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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 18 NUMBER 22
November 17, 1986 Indexed 18 N.J.R. 2235-2344
(Includes rules filed through October 27, 1986)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE, SEPTEMBER 22, 1986.
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED OCTOBER 20, 1986.

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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 **December 17, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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The New Jersey Register (ISSN 0300-6069) is published the first and third Monday (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6601. Subscriptions, payable in advance, are one year, \$75 (\$150 by First Class Mail); back issues when available, \$8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in Trenton, New Jersey and additional mailing offices.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 38-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.

RULE PROPOSALS

BANKING

(a)

DIVISION OF BANKING CONSUMER CREDIT BUREAU

Credit Union Parity

Proposed New Rule: N.J.A.C. 3:21-2.1

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

Authority: N.J.S.A. 17:13-90.

Proposal Number: PRN 1986-467.

Submit comments in writing by December 17, 1986 to:

Roger Wagner
Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 3:21-2.1, Credit Union Parity with Federally Chartered Credit Unions, expired on November 2, 1986. Since the rule has expired pursuant to the Executive Order, the Department proposes its provisions as new. The Department has reviewed the rule and determined it to be necessary, reasonable and proper for the purpose for which it was originally promulgated. The Department also proposes amendments to the expired text.

N.J.A.C. 3:21-2.1 permits credit unions to exercise those powers and make those loans and investments authorized and made by federal credit unions and are exercisable unless the Commissioner of Banking denies their authorization. The amended text reflects the statutory language of N.J.S.A. 17:13-90, which replaces N.J.S.A. 17:13-27, the former authority for this rule.

Social Impact

Adoption of this rule will provide State credit unions with the authority to engage in the full scope of powers, rights, benefits and privileges which are or will be authorized for federal credit unions. The general public will not be directly affected. Credit union members will receive the benefit of expanded products and services.

Economic Impact

Adoption of this rule will allow State-chartered credit unions to maintain their competitive parity with federal credit unions and is expected to enhance the economic viability of State credit unions. There is no foreseen costs as to the agency, credit union members or the public.

Full text of the expired rule with amendments follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

3:21-2.1 Credit union parity with Federally chartered credit unions

In addition to other authority granted by law **and unless contrary to State law**, a credit union may exercise **any power, right, benefit or privilege which is now or hereafter** [these powers and make those loans and investments which are now or hereafter] authorized for Federal credit unions to the same extent as Federal credit unions [may exercise those powers and make those loans and investments] pursuant to Federal law or rules and regulations of the National Credit Union Administration. A credit union in exercising those powers [or making those loans and investments] shall do so in accordance with the terms, conditions and requirements established for Federal credit unions. Such powers [, loans and investments] shall be automatically exercisable upon the expiration of 30 days from the date of adoption of the enabling regulation by the Federal regulatory agency, except if the Commissioner of Banking within that time provides notice that the power shall not be granted to New Jersey credit unions. Such notice shall be provided to each credit union, and to the New Jersey Credit Union League for publication. The Commissioner of Banking may permit credit unions to begin exercise of a power [, loan or investment] prior to the expiration of the 30 day period

by providing notice of permission to each credit union and the New Jersey Credit Union League.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Plumbing Subcode

Proposed Amendment: N.J.A.C. 5:23-3.15

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1986-462.

Submit comments by December 17, 1986 to:

Michael Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, N.J. 08625

The agency proposal follows:

Summary

Lead in drinking water has been recognized as a long term public health hazard. Studies on lead exposure have shown lead to be a causative factor in learning disabilities, heart disease, high blood pressure, stroke, kidney disease, birth defects and low birth weights. Amendment to the plumbing subcode to mandate the use of solder and fluxes with a lead content of not more than 0.2 percent in potable water soldered joints is necessary due to these serious health implications.

Social Impact

The proposed amendment will result in a positive social impact since it will reduce the amount of lead in drinking water resulting from soldered joints.

Economic Impact

Minimal additional cost will occur in potable water plumbing installations of soldered joints due to additional cost of higher grade solder. Some cost associated with monitoring and testing to ensure the use of low lead solder and flux will also be necessary.

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

5:23-3.15 Plumbing subcode

(a) (No change.)

(b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:

1.-4. (No change.)

5. Chapter 4 of the plumbing subcode entitled "Joints and connections" is amended as follows:

i. **Section 4.2.4 is amended to delete the phrase "properly soldered together" on line 4 and to add after line 4 the sentence "Joints for potable water used in copper, brass, or wrought copper fittings shall be made with a solder and flux having a lead content of not more than 0.2 percent."**

Redesignate existing i.-iii. as ii.-iv. (No change in text.)

6.-19. (No change.)

(c) (No change.)

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Transfer of Servicing of Single Family Mortgage Loans

Proposed New Rule: N.J.A.C. 5:80-21

Authorized By: New Jersey Housing and Mortgage Finance

Agency, James L. Logue, Executive Director.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1986-479.

Submit comments by December 17, 1986 to:

Susan N. Ferschmann

Director of Policy Development

New Jersey Housing and Mortgage Finance Agency

CN 18550

Trenton, NJ 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency ("Agency") makes low interest mortgage loans available to single family homebuyers through a Statewide Mortgage Program. The Agency does not make loans directly to homebuyers but offers the loans through traditional mortgage lenders (for example, banks and savings and loan institutions). Mortgage lenders participating in the program accept applications from homebuyers, process them and send them to the Agency for approval. The Agency reviews the loan application to assure the homebuyer meets eligibility requirements and once approved, instructs the mortgage lender to issue a mortgage commitment to the homebuyer. After the sale is closed, the Agency purchases the loan from the mortgage lender. After purchase by the Agency, the mortgage lender maintains ongoing servicing of the loan (for example, receipt of monthly mortgage payments) or may assign the servicing with Agency approval. The proposed new rules govern the procedures and approvals required for mortgage lenders to assign the servicing of the loans.

Social Impact

Mortgage lenders wishing to participate in the Agency's Statewide Mortgage Program must meet rigid standards and qualifications established by the Agency. Such qualifications include satisfactory financial stability, minimum insurance requirements and sufficient experience in mortgage processing. Once participating in the Agency's program, a mortgage lender will, under the provisions of this rule, need Agency approval to transfer the servicing of its mortgage loans. The rule, by requiring Agency review and approval of such transfers, will help ensure the integrity and success of the Agency's program by assuring that loans are transferred to qualified servicers only. This will result in efficient service to the New Jersey homeowners who have mortgages under this program.

Economic Impact

Transfer fees charged by the Agency when mortgage lenders assign their loans are a source of funds which the Agency uses to offset the administrative cost in operating the Statewide Mortgage Program. In 1985, \$153,871 in fees were collected by the Agency. It is anticipated that an additional \$600,000 in fees will be collected in 1986.

Full text of the proposed new rule follows.

SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

5:80-21.1 General applicability

(a) The rules within this subchapter shall apply to all servicers of Agency single family mortgage loans who are either:

1. Transferring the ownership interest of the servicing company or entity; or
2. Transferring the ownership of their holding company; or
3. Transferring by sale their portfolio of Agency loans to another servicer.

(b) The rules within this subchapter shall also apply to any change in the servicer's organizational structure, which in the Agency's determination, amounts to the type of transfer specified in (a) above. In determining whether a change in the servicer's organizational structure is a transfer subject to these rules, the Agency may consider:

1. Name change of servicer;
2. Change of location of servicer;
3. Staff changes by servicer;
4. Other significant organization changes by servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers.

5:80-21.2 Agency review and approval

(a) No servicer may enter into any transfer as specified in N.J.A.C. 5:80-21.1(a) or (b), without obtaining prior written consent of the Agency.

(b) In order for a transfer to be approved, the successor servicer must meet all of the following requirements:

1. Assume a servicing portfolio of at least 100 Agency loans;
2. Have a net worth of \$250,000 plus 0.2 percent of the outstanding principal balances of its total portfolio of loans serviced.
3. Have a servicing portfolio of at least 200 loans for other investors totaling at least \$10 million in outstanding principal balances.
4. Be an approved servicer for the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination.
5. Have current certified financial statements and servicing and delinquency statistics which are satisfactory to the Agency.
6. Complete the participation application to the satisfaction of the Agency.
7. Complete the Agency's Questionnaire for Servicing Transfers to the satisfaction of the Agency. This form must also be completed by the transferring servicer.
8. Submit fidelity insurance, errors and omission insurance and other insurance the Agency deems necessary.
9. If a successor servicer is an existing Agency servicer, there must be a record of acceptable servicing performance, as determined by the Agency.

5:80-21.3 Transfer fees

(a) A transfer fee shall be paid to the Agency on all transfers specified in N.J.A.C. 5:80-21.1(a) and (b). The fee shall be assessed according to the terms of the Mortgage Servicing Agreement with each servicer.

(b) A transfer fee shall not be imposed on loans in foreclosure or loans in default over 60 days. If the servicer receives payment from the mortgagee within a reasonable time of the transfer which brings such loans out of foreclosure or reduces the period of default to less than 60 days, then a fee will be required to be paid by the servicer at such time.

5:80-21.4 Subsequent transfers

(a) The rules within this subchapter shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successor servicers shall assume and abide by all the terms, including payment of transfer fees, of the original Mortgage Servicing Agreement on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency.

ENVIRONMENTAL PROTECTION**(a)****PINELANDS COMMISSION****Pinelands Comprehensive Management Plan****Proposed Amendments: N.J.A.C. 7:50-2, 4, 5, 6 and 7****Proposed New Rules: N.J.A.C. 7:50-5.5, 5.32, 6.43, 6.76, 6.93, 6.94, 6.157****Proposed Repeals: N.J.A.C. 7:50-6.43, 6.65**

Authorized By: New Jersey Pinelands Commission,
Terrence D. Moore, Executive Director.

Authority: N.J.S.A. 13:18A-6j.

Proposal Number: PRN 1986-482.

Two **public hearings** concerning this proposal will be held on:

Tuesday, January 20, 1987 at 7:30 P.M.,
Stockton State College, A-Wing Lecture Hall
Pomona, New Jersey

and

Tuesday, January 27, 1987 at 7:30 P.M.
Burlington County College, Little Theater
Pemberton-Browns Mills Road
Pemberton, New Jersey

Submit comments by February 6, 1987 to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to amend Subchapters 2 (Interpretation and Definitions), 4 (Development Review), 5 (Minimum Standards for Land Uses and Intensities), 6 (Management Programs and Minimum Standards), and 7 (Amendments to the Comprehensive Management Plan) of the Pinelands Comprehensive Management Plan.

The Pinelands Comprehensive Management Plan initially took effect on January 15, 1981 and has since been amended twice. The amendments now proposed represent the culmination of an intensive review of the entire Plan which began in the Spring of 1983. In addition to the public hearings identified below, the Commission's Plan Review Subcommittee held numerous public meetings during which all of the suggested changes to the Plan were reviewed.

Following its initial review, the Pinelands Commission's Plan Review Subcommittee held three public hearings in May, 1984 to elicit public comment on a series of preliminary recommendations which it was considering. A draft report entitled "Reviewing the Comprehensive Management Plan—Report to the Pinelands Commission" was then distributed for public comment in April, 1985. This report presented a series of policy recommendations covering (1) amendments to the Comprehensive Management Plan, (2) administrative actions which could be taken by various agencies to better implement the Plan, (3) priority research (study) topics, (4) other research (study) topics which were not viewed as priorities, and (5) topics and issues considered by the subcommittee but not recommended for Commission action. Two public hearings were held on this draft report.

The subcommittee's final report to the Commission was presented in October, 1985. This report contained the same major categories of policy recommendations as did the draft report; however, specific recommendations within these broad categories were revised based upon public input.

The Pinelands Commission adopted the subcommittee's report, with certain modifications, in January, 1986. Since that time, the formal amendments to the Pinelands Comprehensive Management Plan proposed herein have been drafted to implement the policies adopted by the Commission.

In addition to a number of technical amendments, the proposals for Subchapter 4 would establish expiration dates for development approvals granted by the Commission or the Pinelands Development Review Board before the Pinelands Comprehensive Management Plan took effect and

for certain waivers of strict compliance issued by the Commission. Subchapter 4 amendments would also modify the types of development applications which are subject to Commission review procedures, delete certain non-essential and duplicative application requirements, institute simplified application procedures for certain types of minor development, and modify the standards under which certain types of waivers of strict compliance can be granted.

The proposed amendments to Subchapter 5 include, in addition to technical revisions, limitations on mining, provisions for infill development in the Preservation Area, provisions for limited non-farm residential development in Agricultural Production Areas, changes in the types of other land uses permitted in various parts of the Pinelands Area, provisions for residential clustering options in Forest and Rural Development Areas, and revisions to the Pinelands Development Credit allocation formula.

A number of management programs (development standards) in Subchapter 6 are also proposed for technical and substantive revision. Among the substantive changes are provisions which modify the standards for public improvements in wetlands, exempt certain areas from utilizing native vegetation for landscaping, incorporate the state's list of threatened and endangered wildlife, require additional safeguards in woodcutting activities, revise the buffer and reclamation requirements for sand and gravel mining, permit solid waste transfer stations and vegetative waste landfills to be located within the Pinelands in certain instances, permit the continuation of certain point discharges into surface waters if the effluent treatment process is improved, permit non-point discharges from new wastewater treatment systems to exceed regional nitrate-nitrogen standards in very limited circumstances, and revise the information required for air quality reviews. The affordable housing requirements in Part XIII and associated definitions have been revised to reflect the Supreme Court's decision in "Mt. Laurel II"; however, it is likely that additional changes will be proposed in light of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., once the Commission and the Council on Affordable Housing cooperatively review their respective authorities and responsibilities. Part XV containing standards relative to the protection of historic resources has been substantially revised to reflect the policies of the Commission's "Pinelands Cultural Resource Management Plan for Historic Period Sites", adopted in March 1986, and to reflect recent amendments to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Subchapter 7 has been revised to provide that a comprehensive review of the Pinelands Comprehensive Management Plan shall be undertaken every five, rather than three, years.

Social Impact

The social impact of the proposed rules is expected to be minimal except that these Plan amendments should enable the public and government officials to more clearly understand the procedures and standards governing development in the Pinelands Area. Additionally, historic resources of local, regional, state, or national significance will be better protected for public education purposes and/or research potential.

Economic Impact

Adoption of these amendments will, on a regional basis, have a minimal economic impact. However, in individual circumstances, economic impacts may be viewed as being more significant. Positive economic benefits may result from the elimination of certain application requirements, use of a simplified application procedure for certain types of development, permitting the clustering of homes in certain instances, and modified wastewater treatment standards. Negative economic impacts may result from the expiration dates established for development approvals granted prior to the Comprehensive Management Plan and for certain waivers of strict compliance, to the extent that those development projects do not proceed in a timely manner and are prevented from being developed at a later date. In addition, each of the 52 Pinelands Area municipalities and 7 counties will be required to revise its master plan and land use ordinance to conform to these amendments. The costs of those revisions will be born by those local governments.

Economic impacts may be mixed (positive or negative in certain instances) as a result of changes in permitted land uses in various parts of the Pinelands Area, changes in the allocation formula for Pinelands Development Credits, and revisions to the standards governing the protection of historic resources.

Environmental Impact

The Pinelands Comprehensive Management Plan was adopted to protect the natural and cultural resources of the Pinelands Area. These amendments are largely intended to clarify various requirements of the

Plan and simplify its administration. Most of the substantive changes being proposed, including changes in permitted land uses and development standards, are intended to strengthen the level of environmental protection afforded under the Plan.

The proposed revisions governing wastewater treatment facilities may be viewed as having a negative environmental impact since regional water quality standards may be relaxed in certain instances. However, relaxation of the standards will only occur when current point and non-point pollution discharges are to be lessened, although not at the same levels as required for new development. These proposed rules may thus have a positive environmental impact if they serve to encourage improvements to existing wastewater treatment facilities that might otherwise be discouraged by more stringent water quality standards.

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

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

PART 1—INTERPRETATION

7:50-2.1 through 7:50-2.3 (No change.)

7:50-2.4 through 7:50-2.10 (Reserved)

PART II—DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them:

...
["Advanced wastewater treatment" means treatment processes above and beyond conventional preliminary, primary, and secondary treatment with chlorination.]

...
"Agricultural employee housing" means residential dwellings, for the seasonal use of employees of an agricultur[e]al or horticultural use, which because of their character or location are not [practical] to be used for [and cannot be transformed into] permanent housekeeping units [for non-agricultural employees] and which are otherwise accessory to a principal use of the lot for agriculture.

...
"Agricultural products processing facility" means a facility designed, constructed, and operated for the express purpose of processing agricultural products grown in the Pinelands, including washing, grading, and packaging of those products.

...
"Amendment" [means] is a means for making changes in this Plan as expressly authorized by the provisions of N.J.A.C. 7:50-7 or any change to a certified local master plan or land use ordinance.

...
"Application for development" means any application, filed with any permitting agency, for any approval, authorization or permit which is a prerequisite to initiating development in the Pinelands Area, except for an application for approval, authorization or permit for:

1. The improvement, expansion or reconstruction of any single family dwelling unit or appurtenance thereto;
2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;
3. The improvement, expansion, construction or reconstruction of a structure used exclusively for agricultural or horticultural purposes;
4. The repair of existing utilities and the installation of utilities to serve existing or approved development; and
5. The clearing of less than 1500 square feet of land [that is not located in a wetland or within 200 feet of a scenic corridor].

...
"Approval, final" means any approval to develop issued by a local permitting agency which represents the final action to be taken on the application for development by that agency, including but not limited to final approval of major subdivisions and site plans, approval of minor subdivisions, and the issuance of zoning or construction permits.

...
"Approval, preliminary" means any approval to develop issued by a local permitting agency which is a prerequisite to the issuance of a final approval by that agency, including but not limited to preliminary approvals of major subdivisions and site plans.

...
"Certificate of appropriateness". See N.J.A.C. 7:50-[6.144] 6.156

...
"Certificate of compliance". See N.J.A.C. 7:50-4.11 through 4.27. [(Development in Areas without Certified Local Plans)] This document shall be entitled Certificate of Non-Compliance when the proposed development is not consistent with the requirements of this Plan.

...
"Certificate of filing". See N.J.A.C. 7:50-[4.24] 4.34 and [4.72] 4.82.

...
"Certified county master plan or ordinance" means any county master plan or ordinance certified by the Commission pursuant to [Article 3] N.J.A.C. 7:50-3, Part II as being in conformance with the minimum standards of this Plan.

...
"Commission" means the Pinelands Commission created pursuant to Section 5 of the Pinelands Protection Act , as amended.

...
"Comprehensive Management Plan" means the plan adopted by the Commission pursuant to Section 7 of the Pinelands Protection Act, as amended.

...
"Development" means the change of or enlargement of any use or disturbance of any land, the performance of any building or mining operation, the division of land into two or more parcels, and the creation or termination of rights of access or riparian rights including, but not limited to:

1. A change in type of use of a structure or land;
2. A reconstruction, alteration of the size, or material change in the external appearance of a structure or land;
3. A material increase in the intensity of use of land, such as an increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;
4. Commencement of resource extraction[,] or drilling or excavation on a parcel of land;
5. Demolition of a structure or removal of trees;
6. Commencement of forestry activities;
- [6]7. Deposit of refuse, solid or liquid waste or fill on a parcel of land;
- [7]8. In connection with the use of land, the making of any material change in noise levels, thermal conditions, or emissions of waste material; and
- [8]9. Alteration, either physically or chemically, of a shore, bank, or flood plain, seacoast, river, stream, lake, pond, wetlands or artificial body of water;

...
"Development approval" means any approval granted by [the Executive Director or] the Commission pursuant to N.J.A.C. 7:[4]50-4, Part II or Part IV.

...
"Drainage" means the removal of surface water or ground water from land by drains, grading or other means including control of runoff to minimize erosion and sedimentation during [the] and after construction or development and means necessary for water supply preservation or prevention or alleviation of flooding.

...
"Electric distribution lines" means all electric lines other than electric transmission lines.

...
"Electric transmission lines" means electric lines [carrying more than 230 kvs.] which are part of an electric company's transmission and sub-transmission system, which provide a direct connection between a generating station or substation of the utility company and: (a) another substation of the utility company; (b) a substation of or interconnection point with another interconnecting utility company; (c) a substation of a high-load customer of the utility.

...
"Executive Director" means the chief administrative officer of the [c]Commission or any representative designated by such chief administrative officer to perform any functions delegated to such chief administrative officer pursuant to any provision of this Plan.

...
"Forestry" means the growing and harvesting of trees for commercial purposes[,] except that the following activities shall not be defined as forestry:

1. Removal of trees located on a parcel of land one acre or less on which a dwelling has been constructed;
2. Removal of trees directly associated with the use of the property for a nursery, garden center, Christmas tree plantation, or orchard;
3. Removal of trees directly associated with the use of the property for an authorized landfill;
4. Removal of trees necessary for the maintenance of utility or public rights-of-way;
5. Removal of trees for the personal use of the property owner; and
6. Removal of trees for public safety.

...
"Forestry management plan". See [N.J.A.C. 7:50-6.44(a)2] N.J.A.C. 7:50-4.2(b)6ii.

"Forest stand" means a uniform group of trees of similar species, size, and age.

"Historic[, Archaeological and Cultural Preservation Board] Preservation Commission" See N.J.A.C. 7:50-[6.143] 6.153.

[Historic district means an area designated by the Commission, pursuant to N.J.A.C. 7:50-6.143, as having such historic, cultural or archaeological significance as to merit special protection.]

"Historic resource" means any site, building, area, structure or object [significant] important in American history or prehistory, architecture, archaeology and culture at the national, state, county, local or regional level.

"Home occupations" means an activity for economic gain, carried out in a residential dwelling or accessory structure thereto, in which an occupant of the residence and no more than two other individuals are employed and which is clearly secondary to the use of the dwelling as a residence.

"Immediate family" means those persons related by blood or legal relationship in the following manner: grandparents, grandchildren, parents, sons, daughters, brothers and sisters, aunts and uncles, nephews, nieces and first cousins.

"Institutional use" means any land used for the following public or private purposes: educational facilities, including universities, colleges, elementary and secondary and vocational schools, kindergartens and nurseries, cultural facilities such as libraries, galleries, museums, concert halls, theaters and the like; hospitals, including such educational, clinical, research and convalescent facilities as are integral to the operation of the hospital; medical and health service facilities, including nursing homes, supervised residential institutions, rehabilitation therapy centers and public health facilities; law enforcement facilities; military facilities; churches; public office buildings; cemeteries; and other similar facilities.

"Interim rules and regulations" means the regulations adopted by the Pinelands Commission pursuant to the Pinelands Protection Act to govern the review of applications from the adoption of the regulations until the Comprehensive Management Plan took effect on January 14, 1981. These regulations were formerly codified as N.J.A.C. 7:1G-1 et seq.

"Low income household" means a household [with an annual income of less than 80 percent of the] earning less than 50 percent of median income [for the county or Standard Metropolitan Statistical Area].

"Median income" means the median of household income, adjusted for the number of persons in the household, as determined from time to time by the United States Department of Housing and Urban Development to be the median.

"Middle income household" means a household with an annual income between 100 percent and 120 percent of the median income for the county or Standard Metropolitan Statistical Area.]

"Moderate income household" means a household [with an annual income which is 80 percent to 100 percent of the] earning no less than 50 percent and no more than 80 percent of median income [for the county or Standard Metropolitan Statistical Area].

"Municipality" means any city, borough, town or township wholly or partially located within the Pinelands Area or Pinelands National Reserve.

"Notice of filing". See N.J.A.C. 7:50-4.34(b).

"Pinelands Area" means that area designated as such by [s]Section 10(a) of the Pinelands Protection Act.

[**"Pinelands Development Approval"**. See N.J.A.C. 7:5-4.]

"Pinelands Development Review Board" means the agency responsible from February 8, 1979 until June 28, 1979 for the review of and action on applications for development in the Pinelands Area which required approvals of other state agencies, except where the Pinelands Commission acted on applications during that time period.

"Pinelands National Reserve" means that area designated as such by [s]Section 3(i) of the Pinelands Protection Act.

"Pinelands resource related use" means any use which is based on resources which are indigenous to the Pinelands including but not limited to forest products, berry agriculture and sand, gravel [or minerals], clay or ilmenite.

"Plants, threatened or endangered"[. See N.J.A.C. 7:50-6.24] means a Pinelands plant species whose survival worldwide, nationwide, or in the state is in jeopardy.

"Pre-application conference"[.] See N.J.A.C. 7:50-4.2.

"Preservation Area" means that area so designated by [s]Section 10(b) of the Pinelands Protection Act.

"Protection Area" means all land within the [p]Pinelands [a]Area which is not included in the [p]Preservation [a]Area.

"Public service[s] infrastructure" means sewer service, gas, electricity, water, telephone, [television] and other public utilities, roads and streets and other similar services provided or maintained by any public or private entity.

"Recommended management practice" means the management program which employs the most efficient use of available technology, natural, human[,] and economic resources.

"Recreational facility, intensive" means any recreational facility which does not satisfy the definition of low intensive recreational facility including but not limited to golf courses, marinas, amusement parks, hotels, and motels.

"Resource extraction" means the dredging, digging, extraction, mining and quarrying of sand, gravel [or minerals] clay, or ilmenite for commercial purposes, not including, however, the private or agricultural extraction and use of extracted material by a landowner.

"Seasonal high water table" means the level below the natural surface of the ground to which water seasonally rises in the soil in most years.

"Sign" means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state or city, or any fraternal, religious or civic organizations; merchandise, pictures or models of products or services incorporated in a window display; works of art which in no way identify a product; or scoreboards located on athletic fields.

"Solid waste transfer station" means a facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a landfill.

"Standard subsurface sewage disposal system" means a system for disposal of sanitary sewage into the ground, which meets the standards of N.J.A.C. 7:9-2.1 et seq. and which is designed and constructed to treat sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to an adequate disposal field; excluding those systems which utilize a dosing tank or other comparable system to store and deliver doses of septic tank effluent to the disposal field and those systems that utilize sand filtration.

"[s]Subdivision" means the division of a parcel of land into two or more lots, tracts, parcels or other divisions of land. The following shall not be considered subdivisions within the meaning of this Plan, if no development occurs or is proposed in connection therewith[.]:

1. Divisions of property by testamentary or interstate provisions;
2. Divisions of property upon court order; and
3. Conveyances so as to combine existing lots by deed or other instrument.

The term "subdivision" shall also include the term "resubdivision."

"Uncertified municipality or county" means a municipality or county whose master plan and land use ordinance have not been certified by the Commission under [Article 3, Part 4 of this Plan] N.J.A.C. 7:50-3.

"Utility distribution lines" means [main] lines, conduits or pipes located in a street, road, alley or easement through which natural gas, electricity, water, sewage or storm water discharge is distributed to or from service lines extending from the main line to the distribution system of the building or premises served.

"Wetlands"[.] See N.J.A.C. 7:50-6.3.

"Wetlands, coastal"[.] See [Section 6-104] N.J.A.C. 7:50-6.4.

"Wetland soils" means those soils designated as very poorly drained or poorly drained by the Soil Conservation Service of the United States Department of Agriculture, including but not limited to Atsion, Bayboro,

Berryland, Colemantown, Elkton, Keansbury, Leon, Muck, Othello, Pocomoke, St. Johns and Freshwater Marsh and Tidal Marsh [S]soil types.

SUBCHAPTER 4. DEVELOPMENT REVIEW

INTRODUCTION

The Pinelands Protection Act charges the Pinelands Commission with ensuring that the minimum standards, goals and objectives of this Plan be implemented and enforced. The procedures by which the Commission will discharge its development review responsibilities are set out in this [Article] **subchapter**, according to whether the applicant is a public or private entity and whether the proposed activity is located in a certified or uncertified municipality. Part I establishes a set of uniform application requirements which include a pre-application conference which is designed to afford an applicant the opportunity to informally resolve preliminary application problems and to determine the extent and form of the information and documentation which must be submitted in the application. Part I also establishes a uniform procedure for determining when an application for development approval is complete. N.J.A.C. 7:50-4 prescribes notice and public hearing requirements for development review as well as for the certification of municipal or county plans and ordinances (N.J.A.C. 7:50-3), or amendments to the Plan itself (N.J.A.C. 7:50-7).

Part II of this subchapter establishes the procedures for development review in uncertified jurisdictions. Part III of this subchapter sets forth the procedures for development review in certified areas, including the Commission's authority to review development approvals at the local level. **It is recognized that the specific provisions of this Part can be refined at the local level provided that the objectives and goals the procedural requirements represent will be achieved.** Part IV contains those procedures applicable to review of public development in the Pinelands Area.

In addition, Part V of this subchapter contains provisions for the procedures to be employed in consideration of applications to waive strict compliance with the standards of the Plan. If a waiver is granted by the Commission, the applicant may proceed with the development review procedures in Part III, if in a certified area, or Part [IV]II, if in an uncertified area, or **Part IV, if it is an application by a public agency.**

Part VI sets forth a procedure whereby any person may secure a clarification or interpretation of the meaning or applicability of any provision of this Plan. [The effect of a letter of interpretation is to permit the applicant to proceed with the development review procedure in Part II, if in an uncertified area, or Part III, if in a certified area.] Part VII provides for coordinated permitting with other state agencies.

Part VIII sets forth the procedures to follow if any applicant or other aggrieved person wishes to appeal a decision by the Executive Director [of] or the Commission.

PART I—UNIFORM PROCEDURES

7:50-4.1 Applicability

(a) For the purposes of this subchapter **only**, the following shall not be considered development **except for development of any historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154:**

1. The improvement, expansion, or reconstruction **within five years of destruction or demolition**, of any single family dwelling unit or apurtenance thereto;
2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;
3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;
4. The construction, repair or removal of any sign [;], **except for the construction or replacement of any off-site commercial advertising sign;**
5. The repair of existing [utilities] **utility distribution lines** and the installation of [utilities] **utility distribution lines** to serve existing [or approved] development or development which has received all necessary approvals and permits; [or]
6. The clearing of less than 1500 square feet of land [that is not located in a wetland or within 200 feet of a scenic corridor.] ;
7. **The construction of any addition or accessory structure for any non-residential use provided said addition or structure will be located on an existing impermeable surface and the existing use is served by public sewers and said addition or structure will cover an area of no more than 1,000 square feet; or**

8. The demolition of any structure less than 50 years old.

(b) As of January 14, 1991, the provisions of this Plan shall apply to any proposed development or portion thereof which received approval from the Pinelands Commission pursuant to the Interim Rules and Regulations or which received approval from the Pinelands Development Review Board unless said development has received all other necessary approvals prior to that date and no renewal or extension of any other approval is necessary after that date. Said approvals by the Pinelands Commission and the Pinelands Development Review Board shall be null and void as of January 14, 1991.

(c) **Nothing herein shall preclude any local or state agency from reviewing, in accordance with the provisions of any applicable ordinance or regulation, any proposed development which does not require an application to the Pinelands Commission pursuant to (a) or (b) above.**

7:50-4.2 Pre-application conference; application requirements

(a) Pre-application conference.

1. Request: Any applicant for any [approval or waiver] **application** provided for in this Plan may request an informal conference with the Executive Director prior to filing an application. **However, any applicant seeking approval pursuant to the provisions of Part III of this subchapter is encouraged to discuss the application with the appropriate officials in the certified municipality prior to requesting a conference with the Executive Director.** All requests for a pre-application conference shall include the name and address of the applicant, the legal description and street address, if any, of the property proposed for development, a brief description of the nature of any proposed development and the nature of the approval or waiver sought by the applicant.

2. Scheduling of conference: Within 15 days following receipt of any request for a pre-application conference, the Executive Director shall schedule a **pre-application conference** and notify the applicant of the time, date and location of the conference and specify any additional information which the Executive Director determines is necessary.

3. Conduct and purpose of conference: The Executive Director shall conduct the pre-application conference. The conference shall be informal and its purpose shall be to openly consider the proposals, views and concerns of the applicant and the Commission and to determine whether any of the application requirements of (b) below should be waived or any additional information should be required.

4. Pre-application conference orders: At the conclusion of the pre-application conference, the Executive Director shall [forward a letter to] **inform the applicant in writing** [indicating] whether any of the application requirements contained in (b) below are to be waived or any additional information is to be submitted.

5. Representations of the Executive Director: No representation made by the Executive Director or **any member of the staff designated by the Executive Director** during the course of any pre-application conference shall be binding on the Commission or the Executive Director with respect to any application subsequently submitted.

(b) Applicants requirements[;].

1. General requirements: All applications shall be submitted to the Executive Director at the principal office of the Commission in such form and number as he shall from time to time establish. The filing of an application shall be deemed to be authorization for the Executive Director or his staff to inspect the property which is the subject of the application. The application shall be accompanied by a sworn statement that the requirements of (b)2 below have been satisfied.

2. Notice: The applicant shall provide notice of [filing, or a copy of] all applications for development **in uncertified municipalities** [approval filed with the Commission], applications for waivers and applications for letters of interpretation **filed with the Commission** to the [township] **municipal** and county clerk, and the environmental commission, if any, of the municipality.

3. Waiver of application requirements following pre-application conference: The Executive Director may waive or modify any of the application requirements contained in this subsection if, after a pre-application conference held pursuant to (a) above, he determines that any required information is either not relevant or not necessary to assure proper consideration of any application. Such waiver or modification shall be made in a pre-application order issued pursuant to (a)4 above.

4. Application for approval of minor development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or [4.23] 4.33 for approval of minor development shall include at least the following information:

i. The applicant's name and address and his interest in the subject property;

ii. The owner's name and address, if different from the applicant's, and the owner's signed consent to the filing of the application;

iii. The legal description, **including block and lot designation** and street address, if any, of the subject property;

iv. [The present use] **A description of all existing uses** of the subject property;

v. A brief written statement generally describing the proposed development;

vi. A USGS Quadrangle map, or copy thereof, **and a copy of the municipal tax map sheet** on which the boundaries of the subject property [and all proposed development] **and the Pinelands management area designation and the municipal zoning designation in a certified municipality** are shown;

vii. A plat or plan showing the location of all boundaries of the subject property, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed sanitary facilities:

(1) On-Site Treatment [and Holding] Facilities: Location, size, type and capacity of any proposed on-site wastewater treatment [or holding] facilities; and

(2) Soil Borings and Percolation Tests: If on-site sewage disposal is proposed, results of soil borings and percolation tests in accordance with N.J.S.A. 58:11-23 et seq. and the regulations adopted pursuant thereto shall be submitted at suitable location with a tract map showing location, logs, elevations of all test holes, indicating where ground water was encountered, estimating the seasonal high water table and demonstrating that such facility is adequate to meet the water quality standards contained in subchapter 6 of this Plan.

viii. A location map, including the area extending at least [1,000] **300** feet beyond each boundary of the subject property, showing ownership boundary lines, the boundary of the proposed development, owners of holdings adjoining and adjacent to the subject property, existing facilities, buildings and structures on the site, all proposed development, wetlands, streams (including intermittent streams), rivers, lakes and other waterbodies and existing roads;

ix. A soils map including a county soils survey which conforms to the guidelines of the United States Department of Agriculture Soil Conservation Service, showing the location of all proposed development; and

x. A map showing existing vegetation, identifying predominant vegetation types in the area [, identifying all trees with trunk diameters in excess of twelve inches which are to be removed as a result of the proposed development,] and showing proposed landscaping of the subject property including the location of the tree line before and after development **and all areas to be disturbed as a result of the proposed development.**

5. Application for approval of major development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or [4.23] **4.33** for approval of major development, **except for forestry and resource extraction operations**, shall include at least the following information:

i. All information required by (b)4i through iv;

ii. A brief written statement generally describing the proposed development and the market it is intended to serve; the number of total units; the floor area of all units and the anticipated market value of all units to be included in the proposed development;

iii. A written statement addressing each of the standards or guidelines set forth in subchapters 5 and 6 of this Plan; and stating specifically how the proposed development meets each such standard or guideline;

iv. A plat or plan showing the location of all boundaries of the subject property, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed wastewater treatment facilities:

(1) Sanitary Sewer Distribution: Location, size and direction of flow of all existing and proposed sanitary sewer-lines and pumping stations serving the proposed development and all existing and proposed connections to existing facilities;

(2) On-Site Treatment [and Holding] Facilities: Location, size, type and capacity of any proposed on-site wastewater treatment [or holding] facilities **including, except with respect to discharges into an individual residential septic system, quantities, composition, proposed pretreatment and ultimate means of disposal;** [and]

(3) Soil Borings and Percolation Tests: If on-site sewage disposal is proposed, results of soil borings and percolation tests in accordance with the requirements of N.J.S.A. 58:11-23 et seq. and the regulations adopted pursuant thereto shall be submitted with tract map showing location, logs and elevations of all test holes, indicating where ground water was encountered, and estimating the seasonal high water table[.]; **and**

(4) The proposed hours and days of operation and number of employees of any non-residential facility.

v. A project site base map, at a scale of no less than one inch to 200 feet and including the areas extending at least [1,000] **300** feet beyond each boundary of the subject property, showing ownership boundary lines, the boundary of the proposed development, owners of holdings, if any, adjoining and adjacent to the subject property, existing facilities, buildings and structures on the site, all proposed development, wetlands, streams (including intermittent streams), rivers, lakes and other waterbodies, and existing roads;

vi. A soils map including a county soils survey in conformance with the guidelines of the United States Department of Agriculture Soil Conservation Service, at the same size and scale as the project site base map, delineating all soil series at an appropriate level of detail and, in sewered projects, sufficient soil borings to confirm the accuracy of the soils map;

vii. A slope map, at the same size and scale as the project site base map, indicating contour elevations at two foot intervals [and shaded to show slope categories of 0-3 percent, 3-8 percent, 8-15 percent, 15-25 percent and 25 percent plus];

viii. A resource capability map, at the same size and scale as the project site map, indicating the cumulative limitations to development due to the standards and the guidelines contained in this Plan. This map should be prepared prior to any engineering, site layout or design work;

ix. A proposed development map, at the same size and scale as the project site base map, showing areas of proposed development; the location of surveyor's tape **or other markers** placed on the site delineating the boundaries of the property; the number of residential lots and other type of development in each general area; all proposed lot lines; areas proposed to be retained as open space; the applicable land use areas boundaries; the location of proposed facilities such as dams and impoundments, [community] **public or private** water systems, storm drainage systems, [community] **public or private** sewerage systems, **public utilities, soil erosion and sedimentation control devices**, industrial waste water discharges and **solid** waste disposal areas; **sources of air pollution;** the proposed primary road network; [and] all areas to be disturbed by construction activities;

[x. A map, at the same size scale as the project site base map, showing] existing vegetation, identifying the predominant vegetation types in the area [and identifying all trees with diameters in excess of 12 inches] and all [other] vegetation which is to be removed or disturbed as a result of the proposed development, and the tree line before and after development;

[xi].x. A map, at the same size and scale as the project site base map, showing storm water drainage patterns and calculations and the applicant's proposed storm water run-off management plan, [including] **which shall contain** results of **all** percolation tests and soil borings performed in [the] **each** recharge area **including the estimated seasonal high water table** [together with letters of review and comment from the local Soil Conservation District and county engineer];

[xii. A narrative description of the following:]

[(1) Soil, slope and critical resource data not presented on the base maps;]

[(2) Existing on-site land uses;]

[(3) Public water and sewer systems, other public utilities, storm drainage plans, erosion and sedimentation control measures, solid waste disposal methods and alterations to shorelines, wetlands and waterbodies;]

[(4) Proposed uses of pesticides and herbicides;]

[(5) Sources of air and noise pollution;]

[(6) Outdoor recreation and open space resources;]

[(7) Legal instruments, such as homeowners' association charters and agreements, proposed declaration of covenants, deeds and other documents and instruments of conveyance;]

[(8) Any proposed on-site waste discharges including, except with respect to discharges into an individual septic system, quantities, composition, proposed pretreatment and proposed disposal site;]

[xiii].xi. Legal instruments evidencing the applicant's right, title or interest in any Pinelands [d]Development [c]Credits **and any existing or proposed deed restrictions or easements relating to the subject parcel;**

[xiv.]xii. A landscaping **schedule and plan** on a map, of the same size and scale as the project site base map, identifying the species of plants to be installed and the quantity and location of all plants proposed to be planted, demonstrating that the landscaping will be carried [on] out within six months of the completion of construction[,] and demonstrating that the landscaping will stabilize soils;

[xv. If the proposed development includes industrial or commercial facilities, the following additional information must be included:]

[(1) The proposed hours of operation of any such facility;]

[(2) An energy conservation plan including special energy conservation design considerations, detailed energy conservation practices and an assessment of provisions for public transportation, van and car pooling; and]

[(3) The number of employees to be employed at the proposed facility;]

[xvi. If the proposed development includes any commercial resource extraction activities, all information required by N.J.A.C. 7:50-6, Part VI;]

[xvii. If the proposed development includes any commercial forestry activities, all information required by N.J.A.C. 7:50-6, Part IV;]

[xviii. If the proposed development includes one hundred or more dwelling units, a fiscal impact analysis comparing the cost of the proposed development and the revenues to be generated by the proposed development during the ten-year period immediately subsequent to completion of the development;]

[xix.]xiii. All public [utility] **service infrastructure** agreements, or other documentation, evidencing the availability of electric, gas, water, sewer and other necessary public [utility] service[s] **infrastructure**;

[xx. If the proposed development includes 100 or more dwelling units or more than 300 parking spaces, the information required by N.J.A.C. 7:50-6, Part IX;]

[xxi.]xiv. The cultural resources survey described in N.J.A.C. 7:50-6, Part [XIV] XV;

[xxii.]xv. A list of all permits required for the proposed development from county, municipal, state and federal agencies.

6. Application for forestry: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for a forestry operation shall include at least the following information:

i. All information required by (b)4i through vi;

ii. A forestry management plan, which details the management practices proposed to be employed, including but not limited to harvesting practices, reforestation and the following:

(1) Location and size of tracts with each tract being defined based on the physical characteristics of the parcel, each tract should be as close to 100 acres as practical;

(2) A map of the property at a scale of no less than one inch to 1,000 feet showing wetlands, types of vegetation cover, receiving waters, location of stream crossings and alternatives, location of skid trails, location of access and haul roads and landings, cutting boundaries of the tracts to be harvested and size of filter or buffer strips;

(3) A property description including land use; acreage of open, crop and woodland; general soil types and erodibility; range of percent of slope; timber quality and age (forest type, species, age, DBH, height, volume and reproduction); and understory;

(4) Description of timber to be harvested;

(5) Description of regeneration plans; and

(6) Description of intermediate management practices to be applied;

iii. A letter of comment or no comment from the New Jersey Bureau of Forest Management on the Forestry Management Plan unless the municipality in which the parcel is located has entered an agreement to have said Bureau review all forestry applications;

iv. A signed acknowledgement from both the owner and the applicant that they are responsible for any forestry practices which are contrary to any provision of this Plan or of the submitted forestry management plan done by any agent, employee, contractor, subcontractor or any other person authorized to be on the parcel by either the owner or the applicant;

v. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.44 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the greater of \$500.00 or 10 percent of the value of the wood to be harvested during the two year duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality if applicable as the obligee, shall be posted by the property owner or his agent with the municipi-

ality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified;

vi. Demonstration that the cutting boundaries and property boundaries have been adequately marked and that all adjacent property owners have been notified in writing of the proposed forestry operation; and

vii. Demonstration that for any proposed selective cut that all trees to be harvested have been marked unless the State Bureau of Forest Management is the applicant.

7. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i. All information required by (b)j through vi.

ii. A topographic map at a scale of one inch equals 200 feet, showing the proposed dimensions, location and operations on the subject property;

iii. The location, size and intended use of all buildings;

iv. The location of all points of ingress and egress;

v. A location map, including the area extending at least 300 feet beyond each boundary of the subject property, showing all streams, wetlands and significant vegetation, forest associations and wildlife habitats;

vi. The location of all existing and proposed streets and rights-of-way, including railroad rights-of-way;

vii. A soils map;

viii. A reclamation plan which includes:

(1) Method of stockpiling topsoil and overburden;

(2) Proposed grading and final elevations;

(3) Topsoil material application and preparation;

(4) Type, quantity and age of vegetation to be used;

(5) Fertilizer application including method and rates;

(6) Planting method and schedules; and

(7) Maintenance requirements schedule;

ix. A signed acknowledgement from both the owner and the applicant that they are responsible for any resource extraction activities which are contrary to any provision of this Plan or of the approved resource extraction plan done by any agent, employee, contractor, subcontractor or any other person authorized to be on the parcel by either the owner or the applicant;

x. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.66 and 7:50-6.67 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the cost of restoration of the area to be excavated during the two year duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality, if applicable, as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified;

[6.]8. Application for waiver: An application for a waiver of strict compliance filed pursuant to N.J.A.C. 7:50-4, Part V shall include at least the following information:

i. All information required in an application for development approval as set out in (b)4i through vi;

ii. The waiver sought, the provisions or standards of this Plan from which a waiver is requested and a statement of the reasons for the waiver;

ii. At the option of the applicant, all other information required in (b)4 and 5 above;

iv. A statement of the extraordinary hardship imposed on the applicant [and why the same hardship is not imposed on other property in the area similarly situated] based on the criteria set forth in N.J.A.C. 7:50-4.66(a)1 or an explanation of any compelling public need for the proposed development based on the criteria set forth in N.J.A.C. 7:50-4.6(a)2; and [v. The present use of the subject property.]

v. A statement as to whether the requested waiver will meet the requirements set forth in N.J.A.C. 7:50-4.66(a)3, 4 and 5.

[7.]9. Application for letter of interpretation: An application for a letter of interpretation pursuant to N.J.A.C. 7:50-4, Part VI shall include all information which, after a pre-application conference held pursuant to (a) above, the Executive Director determines is necessary for evaluation of the applicant's request.

[8.]10. Imposition of additional application requirements: At any time during the review of any application filed pursuant to this Plan, the Executive Director may require an applicant to submit any additional information which he determines is reasonably necessary to facilitate

adequate review of the application. If the applicant does not submit the additional material within 30 days, or request an extension of time to do so, the application shall be deemed to be withdrawn.

(c) Determination of whether application is complete.

1. Determination by Executive Director: Within 30 days following receipt of any application or any additional information concerning an application filed pursuant to this Plan except as provided in N.J.A.C. 7:50-4.34(b), the Executive Director shall determine whether such application is complete. If he determines that the application is not complete, he shall mail a written statement to the applicant specifying the deficiencies of the application. The Executive Director shall take no further action on the application until the deficiencies are remedied. **No application shall be deemed complete by the Executive Director if there are outstanding unresolved violations of this Plan on the parcel which is the subject of the application unless the application is made to resolve such a violation.**

2. Remedy of deficiencies: Within 30 days following receipt of a statement of deficiencies from the Executive Director, or such extension as the Executive Director may grant, the applicant shall submit all additional information requested in such statement. The failure of the applicant to submit such additional information shall be deemed a withdrawal of the application.

3. Effect of determination: Any determination of completeness made by the Executive Director pursuant to (c)1 above shall not preclude any local permitting agency or other public agency from requiring additional information as a prerequisite to consideration of any application which must be filed with such agency.

7:50-4.3 Commission hearing procedures

(a) Applicability: The procedures set out in this section shall be applicable, except to the extent that they are specifically modified by other provisions of this Plan with respect to particular subject matters, to all public hearings held pursuant to [N.J.A.C. 7:50-3, 4 and 7] **this Plan.**

(b) Notice of public hearing.

1. Content: All notices of public hearings shall include:

- i. The time and place of hearing;
- ii. The authority pursuant to which the hearing is held;
- iii. The name and address of the applicant;
- iv. A brief description of the subject matter to be considered at the hearing;

v. [If the public hearing relates to an application for development approval,] A statement that the application and supporting materials are available for public inspection and copying at the principal offices of the Commission; and

vi. A statement that any person may at such public hearing speak or submit a written statement.

2. Persons entitled to notice:

i. Notice of public hearings shall be given by the Commission:

(1) By sending a copy of the notice to the applicant[, or the owner of the subject property, if different,] by certified mail;

(2) By sending a copy of the notice, by mail to any person, organization or agency which has previously filed with the Commission a written request, together with an annual fee in an amount to be determined from time to time by the Commission to cover the actual cost of such notice.

(3) **If the public hearing involves certification of a municipal master plan or land use ordinances, by sending a copy of the notice, by mail, to the municipal clerk and the planning board secretary of each Pinelands municipality bordering the municipality seeking certification and to the county clerk and the county planning board secretary of the county in which the municipality is located and of the adjacent county if the municipality borders another county.**

(4) **If the public hearing involves certification of a county master plan or development ordinances, by sending a copy of the notice, by mail, to the municipal clerk and the planning board secretary of each Pinelands municipality in the county seeking certification and to the county clerk and county planning board secretary of each Pinelands county bordering the county seeking certification.**

ii. Notice of public hearings shall be given by the applicant:

(1) If the public hearing relates to an application for development approval or an application for designation pursuant to N.J.A.C. 7:50-6.154, by sending a copy of the notice by certified mail to each owner of record, if different from the applicant, of any land on which development or designation is proposed;

(2) If the public hearing relates to an application for development approval, by sending a copy of the notice, by mail, to:

(A) The [clerk] secretary of the county [or] and municipal planning board and environmental commission, if any, with jurisdiction over [any]

the property on which development has been proposed or which would be directly affected by a map amendment proposed pursuant to N.J.A.C. 7:50-7 **which is the subject of the hearing;**

(B) Any landowners within 200 feet of any border of property proposed for development.

(3) By publication of a copy of the notice, at least once, in a newspaper having general circulation in the area;

(4) By conspicuous posting on [each] any parcel proposed for development or proposed for designation pursuant to N.J.A.C. 7:50-6.154.

3. Time of notice: All notices required by (b)3 shall be published, posted or mailed at least 10 days in advance of the hearing.

4. Notice to be given by applicant: The applicant shall file with the Executive Director, no less than seven days prior to the hearing for which notice was given, an affidavit that the requirements of (b)2ii have been satisfied.

(c) Duty of Commission staff:

1. Presentation of information: At the hearing the Commission staff shall present information concerning pertinent application considerations and the standards set out in this Plan. The Commission staff shall have the right to participate fully in the hearing process and shall act as an advocate for a full and complete record upon which an informed decision can be made.

2. Statement of pertinent considerations: The Commission staff shall state at the outset of the hearing which considerations and required findings it considers pertinent to the application and shall briefly outline the information it intends to present.

3. Production of additional information: Upon a sufficient showing by any person made at any time during the hearing, or on his own motion, the Executive Director may order the Commission staff to produce any additional information with respect to any of the required findings.

(d) Conduct of the hearing:

1. Submission of information: Any person may appear at a public hearing and submit information or written materials, either individually or as a representative of an organization. Each person who appears at a public hearing or who submits written materials shall identify himself and his address and state the name and mailing address of any organization he represents. The Executive Director may exclude information that he finds to be irrelevant, immaterial or unduly repetitious.

2. Continuance by Executive Director: The Executive Director may continue the hearing to a fixed date, time and place. Unless such continuance is publicly announced at a properly noticed and convened hearing, the Executive Director shall cause notice to be given to all persons originally entitled to notice of the date, time and place of such continued hearing in the same manner as specified in (b) above.

3. Record of hearing:

i. The Executive Director shall assure that the proceedings are recorded by any appropriate means and such record of proceedings shall be transcribed at the request of any person upon application to the Executive Director and payment of a fee to cover the cost of transcription, or on order of the Executive Director. If a sound recording is made, any person shall be entitled to listen to the recording at any reasonable time or to make copies at his own expense.

ii. The record of proceedings shall consist of the transcript of testimony, **if ordered**; all applications, exhibits and papers submitted in any proceeding with respect to the matter being considered; and the summary and report or reports of the Executive Director.

iii. All summaries and reports of the Executive Director shall be public records, open to inspection at a reasonable time and upon reasonable notice.

(e) Content and service of decision of Executive Director or Commission:

1. All decisions and orders of the Executive Director or the Commission, and all recommendations of the Executive Director to the Commission, shall be in writing and shall include findings of fact, shall refer to the information in the record upon which such decision or order is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact which shall set forth any recommendation or final approval, conditional approval, or denial of the application being considered.

2. Except as provided in N.J.A.C. 7:50-4 for letters of interpretation, notice of all decisions and orders of the Executive Director or the Commission shall be mailed to:

i. The applicant;

ii. Any person, organization or agency which has previously filed with the Commission a written request, together with an annual fee in an

amount to be determined from time to time by the Commission to cover the actual cost of said notice;

iii. The [clerk] secretary of the county [or] and municipal planning board and environmental commission, if any, with jurisdiction over the property which was the subject of the decision or order;

iv. Any other person who has demonstrated an interest in the proceeding.

3. All decisions and orders of the Executive Director or the Commission shall be considered rendered three days after notice of such decisions and orders has been deposited in the United States Mail addressed to those persons identified in (e)2 above.

7:50-4.4 Waiver of time limits

(a) By agreement: Any time limit imposed by statute or by any subchapter of this Plan on the processing of any application may be waived or extended by agreement of the Executive Director and the applicant.

(b) Automatic waiver: Any applicant who requests a continuance of any hearing at which his application is being considered, or who requests any extension of any time limit imposed by statute or this Plan, shall be deemed to have waived the applicability of that time limit.

7:50-4.5 through 7:50-4.10 (Reserved)

PART II—DEVELOPMENT IN AREAS WITHOUT CERTIFIED LOCAL PLANS

7:50-4.11 Purpose

(No change.)

7:50-4.12 Applicability

The provisions of this Part shall be applicable to all development in any portion of the Pinelands Area located in any [jurisdiction] municipality where the master plan or land use ordinances have not been fully certified by the Commission[er] and in any previously certified municipality whose certification has been revoked or suspended by the Commission pursuant to Part VI of subchapter 3 or which has failed to have any necessary changes to its master plan and land use ordinances certified by the Commission within one year after the effective date of any amendment to this Plan, except for those activities specifically excepted in N.J.A.C. 7:50-4.1.

7:50-4.13 Compliance with this part required for development in uncertified areas

Subject to the provisions of N.J.A.C. 7:50-4.12, no person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with an uncertified master plan or land use ordinance without first complying with all applicable procedures set out in this Part. Any decision made pursuant to this Part shall supersede any local decision. All development shall adhere to the terms of any decision made pursuant to this Part. No local decision shall [be made which] impose[s] any requirements which in any way contravenes any standard contained in this Plan. **No decision by an uncertified county or any agency thereof shall in any way contravene any standard contained in a certified municipal land use ordinance.**

7:50-4.14 Application for [D]development [A]approval in uncertified municipalities

(a) An application for development in uncertified municipalities shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b) [(Application requirements)].

(b) In addition to the requirements of N.J.A.C. 7:50-4.2(b), an applicant for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan **which will be located on a specific parcel**, shall provide notice of the application for development as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c)[.]; and

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12[.]; or

(c) **In addition to the requirements of (a) and (b) above, an application for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan, which will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for development as follows:**

1. **Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the proposed development is located; and**

2. Notice shall be given by publication in the official newspapers, if any, of all municipalities in which the proposed development will be located or if there is no official newspaper in any such municipality then in a newspaper of general circulation in that municipality.

[(c)](d) The notice in (b) and (c) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's determination shall be provided a copy of said determination.

[(d)](e) If the applicant significantly modifies the proposed development from that described in the most recent notice given pursuant to (b), [and] (c) and (d) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development.

[(e)](f) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

[(f)](g) The Executive Director shall not issue a Certificate of Compliance for any application for which the above notice is required until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that the public comments have been received [submitted] prior to issuing a Certificate of Compliance.

7:50-4.15 Action by Executive Director on application

Within 90 days following the receipt of a complete application for development, the Executive Director shall review the application and all information submitted by the application or any other person relating to the application and upon completion of such review issue a Certificate of Compliance stating whether the application should be approved, approved with conditions or disapproved. The application may be approved or approved with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.16. The Executive Director may propose in said Certificate of Compliance any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall provide a copy of the Certificate of Compliance to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2(i) [(Persons Entitled to Notice)].

7:50-4.16 Standards for uncertified areas

(a) No local approval may be granted by an uncertified municipality and no approval may be granted pursuant to this Part unless the proposed development:

1. Satisfies all of the criteria and standards established in N.J.A.C. 7:50-5 [(Minimum Standards For Land Uses And Intensities)] and 6 [(Management Programs And Standards)] of this Plan, provided, however, **that the optional land uses contained in N.J.A.C. 7:50-5 shall be permitted and that [all] in N.J.A.C. 7:50-6 only the optional elements of [Article 6] N.J.A.C. 7:50-6.144 shall be mandatory for any jurisdiction which is uncertified; and**

2. Is otherwise consistent with the objectives of the Federal Act, the Pinelands Protection Act and this Plan.

7:50-4.17 Certificate of compliance required for determination of completeness and action

(No change.)

7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a) General requirement: Every local permitting agency shall give notice to the Pinelands Commission, as hereinafter specified, of the filing of, and of any changes to, and of any hearings and meetings concern-

ing, and of the disposition of every application for development filed with it. Failure to provide said notices shall void any local decision for which such notices were not provided.

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, in writing, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant propose[d]s to develop;
3. A brief description of the proposed development, including uses and intensity of uses proposed;
4. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;
5. The date on which the application, or change thereto, was filed and any docket or other identifying number assigned to such application by the local permitting agency;
6. The local permitting agency with which the application or change thereto was filed;
7. The content of any change made to any such application since it was filed with the Commission; and
8. The nature of the local approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by the local agency in writing not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the Executive Director shall from time to time specify. Each notice shall contain at least the following information:

1. The name and address of the applicant;
2. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;
3. The date, time and location of the meeting, hearing, or other formal proceeding;
4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing, or other formal proceeding;
5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and
6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal ordinance shall be given to the Commission by the local agency, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposes to develop;
3. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued;
4. The date on which the preliminary approval was granted;
5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission;
6. A copy of the resolution or other documentation of the preliminary approval which was granted and a copy of the plans which were approved; and
7. The names and addresses of all persons who actively participated in the local proceedings.

(e) Notice of final determination: Notice of any final determination approving or denying [with respect to] any application for development shall be given to the Commission by the local agency, by certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposes to develop;

3. The docket number of the Certificate of Compliance issued by the Executive Director and the date on which it was issued; and

4. A copy of the resolution or other documentation of the local permitting agency approving or denying the applicant and, if the application was approved, a copy of any final site or subdivision plan or plat or similar plan which was [submitted by the applicant] **approved by the local permitting agency.**

7:50-4.19 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of preliminary local approval given pursuant to N.J.A.C. 7:50-4.18(d), the Executive Director shall review the application for development and all other information in the file, the Certificate of Compliance and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this section. **The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines that there is insufficient information to evaluate whether the proposed development conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16.** If the Executive Director determines that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the preliminary approval will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 30 days following receipt of [any] a notice of preliminary approval [issued pursuant to] **containing all the information specified in N.J.A.C. 7:50-4.18(d)**, the Executive Director shall give notice of his determination by [certified] mail to the applicant, [and] the local permitting agency which granted such preliminary approval, [and by regular mail to the Commission,] interested persons, including all persons who have **individually** submitted information concerning the application or **who participated in the local approval process**, as well as all persons who have requested a copy of said decision, and any person[s], organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) [(Persons Entitled To Notice)]. If the Executive Director determines that the preliminary approval should be reviewed by the Commission, the notice shall **be sent by certified mail to the applicant and the local agency which granted the approval.** The notice shall indicate that the applicant, the local permitting agency or any interested person may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 [(Reconsideration)] for the purpose of reviewing such preliminary approval.

(c) Notices to interested persons: If the Executive Director determines that a preliminary approval shall be reviewed by the Commission and a hearing has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

(d) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to any preliminary approval granted by any local permitting agency until he has received notice provided for in (b) above. If such notice indicates that the Commission will conduct a review of such preliminary approval pursuant to this section, no development shall be carried out [until] **unless** such review has been completed **and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.20(d) have been fulfilled.**

(e) Termination of review: **For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise any issues with respect to the conformance of the proposed development with the minimum standards of the Plan. The Executive Director may also, at any time, terminate the review of the application, if the local approval agency whose approval has been called up for review modifies its approval so that the approval no longer raises any issues.**

7:50-4.20 Decision on review

(a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Executive Director shall, within 60 days **after the time to request reconsideration has expired**, review the application, all other information in the file, the Certificate of Compliance and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan. The Executive Director may recommend

the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) [(Persons Entitled To Notice)].

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, upon receipt of the initial decision of the Administrative Law Judge, review the initial decision, the application, and the record of the hearing only, and approve, approve with conditions, or disapprove the preliminary approval. If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file, the Certificate of Compliance and the local approval only and approve, approve with conditions or disapprove the preliminary approval.

(c) Standards: Preliminary approvals shall be approved or approved with conditions only if the Commission determines that the development as proposed or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16.

[(c)](d) Effect of the determination:

1. If the Commission disapproves any preliminary approval of an application for development, the local permitting agency shall within 30 days revoke such preliminary approval, and, thereafter, deny [approval of] such application.

2. If the Commission approves a preliminary approval subject to conditions, the local permitting agency shall, within 30 days, modify its preliminary approval to include all conditions imposed by the Commission, and shall grant final approval only if the application for final approval demonstrates that such conditions have been or will be met by the applicant.

7:50-4.21 Notice of changes made subsequent to local preliminary approval

(No change.)

7:50-4.22 Commission review following final local approval

(a) Decision to review local approval: Upon receipt of any notice of final local approval given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Compliance and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this section. **The Executive Director shall also initiate the review procedures set forth in this section if it is determined there is insufficient information to evaluate whether the proposed development conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16.** If the Executive Director determines that **sufficient information is available and that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16** the final approval will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 15 days following receipt of [any] a notice of final determination [given pursuant to] **containing all the information specified in N.J.A.C. 7:50-4.18(e)**, the Executive Director shall give notice of his determination by [certified] mail to the applicant, [and] the local permitting agency which granted such approval, [and by regular mail to the Commission,] interested persons, including all persons who have **individually** submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person[s], organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) [(Persons Entitled To Notice)]. If applicable, such notice shall set a date, time and place for public hearing as required by N.J.A.C. 7:50-4.23. **Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.**

(c) No person shall carry out any development pursuant to an approval of an application for development which has been granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice provides that the Commission intends to review such approval pursuant to N.J.A.C. 7:50-4.23 and 4.24, no development shall

be carried out until such review has been completed **and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.24(c) have been fulfilled.**

(d) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise any issues with respect to the conformance of the proposed development with the minimum standards of the Plan. The Executive Director may also, at any time, terminate the review of the application if the local approval agency whose approval has been called up for review modifies its approval so that the approval no longer raises any issues. 7:50-4.23 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of [the] a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.18(e), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3 of this Plan. The applicant shall have the burden of going forward and the burden of proof at the public hearing. **Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission.** The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91 [(Reconsideration)].

7:50-4.24 Decision on review

(a) Determination by Commission: If a hearing is held pursuant to N.J.A.C. 7:50-4.3 [(Commission Hearing Provisions)], the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-4.22(b), review [the application, the file and] the record of the hearing **and the Executive Director's report** only and make a determination as to whether the proposed development should be approved, approved with conditions or disapproved. If a hearing is held before an Administrative Law Judge pursuant to N.J.A.C. 7:50-4.91 [(Reconsideration)], the Commission shall within 45 days of receipt of the initial decision of the Administrative Law Judge, review [such findings and recommendations] **the initial decision, the record of the hearing[,] and the application only** and approve, approve with conditions or disapprove the proposed development.

(b) Standards: The development shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16.

(c) Effect [on] of the [c]Commission's decision.

1. If the Commission disapproves the final local approval of any such application, the local permitting agency shall within 30 days revoke such approval and, thereafter, deny final approval of such application.

2. If the Commission approves the local permitting agency's approval of any such application subject to conditions, the local permitting agency shall within thirty days modify its approval to include all conditions imposed.

7:50-4.25 Commission review following local denial

(a) Decision to review local denial: Upon receipt of a [ny] notice of a local denial given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Compliance and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development may conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 and that the local denial may be contrary to the standards of the Plan, he shall initiate the review procedures set forth in this section. If the Executive Director determines that the proposed development does not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 or that the local denial is based on matters not regulated by the Plan and is not contrary to any such standards, the local denial will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 30 days following receipt of [any] a notice of a denial [issued pursuant to] **containing all the information specified in N.J.A.C. 7:50-4.18(e)** the Executive Director shall give notice of his determination by [certified] mail to the applicant, [and] the local permitting agency which denied the applicant, [and by regular mail to the Commission,] interested persons, including all persons who have **individually** submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person[s], organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) [(Persons Entitled To Notice)]. If the Executive Director determines that the denial should be reviewed by the Commission, the notice shall be **sent by certified mail to the applicant and the local agency which granted the approval. The notice shall** indicate that the applicant, the local permitting agency or any interested person may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 [(Reconsideration)] for the purpose of reviewing the denial.

(c) Notices to interested persons: If the Executive Director determines that a denial shall be reviewed by the Commission and a hearing has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

7:50-4.26 Decision [O]n [R]eview

(a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Executive Director shall, within 60 days **after the time to request reconsideration has expired**, review the application and all other information in the file, [of] the Certificate of Compliance and the local denial and determine whether the denial is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the application, approve the application with conditions [or], disapprove the application [and] or allow the local denial to stand. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have **individually** submitted information concerning the application or **who participated in the local approval process**, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2) [(Persons Entitled To Notice)].

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall, upon receipt of the initial decision of the Administrative Law Judge, review the initial decision, the application, and the record of the hearing only, and approve, approve with conditions, or disapprove the [application] **proposed development or let the local denial stand**. If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall after receipt of the Executive Director's recommendation, review said recommendation, the application, the Certificate of Compliance, other material in the file and the local denial only, and approve, approve with conditions or disapprove the [application] **proposed development [and] or allow the local denial to stand**.

(c) Standards: The development shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16 and that the local denial is based on matters regulated by the Plan.

(d) Effect of the determination:

1. If the Commission approves an application which received a local denial, the local permitting agency shall revoke the denial, and, thereafter, approve of such application within 30 days.

2. If the Commission approves, subject to conditions, an application which received a local denial, the local permitting agency shall, within 30 days, revoke its denial and grant approval subject to the conditions imposed by the Commission.

7:50-4.27 Effect of Pinelands Development Approval

A Pinelands Development Approval issued pursuant to the provisions of this part [previously] in effect **prior to July 15, 1985** shall have the same effect as a Certificate of Compliance issued pursuant to N.J.A.C. 7:50-4.15 [(Action by executive director on application)] unless the applicant received a valid local approval prior to July 15, 1985. If such a valid local approval was granted, the Pinelands Development Approval shall continue to have the same force and effect as if this Part had not been amended **effective July 15, 1985**.

7:50-4.28 through 7:50-4.30 (Reserved)

PART III—REVIEW OF LOCAL PERMITS IN CERTIFIED MUNICIPALITIES

7:50-4.31 Purpose

(a) It is the purpose of this Part to establish procedures and standards to govern Commission review of municipal or county approval of applications for development in **certified municipalities** in the Pinelands Area, to ensure that development will occur only to the extent that it is consistent with the objectives of this Plan, and to ensure that adequate consideration will be given to critical on-site and off-site engineering, planning and design elements so as to preserve and maximize the benefits to the wide diversity of rare, threatened and endangered plant and animal species and the many significant and unique natural, ecological, agricultural, scenic, archaeological, historic, cultural and recreational resources found in the Pinelands Area. In particular, it is the purpose of this Part to ensure that all development approved by local permitting agencies is located, planned, designed, laid out, constructed and serviced in accordance with the standards set forth in N.J.A.C. 7:50-5 and 6 and the objectives of this Plan.

(b) The procedures established in this Part provide for Commission review of all permits issued by local permitting agencies in **certified municipalities** except for activities specifically exempted by the Pinelands Protection Act or this Plan. The standards of this Part are minimum standards to be met by all development in the Pinelands and are designed to assure that all such development will be adequately planned, designed and served to protect the unique environment of the Pinelands Area.

(c) In order to alert landowners at an early stage to any issues raised by a proposed development in regard to the conformance of the development with the minimum standards of this Plan, this Part also provides for Commission staff participation during the local permitting agency proceedings, as well as providing for Commission review of preliminary local approvals of applications for development.

7:50-4.32 Applicability

[(a)] The provisions of this Part shall be applicable to development of land located within a certified [county or] municipality, except for those activities specifically excepted in N.J.A.C. 7:50-4.1. **No person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with a certified plan and land use ordinances without first complying with all applicable procedures set forth in this Part and the provisions of said certified ordinances.**

[(b)] The provisions of this Part shall also, for one year following the effective date of this Plan, be applicable to development of land located in the Protection Area, except for those activities specifically excepted in N.J.A.C. 7:50-4.1.]

7:50-4.33 Applicant to submit copies of local applications to Commission

Prior to filing any application for development of land in the Pinelands Area with any local permitting agency, the applicant shall file a copy of the application with the Commission, **except when the application is to be filed with the designated municipal administrative officer pursuant to N.J.A.C. 7:50-4.34(b)**, in accordance with the requirements of N.J.A.C. 7:50-4.2(b).

7:50-4.34 Certificate of Filing; required for determination of completeness

(a) **Except as provided in (b) below**, [U]pon determining that an application is complete, the Executive Director shall issue a Certificate of Filing. No local permitting agency shall determine that any application for development is complete unless it is accompanied by a Certificate of Filing issued pursuant to this section or a **determination of completeness issued by the designated municipal administrative officer as provided in (b) below**.

