NEW JERSEY REGISTER

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 714.

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(Includes rules filed through March 17, 1986)

***MOST RECENT UPDATE TO ADMINISTRATIVE CODE: JANUARY 21, 1986.**
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED FEBRUARY 18, 1986.

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **May 7, 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. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Rules of Special Applicability
Special Education Hearings: Stay of Implementation

Proposed Amendment: N.J.A.C. 1:6A-5.4

Authorized By: Ronald I. Parker, Acting Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1986-71.

Submit comments by May 7, 1986 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 1:6A-5.4(b) currently provides that a party may request a stay of a special education decision where that party appeals any portion of the decision not involving a change in the pupil's educational placement. In a previous rulemaking proposed at 17 N.J.R. 2586 and promulgated in this issue of the Register, OAL received a comment from David Carroll, Esq. suggesting that subsection (b) is an intrusion upon the jurisdiction of the appellate court. The proposed amendment clarifies the fact that a stay may be granted by an administrative law judge only where a party intends to appeal the decision but has not yet had an opportunity to perfect the appeal.

The proposal also makes the stay process applicable to the appeal of any decision, not only those decisions which do not involve a change in the educational placement. The amendment to N.J.A.C. 1:6A-5.4(a) deleted the requirement that the educational placement of a pupil not be changed during any appeal. This proposed amendment places change of placement cases in the same category as any other appealed decision.

Social Impact

The proposed amendment clarifies the fact that OAL's jurisdiction to issue a stay in a special education decision exists only prior to the perfection of an appeal with the appellate court. The proposal clarifies, rather than changes, the current intention of the rule.

Economic Impact

Since the proposal clarifies rather than changes the current process as reflected by the recent amendment to subsection (a), no substantial economic impact is foreseen.

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

1:6A-5.4 Stay of implementation
(a) (No change.)
(b) Where a party **intends to appeal** [appeals any portion

NEW JERSEY REGISTER

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of] the decision [not involving a change in the pupil's educational placement] **and prior to the filing of a notice of appeal or a notice of motion for leave to appeal,** [and upon request by any party,] **the party may request a stay of implementation of the decision.** [the] **The** judge may stay implementation of the decision if he **or she** finds that immediate implementation would be likely to result in serious harm to the pupil or other pupils in the event that the decision is rejected or modified upon appeal.

AGRICULTURE

The following proposals are authorized by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

DIVISION OF PLANT INDUSTRY

For proposals numbered PRN 1986-79 and 80, submit comments by May 7, 1986 to:
William W. Metterhouse, Director
Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone (609) 292-5541

(a)

Insect Control
Africanized Honeybee

Proposed New Rule: N.J.A.C. 2:22-3.1

Authority: N.J.S.A. 4:6-1 et seq., specifically 4:6-20.
Proposal Number: PRN 1986-80.

The agency proposal follows:

Summary

The proposed new rule has been prepared from a file maintained by the Department of Agriculture, Division of Plant Industry, concerning the Africanized Honeybee. The file and resources used in preparing this rule are open for public inspection at the Department. The Africanized Honeybee (Apis mellifera scutella) is a subspecies of the honeybee type genus (Apis). It can breed with and transmit its traits and characteristics to other honeybees. The Africanized Honeybee has traits and characteristics that are undesirable to the keeping and rearing of bees; those traits are increased aggressiveness, territoriality, lessened manipulatability and lessened honey production. The Africanized Honeybee is a cross between imported African bees which escaped and bred with other bees in Brazil. Further, breeding of these bees with native or naturalized bees in the Americas has led to the spreading of the undesirable characteristics through feral (wild) bees and poorly regulated apiaries. On the basis of the best scientific evidence available to the Department of Agriculture, it appears that the progression of the Africanized Honeybee will continue northward into the United States. In the next three years Florida, southern Georgia, Louisiana, Texas and southern California will suffer infestation of this bee. In the summer of 1985 there was an isolated accidental outbreak of the bee in California which has been controlled. It is expected that more such accidental outbreaks will take place in the near future due to the commerce between the United States and South America. The accepted scientific consensus on the Africanized Honeybee recognizes that the bee can live in any climate other honeybees can dwell. The Africanized Honeybee is also associated with the Varroa mite (Varroa Jacobsoni), which mite is very destructive to the brood nest and adult bees. All comb, bees, and honey from such an infection must be destroyed.

At present, it is not predictable or hopeful that cross-breeding will lessen to any appreciable extent the undesirable characteristics of the Africanized Honeybee in the foreseeable future. It is not believed by the scientific community that the spread of the Africanized Honeybee will be checked by natural features, environmental constraints, natural predators, disease or climatic conditions, before it may enter the stream of commerce of honeybees in the United States.

It has been established and recognized by the scientific community that the Africanized Honeybee is aggressive, territorial, transmits a destructive mite which is an injurious insect in itself, and is not desirable in its behavior and character for apiculture. The New Jersey Department of Agriculture agrees with these conclusions.

Therefore, the State Board of Agriculture proposes new rule N.J.A.C. 2:22-3.1 to declare the Africanized Honeybee an injurious insect and prohibit its keeping or transport into the State of New Jersey.

Social Impact

The Africanized Honeybee is not native to New Jersey or the United States, so there will be minimal impact from the adoption of the regulation at the present time. However, in the next three to five years the adoption of import restrictions and quarantines may be expected in other states and one has already been adopted by the U.S. Department of Agriculture. These new restrictions will cause beekeepers to experience new costs, such as increased laboratory fees to examine and certify that the bees are not Africanized Honeybees. Further, the practices of apiculture are expected to change as apiarists are forced to develop new and different practices to inseminate queen bees. This will require the monitoring of new products and creation of new methods to insure the purity of the strains of bees. The appearance of the Africanized Honeybee will require a greater level of competence and regulation of and by apiarists, both inside and outside the stream of interstate commerce.

It is also expected that a greater public awareness of bees will develop with the real or suspected presence of the Africanized Honeybee. In New Jersey, a densely populated state, this makes adoption of rules to halt or slow the spread of this injurious insect important to all of New Jersey agriculture. Local or statewide attempts to eliminate apiculture as a means to assuage such fears are a distinct possibility, with adverse impacts to all agriculturalists in New Jersey.

Economic Impact

Pollination is necessary to fertilize the fruit of plants. Honeybees facilitate the fertilization process. Bees increase pollination, thus, producing an adequate yield of crops and seasonal vegetables. There are approximately 60,000 colonies of honeybees used for pollination in New Jersey for apples, raspberries, strawberries, blueberries, cranberries, watermelons, cantaloupes, pumpkins, cucumbers and other crops. While other insects pollinate crops, they are not as efficient, nor can they be domesticated as honeybees, nor do they produce usable products in themselves.

If the Africanized Honeybee colonizes the area of 32 degrees north parallel, roughly Savannah, Georgia to Dallas/Fort Worth to San Diego, the economic loss to the beekeeping industry has been estimated to be from $26 to $31 million. $20 to $40 billion of crops that are pollinated by honeybees would be lost.

Every aspect of beekeeping as currently practiced would be adversely affected. In areas of South America affected by the Africanized Honeybee, 60 percent of all hives have been eliminated because of the difficulties of managing the Africanized Honeybee.

The economic impact will fall upon beekeepers and agriculturalists of the state and country. Increase regulation, control and monitoring will necessitate higher costs. It is doubtful that all marginal or hobby operations will be able to meet the changed conditions. It is expected that action now will enable the shock of these changes to be absorbed over a longer period of time, reducing the economic impact at any one particular time, maximizing the amount of apiarists and flow of interstate commerce.

Full text of the proposed new rule follows.

SUBCHAPTER 3. AFRICANIZED HONEYBEES

2:22-3.1 Africanized Honeybee; prohibitions

It has been determined by the New Jersey State Board of Agriculture that the Africanized Honeybee (Apis mellifera scutellata) is a dangerously injurious insect and constitutes a menace to the practice of apiculture in New Jersey. The Africanized Honeybee is not native to the State of New Jersey. The keeping or importation of Africanized Honeybees in any stage of development, including honeybees with characteristics identifiable with the subspecies (Apis mellifera scutellata), regardless of the purity of the genetic strains of the bees, fresh or frozen bee sperm, equipment, shipping and storage containers that have been used at an apiary, unprocessed comb, vehicles that have been used to carry regulated articles, other than fresh or frozen bee sperm, is prohibited. Any other product, article or means of conveyance of any character whatsoever, if in the determination of the Department of Agriculture, presents a risk of the spread of the Africanized Honeybee, shall be prohibited.

(a)

Disease of Bees
Shipment of Bees Into New Jersey

Proposed New Rules: N.J.A.C. 2:24-1.1, 1.2 and 1.3.
Proposed Amendments: N.J.A.C. 2:24-1.4 and 1.5.
Proposed Repeal: N.J.A.C. 2:24-1.3 and 1.6.

Authority: N.J.S.A. 4:6-1 et seq., specifically 4:6-20.
Proposal Number: PRN 1986-79.

The agency proposal follows.

Summary

The acarine mite regulations and quarantine placed on Hamilton and Hammonton Townships in Atlantic County are in need of revision. The quarantined areas have been found to be free of acarine mites and the quarantine may be lifted. The withdrawal of the United States Animal and Plant Inspection Service from an active role in the control of acarine mites has left a void in the regulation of this parasite. There is a need of uniform regulations between the states. The National Association of State Departments of Agriculture has developed and approved a resolution which would provide such uniformity between the states. Resolution number PI-12 was adopted on October 30, 1985, at its convention in Atlantic City. The expected entrance of the Africanized honeybee into the United States will require steps to eliminate this injurious insect. Rapid advances in the science of entomology have led to new practices and products, such as bee sperm for the controlled insemination of queen bees, which contain the risk of disease and the risk of the spread of Africanized honeybee characteristics.

Therefore, the Department of Agriculture proposes the repeal of the Hamilton and Hammonton Townships quarantine (N.J.A.C. 2:24-1.6), an identification of those articles which are regulated by the new rules (2:24-1.1), and a broader, uniform regulatory program with other states to minimize the risk of other diseases and insure the continuation of the interstate commerce in bees (2:24-1.2 through 2:24-1.5).

Social Impact

This proposal will beneficially impact apiarists and agriculturists in New Jersey and from other states, allowing the continuation of the transport of bees and bee products to New Jersey from infected areas. It will minimize the risk of diseases, injurious insects and conditions from entering into the stream of interstate commerce, and eventually entering into New Jersey. It will protect the agriculture of the State and our other surrounding states. The Department of Agriculture sees these as beneficial impacts to the agricultural industry.

Economic Impact

The Department of Agriculture sees a slight increase in costs on beekeepers who do not follow accepted apian practices by having their hives inspected, and who transport diseased bees or bees which are not good pollinators, and possible injurious insects. This increase in cost must be balanced against the possible depopulation of hives and even their destruction if infected, which occurred in 1985, with the importation of infected bees into New Jersey and the subsequent quarantine and expenses incurred to check the bee population in the area. Without controls and regulations on diseased and injurious insects, apiculture may cease to exist as an acceptable agricultural practice, with the resulting costs of pollination increased either through non-bee methods and/or not taking place at all. This would cause lower yields to the grower and a gradual weakening of agriculture throughout the areas such diseased or injurious insects have entered.

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

SUBCHAPTER 1. [ACARINE MITE QUARANTINE] **SHIPMENT OF BEES INTO NEW JERSEY**

2:24-1.1 [(Reserved)] **Regulated articles**

Bees of the genus Apis, in any life stage, fresh or frozen bee sperm, equipment, shipping and storage containers that have been used at an apiary, unprocessed comb, vehicles that have been used to carry regulated articles other than fresh or frozen sperm, and any other product, article or means of conveyance of any character whatsoever, which when determined by the Department of Agriculture presents the risk of the spread of American foulbrood, European foulbrood, tracheal mites, varroa mites, or any other contagious and infectious disease or condition as determined by the Department of Agriculture, shall be permitted importation only if in compliance with N.J.A.C. 2:24-1.2 through 2:24-1.5.

2:24-1.2 **Entities with apiary inspection services**

(a) No colony, nucleus of bees, used apiary supplies and apparatus coming from a state or country having an apiary inspection service shall be permitted into New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that each colony or supply is free from the conditions listed in N.J.A.C. 2:24-1.1 and that the bees are, in fact, honeybees (Apis mellifera) and not Africanized bees (Apis mellifera scutellata) and free from the characteristics identifiable therewith in accordance with N.J.A.C. 2:22-3.1

(b) No certificate of inspection shall be honored unless the complete brood nest inspection was made 30 days prior to shipment and tracheal mite inspection was made 90 days prior to shipment from the site the bees or suppliers were immediately prior to shipment into New Jersey.

(c) Each colony must be marked by a duly appointed inspector of the state of origin. Such marks must be changed annually.

(d) No certificate of inspection shall be honored on honeybees from operations containing any infected colonies or from an infected area as determined by the New Jersey Department of Agriculture. If an examination of the bees is undertaken pursuant to N.J.A.C. 2:22-3.1, the certificate of inspection will not be honored unless the findings of the examination are supplied.

(e) No certificate shall be honored unless the sampling procedure is done in accordance to a sampling standard of the industry, or U.S. Department of Agriculture, and recognized by the New Jersey Department of Agriculture.

(f) The certificate of inspection must be mailed and received prior to entrance into New Jersey by the:

Director, Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625

[2:24-1.3 Entities with apiary inspection service]

[No colony or nucleus of bees or used apiary supplies coming from a state or country having an apiary inspection service shall be permitted in New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that each colony or supplies are free from American foulbrood, European foulbrood, tracheal mite disease and all other infectious or contagious bee disease.]

2:24-1.3 Queen or package bees

All apiaries shipping queen or package bees into New Jersey shall have recorded with the New Jersey Department of Agriculture, a valid certificate in accordance with N.J.A.C. 2:24-1.2.

2:24-1.4 [Common carrier] **Transporter**

No colony or nucleus of bees of used apiary supplies coming from a state or country having apiary inspection service shall be accepted by any person or common carrier for transportation to a point within this state unless accompanied by a valid certificate of inspection stating that each colony or [supplies are] **equipment is** free of [American Foulbrood, European Foulbrood, trachael mite disease or other infectious or contagious bee diseases.] **the conditions listed in N.J.A.C. 2:24-1.1 and 2:24-1.2. A copy of the certificates will be carried by the transporter and shown to the grower.**

2:24-1.5 Entities without apiary inspection services

A colony [or], nucleus of bees or used apiary [supplies] **equipment** coming into [this state] **New Jersey** from a state or country having no apiary inspection service shall be immediately reported by the consignee and by the person or carrier delivering them in this state; giving the name and address of the consignee to the Department **of Agriculture,** which shall cause the shipment to be inspected at such time as shall be [expedient] **prudent and proper after examination and approval by the Department of Agriculture as to the freedom from the conditions listed in N.J.A.C. 2:24-1.1 and 2:24-1.2.**

2:24-1.6 **(Reserved)**

[Honeybee Tracheal Mite Quarantine in the Townships of Hamilton and Hammonton in Atlantic County

(a) The Secretary of Agriculture declares the tracheal mite, *Acarapis woodi,* an internal parasite of honey bees as detrimental to the welfare of the bee industry of New Jersey.

(b) A quarantine is established against tracheal mite, its hosts and possible carriers.

(c) The following articles and commodities are prohibited from moving out of the Townships of Hamilton and Hammonton in Atlantic County.

1. Bee colonies, package bees and queen bees of the species *Apis mellifera* which originated in the Townships of Hamilton and Hammonton in Atlantic County.

(d) Bee colonies, package bees and queen bees are permitted to be moved from Hamilton and Hammontown Townships in Atlantic County when accompanied by the following document:

1. A written statement signed by an apiary inspector, New Jersey Department of Agriculture declaring that the bee originating in the Townships of Hamilton and Hammontown in Atlantic County are free of tracheal mite.]

