is to cancel out the entire development while others may declare a facility "unavoidable" because there is no other alternative.

RESPONSE: It is not clear what deletion the commenter is recommending, as the passage cited is the same as the wetlands restriction language originally proposed by this amendment. The wetlands restriction language has been revised somewhat, as explained in the background section of this document. The term "unavoidable" is defined in the amendment. The definition of "practicable alternatives" is provided in response to comment number 10.

Assuming that the commenter meant that the term "unavoidable" should be deleted from the wetlands restriction language, the amendment, as supported by the commenter, would read: "Development requiring wastewater facilities shall not be permitted in freshwater wetlands. This prohibition applies to all infrastructure associated with the proposed development including utilities, roads, stormwater facilities, recreational and other structural facilities." As explained in response to comment number 13, it would not be appropriate for the Department, at this time, to prohibit any and all development in freshwater wetlands that is exempt from the requirement of a freshwater wetlands permit or is otherwise not regulated under the Freshwater Wetlands Protection Act and the Freshwater Wetlands Protection Act Rules, which would be the practical result of the above version of the WQM plan wetlands restriction language.

17. COMMENT: One commenter was pleased to see that the previously proposed WQM plan amendment that would have stipulated that "any provisions in this WQM plan for the protection of freshwater wetlands shall have no regulatory force" has been withdrawn.

RESPONSE: The comment does not request or require a change to the plan amendment.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Extension of the Moratorium on the Acceptance of Certificate of Need Applications for New Organ Transplant Services for a Maximum of Nine Months by the New Jersey State Department of Health

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB) and the Statewide Health Coordinating Council (SHCC), is proposing to remove from consideration for a one time only extension applications for **new** organ transplant services for a maximum of an additional nine months. No health care services other than proposed new organ transplant services are affected by this proposed action. Any Certificate of Need application for new organ transplant services that have been previously filed by any applicant prior to the adoption of this notice is also unaffected by this moratorium.

The Department of Health is proposing this additional nine month extension to the one year moratorium in response to a recent recommendation made by the New Jersey Advisory Council on Organ Transplantation which stated:

> There is a need to extend the moratorium on all Certificate of Need applications for organ transplantation for an additional nine (9) months pending the completion of development of review criteria by the Department of Health. (The applications currently on file are excepted.)

The purpose of this moratorium is to allow sufficient time for the Department, with the assistance of the New Jersey Advisory Council on Organ Transplantation (NJACOT), to establish a coordinated Statewide policy regarding the orderly development of organ transplant services in the future. The additional nine month time period will also permit the Statewide transplant policy that is developed to undergo extensive public review through the State's health planning and rule-making processes.

This extension of the moratorium will become effective (following publication in the New Jersey Register) with the March 15, 1990 Certificate of Need review cycle (February 1, 1990 application submission deadline) and will end with the December 15, 1990 Certificate of Need review cycle. Should the Department of Health complete its development of Statewide organ transplant review criteria prior to this nine month extension time period, the length of the moratorium will be shortened accordingly.

Any inquiries should be sent to:

John J. Gontarski, Chief
Health Systems Review, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

TREASURY-GENERAL

(b)

STATE PLANNING COMMISSION

Notice of Receipt of Petition for Rulemaking State Planning Rules

N.J.A.C. 17:32

Petitioner: Susan R. Kaplan, Esq., an attorney representing the New Jersey Builders Association

Take notice that on November 22, 1989, the New Jersey State Planning Commission in the Department of Treasury received a petition for rulemaking with regard to preparation and adoption of the preliminary and final State Development and Redevelopment Plan. Specifically, the petitioner requests the promulgation of rules and regulations prescribing: (1) the administration of the various phases of the cross-acceptance process; (2) the procedure for taking formal Commission action, including quorum requirements and the decision-making authority of commission committees; and (3) the role of Volume III of the State Development and Redevelopment Plan (SDRP). In submitting its petition, the petitioner indicated its purpose was to ensure "participation of the private sector, such as petitioner and its consistency, in policy formulation during the negotiation phase (of cross-acceptance) when policy issues are identified" in order to ensure that "the purposes and requirements of the State Planning Act for the preparation, adoption and implementation of the SDRP are to be met".

Petitioner's petition for rulemaking is on file at the offices of the State Planning Commission. **Interested persons** may obtain a copy by writing to John W. Epling, Director, Office of State Planning, 150 West State Street, Trenton, New Jersey 08625.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the petition for rulemaking will be reviewed to determine what action should be taken in response to same. Thereafter, notice of such action shall be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

OTHER AGENCIES

(c)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Notice of Agency Action on Petition for Rulemaking Interest Arbitration

N.J.A.C. 19:16-5.7(d)

Petitioner: Gerald L. Dorf, Esq., an attorney representing the Township of Wayne.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 19:10-6.1.