(b) **A certified municipality may provide in its certified land use ordinances that a completed application for development of an individual single family dwelling may be filed initially with the designated administrative officer of the municipality. The administrative officer shall be responsible for determining whether said application contains all the information required by the municipality's certified ordinances. Upon determining the application to be complete, the administrative officer shall submit a duplicate copy of the application to the Executive Director along with a statement that the application has been determined to be complete. Within 15 days of receiving a duplicate copy of the application, the Executive Director shall issue a Notice of Filing stating that the Commission has received the duplicate application. The Executive Director may state in the Notice of Filing any potential deficiencies in the completeness of the application. The administrative officer shall also be responsible for determining whether the application for development complies with the applicable provisions of**

N.J.A.C. 7:50-5 and 6 as incorporated in the certified municipal master plan and ordinances. A copy of said determination shall be submitted to the applicant and the Executive Director. If the Executive Director determines that the designated municipal administrative officer may be willfully or negligently failing to implement the responsibilities specified above or if no administrative officer has been designated by the municipality, then the procedures specified in Part VI of subchapter 3 shall be implemented by the Executive Director.

7:50-4.35 Report requirements of local permitting agency with respect to applications for development

(a) General requirement: Every local permitting agency shall give notice to the Commission, as hereinafter specified, of the filing of, and changes to, any application for development and of hearings and meetings concerning the filing and disposition of every application for development [filled] filed with it.

(b) Notice of [filing] application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, by mail, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposes to develop;
3. A brief description of the proposed development, including uses and intensity of uses proposed;
4. The docket number of the Certificate of [Compliance] Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;
5. The date on which the application, or change thereto, was filed and any docket or other identifying number assigned to such application by the local permitting agency;
6. The local permitting agency with which the application or change thereto was filed;
7. The content of any change made to any such application since it was filed with the Commission including a copy of any revised plan or reports; and
8. The nature of the local approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by mail or delivery of the same to the principal office of the Commission not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the Executive Director shall from time to time specify. Each notice shall contain at least the following information:

1. The name and address of the applicant;
2. The docket number of the Certificate of [Compliance] Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;
3. The date, time and location of the meeting, hearing or other formal proceeding;
4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing or other formal proceeding;
5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and
6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal ordinance shall be given to the Commission, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposes to develop;
3. The docket number of the Certificate of [Compliance] Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;
4. The date on which the preliminary approval was granted;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission;

6. A copy of the resolution or other documentation of the preliminary approval [which was granted] and a copy of the submitted preliminary plans which were approved by the local permitting agency; and

7. The names and addresses of all persons who actively participated in the local proceedings.

(e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission by certified mail within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposes to develop;
3. The docket number of the Certificate of [Compliance] Filing or Notice of Filing issued by the Executive Director and the date on which it was issued; and
4. A copy of the resolution or other documentation of the local permitting agency approving or denying the application and, if the application was approved, a copy of any final [site] plan, plot or similar document which was [submitted by the applicant] approved by the local permitting agency.

7:50-4.36 Commission staff participation in local review process

(a) Determination of degree [or] of participation: Upon receipt of an application filed pursuant to N.J.A.C. 7:50-[4.23]4.33 or any notice given pursuant to N.J.A.C. 7:50-[4.25]4.35(b) or (c), the Executive Director may at his discretion, after reviewing the application for development, determine that, by reason of the nature of the development proposal, the site involved or any other factor, the Commission staff should participate in the local permitting process. The participation of the Commission staff may include, but is not limited to:

1. Submitting, in writing, either within the Certificate of Filing or Notice of Filing or in a separate document, an analysis of any concerns and opinions the Commission staff has with respect to the conformance of the proposed development with the minimum standards of this Plan, including a list of any conditions which it determines should be imposed in the event that a permit is granted; or
2. Submitting written evidence with respect to the satisfaction, by the proposed development, of any applicable standards for development contained in this Plan.

(b) Local permitting agency to allow [c]Commission staff participation: Each local permitting agency granted permitting authority by N.J.A.C. 7:50-3.18 or 3.38, after certification of the jurisdiction's plan, shall permit the Commission staff to appear at any meeting or hearing described in N.J.A.C. 7:50-[4.25]4.35(c) and present opinions and evidence in regard to the application being considered. At the option of the Executive Director, the opinions and evidence of the Commission staff may be submitted to the local permitting agency in written form in addition to actual appearance at such hearing or meeting.

(c) Conference with Commission staff: Subsequent to any submission by the Commission staff pursuant to (a) above, either the applicant or local permitting agency may request an informal conference with the Executive Director for the purpose of discussing any application for development. The Executive Director shall schedule such conference within 21 days following any such request.

7:50-4.37 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of local approval given pursuant to N.J.A.C. 7:50-[4.25]4.35(d), the Executive Director shall review the application for development submitted and any Commission staff recommendation made pursuant to N.J.A.C. 7:50-[4.26]4.36 and determine whether the grant of preliminary approval raises substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan. If substantial issues are raised, the preliminary approval shall be reviewed pursuant to this section. The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines there is insufficient information to evaluate whether there is such a substantial issue. If substantial issues are not raised, the preliminary approval shall not be reviewed. [A decision not to review a preliminary approval constitutes assurance that absent changes in the application or new information, the Executive Director will not review final approval under N.J.A.C. 7:50-4.30.]

(b) Notice of decision and hearing: Within 30 days following receipt of [any] a notice of preliminary approval [issued pursuant to] **containing all the information specified in N.J.A.C. 7:50-[4.25]4.35(d)**, the Executive Director shall give notice of his determination by [certified] mail to the applicant, [and the clerk of] the local permitting agency which granted such preliminary approval **and interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2)**. If the Executive Director determines that the preliminary approval should be reviewed by the Commission, the notice shall be sent by certified mail to the applicant **and the local agency which granted the approval. The notice shall indicate that either the applicant, [or] the local permitting agency or any interested person may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-[4.81]4.91 for the purpose of reviewing such preliminary approval.**

(c) Notices to persons participating in local permitting process; opportunity to comment: If the Executive Director decides to review a preliminary approval, he shall notify all persons who actively participated in the proceedings before the local permitting agency of such determination and inform them that they may participate in any proceedings held pursuant to this Part.

(d) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to a preliminary approval granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice indicates that the Commission intends to conduct a review of such preliminary approval pursuant to this section, no development shall be carried out [until] **unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.38(d) have been fulfilled.**

(e) Termination of review: **For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive Director may also, at any time, terminate the review of the application, if the local approval agency whose approval has been called up for review modifies its approval so that the approval no longer raises any substantial issues.**

7:50-4.38 Decision on review

(a) Determination by Executive Director: If no hearing is requested by the applicant or the local permitting agency pursuant to N.J.A.C. 7:50-[4.27]4.37(b), the Executive Director shall, **within 60 days after the time to request reconsideration has expired**, review the application, [and] **all other information in the file including any staff reports and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan and the provisions of the relevant certified local ordinance.** The Executive Director may **recommend the Commission** approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. [To the extent it is possible to determine from the information which has been supplied with the application for preliminary approval whether the entire proposed development complies with the minimum standards of this Plan, the Executive Director shall inform the applicant and local reviewing agency of his determination of compliance. In making his determination the Executive Director shall consider the changes which it may be necessary to make in the development proposal to achieve compliance or whether the Executive Director is likely to review the application again after final approval is obtained.] **The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have individually submitted information concerning the application, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).**

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-[4.27]4.37(b), the Commission shall, upon receipt of the findings of fact and recommendations of the Administrative Law Judge, review such findings and recommendation, the application, the file and the record of the hearing **only, and approve, approve with conditions or disapprove the preliminary approval. If no hearing is requested pursuant**

to N.J.A.C. 7:50-4.37(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file including any staff reports and the local approval only and approve, approve with conditions or disapprove the preliminary approval.

(c) Standards: Preliminary approvals [may] **shall be approved or approved with conditions only if the [Executive Director of the] Commission determines that the development as proposed, or with any conditions which are imposed, conforms to the minimum standards established by N.J.A.C. 7:50-4.16 and the provisions of the relevant certified local ordinance.**

(d) Effect of determination.

1. If the [Executive Director or] Commission disapproves any preliminary approval of an application for development, the local permitting agency shall, **within 30 days**, revoke such preliminary approval and, thereafter, deny [approval of] such application.

2. If the [Executive Director or] Commission approved a preliminary approval subject to conditions, the local permitting agency shall, within 30 days, modify its preliminary approval to include all conditions imposed by the [Executive Director or] Commission, and shall grant final approval only if the application for final approval demonstrates that such conditions have been or will be met by the applicant.

7:50-4.39 Notice of changes made subsequent to local preliminary approval

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the commission pursuant to N.J.A.C. 7:50-[4.25]4.35(d), including changes made in response to conditions imposed by the [Executive Director or] Commission pursuant to N.J.A.C. 7:50-[4.28]4.38, to the Executive Director, by [certified] mail, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1. The name and address of applicant;
2. The legal description and street address, if any, of the property which the applicant proposes to develop;
3. The docket number of the Certificate of [Compliance] **Filing or Notice of Filing** issued by the Executive Director and the date on which it was issued;
4. Copies of any amended application, site plans, plats or other documents reflecting such changes; and
5. A brief description of the nature of such changes.

[i.] (b) Any such change shall be subject to review by the Commission pursuant to N.J.A.C. 7:50-[4.27]4.37 and [4.28]4.38 in the same manner as the original preliminary approval.

[(b) Any such change as in (a) above shall be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.27 and 4.28 in the same manner as the original preliminary approval.]

7:50-4.40 Commission review following final local approval

(a) Decision to review local approval: Upon receipt of any notice given pursuant to N.J.A.C. 7:50-[4.25]4.35(e), the Executive Director shall review the application for development submitted, any Commission staff recommendation made pursuant to N.J.A.C. 7:50-[4.26]4.36 and any decision on preliminary review pursuant to N.J.A.C. 7:50-[4.28]4.38 and determine whether the approval of the application for development raises substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan **and the provisions of the relevant certified local ordinance.** If substantial issues are raised, the approval shall be reviewed pursuant to N.J.A.C. 7:50-[4.31]4.41 and [4.32]4.42. **The final approval shall also be reviewed if the Executive Director determines that there is insufficient information to evaluate whether there is such a substantial issue. If sufficient information is available and substantial issues are not raised, the final approval shall not be reviewed by the Commission.**

(b) Notice of decision and hearing: Within 15 days following receipt of [any] a notice of final determination [given pursuant to] **containing all the information specified in N.J.A.C. 7:50-[4.25]4.35(e)**, the Executive Director shall give notice of his determination by certified mail to the applicant and the clerk of the local permitting authority which granted such approval, **and by regular mail to interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If appli-**

cable, [S]such notice shall set a date, time and place for public hearing, as required by N.J.A.C. 7:50-[4.31]4.41. Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.

(c) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to an approval of an application for development which has been granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice provides that the Commission intends to review such approval pursuant to N.J.A.C. 7:50-[4.31]4.42 and [4.32]4.42 of this Part, no development shall be carried out [until] unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.42(c) have been fulfilled.

(d) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive Director may also, at any time, terminate the review of the application if the local approval agency where approval has been called up for review modifies its approval so that the approval no longer raises any substantial issues.

7:50-4.41 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within [30] 45 days following [the date on which notice of that determination is mailed] receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.35(c), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report in the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approval agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-[4.81] 4.91. [Within 45 days following receipt of the findings of fact, conclusions and recommendations of the Administrative Law Judge, the Commission shall issue a final order.]

7:50-4.42 Decision on review

(a) Determination by Commission: If a hearing is held pursuant to N.J.A.C. 7:50-4.3, the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-[4.30]4.40(b), review [the application, the file and] the record of the hearing and the Executive Director's report only and make a determination as to whether [this permit] the proposed development should be approved, approved with conditions or disapproved. If a hearing is held before an Administrative Law Judge pursuant to N.J.A.C. 7:50-[4.81]4.91, the Commission shall, [upon] within 45 days of receipt of the [proposed findings of fact and recommendation] initial decision of the Administrative Law Judge, review [such findings and recommendations] the initial decision, the record of the hearing[,] and the application only [and the file] and approve, approve with conditions or disapprove the [final permit] proposed development.

(b) Standards: The permit shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16 and the provisions of the relevant certified local ordinance.

(c) Effect [on] of the Commission's decision:

1. If the Commission disapproves the final local approval of any such application, the local permitting agency shall revoke such approval and, thereafter, within 30 days, deny final approval of such application.

2. If the Commission approves the local permitting agency's approval of any such application, subject to conditions, the local permitting agency shall, within 30 days, modify its approval to include all conditions imposed.

[7:50-4.43 Reconsideration]

[Any interested person who is aggrieved by any determination made by the Executive Director or Commission pursuant to this Part may seek reconsideration of or judicial review, as the case may be, of such determination as provided in Part VIII of this subchapter.]

7:50-[4.44]4.43 through 7:50-4.50 (Reserved)

PART IV—PUBLIC DEVELOPMENT

7:50-4.51 (No change.)

7:50-4.52 General requirements

(a) Conformance with minimum standards: All development within the Pinelands Area by any state or local public agency shall be in conformance with the minimum standards set out in N.J.A.C. 7:50-4.16 and all other standards and guidelines contained in this Plan, except as otherwise provided by memoranda of agreement between the Commission and such agency [and/]or a [S]state agency plan approved by the Commission pursuant to (e) below. All development within a [m]Military and Federal [i]Installation [a]Area shall be in substantial conformance with the minimum standards and guidelines contained in this Plan, except where incompatible with national defense mission or other national security requirements as provided in (d) below.

(b) Commission approval required: Except as provided in an intergovernmental agreement, no development shall be initiated by any state or local public agency prior to conferring with and obtaining the approval of the Commission pursuant to the procedures established by [Part IV of this subchapter] this Part. Except as provided in an intergovernmental memorandum of agreement, the Commission shall review development within a [F]federal military installation or development by another [F] federal agency only where a [S]state or local permit is required by Federal law or regulations. Such reviews shall be in accordance with the provisions of Part VII of this subchapter.

(c) Intergovernmental agreements: The Commission may enter into intergovernmental memoranda of agreement[s] with any agency of the [F]federal, [S]state or local government which authorize such agency to carry out specified development activities without securing individual development approval from the Commission under this Part.

(d) Exceptions for national defense are as follows:

1. Notwithstanding any provision of this Plan, if the commander of a military installation determines that compliance with the provisions of this Plan, the installation master plan or a memorandum of agreement with a military installation would be incompatible with the installation's mission, safety or other national defense requirements, the installation commander shall notify the Commission in writing.

2. Upon receipt by the Commission of such notification compliance with any provision of this Plan shall be deemed to be waived.

3. In time of war or when war is imminent or a national emergency is declared by Congress or the President, nothing in this Plan shall modify or limit any other provisions of law granting emergency powers to the President, the Secretary of Defense, or persons possessing such authority by delegation from the President or Secretary of Defense, to include but not be limited to acts of using property, mobilizing and training personnel, or acquiring property.

(e) State agency plans:

1. Any agency of the State of New Jersey may submit to the Commission for review and approval a comprehensive plan of its existing and planned land use, resource management and development activities within the Pinelands. Such plans shall:

i. Be based upon a current and comprehensive inventory and analysis of the Pinelands natural resources. The Commission's natural resource inventory may be used as a basis for this purpose;

ii. Set forth the character, location and magnitude of development within the Pinelands;

iii. Be adequate to ensure that all development of land in the Pinelands [are] is carried out in conformance with N.J.A.C. 7:50-5 and 6, provided, however, that alternative or additional techniques may be included if consistent with the goals and objectives of this Plan;

iv. Prescribe standards for capital improvement sit[ting], design and construction, including those necessary to ensure that adequate and necessary support facilities will be available to serve permitted development and proposed uses of lands;

v. Identify resource management practices which conform to the objectives of this Plan, the Pinelands Protection Act, and the Federal Act;

vi. Be compatible with surrounding land uses and certified municipal and county master plans; and

vii. Be otherwise consistent with and contain all provisions necessary to implement this Plan.

2. Upon Commission approval of such plan, the Commission shall review any proposed development in accordance with the standards of this Plan as modified by specified provisions of the approved agency plan.

3. Each agency and the Commission may propose amendments to an approved plan from time to time. Such amendments shall be approved in the manner provided in this part and such amendments shall not require the revision or approval of the plan as a whole.

7:50-4.53 Pre-application conference and submission requirements

(a) Request for pre-application conference: Prior to initiating any development within the Pinelands Area, a public agency shall submit a request for a pre-application conference to the Executive Director pursuant to N.J.A.C. 7:50-4.2(a).

(b) Submission requirement: Following the completion of the pre-application conference, the public agency shall submit such information which the Executive Director determines is necessary to enable the Commission to review the proposed development for conformity with the standards of this Plan.

(c) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11 [of the Plan], which will be located on a specific parcel, shall provide notice of the application for public development as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). **The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c); and**

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there [be] is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12[(b)](a). [The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c)]; or

(d) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11 [of the Plan], which will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for public development as follows:

1. Notice shall be given by publication in any official newspapers of the Pinelands Commission having general circulation in any municipality in which the proposed development is located; and

2. Notice shall be given by publication in the official newspaper, if any, of [all] **each [municipalities] municipality** in which the proposed development will be located or if there is no official newspaper in any such municipality then in a newspaper of general circulation in that municipality.

(e) The notice in (c) and (d) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by requesting a reconsideration of the determination.

(f) If the applicant significantly modifies the proposed development from that described in the most recent notice given pursuant to [(b) and] (c), (d) and (e) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development.

(g) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(h) The Executive Director's action on any application for which the above notice is required shall not be taken until five days after the 10 day period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a recommendation on the application for public development.

7:50-4.54 Review of submission by Executive Director

Within 30 days following receipt of[,] a completed application for public development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.57. The Executive Director may attach to any determination to recommend approval of an application any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person[s], organization or agency which has registered under 7:50-4.3(b)2i(2) [(Persons Entitled To Notice)].

7:50-4.55 Reconsideration [R]ights

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days seek reconsideration of the Executive Director's determination by the Commission as provided by N.J.A.C. 7:50-4.91 [(Reconsideration)]. Additional information not included in the Executive Director's determination may only be presented to the Pinelands Commission by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

7:50-4.56 Action by Commission

At the next regular Commission meeting after the time for reconsideration under N.J.A.C. 7:50-4.91 has expired and no interested person has requested a hearing, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Pinelands Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4 [(Waiver of time limits)]. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for reconsideration in accordance with the provisions of N.J.A.C. 7:50-4.91 [(Reconsideration)].

7:50-4.57 Standards for public development

(a) The Commission shall approve or conditionally approve an application filed pursuant to this Part only if the development as proposed, or with any conditions which are imposed:

1. Satisfies all of the standards established by N.J.A.C. 7:50-5 and 6 or a certified local plan **and if a local agency of a certified municipality or certified county is seeking approval, the provisions of the certified ordinances and master plan of that jurisdiction; and**

2. If the proposed development includes any public roads, the applicant demonstrates that: alternative transportation modes including mass transit and non-motorized methods cannot be employed to satisfy transportation needs; and public fishing, [and/or] crabbing **or canoe** access facilities in association with bridge crossings will be provided as appropriate.

7:50-4.58 (No change.)

7:50-4.59 through 7:50-4.60 (Reserved)

PART V—WAIVER OF STRICT COMPLIANCE WITH PROVISIONS OF THE COMPREHENSIVE MANAGEMENT PLAN

7:50-4.61 (No change.)

7:50-4.62 Application

(a) An application for a waiver shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b). An application for waiver may be filed prior to filing an application for development. If during review of an application for development it appears necessary to obtain a waiver, the applicant may apply for a waiver; such application shall stay the time period for review set forth in Parts II [or], III or IV of this subchapter as the case may be.

(b) In addition to the requirements in (a) above, an applicant requesting a Waiver of Strict Compliance shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given to owners of real property within 200 feet of the subject property as provided for in N.J.S.A. 40:44D-12(b). **The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c).**

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12[(b)](a). [The administrative officer of the municipality shall provide a certified list of paid property owners as provided in N.J.S.A. 40:55D-12(c).]

(c) The notice in (b) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development and a statement of all Waivers sought;

2. That action may be taken on the application after [ten] 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by requesting reconsideration of the determination.

(d) If the applicant significantly modifies either the proposed development or the requested Waivers from that described in the most recent notice given pursuant to (b) and (c) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development and the requested Waivers.

(e) No application for a Waiver of Strict Compliance shall be deemed complete until proof that the requisite notice has been given is received.

(f) The Executive Director's action on any application for which the above notice is required, shall not be taken until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a recommendation [of] on the application for a Waiver of Strict Compliance.

7:50-4.63 Action by Executive Director on [A]application

(No change in text.)

7:50-4.64 (No change.)

7:50-4.65 Action by Commission

If at the next regular Commission meeting after [determination, no request] the time for reconsideration under N.J.A.C. 7:50-4.91 has [been received] expired and [the time] no request for reconsideration [under N.J.A.C. 7:50-4.91 has expired, and no request for reconsideration] has been received, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4 [(Waiver of time limits)]. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for reconsideration in accordance with the provisions of [Part VIII of this subchapter] N.J.A.C. 7:50-4.91.

7:50-4.66 Standards

(a) An application for a waiver shall be approved only if an extraordinary hardship or compelling public need is determined to have been established under the following standards[.]:

1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to meet the minimum lot size requirements **or management standards** of this Plan shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no [adjacent] **contiguous** land which is reasonably available. **Any contiguous lands in common ownership at any time on or after January 14, 1981, shall be considered to be reasonably available.** An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, [one of the following:] that [i.] the subject property, **along with any contiguous lands in common ownership of which are reasonably available,** [is not capable of yielding a reasonable return] **does not have**

any beneficial use if used for its present **use** or developed as authorized by the provisions of this Plan, and that this inability to [yield a reasonable return] **have a beneficial use** results from unique circumstances peculiar to the subject property which:

[(1)] i. Do not apply to or affect other property in the immediate vicinity;

[(2)] ii. Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

[(3)] iii. Are not the result of any action or inaction by the applicant or the owner or his predecessors in title **including any transfer of contiguous lands which were in common ownership on or after January 14, 1981.**[: or]

[ii. For any application for a Waiver of Strict Compliance which was completed by January 14, 1984, the applicant can demonstrate that in good faith reliance on a valid municipal development approval, he has made expenditures of such a nature and amount that he is unable to secure a minimum reasonable rate of return on those expenditures under a strict application of the minimum standards of this Plan. In determining whether an applicant can secure a minimum reasonable rate of return, the Commission shall employ the following criteria:]

[(1) The rate of return shall be related to the applicant's debt to equity ratio in the project;]

[(2) Expenditures for legal or other professional services that are unrelated to the design or construction of improvements shall not be considered as development expenditures;]

[(3) Taxes paid shall not be considered as development expenditures except for any increase in taxes which result from the governmental approval or improvements actually constructed on the property.]

[iii. For applications filed within two years of the effective date of this Plan, a valid final subdivision approval under the Municipal Land Use Law for the property proposed for development in the Protection Area was in effect on February 7, 1979, provided that all lots proposed for development have an area of at least one acre, unless sewer is available, and the proposed development is in conformance with the minimum standards and guidelines of N.J.A.C. 7:50-6.]

2. An applicant shall be deemed to have established compelling public need if [he] **the applicant** demonstrates, based on specific facts, **one of the following:** [that]

i. [t]The proposed development will serve an essential health or safety need of the municipality **or, in the case of an application by a county, state or federal agency, the county** in which the proposed development is located, that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the **Pinelands Protection Act** or the Federal Act, that the proposed use is required to serve existing needs of the residents of the Pinelands, and that [there is] no **feasible alternatives [available] exist outside the Pinelands Area** to meet the established public need **and that no better alternatives exist within the Pinelands Area;** [and] **or**

ii. **The proposed development constitutes an adaptive reuse of an historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154 and said reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource and further that the designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance; and**

3. The granting of the waiver will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the Pinelands Area; and

4. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Pinelands Protection Act, the Federal Act or this Plan; and

5. The waiver is the minimum relief necessary to: relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the Protection Area that may be transferred or clustered to those lands in accordance with N.J.A.C. 7:50-5.30 [or other developable land in the Rural Development Area], or to satisfy the compelling public need; and

6. Any waiver previously approved under the final subdivision standard contained in the now repealed (a)liii above shall continue to be subject to the condition that the waiver shall expire after two years' if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period[.]; **and**

7. Any waiver previously approved under the prior municipal development approval standard contained in the now repealed (a)iii above shall expire, without exception, within five years of the effective date of said waiver or within one year of the effective date of these amendments to the Plan, whichever is later, unless by the expiration of the applicable time period all necessary approvals for the proposed development have been obtained and no such approval is subsequently allowed to expire or lapse.

7:50-4.67 Effect of grant of waiver

Any waiver granted under the provisions of this Part shall only be considered a waiver of the particular standard of this Plan which the Commission waived. It shall not constitute an approval of the entire development proposal. **Nor shall it constitute a waiver from any requirements contained within any certified local ordinance.**

7:50-4.68 through 7:50-4.70 (Reserved)

PART VI—LETTERS OF INTERPRETATION

7:50-4.71 (No change.)

7:50-4.72 Authority

(a) The Executive Director may, subject to the procedures, standards and limitations set forth in this Part, issue letters of clarification or interpretation of any provision of this Plan, or any rule or regulation issued pursuant to it. No letter of clarification or interpretation shall have the effect of modifying, amending, abrogating or waiving any substantive requirement of this Plan. These interpretations may include:

1. A determination of whether a particular use, which is not expressly authorized in an area, is substantially similar to the uses authorized in the area and should be authorized; or

[2. A determination of the presence of significant archaeological data in accordance with the provisions of N.J.A.C. 7:50-6.147; or]

[3.] 2. A determination of the definition or application of any provision of this Plan.

7:50-4.73 Request for interpretation

(a) A request for a letter of clarification or interpretation shall be initiated by requesting a pre-application conference pursuant to N.J.A.C. 7:50-4.2(a). This request shall set forth the clarification or interpretation requested and the facts or the circumstances which are the basis for the request for an interpretation, together with any proposed clarification or interpretation desired by the applicant. The applicant shall include all information determined to be necessary by the Executive Director after the pre-application conference. Within 30 days after receipt of a request for a letter of clarification or interpretation, the Executive Director shall inform the applicant of any additional information which is required in order to make a determination of the requested clarification or interpretation.

(b) An applicant for a letter of clarification or interpretation involving a specific parcel, except where the letter of interpretation involves solely the question of the number of Pinelands Development Credits which are attributed to a specific parcel, shall provide notice of the application as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject property as provided for in N.J.S.A. 40:55D-12(b). **The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c); and**

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there [be] is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12[(b)](a). [The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c).]

(c) The notice in (b) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a statement of the requested interpretation or clarification and, if known, a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing [of] or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy

of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by requesting a reconsideration of the determination.

(d) If the applicant significantly modifies either the proposed development or the requested letter of interpretation or clarification from that described in the most recent notice given pursuant to (b) and (c) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development or requested letter of interpretation or clarification.

(e) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(f) The Executive Director's action on any application for which the above notice is required shall not be taken until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to issuing the letter of interpretation or clarification.

7:50-4.74 Interpretation by Executive Director

Except as provided in N.J.A.C. 7:50-4.75, the Executive Director shall, within [forty-five] **45** days following the receipt of a completed request for clarification or interpretation review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a letter of clarification or interpretation. Prior to the issuance of the letter, an analysis of all pending requests for letters of interpretation will be submitted to the Commission for its review at its regular monthly meeting. A copy of the letter shall be provided to the appropriate [township] **municipal** or county [clerk,] planning board, [the] environmental commission, if any, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). The letter issued by the Executive Director shall specify the grounds, reasons and analysis upon which the clarification or interpretation is based. In the event the Executive Director fails to render a letter of clarification or interpretation within [forty-five] **45** days of receipt of a completed application or such longer period of time as may be agreed to by the applicant, the [request for clarification or interpretation shall be deemed to have been denied] **applicant is entitled to request a hearing pursuant to N.J.A.C. 7:50-4.91.** Nothing in this [S]section shall be construed to prevent any person from resubmitting a request for clarification or interpretation.

7:50-4.75 (No change.)

7:50-4.76 Effect of and limitation on favorable interpretation

(a) No letter of clarification or interpretation shall authorize the establishment of a use or the carrying out of any development, but shall merely authorize the preparation, filing and processing of applications for any permits and approvals which may be required by the codes and ordinances of any local permitting agency with jurisdiction over the subject property or this Plan.

(b) No letter of clarification or interpretation shall be valid for a period longer than one year from the date of issuance, unless a final approval pursuant to this Plan has been granted within that period, and development is thereafter diligently pursued to completion, or the use is **legally** commenced within that period.

7:50-4.77 (No change.)

7:50-4.78 Monthly report

The Executive Director shall keep a record of each [classification] **clarification** or interpretation rendered pursuant to this Part and shall file a monthly report of such clarifications or interpretations with the Commission. The report may include a recommendation of the Executive Director that this [p]Plan be amended to add new uses to the various use lists established by this Plan to reflect any use interpretations given pursuant to this Part.

7:50-4.79 Reconsideration

Any interested person who is aggrieved by any clarification or interpretation given by the Executive Director pursuant to this Part may within 15 days seek reconsideration by the full Commission of such clarification or interpretation as provided in N.J.A.C. 7:50-[4.81]**4.91.**

7:50-4.80 (Reserved)

PART VII—COORDINATED PERMITTING WITH STATE AGENCIES

7:50-4.81 Applicant to submit application to Executive Director

Prior to filing any application for development in the Pinelands Area with any department, board, bureau, official or other agency of the State of New Jersey, the applicant shall file with the Commission a duplicate copy of the application [and shall obtain a Certificate of Filing pursuant to N.J.A.C. 7:50-4.72(b)]. The Executive Director may within [15] 30 days require the applicant to submit any additional information which he determines is necessary in order to evaluate the interest of the Commission in such application. **No state department, board, bureau, official or other agency shall deem an application for development complete unless it is accompanied by a Certificate of Filing, a Notice of Filing, a Certificate of Compliance or a resolution of the Pinelands Commission approving, pursuant to the provisions of Part IV of this subchapter, an application for public development.**

7:50-4.82 Determination of Commission interests; Commission staff participation in State review process

(a) Review of application: Within [15] 30 days following receipt of any application or additional information submitted pursuant to N.J.A.C. 7:50-[4.71]4.81, the Executive Director shall review the application and additional information and determine what, if any, special interests the Commission has with respect to the application, the extent to which the Commission staff should participate in any proceedings held by the state agency with which the application is to be filed, and whether any Commission review provided for in this Plan should be conducted before, after[,] or simultaneously with any proceedings to be conducted by the state agency.

(b) Issuance of Certificate of Filing: [1.] If the Executive Director determines that any proceedings to be conducted by the state agency in question should be conducted prior to or simultaneously with any Commission review provided for in this Plan, the Executive Director shall within 30 days issue to the applicant a Certificate of Filing evidencing the fact that the applicant has complied with the provisions of N.J.A.C. 7:50-[4.71]4.81 and authorizing the filing of the application with the state agency. Such Certificate of Filing shall indicate that any permit, approval [of] or authorization granted by the state agency shall be conditioned upon the issuance of any Commission approval provided for by this Plan.

[2. If the Executive Director determines that any proceedings to be conducted by any state agency should be conducted after any commission review provided for by this Plan, he shall issue a Certificate of Filing authorizing the filing of the application with the state agency only after all required Commission approvals provided for by this Plan have been granted.]

(c) Determination of degree of participation: If the Executive Director determines pursuant to (a) above that any state agency proceeding, with respect to an application filed pursuant to N.J.A.C. 7:50-[4.71]4.81, should be conducted before or simultaneously with any Commission review, he shall determine the appropriate nature and extent of Commission staff participation in such proceeding. Its participation may include, but is not limited to:

1. Submitting a written analysis of any concerns and opinions the Commission staff has with respect to the conformance of the proposed development with the minimum standards of the Plan, including a list of any conditions which it determines should be imposed in the event that the permit is granted;

2. Submitting written evidence with respect to the conformance by the proposed development with the minimum standards of this Plan.

(d) State agency to allow Commission staff participation: Each state agency with jurisdiction over any application for development in the Pinelands Area shall permit the Commission staff to participate at any meeting, hearing or other proceeding at which an application for development in the Pinelands Area is to be considered and to present the opinions of the Commission staff with respect to the application. At the option of the Executive Director, the Commission staff submissions to the state agency may be in written form in addition to actual appearance at such hearing or meeting.

7:50-4.83 Notice from state agencies with respect to applications for development

(a) General: Every department, board, bureau, official and other agency of the state shall give notice to the Commission of the filing of any applications for development and of hearings, meetings and other formal proceedings concerning the filing and disposition of every application for development in the Pinelands Area filed with it.

(b) Notice of [Filing] application: Notice of [filing] submission of any application for development shall be given by mail within seven days following such filing and shall contain the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposed to develop;
3. A brief description of the proposed development, including uses and intensity of uses proposed;
4. The **Pinelands Commission** docket number for the application [of the Certificate of Filing issued by the Executive Director and the date on which it was issued];
5. The date on which the application was filed and any docket or other identifying number assigned to such application by the state agency;
6. The state agency with which the application was filed; and
7. The nature of the approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which the filing or disposition of any application for development in the Pinelands Area is to be considered shall be given by mail no less than five days prior to such meeting or hearing and shall contain the following information:

1. The name and address of the applicant;
2. The **Pinelands Commission** docket number for the application [of the Certificate of Filing issued by the Executive Director and the date on which it was issued];
3. The date, time and location of the meeting or hearing;
4. The name of the [S]state agency which will conduct the meeting or hearing;
5. Any written reports or comments received by the [S]state agency on the application which have not previously been submitted to the Commission; and
6. The purpose for which the meeting or hearing is to be held.

(d) Notice of grant of final determination: Notice of any final determination by any department board, bureau, official or other agency of the [S]state with respect to any application for development in the Pinelands Area shall be given by mail within five days of the grant or denial of such approval and shall contain the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposed to develop;
3. The **Pinelands Commission** docket number for the application [of the Certificate of Filing issued by the Executive Director and the date on which it was issued];
4. A copy of the permit, approval or authorization which was issued; and
5. A copy of any approved [site] plans [or plat].

7:50-4.84 (No change.)

7:50-4.85 (No change.)

PART VIII—RECONSIDERATION AND JUDICIAL REVIEW

7:50-4.91 Reconsideration

(a) Notice: Any person who is granted, by any provision of this Plan, a right to seek reconsideration by the full Commission of any determination made by the Executive Director shall, within 15 days after the decision is rendered, perfect such right by giving notice by mail of his intent to seek reconsideration by the Commission. Such notice shall include:

1. The name and address of the person requesting the reconsideration;
2. The docket number of the application which is the subject of the reconsideration request;
3. The date on which the determination is to be reconsidered was made;
4. A [brief] statement [of] detailing the basis for the reconsideration request;
5. A certificate of service indicating that service of the notice has been made, by certified mail, on the clerk of the county or municipal planning board and environmental commission, if any, with jurisdiction over the property which was the subject of the decision or order.

(b) Hearing: Within 15 days following receipt of a notice filed pursuant to (a) above, or of any demand for a hearing at which an Administrative Law Judge is to preside which is provided for in this Plan, the Executive Director shall initiate the procedures for assignment of an Administrative Law Judge to preside at the hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the procedures established by the Office of Administrative Law. The time, date and location of such hearing shall be designated by the Office of Administrative Law.

(c) Burden: The person seeking reconsideration shall have the burden of going forward and the burden of proof on all issues.

(d) Commission review of record: Within 45 days following receipt of the [findings of fact, conclusions and recommendations] **initial decision** of the Administrative Law Judge, the Commission shall consider the hearing record and [such findings of fact, conclusions and recommendations] **the initial decision only** and issue a final order with respect to the matter in controversy.

7:50-4.92 Judicial review

Judicial review may be had of any determination or order of the Commission as provided by Section 19 of the Pinelands Protection Act or any other provision of state law. If reconsideration of a determination of the Executive Director is sought by any person pursuant to N.J.A.C. 7:50-[4.81]**4.91**, all limitation periods provided by state law for seeking judicial review of any decision of the Commission shall be deemed to commence upon entry of the Commission's order on reconsideration pursuant to N.J.A.C. 7:50-[4.81](d)**4.91(d)**.

SUBCHAPTER 5. MINIMUM STANDARDS FOR LAND USES AND INTENSITIES

INTRODUCTION

The Pinelands Protection Act provides in part that the Comprehensive Management Plan is to "encourage appropriate patterns of compatible residential, commercial and industrial development in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the Pinelands environment from the individual and cumulative adverse impacts thereof" and to "discourage piecemeal and scattered development" while protecting the Pinelands environment. Subchapter 5 contains minimum standards for the development and use of land which the Pinelands Commission has determined are necessary to protect and maintain the essential character of the Pinelands environment and to accomplish the purposes of the Pinelands Protection Act and the Federal Act.

The provisions of this subchapter are intended to serve as minimum standards for the preparation and adoption of county and municipal master plans and land use ordinances **and state agency plans. The provisions of this subchapter are also intended to serve as guidelines for the preparation of federal installation plans.** [However, it] It is recognized that specific provisions of this subchapter, including the management area delineations, can be refined [at the local level] **by local agencies** provided that the objectives and goals the minimum standards represent will be achieved. In determining whether to certify a municipal **or county** master plan or land use ordinance under the provisions of N.J.A.C. 7:50-3[, Part IV] of this Plan, **approve a state agency plan under the provisions of N.J.A.C. 7:50-42(e) of this Plan, or find a federal installation master plan in substantial conformance under the provisions of N.J.A.C. 7:50-3, Part V,** the Pinelands Commission will consider the extent to which the [municipal master] plan or land use ordinance ensures that all development of land will be in conformance with the minimum standards of this subchapter.

It is also recognized that state and local agencies may adopt more restrictive regulations provided that such regulations are compatible with the goals and objectives of this Plan.

PART I—STANDARDS OF GENERAL APPLICABILITY

7:50-5.1 Development in accordance with this plan

(a) No development shall be carried out by any person unless that development conforms to the minimum requirements and standards of this Plan.

(b) **The extraction or underground storage of natural gas or other minerals not expressly authorized in this Plan is prohibited.**

(c) **No more than one principal use, exclusive of forestry, agriculture, horticulture, fish and wildlife management, and, on agricultural lands, recreation development and campgrounds shall be located on one lot.**

7:50-5.2 Expansion of existing uses

(a) Notwithstanding the use restrictions contained in Part III of this subchapter, **a municipality may permit the expansion of any lawful use existing on January 14, 1981, other than intensive recreation facilities and those uses which are expressly limited in N.J.A.C. 7:50-6 [and which existed on the effective date of this Plan, may be expanded]** provided that:

1. The expansion of the use meets all of the minimum standards of N.J.A.C. 7:50-6;

2. The area of expansion does not exceed 50 percent of the floor area, the area of the use or the capacity of the use, whichever is applicable, on [the effective date of this Plan; or] **January 14, 1981.**

[3. The developer demonstrates that the expansion of the existing use in excess of 50 percent is necessary in order to maintain the economic viability of the existing use.]

(b) **A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any lawful use existing on January 14, 1981, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:**

1. **The new use meets all of the minimum standards of N.J.A.C. 7:50-6; and**

2. **The area, capacity, and intensity of the new use is comparable to that of the existing use.**

(c) **A municipality may limit the application of (a) and (b) above to those uses which conformed to its zoning ordinance as of January 14, 1981.**

7:50-5.3 Map status

(a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this Plan as if they were set out in full in this Plan:

1.-20. (No change.)

21. Major Public Land[ing] Holdings, Plate 21;

22.-24. (No change.)

25. Zoning maps, master plans and land use ordinances certified by the Commission under the provisions of N.J.A.C. 7:50-3;

26. Special Areas Map, Figure 7.1.

7:50-5.4 Height limitations

(a) In all Pinelands Management Areas other than Regional Growth Areas and Pinelands Towns, no structure shall exceed a height of 35 feet, except as provided in (b) below.

(b) The height limitation in (a) above shall not apply to any of the following structures, provided that such structures are compatible with uses in the immediate vicinity and conform to the objectives of N.J.A.C. 7:50-6, Part X: silos, barns and other agricultural structures, church spires, cupolas, domes, monuments, water towers, fire observation towers, [transmission towers] **electric transmission facilities and supporting structures**, windmills, chimneys, smoke stacks, derricks, conveyors, flag poles, masts, aerials, solar energy facilities, and similar structures required to be placed above the roof level and not intended for human occupancy.

7:50-5.5 Setback standards

(a) **All buildings within the Preservation Area District, Rural Development Area Districts, and Forest Area Districts shall be set back from public, paved roads in accordance with N.J.A.C. 7:50-6.103 and 104.**

(b) **All structures within 1000 feet of rivers designated in N.J.A.C. 7:50-6.105(a) shall be screened in accordance with the requirements set forth therein.**

7:50-[5.5]5.6 through 5.10 (Reserved)

PART II—PINELANDS MANAGEMENT AREAS

7:50-5.11 (No change.)

7:50-5.12 (No change.)

7:50-5.13 Goals and objectives of Pinelands Management Areas

(a) The Preservation Area District is the heart of the Pinelands environment **and represents the most critical ecological region in the Pinelands.** [and] It is an area of significant environmental and economic values that are specifically vulnerable to degradation. [It is a] **This large, contiguous, wilderness-like area of forest, transected by a network of pristine wetlands, streams and rivers, [all of which] supports diverse plant and animal communities and is home to many of the Pinelands' threatened and endangered species.** The area must be protected from development and land use that would adversely affect its long-term ecological integrity.

(b) Forest Areas are **similar to the Preservation Area in terms of their ecological value and, along with the Preservation Area, serve to provide a suitable ecological reserve for the maintenance of the Pinelands Environment.** These undisturbed, forested portions of the Protection Area [which] support characteristic Pinelands plant and animal species **and provide suitable habitat for many threatened and endangered species.** These **largely undeveloped** areas are an essential element of the Pinelands environment, **contain high quality water resources and wetlands,** and are very sensitive to random and uncontrolled development. **Although the overall type and level of development must be strictly limited,** [S]ome parts of the Forest Areas are more suitable for development than others provided that such development is subject to strict environmental performance standards.

(c) Agricultural Production Areas are areas of active agricultural use, together with adjacent areas of prime and unique agricultural soils or soils of statewide significance, which are suitable for expansion of agricultural operations. **In order to maintain agriculture as an essential element of the Pinelands region, the level and type of development must be controlled to prevent incompatible land uses from infringing upon these important land resources.**

(d) Special Agricultural Production Areas are discrete areas within the Preservation Area District which are primarily used for berry agriculture or horticulture of native Pinelands plants. They represent a unique and essential element of the Pinelands economy and, **because they are generally compatible with the ecological values of the Preservation area**, are a part of the essential character of the Pinelands. **In order to maintain these agricultural uses in a manner which recognizes their integral relationship to the Preservation Area, very strict limits on non-agricultural land uses are necessary.**

(e) Rural Development Areas are areas which are, **on an overall basis**, slightly modified and may be suitable for limited future development subject to strict adherence to the environmental performance standards of N.J.A.C. 7:50-6. They represent a balance of environmental and development values that is intermediate between the pristine Forest Areas and existing growth areas[.]; **however, some parts are more suitable for development than others due to existing development and an absence of critical ecological resources.**

(f) Pinelands Villages and Towns are existing [communities] **spatially discrete settlements** in the Pinelands [which]. **These traditional communities** are appropriate for infill residential, commercial and industrial development that is compatible with their existing character[.].

1. Pinelands Area Villages are:

- i. Bamber Lake;
- ii. Belcoville;
- iii. Belleplain;
- iv. Blue Anchor;
- v. Bricksboro;
- vi.]v. Brookville;
- vii.]vi. Cassville;
- viii.]vii. Chatsworth;
- ix.]viii. Cologne-Germania;
- x. Clermont;
- xi. Corbin City;
- xii.]ix. Cumberland-Hesstown;
- xiii.]x. Delmont;
- xiv.]xi. Dennisville;
- xv.]xii. Dorchester-Leesburg;
- xvi.]xiii. Dorothy;
- xvii.]xiv. Eldora;
- xviii.]xv. Elm;
- xix.]xvi. Elwood;
- xx.]xvii. Estell Manor;
- xxi.]xviii. Folsom;
- xxii. Goshen;
- xxiii.]xix. Green Bank;
- xxiv. Heislerville;
- xxv.]xx. Indian Mills;
- xxi. Jenkins;
- xxvi.]xxii. Lake Pine;
- xxvi.]xxiii. Landisville;
- xxiv. Laureldale;
- xxviii. Leesburg;
- xxix.]xxv. Legler;
- xxx.]xxvi. Lower Bank;
- xxx.]xxvii. Milmay;
- xxii.]xxviii. Mizpah;
- xxxiii.]xxix. Nesco;
- xxxiv.]xxx. New Gretna;
- xxxv.]xxxi. New Lisbon;
- xxxvi.]xxxii. Newtonville;
- xxxvii.]xxxiii. North Dennis;
- xxxviii. Oceanville;
- xxxix.]xxxiv. Petersburg;
- xl.]xxxv. Pomona;
- xli.]xxxvi. Port Elizabeth-Bricksboro;
- xl.]xxxvii. Port Republic;
- xl.]xxxviii. Richland;
- xlvi. Smithville;
- xlvi. South Dennis;
- xlvi. Swainton;
- xlvi.]xxxix. Sweetwater;
- xlvi.]xl. Tabernacle;
- xlvi.]xli. Tansboro;
- li.]xlii. Taunton Lake;
- li.]xliii. Tuckahoe;
- lii.]xliv. Vanhiseville;

- liii.]xlv. Warren Grove;
- liii.]xlvi. Waterford Works;
- liii.]xlvii. Weekstown;
- liii.]xlviii. Westcoatville;
- liii.]xlv. West Creek;
- liii.]xlv. Whiting;
- liii.]xlv. Winslow.

2. Villages located within the Pinelands National Reserve but outside of the Pinelands Area are:

- i. Clermont;
- ii. Corbin City;
- iii. Goshen;
- iv. Heislerville;
- v. Oceanville;
- vi. Smithville;
- vii. South Dennis;
- viii. Swainton; and
- ix. West Creek.

[2.]3. Pinelands Area Towns are:

- i. Buena;
- ii. Egg Harbor City;
- iii. Hammonton;
- iv. Lakehurst;
- v. Tuckerton;
- v. Whiting; and
- vi. Woodbine.

4. Towns located within the Pinelands National Reserve but outside of the Pinelands Area are:

i. Tuckerton.

(g) Regional [g]Growth [a]Areas are areas of existing growth or lands immediately adjacent thereto which are capable of accommodating regional growth influences while protecting the essential character and environment of the Pinelands, provided that the environmental objectives of Subchapter 6 are implemented through municipal master plans and land use ordinances.

(h) Military and Federal Installation Areas are federal enclaves within the Pinelands. They represent a unique element of the Pinelands landscape and are a substantial resource to the region and the state, provided that their activities preserve and protect the unique natural, ecological, agricultural, archaeological, historic, scenic, cultural and recreational resources of the Pinelands.

7:50-5.14 Minimum standards for municipal designation of [s]Special Agricultural Production Areas

(a) Special Agricultural Production Areas may be designated at the option of a municipality, or upon nomination to the Commission by an individual prior to certification, in the Preservation Area District in accordance with the following criteria:

1. The area to be designated is primarily agricultural in use, [and] is of a size capable of sustaining active agricultural operation taking into account adjacent and surrounding uses and the availability of agricultural support uses, **and includes surrounding actively used agricultural lands in so far as necessary to ensure that a viable, long term agricultural area exists; and**

2. The area may include land in an adjacent municipality also designated under this section; and

3. The area is primarily comprised of lands used for active berry agricultural or active native horticultural use and lands which are essential to and held for the protection of active berry agricultural or active native horticultural uses[.]; **and**

4. **Where a nomination is made by an individual prior to certification, the Commission shall conduct a hearing pursuant to N.J.A.C. 7:50-4.3.**

7:50-5.15 Minimum standards for municipal designation of Agricultural Production Areas

(a) Agricultural Production Areas may be designated in the Protection Area at the option of a municipality or upon nomination to the Commission by an individual prior to certification, in accordance with the following criteria:

1. The area to be designated is primarily agricultural in use, [and] is of a size capable of sustaining active agricultural operation taking into account adjacent and surrounding uses and the availability of agricultural support uses, **and includes surrounding actively used agricultural lands in so far as necessary to ensure that a viable, long term agricultural area exists; and**

2. The area may include land in an adjacent municipality also designated under this section; and

3. The area is primarily comprised of lands used for active agricultural use including lands which are held as buffers, water conservation areas or for other protection of active agricultural uses[.]; and

4. Where a nomination is made by an individual prior to certification, the Commission shall conduct a hearing pursuant to N.J.A.C. 7:50-4.3.

7:50-5.16 (No change.)

7:50-5.17 (No change.)

7:50-5.18 Minimum residential allocation of density in wetlands

(a) Each municipality shall allocate a minimum residential density to all wetlands that is at least one-fifth of the average gross residential density of uplands located in the same management area as the wetlands.

(b) Clustering of residential development on properties located within the Regional Growth Areas and Rural Development Areas is encouraged provided that the densities established in the certified municipal ordinance are not exceeded and that the development otherwise conforms to the standards of this Plan.

7:50-5.19 through 7:50-5.20 (Reserved)

PART III—MINIMUM STANDARDS FOR LAND USE DISTRIBUTION AND INTENSITIES

7:50-5.21 (No change.)

7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the preservation area district

(a) [Use of land in the Preservation Area District shall be limited to the following] The following uses shall be permitted in the Preservation Area District:

1. Residential dwellings on lots of 3.2 acres[, provided that:] in accord with N.J.A.C. 7:50-5.32.

[i. The dwelling unit will be the applicant's principal place of residence;]

[ii. The applicant has not developed a dwelling unit under this section within the previous years; and]

[iii. The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:]

[(1) The parcel of land on which the dwelling is to be located was owned by the applicant or a member of his immediate family on February 7, 1979; and either]

[(2) The applicant is a member of a two-generation extended family that has resided in the Pinelands for at least twenty years; or]

[(3) The primary source of the applicant's household income is employment or participation in a Pinelands resource-related activity.]

2. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.]

[3.]2. Berry agriculture and horticulture of native plants and other agricultural activities compatible with the existing soil and water conditions that support traditional Pinelands berry agriculture.

[4.]3. Forestry.

[5.]4. Beekeeping.

[6.]5. Fish and wildlife management.

[7.]6. Low intensity recreational uses, provided that:

i. The parcel proposed for low intensity recreational use has an area of at least [fifty]50 acres;

ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;

iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;

[iv. The parcel will contain no more than one campsite per two acres, provided that the campsites shall not be clustered at a net density exceeding six campsites per acre;]

[iv.] iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and

[iv.] v. No more than one percent of the parcel will be covered with impermeable surfaces.

7. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in the Preservation Area District:

1. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

[8.]2. Expansion of [I]intensive recreational uses, provided

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the essential character of the Pinelands and will not unduly burden available public services.

3. Campgrounds, in accordance with the standards of (a)6 above, provided that the parcel will contain no more than one campsite per two acres and that, if clustered, the campsites not exceed a net density of six per acre.

[9.]4. Public service infrastructure which is necessary to serve only the needs of the Preservation Area District uses. Sewer treatment and collection facilities shall be permitted to service the Preservation Area District only in accordance with N.J.A.C. 7:50-6.84(a)2.

[10.]5. Continuation of existing [R]resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6.63.

[11.]6. Signs.

7. Residential dwellings and commercial uses on lots existing as of January 14, 1981 of at least one acre in size within an area designated by a municipality in its ordinance in accord with the following criteria:

i. The area must have direct access to an existing improved public road;

ii. The area must exhibit a compact pattern of existing development, generally exhibited by more than 20 principal structures;

iii. The area must contain vacant lots of at least one acre in size or smaller lots which could reasonably be assembled into one acre or greater lots;

iv. The area contains vacant lots which, by virtue of their size and the existence of surrounding development within the area, would likely qualify for waivers of strict compliance under N.J.A.C. 7:50-4, Part V; and

v. Commercial uses shall be limited to those specific portions of the area which are predominantly occupied by existing commercial uses.

[12.]8. Accessory uses.

9. Home occupations

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in forest areas

a. The following uses shall be permitted in a Forest Area:

1. Residential dwelling units on lots of 3.2 acres[, provided that:] in accord with N.J.A.C. 7:50-5.32.

[(i.) The dwelling unit will be the applicant's principal place of residence;]

[(ii.) The applicant has not developed a dwelling unit under this section within the previous five years; and]

[(iii.) The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:]

[(1) The parcel of land on which the dwelling is to be located was owned by the applicant or a member of his immediate family on February 7, 1979; and either]

[(2) The applicant is a member of a two-generation extended family that has resided in the Pinelands for at least twenty years; or]

[(3) The primary source of the applicant's household income is employment or participation in a Pinelands resource-related activity.]

2. Residential dwelling units at municipally designated densities provided that the total number of dwelling units authorized by a municipality [for those portions of the municipality in Forest Areas does not exceed the following total number of dwelling units:] does not exceed an average of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands. The Executive Director shall maintain a record of residential units zoned in each certified municipality pursuant to this section.

[i. In Barnegate Township: 459 dwelling units.]

[ii. In Bass River Township: 87 dwelling units.]

[iii. In Berkeley Township: 139 dwelling units.]

[iv. In Buena Vista Township: 163 dwelling units.]

[v. In Corbin City: 64 dwelling units.]

[vi. In Dennis Township: 599 dwelling units.]

[vii. In Eagleswood Township: 80 dwelling units.]

[viii. In Egg Harbor City: 69 dwelling units.]

[ix. In Egg Harbor Township: 95 dwelling units.]

[x. In Estell Manor City: 1,065 dwelling units.]

[xi. In Evesham Township: 60 dwelling units.]

[xii. In Folsom Borough: 114 dwelling units.]

[xiii. In Galloway Township: 110 dwelling units.]

[xiv. In Hamilton Township: 1,325 dwelling units.]

[xv. In Hammonton Township: 93 dwelling units.]

[xvi. In Jackson Township: 264 dwelling units.]

[xvii. In Lacey Township: 541 dwelling units.]

[xviii. In Little Egg Harbor Township: 19 dwelling units.]

[xix. In Manchester Township: 638 dwelling units.]

[xx. In Maurice River Township: 1,198 dwelling units.]

[xxi. In Medford Township: 17 dwelling units.]

- [xxii. In Middle Township: 154 dwelling units.]
[xxiii. In Monroe Township: 111 dwelling units.]
[xxiv. In Mullica Township: 1,027 dwelling units.]
[xxv. In Ocean Township: 238 dwelling units.]
[xxvi. In Permberton Township: 211 dwelling units.]
[xxvii. In Plumsted Township: 57 dwelling units.]
[xxviii. In Port Republic City: 10 dwelling units.]
[xxvix. In Shamong Township: 51 dwelling units.]
[xxx. In Southampton Township: 224 dwelling units.]
[xxxi. In Stafford Township: 560 dwelling units.]
[xxxii. In Tabernacle Township: 33 dwelling units.]
[xxxiii. In Upper Township: 674 dwelling units.]
[xxxiv. In Vineland City: 110 dwelling units.]
[xxxv. In Waterford Township: 27 dwelling units.]
[xxxvi. In Weymouth Township: 376 dwelling units.]
[xxxvii. In Winslow Township: 187 dwelling units.]
[xxxviii. In Woodbine Borough: 31 dwelling units.]
3. Agriculture;
- [4. Agricultural employee housing as an element of, and necessary to, an active agricultural operation;]
- [5.]4. Forestry;
- [6.]5. Low intensity recreational uses, provided that:
- i. The parcel proposed for low intensity recreational use has an area of at least 50 acres;
- ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;
- iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;
- iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and
- v. No more than one percent of the parcel will be covered with impermeable surfaces.
- [7. Intensive recreational uses, provided that:]
- [i. The use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;]
- [ii. The use is necessary to achieve recreational use of a particular element of the Pinelands environment; and]
- [iii. The use is environmentally and aesthetically compatible with the essential character of the Pinelands and will not unduly burden available public services.]
- [8. Public service infrastructure which is necessary to serve the needs of the Pinelands;]
- [9. Signs;]
- [10. Accessory uses.]
- b. In addition to uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:
1. Institutional uses, provided that:
- i. The use does not require or will not generate subsidiary or satellite development in the Forest Area;
- ii. The applicant has demonstrated that adequate public service infrastructure will be available to serve the use; and
- iii. The use is primarily designed to serve the needs of the Forest Area in which the use is to be located.
2. Pinelands resource-related industrial or manufacturing uses, provided that:
- i. The parcel proposed for development has an area of at least five acres;
- ii. The principal raw material for the proposed use is found or produced in the Pinelands; and
- iii. The use does not require or will not generate subsidiary or satellite development in a Forest Area.
3. [Airport facilities and compatible light industrial uses, provided that the airport is publicly owned or serves a Pinelands Town.] **Light industrial uses within an area designated by a municipality in accord with the following criteria:**
- i. **The area adjoins an existing airport which is publicly owned or serves a Pinelands Town;**
- ii. **The area is predominantly developable under the provisions of subchapter 6 of this Plan; and**
- iii. **The area is limited in size to that which received approval to develop pursuant to the Pinelands Protection Act prior to January 14, 1981.**
4. Campgrounds, not to exceed six campsites per gross acre, provided that the campsites may be clustered at a net density not to exceed 10 campsites per acre.

5. Agricultural commercial establishments, **excluding supermarkets, restaurants and convenience stores** provided that:
- i. The principal goods or products available for sale were produced in the Pinelands; and
- ii. The sales area of the establishment does not exceed 5,000 square feet.
6. Roadside retail sales and service establishments, provided that:
- i. The parcel proposed for development has roadway frontage of at least [fifty]50 feet;
- ii. No portion of any structure proposed for development will be more than [three hundred]300 feet, measured along a line parallel to the roadway, from the closest part of a roadside retail sales and service establishment structure that was in existence on February 7, 1979; and
- iii. The proposed use will not unduly burden public services, including but not limited to water, sewer and roads.
7. Resource extraction operations.
8. Landfills.
9. Fish and wildlife management.
- 10. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.**
- 11. Expansion of intensive recreational uses, provided that:**
- i. **The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;**
- ii. **The use is necessary to achieve recreational use of a particular element of the Pinelands environment; and**
- iii. **The use is environmentally and aesthetically compatible with the essential character of the Pinelands and will not unduly burden available public services.**
- 12. Public service infrastructure intended to primarily serve the needs of the Pinelands. Sewer treatment and collection facilities shall be permitted to service the Forest Area District only in accordance with N.J.A.C. 7:50-6.84(a)2.**
- 13. Home occupations.**
- 14. Signs.**
- 15. Accessory Uses.**
- (c) No residential dwelling unit shall be located on a lot of less than 3.2 acres; **provided, however, that a municipality may permit the residential density otherwise permitted on a particular parcel of land to be clustered on one acre lots if the remainder of the parcel not assigned to individual residential lots is permanently dedicated through recordation of a restriction on the deed to the property as open space with no further development permitted.**
- 7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in agricultural production areas
- (a) The following uses shall be permitted in an Agricultural Production Area:
1. Residential dwellings on lots of 3.2 acres[, provided that:] **in accord with N.J.A.C. 7:50-5.32.**
- [i. The dwelling unit will be the applicant's principal place of residence;]
- [ii. The applicant has not developed a dwelling unit under this section within the previous years; and]
- [iii. The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:]
- [(1) The parcel of land on which the dwelling is to be located was owned by the applicant or a member of his immediate family on February 7, 1979; and either]
- [(2) The applicant is a member of a two-generation extended family that has resided in the Pinelands for at least 20 years; or]
- [(3) The primary source of the applicant's household income is employment or participation in a Pinelands resource-related activity.]
2. Residential dwelling units **not to exceed a gross [at a] density of one unit per 10 acres, [provided that the dwelling unit is accessory to an active agricultural operation, and is intended for the use of the owners or employees of the agricultural operation.] on an existing lot of record provided that:**
- i. **The dwelling is accessory to an active agricultural operation;**
- ii. **The dwelling is for an operator of the farm who is actively engaged in the agricultural operation;**
- iii. **The dwelling is located on a lot which is under or qualified for agricultural assessment;**
- iv. **The dwelling is located on a lot which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area; and**

v. No subdivision of the property shall be permitted.
3. Residential dwelling units at a gross density of one unit per 40 acres, provided that the units may be clustered in accordance with (c) below.

[3.] 4. Agriculture.

[4. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.]

5. Forestry.

6. Low intensity recreational uses, provided that:

i. The parcel proposed for low intensity recreational use has an area of at least 50 acres;

ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;

iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;

iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and

v. No more than one percent of the parcel will be covered with impermeable surfaces.

[7. Intensive recreational uses, provided that:]

[i. The use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;]

[ii. The use is necessary to achieve recreational use of a particular element of the Pinelands environment; and]

[iii. The use is environmentally and aesthetically compatible with the essential character of the Pinelands and will not unduly burden available public services.]

[8.] 7. Agricultural commercial establishments excluding supermarkets, restaurants and convenience stores, provided that:

i. The principal goods or products available for sale were produced in the Pinelands; and

ii. The sales area of the establishment does not exceed 5,000 square feet.

[9.] 8. Agricultural products processing facilities.

[10. Public service infrastructure.]

[11. Signs.]

[12. Accessory Uses.]

9. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:

[1. Institutional uses, provided that:]

[i. The use does not require or will not generate subsidiary or satellite development in the Agricultural Production Area;]

[ii. The applicant has demonstrated that adequate public service infrastructure will be available to serve the use; and]

[iii. The use is primarily designed to serve the needs of the Agricultural Production Area in which the use is to be located.]

1. Roadside retail sales and service establishments, provided that:

i. The parcel proposed for development has roadway frontage of at least 50 feet;

ii. No portion of any structure proposed for development will be more than 300 feet, measured along a line parallel to the roadway, from the closest part of a roadside retail sales and service establishment structure that was in existence on February 7, 1979; and

iii. The proposed use will not unduly burden public services, including but not limited to water, sewer and roads.

2. Pinelands resource-related industries, provided that:

i. The parcel proposed for development has an area of at least [5] five acres;

ii. The principal raw material for the proposed use is found or produced in the Pinelands; and

iii. The use does not require or will not generate subsidiary or satellite development in an Agricultural Production Area.

3. Airports and heliports which are accessory to agricultural uses and are used exclusively for the storage, fueling, loading and operation of aircraft as a part of an ongoing agricultural operation.

4. [Airport facilities and compatible light industrial uses, provided that the airport is publicly owned or serves a Pinelands Town.] Light industrial uses within an area designated by a municipality in accord with the following criteria:

i. The area adjoins a publicly owned airport or serves a Pinelands Town;

ii. The area is predominantly developable under the provisions of subchapter 6; and

iii. The area is limited in size to that which is no greater in size than the airport.

5. Fish and wildlife management.

6. [Campgrounds, provided that the parcel shall contain no more than one campsite per gross acre and that the campsites are clustered at a net density of 10 campsites per acre.] Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

7. [Resource extraction operations.] Expansion of intensive recreational uses, provided that:

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the essential character of the Pinelands and will not unduly burden available public services.

8. Landfills.

9. Public service infrastructure. Sewer treatment and collection facilities shall be permitted to service the Agricultural Production Area District only in accordance with N.J.A.C. 7:50-6.84(a)2.

10. Home occupations.

11. Signs.

12. Accessory Uses.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres; provided, however, that a municipality may permit the residential density assigned pursuant to N.J.A.C. 7:50-5.24(a)3 to be clustered on one acre lots if the remainder of the parcel not assigned to individual residential lots is permanently dedicated for agricultural uses through recordation of a restriction on the deed to the property.

7:50-5.25 Minimum standards governing the distribution and intensity of development and land use in special agricultural production areas

(a) [Use of land in a Special Agricultural Production Area shall be limited to the following:] The following uses shall be permitted in a Special Agricultural Production Area:

1. Residential dwellings on lots of 3.2 acres[, provided that:] in accord with N.J.A.C. 7:50-5.32.

[i. The dwelling unit will be the applicant's principal place of residence;]

[ii. The applicant has not developed a dwelling unit under this section within the previous five years; and]

[iii. The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:]

[(1) The parcel of land on which the dwelling is to be located was owned by the applicant or a member of his immediate family on February 7, 1979; and either]

[(2) The applicant is a member of a two-generation extended family that has resided in the Pinelands for at least 20 years; or]

[(3) The primary source of the applicant's income is employment or participation in a Pinelands resource-related activity;]

2. Berry agriculture and horticulture of native plants and other agricultural activities compatible with the existing soil and water conditions that support traditional Pinelands berry agriculture;

[3. Agricultural employee housing as an element of, and accessory to, an active agricultural operation;]

[4]3. Beekeeping;

[5]4. Forestry;

[6]5. Fish and wildlife management.

6. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may permit, at its option, the following uses in a Special Agricultural Production Area:

1. Residential dwelling units provided that the dwelling is:

i. Accessory to an active agricultural operation;

ii. For an operator of the farm who is actively engaged in the agricultural operation;

iii. Located on a parcel of land of at least 40 acres in size which is under or qualified for agricultural assessment; and

iv. Located on a property which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area.

2. Agricultural employee housing as an element of, and accessory to, an active agricultural operation;

3. Public service infrastructure which is necessary to serve only the needs of the Special Agricultural Production Area District uses. Sewer treatment

and collection facilities shall be permitted to service the Special Agricultural Production Area District only in accordance with N.J.A.C. 7:50-6.84(a)2;

4. Home occupations;
5. Accessory uses;
6. Signs.

(b) (c) No residential dwelling unit shall be located on a lot of less than 3.2 acres.

7:50-5.26 Minimum standards governing the distribution and intensity of development and land use in rural development areas

(a) Residential dwelling units at municipally designated densities[, including provisions for the clustering of allocated dwelling units,] shall be permitted [in a Rural Development Area] provided that the total number of dwelling units authorized by a municipality [for a Rural Development Area does not exceed 200 dwelling units per square mile of private, non-wetland, undeveloped land.] **does not exceed one dwelling unit for every 3.2 acres of privately owned undeveloped land which is not defined in this Plan as wetland.**

(b) In addition to the residential uses permitted under (a) above, a municipality may permit any use which is compatible with the essential character of the Pinelands environment and is similar in character, intensity and impact to the following uses:

1. Agriculture;
2. Agricultural employee housing as an element of, and accessory to, an active agricultural operation;
3. Forestry;
4. Recreational facilities, other than amusement parks;
5. Agricultural products sales establishments;
6. Agricultural processing facilities and other light industrial uses;
7. Roadside retail sales and service establishments;
8. Resource extraction operations;
9. Landfills;
10. Public service infrastructure **except that sewer treatment and collection facilities shall be permitted to serve the Rural Development Area District only in accordance with N.J.A.C. 7:50-6.84(a)2;**

11. Institutional uses;
12. Community commercial uses;
13. Signs; and
14. Accessory uses.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres; **provided, however, that a municipality may permit the residential density otherwise permitted on a particular parcel of land to be clustered on one acre lots if the remainder of the parcel not assigned to individual residential lots is permanently dedicated through recordation of a restriction on the deed to the property as open space with no further development permitted.**

7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands [v]Villages and [t] Towns

(a) Any use may be authorized in a Pinelands [v]Village or [t]Town, provided that:

1. Public service infrastructure necessary to support the use is available, or can be provided without any development in the Preservation Area District, **Special Agricultural Production Area**, or a Forest Area; and
2. The character and magnitude of the use is compatible with existing structures and uses in the [v]Village or [t]Town.

(b) No residential dwelling unit shall be located on a parcel of less than [3.2 acres if served by a conventional on-site septic waste water system, or a parcel of less than] one acre [if served by an alternative or innovative on-site waste water system] **unless served by a centralized wastewater treatment plant.**

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in [r]Regional [g]Growth [a]Areas

(a) Any use may be permitted in a [r]Regional [g]Growth [a]Area, provided that:

1. Except as provided in (a)2, [and] 3, 4, 5 and 6 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a [r]Regional [g]Growth [a]Area shall be equal to and not exceed the following density per acre of developable land:
 - i. through v. (No change.)
 - vi. In Chesilhurst Borough: 1.5 dwelling units per acre.
 - vii. through xxx. (No change.)

(1)2. For purposes of this section, developable lands are those privately held, non-wetland lands with a depth to seasonal high water table of greater than five feet. Where sewer systems are available, [soils] lands

with a depth to seasonal high water table exceeding 1.5 feet [may] shall also be considered developable. **Developable land may exclude lands which are zoned exclusively for commercial or industrial use, predominantly developed as such, and which otherwise form a part of a reasonable balance between industrial or commercial zoned property and residential zoned lands.**

[2.]3. The land use element of a municipal master plan and land use ordinance shall [include residential zoning districts which] **reasonably permit development to occur within [the following] a range of densities[:] provided that the total amount of residential development permitted in (a)1 above, is exceeded by at least 50 percent; that a reasonable proportion of the density increase permits the development of single family detached residences; and that the residentially zoned districts in which the ranges are established are reasonable expected to be developed within the assigned density ranges.**

i. The following guidelines may be used by municipalities in establishing these ranges:

- [i.](1) Less than .5 to .5 dwelling units per acre;
- [ii.](2) [Five] **One-half** to one dwelling units per acre;
- [iii.](3) One to two dwelling units per acre;
- [iv.](4) Two to three dwelling units per acre;
- [v.](5) Three to four dwelling units per acre;
- [vi.](6) Four to six dwelling units per acre;
- [vii.](7) Six to nine dwelling units per acre;
- [viii.](8) Nine to 12 dwelling units per acre; and
- [ix.](9) Twelve and greater dwelling units per acre.