DIVISION OF REGULATORY SERVICES

For proposals numbered PRN 1986-78 and 89, submit comments by May 7, 1986 to:

Robert C. Fringer, Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone (609) 292-5575

(a)

Commercial Fertilizer and Soil Conditioner Update Commercial Values

Proposed Amendment: N.J.A.C. 2:69-1.11

Authority: N.J.S.A. 4:9-15.26, 4:9-15.33.
Proposal Number: PRN 1986-78.

The agency proposal follows:

Summary

The purpose of this proposal is to update the commercial values of primary plant nutrients to be effective from July 1, 1986 to June 30, 1987. The assessed penalties for deficient fertilizers will be based on the values and charged to the manufacturer. The State Treasury will receive all unclaimed penalty fees.

Social Impact

All consumers of fertilizers will have more monetary protection when deficient fertilizers are detected. Manufacturers will exhibit more care in controlling their formulating processes to avoid a penalty.

Economic Impact

All consumers of fertilizers will be equitably compensated for their losses because these proposed values are accurately adjusted to current market prices.

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

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from July 1, [1985] **1986** through June 30, [1986] **1987.**

(b)

Jersey Fresh Quality Grading Program Products and Manner of Use

Proposed Amendments: N.J.A.C. 2:71-2.2, 2.3, 2.4, 2.5, 2.6 and 2.7

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.
Proposal Number: PRN 1986-89.

Summary

The proposed amendments to the regulations for the voluntary "Jersey Fresh Logo" program were developed to aid packers of green corn, fresh market tomatoes, domestic type cabbage, summer, fall and winter types of squash, sweet potatoes, white potatoes, common green onions and blueberries to allow them to participate in the Jersey Fresh program. Uniform high grade products have greater acceptance by the consumer and ultimately increase the demand for the superior quality of these New Jersey grown products.

The proposed amendments also describe the configuration of the "Jersey Fresh Logo," the application for license and licensing procedure, the license period, charges for the "Jersey Fresh Logo," labels and all imprinted containers to the program, the commodities to be marketed under the "Jersey Fresh Logo" program, commodity grades, packing requirements, packer identification and containers, definition of terms and penalties for improper use.

Social Impact

The people affected by these regulations will be the packers using the logo and the consumers of the products. Products packed under the logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the packers and consumers. Packers will gain new markets for their products, while consumers will have more quality products and an identifiably larger supply of quality products available.

Economic Impact

The economic impact on voluntary logo packers will be very minimal. Packers' costs will be \$.02 per label, per container or \$1.00 for 1,000 imprinted containers. This cost should be more than offset by increases in the price received by the packers through the sale of high quality produce.

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

2:71-2.2 Use of the "Jersey Fresh **Quality Grading Program**" Logo (**referred to as the "logo"**) on containers of certain fresh fruits and vegetables:

(a) The New Jersey Department of Agriculture approves the use of the New Jersey map symbol under provisions of N.J.S.A. 4:10-5 as an official emblem for identifying New Jersey produced agricultural commodities.

(b) The configuration of the Jersey Fresh **Quality Grading Program** Logo follows:

(c) Only those persons, firms, partnerships, corporations or associations licensed by the New Jersey Department of Agriculture pursuant to N.J.S.A. 4:10-5 to use the Jersey Fresh **Quality Grading Program** Logo shall be permitted to attach the printed label to **or have it printed upon a panel of** the container in which the agricultural commodity is to be marketed or to employ its use in advertising or in any manner whatsoever. **All containers are subject to the approval of the New Jersey Department of Agriculture.**

1. The logo shall be printed on the upper corner of the container's end panel. The minimum size shall be two inches in width and three inches in length. The logo may be printed anywhere on bags containing white potatoes. The logo label shall be attached to or printed on the end panel of master flats of blueberries. The "logo" shall be printed on the corner of the end panel on the lid for peach or tomato cartons.

(d) Any person, firm, partnership, corporation or association wishing to employ the Jersey Fresh logo to be used in marketing certain New Jersey produced agricultural commodities shall make application to the New Jersey Department of Agriculture for a license **and registration number.** The application shall be made in writing, upon a form provided by the department for this purpose. The application shall reveal such information as is deemed necessary for the enforcement of the Jersey Fresh **Quality Grading** logo program. Information given in the application shall be held confidential and not subject to review or reproduction under the provisions of N.J.S.A. 47:1A-1 et seq. (C. 73, P.L. 1963).

(e) All applications approved for issuance of licenses **and registration numbers** shall have the license granted for the period of one year commencing April 1. Interim licenses **and registration numbers** may be granted to qualified packers for the remainder of the license year. Applications shall be submitted at least twenty days prior to application approval. The department shall approve or deny applications within twenty days of receipt.

2:71-2.3 Charges for Jersey Fresh **Quality Grading Program** logo labels **and use of Jersey Fresh Quality logo imprinted containers**

(a) A fee of [$20.00] **$30.00** shall accompany the application form and shall be made payable to the New Jersey Farm Products Publicity Fund. [Qualified applicants will receive a supply of Jersey Fresh logo labels equal in value to the annual fee.] If an applicant is deemed ineligible, the fee shall be refunded.

(b) Licensees may purchase [additional] Jersey Fresh logo labels in increments of 1,000. The charge for Jersey Fresh logo labels shall be $20.00 per thousand. Checks are to be made payable to New Jersey Farm Products Publicity Fund.

(c) The licensed packer using the Jersey Fresh Quality Grading Program logo on approved containers shall pay to the New Jersey Farm Products Publicity Fund a charge of $1.00 per one thousand containers on which the logo is imprinted. Such charge shall be levied on the quantity of containers delivered to the packer. A copy of each shipping invoice or a statement shall be supplied to the department by the person, firm, partnership, corporation or co-operative that transfers ownership of containers bearing the logo to the licensed registrant. Said copy of each shipping invoice or statement shall include: licensed packer's name and address, the registration number, the number of containers delivered, the type of containers and the date of delivery. Failure to supply invoices or statements may be sufficient cause to withdraw approval to imprint Jersey Fresh Quality Grading Program logo containers. The amount of said charge shall be paid by the licensed packer within ten days after date of billing by the department.

(d) Each licensed packer shall submit for each month, by the tenth of the month following, a report on forms supplied by the Department. Information required will include:

1. An inventory of approved Jersey Fresh Quality Grading Program logo imprinted containers;

2. Numbers of Jersey Fresh Quality Grading Program logo containers used.

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh [logo] **Quality Grading Program**

(a) Only **blueberries, cabbage, green corn,** cucumbers, eggplants, iceberg lettuce, **common green onion,** sweet peppers, [and] peaches, **sweet potatoes, white potatoes, summer squash, fall and winter type squash, and tomatoes (fresh market),** may be identified by the [Jersey Fresh] "logo."

(b) All agricultural commodities marketed under the [Jersey Fresh] "logo" program shall be produced and packed in New Jersey.

2:71-2.5 Commodity grades, packing requirements, packer identification and containers

(a) Each container bearing the [Jersey Fresh] "logo" shall have the name and address of the packer in letters not less than three-eighths inches in height. **Each container printed with the "logo" must be identified by the applicable U.S. grade and the licensed packer's registration number, which also shall be no less than three-eighths inch in height. The registration number shall be printed or marked on the carton in close proximity to the "logo" or the name and address of the registrant.**

(b) Blueberries shall be U.S. No. 1 grade. Size shall meet the requirements of at least Large with a maximum of one hundred twenty-nine berries per standard two gill cup. All packaging materials shall be new.

(c) Cabbage, Domestic type, shall be U.S. No. 1, Green grade, with the heads being of two and one-half pound minimum weight to three and one-half pound maximum weight. Each head shall be fairly well trimmed. Containers shall be marked "U.S. No. 1." All containers shall be new.

(d) Green Corn shall be U.S. Fancy, grade with a minimum count of fifty four ears per container and when packed in crates the pack shall be tight. All containers shall be new. All green corn shall be hydrocooled. All containers shall be marked "hydrocooled."

[b]**(e)** Cucumbers shall be U.S. No. 1 grade, or better, with two and three-eighths inch maximum diameter and six inch minimum length. All containers shall be at least fairly well filled. All containers shall be new.

[c]**(f)** Eggplants shall be U.S. No. 1 grade, or better, and reasonably uniform in size. All containers must have at least a fairly tight pack. All containers shall be new.

[d](g) Iceberg lettuce shall be U.S. No. 1 grade, or better. The maximum pack is twenty four heads per container. The heads shall be fairly uniform in size. The containers shall have a tight pack. All containers shall be new. All lettuce shall be vacuum cooled. The containers shall be marked "vacuum cooled."

(h) Common Green Onions shall be U.S. No. 1 grade. The over-all length (roots excepted) of the onions shall be not more than twenty-four inches nor less than eight inches and the onions shall not be less than one-quarter inch or more than one inch in diameter. All containers shall be new.

[f](i) Peaches shall be U.S. Extra No. 1 grade, or better, with a two and one-quarter inch minimum diameter. Containers shall be marked to denote variety and minimum size or count. All containers shall be new. All containers shall be at least fairly well filled. All peaches shall be hydrocooled. All containers shall be marked "hydrocooled."

[e](j) Sweet peppers shall be U.S. No. 1 grade, or better. Containers shall be marked with either "Extra Large" or "Large" or "Medium" in accordance with the following size specifications: "Extra Large" shall have a three inch minimum diameter and a three and one-half inch minimum length; "Large" shall have a three inch minimum diameter and a two and one-half inch minimum length; "Medium" shall have a two and one-half inch minimum diameter and a two and one-half inch minimum length. All containers shall be at least fairly well filled. All containers shall be new.

(k) Sweet potatoes shall be U.S. Extra No. 1 grade. Maximum diameter shall not be more than three and one-quarter inches. Maximum weight shall not be more than eighteen ounces. Length shall not be less than three or more than nine inches. Minimum diameter shall not be less than one and three-quarter inch. All containers shall be at least fairly well filled. All containers shall be new.

(l) White potatoes shall be U.S. No. 1 grade and packed to meet the requirements of Size A or Large. "Size A" means that the minimum diameter shall be not less than one and seven-eighths inches and that the lot shall contain at least forty percent of potatoes which are two and one-half inches in diameter or larger or six ounces in weight or larger. "Large" means that the minimum diameter shall be not less than three inches or the minimum weight shall be not less than ten ounces and the maximum diameter shall be not more than four and one-quarter inches or the maximum weight shall be not more than sixteen ounces. All potatoes shall be washed. All containers shall be new.

(m) Squash, Fall and Winter (acorn and butternut) shall be U.S. No. 1 grade and shall meet the following size specifications: Acorn shall be a minimum of one pound and a maximum of two pounds in weight. Butternut shall be a minimum of one and one-half pounds and a maximum of three pounds in weight. All containers shall be new.

(n) Squash, Summer (yellow and green) shall be U.S. No. 1 grade and shall meet the following size specifications: green type shall be a maximum of eight inches in length and a maximum of one and three-quarters inches in diameter; yellow type shall be a maximum of eight inches in length and a maximum of two inches in diameter at the bulb. All containers shall be at least fairly well filled. All containers shall be new.

(o) Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors." Containers shall be marked with either "Maximum Large" or "Extra Large" or "Large" in accordance with the following size specifications: "Maximum Large" shall have a three and fifteen thirty-second inch minimum diameter; "Extra Large" shall have a two and twenty-eight thirty-second inch minimum diameter and a three and fifteen thirty-second inch maximum diameter; "Large" shall have a two and seventeen thirty-second inch minimum diameter and a two and twenty-eight thirty-second inch maximum diameter. Containers shall also be marked as follows, in accordance with the facts, "Large to Extra Large" or "Extra Large and larger." Containers shall be at least fairly well filled. All containers shall be new.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Fairly well filled" means that cucumbers, sweet peppers, **tomatoes (fresh market), summer squash or sweet potatoes** are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of peaches, the container is level full and there is practically no movement of the fruit when the container is closed.

"Fairly well trimmed" means in the case of cabbage, that the head shall not have more than seven wrapper leaves.

. . .

"Mixed colors" means that a lot of tomatoes may contain not more than five percent of tomatoes which are green in color. "Green" means that the surface of the tomatoe is completely green in color. The shade of green color may vary from light to dark.

. . .

"Tight" means, in the case of lettuce, that the layers are completely and tightly filled without injury to the heads. **In the case of green corn, when packed in crates the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels.**

. . .

2:71-2.7 Penalties

(a) Any licensed packer using [Jersey Fresh] "logo" containers for products other than those covered by these rules or any unlicensed packer using [Jersey Fresh] "logo" packages for any product shall be subject to a penalty of not more than $50.00 for the first offense and not more than $100.00 for each subsequent offense, except for violations of N.J.S.A. 4:10-5 which penalty shall be $50.00.

(b) After the third violation of any part of this subchapter of the same regulated product packed by the same licensed packer during the same calendar year, the license to pack under the Jersey Fresh **Quality Grading** [logo] program will be revoked for the remainder of the license year.

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

CIVIL SERVICE

CIVIL SERVICE COMMISSION

The following proposals are authorized by the Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.

Submit comments by May 7, 1986 to:
Peter J. Calderone
Assistant Commissioner
Department of Civil Service
CN 312
Trenton, New Jersey 08625

(a)

Examinations and Applications
Promotional Examinations

Proposed Amendment: N.J.A.C. 4:1-8.4

Authority: N.J.S.A. 11:21-9, 11:21-9.1, 38:23
Proposal Number: PRN 1986-76.

A **public hearing** will be held on April 22, 1986 at 9:15 A.M. in the Civil Service Commission Room, 215 East State Street, Trenton, New Jersey. Please contact Ms. Dolores Carvill at 609-292-6568 if you plan to attend and to be included on the list of speakers.

The agency proposal follows:

Summary

The proposed amendment codifies Civil Service policies and practices, clarifies statutes governing State and local government employees and presents one substantive change. A clarification is made to 4:1-8.4(c) which refers to applicants for law enforcement and firefighter titles which pertains to local service only. N.J.A.C. 4:1-8.4(d) incorporates a Civil Service Commission decision, which provided that applicants may not use out-of-title work to meet open competitive requirements for promotional examinations. See, *In the Matter of Out-of-Title Work*, CSC, 2/3/82. N.J.A.C. 4:1-8.4(f) represents a substantive addition which will extend promotional eligibility rights for employees displaced as a consequence of layoffs. N.J.A.C. 4:1-8.4(g) provides that seniority computation for local governments shall not deduct military leave, education leave or leave to fill an elective office. See N.J.S.A. 11:21-9 and 38A:4-4. Such computation in State service does not deduct military, education, sick or disability leave. N.J.A.C. 4:1-8.4(h) provides that permanent employees, serving as provisionals or probationers in a title in the same or higher range, are eligible for promotional examinations open to their permanent titles. In addition, minor clarifications have been made and repetitive phrases have been deleted.

Social Impact

The provision to extend promotional eligibility rights to employees affected by layoffs will have a positive social impact. Such employees will be able to compete for promotions for which they previously could not.

N.J.S.A. 11:21-9 and 38A:4-4 provide that military, education and leave to fill elective office shall not be deducted from seniority calculations for local employees. However, sick and disability leave would be deducted for seniority calculations for local employees in promotional situations.

Economic Impact

The rule itself has no fiscal implications for the total Civil Service and therefore will have no economic impact.

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

4:1-8.4 Promotional examinations

(a) [The Department of Civil Service, after receiving the recommendations of the appointing authority, shall determine whether a promotion or open competitive test or both shall be held.] Insofar as it is consistent with the best interests of the service, vacancies shall be filled by promotions based on competitive examinations including an evaluation of service records and other tests or measures of knowledge, skills and abilities.