Take notice that on September 22, 1989, petitioner requested the Commission to rescind the last sentence of N.J.A.C. 19:16-5.7(d). That sentence states: "Any [interest arbitration] hearings conducted shall not be public unless all parties and the arbitrator agree to have them public." The petitioner proposes that interest arbitration proceedings be public upon the request of either the public employer or majority representative. This petition was considered in accordance with N.J.A.C. 19:10-6.1. Notice of the petition was published in the November 6, 1989 issue of the New Jersey Register at 21 N.J.R. 3567(a). Notice of further delibera-

tions was published in the November 20, 1989 issue of the New Jersey Register at 21 N.J.R. 3677(a).

Summary

The Commission has reviewed the petition and, after due consideration pursuant to law, has decided not to adopt the petitioner's proposal as submitted. However, it has decided, for the reasons stated below, to modify the rule under review. The petitioner asserts that interest arbitration is a statutory and quasi-judicial process that should be open to public inspection and scrutiny; the arguments supporting negotiations in private do not apply to interest arbitration; the delegation of economic decision-making to an arbitrator is sufficient reason for the proceedings to be open to public scrutiny, and the Open Public Meetings Act, N.J.S.A. 10:4-12(a), permits interest arbitration proceedings to be open to the public. However, the Commission has concluded that opening interest arbitration proceedings to the public without the consent of both parties could adversely affect the concept of collective negotiations mandated by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Act's declaration of policy states that the public policy of this State is to promote the prompt settlement of public sector labor disputes. It specifically recognizes that the consumers and the people of the State are not direct parties to labor disputes. N.J.S.A. 34:13A-2. The rights and duties associated with negotiations attach only to the majority representative and the public employer; they do not attach to minority organizations, individual employees or the public. N.J.S.A. 34:13A-5.3. Opening the proceedings without the consent of all parties could inhibit meaningful collective negotiations and frustrate the purposes of the Act.

The Commission has concluded, however, that N.J.A.C. 19:16-5.7(d) should be amended to delete the requirement of securing the arbitrator's consent before interest arbitration proceedings can be made public. Negotiation is essentially a bilateral process. If both parties agree that public hearings would facilitate the resolution of their contract dispute, that agreement should be sufficient to make the proceedings public. The Commission, therefore, has initiated proceedings to amend its rule, a notice of proposal for which will be published in the February 5, 1990 New Jersey Register.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the December 4, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 20, 1989

NEXT UPDATE: SUPPLEMENT DECEMBER 18, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 89 and 224	January 17, 1989
21 N.J.R. 225 and 364	February 6, 1989
21 N.J.R. 365 and 588	February 21, 1989
21 N.J.R. 589 and 658	March 6, 1989
21 N.J.R. 659 and 810	March 20, 1989
21 N.J.R. 811 and 954	April 3, 1989
21 N.J.R. 955 and 1036	April 17, 1989
21 N.J.R. 1037 and 1178	May 1, 1989
21 N.J.R. 1179 and 1474	May 15, 1989
21 N.J.R. 1475 and 1598	June 5, 1989
21 N.J.R. 1599 and 1762	June 19, 1989
21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 3689 and 3812	December 4, 1989
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22 N.J.R. 1 and 88	January 2, 1990
22 N.J.R. 89 and 272	January 16, 1990

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1:1-19.2	Withdrawal of request for hearing or defense raised	21 N.J.R. 3589(a)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
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5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)			
EDUCATION—TITLE 6				
6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)	R.1990 d.47	22 N.J.R. 174(a)
6:7	Evaluation of building principals in State-operated districts	21 N.J.R. 3352(a)	R.1990 d.13	22 N.J.R. 28(a)
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)	R.1989 d.615	21 N.J.R. 3937(a)
6:11-5.1–5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)	R.1989 d.614	21 N.J.R. 3934(a)
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)	R.1990 d.47	22 N.J.R. 174(a)
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)	R.1990 d.21	22 N.J.R. 176(a)
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)	R.1990 d.21	22 N.J.R. 176(a)
6:21	Pupil transportation	21 N.J.R. 2724(a)	R.1989 d.610	21 N.J.R. 3939(a)
6:22-1.1, 1.3, 1.4, 1.7, 1.8, 2.5	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)		
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:29	Health, safety and physical education	21 N.J.R. 3815(b)		
6:31	Bilingual education	21 N.J.R. 2443(a)	R.1989 d.600	21 N.J.R. 3948(a)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)		
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)		
	Most recent update to Title 6: TRANSMITTAL 1989-9 (supplement November 20, 1989)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)	R.1990 d.22	22 N.J.R. 179(a)
7:7A-8.2	Freshwater wetlands protection: administrative correction	———	———	21 N.J.R. 3748(b)
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)		
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)		
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	21 N.J.R. 2849(a)		
7:25-12	Surf clam management	21 N.J.R. 3214(a)	R.1990 d.46	22 N.J.R. 183(a)
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)	R.1990 d.50	22 N.J.R. 187(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)	R.1989 d.609	21 N.J.R. 3914(c)
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)	R.1989 d.608	21 N.J.R. 3917(a)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)	R.1989 d.595	21 N.J.R. 3748(c)
7:27-23.2–23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)	R.1989 d.596	21 N.J.R. 3751(a)
7:27A-3	Air pollution control: operative date of civil administrative penalties and adjudicatory hearing rules	———	———	22 N.J.R. 29(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1–11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)		