(1)jii. Municipal master plans or land use ordinances shall provide that development at a density which is greater than the lowest density in each range can be carried out if the increase in density is achieved through a density bonus for use of Pinelands Development Credits[:]; **provided, however, that no Pinelands Development Credits will be required for fractions of a residential unit of 50 percent or less.**

[3.]4. Any residential development approved by variance at a density which exceeds the maximum permitted in that zone shall require that Pinelands Development Credits be used for all dwelling units which exceed the maximum otherwise permitted.

[4.]5. Any residential development approved by municipal variance in a zone in which residential development is not otherwise permitted shall require that Pinelands Development Credits be used for all dwelling units in such development.

[3.]6. Nothing in (a) above is intended to prevent a municipality, as a part of a certified master plan or land use ordinance, from employing additional density bonus or incentive programs, provided that such programs do not interfere with **nor otherwise impair in any way** the required municipal program for use of Pinelands Development Credits.

(b) No residential dwelling unit shall be located on a parcel of less than [3.2 acres if served by a conventional on-site septic waste water system or a parcel of less than] one acre [if served by an alternative or innovative on-site waste water system.] **unless served by a centralized wastewater treatment plant.**

7:50-5.29 Minimum standards governing the distribution and intensity of development and land use in [m]Military and [f]Federal [i]Installation [a]Areas

(a) Any use associated with the function of the federal installation **or another essential public service which is located outside of the Preservation Area and sanctioned by the installation** may be permitted in a [m]Military and [f]Federal [i]Installation [a]Area, provided that:

1. The use shall not require any development, including public service infrastructure, in the Preservation Area District or in a Forest Area; [aand]

2. All development **undertaken by the federal government** substantially meets the [N.J.A.C. 7:50-6] standards of N.J.A.C. 7:50-6 of this Plan or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV[:]; **and**

3. **All development undertaken by another level of government meets the standards of N.J.A.C. 7:50-6 or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.**

7:50-5.30 Minimum standards for transferring and clustering residential development rights in Protection Area

(a) Each municipality with land in the Protection Area shall establish within said area a mechanism to transfer or cluster development rights granted pursuant to N.J.A.C. 7:50-[4.55]4.65 provided, however, that Forest Areas and Agricultural Production Areas shall not be designated to receive rights transferred from other management areas. No municipality shall be required to plan for or accept such rights emanating from

beyond its jurisdiction. If a municipality elects to institute a clustering program, the areas in which clustering is to occur must contain at least 500 acres of contiguous land which is accessible to areas of existing growth and development and which does not exhibit any of the following characteristics:

1. Wetlands as defined in N.J.A.C. 7:50-6, Part I;
2. Somewhat excessively and excessively drained soils as delineated on Plate 9;
3. Lands which recharge to ground water aquifers as identified by a depth of the unsaturated zone of 20-30 and 30-40 feet on Plate 4, except as underlain by clay aquiclude;
4. Extreme fire hazard as depicted on Plate 11;
5. Active agricultural use with a preferential tax assessment under the provisions of the Farmland Assessment Act of 1964;
6. Depth to seasonal high water table of less than five feet as delineated on Plate 7;
7. Drainage basins of first order streams as identified on USGS 7½ foot maps;
8. Basins of streams entering public lands which are managed for resource protection or recreation;
9. Active cranberry bogs and areas which drain to active cranberry bogs;
10. Unique plant communities or the minimum forest corridor area as delineated on the Special Areas Map (Figure 7.1); and
11. Flood-prone areas designated under the federal flood insurance programs.

7:50-5.31 Minimum standards for substandard lots

[(a). Notwithstanding any other provision of this Plan, the owner of a parcel of land of an acre or more in any Forest Area, Rural Development Area or Agricultural Production Area in the Protection Area, excluding those lands governed by the New Jersey Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., shall be exempt from the density limitations of this Part for a period of one year from the effective date of this Plan, provided that:]

- [1. The parcel was owned by the applicant or a member of his immediate family on February 7, 1979;]
- [2. The dwelling unit will be the primary residence of the applicant;]
- [3. The parcel was not in common ownership with a contiguous parcel on February 7, 1979; and]
- [4. The development of the dwelling unit otherwise complies with the minimum standards of this Plan.]

[(b)](a) A municipality may, as a part of its master plan and land use ordinance prepared and certified under the provisions of [Article 3 of this Plan] N.J.A.C. 7:50-3, exempt the owners of parcels of land within the Protection Area from the density limitations of this Part, provided that:

1. The municipality has identified each lot that will be exempt under the municipal exemption plan or has established a program of registration for the owners of such lots;
- [3.]2. The dwelling unit will be the primary residence of the applicant;
3. The parcel was owned by the applicant or a member of his immediate family on February 7, 1979;
4. No lot that was in common ownership with any contiguous land on February 7, 1979 is exempt from the density provisions of this Part; [and]
- [2.]5. No lot of less than one acre will be exempt from the density provisions of this Part; and
- [5]6. The development of the lots exempted from the density limitations of this Part will comply with all other minimum standards of this Plan.

(b) A municipality may modify or eliminate one or more of the standards set forth in subsection (a)1 through 4 above, provided that any resulting increase in projected development is offset by a decrease in the densities otherwise permitted in the applicable management area.

7:50-5.32 Special provisions for cultural housing

(a) Residential dwellings on 3.2 acre lots may be permitted within any management area provided that:

1. The dwelling unit will be the applicant's principal place of residence;
2. The applicant has not developed a dwelling unit under this section within the previous five years; and
3. The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:
 - i. The parcel of land on which the dwelling is to be located was owned by the applicant or a member of his immediate family on February 7, 1979; and either

- ii. The applicant is a member of a two-generation extended immediate family that has resided in the Pinelands for at least 20 years; or
- iii. The primary source of the applicant's household income is employment or participation in a Pinelands resource-related activity.

7:50-[5.32]5.33 through 7:50-5.40 (Reserved)

PART IV—PINELANDS DEVELOPMENT CREDIT PROGRAM

7:50-5.41 (No change.)

7:50-5.42 Pinelands Development Credit Program required

In order to be certified under the provisions of N.J.A.C. 7:50-3, Part IV, the master plan and land use ordinances of a municipality which has land in the Preservation Area District, an Agricultural Production Area, a Special Agricultural Production Area, or a Regional Growth Area shall include provisions implementing the Pinelands Development Credit Program.

7:50-5.43 Pinelands Development Credits established

(a) Except for land which is owned by a public agency on [the effective date of this Plan or] January 14, 1981, land which is thereafter purchased by the state for conservation purposes, land which is subject to an easement limiting the use of land to non-residential uses or land otherwise excluded from entitlement pursuant to (b) below, every parcel of land in the Preservation Area District, an Agricultural Production Area or a Special Agricultural Production Area shall have a use right known as "Pinelands Development Credits" that can be used to secure a density bonus for lands located in Regional Growth Areas.

(b) Pinelands Development Credits are hereby established at the following ratios:

1. In the Preservation Area:

- i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;
- ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;
- [i.]iii. Other uplands: one Pinelands Development Credit per 39 acres; and
- [ii.]iv. Wetlands: two-tenths Pinelands Development Credits per 39 acres; and]

2. In the Agricultural Production Area and Special Agricultural Production Area:

- i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;
- ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;
- [ii.]iv. Wetlands, other than berry agricultural bogs and fields: two-tenths Pinelands Development Credits per 39 acres.

3. The allocations established in (b)1 and 2 above shall be reduced as follows:

- i. No property of 10 acres or less which is improved with a residence as of January 14, 1981 or developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall receive a Pinelands Development Credit entitlement and such an improved property greater than 10 acres in size shall only be entitled to Pinelands Development Credits for that portion of the property not actively used for such use or 10 acres, whichever is greater; and

ii. Properties developed for residential use in accordance with the standards of this Plan shall not receive a Pinelands Development Credit entitlement for the lot area required for the residence, except that the development of farm related housing in accordance with N.J.A.C. 7:50-5.24(a)2 shall not reduce the Pinelands Development Credit entitlement otherwise attributable to the entire property.

4. The allocations established in (b)1 and 2 above shall be increased to at least one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on February 7, 1979.

(c) The owners of parcels of land which are smaller than 39 acres shall have fractional Pinelands Development Credits at the same ratio established in (b) above for the management area in which the parcel is located.

[(d) Notwithstanding the provisions of (b) and (c) above, the owner of record of .1 or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, shall be entitled to at least .25 Pinelands Development Credits provided that the parcel of land is vacant and was not in common ownership with any contiguous land on February 7, 1979.]

7:50-5.44 Limitations on use of Pinelands Development Credits

(a) No Pinelands Development Credit may be [used to secure a density bonus] **conveyed, sold, or transferred** unless the owner of the land from which the credit has been obtained has deed restricted the use of the land in perpetuity to those [non-residential] uses [authorized by this Plan as of the date of the sale or conveyance of the credit] **set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction which is in favor of a public agency or not for profit incorporated conservation organization and specifically and expressly enforceable by the Commission.** [The uses authorized by this Plan at the time of transfer shall be enumerated in the deed of conveyance.]

(b) **Notwithstanding the provisions of (a) above, an owner of property from which Pinelands Development Credits are sold may retain a right for residential development on that property provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that property is reduced in proportion to the lot area required pursuant to this Plan for the residential development. Subdivision of the property shall not be required until such time as the residential development right is exercised. No such reduction is required if the right to develop a farm related residence in accord with N.J.A.C. 7:50-5.24(a)2 is retained.**

(c) The bonus density of a parcel of land on which Pinelands Development Credits are used shall not exceed the upper limits of the density range of the municipal zone or district in which the property is located.

7:50-5.45 (No change.)

7:50-5.46 (No change.)

7:50-5.47 Recordation of deed restriction

(a) No [development involving the use] **conveyance, sale or transfer of Pinelands Development Credits shall [be carried out] occur until the [developer has provided the] municipality with jurisdiction over the parcel of land from which the Pinelands Development Credits were obtained, [the municipality in which the parcel of land to be developed is located] the agency or organization to which the restriction is in favor, and the Commission have been provided with evidence of recordation of a restriction on the deed to the land from which the development credits were obtained.**

(b) **Such deed restriction shall specify the number of Pinelands Development Credits sold and that the property may only be used in perpetuity for the following uses:**

1. In the Preservation Area District:

i. **Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; and low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces.**

ii. **Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.**

2. In Special Agricultural Production Areas:

i. **Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; and fish and wildlife management.**

ii. **Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.**

3. In Agricultural Production Areas:

i. **Agriculture; farm related housing in accord with N.J.A.C. 7:50-5.24(a)2; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; agricultural sales establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.**

ii. **Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are used exclusively**

for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; and agricultural employee housing as an accessory use.

(c) **No development involving the use of Pinelands Development Credits shall be approved until the developed has provided the Commission and the municipality in which the parcel of land to be developed is located with evidence of his ownership of the requisite Pinelands Development Credits; provided, however, that a municipality may grant preliminary subdivision or site plan approval conditioned upon such evidence being presented as a prerequisite to final subdivision or site plan approval. For such a final subdivision or site plan, the developer shall provide evidence of Pinelands Development Credit ownership to secure the same proportion of lots or residential units as was approved for Pinelands Development Credit use in the preliminary approval.**

PART V—MINIMUM STANDARDS FOR MUNICIPAL RESERVE AREAS

7:50-5.51 (No change.)

7:50-5.52 Designation of Municipal Reserve Areas

(a) A municipality may, in its master plan and land use ordinance, designate lands in Rural Development Areas that are adjacent to or contiguous with a Regional Growth Area or areas of existing growth and development located outside of the Pinelands as Municipal Reserve Areas, provided that the area designated:

1. Does not contain significant amounts of:

i. Wetlands as defined in N.J.A.C. 7:50-6, Part I;

ii. Somewhat excessively and excessively drained soils as delineated in Plate 9;

iii. Active agricultural lands;

iv. Aquifer recharge areas as indicated by a depth of the unsaturated zone of 20-30 and 30-40 feet on Plate 4 and not underlain by a clay aquiclude;

v. Extreme fire hazard areas as delineated in Plate 11; and

vi. Flood-prone areas designated under the Federal Flood Insurance Program.

2. Has a relatively uniform boundary which conforms to physical or environmental features;

3. Is geographically balanced around existing or planned community centers;

4. Is accessible to employment centers, and areas of commercial activity and recreation opportunities;

5. Is not contiguous with a Preservation Area District, **Special Agricultural Production Area**, Forest Area or Agricultural Production Area and preserves an adequate buffer of low intensity use between the Municipal Reserve Area and such districts;

6. Has available or is planned for full public services including sewer, water, roads, police and fire protection, and schools and libraries.

7:50-5.53 (No change.)

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

INTRODUCTION

This subchapter establishes management programs and minimum standards governing development and land use in the Pinelands. In addition, guidelines for county and municipality preparation of management programs for scenic **resources**[, energy conservation] and recreation are provided. All the programs are intended to be implemented by the administration of municipal and county master plans and land use ordinances **and by state and federal agencies** through the development review procedures established in N.J.A.C. 7:50-4. Prior to certification of county or municipal master plans and land use ordinances, the standards [and guidelines of these programs] **of this subchapter except for those guidelines or optional programs**, will be implemented and enforced by the Pinelands Commission. The standards set forth in this subchapter are minimum requirements and a municipality, [or] county, **state, or federal agency** may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of this Plan.

PART I—WETLANDS

7:50-6.1 (No change.)

7:50-6.2 (No change.)

7:50-6.3 (No change.)

7:50-6.4 (No change.)

7:50-6.5 Inland wetlands

(a) Inland wetlands include, but are not limited to:

1. Atlantic white cedar swamps **which** are areas dominated by Atlantic white cedars (*Chamaecyparis thyoides*) and supporting one or more of the following hydrophytic plants:

i. through xiv. (No change.)

2. Hardwood swamps **which** are areas dominated by red maple (*Acer rubrum*), blackgum (*Nyssa sylvatica*) and/or sweetbay (*Magnolia virginiana*) and supporting one or more of the following hydrophytic plants:

i. through xi. (No change.)

xii. Chain fern (*Woodwardia* spp.); andxiii. rushes (*Juncus* spp.);

[xiii.]xiv. Or other lowland forests dominated by one or more of the following plants:

(1) Sweetgum (*Liquidambar styraciflua*);(2) Pin oak (*Quercus palustris*); and(3) [and] Willow oak (*Quercus phellos*).

3. Pitch pine lowlands **which** are areas dominated by pitch pine (*Pinus rigida*) and supporting one or more of the following hydrophytic plants:

i. through ix. (No change.)

4. Bogs **which** are areas dominated by hydrophytic, shrubby vegetation including:

i. through vi. (No change.)

vii. Dangleberry (*Gaylussacia frondosa*); [or]viii. Staggerbush (*Lyonia mariana*); [.] ; or

ix. Sphagnum moss (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), sundew (*Drosera* spp.), and sedges (*Carex* spp.) are among the herbaceous plants which are found in bogs. Active cranberry bogs and shrub thickets dominated by leatherleaf (*Chamaedaphne calyculata*) are included in this category.

5. Inland marshes **which** are areas [which are] dominated by hydrophytic grasses (*Graminaea*) and sedges (*Carex* spp.) and which include one or more of the following plants: pickerelweed (*Pontederia cordata*), arrow arum (*Peltandra virginica*), cattail (*Typhus* spp.), and rushes (*Juncus* spp.).

6. Lakes and ponds **which** are seasonal or permanent standing bodies of water.

7. Rivers and streams **which** are bodies of water which periodically or continuously contain moving water or which form a link between two bodies of standing water.

7:50-6.6 (No change.)

7:50-6.7 Significant adverse impact

(a) A significant adverse impact shall be deemed to exist where it is determined that one or more of the following modifications of a wetland will have an irreversible effect on the ecological integrity of the wetland and its biotic components:

1. An increase in surface water runoff discharging into a wetland;

2. A change in the normal seasonal flow patterns in the wetland;

3. An alteration of the water table in the wetland;

4. An increase in erosion resulting in increased sedimentation in the wetland;

5. A change in the natural chemistry of the ground or surface water in the wetland;

6. A loss of wetland habitat;

7. A reduction in wetland habitat diversity;

8. A change in wetlands species composition; or

9. A significant disturbance of areas used by indigenous and migratory wildlife for breeding, nesting, or feeding.

(b) **Determinations under (a) above shall consider the cumulative modifications of the wetland due to the development being proposed and any other existing or potential development which may effect the wetland.**

7:50-6.8 (No change.)

7:50-6.9 (No change.)

7:50-6.10 (No change.)

7:50-6.11 Low intensity uses

Hunting, fishing, trapping, hiking, boating, and swimming [and other similar low intensity recreational uses] shall be permitted in all wetlands provided that such uses do not involve any structure other than those authorized in N.J.A.C. 7:50-6.12. **Other similar low intensity recreational uses shall be permitted provided that any associated development does not have a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, on the wetland in which the use is carried out.**

7:50-6.12 (No change.)

7:50-6.13 Public improvements

(a) Bridges, roads, trails and utility transmission and distribution facilities shall be permitted in wetlands provided that:

1. There is no feasible alternative route or site for the facility that does not involve development in a wetland or, **if none, that another feasible route or site which results in less significant adverse impacts on wetlands does not exist;**

2. The public need cannot be met by existing facilities or modification thereof; [and]

[3. The facility will not result in a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7.]

3. The use represents a need which overrides the importance of protecting the wetland;

4. Development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and

5. The resources of the Pinelands will not be substantially impaired as a result of the facility and its development.

7:50-6.14 Wetland transition areas

No development, except for those uses which are specifically authorized in this [Part] **subchapter**, shall be carried out within 300 feet of any wetland, unless the applicant has demonstrated that the proposed development will not result in a significant adverse impact on the wetland, as set forth in N.J.A.C. 7:50-6.7.

7:50-6.15 through 7:50-6.20 (Reserved)

PART II—VEGETATION

7:50-6.21 (No change.)

7:50-6.22 (No change.)

7:50-6.23 Vegetation removal standards

(a) The clearing of more than 1,500 square feet of vegetation from any parcel of land, other than clearing for agricultural activities, shall be authorized only if the applicant can demonstrate:

1. That the removal is necessary to accommodate the development or maintenance of a permitted structure or to carry out a permitted use of the property; or

2. That removal is necessary in order to implement the fire management objectives in this Plan; or

3. That removal is necessary to eliminate a pedestrian or vehicular safety hazard; or

4. That removal is necessary to eliminate a hazard to a building; and

5. That specimen trees will not be cleared or removed; and

6. That the area to be cleared will be landscaped in accordance with the following requirements:

i. All landscaping as shown on the site plan shall be completed within six months of completion of construction;

ii. All landscaping shall ensure the stabilization of soils;

iii. Native Pinelands trees and shrubs are utilized for landscaping; provided, however, that non-native tree and shrub species may be used for foundation plantings provided that species not of the Heath family ([e]Ericaceae) comprise no more than 20 percent of the plantings. Native plants include:

(1) through (14) (No change.)

(15) [Low bush] **Lowbush** blueberry;

(16) through (45) (No change.)

iv. Other than in association with areas dedicated for public recreational purposes, native Pinelands grasses (such as little bluestem, deer-tongue, red top and switch grass), species adapted to droughty, nutrient poor soils (such as tall fescue, sheep fescue, chewings fescue, red fescue and smooth brome grass) and species used for temporary cover (such as ryegrass and oats) shall be utilized unless mulch is used to stabilize soil; provided, however, an area not to exceed 2,000 square feet per building may be planted with other grasses.

(b) **A municipality may, as part of its certified land use ordinance, exempt certain areas from the requirements of (a)6iii above provided that these areas contain a predominance of non-Pinelands plant species and are clearly delineated in the land use ordinance.**

7:50-6.24 Development prohibited in the vicinity of threatened or endangered plants

(a) No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of **any local** populations of the following plants, which are hereby found and declared to be threatened or endangered plants of the Pinelands:

1. Sensitive-joint vetch[:] (*Aeschynomene virginica*).2. Red milkweed[:] (*Asclepias rubra*).3. Silvery aster[:] (*Aster concolor*).

4. Pickering's morning glory[:] (*Breweria pickeringii*).
5. Pine Barrens reedgrass[:] (*Calamovilfa brevipilis*).
6. Barratt's sedge[:] (*Carex barrattii*).
7. Sick-leaved golden aster[:] (*Chrysopsis falcata*).
8. Spreading pogonia[:] (*Cleistes divaricata*).
9. Broom crowberry[:] (*Corema conradii*).
10. Rose-colored tickseed[:] (*Coreopsis rosea*).
11. Rushfoil[:] (*Crotonopsis elliptica*).
12. Stiff tick trefoil[:] (*Desmodium strictum*).
13. Knotted spike rush[:] (*Eleocharis equisetoides*).
14. Resinous boneset[:] (*Eupatorium resinosum*).
15. Pine Barrens gentian[:] (*Gentiana autumnalis*).
16. Yellow-fringed orchid[:] (*Habenaria ciliaris*).
17. Crested yellow orchid[:] (*Habenaria cristata*).
18. Southern yellow orchid[:] (*Habenaria integra*).
19. Swamp pink[:] (*Helonias bullata*).
20. New Jersey rush[:] (*Juncus caesariensis*).
21. Lily-leaved twayblade[:] (*Liparis loeselii*).
22. Loesel's twayblade[:] (*Liparis loeselii*).
23. Southern twayblade[:] (*Listera australis*).
24. Boykin's lobelia[:] (*Lobelia boykinii*).
25. Canby's lobelia[:] (*Lobelia canbyi*).
26. Hairy ludwigia[:] (*Ludwigia hirtella*).
27. Linear-leaved ludwigia[:] (*Ludwigia linearis*).
28. Climbing fern[:] (*Lygodium palmatum*).
29. Torrey's muhly[:] (*Muhlenbergia torreyana*).
30. Yellow asphodel[:] (*Narthecium americanum*).
31. Floating heart[:] (*Nymphoides cordata*).
32. Narrow panic grass[:] (*Panicum hemitomon*).
33. Hirst's panic grass[:] (*Panicum hirstii*).
34. American mistletoe[:] (*Phoradendron flavescens*).
35. Maryland milkwort[:] (*Polygala mariana*).
36. Slender rattlesnake root[:] (*Prenanthes autumnalis*).
37. Awned meadow beauty[:] (*Rhexia aristosa*).
38. Capitulate beakrush[:] (*Rhynchospora cephalantha*).
39. Slender beaked rush[:] (*Rhynchospora inundata*).
40. Knieskern's beaked rush[:] (*Rhynchospora knieskernii*).
41. Curly grass fern[:] (*Schizaea pusilla*).
42. Chaffseed[:] (*Schwalbea americana*).
43. Long's bulrush[:] (*Scirpus longii*).
44. Slender nut rush[:] (*Scleria minor*).
45. Reticulated nut rush[:] (*Scleria reticularis*).
46. Sclerolepis[:] (*Sclerolepis uniflora*).
47. Wand-like goldenrod[:] (*Solidago stricta*).
48. Little ladies tresses[:] (*Spiranthes tuberosa*).
49. False asphodel[:] (*Tofieldia racemosa*).
50. Humped bladderwort[:] (*Utricularia gibba*).
51. White-flowered bladderwort[:] (*Utricularia olivacea*).
52. Purple bladderwort[:] (*Utricularia purpurea*).
53. Reclined bladderwort[:] (*Utricularia resupinata*).
54. Yellow-eyed grass[:] (*Xyris flexuosa*).

7:50-6.25 through 7:50-6.30 (Reserved)

PART III—FISH AND WILDLIFE

7:50-6.31 Purpose

(a) The Pinelands environment supports a rich diversity of fish and wildlife species. Many threatened and endangered species are found in the Pinelands and they, together with the other fauna of the area, constitute an important part of the essential ecological character of the Pinelands that requires careful management and protection.

7:50-6.32 Protection of threatened or endangered wildlife required

(a) No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of [the following Pinelands] those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.S.A. 23:2A-1 et seq.

[1. Amphibians:]

- [i. Eastern tiger salamander: *Ambystoma tigrinum*.]
- [ii. Pine Barrens treefrog: *Hyla andersoni*.]
- [iii. Southern grey treefrog: *Hyla chrysoscelis*.]
- [iv. Eastern mud salamander: *Pseudotriton montanus*.]

[2. Reptiles:]

- [i.] Bog turtle: *Clemmys muhlenbergi*.]
- [ii. Timber rattlesnake: *Crotalus horridus horridus*.]
- [iii. Wood turtle: *Clemmys insculpta*.]

- [iv. Corn snake: *Elaphe guttata*.]
 - [v. Northern pine snake: *Pituophis melanoleucus melanoleucus*.]
- [3. Birds.]
- [i. Bald eagle: *Haliaeetus leucocephalus*.]
 - [ii. Peregrine falcon: *Falco peregrinus*.]
 - [iii. Osprey: *Pandion haliaetus*.]
 - [iv. Cooper's hawk: *Accipter cooperii*.]
 - [v. Least tern: *Sterna albifrons*.]
 - [vi. Black skimmer: *Rynchops nigra*.]
 - [vii. Great blue heron: *Ardea herodias*.]
 - [viii. Red-shouldered hawk: *Buteo lineatus*.]
 - [ix. Northern harrier: *Circus cyaneus*.]
 - [x. Merlin: *Falco columbarius*.]
 - [xi. Upland sandpiper (plover): *Bartramia americana*.]
 - [xii. Roseate tern: *Sterna dougallii*.]
 - [xiii. Barred owl: *Strix varia*.]
 - [xiv. Short-eared owl: *Asio flammeus*.]
 - [xv. Red-headed woodpecker: *Melanerpes erythrocephalus*.]
 - [xvi. Cliff swallow: *Petrochelidon pyrrhonota*.]
 - [xvii. Bobolink: *Dolichonyx oryzivorus*.]
 - [xviii. Ipswich sparrow: *Passerculus sandwichensis princeps*.]
 - [xix. Pied-billed grebe: *Podilymbus podiceps*.]
 - [xx. Short-billed marshwren: *Cistothorus platensis*.]
 - [xxi. Savannah sparrow: *Passerculus sandwichensis*.]
 - [xxii. Henslow's sparrow: *Ammodramus henslowii*.]
 - [xxiii. Vesper sparrow: *Poocetus gramineus*.]
- [4. Fishes:]
- [i. American shad: *Alosa sapidissima*.]
 - [ii. Native brook trout: *Salvelinus fontinalis*.]

7:50-6.33 (No change.)

7:50-6.34 through 7:50-6.40 (Reserved)

PART IV—FORESTRY

7:50-6.41 (No change.)

7:50-6.42 (No change.)

7:50-6.43 [Forestry application requirements]

(a) In addition to the information required by N.J.A.C. 7:50-4.2(b), an application for any permit involving the harvesting of trees for commercial purposes or fish and wildlife management shall include the following:

[1. A Forestry Management Plan, which details the management practices proposed to be employed, including but not limited to harvesting practices, reforestation and the following:]

[i. Location and size of tracts;]

[ii. Type of ownership;]

[iii. Map of the property showing wetlands, types of vegetation cover, receiving waters, location of stream crossings and alternatives, location of skid trails, location of access roads and landings, cutting boundaries and size of filter or buffer strips.]

[iv. Property description including land use; acreage of open, crop, and woodland; general soil types and erodibility; range of percent of slope; timber quality and age (forest type, species, age, DBH, height, volume and reproduction); and understory;]

[v. Description of timber to be harvested;]

[vi. Description of regeneration plans; and]

[vii. Description of intermediate management practices to be applied.]

[2. A letter of comment or no comment from the New Jersey Bureau of Forest Management on the Forestry Management Plan; and]

[3. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.44(a)4 and (a)5 in the form of guaranty, letter of credit or other recognized form of financial surety.]

Time limit on forestry permits

No permit authorizing a forestry operation shall be issued for a period exceeding two years. Nothing in this section shall be construed to prohibit any person from securing additional permits provided that the requirements of this Plan are met.

7:50-6.44 Forestry standards

(a) Forestry shall be authorized throughout the Pinelands provided:

1. That the owners of all property adjoining the property proposed to be harvested are notified at least five days but no earlier than 90 days prior to the harvest and are advised as to where the forestry management plan for the property may be reviewed;

2. That all persons conducting or supervising the forestry operation have in their possession at all times during the operation the approved forestry permit and evidence that they are authorized by the applicant or his agent to conduct the operation; and

- [1.]3. That access to land proposed for harvesting:
- i. Is direct;
 - ii. Follows previously established roads and trails to the maximum extent practical;
 - iii. Avoids wetland areas except as are absolutely necessary to harvest wetland species or to gain access to the harvesting site; and
 - iv. Avoids crossing streams with high and unstable banks and those with approaching slopes exceeding 10 percent where alternative crossings exist.
- [2.]4. That all activities during and after harvesting are carried out in a manner to avoid damage to stream banks and bottoms, erosion, and degradation of water quality, including the following:
- i. Stream banks at crossings shall be stabilized during and after harvesting;
 - ii. Culverts and bridges shall be temporary in nature;
 - iii. Trees which serve to stabilize stream banks shall be retained; other trees shall be felled to avoid stream banks where practical and winched off such banks where felling occurs;
 - iv. A 25-foot vegetated buffer along streams, ponds, lakes[,] and marshes shall be maintained;
 - v. The use of active and intermittent stream channels for skidding of logs shall be prohibited;
 - vi. Skidding shall not occur within 25 feet of streams, ponds, lakes[,] and marshes except for necessary crossings;
 - vii. Accessways for forestry activities shall be located at least 100 feet from streams, ponds, lakes[,] and marshes where practical;
 - viii. Landings shall be located in well drained areas where practical, at least 200 feet from public roads where practical, and at least 200 feet from ponds, lakes[,] and marshes;
 - ix. Filter strips shall be located between: harvested areas, landings and skid trails; and streams, ponds, lakes[,] and marshes;
 - x. Water diversion devices shall be installed as necessary to control erosion.

5. That, except for operations of the State Bureau of Forest Management on state owned property, the boundaries of any area proposed to be clear cut be marked at regular intervals not to exceed 100 feet in length or, in the case where selected trees are to be cut, that either the trees to be cut or left standing are clearly marked at the base of each tree.

[3.]6. That only those trees which have been selected for harvesting are cut; that all trees are cut to the base; and all practical steps are taken to minimize damage to undesignated trees.

- [4.]7. That at the conclusion of any harvesting operation:
- i. All areas disturbed for access, processing, moving or loading trees shall be regraded to approximate natural slopes and that water diversion devices are installed as necessary in order to avoid erosion;
 - ii. All accessways shall be closed and devices installed, such as poles, pilings or berms that will preclude use of the accessway;
 - iii. Bare ground areas shall be stabilized with vegetation where necessary;
 - iv. All debris shall be removed from streams;
 - v. All non-vegetative refuse shall be collected; and
 - vi. All hanging trees shall be removed.

[5.]8. That harvesting and reforestation activities shall ensure the regeneration of [the harvested forest] **Atlantic White Cedar in harvested cedar and mixed hardwood/cedar swamps or any other native forest type in other harvested areas;** and[.];

[6.]9. That harvesting and reforestation in Atlantic White Cedar and hardwood swamps is conducted in the following manner:

- i. Atlantic White Cedar will be clear-cut and slash will be managed to create site conditions favorable to regeneration of Atlantic White Cedar;
- ii. Reforestation to ensure Atlantic White Cedar regeneration will involve control of competitive hardwood species;
- iii. Existing streams shall be cutting boundaries where practical;
- iv. Harvesting methods employed shall be those which minimize environmental damage including the use of winches, corduroy roads and helicopters; and
- v. Harvesting will occur to the greatest extent practical during dry periods or when the ground is frozen.

[7.]10. That the proposed activity does not involve the draining or filling of wetlands.

7:50-6.45 through 7:50-6.50 (Reserved)

PART V—AGRICULTURE

7:50-6.51 (No change.)

7:50-6.53 (No change.)

7:50-6.54 (No change.)

7:50-6.55 through 7:50-6.60 (Reserved)

PART VI—RESOURCE EXTRACTION

7:50-6.61 Purpose

Sand, gravel, [and other mineral resources] **clay, and ilmenite** are important Pinelands [values] **resources** that have been commercially utilized in the past. Such activity can provide a substantial economic benefit to landowners; however, it is critical that such activities do not conflict with other values of the Pinelands. This Part is intended to ensure that extraction activities do not adversely affect long-term ecological values in the Pinelands, and that abandoned extraction sites will be restored so that they will be a functional part of the Pinelands ecosystem.

7:50-6.62 Resource extraction management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan and land use ordinance must contain a program to manage resource extraction operations. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve equivalent protection of the Pinelands as [sh]would be achieved under the provisions of this Part.

7:50-6.63 [Existing resource extraction operations] **Limitation on resource extraction**

(a) **Except as expressly authorized in this Plan, the extraction or mining of mineral resources other than sand, gravel, clay and ilmenite is prohibited.**

[(a)](b) No [new] resource extraction operations shall be permitted in the Preservation Area District or Special Agricultural Production Areas other than those operations which were registered with the Pinelands Commission on or before January 21, 1981 and received all necessary development permits for resource extraction on or before December 31, 1985. In such cases, [Resource extraction operations that were in operation on August 8, 1980 may be continued in any portion of the Preservation Area District or Special Agricultural Areas provided that:]

[1. The operation was authorized by a valid registration certificate issued by the New Jersey Department of Labor and Industry under N.J.S.A. 34:6-98.4(h) prior to February 8, 1979; or]

[2. The operation was exempt from registration requirements of the New Jersey Department of Labor and Industry and was authorized by and operating under a valid municipal permit prior to February 8, 1979; and]

[3. T]the area of extraction is limited to the value given under the category "acreage to be mined" on the mine registration application submitted to the Department of Labor and Industry as of February 7, 1979, or [the] that area approved by a valid municipal permit as of February 7, 1979 in the case of an operation [permitted under (a)2] above; and] **exempted from registration with the Department of Labor and Industry.**

[4. The extraction activity meets the standards and requirements of N.J.A.C. 7:50-6.66 and 6.67.]

[(b) The owner or operator of existing resource extraction operations in the Preservation Area shall register with the Pinelands Commission on or before January 21, 1981. The owner or operator of existing resource extraction operations in the Protection Area shall register with the Pinelands Commission within 120 days of the effective date of this Plan. Such registration shall describe the area and extent of the operation's existing permit and shall include a copy of all outstanding permits. Existing operations in the Preservation Area shall obtain a development permit on or before February 20, 1981. All existing operations in the Protection Area shall file an application for development approval within 60 days of the applicable effective date of this Plan.]

7:50-6.64 Time limit on resource extraction permits

No permit authorizing resource extraction shall be issued for any period exceeding two years. Nothing in this Section shall be construed to prohibit any person from securing additional permits provided that the requirements of N.J.A.C. 7:50-[6.63]6.66 are met.

7:50-6.65 [Application requirements for resources extraction] **(Reserved)**

[(a) All applications for development involving resource extraction shall include, in addition to the information required by N.J.A.C. 7:50-4.2(b), the following information:]

[1. A topographic map at a scale of one inch equals 400 feet, showing the proposed dimensions, location and operations on the subject property;]

[2. A U.S.G.S. quadrangle map showing the dimensions of the property and an area of at least 1,000 feet beyond such boundary in all directions;]

[3. The location, size and intended use of all buildings;]

[4. The location of all points of ingress and egress;]

[5. The location of all streams, wetlands and significant vegetation, forest associations and wildlife habitats;]

[6. The location of all existing and proposed streets and rights-of-way, including railroad rights-of-way, excluding those included within the area to be mined;]

[7. A soils map;]

[8. A reclamation plan which includes:]

[i. Method of stockpiling topsoil and overburden;]

[ii. Proposed grading and final elevations;]

[iii. Topsoil material application and preparation;]

[iv. Type, quantity and age of vegetation to be used;]

[v. Fertilizer application including method and rates;]

[vi. Planting method and schedules; and]

[vii. Maintenance requirements schedule.]

7:50-6.66 Resource extraction standards

(a) Resource extraction operations shall be approved only if the applicant can demonstrate that the proposed resource extraction operation:

1. Will not result in a substantial adverse impact upon those significant resources depicted on the Special Areas Map, Figure 7.1;

[1.]3. Is designed so that no area of excavation, sedimentation pond, storage area, equipment or machinery or other structure or facility is closer than:]

[i.] 200 feet to any property line[;] **unless it can be demonstrated that a distance between 100 and 200 feet will not result in greater off-site environmental impacts;**

[ii.] 500 feet to any residential or non-resource extraction related commercial use which is in existence on the date the permit is issued;]

[2.]3. Is to be located on a parcel of land of at least 20 acres;

[3.]4. Provides that all topsoil that is necessary for restoration will be stored on the site **but not within 200 feet of any property line unless the area proposed for storage is unforested and will be restored; and that the topsoil [and] will be protected from wind [or] and water erosion;**

[4.]5. Is fenced or blocked so as to prevent unauthorized entry into the resource extraction operation through access roads;

[5.]6. Provides ingress and egress to the resource extraction operation from public roads by way of gravel or porous paved roadways;

[6.]7. Is designed so that surface runoff will be maintained on the parcel in a manner that will provide for on-site recharge to ground water;

[7.]8. Will not involve excavation [below the seasonal high water table, unless the excavation will serve as a recreational or wildlife resource or a water reservoir for public, agricultural or industrial uses or for any other use authorized in the area in which the site is located; provided that in no case shall excavation have a depth] exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated that a depth greater than 65 feet will result in no significant adverse impact relative to the proposed final use or on off-site areas;

[8.]9. Will be carried out in accordance with an extraction schedule which depicts the anticipated sequence, as well as anticipated length of time that each 20 acre unit of the parcel proposed for extraction will be worked;

[9.]10. Will involve restoration of disturbed areas at the completion of the resource extraction operation in accordance with the requirements of N.J.A.C. 7:50-6.67, and the implementation of the restoration plan is secured by a letter of credit, surety bond or other guarantee of performance; and

[10.]11. Will not involve clearing adjacent to ponds in excess of 20 acres or an area necessary to complete scheduled operations; or will not involve unreclaimed clearing exceeding [150] **100 acres or 50 percent of the area to be mined, whichever is less**, for surface excavation at any time.

7:50-6.67 Restoration standards

(a) All parcels of land which are used for resource extraction operations shall be restored as follows:

1. Restoration shall be a continuous process, and each portion of the parcel shall be restored **such that ground cover be established** within two years **and tree cover established within three years** after resource extraction is completed for [that] **each portion of the site mined;**

2. Restoration shall proceed in the same sequence and time frame set out in the extraction schedule required in [N.J.A.C. 7:50-6.66(a)8] **N.J.A.C. 7:50-6.66(a)9;**

3. All restored areas shall be graded so as to conform to the natural contours of the parcel **to the maximum extent practical;** the slope of surface of restored surfaces shall not exceed one foot vertical to three feet horizontal except as provided in (a)6 below;

4. Topsoil shall be restored in approximately the same quality and quantity as existed at the time the resource extraction operation was initiated;

5. Drainage flows, including direction and volume, shall be restored to the maximum extent practical to those flows existing at the time the resource extraction operation was initiated;

6. Any body of water created by the resource extraction operation shall have a graded shoreline with a slope not to exceed one foot vertical to five feet horizontal;

7. All equipment, machinery and structures, except for structures that are useable for recreational purposes or any other use authorized in the area, shall be removed within six months after the resource extraction operation is terminated and restoration is completed; [and]

8. Reclamation shall to the maximum extent practical result in the reestablishment of the vegetation association which existed prior to the extraction activity and shall include:

i. The planting of a minimum of 1,000 one-year-old pitch pine seedlings **or other native Pinelands tree species** per acre;

ii. Stabilization of exposed areas by establishing ground cover vegetation;

iii. Cluster planting, **in lieu of (a)8i above**, of characteristic Pinelands oak species, such as blackjack oak, bear oak, chestnut oak and black oak, and shrubs such as black huckleberry, sheep laurel and mountain laurel, at a spacing sufficient to ensure establishment of these species[.]; and

9. The letter of credit, surety bond, or other guarantee of performance which secures restoration for each section shall be released two years after the requirements of (a)1 through 8 above are met.

10. Notwithstanding the use restrictions of subchapter 5, restored sites which are not located in the Preservation Area District, Special Agricultural Production Areas, or Forest Areas may be reclaimed for use as intensive recreation facilities, other than amusement parks.

7:50-6.68 through 7:50-6.70 (Reserved)

PART VII—WASTE MANAGEMENT

7:50-6.71 (No change.)

7:50-6.72 (No change.)

7:50-6.73 (No change.)

7:50-6.74 Existing landfills

(a) Landfill operations that were in lawful use on August 8, 1980 may be continued provided that:

1. No landfill shall be operated within the Preservation Area;

2. Landfills in Regional Growth Areas, Pinelands Towns and Villages, or Rural Development Areas are terminated on August 8, 1990;

3. Landfills in Agricultural Production Areas or Forest Areas are terminated on August 8, [1980] **1990**, or when the disposal capacity authorized as of January 14, 1981 is exceeded by 25 percent, whichever occurs first.

[4. There are no practical, alternative disposal sites available outside of the Pinelands;]

[5.]4. All waste accepted from outside the Pinelands is from **Pinelands municipalities or from** counties with at least 50 percent of their land area within the Pinelands;

[6.]5. The operation of the landfill will meet the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and all adopted and certified district waste management plans;

[7.]6. All areas filled to final design elevations shall be capped with an impervious material within one year. Prior to the establishment and filling of new areas, all existing areas shall be filled to final elevation and capped with an impervious material. The type and nature of capping shall be in accordance with the standards of the New Jersey Solid Waste Administration; and

[8.]7. Expansion of any existing landfill operation shall only occur if:

i. **There are no practical alternative disposal sites outside of the Pinelands;**

[i.]ii. No feasible alternative disposal techniques are available;

[ii].iii. The expansion does not involve the disposal of waste within 2,500 feet of an existing residential use;

[iii].iv. The expansion area is lined and includes a leachate collection and treatment system and a methane collection and [disposal] removal system; and either

[iv].v. The expansion will occur only on lands containing adequate clay aquicludes as determined by the Commission in consultation with the New Jersey Solid Waste Administration; or

[v].vi. When there are no lands containing adequate clay aquicludes, all measures necessary to prevent the degradation of ground water shall be reviewed and analyzed. Those measures determined to be most effective to prevent the degradation of ground water shall be implemented.

7:50-6.75 New landfills

(a) Landfills not existing on August 8, 1980 shall be permitted in the Protection Area only if a solid waste management district demonstrates to the Commission that:

1. A new landfill is significantly preferable from an environmental perspective to continuation of an existing landfill[.];

2. [that] There are no practical alternative disposal techniques available, as demonstrated in a certified solid waste management plan[.];

3. [that] There are no feasible alternative land sites available **outside of the Pinelands[.];**

4. [that] All waste to be accepted is from **Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands[.];** and

5. [that] The new landfill shall be operated in accordance with N.J.A.C. 7:50-6.74(a)[6-8]5-7. [New landfills established under this section may be continued only until] **Use of the landfill shall be terminated on August 8, 1990.**

(b) **Notwithstanding (a) above, landfills designed and operated exclusively to accept vegetative wastes may be permitted in Rural Development Areas, Regional Growth Areas, Agricultural Production Areas, and Pinelands Towns and Villages.**

7:50-6.76 Solid waste transfer stations

(a) Solid waste transfer stations may be permitted provided that:

1. The facility meets all standards and requirements of the Department of Environmental Protection;

2. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and

3. The facility is located in a Regional Growth Area, Pinelands Town, or Rural Development Area.

(b) **Notwithstanding the requirements of (a)2 and 3 above, a facility may be permitted in a Pinelands Village provided that all waste accepted is from the municipality in which the facility is located; or in any other Pinelands management area if the facility is located on the site of an existing landfill which is no longer active when the transfer station is built, and all waste accepted is from the municipality in which the facility is to be located.**

7:50-[6.76]6.77 Categories of wastes prohibited

(a) No hazardous, toxic, chemical, petroleum (including oil spill pollutants), septic or nuclear waste shall be [accepted for disposal] stored, discharged or disposed of [at any site] on any land within the Pinelands. [No septic waste or l] Liquid or dewatered sludge [shall be accepted for disposal or disposed of at any landfill site within the Pinelands except in accordance with state and federal regulations; provided, however, that nothing in this Part shall be construed to prohibit the surface application of liquid sludge and septage as a part of an agricultural program] **may only be applied as part of a land application program for agricultural purposes when also approved by the New Jersey Department of Environmental Protection.**

(b) **Notwithstanding (a) above:**

1. Petroleum wastes collected and temporarily stored for delivery to another facility for processing may be permitted in the Pinelands provided that the storage facility is designed and operated in accord with state and federal regulations.

2. Other wastes and byproducts may be temporarily stored at the facility where generated provided that the storage facility is designed and operated in accord with state and federal regulations.

7:50-[6.77]6.78 Compliance with county, [S]state and [F]federal requirements

No provision of this Plan shall be construed as authorizing any landfill operation in violation of any local, state or federal regulation or plan

governing the disposal of waste material, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., and associated implementing rules and regulations.

7:50-[6.78]6.79 [through] and 7:50-6.80 (Reserved)

PART VIII—WATER QUALITY

7:50-6.81 Purpose

An essential element of the overall ecological value of the Pinelands environment is its extensive surface and ground water resources of exceptional quality. The Pinelands Protection Act provides that the Plan protect and maintain the quality of surface and ground water through the control of development and land use, and close cooperation and coordination with local, [S]state and [F]federal agencies of government. This management program is intended to protect and preserve surface and ground waters of the Pinelands and to ensure that random and uncontrolled growth and development will not degrade the Pinelands environment. Nothing in this Part applies to agricultural activities except as otherwise provided by [S]state or [F]federal regulation.

7:50-6.82 (No change.)

7:50-6.83 Minimum standards necessary to protect and preserve water quality

(a) All development permitted under this Plan, or under a certified county or municipal master plan or land use ordinance, shall be designed and carried out so that the quality of surface and ground water will be protected and maintained. For the purpose of this Part, agricultural use shall not be considered development.

(b) Except as specifically authorized in this [p]Part, no development [shall be permitted] which degrades surface [and] or ground water quality **or which establishes new point sources of pollution shall be permitted.**

(c) No development shall be permitted which does not meet the minimum water quality and potable water standards of the State of New Jersey or the United States.

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1. **Development of new or expansion of existing [C]commercial, industrial, and waste water treatment facilities, provided that:**

i. There will be no direct discharge into any surface water body;

ii. All discharges from the facility are of a quality and quantity such that ground water exiting from the parcel of land or entering a surface body of water will not exceed two parts per million nitrate/nitrogen;

iii. All public waste water treatment facilities are designed to accept and treat septage; and

iv. All storage facilities, including ponds or lagoons, are lined to prevent leakage into ground water.

2. **Development of new waste water treatment facilities which are designed to improve the level of nitrate/nitrogen attenuation of more than one existing on-site waste water treatment system may be exempted from the standards of (a)1ii above provided that:**

i. There will be no direct discharge into any surface water body;

ii. The facility is designed only to accommodate waste water from existing residential, commercial, and industrial development;

iii. Adherence to (a)1ii above cannot be achieved due to limiting site conditions or that the costs to comply with the standard will result in excessive user fees as judged against relevant federal Environmental Protection Agency guidelines; and

iv. The design level of nitrate/nitrogen attenuation is the maximum possible within the cost limitations imposed by such user fee guidelines but in no case shall ground water exiting from the parcel or entering a surface body of water exceed 10 parts per million nitrate/nitrogen.

3. **Improvements to existing commercial, industrial, and waste water treatment facilities which discharge directly into surface waters provided that:**

i. There is no practical alternative available that would adhere to the standards of N.J.A.C. 7:50-6.84(a)1.

ii. There is no increase in the existing approved capacity of the facility; and

iii. All discharges from the facility into surface waters are such that the nitrate/nitrogen levels of the surface waters at the discharge point do not exceed two parts per million. In the event that nitrate/nitrogen levels in the surface waters immediately upstream of the discharge point exceed two parts per million, the discharge shall not exceed two parts per million nitrate/nitrogen.

[2.]4. **Individual** [O]n-site [conventional] septic waste water treatment systems, provided that:

i. **The proposed development to be served by the system is otherwise permitted pursuant to subchapters 4 and 5;**

ii. **Non-residential development within the Preservation Area District except in areas designated pursuant to N.J.A.C. 7:50-5.22(b)7, Forest Area District, Agricultural Production Area District, and Special Agricultural Production Area District is served by a standard subsurface sewage disposal system;**

[i.]iii. The [location] **design** of the system and its discharge point, and the size of the parcel on which the system is located, will ensure that ground water exiting from the parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen;

[ii.]iv. The depth to seasonal high water table is at least five feet;

[iii.]v. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet; and

[iv.]vi. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85.

[3. On-site alternative and innovative technology wastewater disposal systems, provided that:]

[i. The parcel on which the system is to be located is located in a Pineland Village or Town or Regional Growth Area or is exempted from the density limitations of this Plan pursuant to N.J.A.C. 7:50-4, Part V:]

[ii. The location of the system and its discharge point and the size of the parcel on which the system is located will ensure that ground water exiting from the parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen.];

[iii. The depth to seasonal high water table is at least five feet.];

[iv. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude in which case the well shall be cased to at least 50 feet; and]

[v.]vii. The [alternative or innovative wastewater] technology has been approved for use by the New Jersey Department of Environmental Protection;

[vi. The alternative or innovative system will be inspected and maintained in accordance with the requirements of N.J.A.C. 7:50-6.85; and]

[vii.]viii. Any effluent [discharged from innovative and alternative technology facilities] **from other than standard subsurface sewage disposal systems** will be monitored [at six-month intervals for a period of at least three years, and the results of each sampling period are provided to local boards of health and the Pinelands Commission] **by the owner in accordance with requirements periodically established by the Pinelands Commission.**

[4.]5. **Surface water run-off**, provided that:

i. The volume and rate of runoff generated from the parcel by a 50 year storm of a 24-hour duration as calculated in accordance with the United States Soil Conservation Service Technical Release No. 55 or the S.C.S. National Engineering Handbook section 4 will not increase as a result of any development of the parcel;

ii. Surface water runoff from impervious surfaces will be retained to facilitate infiltration into the ground water; [and]

iii. **Surface water runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel;**

[iii.]iv. Runoff shall not be recharged where depth to water table is more than 20 feet below the surface, wherever practical; and

[iv.]v. Excessively and somewhat excessively drained soils, as defined by the Soil Conservation Service, should be avoided for recharge of runoff wherever practical.

7:50-6.85 Individual wastewater treatment facility and petroleum tank maintenance

(a) The owner of every on-site [conventional] septic wastewater treatment facility in the Pinelands shall, as soon as suitable septage disposal facility capacity is available, in accordance with the provisions of Chapter 326 of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and Section 201 of the Clean Water Act:

1. Have the facility inspected by a [qualified] technician at least once every three years;

2. Have the facility cleaned at least once every three years; and

3. Once every three years submit to the **board of health serving the municipality** in which the facility is located a sworn statement that the facility has been inspected, [and] cleaned **and is functional**, setting forth the name of the person who performed the inspection and cleaning and the date of such inspection.

[(b) The owner of every alternative technology on-site disposal facility shall have the facility inspected every three years and shall submit to the municipality in which the facility is located a sworn statement that the alternative system is in full and complete operation.]

[(c)](b) The owners of [every] commercial petroleum storage tanks shall [have the tank pressure tested at installation and every five years thereafter and shall submit a sworn statement to the municipality in which the tank is located that the tank is water-tight] **comply with the requirements of Chapter 102 of the Laws of 1986.**

7:50-6.86 Water management

(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water-saving toilets, showers and sink faucets shall be installed in all new development.

(b) Water shall not be exported from the Pinelands [counties except by natural surface and ground water flows] **except as otherwise provided in N.J.S.A. 58:1A-7.1.**

7:50-6.87 Prohibited chemicals and materials

(a) Use of the following substances is prohibited in the Pinelands to the extent that such use will result in direct or indirect introduction of such substances to any surface or ground water or any land:

1. Septic tank cleaners; and

2. Waste oil.

(b) All storage facilities for deicing chemicals shall be lined to prevent leaking into the soil, and shall be covered with an impermeable surface which shields the facility from precipitation.

(c) No person shall apply any herbicide to any road or public utility right-of-way within the Pinelands unless necessary to protect an adjacent agricultural activity.

[(d) No hazardous, toxic, chemical, petroleum (including oil spill pollutants), or nuclear waste shall be discharged or disposed of on any land in the Pinelands. Septic waste and liquid sludge may be applied only as part of a land application program for agricultural purposes when approved by the New Jersey Department of Environmental Protection.]

7:50-6.88 through 7:50-6.90 (Reserved)

PART IX—AIR QUALITY

7:50-6.91 (No change.)

7:50-6.92 [Pinelands] Air quality [review] **program**

[(a)] In order to obtain certification under the provisions of N.J.A.C. 7:50-3, the **municipal** master plan and land use ordinances must [ensure that any application for major development in the Pinelands where the proposed development will generate substantial vehicular traffic or space heating emissions, including development involving 100 or more dwelling units or more than 300 parking spaces, shall include, in addition to the information required by N.J.A.C. 7:50-4.2(b), the following information relative to the impact of the proposed development on air quality:] **contain a program for air quality. It is not necessary that the program incorporate the literal terms of the program set out in this Part; rather, it may adopt alternative or additional management techniques which will achieve the protection of the Pinelands equivalent to that which would be achieved under the provisions of this Part.**

[1. A summary of ambient air quality in the vicinity of the facility expressed in terms of levels of sulfur dioxide, particulates, and carbon monoxide concentrations compared with all applicable ambient air quality standards. This data may be obtained from on-site monitoring or, upon approval of the New Jersey Department of Environmental Protection, Division of Environmental Quality, from the nearest New Jersey state monitoring site.]

[2. An analysis of the use of all existing and proposed access roads, including:]

[i. Current traffic volume, in vehicles per hour, for peak hours, peak eight-hour periods and for an average day; and]

[ii. Traffic capacity in vehicles per hour calculated pursuant to the procedures set out in the Highway Capacity Manual 1965, Highway Research Board Special Report 87 and NAS-NRC Publication 1328.]

[3. An estimate of traffic volumes to be generated by the proposed development in vehicles per hour for peak hours and peak eight-hour periods at the time of completion of construction and 10 years after completion.]

[4. A description of parking facilities including:]

[i. Locations;]

[ii. Number of parking spaces;]

[iii. Number of parking levels; and]

[iv. Whether the parking area is to be open or covered.]
 [5. An analysis of emissions from space heating, including:]
 [i. Type and amount of fuel used and pollution emission factors used to calculate emissions; and]
 [ii. The emission rates of sulfur dioxide, particulates, carbon monoxide, hydrocarbons and oxides of nitrogen in tons per day averaged over the five-month heating season.]
 [6. An analysis of motor vehicle emissions to be generated by the proposed development and, where appropriate, by growth induced by the proposed development based on annual average daily traffic and space heating emissions expressed as tons per day of carbon monoxide, hydrocarbons, nitrogen oxide, sulfur dioxide and particulates. The latest data available from the United States Environmental Protection's Agency's publication AP-42, "Compilation of Air Pollution Emission Factors", is to be used to calculate emissions if more definitive information is not available.]

[7. An analysis of the effect of carbon monoxide emissions on air quality including anticipated carbon monoxide concentrations compared with ambient air quality standards and with concentrations in the absence of the proposed development at:]

[i. Places of maximum concentration;]
 [ii. Critical locations including monitoring sites and sensitive receptors such as hospitals, schools, nursing homes, residences and playgrounds.]
 [(1) This analysis should be prepared pursuant to the procedures established in the United States Environmental Protection Agency's publication "Guidelines for Air Quality Maintenance, Planning and Analysis, Volume 9: Evaluating Indirect Sources", Publication No. EPA-450/4-750-001 OAQPS No. 1.2-028 or equivalent procedure.]

[8. An analysis of the availability of public transportation and, for housing projects, the accessibility, including distance, safety and convenience of route, by automobile and by other modes of transportation to the following facilities:]

[i. Medical (including professional offices and hospitals);]
 [ii. Recreational;]
 [iii. Educational;]
 [iv. Commercial (including personal shopping); and]
 [v. Places of employment.]

[9. A description of measures taken in planning the proposed development which are intended to reduce vehicle miles travelled, including but not limited to those measures described in the United States Environmental Protection Agency's publication "Guidelines for Air Quality Maintenance, Planning and Analysis, Volume 3: Control Strategies" (Chapter II, Section E), Publication No. EPA-450/4-74-003 (OAQPS No. 1.2-002), and in Section 108(f)(i)(A) of the Clean Air Act Amendment of 1977, 42 U.S.C. Section 7410.]

[10. A description of measures taken in planning the proposed development which are intended to reduce emissions during construction and minimize dust emissions from the completed development in accordance with the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. Applicable standards for dust control are available in the New Jersey Department of Agriculture publication "Standards for Soil Erosion and Sediment Control in New Jersey".]

[11. Information evidencing compliance with the provisions of N.J.A.C. 7:27 (New Jersey Air Pollution Control Regulations) and 45 F.R. 52676-52748 (August 7, 1980), (EPA Regulations for Prevention of Significant Deterioration).]

7:50-6.93 General standard

All development shall adhere to the relevant air quality standards of N.J.A.C. 7:27 et seq.

7:50-6.94 Standards for specified development

(a) Applications for the following developments shall ensure that all state ambient air quality standards in N.J.A.C. 7:27 et seq. for carbon monoxide shall not be exceeded at places of maximum concentration and at sensitive receptors:

1. Residential development of 50 or more units and any other development involving more than 100 parking spaces located in a Regional Growth Area or Pinelands Town; and

2. Residential development of 100 or more units and any other development involving more than 300 parking spaces located in any other Pinelands management area.

7:50-[6.93]6.95 through 7:50-6.100 (Reserved)

PART X—SCENIC

7:50-6.101 (No change.)

7:50-6.102 (No change.)

7:50-6.103 Scenic corridors

(a) Except for those roads which provide for internal circulation within residentially developed areas, [A]all public, paved roads in the Preservation Area District, the Rural Development and Forest Areas shall be considered scenic corridors.

(b) [All navigable streams and all lakes and ponds in the Preservation Area District, the Rural Development and Forest Areas shall be considered scenic corridors; t]Those rivers designated in [N.J.A.C. 7:50-6.104(d)] N.J.A.C. 7:50-6.105 shall be considered as special scenic corridors in any part of the Pinelands.

7:50-6.104 [Special] [r]Requirements for scenic corridors

(a) Except as provided in this section, no permit shall be issued for development other than for agricultural product sales establishments unless the applicant demonstrates that all buildings are set back at least 200 feet from the center line of the scenic corridor.

(b) If compliance with the 200-foot setback is constrained by environmental or other physical considerations, such as wetland, or active agricultural operation, the building shall be set back as close to 200 feet as practical and the site shall be landscaped in accordance with the provisions of Part II of this subchapter so as to provide screening from the corridor.

(c) If an applicant for development approval demonstrates that existing development patterns of the corridor are such that buildings are set back less than 200 feet within 1,000 feet of the site proposed for development, then a setback shall be set for the proposed development which is consistent with the established development pattern, provided that the site is landscaped in accordance with the provisions of Part II of this subchapter so as to provide screening between the building and the corridor.

7:50-6.105 Requirements for special scenic corridors

[(d)](a) The following rivers are hereby designated to be wild and scenic rivers and scenic corridors of special significance to the Pinelands. All structures within 1,000 feet of the center line of these rivers shall be designed to avoid visual impacts as viewed from the river:

1. Great Egg Harbor River—Great Egg Bay (Garden State Parkway) to Route 536.

2. Tuckahoe River—Great Egg Bay to the Route 552 crossing in Milmay.

3. Middle River—Great Egg Bay to Schoolhouse Lane crossing north of Corbin City.

4. Mullica River—Garden State Parkway to Medford Road crossing at the Medford, Waterford, and Shamong Township boundaries.

5. Wading River—Confluence with the Mullica River to Route 563 crossing at Speedwell.

6. Oswego River—Confluence with the Wading River to Sim Place reservoir dam.

7. Batsto River—Confluence with Mullica River to Carranza Memorial Road crossing at Shamong and Tabernacle Township boundaries.

8. Bass River—Confluence with the Mullica River to Stage Road crossing in Bass River State Forest.

9. Nescochague Creek—Confluence with the Mullica River to confluence with Great Swamp Branch and Albertson Branch.

10. Great Swamp Branch—Confluence with Nescochague Creek to Route 206 bridge in Hammonton.

11. Rancocas Creek—Route 530 crossing in Browns Mills to the Pinelands boundary.

12. Cedar Creek—Route 9 crossing to the dam at Bamber Lake.

13. West Creek—Confluence with Delaware Bay to Pickle Factory Pond above Route 550.

14. Dennis Creek—Confluence with Delaware Bay to the headwaters of the mainstem in the Great Cedar Swamp west on Route 9.

15. North Branch of the Forked River—Garden State Parkway to the confluence with Cave Cabin Branch east of Howardsville.

16. Toms River—From the Central Railroad of New Jersey bridge to the Route 528 crossing east of Cassville.

17. Maurice River—Delaware Bay to Manumuskin River.

18. Manumuskin River—Confluence with the Maurice River to the Route 49 crossing near Cumberland Road.

19. Mount Misery Branch—Route 70 crossing to the Greenwood Branch continuing to the North Branch of the Rancocas Creek.

7:50-[6.105]6.106 Signs

Each municipality shall adopt provisions governing signs in its municipal master plan and ordinances. N.J.A.C. 7:50-[6.106]6.107 contains provisions which must be included in all municipalities; N.J.A.C. 7:50-

[6.107]6.108 contains mandatory provisions for municipalities in the Preservation Area District and Special Agricultural Production Areas; and N.J.A.C. 7:50-[6.108]6.109 contains suggested guidelines for additional sign provisions for other areas of the Pinelands.

7:50-[6.106]6.107 Mandatory sign provisions

(a) No sign, other than warning or safety signs, which is designed or intended to attract attention by sudden, intermittent or rhythmic movement, or physical or lighting change, shall be permitted in any area.

(b) No sign, other than warning or safety signs, which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation shall be permitted in any state.

(c) No outdoor off-site commercial advertising sign, other than signs advertising agricultural roadside stands, shall be permitted in the Pinelands.

(d) No existing sign which does not conform to (a), (b) and (c) above shall be permitted to continue beyond [ten] 10 years after the effective date of this Plan.

(e) To the maximum extent practical, the character and composition of construction materials for all signs shall be harmonious with the scenic values of the Pinelands.

7:50-[6.107]6.108 Mandatory sign provisions in the [p]Preservation [a] Area [d]District and [s]Special [a]Agricultural [p]Production [a]Areas

(a) No sign shall be constructed, repaired or maintained except in accordance with the provisions of N.J.A.C. 7:50-[6.106]6.107 and this section.

(b) The following signs are permitted in the Preservation Area District and the Special Agricultural Production Areas:

1. Official public safety and information signs displaying road names, numbers and safety directions;

2. On-site signs advertising the sale or rental of the premises, provided that:

i. The area on one side of any such sign shall not exceed 12 square feet;

ii. No more than one sign is located on any parcel of land held in common ownership.

3. On-site identification signs for schools, churches, hospitals, or similar public service institutions, provided that:

i. The size of any such sign shall not exceed 12 square feet;

ii. No more than one sign is placed on any single property.

4. Trespassing signs or signs indicating the private nature of a road, driveway or premises, and signs prohibiting or otherwise controlling fishing or hunting, provided that the size of such signs does not exceed 12 square feet;

5. On-site professional, home occupation, or name signs indicating the profession and/or activity and/or name of the occupant of the dwelling, provided that:

i. The size of any such sign shall not exceed 12 square feet;

ii. No more than one sign is permitted for any individual parcel of land.

6. On-site business or advertising signs, provided that:

i. No more than two signs are located on any one premise or on the premises leased or utilized by any one business establishment;

ii. The total area of such signs shall not exceed 20 square feet per side, with the maximum height to the top of the sign not to exceed 15 feet from ground level.

7. Temporary signs advertising political parties or candidates for election, provided that the size of any such sign does not exceed four square feet.

8. Temporary on- and off-site signs advertising civil, social or political gatherings and activities, provided that the size of such signs does not exceed four square feet.

7:50-[6.108]6.109 Guidelines for sign provisions outside the [p]Preservation [a]Area [d]District and [s]Special [a]Agricultural [p]Production [a]Areas

(No change in text.)

7:50-[6.109]6.110 Motor vehicle screening and storage

In order to obtain certification, municipalities shall adopt local ordinances which provide that no more than [ten] 10 automobiles, trucks or other motor vehicles, whether or not they are in operating condition, shall be stored on any lot unless such motor vehicles are adequately screened from adjacent residential uses and scenic corridors. All vehicles not in operating condition shall be stored only if the gasoline tanks of such

vehicles are drained. This section shall not apply to vehicles which are in operating condition and which are maintained for agricultural purposes.

7:50-[6.110]6.111 Location of utilities

(a) New utility distribution lines and telephone lines to locations not presently served by utilities shall be placed underground, except for those lines which are located on or adjacent to active agricultural operations.

(b) All electric utility transmission lines shall be located on existing towers or underground to the maximum extent practical.

(c) Above-ground generating facilities, switching complexes, pumping stations, [storage tanks] and substations shall be screened with vegetation from adjacent uses in accordance with N.J.A.C. 7:50-6, Part II.

PART XI—RESERVED

PART [XI] XII—FIRE MANAGEMENT

7:50-[6.111]6.121 (No change in text.)

7:50-[6.112]6.122 (No change in text.)

7:50-[6.113]6.123 Fire hazard classification

The following vegetation classifications shall be used in determining the fire hazard of a parcel of land:

Fire Hazard Classification

Hazard	Vegetation Type
Low	Atlantic white cedar. Hardwood swamps.
Moderate	Pine-oak or oak-pine greater than 20['] feet tall and less than 20['] foot spacing. Non-Pine Barrens forest. Prescribed burned areas.
High	Pine-oak or oak-pine less than 20['] feet tall and greater than 20['] foot spacing.
Extreme	Immature pine-oak or oak-pine, including those less than 20['] feet tall and less than 20['] foot spacing. Pitch pine lowlands (all size classes).

7:50-[6.114]6.124 Fire hazard mitigation standards

(a) No application for development approval shall be granted in moderate, high and extreme fire hazard areas unless the applicant demonstrates that:

1. All proposed developments, or units or sections thereof, of 25 dwelling units or more will have two accessways of a width and surface composition sufficient to accommodate and support fire fighting equipment;

2. All dead-end roads will terminate in an area adequate to provide ingress and egress for fire fighting equipment;

3. The rights-of-way of all roads will be maintained so that they provide an effective fire break;

4. Except as provided in (a)5 below, [A]a fire hazard fuel break is provided around structures proposed for human use by the selective removal or thinning of trees, bushes, shrubs and ground cover as follows:

i. In moderate fire hazard areas a fuel break of 30 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned on an annual basis; and

(2) All dead plant material is removed.

ii. In high fire hazard areas a fuel break of 75 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned and maintained on an annual basis;

(2) All dead plant material is removed.

iii. In extreme high hazard areas a fuel break of 100 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned and maintained on an annual basis;

(2) No pine tree (Pinus spp.) is closer than 25 feet to another pine tree; and

(3) All dead plant material is removed.

5. All residential development of 100 dwelling units or more in high or extreme high hazard areas will have a 200-foot perimeter fuel break between all structures and the forest in which:

i. Shrubs, understory trees and bushes and ground cover are selectively removed, mowed or pruned and maintained on an annual basis;

- ii. All dead plant material is removed;
 - iii. Roads, rights-of-way, wetlands and waste disposal sites shall be used as fire breaks to the maximum extent practical; and
 - iv. There is a specific program for maintenance.
6. All structures will meet the following specifications:]
- [i. Roofs and exteriors will be constructed of fire resistant materials such as asphalt rag felt roofing, tile, slate, asbestos cement shingles, sheet iron, aluminum, brick or fire retardant-treated wood shingles or shakes.]
 - [ii. All projections such as balconies, decks and roof gables shall be constructed of fire resistant materials or materials treated with fire retardant chemicals.]
 - [iii. Any openings in the roof, attic, and the floor shall be screened.]
 - [iv. Chimneys and stovepipes which are designed to burn solid or liquid fuels shall be equipped with screens over the outlets.]
 - [v. Flat roofs are prohibited in areas where vegetation is higher than the roof.]

7:50-[6.115]6.125 through 7:50-[6.120]6.130 (Reserved)

PART [XII] XIII—HOUSING

7:50-[6.121]6.131 Purpose

In order to ensure that low[,] and moderate [and middle] income households will have adequate and reasonable housing opportunities under the Comprehensive Management Plan, it is necessary that master plans and land use ordinances of municipalities with land in the Regional Growth Areas include a housing program that implements the minimum standards of this Part. There are a variety of methods by which a municipal housing program can implement the minimum standards of this Part. The primary consideration of the Commission will be whether the program is economically feasible and likely to result in the availability of housing opportunities for low[,] and moderate [and middle] income households. It is not necessary that a municipality incorporate the literal terms of this Part, provided that the municipal master plan and land use ordinances ensure the equivalent provision of housing opportunities as would be achieved under the provisions of this Part.

7:50-[6.122]6.132 Minimum standards

(a) In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must include a housing program that:

1. Ensures that at least 10 percent of all available housing units in the portion of the municipality which is located in a Regional Growth Area will be affordable to low income households;

2. Ensures that in addition to the housing units which are affordable to low income households, at least 10 percent of all available housing units in that portion of the municipality which is located in a Regional Growth Area will be affordable to moderate income households;

[3. Ensures that in addition to the housing units which are affordable to low and moderate income households, at least 5 percent of all available housing units in the portion of the municipality which is located in a Regional Growth Area will be affordable to middle income households:]

[4.]3. Ensures that minimum floor area requirements are not applicable to dwelling units which meet the minimum standards of (a)1[,] and 2 [and 3] above;

[5.]4. Ensures that dwelling units that meet the minimum standards of (a)1[,] and 2 [and 3] above are compatible with surrounding land uses;

[6.]5. Ensures that the dwelling units required by (a)1[,] and 2 [and 3] above are available at approximately the same rate as is non-required housing;

[7.]6. Includes provisions that will ensure that the dwellings, required in (a)1[,] and 2 [and 3] above will continue to be available to low[,] and moderate [and middle] income households.