(b) An applicant for a promotional examination shall meet all of the following criteria by the closing date for filing an application:

1. Have **continuous** permanent service in a title to which the examination is open for an aggregate of one year. Such [permanent] service shall be without interruption except for an approved leave of absence [(continuous service)];
2. Meet all the requirements specified in the examination announcement; and
3. File the application on or before the closing date.

(c) **In local service,** [Applications] **applicants** for promotion from entry level law enforcement or firefighter titles shall have three years of **continuous** permanent service [without interruption except for an approved leave of absence (continuous service)] in a title to which the examination is open.

(d) Applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process, except as permitted by the President of the Civil Service Commission for good cause.

[(d)](e) Employees who have been demoted to or are appointed from a special reemployment list to a title to which the examination is open may, in order to satisfy the permanent [time] **service** requirement, include **continuous** permanent [continuous] service in any higher related or comparable title.

(f) Employees who are displaced due to a layoff, and who subsequently return to a title to which a promotional examination is open after the application period for the examination is closed but before the administration of the examination, shall be permitted to apply for such examination.

[(e)](**g**) [Where seniority is a factor in examination scoring:] Suspensions, leaves of absence without pay and any period of time an employee is laid off shall be deducted from seniority calculations **for promotional examinations, except:**

[2.]**1. In State service,** [M]**m**ilitary, education, sick or disability leave or any other leave designated by the Civil Service Commission or by law shall not be deducted from seniority calculations.

2. In local service, military, education, and leave to fill an elected public office or any other leave designted by the Civil Service Commission or by law shall not be deducted from seniority calculations.

(h) Provisional and probationary employees with permanent status in a title at the same or lower salary range are eligible for promotional examinations open to their permanent titles.

[(f)](i) The time requirements specified in (b) and (c) **and (f)** above may be reduced to completion of the working test period if:

1. [There is currently an incomplete promotional list or t] The number of employees eligible for examination will result in an incomplete list; **or**

2. [It appears that v]Vacancies to be filled within the [life time] **duration** of the promotional list [will] **can reasonably be expected to** exceed the maximum number of eligibles that could result from the examination; **or**

3. A promotional examination was announced with the normal service requirements and all candidates failed the examination; or

4. [Other valid reasons as determined by t]The Civil Service Commission[.] **determines that other valid reasons exist for such action.**

(a)

Assignments and Transfers

Proposed New Rules: N.J.A.C. 4:1-15.1 through 4:1-15.8
Proposed Repeal: N.J.A.C. 4:1-15.1 through 4:1-15.7 and 4:2-15.1

Authority: N.J.S.A. 11:11-3 and 11:22-8.
Proposal Number: PRN 1986-77.

A **public hearing** will be held on April 22, 1986 at 10:20 A.M. in the Civil Service Commission Room, 215 East State Street, Trenton, New Jersey.

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order 66(1978), the Civil Service Commission has reviewed the rules codified at N.J.A.C. 4:1-15, and 4:2-15 which regulate assignment and transfer circumstances. After reviewing the rules, the Commission proposes that these subchapters be combined and condensed to eliminate unnecessary detail, codify necessary elements in clear, concise English and reflect current policy and practice.

The Communications Workers of America, by petition for rule change, and individual State and local government employees have expressed concerns that N.J.A.C. 4:1-15 as currently written does not provide concise and detailed statements regarding key elements of critical career change circumstances such as transfer, reassignment, lateral title change, voluntary demotion and "resignation/new appointment." See Petition for Rulemaking, N.J.A.C. 4:1-15, Assignments and Transfers, at 15 N.J.R. 1965(a), November 21, 1983. The proposed new rules precisely define each of these situations and describe approval mechanisms, examination circumstances, Civil Service benefit and seniority retentions and consequences occurring when the career change proves unworkable. The rules do not represent a change in current policies and practices.

Social Impact

Since the proposed new rules essentially incorporate the substance of existing rules, policies and practices, they should not have any negative social impact. In fact, employees should benefit considerably by the proposed new rules since if faced with one of the career change circumstances addressed by the proposed rules, they will be able to ascertain the potential consequences of such movement by referring to the elements of the particular rule which govern the situation.

Economic Impact

Since the proposed new rules essentially incorporates the substances of existing rules, policies and practices it should not have negligible economic impact.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-15 and 4:2-15.

Full text of the proposed new rules follows.

SUBCHAPTER 15. ASSIGNMENTS AND TRANSFERS

4:1-15.1 Transfer

(a) A permanent transfer is the movement of a permanent employee in title between organizational units within the same governmental jurisdiction. In local service, a school district shall be considered a separate governmental jurisdiction. If the recipient organizational unit does not utilize the transferring employee's permanent title, a title change reflecting the employee's new duties shall be made concurrently with the transfer. See N.J.A.C. 4:1-15.5.

(b) A temporary transfer is the movement of a permanent employee for a maximum of six months to provide a better distribution of employees in the service, effect economies, make available a service needed for short periods, provide training sought by employees or required by the heads of organizational units or for any purpose which is for the good of the public service. Such a transfer must be approved by the President of the Civil Service Commission.

(c) For purposes of this subchapter, "organizational unit" means:

1. In State service, an appointing authority; and

2. In local service, a department or separate agency within the same county or municipality.

(d) A permanent transfer shall require the consent of the respective organizational units and the affected employee and the approval of the Department of Civil Service except that the consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

4:1-15.2 Reassignment

(a) A reassignment is the in title movement of an employee to a new job function, shift, location or supervisor within the same organizational unit.

(b) Reassignments shall be within the discretion of the head of the organizational unit. Notice to the Department of Civil Service need not be made unless required by specific regulation.

4:1-15.3 Retention of rights

(a) An employee on temporary transfer shall retain promotional rights in the organizational unit from which he or she has transferred.

(b) An employee reassigned or permanently or temporarily transferred shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements unless otherwise provided by specific rule or regulation. In State service, an employee's rate of compensation, anniversary date and administrative leave entitlement shall be retained.

(c) An employee who consents to a permanent transfer shall retain no rights in the unit from which he or she has been transferred.

(d) An employee who is permanently transferred due to a combining of functions or operations shall retain no rights in the organizational unit from which he or she has been transferred except that if he or she has filed for or passed a promotional examination, promotional rights in the former organizational unit shall be retained based on such examination.

(e) An employee whose reassignment results in the movement from one promotional unit scope to another shall retain no promotional rights in the former unit scope unless granted by specific rule or regulation.

4:1-15.4 Employee transfer or reassignment during a work test period

(a) An employee shall not be placed on temporary transfer during a work test period.

(b) If an employee consents to a permanent transfer during a work test period, such transfer shall only be in his or her permanent title. The employee shall forfeit all rights to complete the work test period.

(c) An employee who is permanently transferred due to a combining of functions or operations during a work test period shall be permitted to complete the work test period in the new organizational unit.

(d) When reassignments result in a change of supervisors during a work test period, the final probationary performance rating shall be based on a review of the entire work test period.

4:1-15.5 Transfer and title change

(a) If the transferred employee is concurrently appointed to a title other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change or voluntary demotion procedures. See N.J.A.C. 4:1-8.1 et seq., 4:1-15.6 and 4:1-15.7.

1. The employee shall retain permanent status in the previously held permanent title with the recipient organizational unit until examination and work test period procedures are concluded.

2. If the employee does not successfully complete the examination or work test period procedures, the recipient organizational unit shall return the employee to his or her permanent title within this organizational unit pursuant to mechanisms set forth in N.J.A.C. 4:2-14.1 or 4:3-14.2 unless the employee has been disqualified for further employment.

(b) In State service when permanent transfers are made in combination with promotional, lateral title change or demotional circumstances, salary and anniversary date determinations shall be made pursuant to N.J.A.C. 4:2-7.1 et seq. and other applicable salary regulations.

4:1-15.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. In State service, such change may be made only if the titles are compensated at the same or converted salary range to adjust for workweek or work year.

(b) If the nature of the work for both titles is substantially similar requiring essentially the same education and experience qualifications, the employee shall retain his or her permanent status without examination. This lateral title change shall take precedence over all Civil Service employment lists.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation entitlements unless otherwise provided by specific rule or regulation. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(c) If the nature of the work for both lateral titles is not substantially similar and the new title required education and experience qualifications not encompassed by the permanent title, the employee shall be appointed pending examination and satisfactory completion of the work test period. The lateral title change pending examination shall not be permitted at the entry level of a title series or when either a special reemployment or a complete promotional list exists or a request to conduct a promotional examination has been submitted to the Department of Civil Service. If an employee fails the examination or is terminated during or at the end of the work test period, he or she shall be restored to his or her permanent title pursuant to procedures set forth in N.J.A.C. 4:1-13.8 unless he or she has been disqualified for further employment.

1. Examination procedures may be waived by the President of the Civil Service Commission if the employee has previously held the title on a permanent basis during current continuous service. For purposes of this determination, a Resignation/New Appointment shall constitute a break in service.

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements unless otherwise provided by specific rule or regulation. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(d) A lateral title change shall require the consent of the employee and the head of the organizational unit and the approval of the Department of Civil Service.

4:1-15.7 Voluntary demotion

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower salary range as adjusted for workweek and work year, within the same organizational unit.

(b) Examination may be waived when the demotion is to any title previously held on a permanent basis during current continuous service. For purposes of this determination, a Resignation/New Appointment shall constitute a break in service.

(c) Examination may be waived and permanent status will be retained when the following conditions are met.

1. The title to which the demotion is made has duties, responsibilities and educational and experience qualifications which are encompassed by the higher title.

2. There are no specific skills, licenses or certifications required of the lower title which are not mandatory for the higher title.

(d) If all of the requirements in (c) above are not met, the employee shall be appointed pending examination. If an employee fails the examination or is terminated during or at the end of the work test period, he or she shall be restored to his or her permanent title pursuant to procedures set forth in N.J.A.C. 4:1-13.8 provided the employee has not been disqualified for further employment. If an employee wants to return to the previously held permanent title after completion of the work test period in the lower title, he or she may request placement on the regular reemployment list for such title in accordance with N.J.A.C. 4:1-11.2.

(e) Employees shall retain accumulated service for purposes of determining sick and vacation leave entitlements unless otherwise provided by specific rule or regulation. Seniority for purposes of determining layoff or demotional rights shall be governed by N.J.A.C. 4:2-16.1 et seq. and N.J.A.C. 4:3-16.1 et seq. Employees who have filed for or passed a promotional examination will retain their eligibility for that examination provided they remain in a title and unit scope to which the examination was open. In State service, the employee's administrative leave entitlement shall be retained and the rate of compensation and anniversary date shall be adjusted pursuant to the provisions of N.J.A.C. 4:2-7.1 et seq. or other applicable salary regulations.

(f) A voluntary demotion shall require the written consent of the employee and the head of the organizational unit and the approval of the Department of Civil Service.

4:1-15.8 Resignation/New Appointment

(a) A permanent employee who is appointed from an open competitive list by a different organizational unit within the same governmental jurisdiction and with no break in service shall have the appointment processed as a "Resignation/New Appointment." The employee shall be considered as resigned from the previously held permanent position.

1. Accumulated service for purposes of determining sick and vacation leave entitlements shall be retained unless otherwise provided by specific rule or regulation. In State service, administrative leave entitlements shall be retained.

2. The employee for any reason, including termination during or at the end of the work test period, may request placement on the regular reemployment list for the previously held permanent title in accordance with N.J.A.C. 4:1-11.2.

3. In State service, appointing authorities shall make such appointments at the minimum or authorized hiring rate unless a higher rate is approved by the Salary Adjustment Committee.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Licensing

Proposed Amendments: N.J.A.C. 5:23-5.5 and 5.7

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1986-110.

Submit comments by May 7, 1986 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 5:23-5.5 clarifies that eligibility for licensing as an inspector based on experience transferred from one code discipline to another is limited to persons who are already licensed and is not applicable to those who may simply satisfy the experience requirements for licensure.

In conformity with N.J.S.A. 52:27D-126.1, licensure as a fire subcode official is expressly excluded from the experience transferability provision for subcode officials. N.J.A.C. 5:23-5.7 is being amended to reflect this exception.

Social Impact

The restriction of the transferability option to persons already licensed will prevent someone not licensed in any code discipline from applying for a license other than in the discipline in which he has experience.

The amendment excepting licensure as a fire subcode official from the experience transferability for subcode officials corrects an apparent variation from the statute which might lead to confusion.

Economic Impact

Persons not yet licensed in one discipline who seeks a license in a discipline other than the one in which they have experience, if such persons exist, will not have the opportunity to qualify for licensing based on course work and examination until they are licensed in their own discipline.

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

5:23-5.5 General license requirements

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

(d) Special provisions:

1.-4. (No change.)

5. An applicant who [satisfies the experience requirements for licensure] **is licensed** as a building inspector, electrical inspector, fire protection inspector or plumbing inspector shall be eligible for licensure as an inspector at the same level or lower in any other subcode upon satisfactory completion of the approved educational program, if applicable, and the examination for licensure as an inspector in that other subcode, provided that the applicant has at least the number of years of experience required for that other subcode inspector's license.

5:23-5.7 Subcode official requirements

(a) A candidate for a license as a building, electrical, fire protection or plumbing subcode official shall meet the following qualifications:

1.-5. (No change.)

6. A person who is already licensed as a building, plumbing or electrical subcode official shall be deemed to have satisfied the requirement for any other subcode official license **other than the fire protection subcode official license.**

EDUCATION

STATE BOARD OF EDUCATION

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

Submit comments by May 7, 1986 to:
Patricia Joseph
Administrative Code Analyst
Department of Education
225 West State Street
Trenton, New Jersey 08625

(a)

Teacher Preparation and Certification State Board of Examiners; Duties

Proposed Amendment: N.J.A.C. 6:11-2.1

Authority: N.J.S.A. 18A:1-1, 4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.
Proposal Number: PRN 1986-93.

The agency proposal follows:

Summary

The State Board of Education proposes to clarify rules concerning the State Board of Examiners, N.J.A.C. 6:11-2, which became operative September 1, 1985. The change is intended to clarify the respective roles of the State Board of Education, the Department of Education and the State Board of Examiners with respect to the issuance of educational certificates and the setting of standards for certification. The change also provides consistency between the regulations and state law. Essentially, the rules state that regulations are set by the State Board of Education at the recommendation of the Commissioner and that the State Board of Examiners is responsible for issuing, revoking and suspending certificates.

Social Impact

The proposed amendment will have a beneficial social impact because it will provide a clarification of the existing rule.

Economic Impact

There is no economic impact because the proposed amendment will simply clarify the State Board of Examiners roles and responsibilities.

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

6:11-2.2 Duties

The Board shall grant appropriate certificates to teach or to administer, direct, or supervise[,] the teaching, instruction or educational guidance of pupils in public schools operated by boards of education, and such other certificates as it shall be authorized to issue by law, based upon certified scholastic records, **documented experience** or upon examinations, and may revoke **or suspend** [the same under] **such certificates** [rules prescribed by the State Board of Education]. **It is the responsibility and authority of the State Board of Education upon recommendation of the Commissioner of Education to establish rules and regulations governing the issuance, revocation and suspension of certificates, including rules governing types of certificates, authorizations and certification requirements. All actions of the State Board of Examiners shall be taken in accord with rules prescribed by the State Board of Education.**

(b)

State Library Assistance Programs Audio-Visual Public Library Services

Proposed New Rule: N.J.A.C. 6:68-5

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.3
Proposal Number: PRN 1986-91

The agency proposal follows:

Summary

New state legislation, the Library Development Aid Law (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.3, provides for State grants for audio-visual public library services. The funds appropriated under this law will provide incentives for improving and expanding audio-visual public library services. The law complements the New Jersey Library Network Law (N.J.S.A. 18A:73-35) which establishes a regional multitype library network and provides for the sharing of resources and services of New Jersey libraries of all types.