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8:19-2	Newborn biochemical screening	21 N.J.R. 3633(a)		
8:19-2	Newborn biochemical screening: public hearing	21 N.J.R. 3708(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)		
8:23	Veterinary public health	21 N.J.R. 3274(a)	R.1990 d.20	22 N.J.R. 204(a)
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-31)	21 N.J.R. 2447(a)	R.1990 d.39	22 N.J.R. 205(a)
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(a)		
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)	R.1989 d.603	21 N.J.R. 3951(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)	R.1990 d.36	22 N.J.R. 205(b)
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)	R.1990 d.38	22 N.J.R. 206(a)
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)	R.1990 d.40	22 N.J.R. 211(a)
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)	R.1990 d.41	22 N.J.R. 212(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)	R.1989 d.619	21 N.J.R. 3951(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on: extension of comment period	21 N.J.R. 3279(a)		
8:31B-4.38–4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)	R.1989 d.620	21 N.J.R. 3953(a)
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)	R.1989 d.604	21 N.J.R. 3970(a)
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3873(b)		
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)	R.1989 d.618	21 N.J.R. 3971(a)
8:33A	Surgical facilities: certificate of need	21 N.J.R. 3888(a)		
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)	R.1989 d.602	21 N.J.R. 3973(a)
8:33I-1.2, 1.3, 1.5	Megavoltage radiation oncology units: need review	21 N.J.R. 3640(a)		
8:33P	Designation of trauma centers: certificate of need	21 N.J.R. 3889(a)		
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:39-44	Respite care services	21 N.J.R. 2924(a)		
8:43B-1–17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)		
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(a)		
8:43G-6	Anesthesia	21 N.J.R. 2925(a)		
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)		
8:43G-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:45	Clinical laboratory services: licensure and charges	21 N.J.R. 3708(b)		
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)	R.1990 d.19	22 N.J.R. 214(a)
8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(a)		
8:57-2	Reporting of AIDS and HIV infection	21 N.J.R. 3905(a)		
8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)		
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a))	21 N.J.R. 1790(a)	R.1990 d.37	22 N.J.R. 214(b)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)	R.1990 d.43	22 N.J.R. 214(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)		
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		

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9:2-14	Student immunization requirements	21 N.J.R. 3605(a)		
9:4-1.3, 1.9, 1.10, 2.1–2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:7-4.2	Garden State Scholarships: academic requirements	21 N.J.R. 3408(a)	R.1990 d.14	22 N.J.R. 29(b)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)	R.1990 d.1	22 N.J.R. 29(c)

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10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)	R.1990 d.25	22 N.J.R. 215(a)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:52	Manual for Hospital Services	21 N.J.R. 3911(a)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:55	Prosthetic and Orthotic Services Manual	22 N.J.R. 4(b)		
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)	R.1989 d.622	21 N.J.R. 3918(a)
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only eligibility computation amounts	Emergency (expires 2-24-90)	R.1990 d.55	22 N.J.R. 251(a)
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:80–83, 87, 89, 90, 109	Division of Economic Assistance: administrative change	———	———	21 N.J.R. 3777(a)
10:83-1.11	Supplemental Security Income payment levels	Emergency (expires 2-13-90)	R.1990 d.23	22 N.J.R. 64(a)
10:85	General Assistance Manual	21 N.J.R. 3221(b)	R.1990 d.33	22 N.J.R. 218(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:85-4.6	Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill	Emergency (expires 1-12-90)	R.1989 d.598	21 N.J.R. 3790(a)
10:87-12.1, 12.2, 12.3, 12.4, and 12.7	Food Stamp Program: Tables I, II, III, IV, and VII	21 N.J.R. 3316(a)	R.1989 d.606	21 N.J.R. 3918(b)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:121	Adoption of children	21 N.J.R. 3048(b)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance for GPA and SSI recipients	21 N.J.R. 3912(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:126A	Family day care standards	22 N.J.R. 13(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		

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10A:2-7	Inmate restitution for damaged or destroyed property	21 N.J.R. 3408(b)		
10A:2-10	Grants procedure	22 N.J.R. 14(a)		
10A:4-6, 6.3, 6.4	Inmate discipline: chronic violator procedure	21 N.J.R. 3240(a)	R.1990 d.34	22 N.J.R. 232(a)
10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)		
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-2.9	Infirmary care: withdrawal of proposal	22 N.J.R. 15(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)		
10A:22-2.6	Release of confidential inmate or parolee records	21 N.J.R. 3411(a)		
10A:22-4.1	Expungement or inmate records: administrative correction	———	———	22 N.J.R. 29(d)
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)		
10A:71-3.19	Parole Board rules: administrative correction	———	———	21 N.J.R. 3777(b)

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11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)	R.1990 d.11	22 N.J.R. 30(b)
11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)		

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11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
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