7:50-[6.123]6.133 Minimum housing standards in uncertified municipalities

(a) In municipalities that have not received certification of their master plans and land use ordinances, all development shall meet the following minimum standards:

1. In developments involving 25 to 99 dwelling units, at least [25 percent] 20 percent of the dwelling units proposed for development shall be affordable to low[,] and moderate [and middle] income households[, provided that at least 4/5ths of the required low, moderate and middle income housing units are affordable to low and moderate income households].

2. In developments of 100 or more dwelling units, [25 percent] 20 percent of the dwelling units shall be affordable to low[,] and moderate

[and middle] income households [as follows: i.] with [A] at least 10 percent of the total dwelling units [shall be] affordable to low income households[.];

[ii. At least 10 percent of the dwelling units shall be affordable to moderate income households; and]

[iii. At least five percent of the dwelling units shall be affordable to middle income households.]

3. All required low[,] and moderate [and middle] income housing units shall be compatible with the non-required housing units and uses in the vicinity of the proposed development.

4. Required low[,] and moderate [and middle] income housing units shall be constructed at the same rate as non-required housing.

5. Deed restrictions or other legally enforceable provisions ensuring the availability of required housing for low[,] and moderate [and middle] income households shall be provided for a period of at least 30 years from the date of initial occupancy.

6. If an applicant can demonstrate that dwelling units required under this [S]section cannot be provided, the applicant may satisfy the housing requirements of this section by dedication of land suitable for development of an equivalent number of required housing units, by payment in lieu thereof to a qualified public housing agency or by other alternative actions which meet the intent of this section.

7:50-[6.124]6.134 through 7:50-[6.130]6.140 (Reserved)

PART [XIII] XIV—RECREATION

7:50-[6.131]6.141 (No change in text.)

7:50-[6.132]6.142 (No change in text.)

7:50-[6.133]6.143 General requirements

(a) All recreational facilities in the Pinelands shall comply with the following requirements:

1. No power vessel in excess of 10 horsepower shall operate on state waters within the Pinelands Area except on:

i. That portion of the Mullica River downstream from Burlington County Route 542; and

ii. That portion of the Wading River downstream from its confluence with the Oswego River.

2. No motor vehicle other than fire, police or emergency vehicles or those vehicles used for the administration or maintenance of any public land shall be operated upon publicly owned land within the Pinelands. Other motor vehicles may operate on public lands for recreational purposes on public highways and areas on land designated prior to August 8, 1980 for such use by state and local governmental entities until designated as inappropriate for such use under (a)3 below.

3. The Commission shall from time to time designate areas which are inappropriate for use of motor vehicles. Such designation shall be based upon the following considerations and upon consultation with the New Jersey Department of Environmental Protection and other interested persons:

i. A need to protect a scientific study area;

ii. A need to protect the location of threatened or endangered plant or animal species;

iii. A need to provide a wilderness recreational area;

iv. A need to prevent conflicts with adjoining intensively used recreational areas;

v. A need to protect historic or archaeological sites;

vi. A need to protect critical wildlife habitats;

vii. A need to address a situation of public health and safety;

viii. A need to protect extensively disturbed areas from further impact; and

ix. The extent to which such road closure would substantially impair recreation access to and uses of surrounding resources.

4. Route maps for organized off-road vehicle events shall be filed with and approved by the Executive Director.

[5. All electrically powered equipment or machinery shall have battery boxes encased in containers to avoid accidental chemical spillage.]

[6.]5. All recreation areas and facilities shall be designed in accordance with the New Jersey Department of Environmental Protection publication "Administration Guidelines: Barrier-Free Design Standards for Parks and Recreational Facilities."

[7.]6. Improved bicycling facilities are provided only in conjunction with paved roads within the Preservation Area District and Forest Area.

7:50-[6.134]6.144 Guidelines for recreational land and facilities

(a) In preparing the recreational program element of its master plan and ordinances, each municipality may consider the following require-

ments[.]. In municipalities that have not received certification of their master plans and land use ordinances, all development shall meet the standards of (a)3i below.

1. Lawn areas shall be permitted in association with commercial and industrial development provided that such lawns are designed and used for public recreational purposes, meet an identified public recreational need, and are dedicated to public recreation use.

2. Lawn areas developed in association with recreational development shall be limited to those which support recreation activities and shall, to the extent practical, be of a variety of grass which requires minimal fertilization.

3. Each municipality shall have ordinances which provide for open space and recreational facilities in association with residential developments. The following guidelines may be utilized to develop these ordinances:

i. All residential development of 25 units or more shall provide:

(1) Eight acres of land to be used for recreational purposes for every 1,000 projected residents of the development; provided, however, that such acreage shall not be required to exceed 10 percent of the total acreage of the proposed development;

(2) Land provided in accordance with (a)3i(1) above shall be provided in a single area or in individual parcels at least one acre in size;

(3) All residential units for which the recreational land is provided in accordance with (a)3i(1) above shall be located within 1/4 mile of such recreational land; and

(4) At least 50 percent of the recreational land provided in accordance with (a)3i(1) above shall be turfed or landscaped with otherwise suitable materials to permit informal recreational activities.

ii. All residential development of 50 units or more should provide recreational land in accordance with (a)3i above. Recreational facilities in accordance with the following schedule shall also be provided to the extent recreational needs are generated by the proposed development. An analysis of the recreational needs of a proposed development within a specified service area around the development shall be conducted by comparing the following schedule of facility standards with existing recreational facilities within the service area and the projected population of the service area:

Recreational Facility Guidelines

	Population	Minimum Facility Space Standards	Recreational Service Area Radius
Basketball courts	1 per 1,000	Court dimensions range 60' x 80' x 70' x 104'	1/2 mile
Tennis courts	1 per 2,000	Court dimensions range from 60' x 120'—single court 45' x 120'—additional adjoining courts	1 mile
Multi-purpose	1 per 2,000	.50 acre [(including basketball and tennis courts)]	1/2 mile
Passive area [(sitting)]	1 per 2,000	.50 acre	1/2 mile
Senior citizen [(boce, shuffleboard, horseshoe)]	1 per 1,000 over 55	.50 acre whichever is greater	1/4 mile
Pre-school playground	1 per 2,000	.25 acre	1/4 mile
Advanced playground	1 per 2,000	.25 acre	1/2 mile
Multi-purpose turf area	1 per 2,000	.50 acre	1 mile
Football/soccer fields	1 per 10,000	Field dimensions 140' x 280'—youth 190' x 420'—adult	1 mile
Baseball—regulation 90'-foot diamond	1 per 6,000	2.8 acres 325-foot outfield	1 mile
Baseball-youth	1 per 6,000	1.0 acre 200-foot outfield	1 mile
Softball 60'-foot diamond		[1.0 acre]	
Picnic area	1 per 6,000	8-foot tables	1 mile

7:50-[6.135]6.145 through 7:50-[6.140]6.150 (Reserved)

PART [XIV] XV—HISTORIC[AL, ARCHAEOLOGICAL AND CULTURAL] RESOURCES PRESERVATION

7:50-[6.141]6.151 Purpose

(a) [The Pinelands Commission may designate] **Historically distinctive resources, including [historic] buildings, structures, sites and districts [and] of historic, archaeological [or cultural resources], architectural, or cultural importance help to define the Pinelands environment and must be properly managed** in furtherance of the following public purposes:

1. To effect and accomplish the protection, enhancement, perpetuation and use of improvements and areas of special historic and archaeological interest or value which represent or reflect significant elements of the Pinelands' cultural, social, economic, political and architectural history and pre[-]history;

2. To safeguard the Pinelands' pre[-]historic, historic and cultural heritage as embodied and reflected in such improvements and areas;

3. To stabilize and improve property values in such areas;

4. To prevent neglect and vandalism of historic, archaeological and cultural sites;

5. To foster pride in the beauty and noble accomplishments of the past; and

6. To preserve opportunities for traditional life styles related to and compatible with the ecological values of the Pinelands.

7:50-[6.142]6.152 Historic, archaeological and cultural] resource management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must provide a program for the protection of historic, archaeological and cultural resources. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve the equivalent protection provided under the provisions of this Part.

7:50-[6.143]6.153 Authorities of [Historic Archaeological and Cultural Preservation Board] **municipal officials and agencies**

(a) The Planning Board of each municipality [shall serve as the Historic, Archaeological and Cultural Preservation Board (hereinafter Preservation Board) and have the powers and duties provided in this Part, unless the municipality designates a separate Board for this purpose. The Preservation Board or Planning Board, as the case may be,] shall have the following powers and duties:

1. To initiate, hear, review and make recommendations to the Pinelands Commission regarding designation of historic, archaeological and cultural resources and districts of Pinelands, national or state significance in accordance with the provisions of N.J.A.C. 7:50-[6.144]6.154;

2. To initiate, hear, review and [designate] **identify** historic, archaeological and cultural resources and districts of local significance **and recommend same to the governing body for designation in the zoning ordinance**, in accordance with the provisions of N.J.A.C. 7:50-[6.144] 6.154 and the **Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.**;

3. To review and [grant or deny] **issue** certificates of appropriateness in accordance with the provisions of N.J.A.C. 7:50-[6.145] 6.155 and 6.156 **for any application for development which it is otherwise empowered to review.**

4. To review and report on any matter related to this Part referred to it by the Pinelands Commission;

5. To make its general knowledge and expertise available upon reasonable written request to the Pinelands Commission or any agency of the municipality, county, state or federal government;

6. To consult with any county, state or national agency with special expertise in the area of historic [and archaeological] resources;

7. To prepare and adopt plans implementing measures to preserve the cultural heritage of traditional Pinelands Villages;

8. To develop and maintain a manual of recommended rehabilitation techniques and the relationship of new construction to natural areas for the guidance of the public; and

9. To adopt rules of procedure which are not in conflict with the provisions of this Part and the **Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.**

(b) **The Board of Adjustment shall review and issue certificates of appropriateness, in accordance with the provisions of N.J.A.C. 7:50-6.155 and 6.156 for any application for development which it is otherwise empowered to review.**

(c) **The governing body may by ordinance provide for an Historic Preservation Commission in accordance with the Municipal Land Use Law,**

N.J.S.A. 40:55D-1 et seq. The Historic Preservation Commission shall have those duties and responsibilities set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and shall:

1. Advise the Planning Board and Board of Adjustment on the issuance of certificates of appropriateness for all applications for development which otherwise require approval of the Boards; and

2. Unless the governing body expressly authorizes the Planning Board to do so, issue certificates of appropriateness, pursuant to N.J.A.C. 7:50-6.155 and 6.156, for all zoning, construction or other permits which are not issued pursuant to a valid site plan, conditional use, or variance approval granted by the Planning Board or Board of Adjustment.

(d) Where the governing body has not provided for an Historic Preservation Commission, the local permitting agency responsible for ruling on the application for development shall exercise the duties set forth in (c)2 above.

7:50-[6.144]6.154 Designation of historic[, archaeological or cultural] resources and districts

[(a) The Pinelands Commission hereby designates the following structures and sites as historic, archaeological and cultural resources of significance to the Pinelands:

[L.N. Renault and Sons Winery
Bremen Avenue and Leibig Street,
Galloway Township]

[Hanover Furnace
Hanover Lake Area,
New Hanover Township]

[Atsion Village
Route 206,
Shamong Township]

[Batsto Village
Wharton State Forest,
Route 542,
Washington Township]

[Grant A.M.E. Church
4th and Washington Streets,
Chesilhurst Borough]

[Dennisville Historic District
Petersburg Road and Main Street,
Dennis Township]

[Double Trouble State Park Historic District
Double Trouble State Park,
Berkeley and Lacey Townships]

[Hanger Number One, Lakehurst Naval Air Station
County Route 547,
Manchester Township]

[Mullica River-Chestnut Neck Historic District
includes parts of Atlantic, Burlington
and Ocean Counties.]

(a) Those historic resources within the Pinelands which are from time to time listed in the State and National Registers of Historic Places, pursuant to N.J.S.A. 13:1B-15.128 et seq. and P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470, respectively, are hereby designated as historic resources of significance to the Pinelands.

(b) Standards for Designation of Additional Resources:

1. The Pinelands Commission may designate additional historic[, archaeological and cultural] resources and districts if it determines [one or more of the following] that the resource or district possesses integrity of location, design, setting, materials, workmanship, feeling, and association which reflects its significance in American history, architecture, archaeology or culture under one or more of the following criteria:

[1.]i. The presence of structures, sites or areas associated with events of significance to the cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

[2.]ii. The presence of structures, sites or areas associated with the lives of persons or institutions of significance to the cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

[3.]iii. The presence of structures which represent distinctive characteristics of a type, period or method of construction of significance to the architectural, cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

[4.]iv. The presence of a site or area which has yielded or is likely to yield significant information regarding the history or archaeological history of the Pinelands[.]; and

2. The [Preservation Board or the] Planning Board shall utilize these standards in [designating] identifying areas, sites, structures or districts as resources of local significance in accordance with the provisions of the Municipal Land Use Law, 40:55D-1 et seq. and recommending that the governing body designate same in the zoning ordinance.

(c) Initiation of Designation: The designation of historic[, archaeological or cultural] resources or districts of Pinelands significance may be initiated by the Pinelands Commission, the Executive Director, [a Preservation Board] an Historic Preservation Committee, a Planning Board, or any other person.

(d) Designation Application:

1. If [the] designation by the Pinelands Commission is proposed by [a Preservation Board] an Historic Preservation Commission, a Planning Board or other person, the application [shall be filed with the Pinelands Commission] shall be submitted on a National Register of Historic Places Inventory-Nomination Form with the accompanying information listed in the State and National Register Manual as published by the New Jersey Department of Environmental Protection. The application shall contain the following information:

[1.]i. A statement setting forth the basis for designation with specific reference to the standards set forth in [(c)] (b) above;

[2. One or more photographs, together with descriptive captions, illustrating the features of the proposal which support its designation;]

[3. A detailed description of the present and original, if known, physical appearance of any structure or site to be designated, including a detailed architectural description, if applicable;]

[4.]ii. Comments from the local [p]Planning [b]Board if the designation is proposed by a person who is not a member of the [p]Planning [b]Board;

[5.]iii. Such additional information as may be required from time to time by the Pinelands Commission [or applicable Planning or Preservation Board] to facilitate adequate review of the application.

2. If local designation is proposed, the application shall include the information required in (d)1 above and any other information as may be required by the Planning Board.

(e) Pinelands Commission Review: All proposed designations by the Pinelands Commission shall be reviewed and a public hearing held in the manner provided in N.J.A.C. 7:50-4.

(f) Effect of Designation: All resources and districts designated pursuant to this section will be governed by the standards of N.J.A.C. 7:50-6.156.

(g) Removal Designation: Any resource designated by the Pinelands Commission or by a municipality may be removed from designation if the designating agency determines that the resource no longer meets the standards of (b) above. In the event the Pinelands Commission considers removal of any designation, a public hearing shall be held in the manner provided in N.J.A.C. 7:50-4. All resources and districts designated pursuant to this section will be governed by the standards of N.J.A.C. 7:50-6.156.

7:50-[6.147]6.155 [Undesignated historic and archaeological sites] Evaluation of development proposals

(a) Identification of Resources:

[(a)]1. A cultural resource survey shall accompany all applications for development in a Pinelands Village or Town and applications for major development in other Pinelands Management Areas in order to determine whether any significant historic resources exist on the property. Guidelines for this survey will be available at the principal offices of the Pinelands Commission. In general, the survey shall include: a statement as to the presence of any properties listed on the National and State Registers of Historic Places on the site or within the area of the project's potential environmental impacts; a thorough search of state, local and any other pertinent inventories to identify sites of potential [cultural] significance; a review of the literature and consultation with professional and avocational archaeologists knowledgeable about the area; a thorough pedestrian survey and archaeological testing as necessary to provide reasonable evidence of the presence or absence of historic [archaeological] resources of significance, and a list of personnel involved and qualifications of the person(s) performing the survey.

[(b) An applicant for development approval in the Pinelands may request a letter of interpretation in order to determine the presence of significant archaeological sites on his property in accordance with the provisions of N.J.A.C. 7:50-4, Part VI.]

[(c) Where archaeological or historic resources are present, the developer shall take all reasonable steps in planning his development to preserve the resource, or if on-site preservation is impractical, to protect

the data in accordance with the guidelines established by the United States Department of the Interior, 43 C.F.R. Section 3 et seq. In addition, if at any time after construction has been commenced, archaeological data is discovered on a site, the developer shall immediately cease construction, notify the Commission and take all reasonable steps to protect the archaeological data in accordance with the guidelines established by the Department of the Interior governing the recovery of archaeological data.]

(b) Survey Exemptions:

1. Notwithstanding (a) above, the need for a cultural resource survey may be:

i. Eliminated by a municipality, as part of its certified land use ordinance, in portions of a Pinelands Village or Town if there is insufficient evidence of significant cultural activity within the area or, in the case of archaeological resources, within the vicinity; and

ii. Waived by the Pinelands Commission or by an approval agency for individual applications for development if it is determined that:

(1) There is insufficient evidence of cultural activity on the project site or, in the case of archaeological resources, within the vicinity;

(2) The evidence of cultural activity on the site lacks the potential for importance because further recording of the available data will not contribute to a more comprehensive understanding of Pinelands culture; or

(3) The evidence of cultural activity lacks any potential for significance pursuant to the standards of N.J.A.C. 7:50-6.154(b).

(c) Evaluation of Resources:

1. The Pinelands Commission may from time to time organize cultural resources into broad groupings according to type, function or historical period to aid in their evaluation and treatment.

2. Except for those resources designated pursuant to N.J.A.C. 7:50-6.154, each historic resource identified through the survey shall be evaluated to determine its significance according to the individual criteria set forth in N.J.A.C. 7:50-6.154(b). The Pinelands Commission may from time to time establish evaluative questions to assist in this determination of significance.

3. Should a resource be determined not to be significant, the evaluation must determine whether the resource constitutes a site with sufficient remains pursuant to N.J.A.C. 7:50-6.157(a).

7:50-[6.145]6.156 [Certificates of appropriateness] Treatment of resources

(a) [General Requirement] Certificate of Appropriateness:

1. No construction, or encroachment upon nor alteration, remodeling, removal, disturbance, or demolition of any resource, structure[,] or area [or site] designated [in N.J.A.C. 7:50-6.144, or as may be hereafter designated in accordance with the provisions of this Part.] pursuant to N.J.A.C. 7:50-6.154 nor any action which shall render such a site inaccessible, shall be permitted without first obtaining a certificate of appropriateness [from the Planning Board].

2. No application for development which involves a resource, structure or area found significant pursuant to N.J.A.C. 7:50-6.155 shall be approved without first obtaining a certificate of appropriateness.

3. The issuance of all certificates of appropriateness by a certified municipality shall be subject to the Pinelands Commission notice and review procedures of N.J.A.C. 7:50-4. In uncertified municipalities, certificates of appropriateness shall be issued by the Pinelands Commission.

4. Notwithstanding (a)1, 2 and 3 above, development proposed by a county, state or federal agency shall require that a certificate of appropriateness be issued by the Pinelands Commission only if the site is listed in this State or National Registers of Historic Places, has been designated by the Commission, or determined by the Commission to be significant pursuant to N.J.A.C. 7:50-6.155.

[(b) Purpose: The purpose for requiring a certificate of appropriateness is to provide a means for reviewing plans to alter, remodel, relocate, or demolish designated structures, areas or sites in order to ensure that such work will comply with the standards established to preserve the integrity of structures, areas, and sites which have been determined to merit special protection by designation.]

[(c)](b) Application for [c]Certificate of [a]Appropriateness:

1. An application for a certificate of appropriateness shall contain the following information:

[1.]i. Detailed plans depicting the exact work to be performed, including detailed renderings of the exterior of any proposed new structure or any exterior alterations to existing structures. A delineation of the relationship of the renderings of the proposal in relation to adjacent structures or surrounding lands may be requested.

[2.]ii. A statement of the relationship of the proposed work to the standards for designation in N.J.A.C. 7:50-[6.144(b)]6.154(b) and the standards for approval of certificates of appropriateness set forth in [(d)](c) below.

[3. In the event the requested certificate of appropriateness, if issued, would permit the demolition of a designated structure, a detailed analysis of the economic feasibility of maintaining the structure in its present form, including the amount paid for the property; date of purchase; the current assessed value of the land and improvements; real estate taxes for the previous two years; the annual debt service, if any, for the previous two years; gross income from the property for the previous two years; and annual cash flow, if any.]

[4. A statement of measures to be taken to mitigate the adverse effects of the proposed work on a designated structure or area.]

[5. If the proposed work involves the disturbance of a designated archaeological site, a statement describing the mitigation program proposed and the qualifications of those professionals who will be conducting data recovery operations.]

[6.]iii. Such other information as may be required from time to time by the Executive Director[,] or [the Preservation Board or the Planning Board] the appropriate municipal reviewing agency or official.

[(d)](c) Standards for [c]Certificates of [a]Appropriateness: [The Preservation Board, or the Planning Board, as the case may be, shall consider the following in approving or disapproving applications for certificates of appropriateness:]

[1. The effect of the proposed work upon the purposes for which the designation was originally granted, as set out in N.J.A.C. 7:50-6.144(c).]

[2. The extent of the alteration, destruction or removal of the distinctive character or architectural features of the designated structure, including consideration of the harmony of materials, details, height, mass, proportion, rhythm, scale, setback, shape, street accessories, and workmanship.]

[3. The relationship of the designated site to the surrounding land and natural features.]

[4. The degree to which the proposed work would isolate the designated structures or area from their historical or architectural surroundings.]

[5. The degree to which the proposed work is compatible with the original design concept of the structure or with the general design characteristic of that era.]

[6. The degree to which the proposed building materials are compatible with the aesthetic and structural appearance of the designated structure or area, including the texture, style, color of the materials and the proposed combination of materials such as brick, stone, concrete, shingle, wood or stucco.]

[7. If the proposed work involves a designated archaeological site, the degree to which the proposed work disturbs the designated site or complies with the rules of the Department of the Interior governing the recovery of archaeological data, 43 C.F.R. Section 3 et seq.]

[8. If the proposed work involves the demolition of a designated structure, the degree to which the applicant has explored preservation options, such as a scale of the structure to an individual or group interested in preserving the structure.]

[9. The degree to which the proposed work is in conformity with the Department of the Interior's Standards for Historic Preservation Projects, 36 C.F.R. Section 1207 et seq.]

1. Certificates of appropriateness shall be issued which require one of the following treatments:

- i. Preservation of the resource in place if possible;**
- ii. Preservation of the resource at another location if in place preservation is not possible; or**
- iii. Recordation of the resource if neither preservation of the resource in place or at another location is possible.**

2. The Pinelands Commission may from time to time establish guidelines to assist in determining the type of treatment required pursuant to (c)1 above. These guidelines shall include, but not be limited to, consideration of the following:

- i. Preservation in place;**
 - (1) Whether the resource represents the last or best remaining example of its kind in the Pinelands that possesses research potential or public educational values;**
 - (2) Whether the resource can be preserved by protecting its location from disturbance;**
 - (3) Whether affirmative measures, such as stabilization, rehabilitation, or reuse can result in preservation;**

(4) Whether redesign of the development proposal to avoid impacts can result in preservation;

(5) Whether the steps necessary to preserve the resource are feasible and practical; and

(6) Whether protective measures will result in long term preservation of the resource.

ii. Preservation at another location;

(1) Whether the resource can be moved and still retain its historic significance;

(2) Whether the resource is sufficiently well preserved to permit relocation;

(3) Whether alternative locations which are compatible with the resource are available;

(4) Whether it is feasible and practical to relocate the resource; and

(5) Whether the relocation will result in long term preservation of the resource.

iii. Recordation

(1) Whether the resource possesses significance other than its association with an important person;

(2) Whether recording the qualities that make the resource significant can increase information beyond that already known; and

(3) Whether the recorded information will help to address important research questions concerning this type of resource.

3. The following requirements shall apply to the treatments specified in (c)1 above:

i. Preservation in Place;

(1) Buildings, architectural features, and engineering features:

(i) Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any rehabilitation of the building or feature must be performed in accordance with the Secretary of the Interior's Standards for Rehabilitation (36 C.F.R. 67); and the structure or feature must be protected sufficiently to preserve those qualities that make it significant.

(ii) Before beginning rehabilitation, the original condition of the building or other architectural or engineering feature must be documented photographically in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation.

(2) Archaeological sites:

i. A deed covenant, easement, or other appropriate mechanism must be developed to provide for protection, through restricted access if necessary, to preserve those qualities that make the resource important. Any on-site activities must have no detrimental effect on the preservation of the resource. The covenant or other appropriate mechanism must further direct that any stabilization of the resource will be carried out in conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

ii. The archaeological resource shall be incorporated into open space whenever project designs or land use activities permit.

iii. Land allocated for resource preservation may need to be set aside for that single use if the preservation of the resource is not compatible with other activities.

ii. Preservation at Another Location

(1) Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any rehabilitation of a building or feature must be performed in accordance with the Secretary of Interior's Standards for Rehabilitation (36 C.F.R. 67); and the structure or feature must be protected and maintained sufficiently to preserve those qualities that make it significant.

(2) The relocation of the resource must be designed to minimize the damage to the resource and to preserve those qualities that make it significant. The relocation shall be undertaken in accordance with the Secretary of the Interior's publication "Moving Historic Buildings".

(3) The resource shall be recorded to the requirements of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation prior to removal from its original location. Minimally this will include the preparation of a site plan, appropriate photographs and/or drawings, and a narrative description of any historical functions or processes carried out at the site.

iii. Recordation: The Pinelands Commission shall from time to time establish guidelines for recording resources in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

[(e) Issuance of certificate of appropriateness: The Preservation Board, or the Planning Board, may approve, disapprove or approve with con-

ditions the issuance of a certificate of appropriateness upon determining that the proposed plans are or are not in conformity with the standards set forth in (d) above.]

[(f)](d) Effect of [i]Issuance of [c]Certificate of [a]Appropriateness.

1. The issuance of a certificate of appropriateness authorizes the applicant to apply for any additional approvals which may be required by the municipality or any other jurisdiction prior to the commencement of work. All subsequent development approvals shall be issued or denied in a manner consistent with the certificate of appropriateness except as provided in (d)2 below. [The issuance of a certificate of appropriateness may be appealed in accordance with N.J.A.C. 7:50-4, Part VIII.]

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for one year. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within one year, the standards of this Part shall thereafter not apply to the property in question.

7:50-6.157 Documentation required for sites with sufficient remains

(a) Sites with sufficient remains are those sites which present graphic evidence of a cultural activity (that is, human alteration of the natural landscape for purposes of occupation or extended use) but which are not found to be significant.

(b) If additional documentation of sites determined to have sufficient remains will provide information beyond that provided in the application for development or the cultural resource survey, these sites shall be documented to include:

1. A narrative description of the resource and its cultural environment;

2. Photographic documentation to record the exterior appearance of buildings, structures, and engineering resources;

3. A site plan depicting in correct scale the location of all buildings, structures, and engineering resources; and

4. A New Jersey state inventory form for buildings and a narrative description of any process or technology if necessary to elaborate upon the photographic record.

7:50-[6.146]6.158 Emergency provisions

(a) Notwithstanding any other provisions of this Part, in any case where the Executive Director determines that alteration, remodeling[,] or demolition of a designated structure is necessary to remedy a condition that is dangerous to life, health or safety, a certificate of appropriateness which is required under the provisions of this Part may be issued under the signature of the Executive Director. The Executive Director shall inform the Commission of any action taken pursuant to this provision at its next regularly scheduled meeting.

(b) If at any time after construction has been commenced, archaeological data is discovered on a site, the developer shall immediately cease construction, notify the Commission and the local permitting agency; and take all reasonable steps to protect the archaeological data in accordance with the Guidelines for Recovery of Scientific, Prehistoric, Historic, and Archaeological Data: Procedures for Notification, Reporting, and Data Recovery (36 C.F.R. Part 66).

SUBCHAPTER 7. AMENDMENTS TO THE COMPREHENSIVE MANAGEMENT PLAN

7:50-7.1 Purpose

This [Part] subchapter establishes a means for making changes in the text of this Plan and in the Land Capability Map. It is not intended to relieve particular hardships nor to confer special privileges or rights but is intended as a tool to adjust the provisions of this Plan and the Land Capability Map in light of changing, newly discovered or newly important conditions, situations or knowledge. The procedures established by this [Part] subchapter are designed to maximize public participation in the amendment process.

7:50-7.2 (No change.)

7:50-7.3 Petitions for amendment

(a) Any member of the Commission or the Executive Director may, at any time, submit to the Commission on his own initiative any proposed amendment for consideration. Any such submission shall include all information which the member of the Commission or Executive Director determines is necessary or appropriate for full and proper consideration of the proposed amendment.

(b) Any other person desiring to petition the Commission for an amendment to this Plan, in municipalities or counties with uncertified

plans, shall file a petition with the Executive Director in such form and number as the Executive Director shall from time to time establish and containing at least the following information:

1. The petitioner's name and address;
2. The precise wording of any proposed amendment of the text of this Plan and a map or plat delineating any proposed change to the Pinelands Land Capability Map;
3. A statement of the need and justification for the proposed amendment;
4. A statement as to the conformity of any proposed amendment to this Plan or the reason for any deviation from the Plan;
5. In the event that the proposed amendment would change the classification of any property as shown on the Land Capability Map:
 - i. The street address and legal description of the property proposed to be reclassified;
 - ii. The petitioner's interest in the subject property;
 - iii. The owner's name and address, if different from the petitioner's, and the owner's signed consent to the filing of the petition;
 - iv. The names and addresses of all owners of property required to be notified pursuant to N.J.A.C. 7:50-[4.2(b)] **4.14(b)**;
 - v. The present classification and existing uses of the property proposed to be reclassified; and
 - vi. The area of the property proposed to be reclassified stated in square feet or acres, or fraction thereof.

7:50-7.4 (No change.)

7:50-7.5 Action by Commission

(a) Decision to review: Upon submission of any proposed amendment to the Commission by any member of the Commission or the Executive Director, the Commission shall determine whether a hearing should be held for the purpose of considering the proposed amendment. If the Commission determines that a hearing should be held, it shall conduct a hearing pursuant to the provisions of N.J.A.C. 7:50-4[.3] [of this Plan] and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., at which the proposed amendment shall be considered. If it determines that no hearing need be held, it shall so order.

(b) Final Decision by Commission: Within 30 days of the conclusion of any hearing held pursuant to (a) above, the Commission shall enter a final order either granting or denying the proposed amendment.

7:50-7.6 (No change.)

7:50-7.7 (No change.)

7:50-7.8 (No change.)

7:50-7.9 (No change.)

7:50-7.10 Effective date of amendments

Amendments to this Plan shall be effective as provided in the Pinelands Protection Act, [and] the Federal Act[.], and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:50-7.11 Comprehensive review of plan by Commission

At least every [three] **five** years after the adoption of this Plan, the Executive Director shall comprehensively review this Plan and all actions taken by the Commission or the Executive Director pursuant to N.J.A.C. 7:50-4 and shall submit a report to the Commission detailing any recommended amendments to the Plan. Such report shall be submitted by January 15 of every [third] **fifth** year after adoption of this Plan and shall include an explanation of the reasons for any recommended amendment.

HEALTH

Proposals numbered PRN 1986-483 through 487 are authorized by Molly Joel Coye, M.D., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

(a)

MANAGEMENT AND ADMINISTRATIVE SERVICES

Birth Certificates

Creation of Birth Record

Proposed Repeal and New Rules: N.J.A.C. 8:2-1

Proposal Number PRN: 1986-487.

Submit comments by December 17, 1986 to:

Charles Karkut, State Registrar
Bureau of Vital Statistics and Registration
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360
609-292-4087

The agency proposal follows:

Summary

The proposed new rules establish a new policy regarding the creation of a birth record. The previous rule on this subject is now obsolete, and is therefore being repealed in its entirety and replaced by this proposed new rule. The policies contained herein delineate procedures for creating an original birth certificate, and for amending or correcting same.

Court decisions, as well as changes in society, dictate that the current rule will be replaced by the new rule. Specifically, the new rule provides the latitude to allow parents to name the child with virtually no restraints, except for obscenities and numerical characters. It will now be easier for parents to correct errors to the birth certificate, to amend the name(s) chosen by the parents, and to correct information relative to the child's parentage. The rule also clarifies who shall act as informant, and how the father is to be named, should there be a dispute.

N.J.A.C. 8:2-1.1 details provisions regarding the naming of the child on the original birth certificate.

N.J.A.C. 8:2-1.2 provides guidance on naming the father of the child, particularly if the mother is currently unmarried.

N.J.A.C. 8:2-1.3 describes the process by which an original birth certificate may be corrected, and erroneous certificates correctly issued.

Finally, N.J.A.C. 8:2-1.4 provides for who shall act as informant, and who must sign the certificate.

Social Impact

The proposed new rules will have a positive social impact upon the citizens of New Jersey. The proposal clarifies the Department's policy regarding the naming of a child and the child's father, expands the options open to a parent in naming the child, makes corrections to the original birth certificate easier to obtain, clarifies who the informant of the birth information should be, and gives the alleged father additional rights regarding the mother's ability to name him on the birth certificate.

Economic Impact

There will be a very minor economic impact as the result of promulgation of the proposed new rules. Legal fees incurred by individuals, who previously had to go to court to obtain certain corrections to a birth certificate, will be lessened, since the new rule also allows such individuals to obtain certain corrections without recourse to the courts.

There will be no economic impact to the State. The Department of Health conducts on-going training of local registrars, hospital personnel, etc., responsible for collecting and completing birth record information, and thus educating the above individuals regarding the new procedures contained herein will not add costs to the State.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 8:2-1.

Full text of the proposed new rule follows:

CHAPTER 2
BIRTH CERTIFICATES

SUBCHAPTER 1. CREATION OF BIRTH RECORD

8:2-1.1 Name of child

(a) The original birth certificate of a child born to a married woman shall give the child the husband's surname, unless both parents agree, by affixing their signature to the back of the birth certificate, to give the child another surname. In the latter case, the child may be given any surname agreed to by the parents, so long as the surname chosen does not contain an obscenity, numerals, or combination of letters and numerals.

(b) The State Registrar is the ultimate judge as to the acceptability of any surname chosen pursuant to (a) above.

1. The parents of the child have 10 business days in which to decide their child's surname, if the parents are not together at the time of the birth. If no decision is made within that time, as evidenced by a lack of either or both signature(s) on the birth certificate as required above, the child shall be given the husband's surname.

2. If a married mother states that she became pregnant by her previous husband who died less than 10 months before the child's birth or from whom she was divorced for a similar length of time, that husband shall be named as the child's father, provided a copy of the death or divorce record is submitted and filed with the mother's hospital record. The child shall be given that husband's surname, unless both the mother and husband affix their signature to the back of the certificate, in which case (a)1. above shall apply. In the case of death, only the mother need affix her signature to the back of the certificate.

3. If the mother does not submit the required proof of death or divorce, the child shall be recorded as being the legitimate child of the mother's present husband and the child's surname shall be that of the present husband, unless both mother and her present husband affix their signatures to the back of the certificate, in which case (a) above shall apply.

(c) The original birth certificate of a child born to an unwed mother shall give the child the mother's maiden name, unless the mother affixes her signature to the back of the birth certificate. If the latter case, the child may be given any surname chosen by the mother, so long as the surname chosen does not contain an obscenity, numerals, or a combination of letters and numerals.

(d) The original birth certificate of a child shall give the child as many given names as the parent(s) shall choose, so long as the names can fit, legibly written, on a single line in the space on the certificate allotted for the name of the child. No given names may contain obscenity, numerals, or a combination of letters and numerals.

1. The State Registrar is the ultimate judge as to the acceptability and legibility of any given name(s) chosen pursuant to (d) above.

2. If the child is born to a married woman, both parents shall have the right to choose the child's given name(s). In the event of a conflict between the parents, the space allotted for the name of the child shall remain blank, until such time as mutually acceptable name(s) are chosen. Once chosen, the child will be named utilizing the correction procedures outlined in N.J.A.C. 8:2-1.3, except that both parents must sign the correction form.

3. If the child is born to an unmarried woman, the mother shall have the right to choose the child's given name(s).

8:2-1.2 Name of father

(a) If the event a child is born to a married woman, the woman's husband is presumed to be the father of the child, pursuant to the New Jersey Parentage Act (N.J.S.A. 9:17-38). The husband shall be so named on the original birth certificate.

(b) If the mother has attempted to marry before the birth occurred, the man the mother attempted to marry shall be presumed to be the child's father, if the conditions of the New Jersey Parentage Act (N.J.S.A. 9:17-38) are met, and shall be so named on the original birth certificate, unless the mother denies that the man is the child's father.

1. The conditions of the New Jersey Parentage Act may be met by completing a form prescribed by the State Registrar. Such forms may be obtained by contacting the State Registrar at: New Jersey Department of Health, Bureau of Vital Statistics, Trenton, New Jersey 08625.

(c) If a married mother states that she became pregnant by her previous husband who died less than 10 months before the child's birth or from whom she was divorced for a similar length of time, that husband shall be named as the child's father, provided a copy of the death or divorce record is submitted and filed with the mother's hospital record.

(d) If the mother of a child is married, but alleges that her husband is not the child's father, and names another man (but not the one she has divorced or has been previously married to, as in (b) above) as the biological father, the wife's husband shall nevertheless be named as the child's father on the original birth certificate.

1. If both husband and wife deny the husband's paternity, and the wife names another as the biological father, and the alleged father comes forth and openly admits paternity, then that man shall be named as the father on the original birth certificate, pursuant to the New Jersey Parentage Act (N.J.S.A. 9:17-38). The husband and the wife shall deny the husband's paternity, and the biological father shall admit paternity, on forms prescribed by the State Registrar.

2. Should both husband and wife deny the husband's paternity, and should either the mother refuse to identify the biological father, or should she identify a man as the biological father but that individual denies paternity, then the husband of the mother shall be presumed to be the child's father, and shall be so named on the original birth certificate. In order to rebut this presumption, the husband must obtain a court order, pursuant to section 6(d) of the New Jersey Parentage Act (N.J.S.A. 9:17-38).

(e) If the child was born as a result of the artificial insemination of the mother, then the mother's husband, if she is married, shall be named as the child's father, pursuant to section 7 of the New Jersey Parentage Act (N.J.S.A. 9:17-38). If the mother is not married, the name of the father shall be listed on the certificate as "not available," unless the mother and the donor of semen have signed a written statement naming the donor as the father. In that case, the donor's name shall be listed on the certificate as the child's father.

1. The written statement described in (e) above shall be made on a form prescribed by the State Registrar.

(f) If the mother is unmarried, the father may be named only if the mother names an individual as father, and the individual meets the conditions of sections 4, 5 or 6 of the New Jersey Parentage Act (N.J.S.A. 9:17-38).

8:2-1.3 Corrections to the birth certificate

(a) Should the married parents of a child be unable to agree on a child's given name(s) at the time of birth (see N.J.A.C. 8:2-1.1(d)(1)), the child shall be named by the parents' completion of a correction form indicating the name(s) chosen. Both parents must affix their signature to the correction form, before the form takes effect. Correction forms are available from the State Registrar or any local registrar.

(b) Once the choice of a child's given name(s) has been made, it may be corrected once, within the first seven years of the child's life, by utilizing the following procedures:

1. If the child whose given name(s) is to be corrected was born to married parents, both parents must sign a correction form indicating the change. If one parent is deceased, only the surviving parent need sign the correction form, so long as documentary proof is submitted to the State Registrar regarding the death of one parent.

2. If the child whose given name(s) is to be corrected was born to an unmarried woman, only the mother need sign a correction form indicating the change.

3. The correction form shall be attached to the original birth certificate of the child, and the given name(s) listed on that correction form shall become the child's legal name.

(c) The given names of an individual may be corrected, if the individual is seven or more years of age, only by the following procedure:

1. The individual, his or her parents, or legal guardian must submit documentary proof indicating that the individual's name, as corrected, had been used by the individual within the first seven years of the child's life. Examples of documentation acceptable as proof include, but are not limited to, baptismal records, census records, school entrance records, or an insurance policy naming the individual as beneficiary.

2. If the documentary proof as required above is unavailable, due to its destruction, and the applicant can prove to the satisfaction of the State Registrar that such documentation was destroyed, the registrar shall accept the earliest available documentation proving that the child has used the name as corrected.

3. If the individual is to be given an additional name (rather than amending an existing name), the registrar will accept any documentation proving that the additional name was used by the individual previously, regardless of when the document was created.

4. The State Registrar is the ultimate judge as to the acceptability of any documentation required in 1. above.

(d) An individual's surname may be changed only by utilizing the following procedure:

1. The individual, or his or her parents, or legal guardian must submit documentary proof indicating that the individual's surname, as corrected, was used by the individual within his or her first year of life. Examples of such documentation include, but are not limited to, an older sibling birth record, the marriage certificate of the individual's parent, or the birth record of an appropriate parent.

2. The State Registrar is the ultimate judge as to the acceptability of any documentation required in 1. above.

(e) A birth certificate will not be amended, if the registrar knows, or has reason to believe, that the information to be corrected was fictitiously provided by the informant to the person responsible for completing the original birth certificate.

1. To obtain a correction of any information on the original birth certificate under (e) above will require issuance of a court order from a court of competent jurisdiction.

(f) If the person responsible for completing the original birth certificate erred in completing the form (or incorrectly filled in information provided by the informant) a duplicate certificate will be issued, with correct information indicated thereon, for up to one year following birth. No duplicate certificate will be issued, if copies of the original birth certificate were previously issued to the child's parent(s)/guardian(s).

1. The burden of proof is on the informant named on the original birth certificate to prove that incorrect information was erroneously, and not fictitiously, provided to the person responsible for completion of the certificate.

8:2-1.4 Informant

(a) The mother of the child shall act as informant, and provide the necessary information to complete the original birth certificate.

1. In the event of the mother's death or incapacity, or if for any other reason the mother is unwilling or unable to provide the necessary information, then,

i. If the mother is married, her husband shall act as informant.

ii. If the mother is unmarried, and another individual has been named as father by the mother, and that individual acknowledges paternity, pursuant to N.J.A.C. 8:2-1.2, then that individual shall act as informant.

iii. If the mother is unmarried, and no father has been named as provided in N.J.A.C. 8:2-1.2, then an individual knowledgeable about the facts surrounding the birth shall act as informant.

2. The informant shall sign either the birth fact sheet or the original birth certificate, thereby certifying that the information provided is accurate and true to the best of the informant's knowledge.

(a)

PUBLIC HEALTH COUNCIL

Chapter IX—State Sanitary Code

Collection, Processing, Storage and Distribution of Blood

Proposed Amendments: N.J.A.C. 8:8-1.2 and 6.2

Proposed New Rule: N.J.A.C. 8:8-5.5

Authorized By: Evelyn Geddes, Chairperson, Public Health Council.

Authority: N.J.S.A. 26:1A-7 and 26:2A-7.

Proposal Number: PRN 1986-488.

A public hearing concerning this proposal will be held on December 8, 1986 at 9:30 A.M. at:

Health and Agriculture Building
Commissioner's Conference Room, 8th Floor
John Fitch Plaza
Trenton, N.J. 08625

Submit comments by December 17, 1986 to:

Samuel D. Thompson, Ph.D.
Director, Clinical Laboratory Improvement Services
Department of Health, Room 405
CN 360
Trenton, N.J. 08625-0360

The agency proposal follows:

Summary

These proposed rules are promulgated pursuant to N.J.S.A. 26:2A, known as the Blood Bank Licensing Act. All establishments which handle human blood or blood components and which participate in the collection, processing, donor and recipient testing, storage and distribution are subject to these rules. The Department of Health proposes to amend the existing rules to include screening procedures for Acquired Immune Deficiency Syndrome (AIDS). A new Subchapter 2 has been incorporated to address this issue. With the exception of Subchapter 6, Processing, no changes have been made to existing Subchapters 2 through 10, other than the necessary recodification. The current Subchapter 6 (Processing), recodified to Subchapter 7, has been revised to include Human Immunodeficiency Virus (HIV) testing under N.J.A.C. 8:8-7.2(b)(3).

In April 1983, the Department recommended all blood banks follow the guidelines released by the Office of Biologics, Food and Drug Administration regarding decreasing the risk of transmitting Acquired Immune Deficiency Syndrome from blood and plasma donors. Basically the recommendations were: (1) provide educational material relating to AIDS so that donors would know when they were in a high risk group; (2) screen donors by history for the early signs and symptoms of AIDS and AIDS related conditions; (3) advise donors that members of high risk groups should voluntarily exclude themselves from donating.

The Department sent interim recommendations and policy guidelines regarding HIV (HTLV-III) antibody testing to all blood banks in June 1985. These guidelines recommended that blood banks test each unit of blood for HIV antibody by an FDA approved procedure and all negative units be labeled regarding the results of the test. Definition and disposition of reactive units were also outlined. The methods of donor notification and counseling were discussed but guidelines relative to these topics were not issued. These recommendations contained a commitment to effectuate essentially permanent rules after additional insight had been gained.

At this time, the Department considers it appropriate to incorporate the guidelines and some additional criteria into existing blood bank rules. Although most blood banks are already complying with recommendations on a voluntary basis, rules would standardize industry practices, thereby providing a more complete and timely assurance of the continued safety of the state's blood supply.

The rules are being amended to require compliance with the Department's 1983 and 1985 recommendations. The state is proposing to use the general term "a serologic test for HIV" in the rules so that any improved test developed in the future may be put into use immediately upon approval by the Department. Blood establishments would be required to maintain a permanent record identifying those donors whose blood was determined to be reactive by a serologic test for HIV.

Blood and blood components that are reactive or collected from a donor known to be reactive, would not be allowed to be used for transfusion. The rules would require all blood donors be given specific written notice prior to donation regarding AIDS screening requirements, and to sign a written confirmation of this notification. Blood banks would be required to use a confidential method of self deferral for donors. Donor notification and counseling would be required when there was serologic evidence of the probable causative agent of AIDS. The rules allow reactive test result, notification and counseling guidelines to be developed by the Department. These guidelines have not been incorporated into the regulations so that the flexibility necessary to implement change in these areas would be maintained. Participation in a proficiency program approved by the state has been required for blood banks performing the serologic test for HIV. The proposed rules require that records for the AIDS screening requirements be maintained in a confidential manner.

Social Impact

Human blood and blood components are used as a frequent and necessary therapeutic procedure in medical practice. Only a small fraction, slightly more than two percent of persons with AIDS, are believed to have contacted the illness from blood and blood components carrying HIV. However, the potential for blood and blood components to transmit HIV has caused great concern within the Department, the blood bank community and among the users and recipients of blood and blood components.

The purpose of these rules is to assure that both donors and recipients are provided with safe conditions and that all blood banks and blood components are safe for human use. Institution of the AIDS screening requirements proposed in these rules should decrease the risk of trans-

mitting AIDS by transfusion by standardizing the methods used for screening. A beneficial effect of the rules should be to reassure and restore the public's confidence in the blood supply.

Consequences resulting from donor notification of reactive serological tests for HIV cannot be accurately determined at this time. However, it is believed that institution donors counseling may alleviate some of the negative impact. It is believed notification of donors will have beneficial long term effect in preventing further transmission of the disease.

Economic Impact

Approximately 30 blood banks of the 135 licensed banks will be affected by this rule. The majority of these establishments are already meeting these requirements on a voluntary basis, and will, therefore, be unaffected by the requirements. The major direct cost element, the cost of conducting the serological tests for HIV, is expected initially to be about \$3.00 per test for plasmapheresis centers and about \$3.00 to \$5.00 per test for blood banks. It should be noted, however, that these costs vary widely depending on the organization's size and operational overhead. Current indications suggest higher test costs for small volume testing centers. The state estimates that the proposed rule would require about 347,000 serologic tests for HIV per year: 306,000 on units of blood and 41,000 on units of source plasma. Other direct costs of the testing program include the cost of retesting blood that has ambiguous or reactive test results, the cost of disposing of, and replacing discarded blood and modest costs associated with labeling changes. Studies have shown that initially less than one percent of blood will have positive test results and that supplemental tests will reduce this figure to 0.03 to 0.04 percent.

Indirect cost resulting from these tests may be substantial. Although indirect costs cannot be quantified at this time, they include the costs of additional testing that may occur as part of the medical evaluation, notifying and counseling persons with positive test results, and the increased medical costs for followup of persons with positive test results. The Center for Disease Control has estimated that the life time cost of treating an AIDS patient is approximately \$150,000. These medical costs will be offset by the reduction in medical costs for those who are spared from AIDS as a result of the testing program.

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

8:8-1.2 Definitions

...
"HIV" means the Human Immunodeficiency Virus, formerly known as the Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus, (HTLV-III/LAV).
...

8:8-5.5 AIDS screening requirements

(a) All blood and blood components collected in New Jersey are subject to the requirements of this section.

(b) Educational material must be given to the blood donors prior to the collection of blood which will allow donors to determine whether or not they have engaged in high risk behavior.

(c) All donors including those utilized in hemapheresis, must be screened by history for the early signs and symptoms of AIDS.

(d) The collecting agency must ensure that all blood and blood components collected in New Jersey, including those obtained from hemapheresis, be screened for HIV as specified in N.J.A.C. 8:8-7.2(b)3. Laboratory tests not performed by the collecting facility must be referred to a blood bank or laboratory approved to perform HIV testing by the Department or which possesses a federal interstate license to perform HIV testing. It shall be the responsibility of the receiving blood bank to assure any blood brought in from out-of-state sources is tested for HIV. Autologous blood need not be tested if the blood is used only for that purpose. If the blood is used for homologous transfusion, it must be tested as all other blood and blood components.

(e) Blood and blood components that are positive, as currently defined by the Department, to a serologic test for HIV or collected from a donor known to be positive to a serologic test for HIV shall either be discarded or used for research purposes only.

(f) All blood and blood components including those obtained from hemapheresis shall be labelled relative to HIV testing.

(g) Prior to a donation of blood or blood component each donor shall be notified in writing and shall have signed a written statement confirming that:

1. The blood or blood components shall be tested for evidence of the probable causative agent of acquired immune deficiency syndrome.

2. Donors found to have serologic evidence of HIV shall be placed on a confidential internal deferral list and may, if deemed appropriate by the Department, a confidential statewide deferral list.

3. The donor shall be notified of the test results in accordance with requirements described in (i) below.

4. Blood or blood components shall not be donated for transfusion purposes by a person if the person has reason to believe that he or she has engaged in high risk behavior.

(h) A blood bank or plasma center shall incorporate a confidential voluntary means of self deferral for donors.

(i) All blood banks must notify the donor of results when there is serologic evidence of the probable causative agent of AIDS as currently outlined by the Department.

(j) Reative donors must be notified and counseled in person. Every effort shall be made to accomplish face to face notification and counseling.

(k) Blood banks must maintain records pertaining to all HIV requirements and test results. These records must be kept in a confidential manner.

(l) Testing facilities shall participate in a proficiency program acceptable to the Department.

8:8-6.2 Processing

(a) (No change.)

(b) All laboratory tests shall be made on specimens of blood taken from the donor at the time of phlebotomy in proper identified tubes.

1.-2. (No change.)

3. Human immunodeficiency virus:

i. Each donation of blood or blood component shall be tested by serologic test(s) for HIV approved for such use by the Department.

ii. The blood or blood components shall not be used for transfusion purposes unless results of test(s) are clearly negative, except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.

iii. In instances where untested blood or components are transfused, the attending physician shall attest in writing to the existence of an emergency and if the test is subsequently positive, the recipient's physician must be notified.

Renumber existing 3.-6. as 4.-7. (No change in text.)

(a)

**PUBLIC HEALTH COUNCIL
ENVIRONMENTAL HEALTH SERVICES**

**Chapter IX—State Sanitary Code
Public Recreational Bathing**

**Proposed Amendments: N.J.A.C. 8:26-3.9, 5.6, 5.7,
5.9, 7.6 and Appendix**

Authorized By: Evelyn Geddes, Chairperson, Public Health Council.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1986-489.

A public hearing concerning this proposal will be held on December 8, 1986 at 9:30 A.M. at:

State Department of Health
Health-Agriculture Building
Commissioner's Conference Room, 8th Floor
John Fitch Plaza
Trenton, N.J. 08625

Submit comments by December 17, 1986 to:

Arhtur Verpent
Chief, Environmental Services
120 So. Stockton St.
CN 364
Trenton, N.J. 08625

The agency proposal follows:

Summary

N.J.A.C. 8:26 requires that within three years of promulgation of this chapter, a swimming pool, hot tub or spa, when open for use, shall be under the supervision of a certified pool operator. The role of the certified pool operator was more clearly defined in 8:26-5.1(c) for swimming pool supervision during the final adoption phase of this new rule. The reason for the amendment to 8:26-5.6(a)2 is to provide the same clarification

for hot tubs and spas that was provided for swimming pools. Adoption of this amendment will provide uniformity to the role of the certified pool operator at swimming pools, hot tubs and spas.

N.J.A.C. 8:26 also requires that certain lifesaving equipment be present. The purpose of this requirement is to provide each recreational bathing place with the minimal equipment that is applicable to their type of facility. During the final adoption phase of this new rule, a comment was received to include a 600 foot 1/4 inch poly rope at each lifeguard station or ocean bathing beaches. The reason for this amendment to 8:26-5.9(a)2 is to clarify the type of rope and the type of facility that should use this specific piece of equipment. Adoption of this amendment would then clearly define the lifesaving equipment for bathing beaches.

Social Impact

The proposed amendments will be most beneficial to the owners and operators of public recreational bathing places. For them, it will clearly define the role of the certified pool operator at a hot tub or spa and clearly establish the type of facility that is required to have a 600 foot rope as part of their lifesaving equipment. The public will enjoy the use of a hot tub or spa that is under the supervision of a certified pool operator who knows his defined role. The public that enjoys ocean bathing beaches can feel safe knowing they are provided with the proper lifesaving equipment.

Economic Impact

The proposed amendments will serve to clarify certain subsections of the new rule and as such should have little economic impact. With the exception of ocean bathing beaches, the owner and/or operators of other bathing beaches will benefit from the saving of not purchasing a 600 foot rope for each lifeguard station. The clarification provided in these proposed amendments will not in any way jeopardize the health and safety of those using New Jersey's recreational bathing facilities and at the same time will eliminate unnecessary operating costs which undoubtedly would have been passed on to the consumer.

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

8:26-3.9 Overflow collection system

(a)-(f) (No change.)

[g] The hydraulic capacity of the overflow system shall be capable of handling 100 percent of the circulation flow.]

8:26-4.8 Circulation systems

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

(d) Filters shall be designated to maintain hot tub or spa water under anticipated operating conditions in accordance with (a) above.

1.-3. (No change.)

4. Filters shall meet such safety and performance standards as will provide safe operation which is not hazardous to the operator or maintenance personnel. The [National Spa and Pool Institute (NSPI) and/or] National Sanitation Foundation (NSF) standards covering filters are recommended. (Information concerning these standards can be obtained from [NSPI, 2111 Eisenhower Avenue, Alexandria, Virginia 22314 and/or] NSF, National Sanitation Foundation, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, Michigan 48106.)

5.-6. (No change.)

8:26-5.6 Hot tubs and spas

(a) Supervision of a hot tub or spa, when open for use, shall be provided by a designated adult supervisor, who is knowledgeable of these rules and shall be responsible for all phases of the operation, and as follows:

1. At least one [adult] **person** currently certified in standard first aid and cardiopulmonary resuscitation (CPR) shall be present at all times when the spa is in use. These certifications shall be from an organization recognized by the New Jersey State Department of Health. (See Appendix)[.]

2. Within **three** years of the promulgation of this chapter, the **maintenance and mechanical operation** of a hot tub or spa, when open for use, shall be under the supervision of a certified pool operator. The certification of a pool operator shall be from an organization acceptable to the New Jersey State Department of Health. (see Appendix)[.]

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

8:26-5.7 Bathing beaches

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

(c) A bathing beach open for use shall establish and post hours of operation and shall be under the management of a designated adult supervisor who is familiar with these regulations and who shall be respon-

sible for all phases of the operation, during said hours, which shall include a reasonable time period, such as 9:00 a.m. to 5:00 p.m., or similar time period, reflecting hours of maximum use.

1. A lifeguard training program, certified by the United States Lifesaving Association, [P.O. Box 366, Huntington Beach, California 92648] **Office of Certification, Mid-Atlantic Region, P.O. Box 1, Avon, N.J. 07717**, shall be established by the owner or operator for ocean and tidal waters.

2.-8. (No change.)

(d). (No change.)

8:26-5.9 Lifesaving equipment for bathing beaches

(a) Lifesaving equipment shall be provided in case of an emergency. The equipment shall include, but not be limited to:

1. (No change.)

2. A 600 foot 1/4 inch poly rope with [quick-release mechanisms] **brass swivel snap hooks**, which shall be provided at each lifeguard station **for ocean bathing beaches**;

3.-8. (No change.)

8:26-7.6 Microbiological water quality standards for swimming pools and wading pools

(a) (No change.)

(b) Total coliform densities:

1. (No change.)

2. Standard: If the [M]membrane [F]filtration [T]technique is used, the number of coliform organisms shall be less than 1 colony per 100 milliliter sample.

i. (No change.)

APPENDIX

The following organizations are currently recognized by the New Jersey State Department of Health to certify the personnel **and/or program** required in Subchapter 5 of these regulations.

First Aid Certification

American Red Cross

CPR Certification

American Red Cross

American Heart Association

Lifesaving/Lifeguarding Certification

Swimming Pools and Lake Bathing

American Red Cross—Advanced lifesaving certificate
Lifeguarding certificate

YMCA—Boy Scouts of America—

BSA Lifeguard certificate

Advanced lifesaving certificate

Lifeguarding certificate

Ocean and Tidal Waters

United States Lifesaving Association

P.O. Box 366

Huntington Beach, CA 92648

Office of Certification

Mid-Atlantic Region

P.O. Box 1

Avon, N.J. 07717

Certified Pool Operators Certification

YMCA

National Swimming Pool Foundation

10803 Gulfdale

Suite 300

San Antonio, Texas 78216

24 UNIT FIRST AID KIT CONTENTS

2 Units—1 inch Adhesive Compress

2 Units—2 inch Bandage Compress

2 Units—3 inch Bandage Compress

2 Units—4 inch Bandage Compress

1 Unit—3 inches by 3 inches Plain Gauze Pads

2 Units—Gauze Roller Bandage

1 Unit—Eye Dressing Packet

4 Units—Plain Absorbent Gauze—1/2 square yard

3 Units—Plain Absorbent Gauze—24 inches by 72 inches

4 Units—Triangular Bandages

1 Unit—Tourniquet—Scissors—Tweezers

(a)

DIVISION OF HEALTH FACILITIES EVALUATION**All Health Care Facilities****Employees Physical Examinations; Child Abuse and Neglect****Proposed Amendments: N.J.A.C. 8:31-26.3 and 26.4**

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

Proposal Number: PRN 1986-486.

Submit comments by December 17, 1986 to:

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

The agency proposal follows:

Summary

N.J.A.C. 8:31-26 contains a series of licensure regulations governing certain characteristics pertaining to ownership and operation of health care facilities as well as particular management and personnel practices within health care facilities. Also included in this subchapter is a section on licensure fees charged by the Department. Subchapter 26 was established in order to group together licensure regulations which commonly apply to all types of health care facilities in the State of New Jersey. As the types of facilities encompassed under the regulations have grown in diversity, exceptions to these rules have increased as well. For this reason, the Department contends that changes in the format of organization of these regulations are appropriate.

N.J.A.C. 8:31-26.3 and 26.4 contain licensure rules for all health care facilities regarding certain specific requirements. N.J.A.C. 8:31-26.3 delineates the requirements for physical examinations (health evaluations) for employees of health care facilities. N.J.A.C. 8:31-26.4 requires health care facilities to establish and implement written policies and procedures for reporting all diagnosed and/or suspected instances of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.

The Department proposes a new rule, N.J.A.C. 8:42, to replace the current rule N.J.A.C. 8:42-1, for the licensure of home health agencies. (See proposal this Register.) As part of the proposed rule, in order to make it more useful to providers and surveyors and to eliminate cross-referencing to other sections of the New Jersey Administrative Code, the text of N.J.A.C. 8:31-26.3 and 26.4 has been included in the proposed new rule, N.J.A.C. 8:42. Editorial changes were made for clarification without changing the intent of the regulations. Since N.J.A.C. 8:31-26.3 and 26.4 have now been incorporated into the proposed N.J.A.C. 8:42, Manual of Standards for Licensure of Home Health Agencies, it is no longer necessary to include home health agencies in N.J.A.C. 8:31-26.3 and 26.4. Therefore, N.J.A.C. 8:31-26.3 and 26.4 are being amended to exclude home health agencies.

Social Impact

The intent of the rule, N.J.A.C. 8:31-26.3, regarding employee physical examinations (health evaluations) is to ensure the health, safety, and welfare of patients in health care facilities. Physical examinations (health evaluations) and the screening tests required in the rules help to ensure that employees are free from communicable diseases that could be transmitted to patients.

The intent of the rule, N.J.A.C. 8:31-26.4, regarding child abuse and/or neglect is to ensure that health care facilities continue as an important element in the implementation of N.J.S.A. 9:6-1 et seq., which mandates the reporting of diagnosed and/or suspected instances of child abuse and/or neglect to the Division of Youth and Family Services, New Jersey State Department of Human Services.

The proposed amendments of N.J.A.C. 8:31-26.3 and 26.4 will not alter the social impact of these rules since the rules will continue in effect and will continue to apply to home health agencies. The elimination of cross-referencing in the proposed new rule N.J.A.C. 8:42 will facilitate the use of the Manual of Standards for Licensure of Home Health Agencies by Department staff and providers.

Economic Impact

N.J.A.C. 8:31-26.3 has been in effect since March 7, 1983, and June 20, 1983. The current rule is a revision of a previous rule that became effective on October 9, 1980, which also required rubella testing. The

greatest economic impact on home health agencies and employees would have been felt when the rules were first required since all employees had to be tested. Since that time, only new employees need be tested so that the economic impact on the facilities and employees should be lessened. There is no discernible economic impact of N.J.A.C. 8:31-26.3 or N.J.A.C. 8:31-26.4 upon the Department since these rules are already in effect.

The Department contends that the social impact of protecting the health, safety, and welfare of patients, employees, and the public outweighs any economic impact of the proposed amendment of these rules.

The proposed amendments to N.J.A.C. 8:31-26.3 and 26.4 will not change the economic impact of these rules since the rules will continue in effect and will continue to apply to home health agencies under N.J.A.C. 8:42. The proposed amendments will permit a more practical, efficient, and cost-effective application of the proposed new rule for home health agencies.

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

8:31-26.3 Employee physical examinations (health evaluations)

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

(d) The standards herein shall not apply to ambulatory care facilities[.] **or to home health agencies.**

8:31-26.4 Child abuse and neglect

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

(c) The standards herein shall not apply to the following health care facilities:

1. Long-Term Care Facilities;
2. Non-Residential Medical Day Care Facilities;
3. Residential Health Care Facilities;
4. Drug Treatment Facilities;
5. Ambulatory Care Facilities[.];
6. **Home Health Agencies.**

HOSPITAL REIMBURSEMENT

For proposals numbered PRN 1986-484 and 485, submit comments by December 17, 1986 to:

Pamela S. Dickson, Director
Hospital Reimbursement
New Jersey Department of Health
CN 360, Room 600
Trenton, NJ 08625-0360

(b)

Procedural and Methodological Regulations**Financial Elements and Reporting: Uncompensated Care****Proposed Amendments: N.J.A.C. 8:31B-3.41, 4.15, 4.38 and 4.39**

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b., and 26:2H-18d.

Proposal Number: PRN 1986-485.

The agency proposal follows:

Summary

Uncompensated care in the Chapter 83 system is comprised of two elements: charity care and bad debts. Under the current regulations, bad debts are defined as patient accounts written off during the year plus a bad debt provision which is an estimate of the percent of current accounts receivable which will become bad debts.

The Department proposes to redefine bad debts to include only that amount of patient accounts actually written off after appropriate collection procedures have been followed. This tabulation of actual bad debts will be used to calculate uncompensated care amounts.

Social Impact

Using actual bad debt write-offs rather than estimates of "booked" bad debts should provide for greater consistency and accuracy in the reimbursement process. The uncompensated care audit will be enhanced by the Department's ability to track bad debt amounts back to the original patient bill.

In addition, the change will improve finality and prospectivity of uncompensated care amounts. Using actual bad debts should improve the Department's ability to audit uncompensated care amounts in a more comprehensive and timely manner.

Accessibility to health care will be further insured by this process. More accurate tabulation of current patient account information will improve the reimbursement system's ability to identify the bad debt population's characteristics. This will add to the Department's ability to focus attention on the charity care population.

Economic Impact

The most significant economic impact of the proposed change involves the timing of payments for bad debts. In the first year of implementation (1987), there should be a decrease in bad debts because a provision for that year's bad debts had been included in a previous year. After the first year, bad debt figures should include all actual bad debts.

Hospitals may feel a timing impact in certain cases. End-of-year patients accounts retained past the regulatory 120 day minimum may have to be included in a subsequent year's bad debts.

The proposed amendment does not alter the hospital's present responsibility (under N.J.A.C. 8:31B-4.40) to make reasonable efforts to collect written-off accounts and to retain accounts where there is a likelihood of recovery, unless collection efforts are too costly in relation to the recovery.

The proposed amendments may ultimately reduce the cost of bad debts to all payers by providing a more accurate and verifiable method of identifying and quantifying the specific patient accounts currently subsumed within the bad debt provision.

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

8:31B-3.41 Uncompensated care

(a) (No change.)

(b) Uncompensated care will be apportioned to all payors or payor classes based upon each payor's or class of payors' percentage of current cost base year gross charges across all New Jersey hospitals receiving Commission approved Schedules of Rates as reported to the New Jersey State Department of Health. Based upon the reports, the Commissioner will propose to the Commission percentage responsibilities for actual bad debts and indigent care for each class of payors. Commission approved percentages based upon the percentage of gross charges relative to the payors total charges at the respective institutions will be applied to uncompensated care requirements determined in N.J.A.C. 8:31B-3.38(b) to determine payor's or class of payor's uncompensated care requirements for each hospital. Payments established pursuant to N.J.A.C. 8:31B-3.58 shall be adjusted to reflect each payor's or class of payors' proportion of estimated uncompensated care.

8:31B-4.15 Revenues and deductions from revenue

(a) In many instances, the hospital receives less than its full charges for the services it renders. This necessitates the reporting of both the gross revenue and revenue "adjustments" resulting from failure to collect full charges for services provided. These revenue adjustments are called Deductions from Gross Revenue. The specific deductions required for reporting Revenue Related to Patient Care, as defined in N.J.A.C. 8:31B-4.32 are defined in (a)1-11 of this section. Any individual allowance must be reported in only one [of the 10] deduction categories [and three] or contra categories (although individual transactions may be distributed among several if appropriate):

1.-9. (No change.)

10. **Actual Bad Debt [provision:] means the total of patient accounts properly written off after appropriate collection procedures have been followed, net of recoveries of previously written off accounts.**

i. These deductions represent the hospital's [estimate of the] actual amount of charges for Services Related to Patient Care during the reporting period (not otherwise accounted for as a deduction from Gross Revenue Related to Patient Care) which will not be received, net of recoveries of previously written-off accounts. Collection agency expense should not be included as a deduction from revenue but rather should be reported as operating expense and Cost Related to Patient Care as defined in N.J.A.C. 8:31B-4.32 and 4.118.

ii. [The] **Actual bad debt [provision]** explicitly excludes deductions for contractual allowances, [indigent patients] **charity care**, courtesy care, medical denials, and nursing home placement medical denial cases. [Estimates of the bad debts incurred for the reporting period are to be reconciled to actual bad debts incurred for the reporting period and reconciled in the next reporting period's bad debt provision.]

11. (No change.)

(b) (No change.)

8:31B-4.38 Uncompensated care

(a) Uncompensated care include the reasonable cost of the following:

1. **Actual [Bad] bad debts**, provided appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40 are followed and the account is at least 120 days old[;], **net of recoveries of previously written off accounts.**

2. (No change.)

3. **But excluding [medicaid] medical denials.**

(b) Uncompensated care shall be determined prospectively as the cost associated with deductions from Revenues Related to Patient Care for Charity Care, net of grants and other funds available for the medically indigent, and for a hospital's **actual Bad Debts [Provision]** provided appropriate collection procedures have been followed.

8:31B-4.39 Determination of uncompensated care factor

(a) In order to prospectively include a factor for Uncompensated Care, such shall be measured for the Current Cost Base pursuant to N.J.A.C. 8:31B-4.131 as follows:

1. The sum of the Deduction for Charity Care and **actual Bad Debts [Provision]** for each reporting period shall be expressed as a fraction of Gross Revenue Related to Patient Care for each year. This ratio shall be defined as the hospital's uncompensated care factor.

2.-7. (No change.)

8. In distinguishing Bad Debts from Charity, hospitals shall follow Hospital Financial Management Association Principles and Practices Board Statement 2. [With respect to any historical data to be reported to the Department of Health, wherever historical records are unavailable, conservative, reasonable estimates shall be made. Nevertheless,] Total Deductions from Gross Operating Revenue for the Current Cost Base year must agree with the hospital's financial statement for the same reporting period.

(a)

Procedural and Methodological Regulations Cost/Volume Methodology

Proposed Amendment: N.J.A.C. 8:31B-3.73 and Appendix IX

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b., and 26:2H-18d.