It is necessary to adopt these rules in order to give full force and effect to the existing statute. If the rules are not adopted, the Department of Education, Division of the State Library could not implement the statute successfully.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the Department of Education
State Library Advisory Council
County Superintendents of Schools
New Jersey Association of School Administrators

New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association

Director
Bergen-Passaic Reg. Film Ctr.
Johnson Public Library
275 Moore Street
Hackensack, NJ 07601

Director
Johnson Free Public Library
275 Moore Street
Hackensack, NJ 07601

Director
Essex-Hudson Reg. Film Ctr.
East Orange Public Library
21 South Arlington Avenue
East Orange, NJ 07018

Director
East Orange Public Library
21 South Arlington Avenue
East Orange, NJ 07018

Director
Monmouth Reg. Film Center
Monmouth County Library
25 Broad Street
Freehold, NJ 07728

Director
Monmouth County Library
25 Broad Street
Freehold, NJ 07728

Director
Morris Regional Film Center
Morris County Library
30 East Hanover Avenue
Whippany, NJ 07981

Director
Morris County Library
30 East Hanover Avenue
Whippany, NJ 07981

Director
South Jersey Reg. Film Ctr.
Echelon Urban Center
Laurel Road
Voorhees, NJ 08043

President, Executive Board
South Jersey Reg. Film Ctr.
Burlington County Library
West Woodlane Road
Mt. Holly, NJ 08060

Director
Camden County Library
Echelon Urban Center
Laurel Road
Voorhees, NJ 08043

Social Impact

Under the new legislation, all residents of the State will have access to expanded audio-visual resources and services through local public libraries. These libraries will be able to acquire and distribute audio-visual materials of all types to serve local, regional and Statewide populations. Information required by the State's residents is available in a variety of formats, and libraries have had difficulty in meeting the demand for these audio-visual materials and services.

The new rules will provide New Jersey residents with greater access to audio-visual services. The rules will also assist libraries in their response to the increasingly diverse informational needs of library users for resources, services and new technology of various levels of complexity.

Economic Impact

Audio-visual materials provided through public libraries are used by New Jersey residents, businesses and organizations for a wide variety of purposes related to education, information and training, all of which impact on the State's economic well being as a whole. The new rules will allow public libraries to provide expanded audio-visual services on a more cost efficient, cost effective basis through cooperative programs, purchases and services.

The rules will provide for a gradually increased amount of State funding to individual libraries and groups of libraries beginning with a State Fiscal Year 1986 appropriation of $150,000. Recommended appropriation for the State Fiscal Year 1987 is $400,000.

Full text of the proposed new rules follows.

SUBCHAPTER 5. AUDIO-VISUAL PUBLIC LIBRARY SERVICES

6:68-5.1 Scope and purpose

The rules in this subchapter provide for the development and expansion of audio-visual public library services to the residents of New Jersey, pursuant to the provisions of the Library Development Aid Law, (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.3.

6:68-5.2 Definitions

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

"Audio-visual" means communications resources which rely on a device for transmission, reproduction, or enlargement to be effectively utilized or understood. Also included are art works and objects.

"Audio-visual public library services" means provision of access to audio-visual resources to clientele of a public library.

"Public library" means a municipal, county, association, or joint library which receives public funding.

6:68-5.3 Eligibility

Any library or organization providing audio-visual public library services is eligible to participate in this program.

6:68-5.4 Grant application procedures

(a) Application forms for the program may be obtained from the Library Development Bureau of the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-5.5 Categories in award of grants

(a) Each approvable application shall be assigned to one of the three categories as follows:

1. Regional audio-visual public library services;
2. Statewide audio-visual public library services;
3. Local audio-visual public library services.

(b) The priority of category and the percentage of funds allocated to each category shall be established each year by the State Librarian.

6:68-5.6 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. Contribution of the proposed service to the published document, "A Developing State Plan for Library Services", New Jersey State Library, January, 1980;
2. Contribution of the proposed service to the "Regional Library Cooperative Plan for Service";
3. Impact of the service on the population to be served;
4. Evidence of interest, need or demand for the proposed service;
5. Clearly defined goals and objectives for the service;
6. Proposed method of measurement and evaluation;
7. Adequacy and realism of budget and cost estimates;
8. Provision of adequate staff and staff training;
9. Provision for the dissemination of information regarding the proposed service;
10. Documentation to the effect that proposed services could not be provided solely with local funds.

6:68-5.7 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-5.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1.1)

(a)

State Library Assistance Programs Institutional Library Services

Proposed New Rule: N.J.A.C. 6:68-6

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.4.
Proposal Number: PRN 1986-92.

The agency proposal follows:

Summary

New state legislation, the Library Development Aid Law (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.4, provides for State grants for institutional library services. The funds appropriated under this law will provide incentives for improving and expanding library services to persons institutionalized in health, mental health, mental retardation, veterans, residential, correctional and other similar facilities which are operated by or under contract to the State or to county or municipal governments. These proposed new rules for the distribution of funds will challenge and encourage institutions to conform to national and State guidelines and standards for library services.

It is necessary to adopt these rules in order to give full force and effect to the existing statute. If the rules are not adopted, the Department of Education, Division of the State Library could not implement the statute successfully.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluations:

Senior staff of the Department of Education
State Library Advisory Council
County Superintendents of Schools
New Jersey Association of School Administrators
New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association

Joan Lamarque, Librarian
Correctional Institution for Women
Drawer E.
Clinton, NJ 08809

Robert Lagerstrom
Jersey City Public Library
472 Jersey Ave.
Jersey City, NJ 17302

Elizabeth A. Hoskins
21 Lawrence Place
Freehold, NJ 07725

Marya Hunsicker, Bureau Head
Library for the Blind & Handicapped
2300 Stuyvesant Ave.
Trenton, NJ 08618

Karl Greiner
Association for Retarded Citizens of New Jersey
99 Bayard Street
New Brunswick, NJ 08901

Carmine Limone
Dept. of Human Services
22 S. Warren St.
Trenton, NJ 08625

Anthony Sarlo, Coordinator of Child Study
Office of Educational Svs.
Department of Corrections
P.O. Box #7387
Trenton, NJ 08628

Michelina V. Bonneau
Somerset County Library
120 B Cedar Lane
Highland Park, NJ 08904

Tomas Loperena
Southern State Correctional Facility
Rt. #47, Box #150
Delmont, NJ 08314

Lori Duncan
Arthur Brisbane Child Treatment Center
P.O. Box #625
Farmingdale, NJ 07727

Social Impact

In 1984, over 30,000 New Jersey residents were housed in State and county correctional institutions and State human services institutions, and many more in various local and county institutions. For these residents, libraries and library services are a source of knowledge, information, education and recreation. Traditionally, institutional residents have had limited access to reading materials and information resources, despite the demonstrated need for and value of these materials in the institutional program. Illiteracy is higher among residents of institutions than among the general population.

The proposed rules will make efficient and effective use of State funds allocated to improve library services to New Jersey's institutionalized. The rules will provide incentives for those institutions not meeting minimum standards, assist those institutions meeting standards in providing improved services, and support developmental and demonstration programs of benefit to all the State's institutional library programs. Beneficiaries of improved library services will include mentally and emotionally retarded persons, disabled veterans, inmates, and emotionally disturbed children served by the state, county and municipal institutions.

Economic Impact

Under these proposed new rules, library services will support literacy, education, and training programs in New Jersey correctional and human services institutions. These programs share a common goal of preparing the residents of institutions to return to their communities as working, productive persons. Information in print and nonprint formats is a primary tool for the enhancement of this vocational education and skill development.

The rules will provide for a gradually increased amount of State funding to institutional libraries beginning with a State Fiscal Year 1986 appropriation of $50,000. Recommended appropriation for the State Fiscal Year 1987 is $100,000.

Full text of the proposed new rules follows.

SUBCHAPTER 6. INSTITUTIONAL LIBRARY SERVICES

6:68-6.1 Scope and purpose

(a) The rules in this subchapter provide for the development of library services in State, county and municipal institutions, pursuant to the provisions of the Library Development Aid Law, (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.4.

(b) Three separate institutional grant categories have been developed. Program I provides institutional library incentive grants to assist institutional libraries in meeting minimum standards. Program II provides basic grants to institutional libraries which meet minimum standards. Program III provides developmental grants to expand programs of library services.

6:68-6.2 Definitions

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

"Associate librarian" means a person who holds an Associate Educational Media Specialist Certificate in accordance with N.J.A.C. 6:11-12.22.

"Basic grants" means funds made available to institutions which meet minimum standards.

"Client groups" means mentally disabled, mentally retarded, and physically handicapped persons; adults and juveniles in correctional and related programs. Excluded are residents of general hospitals, nursing homes and boarding homes.

"Developmental grants" means funds made available to institutions already meeting minimum standards to develop expanded programs of library services.

"Expanded programs of library services" means new services, changes in, or expansion of services already offered.

"Institution" means an adult or juvenile health, mehtal health, mental retardation, veterans, residential, correctional, and other similar facility or day training center, other than a public school, which is operated by or under contract to the State or to county or municipal governments.

"Institutional library incentive grants" means funds made available to institutions to bring library services up to the minimum standards.

"Institutional library" means any library, within an institution, directly serving the institutional client group.

"Librarian" means a professional librarian, an educational media specialist, or an associate educational media specialist.

"Library clerk" means a person employed in a library who performs clerical or support functions.

"Library services" means all activities rendered by the library to its users.

"Part-time employee" means an employee whose regular hours of duty are less than the normal work week for that class or agency in accordance with Civil Service Regulations N.J.A.C. 4:1-2.1.

"Professional librarian" means a person who holds a Professional Librarian's Certificate or an Educational Media Specialist Certificate in accordance with N.J.A.C. 6:11-12.7 and 6:11-12.21.

6:68-6.3 Program I: Institutional library incentive grants

(a) Program I will provide funds to assist institutions in bringing their library services to minimum standards. These standards are:

1. Staff shall be assigned by the institution in accordance with the chart set forth below.

Average Annual Resident Population	Minimum Number of Paid Staff
Less than 100	One staff member part-time.
100 to 300	Associate librarian full-time. One library clerk, part-time.
301 to 999	One librarian full-time. Two library clerks, one of whom must be full-time.
1,000 or more	One librarian full-time. Three library clerks, two of whom must be full-time.

2. Materials to meet the informational, educational and recreational needs of the population shall be provided as follows:

i. A minimum of five titles per resident. Titles can include print and non-print materials.

ii. Audio-visual materials and equipment in sufficient quantity to serve the needs of the users.

3. Access shall be provided to client groups as follows:

i. A library with only part-time staff shall provide library services at least 20 hours per week.

ii. A library with full-time staff shall provide library services at least 30 hours per week.

4. Facilities and furnishings will be adequate to support the library and its services and will be determined in accordance with guidelines established by the State Librarian.

6:68-6.4 Program II: Basic Grants

(a) Program II will provide funds to institutional libraries which meet minimum standards in order to qualify for Program II grants.

(b) Institutions which meet minimum standards and maintain a level of library expenditures for library services equal to the level in the preceding calendar year will be eligible, annually, for a grant of $1,000 per institution and $7.50 per capita.

6:68-6.5 Program III: Developmental grants

Program III will provide funds to institutions to develop expanded programs of library services. These services may be provided through cooperation with other institutions or with other libraries.

6:68-6.6 Grant application procedures

(a) Application forms for these programs may be obtained from the Library Development Bureau of the New Jersey State Library, 195 West State Street, Trenton, New Jersey 08625.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-6.7 Priorities in award of grants

(a) Each approvable application shall be assigned to one of the following three programs:

i. Incentive grants;

ii. Basic grants;

iii. Developmental grants.

(b) The percentage of funds allocated in each program shall be established each year by the State Librarian.

6:68-6.8 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. Establishment of a Library Advisory Committee which will assist in the development of a plan for library services. Membership on the committee will include the institutional library staff, representatives of the administration and departments of the institution, resident population, and the community;

2. Impact of the service on the population to be served;

3. Evidence of interest, need or demand for the proposed service;

4. Clearly defined goals and objectives for the service;

5. Proposed method of measurement and evaluation;
6. Adequacy and realism of budget and cost estimates.

6:68-6.9 Application of funds to library services

Funds received pursuant to these rules shall not be applied to any purpose other than institutional library services.

6:68-6.10 Reports and audits

(a) On or before March 1 in each year, each institutional library receiving State aid according to this subchapter shall annually make and transmit a report to the State Librarian of such information, based upon the records and statistics of the preceding calendar year, as the State Librarian shall require.

(b) Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-6.11 Appeal process

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such formal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1.1.)

(a)

Federal Library Assistance Programs
Library Services to the Disadvantaged

Proposed Amendment: N.J.A.C. 6:69-2.1
Proposed Repeal: N.J.A.C. 6:69-2.2 through 2.12

Authority: N.J.S.A. 18A:1-1 and 18A:4-15.

Proposal Number: PRN 1986-90.

The agency proposal follows:

Summary

Federal legislation for libraries, the Library Services and Construction Act (Public Law 98-480), assists States in the extension and improvement of public library services to areas and populations which are without such services or to which such services are inadequate. The law, reauthorized for five years, has recently been amended and new regulations governing direct grant programs have been issued.

The Code of Federal Regulations (Title 34, Part 770) specifies the types of program activities eligible for funding, sets forth the criteria for selection by which proposals will be evaluated and defines "disadvantaged." Additional State rules are unnecessary and duplicative. Therefore, the State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 proposes to amend the rules pertaining to Library Services to the Disadvantaged, N.J.A.C. 6:69-2.1, and to repeal the remaining sections of that subchapter, N.J.A.C. 6:69-2.2 through 6:69-2.12.

The proposal retains and amends the first section of the subchapter to ensure public awareness of the grant program's existence and availability, but repeals the remaining sections of the rule to remove unnecessary State requirements.

The State Library will continue to receive and administer Library Services and Construction Act funds. Local libraries will continue to submit applications to the State Library for funds to address the needs of the disadvantaged populations in their communities. The only change this represents is that the State Library will be operating under one set of rules not two.

A review of the proposed amendment follows:

N.J.A.C. 6:69-2.1, Authorization and procedure, defines the purpose of the rule, to encourage public libraries to respond to the needs of disadvantaged residents through a grant program for services to the disadvantaged. The proposed amendment authorizes the State Library to establish such a grant program and to administer it in accordance with the regulations of the United States Department of Education. The amended rule cites the broader definition of "disadvantaged" used in the Library Services and Construction Act, Title I. Also, a relatively minor change is being proposed to correct technicalities of wording.

N.J.A.C. 6:69-2 through N.J.A.C. 6:69-12 are being proposed for repeal since they are unnecessary and duplicative.

The Department of Education has submitted this proposal to the State Library Advisory Council, Senior Staff of the Department and to the Department's Administrative Code Review Committee which includes representatives from the following individuals and associations:

County Superintendents of Schools
New Jersey Association of School Administrators
New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association

Social Impact

The proposed amendments will give notice of the authority and the existence of this program and direct any interested parties to the appropriate governing regulations. The proposed repeal eliminates State regulation of a program that is already regulated by Federal rules. Further, the amended Federal rules provide a broader definition of "disadvantaged" than the existing State rules governing this program.

"Disadvantaged" under the existing State rules is defined as follows:

> "An individual is described as a poor person if he does not have suitable employment and is a school dropout, a minority member, a member of a family that receives cash welfare payment or whose net income in relation to a family size and location does not exceed $1,600 annually for a family of one, to $7,900 annually for a family of 13 or more in non-farm income; or $1,100 for a family of one to $5,500 for a family of 13 or more in farm income." (N.J.A.C. 6:69-2.2)

Presently, a disadvantaged individual is defined primarily in economic terms. This definition presents a limited interpretation of disadvantaged residents of New Jersey; and in addition, the net income figures quoted in the definition are unrealistic for survival in this State in 1985.