Proposal Number: PRN 1986-484.

The agency proposal follows:

Summary

The Department proposes to amend Appendix IX of the Procedural and Methodological Regulations to change the cost/volume methodology for inpatient Direct Patient Care with regard to the treatment of negative marginal revenue, the treatment of any revenue resulting from a Length of Stay adjustment, the treatment of Same-Day Surgery revenue and cases, the treatment of newborn revenue and cases and the treatment of outlier cases. The methodology will no longer restore any negative marginal revenue. Under the proposed amendments, marginal revenue will include any revenue resulting from a Length of Stay adjustment (if the hospital elects to accept that adjustment). Same-Day Surgery cases and revenues will be excluded from the volume/intensity calculations. Newborn cases and revenues will be included in the volume and intensity calculations. Outlier, as well as inlier revenues will be used in calculating any change of intensity between the base and rate years. Further, the Department proposes to use discharges rather than admissions, in all volume and intensity calculations.

Social Impact

The major social impacts of the proposed changes are:

The calculation of volume/intensity changes will more accurately reflect actual changes in inpatient volume and intensity. This improved accuracy will aid the Department in ensuring that the cost/volume methodology calculation is consistent with the intent of Chapter 83, which requires cost containment and appropriate compensation for high quality, efficiently delivered health care services.

The inclusion of any revenue resulting from a Length of Stay Adjustment in rate-year revenue will ensure that the measure of marginal revenue reflects all patient care revenue in both base and rate years. The inclusion of revenue from newborn discharges in both rate and base years will also result in marginal revenue being calculated accurately. The

exclusion of Same-Day Surgery cases and revenue, the inclusion of newborn cases and revenue, and the inclusion of outlier revenue in the calculation of volume/intensity shifts will ensure an accurate measure of changes in inpatient volume and intensity. All of these changes from the current system result in more accurately reflecting actual inpatient revenue intensity, and volume shifts.

Ending the practice of restoring some or all revenue under certain conditions when rate-year revenue falls below base-year revenue will bring Departmental policy more in line with the cost containment requirement of Chapter 83. Further, ending this practice will give greater recognition to the Chapter 83 requirement that financial solvency be dependent on institutions' being properly utilized as well as efficient. Data for 1983 on the application of the cost/volume methodology indicate that six hospitals would have been negatively impacted by this change; the occupancy rates of four of the six affected hospitals were below 60 percent. None of the affected hospitals are sole providers for their communities. If the utilization of other facilities reaches such low levels, it would be inconsistent with Chapter 83's requirements of proper utilization to restore lost revenue to such hospitals.

Economic Impact

The proposed elimination in certain cases of the restoration of negative marginal revenue will save the state all-payer system significant dollars. In 1982, the cost/volume adjustment resulting from partial restoration of falling revenues cost \$1.9 million statewide. For 1983 the cost was \$1.0 million with 89.1 percent of hospital adjustments complete. Using data from these two years it can be projected that about \$1.4 million (base-year dollars) per year can be saved by elimination of this protection.

Under present regulations, Earned Marginal Revenue (the Marginal Revenue which a hospital is entitled to retain) does not reflect the Length of Stay (LOS) adjustment when volume is constant among DRG's. In prior years, intensity was, in part, a result of shifts in both Length of Stay and case-mix. However, the Length of Stay adjustment uses rate-year volume (as among DRG's), but assures the same inlier/outlier distribution of cases within DRG's as in the base-year. Exclusion of the Length of Stay adjustment from Marginal Revenue would result in artificially depressing marginal revenue, despite intensity increases due to shifts in Length of Stay.

The total elimination of Same-Day Surgery patients and revenues from the volume/intensity calculation will mean that this calculation is no longer artificially inflated, but rather reflects only real changes in volume and intensity among inpatients. Currently, hospitals' Same-Day Surgery revenues are not included in marginal revenue and, therefore, not subject to any adjustment due to changes in volume/intensity and this will continue unchanged, thus preserving an economic incentive for performing Same-Day Surgery. Hospitals, however, will no longer be able to retain greater amounts of inpatient marginal revenue as a result of the inflated cost/volume calculation that currently results from the inclusion of Same-Day Surgery patients and revenues. All Same-Day Surgery revenue will continue to be retained but the amount of inpatient marginal revenue retained will depend on actual shifts of volume and intensity among inpatients. The reimbursement system will no longer have to bear the cost of increasing inpatient reimbursement simply because a hospital is providing Same-Day Surgery services.

A major component of the cost/volume methodology is the determination of volume/intensity changes. Volume/intensity change is the product of volume change times intensity change. The proposed regulation will define volume change as the ratio of rate-year to base-year discharges exclusive of Same Day Surgery but inclusive of newborns and outliers for both years. This would serve to apply the cost/volume formula consistently since marginal revenue and intensity shifts are based on valid UB-PS records (discharge basis).

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

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of [acutal] **actual** patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill-Patient Summaries (inpatient) or N.J.A.C. 8:31A-10.7, whichever is appropriate; determination of **the actual case-mix as determined by the same GROUPEUR used to established rates[.];** and calculation of the actual economic factor[.]; the Commissioner shall determine consistent with the Commissioner's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation of:

- 1. Variable financial elements:
 - i. (No change.)

- ii. At reconciliation, adjustments will be made to the marginal revenue associated with increases [and decreases] in volume and case-mix according to the methodology detailed in Appendix IX.

- iii. (No change.)
- 2.-4. (No change.)

APPENDIX IX

Volume Variability Adjustment

At final reconciliation the volume **variability** adjustment applies only to inpatient [direct patient care] **Direct Patient Care** revenues. Outpatient and [same day surgery] **Same-Day Surgery** Direct Patient Care revenues remain 100 percent volume variable. The compensation [costs] **portion** of [Inpatient] Direct Patient Care **revenue** [are] is considered the [Fixed] portion of [the] marginal revenue **which is not 100 percent volume variable.** [Thus the percentage] **The portion of Direct Patient Care revenue** is that related to non-compensation (**supply**) costs remains 100 percent volume variable. The following section describes how changes in volume and intensity are measured and then used to calculate the amount of marginal revenue the hospital may retain.

[The terms Marginal Revenue and Incremental Revenue are used interchangeably in the methodology.] Marginal revenue equals the difference between:

$$\text{Rate Year Revenue (Rate Year Inlier + Reasonable Outlier Revenue in Base Year Dollars + Any Revenue from a Length of Stay Adjustment) and}$$

$$\text{Base Year Revenue (Base Year Inlier + Outlier Revenue in Base Year Dollars)}$$

The methodology is concerned with adjusting this marginal revenue in order to arrive at [earned marginal revenue] **Earned Marginal Revenue.** Earned [marginal revenue] **Marginal Revenue** is that portion of marginal revenue due the hospital to cover the actual costs of treating a more intense or larger patient load.

Determining Volume/Intensity Changes

A. The volume base year is the same as the base year for the preliminary cost base [year]. Hospital-specific [direct patient care] **Direct Patient Care** revenues and [admissions] **discharges** in the base year serve as the starting points for measuring volume changes.

B. The [admissions] **discharges** change component of the total volume/intensity change calculation is the ratio of rate-year to base-year [admissions] **discharges.['] Inlier, outlier, and newborn discharges will be used in the base-year and rate-year discharge calculations. Same-Day Surgery cases, and discharges resulting from medically unnecessary admissions will not be used in the base-year and rate-year discharge calculation. Discharges resulting from medically unnecessary admissions are discharges resulting from admissions determined to be unnecessary by a certified Utilization Review Organization.**

C. Determination of the intensity change component of the total volume intensity change calculation is made as follows:

1. Establish a hospital-specific weighted average payment rate for the base year and for the rate [base] year utilizing base-year payment rates. [Only inlier] **Inlier and outlier** revenues and cases (**excluding Same-Day Surgery revenues and cases**) are used to calculate the weighted average payment rate in the base and rate years.['] **Total inpatient revenue for the rate year is expressed in base-year dollars.**

$$\text{[Weighted Average Payment Rate = } \frac{\text{Case-mix X (Schedule of Inlier Rates)[']}{\text{Total Inlier Cases}}]$$

$$\text{Weighted Average Payment Rate = } \frac{\text{Case-mix X Payment Rate in Base Year dollars}}{\text{Total Cases}}$$

2. Determine the ratio of rate-year to base-year weighted average payment rates.

$$\text{[i.e. } \frac{265.00}{200.00} = 1.325]$$

D. [Determining] **Determination of** the overall average percentage change in volume/intensity between the base and rate years. This is calculated as follows:

$$\left(\frac{\text{Rate-Year [Admissions] Discharges}}{\text{Base-Year [Admissions] Discharges}} \times \frac{\text{Rate-Year Weighted Avg. Payment Rate}}{\text{Base-Year Weighted Avg. Payment Rate}} \right)$$

[Inlier, outlier, and SDS admissions will be used in the base year and rate year admission calculations. Newborn admissions and medically unnecessary admissions will not be used in the base year and the rate year admissions calculations. Medically unnecessary admissions are those admissions determined to be unnecessary by a certified utilization review organization.]

[SDS admissions and revenues will be included in the calculation of the base-year weighted average payment rate. SDS admissions and revenues are not included in the calculation of the rate year weighted average payment rate.]

[The total inpatient inlier revenue rate year is expressed in base-year dollars, i.e.,

Base Year Total Inlier Revenue = Base Year Cost/Cost X Base Year Case-Mix

Rate Year Total Inlier Revenue = Base Year Cost/Cost X Rate Year Case-Mix.]

Upside [and Downside] Volume Shifts

A. (No change.)

B. For volume [changes of between] **increases greater than or equal to 0 percent but less than [and] 10 percent** between the base and rate years [in either direction, then

1. The hospital will receive the full [variable cost proportion] **supply portion** of any marginal revenues it receives in the rate year, plus an increasing percentage of the [fixed] **compensation** portion of marginal revenue[, if volume is increasing].

[2. The hospital will receive a decreasing fraction of the fixed portion of any rate year revenue that has been lost due to a volume downturn.]

C. For volume/intensity [changes] **increases** equal to or greater than 10 percent in the period between the base year and a given rate year, [then

1. If volume is increasing,] the hospital may keep all of the marginal revenue it gains.

[2. If volume is decreasing, the hospital may not recover any of the revenue it loses.]

D. The [earned marginal revenue] **Earned Marginal Revenue** of the hospital is the [adjusted] marginal revenue **adjusted in accordance with the Volume Variability Adjustment** and is a function of the [variable and fixed] costs of treating more patients or a more [acute] **intense** case-mix.

The [earned marginal revenue] **Earned Marginal Revenue** of a hospital, if it has undergone an overall [percentage change] **increase** in volume/intensity [between] **greater than 0 percent but less than [and] 10 percent** will equal:

1. (No change.)

2. A variable percentage of the employee compensation revenue. **(This is the revenue related to non-physician salaries and fringe benefits).** The percentage of the compensation portion of marginal revenue which the hospital retains is calculated in accordance with section E below. [(Revenue related to non-physician salaries and fringes).]

E. For volume/intensity increases [between] **greater than 0[%] percent [and] but less than 10 percent**, the following [calculation] **equation** is used to determine how much marginal revenue may be kept by the hospital as [earned marginal revenue] **Earned Marginal Revenue**:

$$\begin{aligned} \text{[Earned Marginal Revenue]} &= 100\% \text{ of the} \\ &= \text{Supply Revenue} + \text{A variable \% of Compensation Revenue} \pm \\ &= (\text{Supply \%}) \times (\text{Total Incremental Revenue}) \end{aligned}$$

(Variable % of Compensation) x (Compensation %) x (Total Incremental Value)

This relationship can be expressed by the following equation:]

$$y = (m)(x) + (b)(f)(x)$$

where

y = marginal revenue due the institution [(earned marginal revenue)] **(Earned Marginal Revenue)**

m = average [variable] **supply** cost percentage for the hospital's **Inpatient Direct [Inpatient] Patient Care** cost centers (supply costs as a percentage of total [direct inpatient care] **Inpatient Direct Patient Care** costs).

x = total marginal inpatient revenue received by the hospital in the rate year [(a function of volume/intensity changes)]

b = $\frac{(\text{Total percent change in volume}) / (\text{intensity between base and rate years})^2}{(10)^2}$

f = average [fixed] **compensation** cost percentage for the hospital's **[Direct Inpatient] Inpatient Direct Patient Care** cost centers

Example: If the rate-year is 1982, and the base-year is 1979, if the total [volume change as measured by the] volume/intensity [and admissions measures] **change** is 6 percent between the base year and rate years, and if

$$\begin{aligned} m &= 40\% \text{ percent} \\ f &= 60\% \text{ percent} \\ x &= \$1,000 \\ b &= \frac{(6)^2}{10^2} = \frac{36}{100} = .36 \end{aligned}$$

then:

$$\begin{aligned} y &= (.40)(1000) + (.36)(.60)(1000) \\ y &= 400 + 216 = \$616 \end{aligned}$$

This is the [earned marginal revenue] **Earned Marginal Revenue** that the hospital may keep. The term b determines what portion of the [fixed (] compensation)] cost [percentage] **portion** of marginal revenue will[, in fact,] be [considerable] **considered** variable. As the size of the volume/intensity increase gets larger, more and more of the [fixed cost proportion] **compensation portion** is considered variable. The logic of this formula is that, as volume/intensity changes over the period between base and rate years, the [possible] hospital response must shift from more efficient use of personnel to the hiring of more personnel.

If volume/intensity [shifts] **increases** by [more than] 10 percent or more in this period then all costs are considered variable, and the hospital is due all the marginal revenue.

[F. If volume/intensity decreases between 0% and 10 percent between the base and the rate year, the following calculation is used to determine how much of the resulting lost revenue may be recovered by the hospital:

$$\begin{aligned} \text{Recoverable Inpatient Revenue} &= (\text{Compensation \% of the Lost Revenue}) \\ &\quad \times \\ &\quad (\text{total direct inpatient care revenue lost by the hospital} \\ &\quad \text{in the rate year, due to a decrease in admissions or case-} \\ &\quad \text{mix intensity}) \\ &\quad \times \\ &\quad (\text{that percentage of the compensation part of lost revenue} \\ &\quad \text{which the hospital should be allowed to keep.)} \\ &\quad \text{OR} \end{aligned}$$

$$e = (h)(i)(1-g)$$

WHERE:

- e = Recoverable inpatient revenue
- h = Compensation portion of lost revenue
- i = Total Lost Revenue
- g = $\frac{(\text{Total \% change in Volume/Intensity})}{(\text{Measure Between Base and Rate Year})^2}$

1-g = Recoverable percentage of the compensation portion of lost revenue.

Thus: If a hospital loses \$1,000 in total direct inpatient revenue in the rate year, 60% of the lost revenue represents compensation revenue, and the total decline in volume intensity between base and rate years was 6.0%.

$$\begin{aligned} h &= .60 \\ i &= \$1,000 \\ g &= \frac{(6.0)^2}{(10)^2} = \frac{36}{100} = .36 \end{aligned}$$

$$\begin{aligned} 1-g &= 1 - .36 = .64 \\ e &= (h)(i)(1-g) \\ e &= (.60)(1,000)(.64) \\ e &= 384 \end{aligned}$$

The hospital is allowed to keep 384. If the total volume decrease is greater than 10% the hospital loses all of the \$1,000]

F.[G.] The above [formulae] **formula** may be inapplicable in [two] **the following [situations] situation**:

[1. A hospital's case-mix intensity may increase between the base year and the rate year, while total admissions do not change. However, the hospital's costs and revenues may actually decrease between the base and rate years. Such a situation would arise if the hospital's low Length of Stay inliers were increasingly shifted to low Length of Stay outlier status.

In this situation, it will be assumed that the hospital has undergone no volume/intensity change. The hospital's rate year revenues will remain at the base year level plus the economic factor adjustment.

2.] A hospital's [case-mix] volume/intensity may decrease between the base and rate years, while its [total admissions remain unchanged. However, the hospital's] costs and revenues may [actually] increase between the base and rate years. [Such a situation would arise, if the hospital's high length of stay inliers were increasingly shifted to high Length of Stay outlier status.] In this situation, [it will be assumed that the hospital has undergone no volume/intensity change. The] hospital will be allowed to keep the [variable] supply portion of the [incremental (marginal)] marginal revenue.

If the hospital feels that some part of the [fixed] compensation portion of [incremental] marginal revenue should also be retained, it must bring an appeal to the Hospital Rate Setting Commission. [The appeal must include proof that the increase in high Length of Stay outliers is outside of the hospital's control.]

[H.]G. Treatment of Revenue Changes due to Strikes and Construction

In the circumstances of a strike or construction activity, a hospital may experience a revenue downturn in the rate year. [Clearly, such] Such a downturn [is] may be unrelated to shifts in [admissions] discharges or case-mix intensity of the kind which might result from demographic movements [(or from the incentives of a case-mix reimbursement system)]. [The hospital] The Department does not intend to allow the cost/volume methodology to interfere with (1) the normal processes of collective bargaining or with (2) the ability of hospitals to schedule construction in such a way as to minimize the disruption of patient care activities. However, because a revenue downturn in a particular year may be due to causes other than strikes or construction activity, or may exceed the downturn properly attributable to such causes, hospitals should not automatically receive some portion of this lost revenue. Rather hospitals should identify and quantify the revenue lost for either of these specific reasons[. They] and may request the right to recover this lost revenue by asking for an extraordinary adjustment before the Hospital Rate-Setting Commission. [The Department does not intend to allow the cost/volume methodology to interfere with (1) the normal processes of collective bargaining; or with (2) the ability of hospitals to schedule construction in such a way as to minimize the disruption of patient care activities.]

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Home Health Agencies Standards for Licensure

Proposed Repeal: N.J.A.C. 8:42-1

Proposed New Rule: N.J.A.C. 8:42

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

Proposal Number: PRN 1986-483.

Submit comments by December 17, 1986 to:

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

The agency proposal follows:

Summary

The Department of Health proposes the adoption of a new rule, N.J.A.C. 8:42, Standards for Licensure of Home Health Agencies, and simultaneously proposes the repeal of the current rule, N.J.A.C. 8:42-1, Standards for Licensure of Home Health Agencies, which the proposed new rule will replace. The current rules, N.J.A.C. 8:42-2 and 8:42-3, have no content but only a reserved status. This is because subchapter N.J.A.C. 8:42-2 formerly contained rules concerning Standards for Licensure of Residential and Inpatient Drug Treatment Facilities, but was repealed effective August 1, 1983 (see: 15 N.J.R. 397(a), 15 N.J.R. 1248(a)), and replaced by the current Standards for Licensure of Drug Treatment Facilities, N.J.A.C. 8:42B. Similarly, subchapter N.J.A.C. 8:42-3 formerly contained rules for licensure of Alcohol Abuse Treatment Facilities, but expired on June 30, 1981, pursuant to Executive Order 66(1978); current rules for Alcoholism Treatment Facilities are now contained in N.J.A.C. 8:42A (see: 13 N.J.R. 217(b), 13 N.J.R. 411(a)). The proposed rule for

licensure of home health agencies is coded as N.J.A.C. 8:42, instead of N.J.A.C. 8:42-1, to conform with the format established by the Office of Administrative Law. The current reserved subchapters, N.J.A.C. 8:42-2 and 8:42-3, are no longer needed since their content has been reassigned to other chapters of New Jersey Administrative Code. It therefore becomes possible to designate each separate topic of the proposed N.J.A.C. 8:42 as a separate subchapter.

The current rule, N.J.A.C. 8:42-1, is the basis for licensure of 56 home health agencies currently in operation in New Jersey. The provisions of the current rule, N.J.A.C. 8:42-1, Standards for Licensure of Home Health Agencies, became effective on May 26, 1976, and were due to expire on February 1, 1985, pursuant to the requirements of Executive Order No. 66(1978). In February, 1985, the existing text of N.J.A.C. 8:42-1 was readopted without change (see: 16 N.J.R. 3250(a), 17 N.J.R. 704(b)), to ensure that continuity of care would not be disrupted in the absence of these regulations, and to provide an adequate amount of time for more thorough review and revision of the current text of the rules. Due to the re-adoption of the current rule, N.J.A.C. 8:42-1, the rule is not due to expire again until 1990. Re-adoption took place with the understanding that revisions of the rule would be made well in advance of that time, to bring the licensure requirements for home health agencies into alignment with current practices in health care delivery by home health agencies in this State and to increase the clarity and accuracy of the rules. The proposed rule will be assigned a new expiration date upon adoption.

The proposed rule, N.J.A.C. 8:42, fulfills the Department's obligation, mandated by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. and amendments thereto, to protect the health and safety of patients. The proposed rule provides minimal requirements for the organization, staffing, and patient care services of home health agencies and will give the Department's survey teams a workable set of measures to determine agency compliance, as well as give the provider agencies a quantifiable basis for meeting Department expectations regarding the quality of the home health services provided to patients.

The current rule, N.J.A.C. 8:42-1, was among the first licensure rules to be developed and promulgated by the Department, and it has remained substantially unaltered since 1976. Home health care is among the fastest growing areas of health care delivery nationally and is being viewed as an alternative to institutional care. This growth of home health care raises issues of quality assurance, minimal standards of care, cost control, access to care, and definitions of service offerings. The current rule, N.J.A.C. 8:42-1, was thoroughly reviewed, resulting in the retention of its basic philosophy and much of its content, but with additions, updating, re-organizing, and revising where necessary.

The proposed rule, N.J.A.C. 8:42, was prepared with assistance from the Home Health Agency Assembly of New Jersey, Inc., and a multi-disciplinary task force representing those professional health care disciplines which provide home health services. Organizations invited to join the task force include: the Home Health Agency Assembly; the Home Care Council of New Jersey; the New Jersey Chapter of the American Physical Therapy Association; the National Association of Social Workers, New Jersey Chapter; the New Jersey Occupational Therapy Association; the New Jersey Dietetic Association; and the New Jersey Speech-Language-Hearing Association; as well as staff from the New Jersey Department of Health and the New Jersey Department of Human Services. The proposed rule, N.J.A.C. 8:42, thus reflects the professional expertise of direct care providers and policy makers. A meeting was held with the membership of the Home Health Agency Assembly on July 17, 1986, to review the proposed draft. Based on the discussion and comments made at this meeting, further revisions were made in the draft and are incorporated in the proposed rule.

Health care services provided by New Jersey home health agencies include services directed toward preservation and restoration of health, and prevention of disease and disability, as well as therapeutic care and rehabilitation. The diversity among home health agencies is a noteworthy characteristic of these providers of service. New Jersey agencies differ greatly, for example, in the number and variety of services offered. At one end of the spectrum are agencies that provide only nursing services, homemaker-home health aide agencies, and physical therapy services to patients; at the other end are agencies that provide comprehensive home care programs which consolidate under a central administration the provision of nursing services, physical therapy services, occupational therapy services, speech pathology and audiology services, dietary counseling services, social work services, and homemaker-home health aide services. Specialized modalities, such as hospice services, are also being

offered by some home health agencies in New Jersey. Examples of community health programs offered by New Jersey home health agencies include: home health care programs (care of the sick at home); non-public school health programs; industrial and occupational health programs; child health conferences; adult health supervision; senior citizen maintenance; teen and parent programs; mental health programs; day care centers; special child health services; hospital coordination; and training of homemaker-home health aides.

The specific characteristics and needs of an area served by a home health agency affect the determination of the types and organization of services provided by the agency. The delivery of service is effected through cooperation with individuals, families, and groups. All age groups are served, including those enrolled in Medicare and Medicaid, Titles XVIII and XIX of the Social Security Act. Home health agencies vary in size, organization, and the number of patients served. Those subject to State licensure include voluntary (visiting nurse associations), governmental (county and local health departments), hospital-based, combination (visiting nurse association-health department), and proprietary agencies. Due to this wide range in types of agencies and their organizational patterns and service offerings, the proposed rule, N.J.A.C. 8:42, was designed to allow greater flexibility to the agencies in determining individual means of complying with the requirements presented in the proposed rule. Accordingly, agencies are expected to develop and implement their own policies and procedures to fulfill requirements now included in the current, more prescriptive rules.

The proposed rule, N.J.A.C. 8:42, is the result of the Department's effort to revise, simplify, and update the Standards for Licensure of Home Health Agencies, to reflect current state-of-the-art practices in home health care. Although the proposed rule preserves the intent of the current rule, N.J.A.C. 8:42-1, to protect the health and safety of patients receiving health care services in their homes, the proposed rule represents a reorganization of content to emphasize professional and support services and significant aspects of patient care. The proposed rule, N.J.A.C. 8:42, benefits from improvements made in the process of formulating licensure requirements in the ten years since the current rule for home health agencies was promulgated in 1976. Since then, the Department has evolved more measurable, objective terminology and criteria, which the proposed rule, N.J.A.C. 8:42, incorporates. The proposed rule accordingly contains changes in format, organization, content, and language, and has been updated to provide more effective licensure rules for home health agencies in New Jersey.

A summary of the contents of the proposed new rule and of the major changes contained in the proposed new rule, N.J.A.C. 8:42, follows:

The proposed new rule, N.J.A.C. 8:42, consists of the following subchapters: Definitions and/or qualifications; Licensure Procedure; General Requirements; Governing Authority; Administration; Continuity and Coordination of Patient Care Services; Nursing Services; Rehabilitation Services (Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Audiology); Social Work Services; Dietary Counseling Services; Medical/Health Records; Infection Prevention and Control; Patient Rights; Quality Assurance; and Financial Data.

The proposed subchapter, N.J.A.C. 8:42-1, provides definitions of the terms used throughout the proposed rule and delineates required qualifications for persons providing administrative and patient care services. Several definitions included in the current rule have been deleted because they are no longer used in the proposed rule, due to changed terminology or to reorganization of content. These definitions are: dentist, parent and primary home health agency, subdivision, summary report, and supervising physical therapist or coordinating physical therapist. Conversely, terms which have been added to the text of the proposed rule have been defined, including: available, cleaning, communicable disease, conspicuously posted, contamination, current, disinfection, documented, drug administration, full-time, job description, licensed nursing personnel, monitor, signature, and sterilization. Definitions of staff education plan and staff orientation plan were also added.

Several definitions have been added or changed which apply to professional and clinical matters. Definitions of "care plan" and "patient treatment plan" have been added. The definition of "clinical note" now allows for dictation of notes on the day service is rendered as an alternative to actually writing the note on the day of service. The dictated note is subsequently transcribed and incorporated into the patient's medical/health record. The definitions of "bylaws" and "supervision" have been clarified; "direct supervision" (within the supervisor's view) is now specifically defined within the definition of "supervision." The definition of "branch office" has been updated and now requires a public health nurse supervisor on the premises.

Certain definitions delineating staff qualifications have been revised. The use of the term "nutritionist" has been replaced by the term "dietitian or dietary consultant" to maintain consistency with licensure rules for other health care facilities. Physical therapists are now licensed by the New Jersey State Board of Physical Therapy rather than registered by the New Jersey Board of Medical Examiners as in the past; the revised definition reflects this change, as mandated by N.J.S.A. 45:9-37.11 et seq. "Homemaker-home health aides," as defined in the proposed rule, are now certified by the Department after successful completion of an approved training program.

The definition of "speech pathologist or audiologist" as it appears in the current rule has been divided into separate definitions for audiologist and speech-language pathologist in the proposed rule. This change was made to conform with the state requirement for licensure of audiologists and speech-language pathologists required by N.J.S.A. 45:38-1 et seq. Finally, the definition of "home health agency" has been simplified and clarified while still encompassing the basic services of nursing, homemaker-home health aide, and physical therapy services provided in the patient's home or place of residence. The footnote to the definitions of "public health nurse director" and "public health nurse supervisor" has been clarified.

The licensure procedure for home health agencies is set forth in the proposed subchapter, N.J.A.C. 8:42-2. The content of this subchapter has been rearranged but remains substantially the same as in the current rule, N.J.A.C. 8:42-1.2 through 8:42-1.7. Included are sections on Certificate of Need, Application for licensure, Surveys and temporary licensure, Full license, Surrender of license, Waiver, and Action against a license. Two new sections have been added to the proposed subchapter, N.J.A.C. 8:42-2: proposed N.J.A.C. 8:42-2.6, Waiver, and proposed N.J.A.C. 8:42-2.7, Action against a license, in conformance with licensure procedures for all other health care facilities. Of note is a change in the annual licensure fee from \$100.00 to \$500.00 (already in effect) in the proposed rule, N.J.A.C. 8:42-2.2(b) (see: 17 N.J.R. 664(a), 17 N.J.R. 2032(a)). The proposed rule, N.J.A.C. 8:42-2.2(b), also specifies an additional fee of \$150.00 for each branch office.

The proposed subchapter, N.J.A.C. 8:42-3, on General Requirements has been changed in several areas. The proposed rules, N.J.A.C. 8:42-3.1(a) and 8:42-3.3(b), clarify the services provided, which include preventive, rehabilitative, and therapeutic services. Required services remain nursing, homemaker-home health aide, and physical therapy services as in the current rule, N.J.A.C. 8:42-1.8(a). As in the current rule, N.J.A.C. 8:42-1.8(b), nursing services must be provided directly by the home health agency, and physical therapy services can be provided directly or through written agreement. The facility has the option of providing other services directly or by written agreement, including occupational therapy, speech-language pathology, audiology, social work, and dietary counseling services, as stated in the proposed rule, N.J.A.C. 8:42-3.1(b), and in the current rule, N.J.A.C. 8:42-1.8(a).

The proposed rule, N.J.A.C. 8:42-3.1(c), specifies that an agency providing services in addition to home health care must also meet the rules for licensure of those services. The current rule, N.J.A.C. 8:42-1.8(c), concerning adherence to all other applicable rule, regulations, and requirements, has been condensed in the proposed rule, N.J.A.C. 8:42-3.1(d), without altering its intent. The proposed rule contains several additions which are rules for all health care facilities licensed in accordance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto. These rules, which are currently applicable to home health agencies, have been added to the proposed rule, N.J.A.C. 8:42-3, for the convenience of the reader and include the following: disclosure of the ownership of the facility, in proposed N.J.A.C. 8:42-3.2(a); prohibition of ownership by a convicted criminal, in proposed N.J.A.C. 8:42-3.2(b); provisions for reporting of child abuse and neglect, in proposed N.J.A.C. 8:42-3.5(a)5 through 8:42-3.5(a)5iii; requirements for employee health examinations, in proposed N.J.A.C. 8:42-3.5(a)7 through 8:42-3.5(a)7iv; and policies and procedures for reporting disciplinary or medical malpractice proceedings against a staff physician, in proposed section N.J.A.C. 8:42-3.10. The requirements regarding employee physical examinations and child abuse and neglect, stated in the current rules, N.J.A.C. 8:31-26.3 and 8:31-26.4, respectively, are being repealed for home health agencies (see proposal this Register), since they will now appear in the proposed new rule, N.J.A.C. 8:42-3.5(a)7 and N.J.A.C. 8:42-3.5(a)5, respectively. The proposed new rules, N.J.A.C. 8:42-3.4 and N.J.A.C. 8:42-3.6, outline requirements for personnel and for staffing, respectively.

The proposed section, N.J.A.C. 8:42-3.5, contains the required content areas of the policy and procedure manual. Some editorial and wording

changes have been made in the areas of organization, contents, and review of the manual, but the intent remains to set forth organizational and operational principles for the agency, as well as philosophy and personnel matters relating to patient health and safety. The policy and procedure manual is to include a written narrative of the agency's program; an organizational chart with lines of accountability to ensure continuity of care; a description of the quality assurance program; policies and procedures for maintenance of personnel records; as well as the policies for the reporting of child abuse and neglect, and for employee health examinations, previously mentioned. The actual content of policies and procedures in these and other areas is left to the agency's determination.

Provisions for written agreements for services not provided directly by the facility are included in the proposed rule, N.J.A.C. 8:42-3.7, and are similar to the current rule, N.J.A.C. 8:42-1.8(o). The intent is to ensure that contracted services are of the same quality and accountability as services provided directly by the agency. The proposed rule, N.J.A.C. 8:42-3.8(a), stipulates that the Department of Health be notified of specific reportable events. The proposed rule, N.J.A.C. 8:42-3.8(b), requiring the agency to provide statistical data as specified by the Department, replaces the current section, N.J.A.C. 8:42-1.21, on patient care statistics. For greater clarity, the designation of the administrator and public health nurse director, now in the current rules, N.J.A.C. 8:42-1.8(k) and N.J.A.C. 8:42-1.9(c)5, have been included in the proposed rules, N.J.A.C. 8:42-7, where their functions are discussed, and have been reorganized in new locations in the proposed rule.

The proposed rule, N.J.A.C. 8:42-4, addressing Governing Authority, remains the same in intent and basically in content as the current rule, N.J.A.C. 8:42-1.9. The functions of the governing authority are described in the proposed rule, N.J.A.C. 8:42-4.1, and include responsibility for services and the quality of care, development and review of all bylaws, policies and procedures, establishment of a mechanism for processing staff and patient grievances, determining qualifications for governing authority membership, and specifying responsibilities and terms of office of governing authority members. Intervals of meetings of the governing authority are no longer specified as at least quarterly, leaving the home health agency greater flexibility in determining the frequency of such meetings.

The proposed rule, N.J.A.C. 8:42-5, Administration, represents a reorganization of the content of the current rule, N.J.A.C. 8:42-1.10, but with the focus remaining upon the functions of designated administrative personnel. A full-time administrator, who may be the public health nurse director, is appointed by the governing authority and shall be available in the facility or an alternate must be designated, as specified in the proposed rule, N.J.A.C. 8:42-5.1(a) and 8:42-5.1(b). The functions of the public health nurse director appear in the proposed subchapter, N.J.A.C. 8:42-7, regarding nursing services. In the proposed rule, N.J.A.C. 8:42-5.2(a), the administrator is given responsibility for the ongoing management and operation of the agency, including its fiscal and operational components; he or she functions in the areas of policy and procedure development and implementation, quality assurance, personnel assignments, staff orientation and education, and maintaining channels of communication and liaison relationships. The public health nurse director is responsible for the provision and quality of patient care services by the home health agency, as stated in the proposed rule, N.J.A.C. 8:42-5.3. The nursing service responsibilities of the public health nurse director which now appear in the current rule, N.J.A.C. 8:42-1.10(g), have been incorporated in the proposed subchapter regarding nursing services, N.J.A.C. 8:42-7.2. Both the current rules and the proposed rules require that each home health agency employ an administrator and a public health nurse director. Both the current rules and the proposed rules permit the public health nurse director to also serve as administrator. These requirements for home health agencies have not changed.

Certain elements of the current rules, N.J.A.C. 8:42-1.11 and N.J.A.C. 8:42-1.19, regarding organization and delivery of services and continuity and coordination of patient care services, respectively, have been incorporated into the proposed rule, N.J.A.C. 8:42-6, regarding Continuity and Coordination of Patient Care Services. The proposed subchapter, N.J.A.C. 8:42-6, sets forth areas for policy development, thus enhancing continuity of care and promoting a continuum of care for patients. The proposed subchapter, N.J.A.C. 8:42-6, is followed by separate subchapters for each of the major patient care services. Thus, the current rules, N.J.A.C. 8:42-1.11 and N.J.A.C. 8:42-1.19, have been replaced by a proposed new subchapter, N.J.A.C. 8:42-6, followed by individual proposed subchapters, N.J.A.C. 8:42-7 through N.J.A.C. 8:42-10, on each of the direct care services: Nursing Services, Rehabilitation Services (Physical Therapy, Occupational Therapy, Speech-Language Pathology,

and Audiology), Social Work Services, and Dietary Counseling Services. Separate subchapters for the different patient care services allows for clarity and easier reference throughout the proposed new rule.

The proposed rule, N.J.A.C. 8:42-6.1(a), requires an advisory group with the same composition of members as in the current rule, N.J.A.C. 8:42-1.11(a) and 8:42-1.11(b). However, intervals of group meetings are now to be determined by the agency and are no longer mandated at four times a year. The advisory group retains responsibility for review of all policies and procedures regarding patient care. As enumerated in the proposed rule, N.J.A.C. 8:42-6.2(a), regarding patient care policies and procedures, these include: policies for the admission, discharge and/or termination, retention, and readmission of patients; policies regarding patient assessment, care, and treatment planning; a rule requiring patient care by the same practitioner(s) when possible; discharge plan requirements; provisions for patient referrals to other sources of care; information to be provided to patients; documentation and timeframes required for the patient's medical/health record; policies for verbal orders and renewal of orders, including timeframes; provision for emergency care and emergency supplies; control of any medications, needles, and syringes kept in the facility, in accordance with State law; financial arrangements made with patients, ensuring disclosure of information regarding fees, additional charges, and third-party payment agreements; interpretation services for non-English-speaking, deaf, and blind patients; and immunization schedules if the agency provides an immunization program. In addition, the proposed rule, N.J.A.C. 8:42-6.2(b), requires that physician's orders for physical therapy, occupational therapy, speech-language pathology, and audiology include the modality, frequency, and duration of treatment. The proposed rule, N.J.A.C. 8:42-6.2(c), requires the facility to provide current pharmaceutical reference materials and sources of information to staff.

The current rules, N.J.A.C. 8:42-1.11(e) through 8:42-1.11(g), concerning physician oversight and documentation have been addressed in the proposed rules, N.J.A.C. 8:42-6.2(a)6 and N.J.A.C. 8:42-6.2(a)11, regarding provision of care in accordance with the patient treatment plan. This avoids infringement upon issues of professional practice while still providing for appropriate patient care. Reference to the plan of treatment in the current rule, N.J.A.C. 8:42-1.11(f), has been replaced in the proposed rule by the system of care plans and patient treatment plan described in the definitions in the proposed rule, N.J.A.C. 8:42-1, and referred to in the subsequent subchapters on professional care services.

The proposed subchapters, N.J.A.C. 8:42-7 through 8:42-10, present requirements for the professional home health services of nursing, rehabilitation (physical therapy, occupational therapy, speech-language pathology and audiology), social work, and dietary counseling services, respectively. These subchapters follow a similar pattern of first stating the services to be offered, followed by the responsibilities of personnel, and then the requirements for documentation of care.

The proposed subchapter, N.J.A.C. 8:42-7, Nursing Services, begins with a requirement in the proposed rule, N.J.A.C. 8:42-7.1, that nursing services be provided to patients in need of such services. The proposed rule, N.J.A.C. 8:42-7.2(a), requires the appointment of a full-time public health nurse director and the designation of an alternate or alternates to act in the absence of the public health nurse director. The nursing services functions of the public health nurse director are stated in the proposed rule, N.J.A.C. 8:42-7.2(b)1 through 8:42-7.2(b)7, including the development and maintenance of objectives, policies and procedures, an organizational plan, and a quality assurance program for the nursing service; planning and budgeting responsibilities; providing a continuum of care through coordinating nursing and other services; providing for the proper utilization of nursing personnel; ensuring that nursing services are provided in accordance with the nursing care plan; and ensuring public health nursing supervision. The proposed rule, N.J.A.C. 8:42-7.2, clarifies the functions of the public health nurse director. In contrast to the current rule, N.J.A.C. 8:42-1.10(e) through 8:42-1.10(h), the public health nurse supervisor's role is described separately in the proposed rule, N.J.A.C. 8:42-7.3(a) and 8:42-7.3(b). Each branch office of a facility must have a public health nurse supervisor available on the premises, as specified in the proposed rule, N.J.A.C. 8:42-7.3(b). Any facility employing a public health nurse supervisor shall ensure that he or she meets the requirements specified in the definition of "public health nurse supervisor," as required in the proposed rule, N.J.A.C. 8:42-7.3(a).

The nursing duties in the proposed rule are stated in less detail than in the current rule to avoid overly prescriptive regulations. The proposed rule, N.J.A.C. 8:42-7.4, now refers to **The Standards of Practice for the Registered Nurse in the State of New Jersey and The Standards of Practice for the Licensed Practical Nurse in the State of New Jersey**, as published

by the New Jersey State Board of Nursing, for both registered professional nurses and licensed practical nurses, leaving matters involving patient care to professional nursing judgment in accordance with the New Jersey State Board of Nursing provisions governing professional practice. Emphasis in the proposed rule, N.J.A.C. 8:42-7.4(a)1 through 8:42-7.4(a)5, is upon prevention, patient safety, health maintenance and restoration, nursing assessment and reassessment and provision of needed services, monitoring the patient's response to care, and teaching the patient and family members.

The proposed rule, N.J.A.C. 8:42-7.5(a)1 through 8:42-7.5(a)3, has been added to state the required nursing documentation in the patient's medical/health record, which is to include the nursing care plan, clinical and progress notes, and a record of administration of medications, all entered in accordance with agency policy regarding matters such as the recording practitioner and timeframes. Nursing personnel qualified to administer medications are listed in the proposed rule, N.J.A.C. 8:42-7.6.

Homemaker-home health aide services have been included in the proposed subchapter, N.J.A.C. 8:42-7, because these services are provided under nursing supervision. The proposed requirements for homemaker-home health aides, as stated in the proposed rule, N.J.A.C. 8:42-7.7, have been updated and clarified. The proposed rule, N.J.A.C. 8:42-7.7(a)1, reflects the current training and certification process for the homemaker-home health aide and, for the patient's protection, requires the aide to have an identification card, issued annually by the Department, while providing direct patient services. The proposed rule, N.J.A.C. 8:42-7.7(a)2i through 8:42-7.7(a)2iii, states the homemaker-home health aide's role under the supervision of a registered professional nurse, who assigns the aide to a patient and documents the personal care and home-making services which the aide will perform. The aide then documents the services provided. Copies of the written instructions and of the documentation of services rendered are kept in the medical/health record as well as in the patient's home so as to be accessible during home health visits. The registered professional nurse may delegate selected tasks to the homemaker-home health aide under controlled circumstances, as put forth in the proposed rule, N.J.A.C. 8:42-7.7(a)2ii. The registered professional nurse must make supervisory visits to the patient's home, as stated in the proposed rule, N.J.A.C. 8:42-7.7(a)2iii. The delegation of selected tasks by a registered professional nurse to a homemaker-home health aide conforms with the recently promulgated rule, N.J.A.C. 13:37-6.2, of the New Jersey State Board of Nursing (see: 18 N.J.R. 2128(a)). The role of the homemaker-home health aide, as stated in N.J.A.C. 8:42-7.7(a)3, includes homemaking services essential to patient health care and comfort, assisting with meals, assisting with the activities of daily living, and performing other specified tasks. These requirements are intended to provide flexibility in homemaker-home health aide services while ensuring the necessary close supervision by a qualified nurse. These measures of the proposed rule are intended to enhance patient care and protect the health and safety of patients.

The proposed subchapter, N.J.A.C. 8:42-8, regarding Rehabilitation Services, incorporates proposed rules for physical therapy, occupational therapy, speech-language pathology, and audiology services which now appear in the current rules, N.J.A.C. 8:42-1.13, 8:42-1.14, and 8:42-1.15, for physical therapy services, speech pathology or audiology services, and occupational therapy services, respectively. These services may be provided either directly or through written agreement, according to agency policy, as stated in the proposed rule, N.J.A.C. 8:42-8.1(a). As stated in the proposed rule, N.J.A.C. 8:42-3.1(a), and reiterated in the proposed rule, N.J.A.C. 8:42-8.1(a), each home health agency is required to provide physical therapy services to patients needing such services. The other rehabilitation service in this proposed subchapter, N.J.A.C. 8:42-8, are optional, but, if provided, must adhere to these proposed rules. The proposed rule, N.J.A.C. 8:42-8.1(b), stipulates that each professional rehabilitation service develop and implement objectives, policies and procedures, an organizational plan, and a quality assurance program. While the current rule, N.J.A.C. 8:42-1.13 through 8:42-1.15, outlines in detail in separate sections the duties of physical therapy, speech pathology and audiology, and occupational therapy personnel respectively, such provisions impinge upon areas of professional judgement and thus were deleted from the proposed rule. The current rules have been replaced with the proposed rule, N.J.A.C. 8:42-8.2(a)1 through 8:42-8.2(a)3, which outlines general areas of responsibility for all rehabilitation therapists, leaving patient evaluation and methods of care to the professional judgement of the therapist. The general responsibilities include assessing and reassessing the patient, preparing and revising the rehabilitation care plan, providing rehabilitation services to implement the plan, and documenting these activities in the patient's medical/health record. In addition, the

rehabilitation therapists are responsible for participating in quality assurance activities and participating in staff education activities. The proposed rule, N.J.A.C. 8:42-8.3(a)1 and 8:42-8.3(a)2, specifies the documentation to be entered in the patient's medical/health record by rehabilitation therapists, specifically, the rehabilitation care plan, the review and revision of the care plan, clinical notes, and progress notes. The proposed rule, N.J.A.C. 8:42-8.2(a), specifies that responsibilities of physical therapy personnel will also be in accordance with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq., and responsibilities of speech-language pathology and audiology personnel will also be in accordance with the State of New Jersey Audiology and Speech-Language Pathology Practice Act, N.J.S.A. 45:3B-1 et seq. This addition incorporates two recently adopted State laws that require State licensure of physical therapists, and audiologists and speech-language pathologists, respectively.

The proposed subchapter, N.J.A.C. 8:42-9, Social Work Services, is based upon the provisions for medical social services in the current rule, N.J.A.C. 8:42-1.17. The proposed rule, N.J.A.C. 8:42-9.1(a), states that social work services may be provided directly or through written agreement to patients who need these services; the agency determines whether or not the service will be offered. As stated in the proposed rule, N.J.A.C. 8:42-9.1(b), policies and procedures are required for the provision of social work services, as are objectives, an organizational plan, and a quality assurance program. Areas of responsibility for social workers in the proposed rule, N.J.A.C. 8:42-9.2(a)1 through 8:42-9.2(a)5, replace the detailed list of tasks in the current rule, which has been revised so as to leave matters of professional judgment to the individual social worker. The social worker is now responsible for patient assessment and reassessment, preparation and revision of the social work care plan, provision of services in accordance with that plan, acting as a contact and referral resource, providing social work counseling to the patient and family, and participating in quality assurance and staff education activities. The proposed rule, N.J.A.C. 8:42-9.3(a), states the required social work documentation in the patient's medical/health record, including the social work care plan, the review and revision of the care plan, as well as clinical notes and progress notes. The proposed rule, N.J.A.C. 8:42-9.3(b), provides for the separate filing of information by the social worker for purposes of confidentiality.

Requirements for dietary counseling services are stated in the proposed rule, N.J.A.C. 8:42-10. The proposed rule, N.J.A.C. 8:42-10.1(a), states that the facility may provide dietary counseling services either directly or through written agreement. If the home health agency offers dietary counseling services, policies and procedures, written objectives, an organizational plan, and a quality assurance program are required, as stated in the proposed rule, N.J.A.C. 8:42-10.1(b). The proposed rule, N.J.A.C. 8:42-10.2(a)1 through 8:42-10.2(a)3, presents the functions of the dietitian or dietary consultant, replacing the list of tasks in the current rule, N.J.A.C. 8:42-1.16(b), with a statement of general functional areas which leaves professional decisions to the practitioner's judgment. These responsibilities are similar to those for other home health services, and include: assessment and reassessment of the patient, preparation and revision of the dietary care plan, provision of services as specified in the care plan, and participating in quality assurance and staff education activities. Requirements for documentation in the patient's medical/health record by the dietitian or dietary consultant, as stated in the proposed rule, N.J.A.C. 8:42-10.3(a), parallel those for other home health services and include the dietary care plan and its review and revision, as well as clinical and progress notes.

As previously indicated, the current rule, N.J.A.C. 8:42-1.19, continuity and coordination of patient care services, has been integrated into the proposed rule. Specific provisions of the current rule, N.J.A.C. 8:42-1.19, have been incorporated in the proposed rule, N.J.A.C. 8:42, in the following subchapters: General Requirements, N.J.A.C. 8:42-3; Continuity and Coordination of Patient Care Services, N.J.A.C. 8:42-6; Medical/Health Records, N.J.A.C. 8:42-11; and Patient Rights, N.J.A.C. 8:42-13.

Rules for Medical/Health Records are included in the proposed rule, N.J.A.C. 8:42-11, which corresponds to the current rule, N.J.A.C. 8:42-1.20, clinical records. The proposed rule regarding the management and maintenance of patient medical/health records requires written objectives, policies and procedures, an organizational plan, and a quality assurance program, as stated in the proposed rule, N.J.A.C. 8:42-11.1(b), thus establishing the patient medical/health records services as an identifiable service of the home health agency. The proposed rule, N.J.A.C. 8:42-11.1, requires the agency to maintain a medical/health record for each patient. Contents of the patient medical/health record are enumerated in the proposed rule, N.J.A.C. 8:42-11.2(a)1 through 8:42-11.2(a)10.

There are requirements for plans of care and for a patient treatment plan, which may incorporate care plans from each service involved in the patient's care, as stated in the proposed rule, N.J.A.C. 8:42-11.2(a)2 and 8:42-11.2(a)3, and defined in the proposed rule, N.J.A.C. 8:42-1, in the definitions of "care plan" and "patient treatment plan."

Other additions in the proposed rule include a record of medications administered to the patient in the proposed rule, N.J.A.C. 8:42-11.2(a)6, an immunization record, if relevant, in the proposed rule, N.J.A.C. 8:42-11.2(a)8, copies of written instructions given to the patient and family in the proposed rule, N.J.A.C. 8:42-11.2(a)9, and documentation of any treatment or medication refused by the patient in the proposed rule, N.J.A.C. 8:42-11.2(a)10. The inclusion of these requirements is intended to facilitate continuity of care through the provision of adequate information about the patient, made available to the practitioners involved in the patient's care.

Patient identification data required in the proposed rule, N.J.A.C. 8:42-11.2(a)1, is substantially the same as that required in the current rule. The requirement for a discharge summary in the current rule has been replaced by the proposed rule, N.J.A.C. 8:42-11.2(b), citing the State statute N.J.S.A. 26:8-5 et seq. The proposed rule, N.J.A.C. 8:42-11.2(d), corresponds to the current requirement regarding the availability of records to health care personnel involved in the patient's care. The proposed rule, N.J.A.C. 8:42-11.2(c), also retains the current requirement regarding the prescribed method of recording information in ink, with signature and date, by the person making the entry. The existing requirement for specific timeframes for completion of records has been replaced in the proposed rule, N.J.A.C. 8:42-6.2(a)10, with a more flexible mechanism, allowing the facility to determine its own policies and procedures regarding requirements for medical and/or health record entries. The proposed rule also contains provisions for the establishment of policies and procedures by the agency regarding medical and/or health records in the proposed rule, N.J.A.C. 8:42-11.3(a), including protection of medical records against loss, destruction, or unauthorized use in the proposed rule, N.J.A.C. 8:42-11.3(a)1; transfer of patient information in the proposed rule, N.J.A.C. 8:42-11.3(a)2; and in the proposed rule, N.J.A.C. 8:42-11.3(a)3i and 8:42-11.3(a)3ii, the release and/or provision of copies of the medical and/or health record to the patient or an authorized representative, with establishment of a fee schedule for copies, and conditions governing release of records so that the patient has access to his or her medical and/or health record. These provisions were added in response to growing awareness of the patient's right to know information about his or her condition of health. The proposed rule, N.J.A.C. 8:42-11.3(a)3iii, requires that a copy of the record be provided within 30 days of a written request. The proposed rule, N.J.A.C. 8:42-11.4, storage and retrieval of medical and/or health records, requires the agency to inform the Department, at least 14 days in advance, about plans for the storage and retrieval of records if the agency ceases to operate, as stated in the proposed rule, N.J.A.C. 8:42-11.4(a). The proposed rule, N.J.A.C. 8:42-11.4(b), requires retention of the patient's medical and/or health record for five years following the date of discharge, unless otherwise specified by law.

The current rule, N.J.A.C. 8:42-1.21, regarding patient care statistics, has been deleted from the proposed rule and replaced by a single statement in the proposed rule, N.J.A.C. 8:42-3.8(b), requiring the provision of statistical data as requested by the Department. The current rule, N.J.A.C. 8:42-1.22, regarding financial data, has been renumbered in the proposed rule as the proposed subchapter, N.J.A.C. 8:42-15, Financial Data. The content, however, is identical, as stated in the proposed rule, N.J.A.C. 8:42-15.1(a), and requires the submission of an annual financial report to the Department, as stated in the proposed rule, N.J.A.C. 8:42-15.1(b).

The proposed subchapter, N.J.A.C. 8:42-12, Infection Control, is a new subchapter of the proposed rule. Infection Control is included as a significant aspect of home health care in protecting the patient's health and safety. Most home health agencies currently practice many of the requirements. The proposed rule, N.J.A.C. 8:42-12.1, mandates the establishment and implementation of an infection prevention and control program by the agency, with the administrator responsible for this function. The agency is required in the proposed rule, N.J.A.C. 8:42-12.2, to develop policies and procedures for infection prevention and control, with required content delineated in the proposed rule, N.J.A.C. 8:42-12.2(a) through 12.2(a)6iv. The proposed rule, N.J.A.C. 8:42-12.2(a)1, cites the New Jersey State Sanitary Code regarding the investigation, reporting, and evaluation of reportable diseases and infections related to agency activities, with records maintained of affected patients and personnel. Reporting of reportable and other diseases is required by the proposed

rule, N.J.A.C. 8:42-12.2(a)2, in accordance with N.J.A.C. 8:57-1 et seq., of the State Sanitary Code. Policies and procedures are required concerning care of patients with communicable diseases in the proposed rule, N.J.A.C. 8:42-12.2(a)3, and concerning provisions for personnel with communicable disease to cease and to resume working in the proposed rule, N.J.A.C. 8:42-12.2(a)4. Policies and procedures are also required for techniques for patient contact, especially handwashing, as stated in the proposed rule, N.J.A.C. 8:42-12.2(a)5. Policies and procedures are required for sterilization, disinfection, and cleaning practices and techniques for objects and equipment used in patient care, including disposable and nondisposable items, as stated in the proposed rule, N.J.A.C. 8:42-12.2(a)6i through 8:42-12.2(a)6iv. The proposed rule, N.J.A.C. 8:42-12.3, orientation and in-service education, specifies that agency staff are to receive training in the infection prevention and control program, both at the time of employment and through continuing inservice education.

The proposed subchapter, N.J.A.C. 8:42-13, Patient Rights, is another new subchapter in the proposed rule. The proposed rule establishes standards for the rights of patients receiving care from home health agencies. Hopefully, the proposed rules will contribute to more effective patient care and to the prevention of abuse and/or exploitation of the patient. Thus, the proposed subchapter, N.J.A.C. 8:42-1.13, is intended to provide some indicators of patient protection during home health care. Moreover, inclusion of patient rights in the proposed rule brings it into conformity with similar standards for patient rights already included in the licensure rules for other types of health care facilities.

As stated in the proposed rule, N.J.A.C. 8:42-13.1(b), the agency's policies and procedures for patient rights are to include: informing patients of their rights, and providing them with a written copy and an explanation, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)1; disclosure of information to the patient regarding who is rendering services, what services are provided, and any changes incurred, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)2; assuring the patient of care as ordered, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)3; allowing the patient to participate in treatment planning, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)4; and allowing the patient to refuse to participate in research, or obtaining written consent if the patient agrees to participate, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)5. The patient also has the right to express grievances and to work with others for improvements in patient care, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)6. Patients are protected from abuse, exploitation, and chemical and physical restraints, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)7. The proposed rule, N.J.A.C. 8:42-13.1(b)8, states their right to confidential treatment of medical and/or health records, including provisions for written release of records. The proposed rule, N.J.A.C. 8:42-13.1(b)9, is intended to protect the patient's privacy and confidentiality, also ensuring respectful and courteous treatment. The patient may join with others to work for improvements in patient care, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)10; is assured of exercising all civil and religious rights, according to the proposed rule, N.J.A.C. 8:42-13.1(b)11; and is not discriminated against in any way, according to the proposed rule, N.J.A.C. 8:42-13.1(b)12. Finally, no other constitutional, civil, or legal rights of the patient may be abridged because of his or her status as a patient, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)13, and the patient may discharge himself or herself with presentation of a written release, as stated in the proposed rule, N.J.A.C. 8:42-13.1(b)14. The proposed rule, N.J.A.C. 8:42-13.2, at the conclusion of the Patient Rights subchapter, requires that the agency post and give written notification to patients of the New Jersey State Department of Health's address and telephone number for the reporting of any complaints concerning the infringement of patient rights.

The proposed rule, N.J.A.C. 8:42-14, Quality Assurance, replaces the current rule, N.J.A.C. 8:42-1.23, Evaluation. This change reflects the growing importance of quality assurance since the promulgation of the current rule for home health agencies. The proposed subchapter, N.J.A.C. 8:42-14, for quality assurance is similar in intent to the current rule, N.J.A.C. 8:42-1.23, for evaluation, but with a broadened scope which includes the audit of various administrative as well as patient care variables. The agency is required to develop a written plan for a quality assurance program for patient care, specifying a schedule for quality assurance activities and the staff responsible for them, as stated in the proposed rule, N.J.A.C. 8:42-14.1. The facility retains control over the actual form and content of quality assurance activities, as long as these activities address the areas listed in the proposed rule, N.J.A.C. 8:42-14.2(a)1 through 8:42-14.2(a)5.

Areas for quality assurance review in the proposed rule, N.J.A.C. 8:42-14, which remain the same or similar to those for evaluation under the current rule, N.J.A.C. 8:42-1.23, are staff qualifications, staff orientation and education programs, and patient care statistics. A new rule is proposed in N.J.A.C. 8:42-14.2(a)4, that patients and family members be involved in the evaluation of services in a manner to be determined by the agency. Review of patient medical/health records for audit purposes remains in the proposed rule, N.J.A.C. 8:42-14.2(a)5, for both active and discharged cases (concurrent and retrospective), as in the current rule, N.J.A.C. 8:42-1.23(a)4. The proposed rule, N.J.A.C. 8:42-14.2(c), requires that the results of the quality assurance program be submitted to the governing authority at least annually as a measure to ensure that deficiencies and recommendations are acted upon. The administrator is responsible for implementing corrections or improvements, as stated in the proposed rule, N.J.A.C. 8:42-14.3. The Department contends that the requirements for quality assurance activities improve the efficiency and effectiveness of the delivery of patient care.

Social Impact

Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, enjoin the Department of Health to protect and promote the health of the citizens of this State. The Act also mandates the Department to develop "standards and procedures relating to the licensing of health care facilities and the institution of additional health care services" to ensure the efficient and effective delivery of health care services. This purpose is served by the proposed rule, N.J.A.C. 8:42, which updates the current rule for licensure of home health agencies, N.J.A.C. 8:42-1, by establishing minimum regulations for the provision of service by home health agencies in New Jersey which reflect the current state-of-the-art in home health care.

The Department expects that the proposed rule will benefit home health care patients, their families and caregivers, the provider agencies and professionals, and the Department's own survey and regulatory programs. The Department of Health recognizes the social impact of the home health movement upon patient care in this State. For many patients, including those with both acute and chronic illness, home health care may be used as an alternative to institutionalization, including either long-term placement or hospitalization, and as a means of maintaining independent living status in the community. As the home health industry continues to expand, regulation is necessary to protect the health and safety of patients. It is necessary that the agencies employ staff who are qualified to provide services at the level of skill required; that agencies provide adequate continuity and coordination of services; and that adequate recordkeeping, administration, and direction are provided to support the patient care services.

The proposed rule, N.J.A.C. 8:42, clarifies the contents of the current rule in several key areas. Qualification for staff are delineated where necessary to reflect current standards of practice in the various professional disciplines. The professional services have been more fully addressed and developed in separate subchapters of the rule, while still allowing full scope for professional judgment within the functional areas described. The proposed rule, N.J.A.C. 8:42, is intended to reduce fragmentation of services which may occur when a patient requires a range of services or has treatment needs which change over time, through provisions for assessment, treatment planning, and revision of care and treatment plans.

Home health care serves many types of patients from all age groups, including many diagnostic categories of both acute and chronic long-term care. Because of this variation in patients served, the proposed rule is designed to provide home health agencies with the flexibility and scope to determine policies, procedures, and methods of service delivery best suited to their individual organizational structures and patient populations. Regulations thus aimed at accommodating the agency's specific configuration of services will foster effective managerial and administrative practices, resulting in efficient and effective use of resources and sustaining the quality of patient care.

The proposed rule contains a new section, subchapter N.J.A.C. 8:42-12, on Infection Prevention and Control, intended to focus attention upon the need for preventive and precautionary measures to ensure patient health and safety in the home environment, where the usual surveillance and control methods and emergency care resources, available in inpatient and outpatient health care facilities, are absent. For this reason it is especially important that policies and procedures regarding prevention of accidents, injury, and infection be adapted by agency personnel to the patient's home setting. Also for patient protection in the home, the proposed rule contains subchapter N.J.A.C. 8:42-13 on Patient Rights,

requiring the agency to develop policies and procedures to safeguard the patient's interests; to assure patient access to channels of redress when needed, and to prevent potentially exploitative situations. Such provisions serve the agencies as well as their patients by establishing measures to ensure adequate levels of patient comfort and protection.

The proposed rule, N.J.A.C. 8:42, includes a revised subchapter, N.J.A.C. 8:42-14, on Quality Assurance to replace the current section on Evaluation, reflecting the increased emphasis placed upon quality assurance issues in home health care, which is especially difficult to monitor due to the noninstitutional setting in which services are rendered. Patients and their families are to be involved in the evaluation process of an organized quality assurance program. The provisions in the proposed subchapter, N.J.A.C. 8:42-14, are intended to focus the agency's efforts upon improved staff performance, utilization of agency resources, and patient care.

The benefits to patients and their families from recovering home health care are manifold. Studies have shown that patients who remain in their homes to receive care often respond better and recover more quickly. The psychological benefits associated with receiving care within the familiar home environment have been demonstrated to contribute significantly to convalescence. There is also a preventive aspect to home health care, in that services provided in some instances may prevent disease and avert disability, and in some cases may reduce the likelihood of institutionalization or postpone its occurrence. For many patients, home care is less stressful than inpatient institutional care. Feelings of isolation and dependence are reduced. Disruption of family life and of the patient's personal life is minimized. The patient and family retain a sense of control over their situation. This applies in cases of long-term, acute, and terminal illness when the patient is eligible for home health services.

Given the potential benefits to patients accruing from home health care, it is important that the agencies supplying these services maintain satisfactory levels of patient care. Especially in light of the challenges presented to the home health industry by rapid growth and evolving service modalities, there exists a need for acceptable, quantifiable measures of agency performance, in order to protect the providers and consumers of home health services. The Department maintains that the proposed rule, N.J.A.C. 8:42, will fulfill this need by updating the licensure standards for home health agencies, thus ensuring the health and safety of patients receiving health care services in their home.

Economic Impact

The Department of Health foresees no adverse financial consequences in the adoption of the proposed rule for home health agencies, N.J.A.C. 8:42. Since the current rule, N.J.A.C. 8:42-1, is in effect and the survey mechanism functioning, no additional costs to the State will result; and because the proposed rule, N.J.A.C. 8:42, is similar in intent to the current rule, the agencies are not expected to incur additional expenses in complying with its contents.

On an individual patient level, home health care, in many cases, reduces the incidence of disease and disability to persons at risk. As delivered by licensed home health agencies, home health care also can represent considerable savings over the alternative cost of institutional care in a hospital or a long-term care facility. Many health care authorities maintain that home health care is a less expensive method than institutionalization for the delivery of long-term care services, as well as acute post-hospital care. There is no doubt that, for many individuals and their families, the use of home health care reduces the drain on personal finances. Third-party reimbursers, both governmental and private, are turning to investigate the financial implications of more widespread use of home health care, with efforts in both sectors focusing on the need to increase third-party reimbursement for health care services rendered in the patient's home.

The growing use of home health services is motivated by economic as well as humanitarian considerations. It is becoming financially feasible to provide in the patient's home many service modalities which were previously available only in acute-care settings. On a national level, escalating costs for both hospital and long-term care have led to increased use of home health care as a way of reducing length of institutional stay, either by postponing the need for institutional care or by allowing earlier discharge. Given the increase in the elderly population, additional home health services are needed to maintain the chronically ill and elderly in their homes and forestall the need for costly institutional care for those who do not require expensive, institution-based services.

Home health care has expanded partly in response to cost-saving measures applied to other sectors of the health care industry. The use of the DRG system encourages early discharge from hospitals to save

expensive hospital days. Recuperation, even from major surgery or major illness, is increasingly taking place at home, supported by a proliferation of drug therapies, equipment, and professional health care services. Hospice services are now being provided to patients by home health agencies. As these trends continue in the future, home health care will have a greater impact on containment of total health care costs.

The proposed rule, N.J.A.C. 8:42, allows flexibility in management and administrative practices to the agencies, such as in developing policies and procedures best suited to their individual circumstances, in allocating staff to best meet patient care needs, and in deciding whether and in what way to provide certain services. This will allow the agencies to conserve resources by determining the most efficient deployment of services and personnel. The functions of professional personnel, including the administrator, the public health nurse director, and health care professionals representing various professional home care services, are stated to promote the functioning of agency operations and the appropriate assignment of duties; however, matters of professional judgment have not been prescribed in this rule. Use of various professional staff members in patient assessment, treatment planning, and delivery of care will promote continuity and coordination of care to reduce duplication, overlap, and fragmentation of services while ensuring that patients receive all needed services. The provisions for consistent record-keeping, found in the proposed subchapter, N.J.A.C. 8:42-11, are another cost-containment measure to prevent administrative oversights and gaps or duplication in patient care.

The proposed rule, N.J.A.C. 8:42, addresses patient health and safety in the home in a new subchapter, N.J.A.C. 8:42-12, on Infection Prevention and Control, intended to reduce the incidence and thus the costs of accident, injury, and infection occurring in the home care setting. The proposed rule also contains provision for a quality assurance program in the proposed subchapter, N.J.A.C. 8:42-14, with the intended functions of improving the delivery of care as well as the cost-effectiveness of agency operations and managerial practices, and correcting any inefficiencies detected.

Given the growth in the home health industry and the capability it offers for preventing or reducing disease, disability, and institutional care, the Department proposes the adoption of the proposed rule, N.J.A.C. 8:42, as one method of supporting the continued strong performance of the home health agencies to continue their provision of services, using updated regulations attuned to current practices. The overall economic impact of the proposed regulations will be favorable since no short-term expenses will be incurred, which the long-range economic implication of quality home health services will benefit home care patients as well as the State's health care delivery system.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:42-1.

Full text of the proposed new rule follows:

CHAPTER 42
MANUAL OF STANDARDS FOR
LICENSURE OF HOME HEALTH AGENCIES

SUBCHAPTER 1. DEFINITIONS

8:42-1.1 Definitions

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

"Administrator" means a person who:

1. Has a master's degree in nursing, public health, public administration, or health services administration, and at least two years of supervisory or administrative experience in home health care or in a health care setting; or

2. Has a baccalaureate degree in administration or business administration and four years of supervisory or administrative experience in home health care or in a health care setting.

"Audiologist" means a person who is so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

"Available" means ready for immediate use (pertaining to equipment); capable of being reached (pertaining to personnel).

"Branch office" means a facility site from which services are provided to patients in their homes or place of residence; which is physically separate from the home health agency but may share administrative

services and public health nurse direction, which meets all requirements for licensure; and which has a public health nurse supervisor on the premises during its hours of operation.

"Bylaws" means a set of rules adopted by the facility for governing its operation. (A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.)

"Care plan" (nursing, rehabilitation, social work, dietary counseling) means a written plan based on an assessment of the patient and the care and treatment to be provided. Each service that the patient receives shall initiate the development and implementation of its own care plan at the time of the patient's admission to that service. If the patient does not need a specific service, a care plan is not needed for that service.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and/or organic matter from surfaces on which and in which infectious agency may find conditions for surviving or multiplying.

"Clinical note" means a signed and dated notation made at each patient visit by each health care professional who renders a service to the patient, and which includes a description of signs and symptoms, treatment and/or medication(s) administered, the patient's response, and any changes in physical or emotional condition; and which is written or dictated on the day service is rendered and incorporated into the patient's medical and/or health record according to the facility's policies and procedures.

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

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Current" means up-to-date, extending to the present time.

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

"Dietitian or dietary consultant" means a person who:

1. Is registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association; or

2. Has a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and has completed a dietetic internship accredited by the American Dietetic Association or a dietetic traineeship approved by the American Dietetic Association or has one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care setting; or

3. Has a master's degree plus six months of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care setting.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

1. "Concurrent disinfection" means the application of measures of disinfection as soon as possible after the discharge of infectious material from the body of an infected person, or after the soiling of articles with such infectious discharges, all personal contact with such discharges or articles being minimized prior to such disinfection.

2. "Terminal disinfection" means the application of measures of disinfection after the patient has ceased to be a source of infection, or after the facility's isolation practices have been discontinued. (Terminal disinfection is rarely practiced; terminal cleaning generally suffices (see definition of "cleaning"), along with airing and sunning of rooms, furniture, and bedding. Terminal disinfection is necessary only for diseases spread by indirect contact.)

"Documented" means written, signed, and dated.

"Drug administration" shall mean a procedure in which a prescribed drug or biological is given to a patient by an authorized person in accordance with all laws and rule governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

"Full-time" means a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the determination and implementation of policy and for the management, operation, and financial viability of the facility.

"Home health agency" means a facility which is licensed by the New Jersey State Department of Health to provide preventive, rehabilitative, and therapeutic services to patients. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services in the patient's home or place of residence.

"Homemaker-home health aide" means a person who has completed a training program approved by the Department and who is so certified by the Department.

"Job description" means written specifications, developed for each position in the facility, containing the qualifications, duties, competencies, responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses and practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Licensed practical nurse" means a person who is so licensed by the New Jersey State Board of Nursing.

"Medication" means a drug or medicine as defined by the New Jersey State Board of Pharmacy.

"Monitor" means to observe, watch, or check.

"Occupational therapist" means a person who is certified, or eligible for certification, as an occupational therapist, registered (OTR) by the American Occupational Therapy Association, and has at least one year of experience as an occupational therapist.

"Patient treatment plan" means a written plan, based on a patient assessment, initiated and implemented upon the patient's admission, and coordinated and maintained by the nursing service. The plan shall include, but not be limited to, the patient's diagnosis, patient goals, means of achieving goals, and care and treatment to be provided. The patient treatment plan shall be kept current and available to all personnel providing patient care, and shall be included in the patient's medical or health record.

"Physical therapist" means a person who is licensed by the New Jersey State Board of Physical Therapy, and who:

1. Has graduated from a physical therapy curriculum approved by the Committee on Allied Health Education and Council on Accreditation of the American Medical Association in collaboration with the American Physical Therapy Association; or

2. Prior to January, 1966;

i. Was admitted to membership by the American Physical Therapy Association; or

ii. Was admitted to registration by the American Registry of Physical Therapists; or

iii. Graduated from a physical therapy curriculum in a four-year college or university approved by a state department of education, is licensed or registered as a physical therapist, and where appropriate, has passed a state examination for licensure as a physical therapist; or

iv. Had two years of full-time, or full-time equivalent, experience as a physical therapist and has achieved a satisfactory grade through the examination conducted by or under the sponsorship of the United States Public Health Services; or

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

3. If trained outside the United States prior to December 31, 1977:

i. Graduated after 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; and

ii. Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy; and

iii. Has acquired one year of full-time, or full-time equivalent, experience under the supervision of an active member of the American Physical Therapy Association; and

iv. Has successfully completed a qualifying examination as prescribed by the American Physical Therapy Association.

"Physician" means a person who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

"Progress note" means a written, signed, and dated notation by the practitioner providing care, summarizing information about the care provided and the patient's response to it.

"Public health nurse" means a person licensed as a registered professional nurse, who has completed a baccalaureate degree program accredited by the National League for Nursing for public health nursing preparation, or post-baccalaureate study which includes content accredited by the National League for Nursing for public health nursing preparation.

"Public health nurse director" means a registered professional nurse who has completed:

1. A master's degree program accredited by the National League for Nursing with a nursing major in supervision, teaching, consultation, or administration, and advanced study in a clinical specialty; or a master's program in public health in an institution accredited by the American Public Health Association; and

2. Five years of experience in public health nursing, one year of which shall have been in a supervisory capacity. (See N.J.A.C. 8:42-7.4.)

"Public health nurse supervisor" means a public health nurse who has completed three years of experience in public health nursing under public health nursing supervision. (See N.J.A.C. 8:42-7.4.)

"Registered professional nurse" means a person who is so licensed by the New Jersey State Board of Nursing.

"Restraint" means a physical device or chemical (medication) used to limit, restrict, or control patient movements.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D.) of a person, legibly written with his or her own hand.

"Social worker" means a person who has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education, and at least one year of post-master's social work experience in a health care setting.

"Speech-language pathologist" means a person who is so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

"Staff education plan" means a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education and for each service, including in-service programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

SUBCHAPTER 2. LICENSURE PROCEDURE

8:42-2.1 Certificate of Need

(a) According to Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources
Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625

(b) The Department shall charge a nonrefundable fee of \$500.00 for the filing of an application for licensure of a home health agency and \$500.00 for the annual renewal of the license. An additional \$150.00 shall be charged for the filing of an application for each branch office of the facility, and \$150.00 for its annual renewal.

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

8:42-2.3 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this Chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more re-surveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Survey(s) by representatives of the Department indicate that the facility adheres to these rules; and

4. Professional personnel are employed in accordance with the staffing requirements in these rules.

(c) No health care facility shall accept patients until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time, or to a patient's home, by authorized staff to the Department. Such visits may include, but not be limited to, a review of all facility documents and patient records, and conferences with patients and/or their families.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:42-2.4 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the health care facility is being operated as required by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules in this chapter.

(b) A license shall be granted for a period of one year or less as determined by the Department. (See N.J.A.C. 26:2H-1.)

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

8:42-2.5 Surrender of license

The facility shall directly notify each patient, the patient's physician, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the revocation, non-renewal, or suspension of license.

8:42-2.6 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of the rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:42-2.7 Action against a licensee

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate cessation of services by a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary license and facilities with a full license.

8:42-2.8 Hearings

(a) If the Department proposes to suspend, revoke, deny or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42-3.1 Compliance with rules and laws

(a) The facility shall provide preventive, rehabilitative, and therapeutic services to patients. This shall include, but not be limited to, nursing, homemaker-home health aide, and physical therapy services. Nursing services shall be available 24 hours a day, seven days a week.

(b) The facility shall provide nursing services directly, and other services directly or through written agreement. Occupational therapy, speech-language pathology, audiology, dietary counseling, and social work services may be provided.

(c) If a facility licensed by the Department provides home health services in addition to other health care services, it shall adhere to these rules and to the rules for licensure of facilities providing the other health care services.

(d) The facility shall adhere to applicable Federal, State, and local rules, regulations, and requirements.

(e) The facility shall adhere to all applicable provisions of Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be

reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with the requirements for Certificate of Need applications.

(b) No health care facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:42-3.3 Submission of documents

The facility shall, upon request, submit any documents which are required by these rules to the Director of the Licensing, Certification and Standards Program of the Department.

8:42-3.4 Personnel

(a) The facility shall ensure that the duties and responsibilities of all personnel are described in job descriptions and in the policy and procedure manual for each service.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

8:42-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be established, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written narrative of the program describing its philosophy and objectives, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability, so as to ensure continuity of care to patients;

3. A description of the quality assurance program for patient care and staff performance;

4. Definition and specification of full-time;

5. Policies and procedures for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.,¹ including, but not limited to, the following:

i. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect, recording notification of the Division of Youth and Family Services on the medical/health record, and serving as a liaison between the facility and the Division of Youth and Family Services;

ii. The development of written protocols for the identification and treatment of abused and or neglected children; and

iii. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures, on at least an annual basis;

6. Policies and procedure for the maintenance of confidential personnel records for each employee, including at least his or her name, previous employment, educational background, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, health evaluation records, job description, and evaluations of job performance; and

7. Policies and procedures for physical examinations (health evaluations) upon employment and subsequently, for employees and for persons providing direct patient care services through contractual arrangements or written agreement. Such policies and procedures shall ensure that:

i. Each employee who provides direct patient care services and who cannot document the result of a previous rubella screening test shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test approved by the Department. Each new employee who cannot document the result of a previous rubella screening test shall be given the rubella screening test upon employment. An employee who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine shall not be required to have a rubella screening test;

ii. Each employee tested shall be informed in writing by the facility of the result of his or her rubella screening test;

iii. Each employee's personnel record shall contain documentation of all tests performed and the results; and

iv. A list shall be maintained of all employees who are seronegative and unvaccinated, to be used in the event that an employee is exposed to rubella and a determination is needed as to whether or not the employee may continue to work.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

8:42-3.6 Staffing

(a) Provision shall be made for staff with equivalent qualifications to provide services for absent staff members. Staffing schedules shall be implemented to facilitate continuity of care to patients. The facility shall maintain staff attendance records.

(b) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of the person(s) responsible for training.

8:42-3.7 Written agreements

(a) The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement or its equivalent shall:

1. Be dated and signed by a representative of the facility and by the person or agency providing the service;

2. Specify each party's responsibilities, functions, and objectives, the time during which services are to be provided, the financial arrangements and charges, and the duration of the written agreement or its equivalent;

3. Specify that the facility retain administrative responsibility for services rendered;

4. Require that services are provided in accordance with these rules and that personnel providing services meet training and experience requirements and are supervised in accordance with these rules; and

5. Require the provision of written documentation to the facility, including, but not limited to, documentation of services rendered by the person or agency providing the service.

8:42-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone (609-292-4304), followed within 72 hours by written confirmation, of the following:

1. Termination of employment of the administrator and/or the public health nurse director, and the name and qualifications of his or her replacement;

2. Expected or actual interruption or cessation of operations and services listed in these rules; and

3. Any deaths resulting from accidents or incidents related to the facility's services.

(b) The facility shall provide statistical data as required by the Department.

8:42-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility to patients and the public:

1. All waivers granted by the Department;

2. All documents required by these rules;

3. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

4. A list of the facility's committees, or their equivalents, and the membership and reports of each;

5. The names and addresses of the governing authority;

6. Any changes of membership of the governing authority, within 30 days after the change; and

7. Policies and procedures regarding patient rights.

8:42-3.10 Reporting information to the State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment, or award. (Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, NJ 08608. Questions may be directed to the Board Office at (609) 292-4843.) (See N.J.A.C. 8:31-26.6.) The information reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

¹Copies of the law may be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, NJ 08625.

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing body action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board;

2. A medical malpractice liability insurance claim settlement, judgment, or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment, or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s), and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:42-4.1 Responsibility

(a) The governing authority shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;

2. Adoption and documented review of written bylaws or their equivalent, according to timeframes established by the governing authority;

3. Development and documented review of all policies and procedures;

4. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

5. Determination of the frequency of meetings of the governing authority, holding such meetings, and documenting them through minutes, including the record of attendance;

6. Delineation of the powers and duties of the officers and committees, or their equivalent, of the governing authority; and

7. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing, appointing, or employing officers, and the terms of services for members, officers, and committee chairpersons or their equivalents.

SUBCHAPTER 5. ADMINISTRATION

8:42-5.1 Administrator

(a) The governing authority shall appoint a full-time administrator who shall be available in the facility. The public health nurse director may be the administrator.

(b) An alternate or alternates shall be designated in writing to act in the absence of the administrator.

8:42-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;

2. Planning for and administering the managerial, operational, fiscal, and reporting components of the facility;

3. Participating in the quality assurance program for patient care;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families, in accordance with the philosophy and objectives of the facility.

8:42-5.3 Public health nurse director's responsibilities

The public health nurse director shall be responsible for the direction, provision, and quality of home health services provided to patients.

SUBCHAPTER 6. CONTINUITY AND COORDINATION OF PATIENT CARE POLICIES

8:42-6.1 Advisory group

(a) The governing authority shall appoint an advisory group composed of at least the following:

1. Three physicians;

2. A public health nurse director and/or supervisor;

3. A representative of each home health service offered by the facility, including physical therapy, and, if offered, occupational therapy, speech-language pathology, audiology, social work services, and dietary counseling; and

4. A lay person or persons knowledgeable in health affairs.

5. At least one member of the advisory group shall be neither an owner nor an employee of the facility.

(b) The advisory group shall review all patient care policies and procedures and shall document the review. The review shall be done at intervals specified in the policy and procedure manual.

8:42-6.2 Policies and procedures

(a) The facility shall establish and implement written patient care policies and procedures governing the services provided to facilitate continuity of care to patients. Policies and procedures shall include, but not be limited to, the following:

1. Admission of patients, including any limitations on admission;

2. Discharge or termination, retention, and readmission of patients;

3. Initiation, implementation, review, and revision of care plans and of the patient treatment plan;

4. Reassessment of patients, in accordance with timeframes documented by each health care practitioner in the care plan;

5. A system whereby, whenever possible, the patient is cared for by the same health care practitioner;

6. Provision of care in accordance with the patient treatment plan;

7. Requirements for a discharge plan for each patient developed prior to the patient's discharge, and methods for including the patient and/or the patient's family in planning and implementing the discharge plan;

8. A system for referral of patients to other sources of care;

9. Provision of written information to patients concerning services provided by the facility, and the facility's telephone number;

10. Requirements for entries documented in the patient's medical and/or health record by health care practitioners, including frequency, comprehensiveness, and accuracy;

11. Timeframes and other requirements for physicians' orders for home health services, including verbal orders and renewal of orders;

12. Provision for emergency care of patients;

13. Provision for emergency supplies, including the contents, locations, and frequency of checking (including checking of expiration dates) of emergency supplies;

14. Requirements for the purchase, storage, safeguarding, accountability, use, and disposition of any medications kept in the facility, in accordance with the New Jersey State Board of Pharmacy Rules (N.J.A.C. 13:39-1 et seq.) and the Controlled Dangerous Substances Act of 1970 (Title II, Public Law 91-513), and the New Jersey Controlled Dangerous Substances Act of 1970 (N.J.S.A. 24:21-1 et seq.) and amendments thereto;

15. Requirements for the destruction of any needles and syringes in accordance with N.J.S.A. 2A:170-25.17 and amendments thereto;

16. Financial arrangements, to ensure that the facility:

i. Makes known to patients the fees for services (where a fee is charged);

ii. Maintains a written record of all financial arrangements with the patient, with copies furnished to the patient;

iii. Notifies the patient of any additional charges, expenses, or other financial liabilities in excess of the predetermined fee; and

iv. Describes for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance;

17. Interpretation services, if the patient population is non-English speaking or for patients who are blind or deaf; and

18. Immunization schedules when an immunization program is provided.

(b) Physician's orders for physical therapy, occupational therapy, speech-language pathology, and audiology shall include the modality, frequency, and duration of treatment.

(c) The facility shall provide current pharmaceutical reference materials and sources of information to staff.

SUBCHAPTER 7. NURSING SERVICES

8:42-7.1 Services

The facility shall provide nursing services to patients who need these services.

8:42-7.2 Responsibilities of public health nurse director

(a) The governing authority shall appoint a full-time public health nurse director who shall be available in the facility. An alternate or alternates shall be designated in writing to act in the absence of the public health nurse director.

(b) The public health nurse director shall be responsible for the direction, provision, and quality of nursing services. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;
2. Monitoring the performance of nursing personnel;
3. Participating in planning and budgeting for the nursing service;
4. Coordinating and integrating the nursing service with other home health services to provide a continuum of care for the patient;
5. Assisting in developing and maintaining written job description for nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions;
6. Ensuring that nursing services are provided to the patient as specified in the nursing care plan; and
7. Ensuring public health nursing supervision to nursing personnel.

8:42-7.3 Public health nurse supervisor

(a) If the facility employs a public health nurse supervisor, he or she shall meet the requirements specified in the definition of "public health nurse supervisor."

(b) A full-time public health nurse supervisor shall be available on the premises of each facility branch office.

8:42-7.4 Waiver of qualifications for existing personnel

Any existing home health agency which as on its staff a public health nurse director and/or supervisor prior to May 26, 1976, who does not meet the qualifications for the position as stated in the licensure rules, shall be permitted to retain that staff member for the duration of his or her employment with the agency. Upon termination of his or her employment, the agency shall be required to hire a director and/or supervisor who meets the requirements stated in the definitions of public health nurse director and public health nurse supervisor. If the supervisor was acting as the director, the agency shall hire a public health nurse director upon the supervisor's termination of employment.

8:42-7.5 Responsibilities of nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., *The Standards of Practice for the Registered Nurse in the State of New Jersey* and *The Standards of Practice for the Licensed Practical Nurse in the State of New Jersey* of the New Jersey State Board of Nursing, and written job descriptions, nursing personnel shall be responsible for providing nursing care including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;
2. Care toward prevention of infection, accident, and injury;
3. Assessing and reassessing the patient's nursing care needs and providing nursing care services;
4. Monitoring the patient's response to nursing care; and
5. Teaching, supervising, and counseling the patient, family members, and staff regarding nursing care and the patient's needs, including other related problems of the patient at home. (Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel.)

8:42-7.6 Nursing entries in the medical and/or health record

(a) In accordance with written job descriptions and with these rules, nursing personnel shall document in the patient's medical and/or health record:

1. The nursing care plan, which may be the nursing portion of the patient treatment plan, in accordance with the facility's policies and procedures;
2. Clinical notes and progress notes; and
3. A record of medications administered. After each administration of medication, the following shall be documented by the nurse who adminis-

tered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the licensed nurse who administered the drug.

8:42-7.7 Administration of medication

(a) Medications shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:

1. Registered professional nurses;
2. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;
3. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and
4. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member.

8:42-7.8 Homemaker-home health aide services

(a) The facility shall provide homemaker-home health aide services in accordance with the following:

1. The homemaker-home health aide shall have completed a training program approved by the Department, shall be certified by the Department, and while providing direct patient services shall have with him or her an identification card issued annually by the Department;

2. The homemaker-home health aide shall provide personal care and/or homemaking services under the direction and supervision of a registered professional nurse;

i. The registered professional nurse shall assign the homemaker-home health aide to a patient and shall give written instructions to the homemaker-home health aide regarding the home health services to be provided. The homemaker-home health aide shall document the home health services provided. Copies of the written instructions and of the documentation of services provided shall be kept in the patient's home and in the patient's medical and/or health record;

ii. If the registered professional nurse delegates selected tasks to the homemaker-home health aide, the registered professional nurse shall determine the degree of supervision to provide, based upon an evaluation of the patient's condition, the education, skill, and training of the homemaker-home health aide to whom the tasks are delegated, and the nature of the tasks and activities being delegated. The registered professional nurse shall delegate a task only to a homemaker-home health aide who meets the requirements specified in 1. above and who has demonstrated the knowledge, skill, and competency to perform the delegated tasks; and

iii. The registered professional nurse shall make supervisory visits to the patient's home, in accordance with the facility's policies and procedures; and

3. The homemaker-home health aide shall be responsible for, but not limited to, providing personal care and homemaking services essential to the patient's health care and comfort at home, including shopping, errands, laundry, meal planning and preparation (including therapeutic diets), serving of meals, child care, patient escort, assisting the patient with activities of daily living, and assisting with prescribed exercises and the use of special equipment.

i. Activities of daily living (ADL) means the functions or tasks for self-care which are performed with or without independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

SUBCHAPTER 8. REHABILITATION SERVICES (PHYSICAL THERAPY, OCCUPATIONAL THERAPY, SPEECH-LANGUAGE PATHOLOGY, AND AUDIOLOGY)

8:42-8.1 Services

(a) The facility shall provide physical therapy and may provide occupational therapy, speech-language pathology, and audiology services, directly or through written agreement, to patients who need these services.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for rehabilitation services shall be determined and implemented.

8:42-8.2 Responsibilities of rehabilitation personnel

(a) In accordance with written job descriptions (and for physical therapy personnel, in accordance also with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq.; and for speech-language pathology and audiology personnel, in accordance also with the State of New Jersey Audiology and Speech-Language Pathology Practice

Act, N.J.S.A. 45:3B-1 et seq.), each physical therapist, occupational therapist, speech-language pathologist, and audiologist shall be responsible for, but not limited to, the following:

1. Assessing the physical therapy, occupational therapy, speech-language pathology, or audiology needs of the patient, preparing the rehabilitation care plan based on the assessment, providing rehabilitation services to the patient as specified in the rehabilitation care plan, reassessing the patient's response to services provided, and revising the rehabilitation care plan. Each of these activities shall be documented in the patient's medical and/or health record;

2. Participating in the quality assurance program for rehabilitation services and patient care; and

3. Participating in staff education activities and providing consultation to facility personnel.

8:42-8.3 Rehabilitation entries in the medical and/or health record

(a) Each physical therapist, occupational therapist, speech-language pathologist, or audiologist shall document in the patient's medical and/or health record:

1. The rehabilitation care plan, which may be the rehabilitation portion of the patient treatment plan. The care plan shall be reviewed and revised by the therapist, speech-language pathologist, or audiologist; and

2. Clinical notes and progress notes.

SUBCHAPTER 9. SOCIAL WORK SERVICES

8:42-9.1 Services

(a) Social work services may be provided directly or through written agreement to patients who need these services.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for social work services shall be developed and implemented.

8:42-9.2 Social worker's responsibilities

(a) Each social worker shall be responsible for, but not limited to, the following:

1. Assessing the social work needs or problems of the patient, including social and psychological factors relating to the health problems of the patient; preparing the social work care plan based on the assessment; providing social work services to the patient as specified in the social work care plan; reassessing the patient's response to services provided; and revising the social work care plan. Each of these activities shall be documented in the patient's medical and/or health record;

2. Contacting social service and other community resources for information, referrals, and services;

3. Providing social work counseling to the patient and his or her family;

4. Participating in the quality assurance program for social work services and patient care; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42-9.3 Social work entries in the medical and/or health record

(a) The social worker shall document in the patient's medical and/or health record:

1. The social work care plan, which may be the social work portion of the patient treatment plan. The care plan shall be reviewed and revised by the social worker; and

2. Clinical notes and progress notes.

(b) The social worker may file information relating to the patient apart from the patient's medical and/or health record, with an entry in the patient's medical and/or health record indicating the availability of the additional information, upon the social worker's approval.

SUBCHAPTER 10. DIETARY COUNSELING SERVICES

8:42-10.1 Services

(a) Dietary counseling services may be provided directly or through written agreement to patients who need these services.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for dietary counseling services shall be developed and implemented.

8:42-10.2 Responsibilities of dietician or dietary consultant

(a) Each dietician or dietary consultant shall be responsible for, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary care plan based on the assessment, providing dietary counseling services to the patient as specified in the dietary care plan, reassessing the patient's

response to services provided, and revising the dietary care plan. Each of these activities shall be documented in the patient's medical and/or health record;

2. Participating in the quality assurance program for dietary counseling services and patient care; and

3. Participating in staff education activities and providing consultation to facility personnel.

8:42-10.3 Dietary entries in the medical and/or health record

(a) The dietician or dietary consultant shall document in the patient's medical and/or health record:

1. The dietary care plan, which may be the dietary counseling portion of the patient treatment plan. The care plan shall be reviewed and revised by the dietician or dietary consultant; and

2. Clinical notes and progress notes.

SUBCHAPTER 11. MEDICAL AND/OR HEALTH RECORDS

8:42-11.1 Services

(a) The facility shall maintain a medical and/or health record for each patient.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical and/or health records services shall be developed and implemented.

8:42-11.2 Contents and maintenance of medical and/or health records

(a) The patient's medical and/or health record shall include at least the following:

1. Patient identification data, including name, date of admission, address, date of birth, race and religion (optional), and sex;

2. A patient treatment plan;

3. A care plan, which may be part of the patient treatment plan, for each service providing care to the patient;

4. Clinical notes;

5. Progress notes;

6. A record of medications if administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;

7. Documentation of allergies in the medical/health record and on its outside front cover;

8. An immunization record, in accordance with the facility's policies and procedures;

9. Copies of written instructions given to the patient and/or the patient's family; and

10. A record of any treatment, medication, or service offered by a staff member of the facility and refused by the patient.

(b) All completed medical and/or health records shall include a discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

(c) All entries in the patient's medical and/or health record shall be typewritten or written in ink, legible, and signed and dated by the person entering them.

(d) The patient's medical and/or health record shall be available to the facility's health care practitioners involved in the patient's care.

8:42-11.3 Policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical and/or health records, including, but not limited to, the following:

1. Protection of medical and/or health record information against loss, tampering, alteration, destruction, or unauthorized use;

2. Transfer of patient information when the patient is transferred to another health care facility, to ensure continuity of care; and

3. Release and/or provision of copies of the patient's medical and/or health record to the patient and/or the patient's authorized representative. Such policies and procedures shall include, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical and/or health records;

ii. Availability of the patient's medical and/or health record to the patient's authorized representative if it is medically contraindicated (as documented by a physician in the patient's medical and/or health record) for the patient to have access to or obtain copies of the record; and

iii. Procedures to ensure that a copy of the patient's medical and/or health record is provided within 30 calendar days of a written request.

8:42-11.4 Storage and retrieval of medical and/or health records

(a) If the facility plans to cease operations, it shall notify the Department in writing, at least 14 days before cessation of operation, of the

location where medical and/or health records shall be stored and of methods for their retrieval.

(b) The patient's medical and/or health record shall be maintained by the facility for a period of at least five years following the date of discharge, unless otherwise specified by law.

SUBCHAPTER 12. INFECTION PREVENTION AND CONTROL

8:42-12.1 Infection prevention and control program

The facility shall establish and implement an infection prevention and control program. The administrator shall ensure its development and implementation.

8:42-12.2 Policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding infection prevention and control, including, but not limited to, the following:

1. In accordance with the New Jersey State Sanitary Code, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;

2. Reporting of reportable and other diseases in accordance with N.J.A.C. 8:57-1 et seq. of the New Jersey State Sanitary Code, and amendments thereto;

3. Care of patients with communicable diseases;

4. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

5. Techniques to be used during each patient contact, including hand-washing before and after caring for a patient; and

6. Sterilization, disinfection, and cleaning practices and techniques including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable patient care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates; and

iv. Procedures for care of equipment and other devices that provide a portal of entry for pathogenic microorganisms.

8:42-12.3 Orientation and in-service education

All personnel shall receive orientation at the time of employment and continuing in-service education regarding the infection prevention and control program.

SUBCHAPTER 13. PATIENT RIGHTS

8:42-13.1 Policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients upon registration and to the public and shall be conspicuously posted in the facility.

(b) Patient rights shall ensure that, at a minimum, each patient:

1. Is informed of these rights, and receives an explanation and a copy of the patient rights;

2. Is informed of services available from the facility, of the names and professional status of personnel providing and/or responsible for his or her care, and of fees and charges, including any fees and charges for services not covered by sources of third-party payment;

3. Is assured of care as ordered;

4. Has the right to participate in the planning of his or her home health care and treatment; has the right to refuse services, including medication and treatment, provided by the facility; is informed of available home health treatment options, including the option of no treatment, and of the possible benefits and risks of each option;

5. Has the right to refuse to participate in experimental research. If he or she chooses to participate, his or her written informed consent shall be obtained;

6. Has the right to express grievances regarding care and services to the facility's staff and governing authority, and to be informed of the action taken;

7. Is free from mental and physical abuse, free from exploitation, and free from the use of restraints by representatives of the facility;

8. Is assured confidential treatment of his or her medical and/or health record, and shall approve or refuse in writing its release to any individual outside the facility, except as required by law or third-party payment contract;

9. Is treated with courtesy, consideration, respect, and recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures;

10. May join with other patients or individuals to work for improvements in patient care;

11. Is assured of exercising civil and religious liberties, including the right to independent personal decisions;

12. Is not the object of discrimination because of age, race, religion, sex, nationality, or ability to pay;

13. Is not deprived of any constitutional, civil, and/or legal rights solely because of receiving services from the facility; and

14. Is allowed to discharge himself or herself from the facility upon presentation of a written release.

8:42-13.2 Notice regarding filing of complaints

The administrator shall ensure that a notice is conspicuously posted in the facility and that patients are given written notification regarding the filing of complaints with:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625
Telephone: (800) 792-9770

SUBCHAPTER 14. QUALITY ASSURANCE

8:42-14.1 Evaluation plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the staff responsible for the quality assurance program, and shall provide for ongoing monitoring of staff and patient services.

8:42-14.2 Evaluation activities

(a) Quality assurance activities shall include but not be limited to:

1. Annual review of staff qualifications and credentials;

2. Annual review of staff orientation and staff education;

3. Evaluation of the delivery of patient care services, staffing, patient care statistics, and infection prevention and control;

4. Evaluation by patients and their families of the delivery of care and services by the facility, by such means as home visits, patient and family interviews, and questionnaires; and

5. Audit of patient medical and/or health records (including those of both active and discharged patients) on a ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care.

(b) Reports of the activities of all facility committees or their equivalents shall be made available to the advisory group specified in N.J.A.C. 8:42-6.1(a).

(c) The results of the quality assurance program shall be submitted to the governing authority at least annually, and shall include at least deficiencies found and recommendations for corrections or improvements. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

SUBCHAPTER 15. FINANCIAL DATA

8:42-15.1 Financial reports

(a) Upon development of a uniform cost reporting system approved by the Health Care Administration Board, the facility shall adopt and maintain the uniform system of cost reporting from which reports will be prepared to meet the requirements of the Commissioner as stated in Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b) An annual financial report shall be submitted to the Department and shall include a statement of income and expenditure by unit of service.

HUMAN SERVICES**(a)****DIVISION OF PUBLIC WELFARE****Public Assistance Manual****Employment and Training Requirements****Proposed Amendment: N.J.A.C. 10:81-3.18**

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

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1986-465.

Submit comments by December 17, 1986 to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment clarifies the definition of "brief and infrequent absences," as a condition for exemption from registering with the Work Incentive (WIN) program in the Aid to Families with Dependent Children (AFDC) program. For purposes of exemption from WIN registration, absence means that the parent and child are apart, one from the other.

The revisions at N.J.A.C. 10:81-3.18(b)2ii(6) provide that absences of a child from the parent for activities related to child development or education are to be considered brief and infrequent. Absences of a parent due to employment shall be considered brief and infrequent. Absences due to full-time school attendance of the parent shall not qualify as brief and infrequent. Additionally, absences of the child due to care of the child by relative or similar arrangement shall not qualify as brief and infrequent.

Social Impact

The proposed amendment improves the administration of the WIN program and ensures that the policies, as set forth in the N.J.A.C. 10:81-3.18, are being applied uniformly.

Economic Impact

Little or no economic impact should be seen from the proposed amendment, other than a slight reduction in erroneous assistance payments due to more uniform application statewide of WIN registration criteria.

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

10:81-3.18 Employment and training requirements

(a) (No change.)

(b) AFDC-C and -F segments (WIN Counties): County welfare agencies, as agents of the United States Department of Labor in those geographical areas designated as WIN counties are responsible, through the income maintenance staff, for determining who is required to register for WIN by completing Form PA-401, WIN Case Review Document (see appendix C).

1. (No change.)

2. Those who are exempt include:

i. (No change.)

ii. Persons who are:

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

(6) The parent or other caretaker relative of a child under six years of age who personally provides care for the child with [other very] **only** brief and infrequent absences from the child. [Absence shall not be considered brief and infrequent if the parent is routinely absent for 12 or more hours per week for activities not related to normal household, child rearing and/or family duties:] **For purposes of exemption from WIN registration, absence means that the parent and child are apart, one from the other.**

(A) Absence shall be considered brief and infrequent if the child is routinely absent from the parent for normal activities related to child development or education, such as kindergarten, preschool classes, etc. Absences of the parent due to employment shall be considered brief and infrequent.

(B) Absence shall not be considered brief and infrequent if the parent is routinely absent from the child for 12 or more hours per week for activities not related to normal household, child rearing and/or family duties. In no event shall the full-time school attendance of the parent be considered brief and infrequent. Absences of the child for more than 12 hours per week due to care of the child by relatives or similar arrangements unrelated to employment or training shall not qualify as brief and infrequent.

(7)-(10) (No change.)

3.-4. (No change.)

(c)-(g) (No change.)

(h)-(k) (See adoption in the November 3, 1986 issue of the New Jersey Register.)

(l) (No change.)

INSURANCE**(b)****DIVISION OF ADMINISTRATION****Cancellation and Nonrenewal of Commercial****Insurance Policies****Prohibition of Certain Cancellation and Nonrenewal Activity**

Proposed Amendments: N.J.A.C. 11:1-20.1, 20.2, 20.3, 20.4 and 20.11; 11:1-22.1, 22.2 and 22.3

Proposed New Rules: N.J.A.C. 11:1-20.5, 20.6, 20.7 and 20.8

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a1, 2 and 3, 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-4 and 17:29C-1 et seq.

Proposal Number: PRN 1986-481.

Submit comments by December 17, 1986 to:

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

The agency proposal follows:

Summary

N.J.A.C. 11:1-20 and 22 provide procedural and substantive requirements relating to the cancellation and nonrenewal of many commercial lines insurance policies. Comprehensive rules governing the termination practices of insurance companies were originally promulgated by the Department on September 16, 1985, on an emergency basis. Subsequently, the Department engaged in several rulemaking proceedings relating to these rules, and, on June 16, 1986, the Commissioner adopted the repeal of the emergency regulation cited as N.J.A.C. 11:1-20 and promulgated two replacement rules, N.J.A.C. 11:1-20 and 22.

On July 21, 1986 (see 18 N.J.R. 1445(a)) the Department of Insurance proposed amendments to the replacement regulations which were designed to respond to public comments submitted by interested parties on earlier versions of the regulations and also to clarify the Department's interpretation of various provisions. In general, these proposed amendments addressed the following areas: (1) the status of binders under the regulations; (2) the issuance by insurers of estimated premium billings at renewal; and (3) policy provisions relating to an insurer's grounds for nonrenewal. Upon further review of the July 21 proposal and the public comments submitted in connection therewith, the Department has determined to withdraw the proposal and supersede it with the following proposed amendments.

Certain issues addressed in the July 21 proposal, such as the status of binders, are covered by these proposed amendments, albeit in a different fashion. Other matters, unrelated to those discussed in the July 21 proposal, but which were brought to the Department's attention during that proceeding, also are addressed herein.

Many of the amendments to N.J.A.C. 11:1-20 and 22 set forth in this proposal stem from interpretive Bulletins 86-3 and 86-5 issued by the

Department on July 24, 1986 and October 10, 1986, respectively. As such, the proposed amendments simply formalize guidelines and standards that are currently applicable to the rules.

Finally, the proposed amendments to these rules, in particular those affecting policy provisions relating to cancellation and submission of underwriting guidelines (N.J.A.C. 11:1-20.3 and 20.4), reflect the experience gained by the Department through its ongoing evaluation of insurer underwriting guidelines and termination practices over the months following promulgation of the emergency regulation.

The various rulemaking proceedings engaged in by the Department during this period were conducted with a view toward establishing an appropriate framework for governing terminations and ensuring compliance with statutory standards prohibiting terminations that are arbitrary, capricious or unfairly discriminatory. The Department believes that the proposed amendments provide a framework that continues to afford adequate protection to the insurance-buying public while at the same time streamlining certain review functions and filing requirements contained in the existing regulations.

Proposed amendments to the "scope" sections of both rules (N.J.A.C. 11:1-20.1 and 22.1) expand the current exemption granted to multistate location risks which do not have their principal headquarters in this state to include all risks with multistate locations.

Proposed amendments to N.J.A.C. 11:1-20.2, concerning nonrenewal and cancellation notice requirements, stem from the Department's Bulletin 86-5 and are designed to supplement and/or clarify the provisions of the rule in a manner consistent with the interpretations enunciated in the Bulletin. N.J.A.C. 11:1-20.2(c), for example, is being amended to specify that any required notice of changes in contract terms must be given to the insured in writing.

N.J.A.C. 11:1-20.2(j) is being amended to clarify the relationship between this provision and the requirement of subsection (c) that an insured be given notice of the amount of the renewal premium not more than 120 days nor less than 30 days prior to the due date of the premium. The amended language indicates that, in the event the insurer is entitled to continue the expiring policy at the same terms and conditions until such time as the insurer gives notice of the renewal premium as specified in subsection (c).

A new subsection (l) is being added to the section to clarify that an insurer may, in writing, elect to delegate performance of the notice functions set forth in the section to its agent or other person or entity. The proposed amendment, however, further specifies that such delegation shall not relieve the insurer of its responsibilities under the section.

N.J.A.C. 11:1-20.3, concerning policy provisions relating to cancellation, is substantively revised by the proposal. For instance, the section is expanded to apply to nonrenewals as well as cancellations. However, the present requirement of the rule that the insurer enumerate in its policy forms all grounds it will utilize for cancellation is being eliminated. Instead, the proposal requires that each policy form contain a statement concerning the insurer's grounds for termination, the language of which is prescribed in the rule. The statement indicates that: (1) an insurer may not terminate coverage based on a guideline that is arbitrary, capricious or unfairly discriminatory; and (2) an insurer's underwriting guidelines must be maintained in writing and must be available to the insured upon written request. In order to facilitate implementation of this requirement, the proposal provides that use of the language set forth in the rule is mandatory and forms revised to include the prescribed statement need not be submitted to the Department for approval.

N.J.A.C. 11:1-20.3(b) concerning cancellations initiated during the first 60 days of coverage is recodified to N.J.A.C. 11:1-20.4(l) and amended to clarify its applicability to all coverages, whether provided through the issuance of binders or policies. The proposal clarifies that with respect to such terminations, the insurer may base its cancellation on grounds other than those contained in its guidelines. However, except as may be otherwise permitted by law, the amended provision specifies that an insurer is subject to the remaining requirements of the rule.

N.J.A.C. 11:1-20.4 concerning submission of underwriting guidelines is substantively revised by the proposal. The Department through its review of such submissions has found that most insurers rely on several common guidelines for the cancellation and nonrenewal of policies that are subject to the rule's requirements. The required submission of guidelines, therefore, is being eliminated in this proposal. Instead, the proposal sets forth a list of 13 approved guidelines found to be common to most filers. Ten of these guidelines were deemed preapproved for use by insurers pursuant to the Department's Bulletin 86-3. That Bulletin also contained definitions and standards for some of the approved guidelines, which have been incorporated into the proposal.

Several new subsections have been added to N.J.A.C. 11:1-20.4 and these provide, for example, that: (1) insurers may use other underwriting guidelines in addition to those specifically enumerated in the rule, provided they are not arbitrary, capricious or unfairly discriminatory; (2) all underwriting guidelines must be maintained in writing and be made available to the Department upon request; (3) guidelines relating to adverse loss experience may be used for nonrenewal purposes only; and (4) insurers may use only those guidelines which are in effect at the inception date of the policy or at a subsequent renewal of the policy to terminate coverage during that policy period.

Subsections (b) through (d) of N.J.A.C. 11:1-20.4 are recodified to subsections (i) through (k) and modified for clarification and consistency with other proposed amendments to the rule.

Several new sections (N.J.A.C. 11:1-20.5 through 8) are included in the proposal to provide specific documentation and filing requirements for terminations based on any guideline for loss of or reduction in insurance capacity, material increase in exposure arising from changes in statutory or case law, loss of or substantial changes in applicable reinsurance and agency termination. The specific standards delineated in the proposal are incorporated from Bulletin 86-3.

N.J.A.C. 11:1-22.1 is amended to add definitions of the terms "block" and "class". N.J.A.C. 11:1-22.2(b), (c) and (d) are amended to clarify that plans for block terminations may be submitted under the streamlined requirements of these subsections only if the insurer's guidelines for loss of reinsurance, loss of capacity, or agency termination, as applicable, conform to the definitions of those terms set forth in proposed N.J.A.C. 11:1-20.4. Once again, these proposed amendments are drawn from standards previously communicated to insurers in Bulletin 86-3.

The penalty provisions of both N.J.A.C. 11:1-20 and 22 are being amended to permit the Commissioner, where he deems such action will further the purpose of the rules, to order reinstatement without lapse of any policy cancelled or nonrenewed in violation of the rules. The current language of these provisions provides only for reinstatement of policies cancelled in violation of the rule. The proposed amendments also clarify that the authority vested in the Commissioner does not create a right or cause of action on behalf of the insured to enforce the penalties of the section.

Finally, the proposed amendments establish time limitations with respect to the Commissioner's authority to order reinstatement of a policy which has been cancelled or nonrenewed in violation of the provisions of the subchapter.

Social Impact

The proposed amendments to N.J.A.C. 11:1-20 and 22 maintain the essential protections currently afforded to policyholders under these rules.

Several amendments are simply intended to provide necessary clarification of various provisions in accord with interpretations previously communicated by the Department through the issuance of Bulletins 86-3 and 86.5. This clarification will foster consistent implementation of the rules' requirements by insurers.

Incorporation into the rules of the specific documentation requirements supporting various types of terminations will aid the Department's enforcement of the regulations. Insurers will benefit by being adequately apprized of the type of documentation which must be maintained on certain types of terminations.

The Department's proposed amendments to certain requirements, such as those concerning policy provisions and the review of insurer underwriting guidelines, should serve to streamline administration of the rules.

Economic Impact

The proposed amendments are not expected to have a negative economic impact on the public since the essential protections now afforded under N.J.A.C. 11:1-20 and 22 are maintained.

Insurers will experience modification of costs as a result of implementing the revised requirements of the regulations. Certain administrative costs, such as those which were associated with developing and filing policy forms listing the insurer's guidelines for cancellation, will be eliminated. Other requirements, such as the required furnishing of guidelines to any insured requesting same, may increase costs. The overall economic impact on insurers is not expected to be significant.

The Department may experience reduction in administrative costs associated with the review of policy form and guidelines.

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

SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF
COMMERCIAL INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this state except workers' compensation insurance, employers' liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1-20.3 and 11:1-20.4(d), this subchapter shall not be applicable to multi-state location risks [which do not have their principal headquarters in the state] or policies subject to retrospective rating plans.

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

11:1-20.2 Nonrenewal and cancellation notice requirements

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

(c) With respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured in writing not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d)-(i) (No change.)

(j) For the purposes of this subchapter, if an insurer fails to send a notice of nonrenewal as required by this subchapter or fails to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the insurer, or fails to issue and deliver a certificate or notice extending the term of the policy beyond its policy period or term or fails to provide notice of renewal as specified at (c) above, the insured shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination or renewal under this subchapter. Nothing in this subchapter shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control, provided the insurer obtains its policyholder's consent to do so and maintains records of such actions.

(k) (No change.)

(l) An insurer may in writing delegate to its appointed agent or to another person or legal entity the performance of any or all of the notice functions set forth in this section. However, delegation of these functions by the insurer to any person or entity shall not relieve the insurer of its responsibilities hereunder. No notice, whether provided by the insurer directly or through a person or entity authorized to act on the insurer's behalf, shall be deemed effective unless provided in conformance with the requirements of this section.

11:1-20.3 Policy provisions relating to cancellation or nonrenewal

(a) All commercial insurance policy forms issued or renewed on or after [August 21, 1986 must contain provisions that clearly state the grounds upon which the insurer will cancel coverage and that generally describe the types of conditions or circumstances under which the insurer will initiate cancellation. Such grounds shall include, but need not be limited to the following:

1. Nonpayment of premium;
2. Moral hazard;
3. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
4. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
5. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
7. Loss or substantial changes in applicable reinsurance;
8. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract; and
9. Loss of or reduction in available insurance capacity.] 60 days from the effective date of this subchapter must contain a provision setting forth the following statement:

"Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guidelines which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy."

1. The policy provision language set forth at (a) above is mandatory and, notwithstanding any other law to the contrary, need not be submitted to the Department for approval.

[(b) Nothing in this subchapter shall prohibit an insurer from issuing a notice of cancellation with respect to any policy which has been in effect for less than 60 days at the time the notice is mailed or delivered, unless the policy is a renewal policy.]

11:1-20.4 [Submission of underwriting guidelines] Cancellation and nonrenewal underwriting guidelines

(a) [On or before July 28, 1986, insurers shall submit to the Commissioner for review their current underwriting guidelines used for cancellation or nonrenewal of commercial lines coverage which are subject to the provisions of this subchapter. Where an insurer determines to amend or modify previously filed guidelines notice of such amendment or modification shall be immediately furnished to the Commissioner.] No insurer may cancel or nonrenew a policy based upon underwriting guidelines which are arbitrary, capricious or unfairly discriminatory.

(b) The following guidelines are approved for use by insurers:

1. Nonpayment of premium;
2. Moral hazard, as defined at N.J.A.C. 11:1-20.2(f);
3. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
4. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
5. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
7. Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured;
8. Loss of or reduction in available insurance capacity. For the purposes of this paragraph, loss of or reduction in available insurance capacity shall exist if:

- i. An insurance department or court of competent jurisdiction has declared the insurer to be financially impaired or unsound, which shall include such actions as suspension, conservatorship, rehabilitation or liquidation; or
- ii. Based upon information set forth in the insurer's annual statements, the insurer has experienced a significant deterioration in its financial condition during the most recent annual statement period resulting in its designation by the National Association of Insurance Commissioners as being in need of "immediate attention", and the insurer's:

- (1) Ratio of net premium to surplus to policyholders has gone above four to one and its surplus to policyholders has fallen below 25 percent of net loss and loss expense reserves; or

- (2) Ratio of net premium to surplus to policyholders has increased to at least six to one; or

- (3) Ratio of net losses and loss reserves to surplus to policyholders has increased to at least six to one.

9. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or any subsequent renewal thereof;

10. Loss of or substantial changes in applicable reinsurance. For the purposes of this paragraph, loss of or substantial changes in applicable reinsurance shall be deemed to exist if any of the following have occurred;

- i. Termination by the reinsurer of treaty or facultative reinsurance affecting the individual risk or line, class or subclass of insurance, as applicable, proposed for cancellation and/or nonrenewal; or

- ii. Substantial reductions in the amount of available reinsurance or other changes to such contracts which effectively prohibit the insurer from providing coverage at the same limits and terms as the existing policy; or

- iii. Changes in the financial condition of the reinsurer which adversely affect its ability to honor its obligations. A change in the financial condition of the reinsurer shall be evidenced by an order issued by an insurance department or court of competent jurisdiction declaring the insurer to be financially impaired or unsound, which shall include such actions as suspension, conservatorship, rehabilitation or liquidation.

11. Failure by the insured to comply with any Federal, State or local fire, health, safety, building or construction regulation, law or ordinance with respect to an insured risk which substantially increases any hazard insured against within 60 days of written notification of a violation of any such law, regulation or ordinance;

12. Failure by the insured to provide reasonable and necessary underwriting information to the company upon written request therefor and a reasonable opportunity to respond; and

13. Agency termination, provided:

i. The insurer documents that replacement coverage at comparable rates and terms has been provided to the insured, and the insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer; or

ii. The insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer and the insured has agreed, in writing, to the cancellation or nonrenewal based upon the termination of his or her appointed agent.

(c) Only the specific language of the underwriting guidelines as set forth in (b) above is deemed to be approved by the Commissioner for use in the cancellation and nonrenewal of policies which are subject to the provisions of this subchapter.

(d) In addition to the approved guidelines set forth in (b) above, an insurer may use other guidelines for cancellation or nonrenewal provided such guidelines are not arbitrary, capricious or unfairly discriminatory.

(e) Any underwriting guideline or standard premised on adverse loss experience shall be limited in application to nonrenewals only and shall specifically identify the type of loss experience which supports and justifies the nonrenewal action.

(f) All underwriting guidelines or standards utilized by the insurer for the cancellation or nonrenewal of commercial lines coverages which are subject to the provisions of this subchapter shall be maintained by the insurer in writing and shall indicate the effective date(s) thereof. An insurer's underwriting guidelines shall be made available to the Department upon request.

(g) Only those guidelines which are in effect at the inception date of the original policy or any subsequent renewal of that policy, as applicable, may be utilized by the insurer to cancel or nonrenew during that policy period.

(h) The requirement of (g) above shall not be construed to limit an insurer's ability to modify from time to time its underwriting guidelines; however the modified guidelines only may be applied to policies issued or renewed subsequent to the effective date of such modification.

[(b)](i) If the Commissioner finds [that] an underwriting guideline is being utilized by an insurer [is] in an arbitrary, capricious or unfairly discriminatory manner, the Commissioner shall issue a preliminary order prohibiting the use of such a guideline in the proscribed manner and shall require such insurer to rescind any notice of cancellation or nonrenewal based on such application of the underwriting guideline which has not yet become effective pending a hearing. Following the hearing, if the preliminary order is sustained, the Commissioner shall prohibit [the] further [use] application of [such] the guideline in the manner found to be arbitrary, capricious or unfairly discriminatory, except that, if the insurer can demonstrate to the Commissioner that it will be significantly prejudiced by the proscription [disapproval of such guideline], the Commissioner shall permit the continued [use] application of that guideline, with respect to policies written prior to the date of preliminary order during a reasonable run-off period to be specified by the Commissioner and not to exceed three years. If the preliminary order is not sustained, coverage which has been extended pending the hearing may be cancelled by the insurer in accordance with the provisions of N.J.A.C. 11:1-20.2.

[(c)](j) In the event that the Commissioner shall issue a preliminary order [disapproving] proscribing the manner in which an underwriting guideline is being used by an insurer, pursuant to [(b)](i) above, the insurer may request and expedited hearing on the Commissioner's preliminary order.

[(d)](k) With respect to retrospectively rated risks and multi-state location risks [with principal headquarters outside the state], insurers shall maintain records of those policies which are either cancelled or nonrenewed and the reasons upon which such termination was based.

(l) Nothing in this section shall prohibit an insurer from cancelling a policy or coverage which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered. Except as may be otherwise provided by statute, such cancellations shall be subject to the remaining provisions of this subchapter.

[(e)] This section shall apply to all notices of cancellation or nonrenewal issued on or after July 28, 1986.]

11:1-20.5 Cancellation or nonrenewal based on loss of or reduction in available insurance capacity

(a) Every cancellation or nonrenewal based upon loss of or reduction in available insurance capacity shall be supported by the following documentation:

1. A narrative description of the specific facts underlying the insurer's loss of or reduction in capacity.

2. Identification of the individual risk(s) or line, class or subclass of insurance, as applicable, proposed for termination and an explanation of the basis for the selection, which shall demonstrate that the insurer's selection is not arbitrary, capricious or unfairly discriminatory. An unsupported statement, such as "underwriting judgment", shall not constitute a valid explanation.

3. With respect to terminations subject to N.J.A.C. 11:1-22, an explanation of how the loss of or reduction in capacity affects the insurer's risks throughout the line, class capacity affects the insurer's risks throughout the line, class or category of insurance proposed for cancellation and/or nonrenewal.

4. An explanation of why cancellation or nonrenewal is necessary to cure the capacity problem and why other measures, including but not limited to cessation of new business writings, do not present a viable alternative to termination of existing business; and

5. With respect to terminations subject to N.J.A.C. 11:1-22, an explanation of how the cancellation or nonrenewals will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

(b) Whenever an insurer proposes to cancel or nonrenew, on an individual basis, a policy which is subject to the provisions of this subchapter due to loss of or reduction in insurance capacity, the insurer shall furnish the Department with written notice of the termination. The notice shall include the information set forth at (a)1, 2 and 4 above and shall be mailed to the Department at the same time notice of termination is mailed or delivered to the insured.

11:1-20.6 Cancellation and nonrenewal based on changes in statutory or case law

(a) Every cancellation or nonrenewal based on material increase in exposure resulting from changes in statutory or case law subsequent to issuance of the insurance contract shall be supported by the following documentation:

1. Copies of or appropriate references to the applicable statute or case;

2. A narrative description of the changes resulting from the statute or case and how the changes affect the coverages provided under the contract to increase the insurer's exposure in a material fashion. The narrative should also document that the modification to policy coverages arising from the change in statutory or case law was such that it could not have been reasonably foreseen by the insurer;

3. Identification of the individual risk(s), line(s), class(es) or subclass(es) of insurance affected by the change in statutory or case law;

4. If all risks within the lines, classes or subclasses identified in item 3 above are not to be cancelled or nonrenewed, an explanation of the basis for selection of individual risk(s) or lines, classes or subclasses, as applicable, which shall demonstrate that such selection is not arbitrary, capricious or unfairly discriminatory;

5. Explanation of why cancellation and/or nonrenewal is necessary to cure the insurer's increased exposure and why other measures, including but not limited to, premium modification or revision of coverage limits or terms, do not present a viable alternative to termination.

(b) Whenever an insurer proposes to cancel or nonrenew, on an individual basis, a policy which is subject to the provisions of this subchapter due to material increase in exposure arising out of changes in statutory or case law, the insurer shall furnish the Department with written notice of the termination. The notice shall include the information set forth at (a)1, 2, 3 and 5 above and shall be mailed to the Department at the same time notice of termination is mailed or delivered to the insured.

11:1-20.7 Cancellation or nonrenewal based on loss of or substantial changes in applicable reinsurance

(a) Every cancellation or nonrenewal based on loss of or substantial changes in applicable reinsurance shall be supported by the following documentation:

1. All information set forth at N.J.A.C. 11:1-22.2(b)1 through 8;

2. Copy of termination notice or other notice reflecting substantial changes in applicable reinsurance;

3. Copy of order issued by insurance department or court of competent jurisdiction, where applicable; and

4. Name, address and telephone number of each reinsurer contacted by the insurer in its effort to obtain replacement coverage, name and title of each company representative contacted and the outcome.

(b) Whenever an insurer proposes to cancel or nonrenew, on an individual basis, a policy which is subject to the provisions of this subchapter due to loss of or substantial changes in applicable reinsurance, the insurer shall

furnish the Department with written notice of the termination. The notice shall include the information set forth at N.J.A.C. 11:1-22.2(b)2, 3, 4 and 7 and (a)2, 3 and 4 above.

(c) In lieu of cancellation or nonrenewal, insurers shall offer to continue the policyholder's coverage at limits which reflect at least the insurer's net retention as identified pursuant to (a) above. In no event shall the insurer's offer to continue coverage at reduced limits relieve it from requirements that are otherwise applicable to cancellations and nonrenewals under N.J.A.C. 11:1-22 or this subchapter.

11:1-20.8 Cancellation and nonrenewal based on agency termination

(a) Every cancellation or nonrenewal based on agency termination shall be supported by the following documentation:

1. Explanation of the basis for the insurer's termination of the agency contract;

2. Explanation of why the individual risk(s) or line, class or subclass, as applicable, of insurance must be cancelled or nonrenewed as a result of the agency termination and why coverage cannot or should not be continued through referral to another active agent of the insurer or written by the insurer on a direct basis;

3. Evidence of the provision of replacement coverage to the insured, where applicable;

4. Copy of the insured's statement consenting to the termination of coverage, where applicable; and

5. Copy of the written notice issued by the insurer advising the insured of his or her right to continue coverage with the insurer.

11:1-20.[5]9 Policy provisions

No policy shall contain provisions which are inconsistent with the requirements of this subchapter.

11:1-20.[6]10 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

11:1-20.[7]11 Penalties

(a) In addition to any other penalty authorized by law, the Commissioner may [order the immediate reinstatement without lapse of any policy which has been cancelled in violation of the provisions of this subchapter and may], after notice and a hearing, impose penalties as proscribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

(b) As an alternative or in addition to the penalties set forth in (a) above, the Commissioner, where he deems such action will further the purposes of this subchapter, may require immediate reinstatement without lapse of any policy which has been terminated in violation of the provisions of this subchapter.

1. The Commissioner shall not order any reinstatement more than one year after the effective date of the nonrenewal or cancellation, provided, however, that the one year period shall be tolled during the course of any administrative proceedings initiated by the Department and any subsequent judicial review of those proceedings.

2. Nothing herein shall be deemed to create any right or cause of action on behalf of any insured to enforce the penalties set forth in this subsection.

[(b) This section shall apply to all notices of cancellation or nonrenewal issued on or after July 28, 1986.]

11:1-20.[8]12 Duration

Unless earlier repromulgated by the Commissioner, this subchapter shall expire two years after it becomes effective.

SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

11:1-22.1 Scope; definitions

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State except workers' compensation insurance and employers' liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. This subchapter shall not be applicable to multi-state location risks [which do not have their principal headquarters in the state].

(b) (No change.)

(c) For the purposes of this subchapter, the terms "block" and "class" shall mean any group of insureds, however defined or designated, to which a common plan or program of cancellation or nonrenewal applies. A class may include one or more blocks.

11:1-22.2 Prohibitions

(a) (No change.)

(b) Notwithstanding (a)2 and (a)3 above, an insurer may cancel or nonrenew a line or class of business where such cancellation or nonrenewal is necessary because of loss or substantial changes in applicable reinsurance by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal.

1. Any such plan shall contain a certification by an elected officer of the company:

Renumber existing 1.-8. as i.-viii. (No change in text.)

2. Any plan for cancellation or nonrenewal due to loss of or substantial changes in applicable reinsurance may be submitted to the Department as provided at (b) above only if the guideline meets the standards set forth at N.J.A.C. 11:1-20.4(b)10. A plan for termination based on any other guideline for loss of or substantial changes in available reinsurance must be submitted to the Department for approval as specified at N.J.A.C. 11:1-22.2(a)2 or 3, as applicable.

(c) Notwithstanding (a)2 and (a)3 above, an insurer may cancel or nonrenew a line or class of insurance based upon a material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or loss of or reduction in available insurance capacity by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal.

1. Any plan for cancellation or nonrenewal due to loss of or reduction in available insurance capacity may be submitted to the Department as provided at (c) above, only if the guideline meets the standards set forth at N.J.A.C. 11:1-20.4(b)8. A plan for termination based on any other guideline for loss of or reduction in available insurance capacity must be submitted to the Department for approval as specified at N.J.A.C. 11:1-22.2(a)2 or 3, as applicable.

(d) Notwithstanding (a)2 and (a)3 above, an insurer may nonrenew a line or class of insurance based upon agency termination by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of nonrenewal.

1. Any plan for nonrenewal due to agency termination may be submitted to the Department as provided at (d) above only if the guideline meets the standards at N.J.A.C. 11:1-20.4(b)13. A plan for nonrenewal based on any other guideline for agency termination must be submitted to the Department for approval as specified at N.J.A.C. 11:1-22.2(a)2.

11:1-22.3 Penalties

(a) In addition to any other penalty authorized by law, the Commissioner may [order the immediate reinstatement without lapse of any policy which has been cancelled in violation of the provisions of this subchapter and may], after notice and a hearing, impose penalties as proscribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

(b) As an alternative or in addition to the penalties set forth in (a) above, the Commissioner, where he deems such action will further the purposes of this subchapter, may require immediate reinstatement without lapse of any policy which has been terminated in violation of the provisions of this subchapter.

1. With respect to any policy which has been nonrenewed in violation of the provisions of this subchapter, the Commissioner shall not require reinstatement as specified in (b) above except where a complaint made by or on behalf of the insured has been filed with the Department or the insurer's violative conduct has otherwise been brought to the Department's attention within not more than one year following the expiration date of the policy.

2. Nothing herein shall be deemed to create any right or cause of action on behalf of any insured to enforce the penalties set forth in this subsection.

[(b) This section shall apply to all notices of cancellation or nonrenewal issued on or after July 28, 1986.]

11:1-22.4 Duration

Unless earlier repromulgated by the Commissioner, this subchapter shall expire two years after its effective date.

COMMERCE AND ECONOMIC DEVELOPMENT TREASURY-GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY

Small Business, Female Business and Minority Business Contracts

**Jointly Proposed Repeal: N.J.A.C. 12A:10-1 and
N.J.A.C. 17:12-6**

**Jointly Proposed New Rules: N.J.A.C. 12A:10-1 and
N.J.A.C. 17:12-6**

Authorized By: Borden R. Putnam, Commissioner, Department
of Commerce and Economic Development, and
Feather O'Connor, State Treasurer.

Authority: N.J.S.A. 52:32-17 (P.L. 1985, ch. 384), 52:27H-6f,
52:18A-30(d).

Proposal Number: PRN 1986-464.

Submit comments by December 17, 1986 to:

Anthony Vergara
Department of Commerce and Economic Development
Certification and Approvals Unit
One West State Street
Trenton, New Jersey 08625; or
Jim Rosenberg
Division of Purchase and Property
Department of Treasury
135 West Hanover Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed in implementation of the Set-Aside Act for Small Businesses, Female-owned Businesses and Minority-owned Businesses; P.L. 1985, ch. 384 (N.J.S.A. 52:32-17).

These rules amend and supersede the previous regulations for the Small Business Set-Aside Act, P.L. 1983, ch. 482. These rules are being jointly proposed by the Department of Commerce and Economic Development and the Department of Treasury, which are given the responsibility of implementing the Act.

The purpose of the Act and of these rules is to increase the percentage of State contracts and purchases awarded to small businesses, female-owned businesses, and minority-owned businesses. Pursuant to the Act, a goal is established of awarding no less than 25 percent of the State agency contracts and purchases to small businesses, female-owned businesses, and minority-owned businesses. Specifically, the Act sets goals of 15 percent of state contracts and purchases for small businesses, 7 percent of state contracts and purchases for minority owned businesses, and 3 percent of state contracts and purchases for female-owned businesses. Businesses wishing to participate in this program must meet certain statutory criteria:

1. Vendors must be New Jersey based businesses;
2. Vendors must be independently owned and operated;
3. Small Business vendors must have 100 or less full-time employees;
4. Female-owned and Minority-owned businesses must show 51 percent ownership by females or a designated minority groups as specified under the Act.

Under the Act, the responsibility of registering eligible set-aside businesses lies with the Department of Commerce and Economic Development.

Some key provisions of these rules include:

1. A definition of small business as one with no more than 100 full-time employees (see N.J.A.C. 17:12-6.3);
2. A definition of female-owned, and minority-owned businesses as being firms with at least 51 percent ownership by either females, or in the case of minorities those designated ethnic or racial groups;
3. A procedure whereby vendors may apply to The Department of Commerce and Economic Development for eligibility as set-aside bidders

(see N.J.A.C. 17:12-6.3 and 6.4). In order to be eligible for consideration as a bidder on a set-aside contract, the bidder must apply to DCED no later than the bid opening date for the contract;

4. A procedure for challenging the eligibility of a vendor to be a set-aside vendor (see N.J.A.C. 17:12-6.7) and for penalizing vendors who falsely claim eligibility as a set-aside bidder (see N.J.A.C. 17:12-6.8);

5. A set of standards for determining set-aside goals (see N.J.A.C. 17:12-6.9); and

6. A procedure for establishing set-aside plans (see N.J.A.C. 17:12-6.9) and for reporting on implementation of the plans (see N.J.A.C. 17:12-6.14).

More specific regulations will be published in the future relating to the special circumstances of construction contracts and how they will be specifically accounted for under this program.

Social Impact

According to Section 2 of the Set-Aside Act, the well-being of New Jersey's economy and society depend on the existence of small businesses, female-owned, and minority owned businesses and toward this end, declares that, the "State must ensure that a fair portion of the State's total purchases and contracts for construction, property and services is placed with small business, female and minority business concerns". The Act then requires State agencies to make a "good faith effort" to award at least 15 percent to small business, 3 percent to female-owned business, and 7 percent to minority business of their contracts and purchases.

The proposed new rules attempt to facilitate the fulfillment of these goals under the Act, by setting standards and procedures for State agencies, and also provide for outreach to small businesses, female, and minority businesses.

Economic Impact

The Set-Aside Act and the proposed new rules are expected generally to impact on the New Jersey economy by assisting small business, female owned business and minority business. The actual economic impact will be ascertained through reports and surveys, required under the Act and these rules.

The Act and these rules should also have some fiscal impact on the state in three respects. First, the Act and these rules will entail administrative cost on the part of DCED and the Department of Treasury, as well as other state contracting agencies. Set-Aside contracts may require some special procedures or paperwork.

Second, the Act may result in some higher-priced purchases made under set-aside contracts. Although these rules provide a mechanism for rescinding the designation of a set-aside contract when those set-aside vendors bid is unreasonably high (see N.J.A.C. 17:12-6.13), it is nonetheless expected that some of the set-aside contracts will entail some higher prices than otherwise.

Third, the Act may result in some lower contract prices overall. Because of the increase of the vendors submitting contract bids greater competition may be created, and as such, a realization of lower contract cost through increased competition. The actual economic impact will be ascertained as these rules are implemented.

Full text of the repealed rule can be found at N.J.A.C. 12A:10-1 and N.J.A.C. 17:12-6.

Full text of the proposed new rule follows.

SUBCHAPTER 6. CONTRACTS FOR SMALL BUSINESSES, FEMALE BUSINESSES AND MINORITY BUSINESSES

17:12-6.1 Applicability and scope

(a) The rules in this subchapter are jointly promulgated by the Department of Commerce and Economic Development and the Department of Treasury to implement the Small Business Set-Aside Act, P.L. 1983, C. 482, as amended and renamed the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, P.L. 1985 c.384, N.J.S.A. 52:32-17 et seq. The Act establishes a goal of awarding no less than 25 percent of State agency contracts to small businesses, female-owned businesses and minority owned businesses. Specifically, the Act sets goals of 15 percent of State contracts for small businesses, 7 percent of State contracts for minority business and 3 percent of State contracts for female businesses.

(b) The Act requires the Department of Commerce to establish and implement standards and procedures for qualifying vendors as small

businesses, minority businesses and female businesses. The Act requires the Department of Treasury to establish purchasing procedures for implementing the goals of the Act.

(c) These rules are divided into two major parts. The first part, N.J.A.C. 17:12-6.3 to N.J.A.C. 17:12-6.8, describes the procedures for businesses to qualify under the Act and the penalties for filing false information under the Act. The second part, N.J.A.C. 17:12-6.9 to N.J.A.C. 17:12-6.16, describe the procedures for state agencies to implement the Act.

(d) Applications and questions regarding qualification as a small business, minority business and/or female business should be addressed to the Department of Commerce. Specifically, questions concerning eligibility under the Act of small businesses or female businesses should be directed to:

Office of Small Business Assistance
Department of Commerce
1 West State Street
CN 823
Trenton, New Jersey 08625

Questions concerning eligibility under the Act of minority businesses should be directed to:

Office of Minority Business Enterprise
Department of Commerce
1 West State Street
CN 823
Trenton, New Jersey 08625

(e) Questions concerning the award of contracts under the Act should be directed to:

Department of the Treasury
General Services Administration
Division of Purchase and Property
Attention: Purchase Bureau
135 W. Hanover St.
Trenton, New Jersey 08625

(f) The Act applies to every State agency with purchasing authority. The rules in this subchapter apply to all contracts for the purchase of goods and services which are awarded by the State's various contracting agencies. The State contracting agencies whose purchases are governed by these rules include the following:

1. DEPARTMENTS:

- Agriculture
- Banking
- Civil Service
- Commerce and Economic Development
- Community Affairs
- Corrections
- Defense
- Education
- Energy
- Environmental Protection
- Health
- Higher Education
- Human Services
- Insurance
- Labor
- Law and Public Safety
- Public Advocate
- State
- Transportation
- Treasury

2. COLLEGES:

- Edison College
- Glassboro State College
- Jersey City State College
- Kean College
- Montclair State College
- N.J. Institute of Technology
- Ramapo College
- Rutgers University
- Stockton State College
- Trenton State College
- University of Medicine and Dentistry
- William Paterson College

3. AUTHORITIES:

- Board of Public Utilities
- Casino Redevelopment Authority
- Development Authority for Small Businesses, Women-owned and Minority-owned Businesses
- Expressway Authority
- Health Care Facilities Financing Authority
- Highway Authority
- N.J. Economic Development Authority
- N.J. Educational Facilities Authority
- N.J. Health Care Facilities Financing Authority
- N.J. Housing & Mortgage Finance Agency
- N.J. Transit Corp.
- N.J. Water Supply Authority
- Public Broadcasting Authority
- Sports and Exposition Authority
- Turnpike Authority
- Urban Development Corporation

4. COMMISSIONS

- Beach Erosion Commission
- Casino Control Commission
- County and Municipal Government Study Commission
- Election Law Enforcement Commission
- Executive Commission on Ethical Standards
- Hackensack Meadowlands Development Commission
- N.J. Commission on Capital Budgeting & Planning
- N.J. Racing Commission
- North Jersey Water Supply Commission
- Passaic Valley Sewer Commission
- Pinelands Commission
- State Commission of Investigation
- Commission on Science and Technology
- and all other departments, colleges, authorities and commissions as may be established in the future.

17:12-6.2 Definitions

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

"Contracting agency" means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make contracts.

"Cooperative purchasing" means an award made by the Division of Purchase and Property for the use of either local governing authorities, pursuant to N.J.S.A. 52:25-16.1 et seq., or quasi-State agencies, pursuant to N.J.S.A. 52:27B-56.1. Such an award is made as an adjunct to an award of a contract for State agency purchases.

"Delegated Purchase Authority" means:
1. The the authority of a state agency to award contracts on its own pursuant to authority delegated by the Director, Division of Purchase and Property. (See N.J.S.A. 52:25-23.)

2. The authority of a state agency to award contracts on its own pursuant to authority delegated by the Director, Division of Building and Construction. (See N.J.S.A. 52:18A-78.11.)

"Direct purchasing" means the issuance of a purchase order by a State agency for a specific item of goods or service, for which a contract either has already been awarded or is simultaneously being awarded. The term is generally applied when a State agency issues a purchase order for goods or services available under either a contract awarded by the State agency pursuant to its own statutory contracting authority, a term contract awarded by the Division of Purchase and Property, or a line-item contract awarded by the State agency pursuant to purchasing authority delegated from the Division of Purchase and Property. (For line-item contracts awarded by the Division of Purchase and Property, a purchase order is issued by the Division of Purchase and Property.)

"Division of Purchase and Property" means the State agency within the Department of Treasury which provides a centralized purchasing service for other State agencies, pursuant to N.J.S.A. 52:27B-56.

"Division of Building and Construction" means the State agency within the Department of Treasury which provides a centralized purchasing service for other State agencies, pursuant to N.J.S.A. 52:18A-151, 162.

"Line-item contract" means an award in which a specific one-time purchase of a good or service is established.

"Multiple award contract" means a term contract awarded by the Division of Purchase and Property or other contracting agency wherein more than one vendor is awarded a contract. The term is applicable in two situations:

1. Where the volume of business is so large or the geographical distances are so great that more than one vendor is necessary to serve the State's needs; or

2. Where the differences between various vendors' versions of a product are so significant that it is useful to have a contract with a vendor of each product.

"Purchase order" means the document which

1. Implements the purchase of a specific item authorized by a line-item contract award, issued by the Division of Purchase and Property, and the using agency; or

2. Implements the purchase of items authorized by a term contract award, issued by the using agency only. (Purchases are made by the Division of Purchase and Property, for the using agency, or by the using agency, under delegated authority.)

"Request for Proposals" or "RFP" means the document issued by the Purchase Bureau of the Division of Purchase and Property; Division of Building and Construction or any other contracting agency which forms the basis of an advertised bidding and award process conducted by the contracting agency. The RFP defines the contract's basic terms and conditions, the specifications, and other requirements, such as a set-aside requirement (restricting the bidding to businesses qualified as small, minority or female businesses). RFP's are usually of two types, those for term contracts and those for line-item contracts.

"Set-Aside Contract" means a contract or subcontract specifically designated by a contracting agency as being for small businesses, minority businesses and/or female businesses.