The current Federal rules define eligible recipients of library services as:

> "Individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage

are unable to receive the benefits of public library services regularly made available to the public."

More individuals will become eligible to receive public library services under this broader definition. This definition will also enable libraries to develop programs that serve a larger segment of their populations. Libraries which could not previously receive assistance in serving disadvantaged residents can now become eligible to serve them.

One example of a program which can be developed by libraries under the broader definition is a program which addresses the needs of a specific age group. Presently there are 860,000 people in New Jersey who are 65 years of age or older. By 1990, there will be an estimated 1,048,000 people, 65 or older. This growing older population can now be targeted for library services because age is now included in the definition.

Economic Impact

The proposed amendments and repeal of the rules will stimulate additional grant applications from libraries for funds to initiate services to larger segments of their populations. They will also generate the addition of local monies to purchase materials, maintain or expand staff to continue services made possible by these grant funds. Reports from libraries, during the past five years have indicated that libraries, county government and community agencies have allocated increased funds to maintain and improve the library services initiated by grants from this project. During the past four years approximately $1,217,000 has been allocated from State funds. This has generated approximately $1,408,000 in local funds to serve the eligible public under this program.

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

SUBCHAPTER 2. LIBRARY SERVICES TO THE DISADVANTAGED

6:69-2.1 [Foreword] **Authorization and procedure**

(a) To encourage public libraries to respond to the needs of that portion of its citizenry alienated from society and its institutions because of severe economic deprivations, cultural, social and minority group isolation and lack of awareness of the library potential for continuing education, the New Jersey State Library [has established] **may establish** a grant program for Library Services to the Disadvantaged.

(b) This program, made possible by the use of Library Services and Construction Act funds, is designed to help libraries initiate [innovation] **innovative** and creative "outreach" programs which hopefully, will encourage full use of public library services by citizens heretofore reticent to use libraries. [See: Library Services and Construction Act (20 U.S.C. 351 to 358).]

(c) This program shall be administered in accordance with the regulations of the United States Department of Education which implement the Library Services and Construction Act (P.L. 98-480, 20 U.S.C. 351 to 358). A copy of these regulations may be obtained by contacting the Department of Education, New Jersey State Library, Library Development Bureau, 185 West State Street, Trenton, New Jersey 08625.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 6:69-2.2 through 2.12.

ENVIRONMENTAL PROTECTION

The following proposals are authorized by Richard T. Dewling, Commissioner, Department of Environmental Protection.

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineation
Revision to the Delineation of the Raritan River and Peters Brook

Proposed Amendment: N.J.A.C. 7:13-7.1

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.
DEP Docket No. 009-86-03.
Proposal Number: PRN 1986-109.

A **public hearing** on the proposal will be held on:
May 21, 1986 at 1:00 P.M.
Hillsborough Township Municipal Bldg.
330 Amwell Road
Neshanic, NJ

Submit written commits by May 28, 1986 to:
Clark Gilman
Division of Water Resources
Bureau of Flood Plain Delineation
CN 029
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-1 et seq., the Department of Environmental Protection (Department) proposes to revise the flood hazard area delineation for the Raritan River from approximately 1500 feet upstream of Landing Bridge Lane upstream to the confluence of the North and South Branch of the Raritan River and for Peters Brook from the mouth upstream to approximately 1000 feet upstream of North Bridge Street. These flood hazard areas were previously delineated by the Department. As a result of having received more detailed data and analyses performed by the U.S. Geologic Survey in flood insurance studies, the Department is obliged to update the present delineation to reflect this new information.

Social Impact

By delineating a stream or river, the Department applies its regulatory jurisdiction under the Act to the "flood fringe", as defined under the Flood Hazard Area Control Regulations, N.J.A.C. 7:13-1 et seq. For many parts of the State, flood studies are underway which generate additional data, regarding the exact location of the stream encroachment lines. As the detailed data and analyses are received by the Department, the new information is added to that which describes the existing delineation. Since the delineated floodway and flood fringe lines will simply be more accurately described, no additional impact will result, beyond that intended and foreseeable from the original delineation.

By having more accurate maps and flood profiles available, developers of properties which may be within the flood fringe are better able to determine in advance whether or not their project may fall within the jurisdiction of the Department.

Economic Impact

The proposed amendment will result in the more exact location of the floodway and flood fringe. Therefore, there is no economic impact resulting from this proposal, beyond what was reasonably foreseeable at the time of the original delineation. Though the original delineation of the waterways involved here certainly resulted in calculable impact, the proposed revision does not.

Environmental Impact

As in the case of the other areas of potential impact discussed above, no environmental impacts will result from this proposal. Revision of the present delineations is needed so that they will reflect the more accurate data and analyses now available.

7:13-7.1 Delineated floodways

No change in the text of N.J.A.C. 7:13-7.1(d) is required. Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Bldg. No. 9, Quakerbridge Road and at the Bureau of Flood Plain Delineation, 1911 Princeton Ave., Lawrenceville, NJ.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Defining Status of Indigenous Nongame Wildlife Species

Proposed Amendment: N.J.A.C. 7:25-4.17

Authority: N.J.S.A. 23:2A-4 and 23:2A-7.
DEP Docket No. 010-86-03.
Proposal Number: PRN 1986-103.

Submit comments by May 7, 1986 to:
JoAnn Frier-Murza
Program Manager
Endangered and Nongame Species
Division of Fish, Game and Wildlife
CN 400
Trenton, NJ 08625

The agency proposal follows:

Summary

Due to increasing numbers of merlins (Falco columbarius) observed on migration, the department proposes to upgrade the species' status, as designated at N.J.A.C. 7:25-4.17, from "threatened" to "stable."

During the last eight years the number of migrating merlins has increased dramatically as evidenced by fall merlin count at Cape May Point which increased from 562 in 1976 to 2375 in 1984. None of the surrounding states lists the species in a rare category, and it was removed from the American Ornithological Union's list of species of concern in 1981. Consequently, the Endangered and Nongame Species Advisory Committee has advised the Commissioner to upgrade the merlin's status in New Jersey from "threatened" to "stable," and the Commissioner has determined that this change is warranted in conformity with N.J.S.A. 23:2A-4.

Social and Environmental Impact

The upgrading of a species' status from "threatened" to "stable," when justified on the basis of scientific data, enhances the credibility of subsequent department determinations that add to the list of threatened species. Further, the reporting of such proposed department listings and delistings enhances public awareness and concern for these vital natural resources as well as the opportunity for public participation. It is anticipated that increased confidence in the department's nongame and endangered species program, and increased public participation therein, will help to maintain and enhance the diversity of living natural resources essential for a healthy, stable human environment.

The change in status will enable licensed falconers within the State to utilize the merlin as limited by the department-imposed restrictions in their licenses.

Economic Impact

No economic impact is anticipated as a result of upgrading merlins from "threatened" to "stable" because this redesignation is considered simply an administrative action.

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

7:25-4.17 Defining status of indigenous nongame wildlife species of New Jersey

(a) The following table defines the status of indigenous nongame wildlife species of New Jersey.

BIRDS

. . .

Merlin, Falco columbarius. [T]**S**

. . .

HEALTH

The following proposals are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health.

(a)

LOCAL AND COMMUNITY HEALTH SERVICES

Mobile Intensive Care Programs Administration of Medications

Proposed Repeal: N.J.A.C. 8:31-25.1 Proposed New Rule: N.J.A.C. 8:41-8

Authority: N.J.S.A. 26:2K-7 et seq. and 26:1A-15.
Proposal Number: PRN 1986-73.

Submit comments by May 7, 1986 to:
Roy W. Nickels, Director
Emergency Health Services
New Jersey State Department of Health
CN 363
Trenton, NJ 08625

The agency proposal follows:

Summary

Under the statutory authority of New Jersey's paramedic law (N.J.S.A. 26:2K-7 et seq.), the Commissioner of Health is authorized to approve the "... administration of specific medications, drugs and solutions ..." for use in the State's advanced life support programs, as well as to set standards in other aspects of advanced life support prehospital care.

The proposed new rule revises the drugs approved for use by the mobile intensive care programs in New Jersey. This list is reviewed annually and revised, if necessary, to include the most recent advances in prehospital and emergency pharmacologic agents. Five drugs have been added this year. One of these drugs, nalbuphine hydrochloride, an FDA approved analgesic currently utilized in hospital settings, is added for a one year period to evaluate its use in the prehospital setting. Another addition is the combination solution of dextrose, five per cent in water and normal saline .45 per cent. Two drugs, metaproternol sulfate and isoetharine hydrochloride, have been added to assist patients with bronchospasm, including those with bronchial asthma. The final drug, nifedipine, is added to treat patients with angina and ischemic chest pain. The addition of these agents has caused the list to be realphabetized; one correction was needed (in the generic drug name of atropine sulfate).

At the same time, the subchapter is being recodified from N.J.A.C. 8:31-25.1 (which is being repealed), to chapter 41 so that all the rules pertaining to the mobile intensive care programs will appear in one place. Recodification has caused the rules accompanying the drug list to be reorganized. Subchapter 1 through 7 are being reserved for the remainder of the rules which will be proposed sometime in the near future.

Social Impact

Evaluation and subsequent revision of procedures and techniques is a continuous process in the health care delivery system. Drug therapy under medical direction is a vital management tool of the paramedic when giving advanced life support prehospital care. By continually updating and adding the most current and most effective pharmacologic agents available for use in the United States, New Jersey will continue to provide its citizens the best possible emergency care.

Economic Impact

Treatment in the prehospital setting, utilizing advanced life support techniques and procedures, is a major determinant in patient prognosis and survival rates. Appropriate and rapid prehospital interventions have the capability to prevent unnecessary hospital admissions and to decrease the need for more costly inhospital management techniques. These interventions may also decrease the patient's length of stay in the hospital, if he or she is admitted.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 8:31-25.1.

Full text of the proposed new rule follows.

CHAPTER 41
LICENSURE AND OPERATION OF MOBILE INTENSIVE CARE UNITS: MANUAL OF STANDARDS

SUBCHAPTERS 1. THROUGH 7. (RESERVED)

SUBCHAPTER 8. ADMINISTRATION OF MEDICATIONS

8:41-8.1 Approved drug list for mobile intensive care units

(a) The following is an alphabetical list of generic therapeutic agents authorized for administration by mobile intensive care paramedics:

Aminophylline
Atropine sulfate
Bretylium tosylate
Calcium chloride
Dextrose, 50 percent
Dextrose, five percent in water
Dextrose, five percent in water and normal saline .45 percent
Dexamethasone sodium phosphate
Diazepam
Diphenhydramine HCL
Dopamine HCL
Epinephrine
Furosemide
Ipecac syrup
Isoetharine HCL
Isoproterenol HCL
Lidocaine HCL
Metaproternol sulfate
Morphine sulfate
Nalbuphine HCL—one year period only
Naloxone HCL
Nifedipine
Nitroglycerin
Nitroglycerin ointment
Normal saline

Oxygen
Procainamide HCL
Ringer's lactate
Sodium bicarbonate
Terbutaline sulfate
Thiamine HCL
Verapamil HCL

8:41-8.2 Applicability of laws and regulations

(a) As an extension of the hospital, the mobile intensive care units shall be subject to applicable laws and regulations.

(b) All policies and procedures regarding the control of drugs shall be subject to provisions of the Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.) and amendments thereto. The policies and procedures shall be in compliance with all Federal and State laws and regulations, including those of the New Jersey State Board of Pharmacy, concerning procurement, storage, dispensing, administration, and disposition (N.J.A.C. 13:39-7.5).

(c) Policies and procedures regarding the storage, use, and disposition of hypodermic needles and syringes shall be in accordance with the New Jersey State Board of Pharmacy rule N.J.A.C. 13:39-7.19(m)6 and the Controlled Dangerous Substances Act and amendments thereto.

8:41-8.3 Medication controls, inventory, and recordkeeping required

(a) Each designated mobile intensive care program shall devise a plan for maintaining inventory control over medications, including all substances in Schedule II of the Controlled Dangerous Substances Act and amendments thereto, and syringes used in the program. The following information shall be recorded:

1. Name of the patient receiving the medication;
2. Name of the prescribing physician;
3. Name and strength of the drug;
4. Date drug package was given to the mobile intensive care unit;
5. Date the drug was administered;
6. Dosage administered;
7. Method of administration;
8. Signature of the paramedic or mobile intensive care nurse administering the drug; and
9. Amount of medication wasted, if any.

(b) A verifiable record system shall be maintained of the acquisition, storage, and disposal of hypodermic needles and syringes.

(c) Records on the administration of any therapeutic agent shall be maintained by the paramedic or mobile intensive care nurse on a written log, setting forth the date, time, drugs or therapeutic agents administered, directions for administering, quantity and strengths to be indicated where appropriate. All entries shall be typewritten or written in ink, legible, dated and signed by the paramedic or mobile intensive care nurse. All orders are to be countersigned and dated within 24 hours by the physician who directed the call.

(d) All medications are to be kept in a locked storage box or compartment. All substances in Schedule II of the Controlled Dangerous Substances Acts, and amendments thereto, shall be kept under double lock and key. Medications for external use are to be kept in a separate section from medications for internal use. Keys to the medications box or compartment shall be available only to authorized persons.

(e) In the event that the inventories to a particular mobile intensive care unit cannot be verified or drugs are lost, contaminated or destroyed, a report of such incident is to be written and signed by the paramedics or mobile intensive care nurses involved and any witnesses present. Copies of the report are to be sent for review to the coordinator and medical director of the program.

(f) All voice or telemetered orders between the hospital and mobile intensive care units shall be monitored by recording tape and retained by the hospital for a period of at least two years.

(a)

NARCOTIC AND DRUG ABUSE CONTROL

Controlled Dangerous Substances
Temporary Placement of Paraflourofentanyl in Schedule I

Proposed Amendment: N.J.A.C. 8:65-10.1

Authority: N.J.S.A. 24:21-3.
Proposal Number: PRN 1986-84.

Submit comments by May 7, 1986 to:
Lucius A. Bowser, RP, MPH
Chief
Drug Control Program
CN 362
Trenton, NJ 08625
609-984-1308

The agency proposal follows:

Summary

The Department of Health proposes to amend the Schedules of the Controlled Dangerous Substances Act to add a new chemical entity to Schedule I because it is now classified as a "Designer Drug." This substance is an analog of an existing controlled dangerous substance but whose chemical structure makes it a non-controlled substance, and which substance poses an imminent hazard to public safety. The proposed amendment will bring the State regulations into conformity with Federal regulations. The substance is an analog of the Schedule II narcotic analgesic fentanyl.

This substance was placed into Schedule I by the Drug Enforcement Administration, U.S. Department of Justice in the Federal Register, cited at 51 F.R. 4722, dated February 7, 1986 and became effective March 10, 1986.

This substance is clandestinely produced primarily in California and is known as "synthetic Heroin." Paraflourofentanyl has a potency of 100 times that of morphine and has a 90 minute duration of analgesic activity. Since 1984 there have been at least 60 deaths from Fentanyl analogs. There are no acceptable medical uses for or commercial manufacturer of paraflourofentanyl. The pattern of abuse of fentanyl analogs parallels that of heroin and other nartcotics.

The substance paraflourofentanyl poses a serious threat to the health and welfare of the public and requires immediate scheduling to prevent its abuse.

Social Impact

The control of the substance paraflourofentanyl having no known medical use in the United States would have a great social impact in that it would control the illicit production and distribution of this extremely potent analog of Fentanyl, a Schedule II narcotic analgesic. This control would lower incidences of hospitalization and/or deaths from the ingestion or injection of this potent substance. There would be no social impact on pharmacies or practitioners as these substances are not commercially available for use in modern medicine.

Economic Impact

Preventing the production or distribution of this substance, paraflourofentanyl, would have a great economic impact on the public and hospitals. It would be in the best interest of public health and safety to control this product from the onset. There would be no economic impact on pharmacies or practitioners in that it will become a Schedule I substance which may not be prescribed, dispensed or administered.