"Term contract" means an award made by a contracting agency in which a source of supply for a product is established for a specific period of time. The term is generally applied when a State agency:

1. Establishes a fixed, unit price or discount for items to be purchased thereunder;

2. Provides for some estimated dollar volume or minimum quantities to be purchased; or

3. Provides for the rebidding of any single purchase which exceeds a specified maximum amount.

"Using agency" means the State agency for which a purchase of goods or services is being made.

"Vendors with the Division of Building and Construction" means construction contractors, architects, engineers, professionals, and all other vendors for which DBC contracts.

"Waiver" means an award process, authorized by N.J.S.A. 52:34-8, which does not conform to the standard advertised bidding and award process required by N.J.S.A. 52:34-6 et seq. and which consists either of negotiations with a limited number of vendors or of bids solicited from a limited number of vendors. A waiver may also delegate purchasing authority to a using agency.

17:12-6.3 Standards of eligibility for small business, minority businesses and female businesses

(a) A business may qualify as a small business, a minority business, a female business, or any combination of the three.

(b) In order to qualify under the Act as a small business, minority business or female business, a business must both have its principal place of business in New Jersey and be independently owned and operated.

1. For purposes of these rules, a business shall be deemed to have its principal place of business in New Jersey:

i. When it has been either incorporated or registered to do business in New Jersey; and

ii. When either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes.

2. For purposes of these rules, a business shall be deemed independently owned and operated, if its management is responsible for both its daily and its long term operation, and if its management owns at least 51 percent interest in the business.

(c) In order to qualify as a small business, a business must be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time positions.

1. In determining its number of full-time employees, a business shall not include:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods or services which the business wants to qualify as a small business.

(d) In order to qualify as a minority business, a business must be a sole proprietorship, partnership or corporation at least 51 percent of which is owned and controlled by persons who are Black, Hispanic, Portuguese, Asian American, American Indian or Alaskan natives, which are defined as follows:

1. Black American: having origins in any of the racial groups of Africa.

2. Hispanic American: a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

3. Asian American: a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

4. American Indian or Alaskan native: a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

5. Portuguese: a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

(e) In order to qualify as a female business, a business must be a sole proprietorship, partnership or corporation at least 51 percent of which is owned and controlled by women.

17:12-6.4 Qualification procedures for small businesses, minority businesses and female businesses

(a) Any business which seeks to qualify under the Act as a small business, minority business and/or female business must apply to the Department of Commerce. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce, the Division of Purchase and Property and the State's other contracting agencies.

(b) As part of its application to the Department of Commerce, a business shall reasonably document its principal place of business and independent status, and, as appropriate, the number of its employees and the character of its ownership. Where available, this documentation should include appropriate forms or reports otherwise submitted to State and Federal agencies, such as employee or affirmative action reports filed with the New Jersey Department of Labor.

1. If an applicant fails to complete fully the Vendor Registration Form or to document its application, the application may be delayed or rejected.

2. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. 17:12-6.8.

(c) In order to qualify under the Act, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency for whose contracts the business intends to bid.

17:12-6.5 Acceptance as a small business, minority business or female business

(a) When a business is accepted by the Department of Commerce as a small business, minority business or female business, the business will be added by the Department of Commerce onto the set-aside vendors lists which shall be used in determining whether contracting agencies have fulfilled their contracting goals under the Act, and by contracting agencies in soliciting bids or contracts with specific set asides for small businesses, minority business and/or female businesses. There will be no limits to the number of businesses on the various Small Business, Minority Business and Female Business bidders lists. Each eligible applicant will be placed on that list or those lists for which it is qualified.

(b) When a business is accepted as a small business, minority business and/or female business, that business may bid on RFPs which are specifically set aside under the Set-Aside Act.

17:12-6.6 Time for application to qualify as a small business, minority business or female business

(a) A business may apply to the Department of Commerce at any time to be registered under the Set-Aside Act as a small business, minority business or female business and to be placed on appropriate set-aside vendors lists.

(b) Where a contract has been specifically set aside under the Act for small businesses, minority business and/or female businesses, a business may apply to the Department of Commerce for purposes of registration as a set-aside business so as, to bid on that specific contract no later than the bid opening date for that contract, and shall include the name of the contracting agency, the RFP number and the bid opening date along with its application to the Department of Commerce.

17:12-6.7 Procedures for challenging a business qualification as a small business, minority business or female business

(a) The qualification under these rules of a business on a bidders list as a small business, minority business or female business may be challenged by any other business on that state bidders list. The qualification of a business to bid on a contract set aside for small, minority and/or female businesses may be challenged by any other bidder on the contract on the state bidders list.

1. A qualification challenge shall be made in writing to the Department of Commerce with copies to the challenged business and to the appropriate contracting agency where a specific contract is at issue.

2. Any qualification challenge to the Department of Commerce may concern only the qualification of a business under these rules as a small business, minority business or female business. Any challenge to a business' qualifications to perform a contract shall be referred to the appropriate contracting agency.

3. The written challenge shall be accompanied and supported by documentation in support of its charges.

(b) In the case of a challenge to a bidder on a set-aside contract, except where emergent circumstances disclosed to the Department of Commerce and the bidders require the immediate implementation of an award, the State agency making the award shall be notified and shall withhold the final award of the set-aside contract for 10 days from the date of the issuance of any intent to award or proposed award, so that the Department may conduct a hearing if warranted.

1. Within seven days of being notified of the challenge, the contracting agency shall furnish the Department of Commerce with the relevant information about the bidders (names, addresses, telephone numbers) and about the RFP or other solicitation for the set-aside contract.

2. In the event that a proposed awardee on a set-aside contract is disqualified under these rules by the Department of Commerce, the contracting agency shall proceed to award the contract as otherwise authorized by these rules and by its own enabling laws.

3. In the event that a proposed awardee is not disqualified by the Department within 10 days of the date of the proposed award, the contracting agency may proceed with the proposed award.

4. The right to challenge a bidder's qualifications under these rules is in addition to any protest hearing rights which are afforded by a contracting agency, such as those provided by the Division of Purchase and Property in N.J.A.C. 17:12-3.

(c) When the Department of Commerce receives a challenge, it shall first demonstrate whether a hearing is warranted or whether the matter can otherwise be resolved. Where a hearing is warranted, the Department shall conduct a hearing on the matter as follows:

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Department may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the Chief of that unit within the Department of Commerce which processes registration forms for the type of business under discussion at the hearing. The hearing officer will issue a written report to the Commissioner of the Department of Commerce within four working days of the close of the hearing.

4. Where time permits, participants at the hearing will be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

17:12-6.8 Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible small business, female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a set-aside contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:12-6.8, may:

1. Require the business to pay to the State any difference between the contract amount and what the State's cost would have been if the contract had not been awarded as a set-aside contract;

2. Assess the business a penalty in an amount of not more than 10 percent of the amount of the contract involved; and

3. Order the business ineligible to transact any business with the State for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a small business, minority business and/or female business shall immediately apprise the Department of any circumstances which might disqualify the participation of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any bidders list under these rules and may subject the business to adverse action by contracting agencies. (See N.J.A.C. 17:12-2(e) and N.J.A.C. 17:12-7.2.)

17:12-6.9 Purchase goals

(a) N.J.S.A. 52:32-17 establishes goals for contracting agency of awarding 15 percent of its contracts to small businesses, seven percent of its contracts to minority businesses and three percent of its contracts to female businesses.

(b) In determining compliance with the goals, an agency may consider only businesses duly approved by the Department of Commerce as small businesses, minority businesses and female businesses.

(c) In determining compliance with the goals, the Division of Purchase and Property, and any other contracting agency whose primary function is to award contracts for use by other agencies, may consider the total number of contracts it has awarded and the number it has awarded to small, minority and female businesses. For these purposes, it may count the number of term contracts it has awarded, in addition to the number of line-item contracts it has awarded. In so doing, the Division and other similarly situated contracting agencies may also consider each award under a multiple award contract as a separate contract. Therefore, in computing the total number of contracts awarded by the Division or other contracting agency, the agency may count each separate line-item contract, each award of a multiple award contract and each other term contract. The award shall be made notwithstanding the dollar amounts of the contracts and the number of purchase orders issued by using agencies under the contracts.

(d) In determining compliance with the goals, other contracting agencies, using agencies issuing purchase orders under contracts otherwise awarded and agencies awarding contracts under delegated purchasing authority shall consider separately the number and the dollar amount of purchase orders issued. In setting its goals, the agency shall compute the total number of purchase orders issued and the total dollar amount expended by the agency through purchase orders. The agency shall attempt both to issue the appropriate percentage of purchase orders to businesses approved under these rules and to spend an appropriate percentage of money on these purchases.

(e) In determining the purchase goals, an agency shall not include any contract or purchase for which the application of the set-aside preferences, in-state preferences or other procedures established by the Act would jeopardize the State's participation in a program from which the state receives federal funds or other benefits.

(f) Where an agency is otherwise unable to fulfill the goals under the Act, the agency shall make a good faith effort to achieve its goals through specifically setting aside contracts and purchases for small businesses, minority businesses and/or female businesses. A set-aside contract must be competitively awarded and may be awarded only after the receipt of bids from three qualified bidders.

(g) In determining compliance with the goals, the award of a contract or purchase order may be counted toward only one goal. For example, the award of a contract to a small business owned by a black woman may be counted toward either the small business goal, minority business goal or female business goal, but not towards more than one goal.

17:12-6.10 Set-aside plans

(a) On or before June 1 of each year, each contracting agency and using agency shall prepare and submit to the Department of Commerce a set-aside plan for meeting the purchase goals for the next fiscal year.

(b) The set-aside plan shall include:

1. A general list and explanation of the goods and services and/or types of goods and services which are deemed appropriate for meeting the purchasing goals;

2. A consideration of the estimated dollar amounts and numbers of purchase orders expected for various contracts and types of contracts;

3. A list of those contracts and/or purchase orders it expects to award to small businesses, minority businesses and female businesses, including those contracts it intends to set aside.

(c) After consultation with the Department of Commerce, the contracting agency or using agency shall begin implementing the next year's set-aside plan no later than July 1. However:

1. The agency and the Department shall periodically review the plan's implementation and shall develop any revisions which may be necessary to achieve the goals; and

2. Where the agency and the Department disagree about the agency's plan or its implementation, the matter shall be submitted immediately for prompt resolution by the Commissioner of the Department of Commerce and Economic Development and the State Treasurer, or their designees.

17:12-6.11 Factors in establishing purchasing plans

(a) The following factors are to be considered by contracting and using agencies in determining whether a contract or purchase is appropriate for meeting the agencies' goals if the contract is in an area wherein:

1. Small businesses, female or minority businesses do not currently obtain a significant percentage of State contracts, but wherein the price, quality of product and responsibility of small businesses, female business or minority business are competitive with the general business community; or

2. The normal bidding process creates unnecessary obstacles against small businesses, female and minority businesses irrespective of any actual ability of these businesses to perform the contracts or fulfill the State's needs; or

3. Small businesses, female and minority businesses are not competitive with the general business community, but wherein the State would not suffer any disadvantage if a percentage of contracts and purchases were awarded to those businesses; or

4. The State's long term best interests in purchasing lie in developing small businesses, female and minority businesses in competition with the general business community; or

5. The State's long term best interests economically and socially lie in developing small businesses, female and minority business; or

6. The practices of the contracting or using agency create unnecessary obstacles to the award of contracts to small businesses, female and minority businesses; or

7. Potential emergency conditions, public health and safety considerations, or the continued operation of vital State services, preclude setting the contract aside for bidding exclusively by small businesses, female or minority businesses.

17:12-6.12 Bidders lists

(a) With the cooperation and coordination of the Department of Commerce, contracting agencies and using agencies shall maintain lists of small business bidders, minority business bidders and female business bidders.

(b) For the convenience of using agencies making delegated purchases or issuing purchase orders, the Department of Commerce shall distribute available bidders lists to using agencies.

(c) On or about October 1 of each year, each contracting agency and using agency maintaining small, female and/or minority business vendors lists shall submit such lists for review and approval to the Department of Commerce. The Department shall respond by December 15.

1. Unless and until disapproved by the Department, a State agency may continue to use any existing small, female and minority business bidders lists.

2. Unless and until disapproved by the Department, the State agency may continue to count towards its purchasing goals contracts awarded to any business previously approved for inclusion on a designated bidders list.

3. Where a contract is specifically set aside for small, female and/or minority businesses, and where no approved list is available from the Department, an agency may issue RFPs or other solicitations to businesses on any otherwise appropriate list of bidders so long as the RFPs and solicitations specify that only approved small, female-owned and/or minority-owned businesses, as appropriate, may bid on the contract. The agency shall also include a New Jersey Vendor Registration Form with the RFP or other solicitation and shall include instructions on how to apply to the Department of Commerce for appropriate approval.

(d) The Department of Commerce shall prepare and distribute New Jersey Vendor Registration Forms to businesses and State agencies. State agencies shall distribute these forms to prospective bidders and shall refer prospective bidders to the Department for appropriate approval and inclusion on bidders lists.

17:12-6.13 Set-aside contracts

(a) Any contract specifically set aside for small, minority and/or female businesses must be competitively bid, either through public advertising or through informal bidding, and may be awarded only if responsive bids from at least three qualified bidders are received.

(b) The RFP for a set-aside contract shall clearly and conspicuously state that an award may go only to a business duly approved by the Department of Commerce.

1. The RFP shall further state that a bidder who is not already approved, may submit a bid but then must apply to the Department of Commerce for approval as a small, minority or female business, as appropriate, no later than the bid opening date and, in order to be eligible for an award under that RFP, must be approved by the Department no later than five working days after the bid opening date. The RFP shall state that if, for whatever reason, the contracting agency does not receive approval of that bidder from the Department of Commerce no later than five working days from the bid opening date, the agency shall reject that bid without any obligation or recourse to the bidder.

(c) All bids may be rejected on a set-aside contract and the contract may be rebid as an ordinary contract where:

1. In evaluating the small, female and/or minority business bids, the agency determines that acceptance of any of the bids would subject the State to an unreasonable expense, or to a contract otherwise unacceptable pursuant to that agency's purchasing laws and rules; or

2. The agency does not receive at least three bids from qualified vendors approved as small, female and/or minority businesses, as appropriate; and

3. The agency notifies the bidders and the Department of Commerce of the reasons for its action, and the agency maintains its records of the bidding process for at least one year from the bid opening date.

(d) Immediately after rejecting all bids, the agency may, without any delay, rebid the contract as an ordinary award. Small, female and minority businesses bidders may participate in this rebidding process.

17:12-6.14 Purchasing reports

(a) On or before October 1 of each year, each contracting and using agency shall report to the Department of Commerce on the results of its purchasing plan for the previous fiscal year. The compilation of these reports shall be the sole responsibility of those Departments and contracting agencies required to report.

(b) The report shall include:

1. The total number of contracts awarded and purchase orders issued by the contracting or using agency.

2. The estimated total dollar amounts of contracts and purchase orders awarded by the contracting or using agency.

3. The number of set-aside contracts and/or purchase orders awarded by the contracting agency and by its using agencies.

4. The estimated dollar amounts of contracts and/or purchase orders awarded to small, minority and female businesses by the contracting or using agency.

5. A breakdown of the types of contracts and/or purchase orders awarded generally and awarded to small, minority and female businesses by the contracting or using agency.

6. An analysis of whether and how the previous year's goals were achieved by the contracting or using agency.

17:12-6.15 Consultation with industry

(a) The Department of Commerce shall conduct no less than two consultation sessions each year with bidders, vendors and industry representatives for the purpose of soliciting information and suggestions on implementing the various goals in the Act and these rules.

(b) The consultation dates and times will be incorporated into a plan developed by the Department for each fiscal year.

(c) Bidders, vendors and industry representatives may call the Office of Small Business Assistance or, in the case of a minority business, the Office of Minority Business Enterprise for the exact time, date and location of these sessions.

(d) Sessions shall be open to the public and any interested parties.

(e) Industry representatives may ask to be placed on an agenda if they wish to present comments.

(f) Challenges to individual bid awards will not be heard at these sessions.

(g) The Chief of the Office of Small Business Assistance and the Chief of the Office of Minority Business Enterprise, both with the Department of Commerce, shall prepare a report of the results of the sessions, the attendees and their affiliations and any items which require the attention of the Department or any contracting agencies.

(h) Notice that the sessions have been held will be included in the annual reports of these offices on the implementation of the Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses. 17:12-6.16 Delegation of Treasurer's authority

For purposes of implementing the Set-Aside Act for Small Business, Female Businesses and Minority Businesses, the authority of the Treasurer under the Act is delegated to the Administrator of the General Services Administration.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Proposed New Rules: N.J.A.C. 13:60

Authorized By: Colonel Clinton L. Pagano, Superintendent,
Division of State Police.

Authority: N.J.S.A. 39:5B-32.

Proposal Number: PRN 1986-480.

Submit comments by December 17, 1986 to:

Col. Clinton L. Pagano, Superintendent
Division of State Police
Office of Hazardous Materials
Transportation, Compliance and Enforcement
P.O. Box 7068
West Trenton, N.J. 08625

The agency proposal follows:

Summary

The legislature recognized a need to regulate the transportation of hazardous materials by enacting Laws of 1983, Chapter 401 (N.J.S.A. 39:5B-25, et seq.). Under the provisions of that law (N.J.S.A. 39:5B-26) the Commissioner of Transportation adopted regulations substantially conforming to the Federal "Hazardous Materials Transportation Act" as embodied in the Code of Federal Regulations at 49 C.F.R. Parts 100-179 to regulate the transportation of Hazardous Materials in New Jersey. See N.J.A.C. 16:49, "Transportation of Hazardous Materials," adopted February 11, 1985, effective March 18, 1985, adopting 49 C.F.R. 171, 172, 173, 174, 177, 178 and 179, subject to certain specific exclusions. N.J.A.C. 16:49-2.

New Jersey Department of Transportation, in adopting the Federal Regulations, incorporated 49 C.F.R. 177.804 which requires all carriers and persons subject to the N.J.D.O.T. regulation to comply with the Federal Motor Carrier Safety Regulations as set forth at 49 C.F.R. 390 through 397, subject to certain listed exclusions. See N.J.A.C. 16:49, Appendix to the Regulations.

Subsequently, the Legislature enacted L. 1985, c. 415 which amended L. 1983, c. 401 and enacted certain new provisions at N.J.S.A. 39:5B-30 through 32. The enactment of N.J.S.A. 39:5B-32 authorized and directed the Superintendent of State Police to adopt "rules and regulations concerning the qualifications of interstate motor carrier operators and vehicles, which shall substantially conform to the requirements established pursuant to sections 401-404 of the "Surface Transportation Assistance Act of 1982," Pub. L. 97-424 (49 U.S.C. §2301-2304)." In compliance thereof, the Superintendent of State Police has determined to adopt the Federal Motor Carrier Safety Regulations as set forth at 49 C.F.R. Parts 390 through 397, revised as of October 1, 1986, with the following specific sections omitted: 49 C.F.R. 391.69, 391.71, 393.81, 397.3 and 397.9.

Although the Commissioner of Transportation has adopted the same regulations, revised as of November 1, 1983, the adoption herein by the Superintendent of State Police will broaden the scope of enforcement of these safety regulations. In addition to regulating the transportation of hazardous materials, the regulations proposed herein will apply to all motor carriers and operators of vehicles engaged in interstate commerce and to those motor carriers and operators engaged in the intrastate transportation of hazardous materials.

Social Impact

The primary social impact in adopting the Federal Motor Carrier Safety Regulations will be the advancement of general highway safety for the motoring public by focusing greater attention on unsafe commercial vehicles. The uniformity brought about by this effort will provide

for greater control and safety with regard to both interstate and intrastate transportation while enhancing safety for all citizens and highway users throughout New Jersey. Adoption of these regulations will also allow New Jersey to be in greater conformity with the federal standards established by the Federal Highway Administration's Bureau of Motor Carrier Safety.

The proposed new rules will create no additional impact on shippers, motor carriers or drivers involved in interstate or intrastate commerce. Shippers, motor carriers transporting hazardous materials and/or non-hazardous commodities on an interstate basis, as well as drivers, have long been required to comply with the Federal Motor Carrier Safety Regulations. In addition, New Jersey's recent adoption of the Federal Hazardous Materials Regulations by the New Jersey Department of Transportation at N.J.A.C. 16:49 impacts both the interstate and intrastate movement of hazardous materials by highway and rail, and further requires all shippers, motor carriers and drivers transporting hazardous materials on an intrastate basis to comply with the Federal Motor Carrier Safety Regulations as stipulated in Part 177—Carriage by Public Highway, Subpart A—General Information and Regulations, 49 C.F.R. 177.804. However, that adoption provides specific exceptions for transporters of combustible liquids which have been excluded pursuant to Section 173.118a N.J.A.C. 16:49-1.3(l).

Interstate shippers of all commodities have been subject to the Federal Motor Carrier Safety Regulations for many years. However, there was no direct enforcement of these Federal regulations at the state level. L. 1985, c. 415 authorizes the adoption of the Federal Motor Carrier Safety Regulations and provides the State with appropriate enforcement powers and penalties for violations of the Federal standards.

Only the New Jersey State Police and the police officers of the Port Authority of New York and New Jersey are empowered to enforce the Federal Hazardous Materials Regulations as they apply to motor carriers or drivers operating on an interstate or intrastate basis. Adoption of the Federal Motor Carrier Safety Regulations, 49 C.F.R., Parts 390-397, will create no additional impact on interstate or intrastate motor carriers and/or drivers transporting hazardous materials as they are currently required to abide by such regulations. However, such adoption will allow the New Jersey State Police and the police officers of the Port Authority of New York and New Jersey to enforce the Federal Motor Carrier Safety Regulations as they apply to motor carriers and/or drivers transporting non-hazardous materials on an interstate basis.

Economic Impact

The proposed adoption of the Federal Motor Carrier Safety Regulations is not anticipated to create any significant economic impact on the motor carrier industry. All interstate commercial carriers and their drivers have been subject to these requirements for a considerable length of time. In addition, intrastate transporters of hazardous materials have had to comply with Federal Motor Carrier Safety Regulations since March 18, 1985.

The Department of Transportation and the Division of State Police will incur some administrative and operational costs when implementing and enforcing these regulations. However, P.L. 1985, c. 415, Section 7, provides to the Department of Law and Public Safety the sum of \$1,000,000 to carry out the purposes of this amendatory and supplementary act and to otherwise enforce the provisions of P.L. 1983, c. 401 (N.J.S.A. 39:5B-25 et seq.). Further, the Commissioner of Transportation may request of the Attorney General such sums as may be necessary to carry out the responsibilities of the Department of Transportation under P.L. 1983, c. 401, and the Attorney General may transfer to the Department of Transportation such sums as he deems appropriate.

Adoption of these regulations will also enable the Division of State Police to apply for long-term funding under the Motor Carrier Safety Assistance Program (MCSAP), 49 U.S.C. 2301 et seq. This program is designed to assist the States in the development and implementation of programs for the enforcement of Federal rules, regulations, standards and orders applicable to commercial motor vehicle safety and compatible State rules, regulations, standards and orders. A State Enforcement Plan has already been submitted to the Federal Bureau of Motor Carrier Safety as a prerequisite for qualification to receive federal funds through MCSAP.

Full text of the proposed new rule follows.

CHAPTER 60
MOTOR CARRIER SAFETY REGULATIONS

SUBCHAPTER 1. GENERAL REQUIREMENTS

13:60-1.1 Purpose

This chapter establishes rules and regulations concerning the qualifications of motor carrier operators and vehicles, which substantially conforms to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," Pub. L. 97-424 (49 U.S.C. §2301-2304) by adopting the "Federal Motor Carrier Safety Regulations" as adopted at 49 C.F.R., Parts 390 through 397.

13:60-1.2 Application

(a) This chapter shall apply to:

1. Every motor carrier and every person, including drivers, agents, employees and representatives involved or in any manner related to the intrastate transportation of hazardous materials as defined in the statute (N.J.S.A. 39:5B-25 et seq.), or the transportation of any other cargo or operation of a vehicle in interstate commerce shall comply with and be bound by these rules and regulations and all amendments and supplements thereto, and shall take such measures as are necessary to insure compliance therewith.

2. All officers, agents, representatives, drivers and employees of motor carriers involved or concerned with the management, maintenance, operation or driving of vehicles, subject to these regulations, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter.

13:60-1.3 General requirements

(a) This chapter establishes minimum standards of compliance concerning the qualifications of motor carrier operators and vehicles, operating in this state in interstate commerce or operating in this state transporting hazardous materials in intrastate commerce. Therefore, in the event of a conflict between this chapter and any other State regulation, except as otherwise provided by statute or law, the stricter, more stringent standard shall apply and govern.

(b) Whenever the term "interstate" is used in the Federal regulations adopted herein it shall, for the purpose of those regulations, mean or include both "interstate" transportation in commerce and "intrastate" transportation of hazardous materials in commerce except where stated otherwise.

(c) If any section, subsection, clause or provision of this chapter shall be adjudged unconstitutional or to be ineffective or invalid in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective or is not invalid, it shall be valid and effective and no other section, subsection, clause or provision of this chapter shall, on account thereof, be deemed unconstitutional, invalid or ineffective, and the inapplicability or invalidity of any section, subsection, clause or provision of this chapter in any one or more instances or under any one or more circumstances shall not be taken to affect or prejudice in any other instance or under any other circumstance. To this end, the provisions of this regulation are declared to be severable.

(d) This chapter may be amended from time to time by the Superintendent of State Police. The "Federal Motor Carrier Safety Regulations" referenced herein are those adopted by the Secretary of Transportation as of October 1, 1986. The Superintendent of State Police intends to review the Federal regulations and amend these regulations as relevant changes in the Federal regulatory scheme are adopted.

(e) The provisions and requirements of these regulations as well as the Federal regulations adopted herein by reference, and made a part hereof as if set forth in full, are applicable to all transportation in interstate commerce as well as all transportation of hazardous materials in intrastate commerce unless specifically stated otherwise.

13:60-1.4 Penalty for violation

(a) The penalties for violation of these regulations shall be enforced under the provisions of the Laws of 1985, Chapter 415, Section 5, N.J.S.A. 39:5B-29.

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

13:60-1.5 Document availability

(a) Copies of the "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of

October 1, 1986, and referenced herein, may be purchased from the sources listed below.

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
(202) 264-3238

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, N.Y. 10278-0081
(212) 264-3825

U.S. Government Printing Office Bookstore
Room 1214, Federal Building
600 Arch Street
Philadelphia, PA 19106
(215) 597-0677

(b) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1986, are also available for review at the following public libraries:

New Jersey State Library
185 West State Street
Trenton, N.J. 08625
(609) 292-6220

Newark Public Library
5 Washington Street
Newark, N.J. 07101
(201) 733-7882

Jersey City Public Library
472 Jersey Avenue
Jersey City, N.J. 07304
(201) 547-4501

New Brunswick Public Library
60 Livingston Avenue
New Brunswick, N.J. 08901
(201) 745-5108

Trenton Public Library
120 Academy Street
Trenton, N.J. 08608
(609) 392-7188

Camden County Public Library
Laurel Road
Voorhees, N.J. 08043
(609) 772-1636

Cherry Hill Public Library
1100 Kings Highway, North
Cherry Hill, N.J. 08034
(609) 667-0300

(c) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1986, are further available for review at the Division of State Police, Office of Hazardous Materials Transportation Compliance and Enforcement, River Road, P.O. Box 7068, West Trenton, New Jersey 08625. Regular business hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. The telephone number is (609) 882-2000 extension 2581 or 2582.

13:60-1.6 Assistance

For general assistance and procedural questions in matters related to the "Federal Motor Carrier Safety Regulations," as adopted herein, contact:

Bureau of Motor Carrier Safety
Federal Highway Administration
U.S. Department of Transportation
25 Scotch Road, Second Floor
Trenton, N.J. 08625
(609) 989-2276

For assistance in matters related to enforcement of the regulations adopted herein, contact:

Office of Hazardous Materials
Transportation Compliance and Enforcement
New Jersey Division of State Police
River Road, P.O. Box 7068
West Trenton, N.J. 08625
(609) 882-2000 Extension 2581 or 2582

Note, however, statements or opinions provided by the Division of State Police do not constitute legal advice.

**SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49,
CODE OF FEDERAL REGULATIONS, BY
REFERENCE**

13:60-2.1 Parts adopted by reference

The Superintendent of the Division of State Police, pursuant to the Laws of 1985, Chapter 415, N.J.S.A. 39:5B-32, hereby incorporates, by reference, the following portions of the Code of Federal Regulations, Title 49—Transportation, Subchapter B—The Federal Motor Carrier Safety Regulations, Parts 390 through 397, inclusive, revised as of October 1, 1986. 49 C.F.R., Parts 390 through 397, inclusive. The parts adopted by reference are found in Chapter III, referred to as "Federal Highway Administration, Department of Transportation," Subchapter B—Federal Motor Carrier Safety Regulations. These parts are detailed in the Appendix to the Regulations regarding the Motor Carrier Safety Regulations.

**APPENDIX TO THE REGULATIONS REGARDING
THE MOTOR CARRIER SAFETY REGULATIONS**

This Appendix to the regulations regarding the Motor Carrier Safety Regulations details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

**CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION
DEPARTMENT OF TRANSPORTATION**

**SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY
REGULATIONS**

**PART 390 FEDERAL MOTOR CARRIER SAFETY
REGULATIONS: GENERAL**

Subpart A—Definitions

- Section 390.1 Motor vehicle.
- Section 390.2 Vehicle.
- Section 390.3 Bus.
- Section 390.4 Truck.
- Section 390.5 Truck Tractor.
- Section 390.6 Semitrailer.
- Section 390.7 Full trailer.
- Section 390.8 Pole trailer.
- Section 390.9 Driveaway-towaway operation.
- Section 390.10 Gross weight.
- Section 390.11 Driver.
- Section 390.12 Business district.
- Section 390.13 Residence district.
- Section 390.15 Motor carrier.
- Section 390.16 Exempt intracity operation.
- Section 390.17 Lightweight vehicle.

PART 391 QUALIFICATIONS OF DRIVERS

Subpart A—General

- Section 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.
- Section 391.2 General exemptions.
- Section 391.3 Definitions.
- Section 391.5 Familiarity with rules.
- Section 391.7 Aiding or abetting violations.

Subpart B—Qualifications and Disqualification of Drivers

- Section 391.11 Qualifications of drivers.
- Section 391.15 Disqualification of drivers.

Subpart C—Background and Character

- Section 391.21 Application for employment as specified in this Section 391.21 are not required for persons already employed by the same carrier as of March 4, 1985.
- Section 391.23 Investigation and inquiries. Section 391.23 shall apply to drivers hired after March 4, 1985.
- Section 391.25 Annual review of driving record.
- Section 391.27 Record of violations.

Subpart D—Examinations and Tests

- Section 391.31 Road test.
- Section 391.33 Equivalent of road test.
- Section 391.35 Written examination.
- Section 391.37 Equivalent of written examinations.

Subpart E—Physical Qualifications and Examinations

- Section 391.41 Physical qualifications for drivers.
- Section 391.43 Medical examination; certificate of physical examinations.
- Section 391.45 Persons who must be medically examined and certified.
- Section 391.47 Resolution of conflicts of medical evaluation.
- Section 391.49 Waiver of certain physical defects.

Subpart F—Files and Records

- Section 391.51 Driver qualification files.

Subpart G—Limited Exemptions

- Section 391.61 Drivers who were regularly employed before January 1, 1971.
- Section 391.62 Drivers of lightweight vehicles.
- Section 381.63 Intermittent, casual, or occasional drivers.
- Section 391.65 Drivers furnished by other motor carriers.
- Section 391.67 Drivers of articulated (combination) farm vehicles.

PART 392 DRIVING OF MOTOR VEHICLES

Subpart A—General

- Section 392.1 Scope of the rules in this part.
- Section 392.2 Applicable operating rules.
- Section 392.3 Ill or fatigued operator.
- Section 392.4 Narcotics, amphetamine, and other dangerous substances.
- Section 392.5 Intoxicating beverage.
- Section 392.6 Schedules to conform with speed limits.
- Section 392.7 Equipment, inspection and use.
- Section 392.8 Emergency equipment, inspection and use.
- Section 392.9 Safe loading.
- Section 392.9a Corrective lenses to be worn.
- Section 392.9b Hearing aid to be worn.

Subpart B—Driving of Vehicles

- Section 392.10 Railroad grade crossings; stopping required.
- Section 392.11 Railroad grade crossings; slowing down required.
- Section 392.12 Drawbridges; stopping of buses.
- Section 392.13 Drawbridges; slowing down of other vehicles.
- Section 392.14 Hazardous conditions; extreme caution.
- Section 392.15 Required and prohibited use of turn signals.
- Section 392.16 Use of seat belts.
- Section 392.18 Slow moving vehicles; hazard warning signal flashers.

Subpart C—Stopped Vehicles

- Section 392.20 Unattended vehicles; precautions.
- Section 392.21 Stopped vehicles not to interfere with other traffic.
- Section 392.22 Emergency signals; stopped vehicles.
- Section 392.24 Emergency signals; flame-producing.
- Section 392.25 Emergency signals; dangerous cargoes.

Subpart D—Use of Lighted Lamps and Reflectors

- Section 392.30 Lighted lamps; moving vehicles.
- Section 392.31 Lighted lamps; stopped or parked vehicles.
- Section 392.32 Upper and lower head lamp beams.
- Section 392.33 Obscured lamps or reflectors.

Subpart E—Accidents and License Revocation; Duties of Driver

- Section 392.40 All accidents.
- Section 392.41 Striking unattended vehicles.
- Section 392.42 Notification of license revocation.

Subpart F—Fueling Precautions

- Section 392.50 Ignition of fuel; prevention.
- Section 392.51 Reserve fuel.
- Section 392.52 Buses; fueling.

Subpart G—Prohibited Practices

- Section 392.60 Unauthorized persons not to be transported.
- Section 392.61 Driving by unauthorized person.
- Section 392.62 Bus driver; distraction.
- Section 392.63 Towing or pushing loaded buses.
- Section 392.64 Riding within closed vehicles without proper exits.
- Section 392.65 Sleeper berth; transfer to or from.
- Section 392.66 Carbon monoxide; use of vehicle when detected.
- Section 392.67 Heater, flame-producing; on vehicle in motion.
- Section 392.68 Motive power not to be disengaged.
- Section 392.69 Sleeper berth, occupation.

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A—General

Section 393.1 Scope of the rules in this part.

Section 393.2 Additional equipment and accessories.

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

Section 393.9 Lamps operable.

Section 393.11 Lamps and reflectors, small buses and trucks.

Section 393.12 Lamps and reflectors, large buses and trucks.

Section 393.13 Lamps and reflectors, truck tractors.

Section 393.14 Lamps and reflectors, large semitrailers and full trailers.

Section 393.15 Lamps and reflectors, small semitrailers and full trailers.

Section 393.16 Lamps and reflectors, pole trailers.

Section 393.17 Lamps and reflectors, combinations in driveway-towaway operation.

Section 393.18 Lamps on motor vehicles with projecting loads.

Section 393.19 Requirements for turn signaling system.

Section 393.20 Clearance lamps to indicate extreme width and height.

Section 393.22 Combination of lighting devices and reflectors.

Section 393.23 Lighting devices to be electric.

Section 393.24 Requirements for head lamps and auxiliary road lighting lamps.

Section 393.25 Requirements for lamps other than head lamps.

Section 393.26 Requirements for reflectors.

Section 393.27 Wiring specifications.

Section 393.28 Wiring to be protected.

Section 393.29 Grounds.

Section 393.30 Battery installation.

Section 393.31 Overload protective devices.

Section 393.32 Detachable electrical connections.

Section 393.33 Wiring, installation.

Subpart C—Brakes

Section 393.40 Required brake systems.

Section 393.41 Parking brake system.

Section 393.42 Brakes required on all wheels.

Section 393.43 Breakaway and emergency braking.

Section 393.44 Front brake lines, protection.

Section 393.45 Brake tubing and hose adequacy.

Section 393.46 Brake tubing and hose connections.

Section 393.47 Brake lining.

Section 393.48 Brakes to be operative.

Section 393.49 Single valve to operate all brakes.

Section 393.50 Reservoirs required.

Section 393.51 Warning devices and gauges.

Section 393.52 Brake performance.

Subpart D—Glazing and Window Construction

Section 393.60 Glazing in specified openings.

Section 393.61 Window construction.

Section 393.62 Window obstruction.

Section 393.63 Windows, markings.

Subpart E—Fuel Systems

Section 393.65 All fuel systems.

Section 393.67 Liquid fuel tanks.

Section 393.69 Liquefied petroleum gas systems.

Subpart F—Coupling Devices and Towing Methods

Section 393.70 Coupling devices and towing methods, except for driveway-towaway operations.

Section 393.71 Coupling devices and towing methods, driveway-towaway operations.

Subpart G—Miscellaneous Parts and Accessories

Section 393.75 Tires.

Section 393.76 Sleeper berths.

Section 393.77 Heaters.

Section 393.78 Windshield wipers.

Section 393.79 Defrosting devices.

Section 393.80 Rear-vision mirrors.

Section 393.82 Speedometer.

Section 393.83 Exhaust system location.

Section 393.84 Floors.

Section 393.86 Rear end protection.

Section 393.87 Flags on projecting loads.

Section 393.88 Television receivers.

Section 393.89 Buses, driveshaft projection.

Section 393.90 Buses, standee line or bar.

Section 393.91 Buses, aisle seats prohibited.

Section 393.92 Buses, marking emergency doors.

Section 393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.

Section 393.94 Vehicle interior noise levels.

Subpart H—Emergency Equipment

Section 393.95 Emergency equipment on all power units.

Subpart I—Protection Against Shifting or Falling Cargo

Section 393.100 General rules for protection against shifting or falling cargo.

Section 393.102 Securement systems.

Section 393.104 Blocking and bracing.

Section 393.106 Front-end structure.

PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS

Section 394.1 Scope of the rules in this part.

Section 394.3 Definition of "reportable accident."

Section 394.5 Definition of "farm-to-market agricultural transportation."

Section 394.7 Immediate notification of fatal accidents.

Section 394.9 Reporting of accidents.

Section 394.11 Notice of death after filing report.

Section 394.15 Assistance in investigations and special studies.

Section 394.20 Instructions for preparing accident reports.

PART 395 HOURS OF SERVICE OF DRIVERS

Section 395.1 Compliance with, and knowledge of, the rules in this part.

Section 395.2 Definitions.

Section 395.3 Maximum driving and on-duty time.

Section 395.7 Travel time.

Section 395.8 Driver's record of duty status.

Section 395.10 Adverse driving and conditions.

Section 395.11 Emergency conditions.

Section 395.12 Relief from regulations.

Section 395.13 Drivers declared out of service.

PART 396 INSPECTION, REPAIR AND MAINTENANCE

Section 396.1 Scope.

Section 396.3 Inspection, repair and maintenance.

Section 396.5 Lubrication.

Section 396.7 Unsafe operations forbidden.

Section 396.9 Inspection of motor vehicles in operation.

Section 396.11 Driver vehicle inspection report(s).

Section 396.13 Driver inspection.

Section 396.15 Driveaway-towaway operations, inspections.

PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS: DRIVING AND PARKING RULES

Section 397.1 Application of the rules in this part.

Section 397.2 Compliance with Federal Motor Carrier Safety Regulations.

Section 397.5 Attendance and surveillance of motor vehicles.

Section 397.7 Parking.

Section 397.11 Fires.

Section 397.13 Smoking.

Section 397.15 Fueling.

Section 397.17 Tires.

Section 397.19 Instructions and documents.

Section 397.21 Marking of vehicles operated by private carriers.

PUBLIC UTILITIES**(a)****BOARD OF PUBLIC UTILITIES****Winter Termination of Residential Electric and Gas Winter Termination Program****Proposed New Rule: N.J.A.C. 14:3-7.12A**

Authorized By: Board of Public Utilities, Barbara A. Curran, President.

Authority: N.J.S.A. 48:2-12, 48:2-13 and 48:2-24.

BPU Docket No. 792-88.

Proposal Number: PRN 1986-470.

Submit comments by December 17, 1986 to:

Edward D. Beslow, Esq.
Regulatory Officer
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Inasmuch as the loss of residential electric and gas service during the heating season poses a potential danger to the health and welfare of many citizens of this State, the Board of Public Utilities proposes to establish and implement a program to be known as the "Winter Termination Program" (Program).

The proposed new rule codifies the terms and conditions for eligibility for protection under the program as developed and set out in a series of Orders in Docket No. 792-88. Under the program, the termination of residential electric and gas utility service to eligible customers is prohibited during the period of November 15 through March 15. The proposed rule further sets out the responsibilities of the protected customers including good faith payments during the heating season, enrollment in a budget payment plan and participation in a low income energy seal-up program.

Social Impact

The social impact of the proposed new rule, as has been the case with the existing Winter Termination Program, is to recognize that the loss of residential electric and gas utility service during the heating season poses a potential danger to the health and welfare of many citizens of this State. This program provides an opportunity for eligible customers to retain their electric and gas service during the heating season. Said customers, however, are still responsible for and eventually are obligated to satisfy in full those bills reflecting the amounts of energy actually consumed.

Economic Impact

As each eligible customer remains obligated to satisfy his or her bills in full, the affected utilities should not lose any revenues. However, since the payment of these bills may be deferred over a longer period of time, there may be some adverse impact upon the cash flow of the utilities.

Implementation of this rule is not expected to impose any additional costs on the Board of Public Utilities.

Full text of the proposed new rule follows:

14:3-7.12A Winter termination of residential electric and gas service (Winter Termination Program)

(a) A regulated electric and gas utility shall not discontinue service during the period from November 15 through March 15, referred to in this section as the "heating season", unless otherwise ordered by the Board, to those residential customers who demonstrate at the time of the intended termination that they are:

1. Recipients of benefits under the Lifeline Credit Program;
2. Recipients of benefits under the Federal Home Energy Assistance Program (HEAP), or certified as eligible therefore under standards set by the New Jersey Department of Human Services;
3. Recipients of Federal Aid to Families with Dependent Children (AFDC);
4. Recipients of Federal Supplemental Security Income (SSI);
5. Recipients of Pharmaceutical Assistance to The Aged and Disabled (PAAD);
6. Recipients of general welfare assistance benefits; or

7. Persons unable to pay their utility bills because of circumstances beyond their control. Such circumstances shall include but shall not be limited to unemployment, illness, medically related expenses, recent death of a spouse and any other circumstances which might cause financial hardship.

(b) Those residential electric and gas customers whose services have been discontinued for non-payment and have not been reconnected as of November 15, and who are otherwise eligible for protection under the Winter Termination Program, shall be required to make a down payment of up to 25 percent of the outstanding balance as a condition precedent to the recipient of services during the current heating season. The customer shall be notified, at the time of enrollment in a budget payment plan as required by (c) below, that the 25 percent down payment shall represent a maximum required amount and is not to be regarded as a minimum required payment. The utility shall consider the customer's ability to pay in determining the appropriate level of the required down payment, but in no instance shall such required payment exceed 25 percent of the outstanding balance. The utility shall refer to the Board for resolution, all disputes regarding the appropriate level of down payments.

(c) All residential electric and gas customers who are eligible for and who seek the protection of the Winter Termination Program shall enroll in a budget payment plan on an annual basis.

(d) All residential electric and gas customers who are eligible for and who seek the protection of the Winter Termination Program shall make good-faith payments during the heating season, if they have the ability to do so. Said payments should be equal to a budget payment amount, although a lesser amount shall be accepted from those customers who do not have the ability to pay the full budget amount.

1. If an eligible customer has the ability to make a good-faith payment but refuses to do so, or if there is any other dispute related to good-faith payments, the servicing utility may refer said dispute to the Board for a determination. In addition, the servicing utility shall inform each eligible customer involved in such a dispute that the matter has been forwarded to the Board for a determination and that the customer may also notify the Board of the dispute if he or she so chooses. Until the Board has rendered a determination in such an instance, the servicing utility shall not unilaterally discontinue service.

(e) Customers who are eligible for and who seek the protection of the Winter Termination Program shall forward all energy related financial assistance, such as Home Energy Assistance Program (HEAP) heating benefits, to their electric or gas utility, if either utility is their major heat supplier.

(f) During the heating season, the affected electric and gas utilities shall not request a security deposit or an addition to an existing security deposit from a customer who is eligible for and seeks the protection of the Winter Termination Program.

(g) During the heating season, all notices of discontinuance of residential electric and gas services shall be accomplished by a Winter Termination Program fact sheet, printed in both English and Spanish, setting forth all terms and conditions of the Program. The affected electric and gas utilities shall submit drafts of their proposed fact sheets to the Board no later than October 1, in order that the Board may approve their form and substance prior to the heating season. The form and substance of the Winter Termination Program fact sheets shall be subject to Board review and approval on an annual basis.

(h) Customers who are eligible for and seek the protection of the Winter Termination Program shall participate in the low income seal-up programs, if eligible therefore, currently approved by the Board and administered by the affected electric and gas utilities. The implementation of this requirement shall be effectuated through the following procedures:

1. Descriptive information on the low income seal-up programs shall accompany the Winter Termination Program fact sheet as required in (g) above;

2. The utility shall refer to its seal-up contractor, the names of responding protected customers who are eligible for the low income seal-up program. The contractor or the utility shall contact the customers to schedule the seal-up. Scheduling shall take place as soon as practicable after receipt of the customer response to the notice of discontinuance;

3. Winter Termination Program customer seal-ups shall be performed as soon as practicable. If a utility projects that it cannot complete these seal-ups prior to the end of the heating season, it shall submit an alternate implementation schedule to the Board for review on or before January 31;

4. The contractor shall perform a general audit of the dwelling and perform the most cost effective weatherization measures first. The contractor shall record and report to the utility any structural deficiencies requiring greater weatherization measures beyond the scope of the seal-up. The utility shall refer the customer names to those agencies providing low income weatherization programs;

5. The utility shall inform all agencies administering the Low Income Weatherization Grant Program in its territory of the new seal-up and weatherization grant provisions of the Winter Termination Program;

6. The utility shall monitor the usage and billing payment record of participating customers. The utility shall also compile historic consumption and billing data for these customers as well as a list of specific conservation measures installed in order to provide a basis for evaluating the Program. This information shall be submitted to the Board for analysis by May 1;

7. Electric utilities shall provide seal-up to those eligible participating customers who heat with electricity or any fuel other than natural gas in accordance with the existing Board approved low income seal-up programs;

8. Electric utilities shall not be required to provide the seal-up to those customers who heat with natural gas. The electric utilities shall forward the names of these gas heating customers to the appropriate gas utility for processing;

9. Tenants shall be required to secure landlord permission for the weatherization work. A landlord consent form shall be forwarded to customers along with the descriptive information and Winter Termination Program fact sheet as required in 1. above.

10. The utility may utilize the services of the local Community Action Program (CAP) Agencies or other local social service organizations, to certify the economic eligibility for the low income seal-up programs for those customers who seek the protection of the Winter Termination Program since they are unable to pay their utility bills because of circumstances beyond their control. This option shall be related solely to the economic eligibility for the low income seal-up programs and shall not be utilized as a means of determining the eligibility of a customer for protection under the Winter Termination Program. Economic eligibility for the seal-up measures for these customers shall be determined by those standards applicable to the low income seal-up programs as established and approved by the Board;

11. As participation in the low income seal-up programs is a continued program eligibility requirement, the utility shall refer to the Board, for purposes of an administrative review, the names of all protected customers who refuse such participation. Pending said administrative review, the utility shall not unilaterally discontinue service for failure to participate in the low income seal-up programs. Discontinuance for said failure to participate shall not occur unless authorized by the Board. Tenants who are unable to obtain appropriate landlord/owner permission shall not be considered to have refused participation in the low income seal-up programs. The utility shall provide the names and addresses of those tenants who have indicated their inability to obtain landlord/owner consent.

(i) An electric or gas utility may terminate service to a customer who is eligible for the Winter Termination Program if said customer connects, disconnects or otherwise tampers with the meters, pipes, wires or conduits of the utility for the purpose of obtaining electric or gas service without payment therefor.

1. No discontinuance shall occur until the customer has been afforded all reasonable due process considerations, including an opportunity to be heard. Toward this end, the electric and gas utilities shall comply with the following requirements prior to discontinuing service to any customer who has allegedly tampered with the meter or other company facilities resulting in the receipt of unmetered service:

i. The utility shall notify the Board of all pertinent facts related to the alleged tampering;

ii. The Board shall have seven days after receipt of said information to complete an impartial and informal investigation of the matter. In the event that a utility comes forward with sufficient credible evidence that shows that the meters, pipes, wires, conduits or attachments through which a customer is thus being furnished with electric or gas service have been tampered with, the Board shall immediately notify the customer and the burden shall shift to the customer to come forward with sufficient evidence to rebut the charges of the utility. Failure to do so will result in a finding that tampering did not occur for the purpose of obtaining the utility service without payment and that the customer is responsible therefor;

iii. Upon a finding by the Board that tampering did occur, the utility shall give written notification to the customer, by certified mail, return receipt requested, and to the local public welfare agency and the local municipal health agency, by regular mail, to give notification of the date upon which service to the customer shall be terminated. Said notification shall be made at least seven days prior to the date of the proposed service termination. The utility shall further advise the customer in the written notification that if he or she claims to be dependent on life sustaining equipment, the customer must furnish a physician's certificate within the aforementioned seven day period, wherein the condition requiring such equipment is identified and verified;

iv. Any relief requested under N.J.A.C. 14:3-3.6(d) regarding medical emergencies shall be reviewed on a case-by-case basis.

2. A customer, otherwise eligible for the Winter Termination Program, whose electric or gas service had been discontinued prior to the start of the heating season and who has subsequently caused the unauthorized restoration of said service shall, when said unauthorized service has been registered on the meter, be required to make a down payment of up to 25 percent of the outstanding account balance as of the most current meter reading as a pre-condition for the continuation of service during the heating season.

TRANSPORTATION

TRANSPORTATION OPERATIONS

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

Submit comments by December 17, 1986 to:

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

(a)

Restricted Parking and Stopping Routes U.S. 1 Alternate in Mercer County, U.S. 9 in Monmouth County, 67 in Bergen County, 147 in Cape May County and 35 in Monmouth County Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.25, 1.47, 1.71, 1.97

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,
39:4-199.

Proposal Number: PRN 1986-471.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 1 Alternate in Lawrence Township, Mercer County; U.S. 9 in Marlboro Township, Monmouth County; Route 67 in Fort Lee Borough, Bergen County and "no parking" zones along Route 147 in the City of North Wildwood, Cape May County and 35 in the Borough of Shrewsbury, Monmouth County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on and off loading of passengers at established bus stops.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" and "no parking" zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.97, 1.7, 1.71, 1.25 and 1.47 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 1 Alternate in Lawrence Township, Mercer County; U.S. 9 in Marlboro Township, Monmouth County; 67 in Fort Lee Borough, Bergen County and "no parking" zones along Routes 147 in the City of North Wildwood, Cape May County and 35 in the Borough of Shrewsbury, Monmouth County, for the safe and efficient flow of

traffic, the enhancement of safety, the well-being of the populace and the safe on and off loading of passengers of established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zones signs and the local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

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

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

(a) (No change.)

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

1.-4. (No change.)

5. Along the westerly (northbound) side in Marlboro Township, Monmouth County:

i. (No change.)

ii. Near side bus stops: [Beginning at the southerly curb line of County Route 520 and extending 225 feet southerly therefrom.]

(1) **Beginning at the southerly curb line of County Route 520 and extending 225 feet southerly therefrom.**

(2) **Sandburg Drive—Beginning at the prolongation of the southerly curb line of Sandburg Drive and extending 105 feet southerly therefrom.**

(3) **Station 452 "U-Turn" traffic signal (172 feet).**

iii. **Far side bus stop:**

(1) **Kilmer Drive—Beginning at the prolongation of the northerly curb line of Kilmer Drive and extending 105 feet southerly therefrom.**

6. Along the westerly (southbound) side in Marlboro Township, Monmouth County:

[i. Union Hill Road ramp (north intersection) (far side): Beginning at the southerly curb line of Union Hill Road Ramp (north intersection) and extending 105 feet southerly therefrom.]

i. **Far side bus stops:**

(1) **Robertsville Road—Beginning at the southerly curb line of Robertsville Road and extending 100 feet southerly therefrom.**

(2) **Sandburg Drive—Beginning at the southerly curb line of Sandburg Drive and extending 100 feet southerly therefrom.**

ii. **Near side bus stops:**

(1) **Station 452 "U-Turn" traffic signal (168 feet).**

(2) **Beginning at the northerly facia of the Union Hill Road overpass abutment structure and extending 150 feet northerly therefrom.**

(3) **Longfellow Drive—Beginning at the northerly curb line of Longfellow Drive and extending 105 feet northerly therefrom.**

(4) **Kilmer Drive—Beginning at the northerly curb line of Kilmer Drive and extending 105 feet northerly therefrom.**

7.-19. (No change.)

[20. Along the easterly (northbound) side in Marlboro Township, Monmouth County:

i. **Near side bus stop:**

(1) **Station 452 "U-Turn" traffic signal (172 feet).**

21. Along the westerly (southbound) side in Marlboro Township, Monmouth County:

i. **Near side bus stop:**

(1) **Station 452 "U-Turn" traffic signal (168 feet).**

Renumber 22.-43 as **20.-41.** (No change in text.)

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-8. (No change.)

9. No stopping or standing in Shrewsbury [and New Shrewsbury] Borough[s], Monmouth County:

[i. Along the southbound side:

(1) From the Red Bank Borough-Shrewsbury Borough corporate line, to the center line of Obre Place.

(2) From 470 feet north of the center line of Sycamore Avenue to the Shrewsbury-New Shrewsbury Borough corporate line.

(3) From the Shrewsbury Borough-New Shrewsbury Borough corporate line, to the New Shrewsbury Borough-Eatontown Borough corporate line.

ii. Along the northbound side:

(1) From the Eatontown Borough-Shrewsbury Borough corporate line, to the Shrewsbury Borough-Red Bank Borough corporate line.

10. No stopping or standing between the hours of 2:00 A.M. and 5:00 A.M. in Shrewsbury and New Shrewsbury Boroughs, Monmouth County:

i. Along the southbound side:

(1) From the center line of Obre Place to 470 feet north of the center line of Sycamore Avenue.]

i. **Along both sides (Broad Street):**

(1) **For its entire length in the Borough of Shrewsbury, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

Renumber 11.-22. as **10.-21.** (No change in text.)

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

16:28A-1.47 Route 147

(a) The certain parts of State highway Route 147 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. (No change.) (see proposal at 18 N.J.R. 2118(b).)

2. No stopping or standing in the City of North Wildwood, Cape May County along both sides for the entire length, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provision of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. (No change.)

ii. **Far side bus stops:**

(1) **Along Lemoine Avenue**

(A)-(B) (No change.)

(C) **Riverdale Drive—Beginning at the southerly curb line of Riverdale Drive and extending 165 feet southerly therefrom.**

(D) **Forest Road—Beginning at the southerly curb line of Forest Road and extending 150 feet southerly therefrom.**

(E) **Route 5—Beginning at the southerly curb line of State Highway Route 5 and extending 114 feet southerly therefrom.**

iii.-iv. (No change.)

2.-3. (No change.)

4. **Along Palisade Avenue (Route 67) northbound on the easterly side in Fort Lee Borough, Bergen County:**

i. **Near side bus stops:**

(1) **Route 5—Beginning at the prolongation of the southerly curb line of Route 5 and extending 155 feet southerly therefrom.**

(2) **Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.**

ii. **Far side bus stop:**

(1) **Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 100 feet northerly therefrom.**

16:28A-1.97 Route U.S. 1 Alternate

(a) (No change.)

(b) The certain parts of State highway Route U.S. 1 Alternate described in this subsection are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along the westerly (southbound) side in Lawrence Township, Mercer County:

i. (No change.)

ii. **Near side bus stops:**

(1) (No change.)

(2) **Bunker Hill—Beginning at the northerly curb line of Bunker Hill and extending 105 feet northerly therefrom.**

3. (No change.)

4. Along Brunswick Avenue (Alternate Route 1) northbound on the easterly side in Lawrence Township, Mercer County at the far side bus stop on President Avenue.

5. Along Brunswick Avenue (Alternate Route 1) southbound on the easterly side in Lawrence Township, Mercer County at the near side bus stop on Hope Street.

(a)

**Restricted Parking and Stopping
Routes 31 in Mercer County, and U.S. 40-322 in
Atlantic County**

**Proposed Amendments: N.J.A.C. 16:28A-1.22 and
1.104**

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

Proposal Number: PRN 1986-475.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes 31 in Ewing Township, Mercer County and U.S. 40-322 in the City of Pleasantville, Atlantic County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on and off loading of passengers at established bus stops.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Routes 31 and U.S. 40-322 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.22 and 1.104, based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes 31 in Ewing Township, Mercer County and U.S. 40-322 in the City of Pleasantville, Atlantic County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on and off loading of passengers of established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.22 Route 31

(a) (No change.)

(b) The certain parts of State highway Route 31 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along Pennington Road northbound on the easterly side in Ewing Township, Mercer County:

i. Near side bus stops:

(1) Bull Run Road—Beginning at the southerly curb line of Bull Run Road and extending 105 feet southerly therefrom.

(2) Rockleigh Drive—Beginning at the southerly curb line of Rockleigh Drive and extending 105 feet southerly therefrom.

(3) Brighton Road—Beginning at the southerly curb line of Brighton Road and extending 105 feet southerly therefrom.

(4) Carlton Avenue—Beginning at the southerly curb line of Carlton Avenue and extending 105 feet southerly therefrom.

(5) Lanning Street—Beginning at the prolongation of the southerly curb line of Lanning Street and extending 105 feet southerly therefrom.

(6) Somerset Avenue—Beginning at the southerly curb line of Somerset Avenue and extending 105 feet southerly therefrom.

(7) Sussex Avenue—Beginning at the southerly curb line of Sussex Avenue and extending 105 feet southerly therefrom.

(8) Atlantic Avenue—Beginning at the southerly curb line of Atlantic Avenue and extending 105 feet southerly therefrom.

(9) Bruce Lane—Beginning at the southerly curb line of Bruce Lane and extending 105 feet southerly therefrom.

(10) Parkside Avenue—Beginning at the southerly curb line of Parkside Avenue and extending 105 feet southerly therefrom.

(11) Homecrest Avenue—Beginning at the southerly curb line of Homecrest Avenue and extending 105 feet southerly therefrom.

(12) Clover Street—Beginning at the southerly curb line of Clover Street and extending 105 feet southerly therefrom.

ii. Far side bus stops:

(1) Ewingville Road—Beginning at the northerly curb line of Ewingville Road and extending 100 feet northerly therefrom.

(2) Green Lane—Beginning at the northerly curb line of Green Lane and extending 100 feet northerly therefrom.

(3) Pennroad Avenue—Beginning at the northerly curb line of Pennroad Avenue and extending 100 feet northerly therefrom.

(4) Woodland Avenue—Beginning at the northerly curb line of Woodland Avenue and extending 100 feet northerly therefrom.

iii. Mid-block bus stop:

(1) Between Carlton Avenue and Campus Court—Beginning 650 feet north of the northerly curb line of Campus Court and extending 135 feet northerly therefrom.

2. Along Pennington Road, southbound on the westerly side in Ewing Township, Mercer County:

i. Far side bus stops:

(1) Bull Run Road—Beginning at the southerly curb line of Bull Run Road and extending 100 feet southerly therefrom.

(2) Rockleigh Road—Beginning at the southerly curb line of Rockleigh Road and extending 100 feet southerly therefrom.

(3) Upper Ferry Road—Beginning at the southerly curb line of Upper Ferry Road and extending 100 feet southerly therefrom.

(4) Theresa Street—Beginning at the northerly curb line of Theresa Street and extending 120 feet northerly therefrom.

(5) Pennroad Avenue—Beginning at the prolongation of the southerly curb line of Pennroad Avenue and extending 100 feet southerly therefrom.

ii. Near side bus stops:

(1) Hilltop Road—Beginning at the northerly curb line of Hilltop Road and extending 105 feet northerly therefrom.

(2) Carlton Avenue—Beginning at the northerly curb line of Carlton Avenue and extending 105 feet northerly therefrom.

(3) Lanning Street—Beginning at the northerly curb line of Lanning Street and extending 105 feet northerly therefrom.

(4) Brenwall Avenue—Beginning at the northerly curb line of Brenwall Avenue and extending 105 feet northerly therefrom.

(5) Carolina Avenue—Beginning at the northerly curb line of Carolina Avenue and extending 105 feet northerly therefrom.

(6) Harrop Place—Beginning at the northerly curb line of Harrop Place and extending 105 feet northerly therefrom.

(7) Bradway Avenue—Beginning at the northerly curb line of Bradway Avenue and extending 105 feet northerly therefrom.

(8) Parkside Avenue—Beginning at the northerly curb line of Parkside Avenue and extending 120 feet northerly therefrom.

iii. Mid-block bus stop:

(1) Between Carlton Avenue and Theodore Street—Beginning 405 feet south of the southerly curb line of Carlton Avenue and extending 135 feet southerly therefrom.

16:28A-1.104 Route U.S. 40-322

(a) (No change.)

(b) The certain parts of State highway Route U.S. 40-322 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stop:

1. Along the southerly (eastbound) side of the City of Pleasantville, Atlantic County at the mid-block bus stop between Noahs Road and Doughty Road beginning 150 feet east of the easterly curb line of Noahs Road and extending 135 feet easterly therefrom.

(a)**Restricted Parking and Stopping
Routes 94, U.S. 206 and U.S. 206-94 in Sussex
County****Proposed Amendments: N.J.A.C. 16:28A-1.45, 1.57,
1.58**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138(g), 39:4-199.
Proposal Number: PRN 1986-473.

The agency proposal follows:

Summary

The proposed amendments will establish "time limit parking" zones along Routes 94, U.S. 206 and U.S. 206-94 in the Town of Newton, Sussex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "time limit parking" zones in the areas designated were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.45, 1.57 and 1.58 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "time limit parking" zones along Routes 94, U.S. 206 and U.S. 206-94 in the Town of Newton, Sussex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct costs for mileage, personnel and equipment requirements. The local officials will bear the costs for "time limit parking" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.45 Route 94

(a) (No change.)

(b) **The certain parts of State highway Route 94 described in this section shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:**

1. **One hour time limit parking on High Street in the town of Newton, Sussex County, beginning at the northerly curb line of Church Street and extending 200 feet northerly, on Monday through Saturday from 8:00 A.M. to 6:00 P.M., and Friday from 6:00 P.M. to 9:00 P.M., except Sundays and holidays.**

16:28A-1.57 Route U.S. 206

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

(c) **The certain parts of State highway Route U.S. 206 described in this section shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:**

1. **Ten minutes time limit parking in the Town of Newton, Sussex County on the east side of Main Street beginning 35 feet south of the prolongation of the southerly curb line of Park Place and extending 100 feet southerly therefrom, Monday through Saturday 8:00 A.M. to 6:00 P.M., except Sunday and holidays.**

2. **One hour time limit parking in the Town of Newton, Sussex County on the east side of Main Street, beginning at the northerly curb line of Halsted Street and extending 516 feet northerly therefrom, Monday through Saturday 8:00 A.M. to 6:00 P.M., Friday 6:00 P.M. to 9:00 P.M., except Sunday and holidays.**

16:28A-1.58 Route U.S. 206-94

(a) (No change.)

(b) **The certain parts of State highway Route U.S. 206-94 described in this section are designated and established as "Time Limit Parking" zones where parking is prohibited at all times. In accordance with the provisions**

of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:

1. **One hour time limit parking in the Town of Newton, Sussex County, Monday through Saturday, 8:00 A.M. to 6:00 P.M. and Friday 6:00 P.M. to 9:00 P.M., except Sundays and holidays, on:**

i. **The east side of Main Street, beginning at the southerly curb line of Spring Street and extending 80 feet southerly therefrom;**

ii. **The south side of Park Place, beginning at the westerly curb line of Main Street and extending 200 feet southerly therefrom; and**

iii. **The south side of Spring Street, between Main Street and High Street.**

(b)**One Way Street Regulations
Route U.S. 206-94 in Sussex County****Proposed New Rule: N.J.A.C. 16:30-1.9**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-85.1, 39:4-197(h).
Proposal Number: PRN 1986-476.

The agency proposal follows:

Summary

The proposed new rule will establish one-way routes of travel along Route U.S. 206 and Route 94 in the Town of Newton, Sussex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of one-way routes of travel in the areas designated along Route U.S. 206 and Route 94 were warranted.

The Department therefore proposes new rule N.J.A.C. 16:30-1.9 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed new rule will establish one-way routes of travel along Route U.S. 206 and Route 94 in the Town of Newton, Sussex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "one-way" traffic signs. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the proposed new rule follows.

16:30-1.9 Routes U.S. 206-94

(a) **The certain parts of State highway Routes U.S. 206 and Route 94 described in this section shall be designated for one-way traffic in the direction indicated:**

1. **In the Town of Newton, Sussex County:**

i. **Eastbound on Park Place between High Street and Main Street.**

ii. **Northbound on Main Street between Park Place and Spring Street.**

iii. **Westbound on Spring Street between Main Street and High Street/Water Street.**

iv. **Southbound on High Street/Water Street between Spring Street and Park Place.**

(c)**Turns
Route 38 in Burlington County****Proposed New Rule: N.J.A.C. 16:31-1.23**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6.
Proposal Number: PRN 1986-474.

The agency proposal follows:

Summary

The proposed new rule will establish "no left turn" along Route 38 in Mount Laurel Township, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the Mount Laurel Township officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no left turn" along Route 38 was warranted.

The Department therefore proposes new rule N.J.A.C. 16:31-1.23 based upon the request from the local officials and the results of the traffic investigation.

Social Impact

The proposed new rule will establish "no left turn" along Route 38 in Mount Laurel Township, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" signs. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the proposed new rule follows.

16:31-1.23 Route 38

(a) Turning movements of traffic on the certain parts of Route 38 described in this section are regulated as follows:

1. No left turn eastbound into the Larchmont Shopping Center driveway in Mount Laurel Township, Burlington County.

TREASURY-GENERAL

DIVISION OF PENSIONS

For the following Division of Pensions proposals, submit comments by December 17, 1986 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, N.J. 08625

(a)

Administration Enrollment Schedules

Proposed Amendment: N.J.A.C. 17:1-4.4

Authority By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96.

Proposal Number: PRN 1986-466.

The agency proposal follows:

Summary

The proposed amendments are intended to clarify the Division of Pensions' current procedures concerning the effective enrollment dates within the State-administered retirement systems. If a person receives a regular appointment between the first and 16th of the month, that person will be enrolled in the system as of the first of that month. If he or she receives the regular appointment to an eligible position between the 17th and the end of the month, the enrollment date will be the first day of the following month. There are currently amendments being proposed by the major retirement systems that would eliminate the enrollment waiting period where there is a working test period or probationary period involved and this proposal merely compliments those proposals in order to standardize similar administrative rules throughout all of the State-administered retirement systems.

Social Impact

The proposed amendments may affect future public employees who become eligible to enroll in the State-administered retirement systems. These amendments will allow the employees to enter the retirement systems sooner than they would under the current rules.

Economic Impact

The employees affected by the proposed amendments may be contributing to the retirement systems earlier than they now do under the current rules but, in doing so, may have their ultimate retirement benefits slightly

increased since they will be accruing a few months of additional service credit. Essentially, the employees who may be affected by this proposal will not experience any significant, adverse economic impact, as a result of the adoption of this proposal.

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

17:1-4.4 Enrollment schedules

(a) Employees appointed on or after the 17th of a month will be enrolled as of the first of the following month [, unless otherwise specified by the employee, in accordance with the statute and board regulations].

(b) An optional enrollee is enrolled as of the first of the month following the date the enrollment application is received [, unless otherwise specified by the employee].

(b)

Public Employees' Retirement System Enrollment Dates

Proposed Amendments: N.J.A.C. 17:2-2.4, 3.1 and 5.2

Authorized By: Janice Nelson, Secretary, Public Employees' Retirement System.

Authority: N.J.S.A. 43:15A-17.

Proposal Number: PRN 1986-477.

The agency proposal follows:

Summary

The proposed amendments eliminate the waiting period concerning the probationary period before an employee may enroll in the Public Employees' Retirement System. The proposed amendments provide that enrollment will occur during the first month after the regular appointment with the specific enrollment date being dependent upon whether such appointment date falls between the first and 16th of the month or the 17th and the end of the month. It is hoped that such amendments will avoid the confusion that has arisen concerning when a person can enroll in the PERS where there are probationary work periods involved.

Social Impact

The proposed amendments will affect future public employees who are eligible to enroll in the Public Employees' Retirement System. Such persons will be enrolled sooner within the PERS and the current waiting period regarding the working test period for enrollment purposes will be eliminated.

Economic Impact

The employees affected by this proposed amendment will be contributing to the PERS earlier than they now are but by doing so will have their ultimate retirement benefits increased slightly since they will be possibly accruing a few months additional service credit. If such employees were to purchase service credit concerning their employment during the working test period under the current rules, there would be no significant cost increase involved with the proposed amendments.

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

17:2-2.4 Enrollment date

(a) A new appointee in the classified service shall be considered as beginning his or her service on the date of his or her regular appointment [, and the compulsory enrollment date shall be fixed as the first of the month following the completion of the equivalent of a working test period of four months.]. **The compulsory enrollment date shall be fixed as the first of the month for an appointee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose regular appointment date falls between the 17th and the end of the month.** If an applicant, an optional enrollee, fails to give the date of his or her enrollment application that he or she desires to enroll in the system, the applicant shall be enrolled as of the first of the month following the receipt of the enrollment application.

(b) (No change.)

1. (No change.)

2. The date of compulsory enrollment shall be [the first of the month following the completion of the equivalent of a working test period of four months] **fixed as the first of the month for an appointee whose beginning employment date falls between the first through 16th of the month**

and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(c) (No change.)