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

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 substances code number.

1.-6. (No change.)

7. Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

i. (No change.)

ii. (See adoption at 18 N.J.R. 87(a).)

iii.-iv. (See proposal at 17 N.J.R. 2950(a).)

v.-xii. (See proposal at 18 N.J.R. 254(b).)

xiii. Paraflourofentanyl (N-(2-1-phenylethyl)-4-piperidyl)-N-(4-flourophenyl)propanamide.

CORRECTIONS

(a)

THE COMMISSIONER

Work Release Program

Proposed New Rules: N.J.A.C. 10A:31.6

Authorized by: William H. Fauver, Commissioner, Department of Corrections.
Authority: N.J.S.A. 30:8-44.
Proposal Number: PRN 1986-72.

Submit comments by May 7, 1986 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
PO Box 7387
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules are intended to provide guidelines governing the selection and placement of county sentenced inmates into employment and vocational training within the community. These proposed rules also include guidelines for the release of an inmate to attend to family needs.

Social Impact

The proposed new rules will have no new or additional social impact on the public or county correctional facilities since they reflect a codification of current practice into established rules.

Economic Impact

The proposed new rules will have no new or additional economic impact on the public or county correctional facilities because the facilities are currently adhering to these practices and no additional costs are necessary to implement or maintain them.

Full text of the proposed new rules follows:

CHAPTER 31
ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 6. WORK RELEASE PROGRAM

10A:31-6.1 Authority

N.J.S.A. 30:8-44 authorizes the operation of a County Work Release Program in the counties in which the Board of Freeholders has approved the establishment of this type of program.

10A:31-6.2 Responsibility for designating County Work Release Administrator

(a) Upon adoption of a resolution to implement a Work Release Program, the County Board of Freeholders shall designate a County Work Release Administrator who may be the Sheriff, Warden or other person who shall be responsible for administering the Program.

(b) The Board of Freeholders shall promptly notify the Commissioner of the Department of Corrections of its action and the name of the designated County Work Release Administrator.

10A:31-6.3 Placement in program

A person convicted and sentenced to a county jail may be placed in a Work Release Program by order of the court in which such person was convicted, or by the assignment judge of the county in which the sentence was imposed.

10A:31-6.4 Inmates inappropriate for program participation

(a) The following circumstances shall make an inmate inappropriate for participation in the Program.

1. Untried detainers for criminal offenses or immigration detainers;

2. Current convictions involving sex or arson offenses;

3. Previous convictions for sex or arson offenses, even if the current conviction is for an offense(s) other than sex or arson; or,

4. Current convictions for sale and/or distribution of controlled dangerous substance (CDS) solely for profit.

10A:31-6.5 Application for admission to the program

(a) An inmate placed in Work Release, released to vocational training or released to meet family needs at the time of sentencing by the court, shall be required to complete Form

CWR-1 APPLICATION AND AGREEMENT FOR ASSIGNMENT UNDER THE WORK RELEASE PROGRAM and submit it to the County Work Release Administrator.

(b) An inmate sentenced by the court to a county correctional facility who desires an opportunity to participate in the Work Release Program shall be required to submit a Form CWR-1 APPLICATION AND AGREEMENT FOR ASSIGNMENT UNDER THE WORK RELEASE PROGRAM to the court through the County Work Release Administrator.

(c) The County Work Release Administrator shall be responsible for advising county sentenced inmates that they may submit an application to him or her for submission to the court for approval to participate in the Program.

(d) The County Work Release Administrator shall review and evaluate the information collected on each application and make a recommendation to the court concerning admission to the Program. The basic information shall include, but is not limited to:

1. Prior criminal history;
2. Detailed information concerning present offense;
3. Detailed information regarding untried criminal charges pending and the current status of these charges;
4. Psychological and psychiatric evaluations;
5. Record of violent or assaultive conduct;
6. Record of violation of financial or public trust;
7. Data on family relationships including responsibility to assist in family maintenance;
8. Work history;
9. Personal health;
10. Record of substance abuse; and
11. Information on Job opportunities or vocational programs to meet the inmate's needs.

(e) The following facts and circumstances shall be viewed as negative factors when considering an inmate's application for Work Release:

1. Record of association with organized crime;
2. Record of serious emotional or personality defects;
3. Record of violent or assaultive behavior;
4. Previous violations of financial or public trust;
5. A high degree of public notoriety which would cause adverse reaction if the inmate were released;
6. Indications that release would be contrary to punitive intention of sentence; and
7. A history which indicates a record of convictions for CDS.

10A:31-6.6 Job site evaluation

(a) The County Work Release Administrator shall be responsible for evaluating all prospective places of employment for inmates.

(b) Whenever possible, work release employment shall be related to prior vocational training, work experience and/or the institutional training of the inmate.

(c) The following shall initially be taken into account when evaluating the job site:

1. Working conditions of the employee;
2. Potential hazards to health of employees;
3. Credibility of the employer;
4. Verification of a fair rate of pay, not less than minimum wage;
5. Coverage by an appropriate workers' compensation plan;
6. Availability of transportation;
7. Duration of the offered employment and benefits; and
8. Proximity to the institution.

(d) Inmates shall not be placed in Work Release assignments which will result in the displacement of workers employed in the community.

(e) Representatives of local union central bodies or similar labor union organizations shall be consulted about the placement of inmates with an employer, if necessary.

(f) If suitable private outside employment cannot be found for an inmate, he or she may be employed by the county at a fair wage and reasonable hours of work.

10A:31-6.7 Notice to inmate

Form CWR-2 NOTIFICATION OF ADMISSION TO WORK RELEASE WITH SPECIFIED CONDITIONS shall be used by the County Work Release Administrator to notify the inmate of the court's decision on his or her application.

10A:31-6.8 Work release plan

(a) The County Release Administrator and the inmate shall prepare a detailed work release plan (Form CWR-3 APPROVED WORK RELEASE PLAN). The plan shall include information concerning the job, transportation and a statement authorizing the County Work Release Administrator to make disbursements from earnings.

(b) The information concerning the job placement shall include, but is not limited to:

1. Name of employer;
2. Address of employer;
3. Telephone number of employer;
4. Location of work site;
5. Hourly or other rate of pay;
6. Work days and hours;
7. The plan for overtime or shift work, if necessary; and,
8. Evaluation of the job offer by the County Work Release Administrator.

(c) Each work release plan shall contain written detailed information regarding transportation. This information shall include, but is not limited:

1. Time of departure from correctional facility;
2. Time of return to correctional facility;
3. Time of arrival at job;
4. Time of departure from job;
5. Method of transportation (for example, correctional facility, public, private conveyance);
6. Daily cost of transportation;
7. Routes of travel;
8. Procedure to be used when there are unexpected changes in travel arrangements (for example, extended work conditions, delays caused by breakdowns, etc.).

(d) If the transportation plan calls for the use of a private conveyance as the method of transportation, the County Work Release Administrator should insure that the appropriate licensing, vehicle registration and insurance coverage are provided. Copies of these documents shall be contained in the inmate's file.

(e) The transportation plan should be flexible so as to allow for normal problems anticipated in daily travel. Generally, travel time to and from a job should not exceed one hour each way.

(f) The final section of the work release plan shall include information on the disbursement of wages.

(g) When the plan is completed and reviewed by the Work Release Administrator, the inmate shall be asked to read and indicated his or her acceptance of the provisions of the plan by signing it;

(h) The employer shall receive a copy of the approved work release plan by certified mail, return receipt requested, along with a copy of the court's order placing the inmate in outside employment. The inmate shall also receive a copy of the plan.

10A:31-6.9 Disbursement of wages

(a) Inmates participating in the Program shall submit his or her salary, wages or stipend, in the form that it is paid (cash or check), to the County Work Release Administrator who shall make payments from these earnings for:

1. Money advances made to purchase or redeem work clothes, travel clothes, and/or work tools. Every effort shall be made to secure full payment of advances as promptly as possible. Except in the most unusual situations, full repayment shall be obtained no later than the second full pay;

2. Cost of work transportation and cash advanced for miscellaneous daily expenses while outside the correctional facility;

3. Payment of cost for board which shall be charged for each day that the inmate is participating in this program. Such daily per capita rate shall not include any part of the costs arising from the administration of this Program;

4. Court costs and fines;

5. Legally ascertained support of dependents after written notice to the appropriate welfare board;

6. Payment on debts and legal obligations acknowledged by the inmate in writing and filed with the County Work Release Administrator on such forms as he or she shall specify.

(b) Any balance of earnings that shall remain after payment items in (a) above shall be retained as required by N.J.S.A. 30:8-49(4), and paid to the inmate when he or she shall specify.

(b) Any balance of earnings that shall remain after payment of the items in (a) above shall be retained as required by N.J.S.A. 30:8-49(4), and paid to the inmate when he or she is discharged.

(c) Each county shall develop a written system whereby each inmate participating in the program shall pay a fair percentage of his or her earnings for board.

10A:31-6.10 Statement of disbursements

(a) The work release inmate shall receive a statement on Form CWR-4 STATEMENT OF DISBURSEMENTS itemizing deductions made from each pay check within two weeks of the county's receipt of the pay check.

(b) The statement shall report all income and expenses and accurately reflect the statement of the inmate's account for the period covered.

10A:31-6.11 Vocational training release plan

(a) A detailed vocational training release plan (CWR-5 VOCATIONAL TRAINING RELEASE PLAN) shall be prepared by the County Work Release Administrator. A copy shall be sent to the inmate and a copy shall be sent to the training agency by certified mail, return receipt requested. The plan shall include the following:

1. Name and address of training agency;
2. Location where training will take place;
3. Hour and days of leaving and returning to institution;
4. Hour of arrival and departure from the training site;
5. Mode of transportation; and,
6. Other pertinent data including responsibility for payment of costs (for example, transportation, meals, etc.).

10A:31-6.12 Family need release plan

(a) A detailed family need release plan (CWR-6 FAMILY NEED RELEASE PLAN) shall be prepared by the County Work Release Administrator with a copy to the inmate outlining the following:

1. Nature of need;
2. Location of where family need is to be served;
3. Hour and days of leaving and returning to the correctional facility;
4. Hour of arrival and departure from the family need site;
5. Mode of transportation; and
6. Other pertinent data including responsibility for paying costs (for example, transportation, meals, etc.).

10A:31-6.13 Notification of local police departments

(a) N.J.S.A. 30:4-91.3A requires that the local police departments be notified when the county intends to place an inmate in the respective municipality for the purpose of a visit, study, work or residence.

(b) Whenever an inmate is being considered for placement into the work release, vocational training release, or family care release programs the local police departments shall be notified in writing.

10A:31-6.14 Custody status

Inmates approved for outside employment, family care or vocational training under a Work Release Program shall be classified as minimum custody and housed separately from other prisoners serving terms in ordinary confinement, if possible.

10A:31-6.15 Orientation

(a) When the inmate has been accepted into the Program and the appropriate applications and plans have been completed, the County Work Release Administrator shall provide an orientation to the inmate.

(b) This orientation shall insure that the inmate is made aware of and has a clear understanding of the rules, regulations and conditions governing the program.

(c) The County Work Release Administrator or his or her designate shall also insure that the employer is made aware of the rules and regulations and of his or her responsibilities concerning the Work Release Program.

(d) The County Work Release Administrator shall make periodic evaluations of the extent of family needs and of job and vocational training sites to insure that the rules and regulations governing the program are not being violated.

10A:31-6.16 Review of status-termination

(a) The County Work Release Administrator may hold the inmate in confinement pending judicial review of his or her status, when there is cause to believe that the inmate has:

1. Violated the rules of the Program; or,
2. Been charged with the commission of an offense.

(b) The County Work Release Administrator shall submit a written report to the court which will include the reason(s) for holding the inmate in confinement and a request that the court review the inmate's status in the Program.

(c) The County Work Release Administrator shall implement the court's decision.

(d) No inmate may be removed from the Work Release Program without an order from the court authorizing such a removal.

10A:31-6.17 Escape

(a) An inmate shall be deemed an escapee if he or she:

1. Fails to return to the correctional facility within the prescribed time or has not notified the correctional facility within the one hour grace period that he or she is in the process of returning; or,

2. Fails to notify the correctional facility that he or she has been detained (that is, hospitalized, arrested, etc.); or,
3. Fails to obtain authorization to leave his or her place of employment.

(b) If the inmate contacts the county correctional facility within the one hour grace period and is given a reasonable time limit within which to return to the facility but fails to do so, the inmate shall be declared an escapee if there are no extenuating circumstances or verified legitimate reasons for the inmate's failure to return within the time limit.

(c) In all cases of escape, the County Release Administrator shall arrange for immediate notice to the :
1. County jail warden;
2. Local police;
3. State police; and
4. Court.

10A:31-6.18 Monthly reports

(a) The County Work Release Administrator shall be responsible for preparing a written monthly report which shall be submitted to the sentencing court and the County Board of Freeholders.

(b) The monthly report shall contain the following information on each participant in the Program:
1. Name of inmate;
2. Identification number of inmate;
3. Place of employment or vocational training;
4. Hours of employment;
5. Earnings (including disposition);
6. Date of expected Program termination;
7. Prospects for future employment;
8. Description of unusual incidents;
9. Method of transportation; and,
10. Other information deemed relevant.

(c) The monthly report shall also contain a general summary of Program information, which includes, but is not limited to, the following:
1. Total number of participants in program;
2. Total number of admissions to program;
3. Total number of terminations from program;
4. Total number of revocations for violations of conditions; and,
5. Total number of removals because of illness or death.

10A:31-6.19 Quarterly report

(a) The County Work Release Administrator shall be responsible for preparing a quarterly report (Form CWR-9 QUARTERLY REPORT OF WORK RELEASE) which shall be submitted to the County Board of Freeholders and the New Jersey Department of Corrections.

(b) The quarterly report shall contain other summary information on numbers of inmates in the Program and facts as may be requested by the County Board of Freeholders and the New Jersey Department of Corrections.

10A:31-6.20 Arrangements with other counties

(a) An inmate may be housed in another county for the purposes of work release when the court, issuing the release placement order, authorizes the County Work Release Administrator to arrange with the County Work Release Administrator of another county for the employment of an inmate within that county.

(b) The inmate shall be in the custody of the other county and subject to the commitment and all applicable regulations while the inmate is participating in the Program.

(c) Agreements between cooperating counties shall include a statement of financial arrangements.

10A:31-6.21 Time credits

(a) Pursuant to N.J.S.A. 30:8-50, an inmate participant may be granted a reduction of not more than one quarter of his or her term if the inmate's conduct, diligence and general attitude merit such reduction.

(b) Form CWR-7 DIMINUTION OF TERM shall be used to notify the appropriate person in the county jail as to the number of days to be credited in reduction of an inmate's sentenence.

INSURANCE

DIVISION OF ACTUARIAL SERVICES

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

Submit comments by May 7, 1986 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

Alcoholism Benefits

Proposed New Rule: N.J.A.C. 11:4-15

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); 17B:27-46.1 and 17B:26-21.
Proposal Number: PRN 1986-95.

The agency proposal follows:

Summary

The proposed new subchapter, N.J.A.C. 11:4-15, provides that benefits for the treatment of alcoholism must be included in all individual and group health insurance policies providing hospital-medical expense benefits which are issued or renewed in this State.

The subchapter was originally proposed in 1978. Certain early editions of Title 11 of the Administrative Code did not specify any expiration date pursuant to Executive Order 66(1978). Subsequent updates of the Code indicated that the rule was scheduled to expire on May 22, 1983, as required by Executive Order 66(1978). Although it has been the Department's position that the rule was exempt from the sunset provision of Executive Order 66(1978), the Department is now reproposing the rule to avoid any uncertainties with respect to the validity of the rule.

N.J.A.C. 11:4-15.1 outlines the scope of the new rule, and defines the term "renewed" for the purposes of this subchapter.

N.J.A.C. 11:4-15.2 lists the benefits to be provided in each contract. These benefits include coverage for treatment of alcoholism in a detoxification facility or a residential treat-

ment facility. Additionally, out-patient treatments will be considered the equivalent of inpatient days and shall be afforded the same kind of coverage as inpatient days.

N.J.A.C. 11:4-15.3 lists policies and coverages which are excluded from the new rule.

Social Impact

The proposed new rule will implement the statute and will aid insureds who avail themselves of this type of treatment by providing insurance coverage. If this coverage were not provided, many individuals who need the alcoholism treatment would not obtain it because of its cost.

Economic Impact

By providing coverage for alcoholism treatments, the new rule economically benefits insureds who use these services. Insurers have been providing this coverage, as a result of the original adoption, and thus should not experience any additional costs.

The Department does not expect to be affected economically by this rule.

Full text of the proposed new rule follows.

SUBCHAPTER 15. ALCOHOLISM BENEFITS

11:4-15.1 Scope

This subchapter applies to all individual and group health insurance policies providing hospital-medical expense benefits issued or renewed in this State. "Renewed" is defined as any date the insurer has the option to change the level of premium rates. This subchapter does not apply to policies which provide only limited hospital or medical expense coverage, such as: Medicare complement policies, hospital income policies, student accident, trip or accident only policies, PIP coverage, cancer or dread disease policies, or surgical expense policies, or to policies issued prior to June 2, 1977, where the premium is guaranteed at issue and the insurer cannot increase the premium.

11:4-15.2 Benefits

(a) The following benefits shall be included in each contract:

1. Where benefits are defined in terms of inpatient days, treatment of alcoholism by means of inpatient confinement in a detoxification facility or a residential treatment facility, and outpatient treatments shall be considered equivalent to inpatient hospital days and afforded the same kind of coverage under the policy as an alternative to inpatient hospital days.

2. For policies that provide blanket reimbursement for medical expenses, with or without deductibles, coinsurance, and inside limits, alcoholism shall be covered as any other sickness, subject to the same deductibles and coinsurance, but with the inside limits on inpatient hospital days applying equally to detoxification facilities, residential treatment facilities, and outpatient treatments.

3. Outpatient treatment is defined as treatment on an outpatient basis at a hospital or residential treatment facility or as aftercare at a detoxification facility as provided by certified alcoholism counselors and other professionals employed by these health care facilities under a program approved by the Division on Alcoholism.

11:4-15.3 Exclusions

(a) An insurer may avail itself of any appropriate legal methods to avoid duplication of coverage, such as coordination of benefits provisions or statutory provisions concerning other insurance.

(b) Alcoholism benefits must be included for all certificate holders under all group policies issued or renewed in New Jersey. New Jersey residents insured under group policies issued in other states are not covered by this rule.

(c) Policy exclusions relating to workers' compensation, employers' liability laws, veterans' hospitals, military services, etc. may apply also to benefits for alcoholism treatment.

(d) Benefits need not be payable if no charge is normally made for the service.

(e) Benefits may be limited to the reasonable and customary charges for care and treatment.

(f) Benefits may be limited to expenses for treatment provided at the appropriate level of care.

(a)

Minimum Standards

Proposed Amendment: N.J.A.C. 11:4-16.6

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:22-1, 17B:26-1 et seq., 17B:26-44.6 and 17B:26-45.
Proposal Number: PRN 1986-96.

The agency proposal follows:

Summary

The proposed amendment, N.J.A.C. 11:4-16.6(d)1, will give insurers the option of offering daily hospital room and board coverage that is not less than the lesser of 80 percent of the charges for semi-private accommodations or the statewide average semi-private hospital room and board charge at the time the policy is issued.

At the present time, insurers are permitted to offer coverage of this type at a level that is 50 percent of an amount equal to the Medicare Part A deductible in effect at the time the policy is issued.

Until recently, Medicare Part A was a reliable standard upon which to predict the cost of coverage for hospital room and board charges. However, the Medicare Part A deductible and the daily hospital room and board rate in New Jersey have not increased at the same rate. The Medicare Part A deductible is significantly higher than the New Jersey room and board rate. Thus, insureds are being required to purchase more coverage than is necessary.

The amendment will allow insureds to offer coverage that more accurately reflects the actual cost of room and board charges in New Jersey.

Social Impact

The proposed amendment will eliminate the requirement that New Jersey insureds purchase more insurance than is necessary.

Economic Impact

The proposed amendment will allow insurers to offer basic hospital expense coverage that is both affordable and adequate. The insured will be able to purchase insurance coverage that is sufficient, but not excessive. The Department of Insurance does not expect to be affected economically by this rule.

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

11:4-16.6 Minimum standard for benefits

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

(d) "Basic hospital expense coverage" is a health insurance policy which provides coverage for a period of not less than 31 days for one period of hospital confinement of each covered person for expenses incurred for necessary treatment and services rendered as a result of injury or sickness for at least the following:

1. Daily hospital room and board, including general nursing care and special diets in an amount not less than the lesser of:

i. 80 percent of the charges for semi-private accommodations; or

[ii. 50 percent of an amount equal to the Medicare Part A deductible in effect at the time the policy is issued.]

ii. The statewide average semi-private hospital room and board charge at the time the policy is issued, as determined by the Commissioner.

2.-4. (No change.)

(e)-(k) (No change.)

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides Public Safety Standards

Proposed Amendments: N.J.A.C. 12:195-1.7, 1.9, 1.12, 1.13, 1.14, 2.1, 3.1, 3.3, 3.9, 3.10, 4.2, 4.6 and 5.11

Proposed New Rules: N.J.A.C. 12:195-1.3, 1.4, 3.14, and 6

Proposed Repeal: N.J.A.C. 12:195-1.3

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 5:3-31 et seq., specifically N.J.S.A. 5:3-36.

Proposal Number: PRN 1986-75.

Submit comments by May 7, 1986 to:
William J. Clark, Director
Division of Workplace Standards
New Jersey Department of Labor
CN 054
Trenton, New Jersey 08625-0054

The agency proposal follows:

Summary

The purpose of the proposed amendments is to mitigate safety and health hazards at carnival-amusement rides and to provide for improved safety for the public.

The proposed amendments reflect an amendment to N.J.S.A. 5:3-32 (P.L. 1983, c.274) which added any passenger or gravity propelled ride to the definition of a carnival amusement ride. The proposed amendments also update specifications of ride design by requiring conformance to accepted engineering practice; incorporates several of the most recently approved mechanical and electrical standards promulgated by various nationally recognized standards associations; and includes various editorial changes.

The development of the proposed amendments was accomplished by:

1. Internal review in the Department;
2. Consultation with the New Jersey Department of Public Advocate, Division of Advocacy for the developmentally Disabled; and
3. Notice of the proposal sent to interested parties and responses from interested parties, including:
   a. One amusement ride operator;
   b. One carnival ride operator;
   c. The New Jersey State Safety Council;
   d. The American Society of Safety Engineers:
   e. The New Jersey Manufacturers Insurance Company;
   f. The New Jersey State League of Municipalities;
   g. New Jersey State Chamber of Commerce; and
   h. New Jersey Association of Counties.

The New Jersey Amusement Association had a minor negative comment on N.J.A.C. 12:195-1.12(b). The Association felt "in writing" did not provide a timely response and suggested "other means" as a substitute. "Other means" would permit notification by mailgram. The Department agreed with the suggestion and has proposed the requested change.

All the statutory provisions of the Act, N.J.S.A. 5:3-31 et seq., have been complied with. The Advisory Board on Carnival-Amusement Rides Safety reviewed this proposal over the course of three meetings and responsed affirmatively to the rules.

Social Impact

Implementation of the proposed amendments will provide greater safety to the public during the use and operation of carnival-amusement rides in that the rules will reflect current developments in ride design and safety.

Economic Impact

Implementation of the proposed amendments should not cause any economic hardship to the amusement ride industry. The amendments should provide an increased degree of safety to the using public which in turn should reduce the frequency of accidents, injuries and medical costs to the public and owners and operators of amusement rides.

Through compliance with the rules does impose some minimal expense (although not easily or readily quantifiable in terms of dollars) on the owners and operators of amusement rides, this expense is far outweighed by the positive results in safety.

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

12:195-1.3 Scope

[(a) This chapter shall apply to amusement rides subject to the Carnival-Amusement Rides Safety Act, N.J.S.A. 5:3-31 et seq.

(b) This chapter shall not apply to:

1. Any single-passenger manually, mechanically or electrically operated, coin-operated ride, which is customarily placed, singly or in groups, in a public location and which

does not normally require the supervision or services of an operator; and

2. Locomotives weighing more than seven tons, operating on track the length of which is ½ mile or greater, the gauge of which is three feet or greater, and the weight of which is at least 60 pounds per yard.]

(a) This chapter shall apply to:

1. An amusement ride subject to the Carnival-Amusement Rides Act, N.J.S.A. 5:3-31 et seq.;

2. An amusement ride as defined in N.J.A.C. 12:195-2.1;

3. Any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement and including, among others:

i. A water slide exceeding 15 feet in height; and

ii. A water amusement ride as defined N.J.A.C. 12:195-2.1; and

4. Any passenger or gravity propelled ride when located in an amusement area or park in which there are other rides covered by the Act.

(b) This chapter shall not apply to:

1. A locomotive weighing more than seven tons, operating on a track the length of which is one-half mile or greater, the gauge of which is three feet or greater, and the weight of which is at least 60 pounds per yard;

2. Any single-passenger manually, mechanically or electrically operated, coin-operated ride, which is customarily placed, singly or in groups, in a public location and which does not normally require the supervision or services of an operator; or

3. A passenger or gravity propelled ride that is not a mechanical device and is not located in an amusement area or park.

(c) The height of a water slide as described in (a)3.i above shall be the difference in elevation between the point of entry (top) and the point of discharge (bottom) of the slide.

(d) A locomotive falling within the scope of (b)1 above shall be under the jurisdiction of the New Jersey Department of Transportation for the purpose of safety inspection.

12:195-1.4 [(Reserved)] **Documents referred to by reference**

(a) The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:195-6.

(b) The standards listed below have been utilized in the development of this rule, when appropriate:

1. ASTM F 698—1983, Physical Information to be provided for Amusement Rides and Devices;

2. ASTM F 747—1982, Definitions of Terms Relating to Amusement Rides and Devices;

3. ASTM F 770—1983, Operation Procedures for Amusement Rides and Devices;

4. ASTM F 846—1983, Testing Performance of Amusement Rides and Devices;

5. ASTM F 853—1983, Maintenance Procedures for Amusement Rides and Devices; and

6. ASTM F 893—1984, Inspection of Amusement Rides and Devices.

12:195-1.7 Existing [installations] **equipment**

Maintenance of existing equipment shall be in accordance with this chapter[; and any]. **Any** replacements [thereof] **of existing equipment** shall **also** be in conformity with this chapter.

12:195-1.9 Inspection fee and permit

(a) Before commencing operations and in each year thereafter, an owner shall apply for **a permit with** an application form furnished by the Division and containing such information as the Division may require. The application shall be accompanied by a certificate of insurance, bond, or other security indicating that the owner has complied with N.J.A.C. 12:195-1.14 [below].

(b)-(g) (No change.)

(h) The Division shall order in writing a temporary cessation of operation of an amusement ride if it has been determined after inspection to be hazardous or unsafe. Operation **of the ride** shall not be resumed until [such conditions are corrected to the satisfaction of the Division] **the ride has been reinspected by a designee of the Division and it is determined by the designee to be safe for operation.**

(i) (No change.)

12:195-1.12 Reporting

(a) (No change.)

(b) Any major breakdown or malfunction of a ride shall be reported **immediately by the owner** to the Division by telephone or [in writing.] **other means.**

(c) (No change.)

12:195-1.13 Serious injury or death to a member of the public

(a) When any accident occurs at an amusement ride which results directly or indirectly in a serious injury or death to a member of the public, the amusement ride shall be:

1.-2. (No change.)

3. Secured to prevent operation [with passengers] until the Division has conducted a full investigation and permits operation with passengers.

12:195-1.14 Insurance, bond or other security

(a) (No change.)

(b) The policy shall be procured from one or more insurers acceptable to the [State] Commissioner of Insurance, and either:

1. (No change.)

2. Approved as surplus line insurers pursuant to [Section 11 of P.L.1960, c.32 (c.17:22-6.45).] **N.J.S.A. 17:22-6.45.**

(c) The bond, cash or other security as required by (a)2 or (a)3 above shall provide at least $100,000 for each ride.

(d) The bond of (a)2 above shall be in such form and content as to be acceptable to the Department of Insurance.

(e) The cash or other security shall be assigned to meet carnival-amusement ride liability judgments only.

12:195-2.1 Definitions

. . .

"Amusement ride"means any mechanical device or devices, **including water slides exceeding 15 feet in height,** which carry or convey passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement, **and any passenger or gravity propelled ride when located in an amusement area or park in which there are other rides covered by the Act;** [and does not] **provided, however that this shall not** include locomotives weighing more than seven tons, operating on track the length of which is one-half mile or greater, the gauge of which is three feet or greater, and the weight of which is at least 60 pounds per yard. (See "Water amusement ride.")

. . .

"Commissioner" means the Commissioner of Labor [and Industry] of the State of New Jersey or his authorized [representative] **designee.**

. . .

"Division" means the Division of Workplace Standards, New Jersey Department of Labor *[and Industury]*, CN 054, Trenton, New Jersey 08625-0054.

. . .

"Office of Safety Compliance" means the Office of Safety Compliance in the Division of Workplace Standards, New Jersey Department of Labor [and Industry], CN 386, Trenton, New Jersey 08625-***0386.***

. . .

12:195-3.1 Design

(a) (No change.)

(b) [All structures used in connection with amusement rides shall be so designed and constructed as to carry safely all loads to which such structures may normally be subjected.] **All amusement rides shall be designed and constructed in accordance with accepted engineering practice, and all reasonably foreseeable hazards which could arise from use or probable misuse of the ride shall be guarded against in the design insofar as it is feasible to do so. "Accepted engineering practice" means that which conforms to accepted principles, tests or standards of accredited authorized agencies, and to standards or generic principles and practices of safety engineering.**

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

g. All structures used in connection with amusement rides shall be so designed and constructed as to carry safely all loads to which such structures may be subjected.

12:195-3.3 Means of access and egress

(a)-(h) (No change.)

(i) The [head] **vertical** clearance in passageways shall not be less than seven feet.

(j)-(s) (No change.)

12:195-3.9 Passenger tramways

(a) Aerial Passenger Tramways, ANSI [B-77.1-1976 and addendum to Aerial Passenger Tramways, ANSI B77.1a-1978 are] **B77.1-1982 is** hereby adopted and incorporated by reference as a rule with [the] modifications **as** indicated in (b) below.

[1. These documents are available for review between the hours of 9:00 a.m. and 4:00 p.m. on normal working days at the New Jersey Department of Labor and Industry, Division of Workplace Standards, Labor and Industry Building, Room 1103C, Trenton, New Jersey.

2. These documents may be purchased from the American National Standards Institute, 1430 Broadway, New York, New York 10018]

(b) The following are modifications to the rule **as** referenced in (a) above:

1. Sections 1.1 through [1.5] **1.3,** [Section 3.6.4] and Section [5] **8** are deleted.

2. (No change.)

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

12:195-3.10 Electrical equipment

(a) The National Electrical Code, NFPA No. [70-1981] **70-1984** is hereby adopted **and incorporated by reference** as a rule.

[This document is available for review between the hours of 9:00 a.m. and 4:00 p.m. on normal working days at the New Jersey Department of Labor and Industry Building, Room 1103C, Trenton, New Jersey.