17:2-3.1 Compulsory and optional enrollment

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

[(c) Any member enrolling within the period when he is first eligible to join and the date of compulsory enrollment, will have a contributory insurance effective date of the first of the month following the date his enrollment application is received but never later than the date of his compulsory enrollment. One year of insurance premiums will be required from the date his insurance premiums are effective; his insurance benefits will be effective on the date the member is enrolled in the system.]

[(d)] (c) When proof of insurability is required, the member's opportunity to prove such insurability shall expire one year (12 months) from the date the initial written notice is sent advising him or her that he or she must prove insurability by taking a medical examination.

17:2-5.2 New enrollment purchase or rate adjustment

[(a) Members who file an application for enrollment and who indicate they want to purchase the period between their regular appointment and their compulsory date of enrollment will have such purchase calculated on the basis of their net pension rate of contribution and salary as of their date of regular appointment. If more than one year has elapsed from the date of compulsory enrollment, the purchase of all service will be based on the member's current salary times the full pension rate of contribution.]

[(b)] Upon enrollment or reenrollment, a veteran shall contribute at the percent rate applicable to the age resulting from the subtraction of his or her years of prior service (pre-1955) from the date he or she began his or her present employment or the date of enrollment, whichever is later, provided that the member submits satisfactory evidence of prior public employment in New Jersey.

(a)

Police and Firemen's Retirement System Enrollment Dates

Proposed Amendments: N.J.A.C. 17:4-2.6, 5.1, and 5.2

Authorized By: Anthony Ferrazza, Secretary, Police and Firemen's Retirement System.

Authority: N.J.S.A. 43:16A-13(17).

Proposal Number: PRN 1986-478.

The agency proposal follows:

Summary

The proposed amendments eliminate the four month working test or probationary period before an employee may enroll in the Police and Firemen's Retirement System upon his or her initial employment in a covered position. The proposed amendments provide for enrollment of such newly appointed employees within the first month following their regular appointment with the specific date of enrollment dependent upon whether they were employed between the first and the 16th of the month or between the 17th and the end of the month. It is hoped that the proposed amendments will eliminate the confusion that has often arisen concerning when an employee can enroll in the PFRS when a probationary or working test period is involved.

Social Impact

The proposed amendments will affect future public employees who are eligible to enroll in the Police and Firemen's Retirement System. Such persons will be enrolled sooner within the PFRS and the current waiting period regarding the working test or probationary period for enrollment purposes will be eliminated.

Economic Impact

The employees affected by these proposed amendments will be contributing to the PFRS earlier than they now are but, by so doing, will have their ultimate benefits increased slightly since they will be possibly accruing a few months additional service credit. If such employees were to purchase the service credit concerning their employment during the working test or probationary period under the current rules, there would be no significant cost increase involved with the proposed amendments.

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

17:4-2.6 Enrollment date

(a) An employee who is appointed to a permanent position from a Civil Service list shall be considered as having begun his or her eligibility for enrollment on the date of his or her regular appointment [, and the compulsory enrollment date shall be fixed as the first of the month following a four-month period from such appointment]. **The compulsory enrollment date shall be fixed as the first of the month for an appointee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose regular appointment date falls between the 17th and the end of the month.**

(b) An employee in the unclassified service shall be considered as beginning service on the date [of his original appointment and the compulsory enrollment date shall be fixed as of the first of the month following the completion of the employee's initial four months of employment.] **his or her employment began. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose beginning employment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.**

(c) The regular appointment of an employee appointed by a local employer not covered by Civil Service shall constitute the date the employee originally accepted employment in a regular budgeted position. [The date of compulsory enrollment shall be the first of the month following the completion of the employee's initial four months of employment.] **The date of compulsory enrollment shall be fixed as the first of the month for an appointee whose beginning date of employment falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.**

(d) (No change.)

17:4-5.1 Temporary service

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

[(c) In order to be eligible to purchase temporary service, a member must submit a written request to purchase such service within one year from the date his initial pension contributions are certified to begin and such purchase must be authorized by the member before the expiration date indicated in the quotation letter.]

17:4-5.2 [New enrollment purchases] (**Reserved**)

[Members who file an application for enrollment and indicate they want to purchase the period between their regular appointment and their compulsory date of enrollment will have such purchase calculated on the basis of their pension rate of contribution and salary as of their date of their regular appointment. If more than one year has elapsed from the date of compulsory enrollment, the purchase of all service will be based on the member's current salary times the full pension rate of contribution.]

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Administration of Transfer Tax and New Jersey Estate Tax

Who May Represent the Estate Before the Transfer Inheritance Tax Branch

Proposed Amendment: N.J.A.C. 18:26-12.2

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1986-472.

Submit comments by December 17, 1986 to:

Emil Petrecca, Jr.
Chief Auditor
Transfer Inheritance Tax Branch
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment relates to the Transfer Inheritance Tax Act, N.J.S.A. 54:33-1 et seq. and N.J.A.C. 18:26-12.2, with respect to who may represent the estate of a decedent before the Transfer Inheritance Branch, Division of Taxation, State of New Jersey. The amendment applies to both New Jersey Transfer Inheritance Tax Returns and New Jersey Estate Tax proceedings. Under the current rule, the persons who could prepare and file these returns were an attorney-at-law of the State of New Jersey, the personal representative of an estate, or an heir-at-law, next of kin, grantee, transferee, legatee, or devisee of the decedent; this is set forth in N.J.A.C. 18:26-12.2, now being amended by this proposal. The proposed amendment would add qualified certified public accountants licensed by the State of New Jersey with limitations. The certified public accountants of the State of New Jersey won this right through litigation. See the case of *Application of the New Jersey Society of Certified Public Accountants*, 102 N.J. 231, decided by the Supreme Court of the State of New Jersey on April 14, 1986. The decision of the court held that qualified certified public accountants licensed in the State of New Jersey may prepare and file returns before the Transfer Inheritance Tax Branch of the Division of Taxation, provided that the qualified certified public accountant notifies the client in writing before work is commenced that review of the Transfer Inheritance Tax Return or the Estate Tax Report by a qualified attorney-at-law of the State of New Jersey may be desirable or is necessary because of possible application of legal principles to preparation of the tax return. The court also stated that notification to clients "is essential for the protection of the public who might otherwise be willing to rely entirely on the skill of the certified public accountant to protect their interest." (p.242 of CPA case.) Also, the court stated that a certified public accountant's "failure to consult counsel or to advise a client of the need to obtain legal advice with respect to certain Inheritance Tax Returns could constitute a deviation from the accountant's standard of care and result in civil liability." (See again p.242 of CPA case.)

Social Impact

The opinion of the New Jersey Supreme Court gives the public the right to the service of certified public accountants, licensed by the State of New Jersey, in the preparation and filing of Transfer Inheritance Tax Returns. Properly prepared certified public accountants may be helpful, for instance, in the area of valuation of closely held corporations. A new field is open to the accounting profession for practice before the Transfer Inheritance Tax Branch of the Division of Taxation without the absolute requirement that an attorney-at-law be used. However, the caveat or warning by the New Jersey Supreme Court that the accountant notify the client in writing before work is commenced that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return cannot be taken lightly. Hopefully, the Division of Taxation's expectation of professionally competent preparation and filing of returns will continue to be fulfilled, benefitting the State of New Jersey and its people as well as the preparer and filer of the return, whoever that may be.

Economic Impact

The amendment is a consequence of the decision of the New Jersey Supreme Court. There is no economic impact on State revenue related to this amendment. The cost to the decedent's estate may be larger where both an attorney and an accountant are required but that is not necessarily true. As in most instances the cost can vary based on the facts and complexity of the legal as well as accounting problems.

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

18:26-12.2 Administration of Transfer Inheritance Tax and New Jersey Estate Tax

(a) (No change).

1. No [inheritance] **Inheritance** Tax report on the estate of a resident decedent will be accepted nor negotiation entered into with regard to the estate matters of a resident decedent unless such estate is represented by:
 - i. An attorney-at-law of the State of New Jersey;
 - ii. The personal representative of an estate; [or]
 - iii. An heir-at-law, next of kin, grantee, transferee, legatee, or [devisee] **devisee** of the decedent[.]; **or**
 - iv. A **certified public accountant of the State of New Jersey, provided such accountant is designated for such purpose, in writing, by any of the persons enumerated in ii. or iii. above.**

- [2. Nothing herein is intended to preclude the discussion of accounting problems which may arise in the course of an audit of a New Jersey Inheritance Tax report, with a Certified Public Accountant, provided, such accountant is designated for such purpose, in writing, by any of the persons enumerated in paragraph 1 of this subsection. Under no circumstances may a C.P.A. enter into discussion regarding any question of law;]
- [3.] **2.** (No change in text.) _____

OTHER AGENCIES

CASINO CONTROL COMMISSION

(a)

Gaming Schools

Minimum Hours of Training

Proposed Amendment: N.J.A.C. 19:44-8.3

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69.

Proposal Number: PRN 1986-469.

Submit comments by December 17, 1986 to:

Deno R. Marino

Deputy Director, Operations

Division of Financial Evaluation and Control

Casino Control Commission

3131 Princeton Pike, Bldg. 5

CN 208

Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:44-8.3(a) would extend the required hours of training for baccarat by eight hours to encompass minibaccarat. For those students already trained in baccarat, a separate 10 hour course would be necessary to learn minibaccarat. In addition, those persons trained to deal baccarat and blackjack would require five hours of training to deal minibaccarat.

Social Impact

The proposed amendment would assure that all persons seeking a license endorsement for minibaccarat have been adequately trained.

Economic Impact

The proposed amendment would only have an economic impact on persons wishing to obtain an endorsement in minibaccarat. Those persons would have to pay for the course or make arrangements to have their employer pay for the course.

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

19:44-8.3 Minimum hours

- (a) Any training or instruction designed to prepare a student for employment as a dealer of roulette, blackjack, baccarat, **minibaccarat** or craps shall satisfy the following minimum requirements:
 1. For a student being trained to deal his first game the following minimum hours of training and instruction shall be required:
 - i. 160 hours to prepare a student to deal blackjack;
 - ii. [200] **208** hours to prepare a student to deal baccarat **and minibaccarat**;
 - iii. 200 hours to prepare a student to deal roulette; and
 - iv. 240 hours to prepare a student to deal craps.
 2. For a student being trained to deal his second or subsequent game the following minimum hours of training and instruction shall be required:
 - i. For a student who has been trained to deal blackjack:
 - (1) 180 hours to prepare him to deal craps;
 - (2) 120 hours to prepare him to deal roulette; and
 - (3) [80] **85** hours to prepare him to deal baccarat **and minibaccarat**.
 - ii. For a student who has been trained to deal roulette:
 - (1) 180 hours to prepare him to deal craps;
 - (2) 80 hours to prepare him to deal blackjack; and
 - (3) [80] **88** hours to prepare him to deal baccarat **and minibaccarat**.

- iii. For a student who has been trained to deal craps:
 - (1) 120 hours to prepare him to deal roulette;
 - (2) 80 hours to prepare him to deal blackjack; and
 - (3) [80] **88** hours to prepare him to deal baccarat **and minibaccarat.**
 - iv. For a student who has been trained to deal baccarat:
 - (1) 180 hours to prepare him to deal craps;
 - (2) 120 hours to prepare him to deal roulette; [and]
 - (3) 80 hours to prepare him to deal blackjack[.]; **and**
 - (4) **10 hours to prepare him to deal minibaccarat.**
- 3. For a student who has been trained to deal blackjack and baccarat, five hours shall be required to prepare him to deal minibaccarat.**
(b) (No change.)

(a)

**Casino Hotel Alcoholic Beverage Control
Security of Unattended Alcoholic Beverages
Proposed Amendment: N.J.A.C. 19:50-1.6**

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-70(q) and N.J.S.A. 5:12-103.

Proposal Number: PRN 1986-468.

Submit comments by December 17, 1986 to:

Seth H. Brilliant
Assistant Counsel
Casino Control Commission
Boardwalk at Tennessee Avenue
Atlantic City, NJ 08401

The proposal follows:

Summary

Present casino hotel alcoholic beverage regulations do not expressly require alcoholic beverages to be kept in a secure manner, except in

storage locations licensed pursuant to N.J.S.A. 5:12-103(g)(7). See N.J.A.C. 19:50-1.13(d). However, all casino hotel alcoholic beverage licensees are required to include procedures for the security of alcoholic beverages in their internal control submissions, pursuant to N.J.A.C. 19:50-1.6(b)1v. The proposed amendment would extend the express duty to maintain liquor in a secure manner in a storage area, to all unattended alcoholic beverages in all other authorized alcoholic beverage locations, such as casino rooms, showrooms, restaurants, pubs, and room service locations. The amendment would thus codify the present practice of requiring all stored alcoholic beverages to be kept in a secure manner, regardless of location within a casino hotel.

Social Impact

The proposed amendment is consistent with the strict regulation of alcoholic beverages in the casino industry. The proposed amendment will benefit the casino industry by requiring the safeguarding of a casino hotel alcoholic beverage licensee's assets in liquor inventories. To the extent that the proposed amendment will prevent the improper consumption and illegal distribution of alcoholic beverages, public confidence in the integrity of the industry is enhanced.

Economic Impact

The proposed amendment will not impose any additional costs upon the Casino Control Commission or the Division of Gaming Enforcement. The proposed amendment might impose some minor costs upon the casino industry or the public.

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

19:50-1.6 General regulations concerning operating conditions of licensees

(a)-(y) (No change.)

(z) No casino hotel alcoholic beverage licensee shall leave unattended any alcoholic beverage in, on or about any of its locations authorized pursuant to N.J.S.A. 5:12-103(g), unless kept in a secure manner.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF BANKING

Bank Holding Company Registration

Adopted New Rule: N.J.A.C. 3:13-1

Proposed: July 21, 1986 at 18 N.J.R. 1434(a).

Adopted: October 27, 1986 by Mary Little Parell, Commissioner,
Department of Banking.

Filed: October 27, 1986, as R.1986 d.459, 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. 17:9A-379 (P.L. 1986, c.6) and
N.J.S.A. 17:1-8.

Effective Date: November 17, 1986.

Expiration Date: November 17, 1991.

Summary of Public Comments and Agency Responses:

The Department of Banking received one public comment which dealt with several sections of the proposed rule. These comments came from the general counsel of a major bank holding company.

COMMENT: It was noted that the definitions section of the proposed rule does not contain all of the definitions found in the law and that in some instances the definitions were rewritten using different words than those used in the statute.

RESPONSE: The Department recognizes the merit of this comment and the definitions section has been changed so that all definitions will tie into the definitions used in the statute.

COMMENT: It was recommended that the phrase "Each bank holding company" be substituted at N.J.A.C. 3:13-1.4(a) in lieu of the phrase "Any company which controls a banking institution." It is suggested that this phrasing would conform this provision to the law.

RESPONSE: The word "company," which would include a bank holding company, was used in the rule to make it clear that any company that controlled a bank holding company would be required to register, as well as a bank holding company itself. However, since the preponderance of those that will be required to register are strictly bank holding companies, the Department has accepted the suggested change and incorporated it in the proposed rule. It is the Department's position that any company that controls a bank holding company would also have to register, as by definition a bank holding company means any company which controls a banking institution.

COMMENT: As an adjunct to the proposed change in the previous comment, it was suggested that the phrase ", other than a bank holding company," be added after the word "person" in subsection N.J.A.C. 3:13-1.4(b).

RESPONSE: For the sake of clarity, this change has been made.

COMMENT: It is suggested that section N.J.A.C. 3:13-1.5 should be eliminated from the regulation as the commentator questions the statutory basis for the notification called for in this section. Due to this, he feels the notice may be ignored or overlooked. Further, he feels the Department would receive notices of such changes through requirements of other laws and regulations and, therefore, this notice would be duplicative.

RESPONSE: The Department feels it has the regulatory authority to call for such notices as are necessary in order for it to carry out the purposes of its responsibility under the provisions of the act under which this rule is written, the "New Jersey Banking Oversight and Change of Control Act." In particular, N.J.S.A. 17:9A-379 gives the Commissioner the authority to promulgate those rules and regulations she deems necessary. Further, in order for the Department to keep its records on bank holding companies current, it is felt it should be notified of changes in control on a timely basis. Additionally, it is felt the Department should provide for the notification of change as part of a total rule dealing with registration of bank holding companies rather than relying on the chance that it may become aware of a change through some other provision of a law or regulation.

COMMENT: The commentator questions the basic authority of the Commissioner to adopt this registration regulation, at all, and refers to the statute at N.J.S.A. 17:9A-374(a) and (b) which deals with bank holding companies and persons other than bank holding companies filing copies of certain reports with the Department. He suggests a bank holding company file its Form 10K or equivalent report filed with its bank regulatory authority. He further notes that the information requested of persons, other than bank holding companies, does not parallel the requirements of the statute nor the filing deadline of April 30, since the regulation calls for the registration to be made by January 31 of each year.

RESPONSE: The Department feels it has the regulatory authority to call for the registration by all bank holding companies and/or persons controlling a bank. This authority is found in N.J.S.A. 17:9A-379 which gives the Commissioner the authority to promulgate necessary rules and regulations in order for her to carry out the purposes and responsibilities delegated in the statute. Apparently, the commentator has the misconception that this registration rule represents the Commissioner's request for bank holding companies and other persons controlling a bank to file information as called for in N.J.S.A. 17:9A-384. This is not the case.

The proposed rule is merely a requirement for the registration with the Department of all bank holding companies. This one or two page registration form will allow the Department to create a file on all bank holding companies in order for it to determine what bank holding companies are in existence. In order for the Department to properly determine which entities are to be subject to examination and for it to determine what reports are to be requested and from whom, it must first generate this basic information. The required financial data filings are to be the subject of a separate rule and will parallel the requirements of N.J.S.A. 17:9A-374.

In addition to the changes made in response to the comments noted above, the Department has added a new section to the rule to provide a \$50.00 fee for the processing of the required registration forms (see N.J.S.A. 17:1-8). This nominal fee will provide funding for the establishing of an automated file on bank holding companies.

Further, since the rule will become effective so close to year-end 1986, a provision has been made to have the initial registration submitted on or before January 15, 1987, reflecting data as of year end 1986 rather than 30 days after the effective date of the rule. The deadline for filing of the initial and annual registration forms has been set as of January 15 since data contained in these forms will be used to determine what additional annual reports our Department will require.

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

CHAPTER 13 BANK HOLDING COMPANIES

SUBCHAPTER 1. BANK HOLDING COMPANY REGISTRATION

3:13-1.1 Scope and purpose

This subchapter requires the initial and annual registration of all persons or companies controlling banking institutions located in New Jersey. The subchapter will enable the Commissioner to determine which provisions of the "New Jersey Banking Oversight and Change of Control Act" (N.J.S.A. 17:9A-373) apply to the reporting person or company.

3:13-1.2 Definitions

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

"Bank" shall have the same definition as provided in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1).

"Banking institution" means a bank or a national banking association having its principal office in this State.

"Bank holding company" means a company which controls a banking institution.

"Commissioner" means the Commissioner of Banking of New Jersey.

"Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust, unless by its terms it must terminate within 25 years or not later than 21 years and 10 months

after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

"Control" of a banking institution means:

1. Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the ***bank or* banking institution***, directly or indirectly, or acting through one or more persons ***[or companies]**. For purposes of this subchapter, a person or company is deemed to control voting securities or assets owned, controlled, or held directly or indirectly:

i. As joint tenant, tenant in common, tenant by entirety or as community property; or

ii. By any subsidiary of the person or company; or

iii. In a fiduciary capacity, including by pension and profit-sharing trust, for the benefit of the shareholders, members, employees, or individuals serving in similar capacities, of the person or company or of any of its subsidiaries; or

iv. In a fiduciary capacity for the benefit of the person or company or any of its subsidiaries; or

v. By a spouse, child, parent or sibling.]**;

2. Control in any manner over the election of a majority of the directors, trustees, general partners or individuals exercising similar functions of the ***bank or* banking institution***; or

3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the ***bank or* banking institution***, as determined by the ***[c]**C*ommissioner** after notice and opportunity for hearing.

***4. A person which is a bank, as defined in section 1 of P.L. 1957, c.70 (N.J.S.A. 17:9A-344), shall not be deemed to control voting securities or assets of a bank acquired:**

i. In good faith in a fiduciary capacity, except where voting securities are held in a trust that constitutes a company; or

ii. In the regular course of securing or collecting a debt previously contracted in good faith which securities are disposed of within a period of two years after the date on which they were acquired or after the enactment of N.J.S.A. 17:9A-373, whichever is later.

5. A person is deemed to control voting securities or assets owned, controlled, or held directly or indirectly:

i. By any subsidiary of the person; or

ii. In a fiduciary capacity, including by pension and profit sharing trusts, for the benefit of the shareholders, members, employees, or individuals serving in similar capacities, of the person or of any of its subsidiaries; or

iii. In a fiduciary capacity for the benefit of the person or any of its subsidiaries.

"Insured banking institution" means a banking institution the deposits of which are insured in accordance with the provisions of the "Federal Deposit Insurance Act," 64 Stat. 873 (12 U.S.C. 1811 et seq.).

"Outstanding shares" means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.*

"Subsidiary" means a person or company that is controlled by another person or company.

"United States" means the United States and includes any of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"Voting securities" means:

1. Shares of common or preferred stock, general or limited partnership shares of interests or similar interests if the shares of interests, by statute, charter, or in any manner, entitled the holder:

i. To vote for or to select directors, trustees, partners, or persons exercising similar functions for the issuing company; or

ii. To vote on or to direct the conduct of the operations or other significant policies of the issuing person;

2. Preferred shares, limited partnership shares or interests, or similar interests are not "voting securities" if:

i. Any voting rights associated with the shares of interests, including the right to select or vote the selection of directors, trustees, or partners or person exercising similar functions,

(1) Are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing person, or the payment of dividends by the issuing person when preferred dividends are in arrears; or

(2) Entitle the holder thereof to vote for the election of directors, trustees or partners or persons exercising similar functions only as the result of the failure to pay a dividend or to fulfill an obligation or satisfy a condition specified by the terms of such shares or interests; and

ii. The shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing person.*

3:13-1.3 ***Initial* [R]**r**egistration

(a) Any person or company which controls a banking institution shall ***file an initial registration form* [register]*** with the Department of Banking ***by January 15, 1987 reflecting the information set out in (c) below as of December 31, 1986*** ***[within 30 days from the effective date of this subchapter]***.

(b) Any person or company not ***initially*** registered with the Department of Banking and which subsequently acquires control of a banking institution after the effective date of this subchapter shall register with the Department of Banking within 30 days of such acquisition.

(c) Registration shall be on forms prescribed by the Commissioner of Banking and shall require submission of the following information:

1. Name of the person or bank holding company;

2. Mailing address of the person or bank holding company;

3. Location of the bank holding company's principal office;

4. Registered agent of the bank holding company;

5. Chief executive officer of the bank holding company;

6. Name and address of any person or company, which controls the bank holding company;

7. List of banking institution subsidiaries;

8. List of subsidiary bank holding companies.

3:13-1.4 Annual registration

(a) ***[Any company which controls a banking institution]* *Each bank holding company*** shall annually file a "Bank Holding Company Registration Form" with the Department. The information required shall be as of December 31 of each year and the form shall be filed by January ***[31]* *15*** of ***the*** following year.

(b) Any person*, **other than a bank holding company***, who controls a banking institution shall annually file a "Bank Holding Company Registration Form for Individuals" with the Department. The information required shall be as of December 31 of each year and the form shall be filed by January ***[31]* *15*** of the following year.

3:13-1.5 Notification of change

(a) Any registered bank holding company which acquires control of a banking institution or divests itself of a controlled banking institution shall notify the Commissioner within 30 days after the consummation of the transaction.

(b) Any registered person which acquires control of a banking institution or divests himself of a controlled banking institution shall notify the Commissioner within 30 days after the consummation of the transaction.

***3:13-1.6 Registration fee**

A filing fee of \$50.00 shall accompany each registration form and each notification of change submitted to the Department.*

DIVISION OF BANKING

(a)

Bank Holding Company: Reporting Requirements and Examination Charges

Adopted New Rules: N.J.A.C. 3:13-2 and 3:13-3

Proposed: September 8, 1986 at 18 N.J.R. 1763(a).

Adopted: October 27, 1986 by Mary Little Parell, Commissioner, Department of Banking.

Filed: October 27, 1986, as R.1986 d.458, with substantive changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:9A-379; 17:9A-374; 17:9A-375; 17:9A-377.

Effective Date: November 17, 1986.

Expiration Date: November 17, 1991.

Summary of Public Comments and Agency Responses:

No comments received; however, the Department has added an amendment to the rule which stipulates that certain reports called for in this

rule are to be filed by April 30 of each year. This requirement ties into the time frame set out in the statute. Further, an amendment was made to clarify that the examination charge provided for in the rule is a charge per man, per day, as opposed to an interpretation which might imply a daily examination charge regardless of the number of people involved in an examination.

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

CHAPTER 13
BANK HOLDING COMPANIES

SUBCHAPTER 2. BANK HOLDING COMPANY REPORTING

3:13-2.1 Purpose and scope

This subchapter requires filing of financial reports by all persons or companies controlling banking institutions located in New Jersey. The subchapter will enable the Commissioner to monitor the activities of individuals and companies that control New Jersey banks. The first reports to be filed pursuant to the provisions of these rules shall be for the period ending December 31, 1986.

3:13-2.2 Reporting for bank holding companies

(a) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9C entitled "Consolidated Financial Statements for Bank Holding Companies with total consolidated assets of \$150,000,000 or more or with more than one subsidiary bank," shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(b) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9LP entitled "Parent Company Only Financial Statements for Bank Holding Companies with total consolidated assets of \$150,000,000 or more with more than one subsidiary bank" shall concurrently file a copy of this report with the Commissioner of Banking. A \$50.00 filing fee shall accompany the submitted report.

(c) Each bank holding company which is required to file with the Federal Reserve System form FR Y-9SP entitled "Parent Company Only Financial Statements for One Bank Holding Company with total consolidated assets of less than \$150,000,000" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(d) Each bank holding company which is required to file with the Federal Reserve System form FR Y-6 entitled "Annual Report of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. The copy of FR Y-6 filed with the Commissioner of Banking shall include the required copy of the bank holding company's annual report to shareholders or the required copy of form 10K to the Securities and Exchange Commission. A filing fee of \$100.00 shall accompany the submitted report.

(e) Each bank holding company which is required to file with the Federal Reserve System form FR Y-6A entitled "Bank Holding Company Report Changes in Investments or Activities" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(f) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11I entitled "Annual Report of Selected Financial Data for Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(g) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11Q entitled "Combined Financial Statement of Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(h) Each bank holding company which is required to file with the Federal Reserve System form FR Y-11AS entitled "Annual Supplement to the Combined Financial Statements of Non-Bank Subsidiaries of Bank Holding Companies" shall concurrently file a copy of this report with the Commissioner of Banking. A filing fee of \$50.00 shall accompany the submitted report.

(i) Each bank holding company which is not required to file with the Federal Reserve System shall:

1. If the bank holding company is required to file a form 10K with the Securities and Exchange Commission, the bank holding company shall concurrently file a copy of this report with the Commissioner of Banking; or

2. If the bank holding company is not required to file a form 10K with the Securities and Exchange Commission, the bank holding company shall annually*, on or before April 30 of each year,* file with the Commissioner of Banking the following information on forms provided by the Department of Banking:

- i. Name and address of the company;
 - ii. Names and addresses of principal officers;
 - iii. Names and addresses of controlling shareholders of the company;
 - iv. A summary of material business activities and affiliations during the past five years;
 - v. A description of pending legal or administrative proceedings in which the company is a party;
 - vi. A statement of assets and liabilities of the company for each of the five preceding fiscal years, together with related statements of income and sources and applications of funds for each of those fiscal years; and
3. Submit a filing fee of \$100.00 with the filed report.

3:13-2.3 Reporting for persons other than bank holding companies

(a) Each person who controls a bank *or bank holding company* shall annually file with the Commissioner of Banking*, on or before April 30 of each year,* the following information on forms provided by the Department of Banking:

1. Name and address of the person;
2. A resume of material business activities and affiliations during the past five years;
3. A description of pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of the individual issued by a state or federal court;
4. A statement of assets and liabilities of the person for each of the five preceding fiscal years, together with related statements of income and sources and applications of funds for each of those fiscal years;
5. A filing fee of \$100.00.

SUBCHAPTER 3. BANK HOLDING COMPANY EXAMINATIONS

3:13-3.1 Purpose and scope

This subchapter establishes the per diem *per person* examination charge to be assessed against and paid by a company to defray the Department of Banking examination costs relative to an examination of a company which controls a bank.

3:13-3.2 Per diem *per person* examination charge

The *individual* per diem *per person* examination charge for an examination of a company which controls a bank shall be \$200.00.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Rules Concerning CAFRA Facilities

Adopted Amendment: N.J.S.A. 7:7-2.1

Proposed: September 8, 1986 at 18 N.J.R. 1772(a).

Adopted: October 21, 1986.

Filed: October 27, 1986 as R.1986 d.461, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 13:19-1 et seq.

Effective Date: November 17, 1986.

Expiration Date: May 7, 1989.

DEP Docket Number: 034-86-08

Summary of Public Comments and Agency Responses:

One letter with comments in support of the proposal was received. The letter suggested that, in order to ensure a clear definition of the types of regulated structures, the amendment should provide that these structures should require a permit if they are either primarily intended for dwelling purposes or are affixed to the land and have potable water and waste water services. The amendment, as proposed, provides that both of these conditions must be met.

In response to this suggestion, the Department has reviewed the proposal and the applicable provisions of the Coastal Area Facility Review Act, N.J.A.C. 13:19-1 et seq. (CAFRA). CAFRA provides that "new housing developments of 25 or more dwelling units or equivalent" require a permit from the Department. In accordance with the provisions of CAFRA, it is the Department's intent, by this rule amendment, to assert

jurisdiction over those structures which, by their nature, are equivalent to dwelling units. The Department finds that structures which are suitable merely for changing and storing clothing and showering or which provide temporary shelter from the sun during the daylight hours are not sufficiently equivalent to dwelling units. A two pronged standard is therefore necessary which provides that where a structure can be used as a shelter and is also of a permanent nature and therefore capable of being used as a dwelling, such a structure is equivalent to a dwelling unit. Both of the standards set forth in the proposed amendment are necessary to effect this purpose.

Full text of the adoption follows.

7:7-2.1 CAFRA

(a) (No change.)

(b) The Department interprets the statutory term "facility" in its broadest sense so as to provide adequate environmental safeguards for the construction of any facility in the coastal area. On the other hand, the Department interprets the statutory intent as excluding relatively minor construction or reconstruction. To that end, the following terms are interpreted as follows.

1.-3. (No change.)

4. "New housing developments or expansion of existing developments by the addition of 25 or more dwelling units or equivalent" means:

i.-vii. (No change.)

viii. The construction of 25 or more contained units including but not limited to cabanas which are walled and roofed structures whose primary purpose is to provide shelter and which are affixed to the land and provide potable water and wastewater services or the addition of one or more such contained units to any facility for which construction had commenced subsequent to September 19, 1973 where such addition results in a total of 25 or more units.

5. (No change.)

DIVISION OF WATER RESOURCES

(a)

Flood Hazard Area Delineation

Delineation of Rock Brook, Pike Run and Crusier Brook and Redelineation of Beden Brook and Van Horn Brook in the Raritan River Basin.

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: July 7, 1986 at 18 N.J.R. 1334(a).

Adopted: October 24, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: October 27, 1986, as R.1986 d.460, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

Effective Date: November 17, 1986.

Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses:

Notice of the proposed rule change was published on July 7, 1986 in the New Jersey Register at 18 N.J.R. 1334(a). That notice also advised that a Public Hearing had been scheduled for Thursday, August 21, 1986 at 1:00 P.M. at Montgomery Township Municipal Building, 2261 Route 206, Belle Mead, Somerset County, New Jersey to afford the public an opportunity to be heard on this proposed action by the Department. In addition, a notice of public hearing was issued by the Division of Water Resources on June 19, 1986. Both notices invited written comments to be submitted on or before September 4, 1986.

No comments received.

Full text of the adoption follows.

7:13-7.1 Delineated floodways

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

(d) A list of streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follows:

1.-53. (No change.)

54. Rock Brook,
Pike Run and
Cruser Brook.

Rock Brook from
its mouth upstream
to Camp Meeting Road;
Pike Run from its
mouth upstream to
Township Line Road;
Cruser Brook from its
mouth upstream to Belle
Mead-Blawenburg Road.

(e)-(i) (No change.)

AGENCY NOTE: Maps of the approximate location of the delineated flood hazard areas and associated flood profiles are available for inspection during normal office hours at the offices of The Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey and at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

In addition maps of the proposed delineations have been sent to the town clerks of Montgomery Township and Rocky Hill Borough as well as to the Somerset County Planning Board.

HEALTH

(b)

NARCOTIC AND DRUG ABUSE CONTROL

Controlled Dangerous Substances

Reschedule Dronabinol from Schedule I to II

Adopted Amendments: N.J.A.C. 8:65-10.1 and 10.2

Proposed: September 8, 1986 at 18 N.J.R. 1774(a).

Adopted: October 23, 1986 by Molly J. Coye, M.D.,

Commissioner, Department of Health.

Filed: October 24, 1986 as R.1986 d.457, **without change.**

Authority: N.J.S.A. 24:21-3.

Effective Date: November 17, 1986.

Expiration Date: Exempt from the provisions of Executive Order No. 66(1978) pursuant to N.J.S.A. 24:21-3.

Summary of Public Comments and Agency Responses:

Two comments were received, one from the New Jersey Pharmaceutical Association and one from the Council on State Laws, Washington, DC regarding the statement in the social impact regarding restriction to hospital pharmacies for the substance Dronabinol.

The Department replied that it became aware that no such restriction limiting Dronabinol to hospital pharmacies was intended by the Drug Enforcement Administration, and that public notice of the change would be published. Such change does not affect the language of the regulation amendment.

Full text of the adoption follows.

8:65-10.1 Controlled dangerous substances: schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code number.

1.-2. (No change.)

3. Hallucinogenic substances: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomer" includes the optical, positions and geometric isomers) listed by generic/established or chemical name with CDS code):

(No change in listing.)

4.-7. (No change.)

8:65-10.2 Controlled dangerous substances: schedule II

(a) (No change.)

(b) The following is schedule II listing the controlled dangerous substances by generic, established or chemical name and controlled dangerous substances code numbers.

1.-6. (No change.)

7. Hallucinogenic substances:

i. Dronabinol (synthetic) in sesame oil encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved product . . . 7369

ii. Some other names for Dronabinol: (6aR-trans)-6a-7, 8, 10a-tetrahydro-6, 6,9-trimethyl-3-pentyl-6H-dibenzyl (b,d) pyran-1-01, or (-)-delta-9-(trans)-tetra-hydrocannabinol.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Home Energy Assistance Handbook

Eligibility Requirements; Emergency Energy Assistance

Adopted Amendment: N.J.A.C. 10:89-2.2, 2.3 and 3.4

Proposed: August 18, 1986 at 18 N.J.R. 1676(a).

Adopted: October 21, 1986 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: October 23, 1986, as R.1986 d.450, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: November 17, 1986.

Expiration Date: September 11, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from a county welfare agency (CWA) and a legal services organization.

Comments from the CWA are as follows:

COMMENT: For clarification purposes, language should be added at N.J.A.C. 10:89-2.2(a)1i(3) to specify what constitutes a "reasonable" payment for room and board. The CWA suggested, for example, that the room and board payment should be no less than the roomer-boarder's per capita share of the household's total shelter and heating costs.

RESPONSE: The language as proposed has been maintained, thus giving the CWA the opportunity to interpret what constitutes a reasonable room and board payment, since what is reasonable may vary from county to county and from one region to another of each county.

COMMENT: The word "funds" should be changed to "income" at N.J.A.C. 10:89-3.4(a)1 since emergency energy assistance is available only to Home Energy Assistance (HEA) eligible households.

RESPONSE: The Department agrees with the comment and the wording has been revised.

Comment from the legal services organization is as follows:

COMMENT: Clarification should be made at N.J.A.C. 10:89-2.2(a)1i, with regard to the definition of the word "household," to indicate that even where there is one central source of residential heating, a group of individuals who share an apartment may still be considered separate households if they are not living together as one economic unit. Prior to November 1984, the regulations failed to include the concept of separate economic unit in the definition of household. This was challenged in the case of *Middlesex County Board of Social Services v CC*, OAL Docket No. HPW 3424-84. The Administrative Law Judge "struck down the restrictive State regulation as being in conflict with Federal statute and therefore invalid."

RESPONSE: The proposed regulation does not alter the Federal definition of household, but rather is consistent with Federal intent. The argument that an individual with income constitutes an economic unit is not appropriate for the HEA program. An economic unit for the HEA program is a person or group of persons who purchase residential energy in common. Since the HEA program was established to provide energy assistance, the focal point of the household concept should be the manner in which energy is purchased. If the heating bill is shared then the HEA benefit should be shared also. In the cited case, each resident had a separate rental agreement and did not pool money with other roommates for any purpose whatsoever. This resulted in the reversal of the Middlesex

County Board of Social Services decision to deny HEA benefits to C.C. though he resides with others under the same roof. Each resident pays for heat included in his rental payment and therefore each constitutes a separate hearing economic unit.

The Federal definition states that a household is "one economic unit for whom residential energy is purchased in common or who make payments for energy in the form of rent."

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

10:89-2.2 Eligibility requirements

(a) The household members shall be residents of New Jersey.

1. Household defined: The term "household" means any individual or group of individuals who are living together as one economic unit for whom home energy is customarily provided in common or who make undesignated payments for energy in the form of rent. Specifically:

i. If there is one central source of residential heating (for example, one furnace) there is one household; except that,

(1) If there is one central source of residential heating but the building contains multiple dwelling units or apartments, each apartment may be considered a separate household; except that,

(2) If the building is a licensed boarding home, Residential Health Care Facility or community recognized boarding facility, each resident may be considered a separate household;

(3) If a business only (roomer-boarder) relationship exists, where one person is paying for living space in the dwelling of another, the roomer-boarder may be considered a separate household. For such relationship to be established, the payments for room and board must be reasonable, considering the total shelter and heating cost for the person supplying the room and board. Further, the relationship must be one which would immediately terminate if the payment between the parties ceased (see N.J.A.C. 10:89-2.3(f)4 for limitations).

2.-3. (No change.)

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of \$235.00, the amount in excess of \$235.00 shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

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

10:89-2.3 Income eligibility

(a)-(f) (No change.)

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

Household Size	Monthly Allowable Gross Income Limit
1	670
2	905
3	1140
4	1375
5	1610
6	1845
7	2080
8	2315
9	2550
10	2785
Each Additional Member	+235

10:89-3.4 Emergency energy assistance

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

1. An energy emergency shall exist when a household is without heat or is in danger of being without heat and the household has insufficient *[funds on hand]* *income available* to purchase fuel.

2.-6. (No change.)

(b) (No change.)

(c) Emergency purchase of fuel:

1. The CWA is authorized to issue an emergency payment for the purchase of fuel oil or other fuel used for residential heating.

2.-3. (No change.)

(d) (No change.)

(e) Emergency temporary rehousing:

1.-3. (No change.)

4. The CWA is responsible for evaluation of the situation and determination of appropriateness of the reimbursement from program funds. The Director of the Division of Public Welfare, upon consideration of the CWA's recommendation, may authorize the reimbursement for a specified temporary period not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency.

5-7. (No change.)

(f) (No change.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance

Coverage Option Survey: Personal Injury Protection and Tort Threshold Options

Adopted New Rules: N.J.A.C. 11:3-22

Proposed: July 7, 1986 at 18 N.J.R. 1344(b).

Adopted: October 27, 1986 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: October 27, 1986, as R.1986 d.463, 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. 17:1C-6(e), N.J.S.A. 17:1-8.1, N.J.S.A. 17:28-1 et seq. and N.J.S.A. 39:6A-1 et seq.

Effective Date: November 17, 1986.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department received four comments from insurers on the proposed new rule N.J.A.C. 11:3-22 concerning the Automobile Insurance Coverage Option Survey: Personal Injury Protection and Tort Threshold Options.

COMMENT: One commenter suggested that the adopted rule should provide one month's lead time in order to permit companies to configure their systems to produce the requirements of the report.

RESPONSE: The adoption of this regulation is effective on November 17, 1986, thereby making the February 21 filing of information the first to be submitted pursuant to its requirements. Accordingly, there is ample lead time for companies to produce data in conformance with the requirements of the regulation.

COMMENT: One commenter argued that the rule should be amended to provide equivalent time frames for submission of data following the close of each applicable reporting period. The writer, therefore, suggested that the due date for submission of data for the January 31 reporting period should be changed from February 14 to February 21 to parallel the July submission due date of August 22. Another commenter anticipated difficulty in complying with the submission due date of February 14 and August 22 and suggested changing them to March 1 and September 1 respectively.

RESPONSE: The data submission due dates are February 14 and August 22 as noted in the proposed rule correspond with the dates given in the three Orders which the Department had used to solicit prior option selection data. There appears to be no indication that companies experienced difficulty in complying with those dates; therefore, we find no need to change the dates to March 1 and September 1 respectively. Upon review, the Department finds merit in the suggestion that insurers be given equivalent time periods in which to prepare the biannual submissions required by the rule. The rules has been amended on adoption to extend the deadline for the January 31 submission from February 14 to February 21 (February 22 is a holiday).

COMMENT: Another commenter requested clarification as to whether insurers which act as servicing carriers for the NJAFIUA (Association) should continue the practice of reporting to the Department only the coverage options selected by their voluntary policyholders, while reporting options selected by Association insured separately to the NJAFIUA.

RESPONSE: The Department intends to continue the practice of requiring the NJAFIUA to furnish a separate report concerning coverage options selected by Association policyholders. Accordingly, insurer's re-

ports to the Department should reflect voluntary business only. A provision has been added to the regulation clarifying this reporting procedure.

COMMENT: One writer recommended that the proposed rule be amended to include a two year sunset provision in order to insure a timely departmental review as to the ongoing need for the submission of the reports. The commenter argued that if certain legislation that is now pending, were enacted, the tort threshold option would be replaced by a verbal threshold and the need for the submission of data would be obviated.

RESPONSE: Pursuant to Executive Order No. 66(1978), this rule expires on January 6, 1991. The Department sees no merit in providing a shorter time frame. If the pending legislation is passed or some other reason arises for the discontinuation of the compilation of data for monitoring purposes, the rule can be amended or repealed.

COMMENT: A commenter recommended that the data requested in this rule be submitted on a policy basis rather than by the number of automobiles with insurance coverage in force. This writer noted that since prior option selection data furnished to the Department pursuant to three aforementioned Orders has been submitted on a policy basis, insurer's computed programs were written to tabulate the information in that manner. It was also argued that the Department would lose the continuity of prior reports made on a policy basis.

RESPONSE: The department recognizes that it will lose the consistency of data collected in past surveys; however, it believes the data based on the number of automobiles is more reflective of the number of options selected. Data collected upon this basis will be more compatible with data collected and monitored by the Department for other purposes.

COMMENT: Finally, a commenter claimed that the prior data would be distorted since automobile counts would require the inclusion of private passenger vehicles insured as a part of a Business Auto policy.

RESPONSE: The basis of this comment is unclear. The definition of "automobile," for the purpose of the reporting requirements of this regulation is found at N.J.A.C. 11:3-22.2(b). "Automobile" is defined as a private passenger automobile of a private passenger or station wagon type that is owned or hired by an individual. For the purposes of this regulation, the definition was altered to exclude private passenger automobiles that are owned by a business entity and insured as a part of a Business Auto Policy.

Upon internal review of the proposal, minor typographical errors were found in the Note Sections of Forms A and B. Corrections were made to indicate that due to inflation index, the tort threshold amount is subject to change on January 1 of each year.

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

SUBCHAPTER 22. COVERAGE OPTION SURVEY: PERSONAL INJURY PROTECTION AND TORT THRESHOLD OPTIONS

11:3-22.1 Purpose

This subchapter requires the submission of data concerning policyholder selection of the various options provided under the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c.362 as amended by P.L. 1984 c.40) in order to monitor the implementation and effectiveness of the Act.

11:3-22.2 Scope

(a) This subchapter applies to every insurer authorized to transact the business of automobile insurance in this State.

(b) For the purpose of the reporting requirements of this subchapter, "automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired by an individual and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered an individually owned private passenger automobile owned by two or more relatives resident in the same household.

11:3-22.3 Coverage option survey requirements

(a) Every automobile insurer, on a biannual basis, shall complete and file with the Commissioner the coverage option survey required by this subchapter. The insurer's biannual survey shall reflect the total number of automobiles with inforce coverage as of January 31 *[an]* **and** as of July 31 of each year, and shall indicate the personal injury protection and tort threshold options selected with respect to such automobile. Insurers shall use forms A and B, appended to this subchapter, to report the information required by this section.

(b) Survey forms reflecting coverage option selections as of January 31 of each year shall be filed with the Commissioner by February *[14]* **21** of that year. Survey forms reflecting coverage option selections as of July 31 of each year shall be filed with the Commissioner by August 22 of that year.

(c) Completed coverage option survey forms shall be submitted to:
Director of Consumer Affairs
State of New Jersey, Department of Insurance
201 East State Street, P.O. Box CN 325
Trenton, New Jersey 08625

(d) Companies may submit the data required by this rule on a group basis, provided that each company included in the group is identified on the coverage option survey forms.

(e) Insurers which act as servicing carriers for the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) shall report directly to the Department only the coverage options selected by their voluntary policyholders. The options selected by Association insured should be reported directly to the NJAFIUA.

***(e) *(f) Failure to provide the data required by this subchapter by the due dates in (b) above will result in Departmental sanctions as authorized by law.**

Form A

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: _____

Total Number of Automobiles with Insurance Policy Coverage in Force as of (January or July) 31, 19 ****** _____

Options	Number of Automobiles
PIP Coverages for Medical Expense Only	_____
PIP Medical Expense Benefit Deductibles:	_____
\$ 500	_____
\$1,000	_____
\$2,500	_____
No deductible	_____
Reimbursement to Insurance Company of PIP Medical Expenses up to 20% of Non-Economic Loss	_____
Tort Threshold	_____
\$200	_____
†Threshold Index amount	_____

†Note: Due to the inflation index, the tort threshold ***amount*** is subject to change on January 1 of each year.

Form B

STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: _____

Number of Automobiles with Insurance Coverage in Force as of (January or July) 31, 19 ****** _____

P.I.P. Deductible	Set Off	Full P.I.P. with Tort Threshold of:		Medical P.I.P. Only with Tort Threshold of:	
		\$200	Threshold Index Amount†	\$200	Threshold Index Amount†
0	With				
	Without				
\$ 500	With				
	Without				
\$1,000	With				
	Without				
\$2,500	With				
	Without				

†Note: Due to the inflation ***index***, the tort threshold amount is subject to change on January 1 of each year.

(a)

DIVISION OF ADMINISTRATION

Legal Services Insurance

Readoption: N.J.A.C. 11:12

Proposed: September 8, 1986 at 18 N.J.R. 1782(b).
Adopted: October 27, 1986 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: October 27, 1986, as R.1986 d.462, **without change**.

Authority: N.J.S.A. 17:1-8.1, N.J.S.A. 17:1C-6(e), and N.J.S.A. 17:46C-4, 13 and 24.

Effective Date: October 27, 1986.

Expiration Date: October 27, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 11:12.

LABOR

(b)

THE COMMISSIONER

1987 Maximum Weekly Benefit Rates for Unemployment Compensation and State Plan Temporary Disability

Adopted Amendment: N.J.A.C. 12:15-1.3

Proposed: September 8, 1986 at 18 N.J.R. 1787(a).

Adopted: October 22, 1986 by Charles Serraino, Commissioner, Department of Labor.

Filed: October 23, 1986, as R.1986 d.451, **without change**.

Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-3(c), 43:21-40.

Effective Date: November 17, 1986.

Operative Date: January 1, 1987.

Expiration Date: December 31, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being \$228.00 per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being \$213.00 per week.

(c) These maximum benefits shall be effective for the calendar year 1987 on benefit years and periods of disability commencing on or after January 1, 1987.

(c)

1987 Taxable Wage Base Under the Unemployment Compensation Law

Adopted Amendment: N.J.A.C. 12:15-1.4

Proposed: September 8, 1986 at 18 N.J.R. 1787(b).

Adopted: October 22, 1986 by Charles Serraino, Commissioner, Department of Labor.

Filed: October 27, 1986 as R.1986 d.452, **without change**.

Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7(b)(3).

Effective Date: November 17, 1986.

Operative Date: January 1, 1987.

Expiration Date: December 31, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first \$11,300 during the calendar year 1987.

(a)

Unemployment Compensation Contribution Rates of Governmental Entities for 1987

Adopted Amendment: N.J.A.C. 12:15-1.5

Proposed: September 8, 1986 at 18 N.J.R. 1788(c).
Adopted: October 22, 1986 by Charles Serraino, Commissioner of Labor.
Filed: October 23, 1986 as R.1986 d.456, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7.3(e).
Effective Date: November 17, 1986.
Operative Date: January 1, 1987.
Expiration Date: December 31, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being one and three-tenths percent (1.3 percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1987.

(b)

Base Week for Unemployment Compensation and State Plan Temporary Disability

Adopted Amendment: N.J.A.C. 12:15-1.6

Proposed: September 8, 1986 at 18 N.J.R. 1787(c).
Adopted: October 22, 1986 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 23, 1986 as R.1986 d.453, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-19(t), 43:21-27.
Effective Date: November 17, 1986.
Operative Date: January 1, 1987.
Expiration Date: December 31, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being \$81.00 per week for benefit years and periods of disability commencing on or after January 1, 1987.

(c)

Alternative Earnings Test for Unemployment Compensation and State Plan Temporary Disability

Adopted Amendment: N.J.A.C. 12:15-1.7

Proposed: September 8, 1986 at 18 N.J.R. 1788(a).
Adopted: October 22, 1986 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 23, 1986 as R.1986 d.454, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-4(e), 43:21-41.
Effective Date: November 17, 1986.
Operative Date: January 1, 1987.
Expiration Date: December 31, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being \$4,900 for benefit years and periods of disability commencing on or after January 1, 1987.

(d)

1987 Maximum Weekly Benefit Rate for Workers' Compensation

Adopted Amendment: N.J.A.C. 12:235-1.6

Proposed: September 8, 1986 at 18 N.J.R. 1788(b).
Adopted: October 22, 1986 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 23, 1986 as R.1986 d.455, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20 and 34:15-12.
Effective Date: November 17, 1986.
Operative Date: January 1, 1987.
Expiration Date: December 31, 1987.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being \$302.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1987.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Returns Filed by S Corporations

Adopted Amendment: N.J.A.C. 18:7-11.16

Proposed: August 18, 1986 at 18 N.J.R. 1686(b).

Adopted: October 27, 1986 by John R. Baldwin, Director,
Division of Taxation.

Filed: October 27, 1986, as R.1986 d.464, **without change.**

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

Effective Date: November 17, 1986.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:7-11.16 Return to be filed by an S Corporation

(a) An S corporation, that is, one which has made an election under Section 1361 et seq. of the Internal Revenue Code of 1954 as amended and supplemented, must complete its New Jersey Corporation Business Tax Return on its own separate basis as though no election had been made under the Federal statute.

(b) In preparing its Corporation Business Tax Return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey Corporation Business Tax purposes,

when the taxpayer has elected Federal S Corporation treatment. Certain amounts not necessarily limited to I.R.C. Section 179 expenses, and 1120-S dividends that qualify for the dividend exclusion are not included as part of the S Corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K-1 Schedule. For Corporation Business Tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C Corporation and no Federal S Corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of \$100,000. However, not included in computation of such amount is a \$5,000 Federal I.R.C. Section 179 expense and \$10,000 of S Corporation dividends received from a different corporation which qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT-100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

\$100,000	Federal Taxable Income
(5,000)	I.R.C. Section 179 Expense
10,000	Qualifying S Corporation Dividends
\$105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. Section 337. When disposing of its real property during the 12 month distribution period, the corporation recaptures for Federal tax purposes \$5,000 of I.R.C. Section 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the Federal I.R.C. Section 337 election and the I.R.C. Section 1363(b) election. Since the S Corporation is treated as a C Corporation for State tax purposes, the I.R.C. Section 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT-100.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment is to expand the Verona Sewerage Treatment Plant's sewer service area to accept a small portion of Caldwell and Essex Fells. The majority of the new sewer service area is to accommodate Fells Manor development. Sewer service to wetlands will not be permitted.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. The information is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

Amendment to Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment is to adopt a Wastewater Management Plan for Mendham Township. The plan addresses the wastewater needs for the township's existing zoning. No development will be permitted in wetland areas. Also, as part of this amendment, Mendham will be designated as the Wastewater Management Agency for all new wastewater treatment facilities.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

Amendment to Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been requested by Environmental Disposal Corporation to allow the expansion of its existing advanced wastewater treatment facility located in Bedminster Township, Somerset County. As part of this amendment request, Environmental Disposal Corporation has developed a Wastewater Management Plan which details both the proposed expansion and areas to be provided sewer service within the franchise area. Also, as part of this amendment, the Township of Bedminster will be designated as the Wastewater Management Agency and the co-permittee for this facility.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any **interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

Amendment to Tri-County Water Quality Management Plan

Public Notice

Take notice that on September 3, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow for the expansion of the Willingboro Municipal Utilities Authority's wastewater treatment plant from 4.20 million gallons per day (mgd) to 5.22 mgd to serve present and future wastewater needs.

(e)

Amendment to Tri-County Water Quality Management Plan

Public Notice

Take notice that on August 26, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow the Evesham Municipal Utilities Authority (MUA) to expand the Woodstream Sewage Treatment Plant (STP) from 1.25 million gallons per day (mgd) to 1.70 mgd. The sewer service area delineation line between the Woodstream and Elmwood plants in Evesham will be adjusted to accurately reflect existing conditions. The amendment also provides for the expansion of the Kings' Grant STP to an ultimate capacity of 1.05 mgd and to allow sewer service to the Marlton Lakes

area of the Township from either the Elmwood STP or the construction of a STEP system, whichever is most feasible. Evesham MUA will serve as co-permittee for the expansion of the King's Grant STP.

(a)

OFFICE OF THE COMMISSIONER
Revocation of Condemnation of Shellfish Beds
Public Notice

Pursuant to statutory authority granted the Department of Environmental Protection appearing at N.J.S.A. 58:24-1 et seq. and because of the elevated coliform levels in certain State waters, on October 3, 1986, the Commissioner ordered the prohibition of direct market harvesting of shellfish in the following State waters previously classified as approved:

All of the waters inshore (on the Ocean City side) of the jetty located on the beach near the intersection of Seaspray Road and Waverly Boulevard, City of Ocean City (first stone jetty projecting into Great Egg Harbor Inlet on the northeastern most end of the city), and continuing along that jetty in a southeasterly direction to its outermost tip, the line then bears approximately 24 degrees T to RW "F" Mo (A), the line continues bearing approximately 286 degrees T to the northern terminus of the Ocean City-Longport Bridge, then bearing approximately 250 degrees T to Anchorage Point then bearing approximately 203 degrees T to the southern terminus of the 9th Street (Rt. 52) bascule bridge and terminating.

The prohibition became effective on October 3, 1986.

As provided for in the aforementioned prohibition, having determined that the said waters set forth above are now safe for the harvesting of shellfish, the Commissioner has revoked the prohibition, returning said waters to their prior classification effective at sunrise, October 27, 1986.

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 October 6, 1986 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(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date 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: SEPTEMBER 22, 1986.

NEXT UPDATE WILL BE DATED OCTOBER 20, 1986.

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

<u>If the N.J.R. citation is between:</u>	<u>Then the rule proposal or adoption appears in this issue of the Register</u>	<u>If the N.J.R. citation is between:</u>	<u>Then the rule proposal or adoption appears in this issue of the Register</u>
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986
18 N.J.R. 377 and 446	February 18, 1986	18 N.J.R. 1727 and 1862	September 8, 1986
18 N.J.R. 447 and 506	March 3, 1986	18 N.J.R. 1863 and 1978	September 22, 1986
18 N.J.R. 507 and 582	March 17, 1986	18 N.J.R. 1979 and 2078	October 6, 1986
18 N.J.R. 583 and 726	April 7, 1986	18 N.J.R. 2069 and 2148	October 20, 1986
18 N.J.R. 727 and 868	April 21, 1986	18 N.J.R. 2149 and 2234	November 3, 1986
18 N.J.R. 869 and 1018	May 5, 1986	18 N.J.R. 2235 and 2344	November 17, 1986
18 N.J.R. 1019 and 1122	May 19, 1986		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2-1:21	Administrative hearings
1:1-15.10	Prior transcribed testimony
1:5	Council on Affordable Housing hearings
1:10B	Medicaid and Medically Needy hearings

PROPOSAL NOTICE (N.J.R. CITATION)

18 N.J.R. 1728(a)
18 N.J.R. 1865(a)
18 N.J.R. 1506(a)
18 N.J.R. 1507(a)

DOCUMENT NUMBER

R.1986 d.421
R.1986 d.405

ADOPTION NOTICE (N.J.R.CITATION)

18 N.J.R. 2122(a)
18 N.J.R. 2008(a)

(TRANSMITTAL 23, dated August 18, 1986)

AGRICULTURE—TITLE 2

2:6-1	Sale and use of animal biologics
2:7-1.2, 1.3, 1.4	Pullorum and fowl typhoid control
2:76-5.3	Cost-share assistance for soil and water conservation projects
2:76-6.15	Acquisition of development easements: deed restrictions
2:90-1.3	Soil erosion and sedimentation control

18 N.J.R. 2151(a)
18 N.J.R. 1508(a)
18 N.J.R. 1981(a)
18 N.J.R. 513(a)
18 N.J.R. 2081(a)

R.1986 d.430

18 N.J.R. 2123(a)

(TRANSMITTAL 43, dated September 22, 1986)

BANKING—TITLE 3

3:11-11.13	Leeway investments: confidentiality of approval process
3:13-1	Registration of bank holding companies
3:13-2, 3	Bank holding company: reporting requirements and examination charges
3:13-4	Bank holding companies: interstate acquisitions
3:41	Cemeteries: disinterment and reinterment of human remains

18 N.J.R. 1224(a)
18 N.J.R. 1434(a)
18 N.J.R. 1763(a)
18 N.J.R. 1982(a)
18 N.J.R. 1642(a)

R.1986 d.459
R.1986 d.458

18 N.J.R. 2324(a)
18 N.J.R. 2325(a)

(TRANSMITTAL 34, dated July 21, 1986)

PERSONNEL—TITLE 4

4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals
4:1-8.4	Promotional examinations
4:1-12.18	Disposition of certification by appointing authority
4:1-15	Assignments and transfers
4:1-18	Workweek programs
4:1-26	Supplemental compensation on retirement
4:2-15.1	Assignments and transfers
4:2-16	Separations and demotions
4:2-18	Workweek programs
4:2-26	Supplemental compensation on retirement
4:3-16	Separations and demotions
4:4	State employees' awards program
4:5	Supplemental compensation on retirement

18 N.J.R. 450(a)
18 N.J.R. 591(a)
18 N.J.R. 1642(b)
18 N.J.R. 592(a)
18 N.J.R. 1764(a)
18 N.J.R. 2152(a)
18 N.J.R. 592(a)
18 N.J.R. 450(a)
18 N.J.R. 1764(a)
18 N.J.R. 2152(a)
18 N.J.R. 450(a)
18 N.J.R. 1766(a)
18 N.J.R. 2152(a)

(TRANSMITTAL 31, dated June 16, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)	R.1986 d.448	18 N.J.R. 2194(a)
5:23-3.4, 3.20	Uniform Construction Code: correction			18 N.J.R. 2063(b)
5:23-3.4, 3.20	Uniform Construction Code: mechanical subcode	18 N.J.R. 2083(a)		
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)	R.1986 d.448	18 N.J.R. 2194(a)
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:91-1.2, 1.3, 2.1, 3.1, 5.1, 7.1, 13.3, 13.4	Council on Affordable Housing: procedural rules	18 N.J.R. 1643(a)		
5:92-1.3, 10.4, 14, 15	Council on Affordable Housing: inclusionary development and affirmative marketing	18 N.J.R. 2083(b)		

(TRANSMITTAL 45, dated September 22, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:8	Thorough and Efficient System of Free Public Schools	18 N.J.R. 1984(a)		
6:11-12.11	Speech-language specialist endorsement	18 N.J.R. 1994(a)		
6:11-12.24	Teacher-coordinator certification in Work Experience Career Exploration Program	18 N.J.R. 1995(a)		
6:21-10	Pupil transportation in small private vehicles	18 N.J.R. 2155(a)		
6:28-3.4, 3.5	Special education	18 N.J.R. 1771(a)		
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)	R.1986 d.445	18 N.J.R. 2206(a)
6:29-8.1, 8.2	Audiometric screening	18 N.J.R. 1996(a)		
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)	R.1986 d.396	18 N.J.R. 2009(a)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		

(TRANSMITTAL 44, dated September 22, 1986)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)		
7:7-2.1	CAFRA facilities	18 N.J.R. 1772(a)	R.1986 d.461	18 N.J.R. 2326(a)
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)	R.1986 d.460	18 N.J.R. 2327(a)
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)		
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)		
7:13-7.1(e)	Redelineation of Henderson Brook in Passaic River	18 N.J.R. 2169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:22-1, 2, 8	Wastewater treatment facilities: State matching grants	18 N.J.R. 1869(a)		
7:22-3	Wastewater Treatment Fund procedures	18 N.J.R. 1875(a)		
7:22-4	Wastewater Treatment Trust procedures	18 N.J.R. 1883(a)		
7:22-5	Determination of allowable costs: Wastewater Treatment Fund and Trust	18 N.J.R. 1891(a)		
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	18 N.J.R. 1511(b)	R.1986 d.437	18 N.J.R. 2123(b)
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(a)		
7:25-18A.4	Sale of striped bass	18 N.J.R. 2170(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills	18 N.J.R. 2170(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 1773(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 2171(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)		
7:26-16A.1, 16A.2	Filing of disclosure statements by solid and hazardous waste licensees subject to A-901	18 N.J.R. 2172(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		

(TRANSMITTAL 46, dated September 22, 1986)

HEALTH—TITLE 8

8:21-2.41	Sale of striped bass	18 N.J.R. 2174(a)		
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.38, 3.58, App. II, 4.66	Hospital reimbursement: malpractice costs	18 N.J.R. 1911(a)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	18 N.J.R. 1918(a)		
8:33H-2.1, 3.2, 3.3, 3.5, 3.8, 3.10	Long-Term Care Policy Manual	18 N.J.R. 2095(a)		
8:33I	Megavoltage radiation oncology services	18 N.J.R. 1436(a)	R.1986 d.417	18 N.J.R. 2010(a)
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)		
8:52	Standards for local boards of health	18 N.J.R. 1690(a)		
8:57-1.14	Reporting of AIDS and AIDS Related Complex	18 N.J.R. 1245(a)	R.1986 d.408	18 N.J.R. 2011(a)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:61-1.1	Children and adults with HIV infection and school attendance	18 N.J.R. 1512(a)	R.1986 d.407	18 N.J.R. 2014(a)
8:65-10.1, 10.2	Reschedule Dronabinol from Schedule I to II	18 N.J.R. 1774(a)	R.1986 d.457	18 N.J.R. 2327(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a), 1463(a), 1957(b))	17 N.J.R. 2842(a)	R.1986 d.442	18 N.J.R. 2208(a)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a))	18 N.J.R. 537(a)	R.1986 d.406	18 N.J.R. 2015(a)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b))	18 N.J.R. 1167(a)	R.1986 d.443	18 N.J.R. 2208(b)
8:71	Generic drug additions	18 N.J.R. 1775(a)		
8:71	Interchangeable drug products	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products	18 N.J.R. 2101(a)		

(TRANSMITTAL 43, dated September 22, 1986)

HIGHER EDUCATION—TITLE 9

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	18 N.J.R. 1713(a)	R.1986 d.435	18 N.J.R. 2124(a)
9:7-9	Carl D. Perkins Scholarship Program	18 N.J.R. 2174(b)		
9:11-1.2	Student residency	18 N.J.R. 1777(a)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 33, dated August 18, 1986)

HUMAN SERVICES—TITLE 10

10:2	County Human Services Advisory Councils	18 N.J.R. 1777(b)		
10:12-3	Referral of handicapped students for adult educational services	18 N.J.R. 1997(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)	R.1986 d.449	18 N.J.R. 2209(a)
10:51-1, App. B, C	Pharmaceutical services manual	18 N.J.R. 1780(a)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)	R.1986 d.440	18 N.J.R. 2211(a)
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)	R.1986 d.397	18 N.J.R. 2015(b)
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)	R.1986 d.428	18 N.J.R. 2125(a)
10:81-7.29	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)	R.1986 d.427	18 N.J.R. 2125(a)
10:85-4.9	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-5.4, 5.5, 12.3, 12.4, 12.7	Food Stamp Program: maximum income limits	18 N.J.R. 1490(a)	R.1986 d.395	18 N.J.R. 2015(c)
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	Emergency	R.1986 d.436	18 N.J.R. 2137(a)
10:89-2.2, 2.3, 3.4	Home Energy Assistance	18 N.J.R. 1676(a)	R.1986 d.450	18 N.J.R. 2328(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)	R.1986 d.426	18 N.J.R. 2125(a)
10:100-3.10	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A-2.2	Certification period for adoption agencies	18 N.J.R. 1923(a)		
10:132	Youth and Family Services: court actions and proceedings	18 N.J.R. 1924(a)		

(TRANSMITTAL 44, dated September 22, 1986)

CORRECTIONS—TITLE 10A

10A:3	Security and control	18 N.J.R. 1057(b)	R.1986 d.410	18 N.J.R. 2016(a)
10A:4-4.1	Inmate prohibited acts: correction to Administrative Code	_____	_____	18 N.J.R. 2138(d)
10A:5	Close custody units	18 N.J.R. 1067(a)	R.1986 d.409	18 N.J.R. 2027
10A:5-5.2	Involuntary placement to Protective Custody: correction to adopted rule	_____	_____	18 N.J.R. 2218(a)
10A:9	Classification of inmates	18 N.J.R. 1649(a)		
10A:16	Medical and health services	18 N.J.R. 1662(a)		
10A:17-9	Referral of handicapped children for adult educational services	18 N.J.R. 2102(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		

(TRANSMITTAL 13, dated August 18, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
INSURANCE—TITLE 11				
11:1-16	Filing of rate decreases	18 N.J.R. 1998(a)		
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20.1, 20.2, 20.3, 22.1	Cancellation and nonrenewal of commercial policies	18 N.J.R. 1445(a)		
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)	R.1986 d.418	18 N.J.R. 2039(a)
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)	R.1986 d.419	18 N.J.R. 2045(a)
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)	R.1986 d.463	18 N.J.R. 2329(a)
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-16.8	Medicare information brochure	18 N.J.R. 2103(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:4-23.8	Medicare information brochure	18 N.J.R. 2107(a)		
11:5-1.3	Real estate licensing qualifications	18 N.J.R. 1782(a)		
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)		
11:5-1.16	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 2112(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 1678(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:5-1.30	Sponsoring of real estate license applications	18 N.J.R. 2000(a)		
11:12	Legal services insurance	18 N.J.R. 1782(b)	R.1986 d.462	18 N.J.R. 2330(a)
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 40, dated July 21, 1986)

LABOR—TITLE 12

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12:15-1.4	Unemployment compensation: 1987 taxable wage base	18 N.J.R. 1787(b)	R.1986 d.452	18 N.J.R. 2330(c)
12:15-1.5	Unemployment compensation: 1987 contribution rate for governmental entities	18 N.J.R. 1788(c)	R.1986 d.456	18 N.J.R. 2331(a)
12:15-1.6	Base week earnings for claim eligibility	18 N.J.R. 1787(c)	R.1986 d.453	18 N.J.R. 2331(b)
12:15-1.7	Alternate earnings test	18 N.J.R. 1788(a)	R.1986 d.454	18 N.J.R. 2331(c)
12:16-19.1	Charging of unemployment benefits to employer's account	18 N.J.R. 1682(a)		
12:16-20.1	Work relief and work training programs: exempt employment	18 N.J.R. 1683(a)		
12:17-2.2, 2.4	Unemployment compensation claims and verification of Social Security numbers	18 N.J.R. 1683(b)		
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12:17-7.1, 7.2	Unemployment compensation and temporary disability: disclosure of information	18 N.J.R. 1447(a)	R.1986 d.420	18 N.J.R. 2127(a)
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(TRANSMITTAL 32, dated August 18, 1986)

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13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1448(a)	R.1986 d.431	18 N.J.R. 2128(a)
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
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13:46-4.7, 4.25	Licensure of boxers	18 N.J.R. 1924(c)		
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13:70-3.47	Thoroughbred racing: Coggins test for track entrance	18 N.J.R. 1448(b)	R.1986 d.416	18 N.J.R. 2054(a)
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13:71-6.24	Harness racing: Coggins test for track entrance	18 N.J.R. 1448(c)	R.1986 d.415	18 N.J.R. 2055(a)
13:71-21.8	Harness racing: purse deductions	18 N.J.R. 1516(a)		
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(TRANSMITTAL 46, dated September 22, 1986)

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(TRANSMITTAL 29, dated September 22, 1986)

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16:30-2.11	Stop-intersections along Route 57, Warren County	18 N.J.R. 1517(c)	R.1986 d.401	18 N.J.R. 2057(d)
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(TRANSMITTAL 44, dated September 22, 1986)

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(TRANSMITTAL 37, dated July 21, 1986)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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(TRANSMITTAL 26, dated September 22, 1986)

NOTES

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