2. This document may be purchased from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.]

(b) Permanent wiring **shall be subject to the following requirements:**

1.-5. (No change.)

6. **Electrical conductors other than flexible cords and fixture wires shall be protected against overcurrent in accordance with their ampacities.**

[(c) Temporary wiring:

1. The provisions of (c) 2 through 11 below shall apply to installations of 600 volts, nominal or less, for temporary electrical power and lighting wiring methods which may be of a class less than would be required for a permanent installation. Except as specifically modified in this subsection, all other requirements of (b) above for permanent wiring shall apply to temporary wiring installations.

2. Temporary electrical power and lighting installations shall be permitted during the period of construction, remodeling, or demolition of buildings, structures, equipment, or similar activities.

3. Temporary electrical power and lighting installations shall be permitted for a period not to exceed 90 days for Christmas decorative lighting, carnivals, and similar purposes, and for experimental or development work.

4. Services shall be installed in accordance with Article 230 of the rule referenced in (a) above.

5. Feeders shall be protected in accordance with Article 240 of the rule referenced in (a) above. They shall originate in an approved distribution center. The conductors shall be permitted within multi-conductor cord or cable assemblies or where not subject to mechanical injury, they shall be permitted to be run as open conductors or insulators not more than 10 feet apart.

6. All branch circuits shall originate in an approved power outlet or panelboard. Conductors shall be permitted within multi-conductor cord and cable assemblies or as open conductors. All conductors shall be protected by overcurrent devices at their rated ampacity. When run as open conductors they shall be fastened at ceiling height every 10 feet. No conductor shall be laid on the floor. Each branch circuit that supplies receptacles or fixed equipment shall contain a separate equipment grounding conductor when run as open conductors.

7. All receptacles shall be of the ground-type. Unless installed in a complete metallic reaceway all branch circuits shall contain a separate equipment grounding conductor and all receptacles shall be electricity connected to the grounding conductor.

8. No bare conductors nor earth returns shall be used for the wiring of any temporary circuit.

9. Suitable disconnecting switches or plug connectors shall be installed to permit the disconnection of all ungrounded conductors of each temporary circuit.

10. All lamps for general illumination shall be protected from accidental contact or breakage. Protection shall be provided by elevation of at least seven feet from normal working surface or by a suitable fixture or lampholder with a guard.

11. All grounding shall conform with Article 250 of the rule referenced in (a) above.

12. Temporary wiring over 600 volts shall be permitted during periods of construction, tests, experiments, or emergency. A less permanent class of wiring and equipment shall be permitted than would be required for a permanent installations.

13. Suitable fencing, barriers, or other effective means shall be provided to prevent access of other than authorized and qualified personnel to temporary wiring over 600 volts.

14. Temporary wiring over 600 volts shall be removed immediately upon completion of construction or purpose for which the wiring was installed.

15. Equipment utilizing temporary wiring over 600 volts shall be grounded in accordance with Section 250-42 of the rule referenced in (a) above.

16. Temporary electric wiring, if suspended, shall be so supported that its protective will not be damaged.]

[(d)] **(c)** (No change.)

[(e)] **(d)** (No change.)

12:195-[3.14] **3.15** Identification and rating plates
(No change in text.)

12:195-3.14 Non-destructive test

(a) The commissioner may require all critical mechanical and structural components including but not limited to journals, shafts, spindles and pins not visible to the naked eye to be subjected to non-destructive testing by the owner or operator.

(b) The owner or operator shall prepare a report in writing of the non-destructive tests performed.

(c) The report of the non-destructive tests shall include the following:

1. Name of owner or operator;
2. Date and location of test;
3. Name of ride;
4. Serial number of ride;
5. Name of firm that conducted the test;
6. The type of non-destructive test performed; and
7. Results and certification of results.

(d) The report required in (b) above shall be submitted to the commissioner. The owner or operator shall also advise the commissioner what corrective action, if any, has been taken as a result of the non-destructive tests.

12:195-[3.15] **3.16** Rebuilt or modified rides
(No change in text.)

12:195-[3.16] **3.17** Assembly and disassembly
(No change in text.)

12:195-[3.17] **3.18** Lighting
(No change in text.)

[12:195-3.18 Proximity to high voltage lines]
[Amusement rides shall be located so that they conform to the requirements of the High Voltage Proximity Act, N.J.S.A. 34:6-47.1 et seq.]

12:195-3.25 Proximity to high voltage lines
Amusement rides shall be located so that they conform to the requirements of the High Voltage Proximity Act, N.J.S.A. 34:6-47.1 et seq.

12:195-4.2 Construction
(a) (No change.)

[1. This document is available for review between the hours of 9:00 a.m. and 4:00 p.m. on normal working days, the New Jersey Department of Labor, Division of Workplace Standards, Labor and Industry Building, Room 1103C, Trenton, New Jersey 08625.

2. This document may be purchased from the Building Officials and Code Administrators International, Inc., 17926 South Halsted, Homewood, Illinois 60430.]

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

12:195-4.6 Walkways and ramps
(a) (No change.)
(b) (No change.)

[1. This document is available for review between the hours of 9:00 a.m. and 4:00 p.m. on normal working days, at the New Jersey Department of Labor, Division of Workplace Standards, Labor and Industry Building, Room 1103C, Trenton, New Jersey.

2. This document may be purchased from the American National Standards Institute, 1430 Broadway, New York, New York 10018.]

(c) (No change.)

12:105-5.11 Warning signs
(a)-(b) (No change.)

[(c) The sign required by (a) above shall read as follows or express an equivalent warning:

The following people should not use this ride:
1. Those under influence of alcohol
2. Those under influence of narcotics
3. Those with heart conditions
4. Pregnant women
5. Handicapped people
6. Those subject to motion sickness
7. Those with back ailments]

(c) The sign as required by (a) above shall read as follows or express an equivalent warning:

The following people should not use this ride:
1. Those who are pregnant;
2. Those with heart conditions;
3. Those with serious back problems;
4. Those subject to motion sickness;
5. Those with serious health problems or serious physical disabilities; and
6. Those under the influence of alcohol or drugs.

(d) The owner shall not post any sign which prohibits or discourages all handicapped persons from using the ride. For example "No Handicapped" shall not be used as an equivalent warning.

SUBCHAPTER 6. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:195-6.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter is as follows:

1. ANSI A17.1-1978, Elevators, Dumbwaiters, Escalators and Moving Walks;
2. ANSI B77.1-1982, Aerial Passenger Tramways;
3. ASTM F698-1983, Physical Information to be provided for Amusement Rides and Devices;
4. ASTM F747-1982, Definitions of Terms Relating to Amusement Rides and Devices;
5. ASTM F770-1983, Operation Procedures for Amusement Rides and Devices;
6. ASTM F846-1983, Testing Performance of Amusement Rides and Devices;
7. ASTM F853-1983, Maintenance Procedures for Amusement Rides and Devices;
8. ASTM F893-1984, Inspection of Amusement Rides and Devices;
9. BOCA-1981, Basic Building Code;
10. NFPA No. 70-1984, National Electrical Code;
11. NJAC 12:90, Boilers, Pressure Vessels and Refrigeration;
12. NJAC 5:23, Uniform Construction Code;
13. N.J.S.A. 5:3-31 et seq., Carnival-Amusement Ride Safety Act;

14. N.J.S.A. 17:22 et seq., Surplus Lines Law;
15. N.J.S.A. 34:6-47:1 et seq., High Voltage Proximity Act;

12:195-6.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
36 West State Street, Room 311
Trenton, New Jersey

12:196-6.3 Availability of documents from issuing organization

Copies of the referred to standards and publications in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:195-6.1.

ANSI—American National Standards Institute
1430 Broadway
New York, New York, 10018

ASTM—American Society for Testing and Materials
1916 Race Street
Philadelphia, Pa. 19103

BOCA—Building Officials and Code Administrators
4051 West Flossmoor Road
Country Club Hills, Illinois 60477-5795

NFPA—National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

NJAC—New Jersey Administrative Code
12:90 Copies available from:
Office of Boiler and Pressure Vessel Compliance
New Jersey Department of Labor
CN 392
Trenton, N.J. 08625-0392

NJAC—New Jersey Administrative Code
5:23 Copies available from:
Construction Code Enforcement Bureau
Department of Community Affairs
Central Services/Publications
CN 805
Trenton, N.J. 08625-0805

NJSA—New Jersey Statutes Annotated
Copies available from:
Office of Safety Compliance
New Jersey Department of Labor
CN 386
Trenton, N.J. 08625-0386

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Amusement Games Control

Proposed Amendments: N.J.A.C. 13:3-3.4, 3.8, and 7.9

Proposed New Rule: N.J.A.C. 13:3-3.17

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control, and Amusement Games Control Commissioner.
Authority: N.J.S.A. 5:8-79, 5:8-79.1 and 5:8-85.
Proposal Number: PRN 1986-70.

Submit comments by May 7, 1986 to:
John F. Vassallo, Jr., Commissioner
Bureau of Amusement Games Control
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex
CN-087
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments and new rule to the basic regulatory provisions of the Bureau of Amusement Games Control will clear up interpretation problems that have existed both in the conduct of the games and in the licensing of certain games.

The amendment to N.J.A.C. 13:3-3.4 will resolve a problem that has existed regarding the holding of a player's monetary change. The amendment will clarify that the change must be delivered immediately. This has been the Bureau's policy and interpretation but was never clearly stated.

The amendment to N.J.A.C. 13:3-3.8 establishes that all games, even unpaid for games, must be operated in the same manner. This eliminates an operator from showing a game in which the desired result is easily attainable when the actual game is more difficult.

The amendment to N.J.A.C. 13:3-7.9 establishes a new certification to cover three games that previously fell under separate certifications. The establishment of a new certification will eliminate any area of misunderstanding.

The proposed new rule, 13:3-3.17, will establish clear guidelines on the signage that a licensee is required to post.

Social Impact

The proposed amendments should serve to eliminate misunderstanding between the public and the licensees, thus making the games more enjoyable for the public to play. The new certification will make the licensing of the three named games uniform throughout the municipalities in which licenses are issued.

Economic Impact

It does not appear that the proposed amendments will have any economic effect on the licensees, concerned municipalities or the general public, since the amendments essentially incorporate existing practice and procedure into the existing regulations for purposes of clarity.

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

13:3-3.4 Maximum fee for participation in game

No licensee shall charge or accept, or allow, permit or suffer, directly or indirectly, the charging or accepting of more than $1.00 from any one player or participant in any one amusement game for each single or multiple entry fee or payment for the privilege of participating in the game, except that the maximum charge for participation in any arcade game certified in Subchapter 7 (Certification of Permissible Games) under certification No. 2 shall not exceed $0.50 for any one game or play. **Upon receipt of currency greater than $1.00 the licensee must remit the appropriate change to the player immediately.**

13:3-3.8 Deceptive, fraudulent or misleading advertising or practice; conduct of games

(a) (No change.)

(b) All games, **including free, sample or tryout games,** must be conducted in their original certified form and any changes must receive prior written authorization by the Commissioner.

(c) (No change.)

[(d) Rules and instructions for the game must be clearly and conspicuously posted on a sign entitled "Rules".]

13:3-3.17 Required signs

(a) Rules and instructions for the game must be clearly and conspicuously posted on a sign entitled "Rules." Minimum size for rule signs is 8½ inches by 11 inches with readable letters at least one-half inch high. The color of the print and background material must be contrasting.

(b) The price to play must be clearly posted and visible from all player positions. If the price to play is not on the rules sign, it must be on a sign with the minimum dimensions of 5 inches by 5 inches, with the color of the print and background material contrasting.

13:3-7.9 Permissible amusement games certifications

(a) Pursuant to P.L. 1959, c.108 and this subchapter there is hereby granted certification of permissibility for licensing of the following amusement games:

1.-3. (No change.)

4. Certification No. 4. Competitive games wherein several players upon payment of fee are permitted to compete against each other for a prize to be awarded to the player who first achieves the required result, generally known as the Bowlo Game, Fascination Game, Greyhound Game, Skilo Game, Throw Fascination Game, [Pan Game] and Water Gun Game, and such similar games as may from time to time be certified pursuant to this subchapter. A Stop and Go Game type of installation, as set forth in (a)5 below (Certification No. 5), and subject to the same requirements, limitations and restrictions contained in (a)5 below, may be utilized in the conduct of such games.

i. Only one of the above games may be licensed under one license.

ii. There is no restriction on the number of units that may comprise the game.

5.-8. (No change.)

9. Certification No. 9. A game of chance incorporating a laydown board marked in segments bearing numbers, names or symbols whereon the player or players place the entry fee as an indication of the choice of expected winner, which is determined by a nonelectrical and nonmechanical device, set in motion by a player or players, coming to rest, generally known as Pan Game, Crazy Ball and Crazy Block.

i. Only one of the above games may be licensed under one license.

(a)

BOARD OF MEDICAL EXAMINERS

Termination of Pregnancy

Proposed Amendment: N.J.A.C. 13:35-4.2

Authorized By: Board of Medical Examiners, Edward W. Luka, M.D., President
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1986-101.

Submit comments by May 7, 1986 to:
Charles A. Janousek, Executive Secretary
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The proposed amendment incorporates into the rule text most of the material which was previously published under the denomination of Guidelines in the New Jersey Register of February 3, 1986 at 18 N.J.R. 286(a). In addition, the rule requires that physicians performing termination of advanced pregnancies in out-patient settings must have surgical privileges at a nearby licensed hospital to assure the reliable availability of operating room resources in the event of complications. This publication also corrects a printer's error appearing in the prior adoption notice at 18 N.J.R. 288, section (f)7ix which, as adopted originally by the Board, required data to be maintained for patients suffering certain kinds of complications including the number of patients, if any, who died within 30 days.

Social Impact

This rule was originally published at 17 N.J.R. 2738(a) in the form of rule with accompanying guidelines to interpret specified rule sections. After adoption of the rule, effective February 3, 1986 at 18 N.J.R. 286, the validity of the adoption process was challenged in a proceeding currently pending in the Appellate Division of Superior Court. On February 20, 1986 the Court stayed those aspects of the adopted rule which had not been included in the basic rule text as originally published. The court order of February 21, 1986 states that: "The effectiveness of N.J.A.C. 13:35-4.2 is stayed only insofar as any aspect of the new rule was not specifically included in the published proposed rule. All aspects of the rule which were specifically published shall remain in full force and effect. This order is effective *nunc pro tunc*. As the Board believes that all of the provisions which it intended to adopt in January 1986 should be available for protection of the public, this re-publication is being made. The most significant change is that in section (f)2, requiring that the physician must have admitting and surgical privileges at a nearby hospital which possesses certain resources. This change was made at the suggestion of the New Jersey Department of Health. The purpose of the amendment is to assure that a physician undertaking to perform an outpatient termination procedure on a patient at an advanced stage of pregnancy will have suitable hospital surgical privileges to promptly and effectively deal with the risk of foreseeable complications. These include, for example, uterine perforation, incomplete evacuation, peritonitis, septic shock, cardiovascular collapse from toxic reaction to anesthesia, hemorrhage. Thus, it is anticipated that if a patient experiences any of these difficulties, the attending surgeon at the clinic, who is familiar with her situation, will be able to accompany her in a readily available ambulance directly to the hospital and into the operating room, without loss of precious time seeking a new operating surgeon. Any lesser requirement would magnify the patient's danger since it would be unknown if a suitable surgeon were available when needed, and who would already be aware of the patient's blood type, history and current problem, etc. A physician who has been found insufficiently trained in surgery, or is unknown to that hospital, should not be commencing an elective surgical procedure with significant risks in an outpatient setting.

Economic Impact

The economic impact should be entirely beneficial to patients, since in the event of complications, the treating doctor with whom the patient has already established a relationship will be able to provide proper follow-up care to that patient. Those physicians affected will be only those who are certified with the Board to be performing advanced stage terminations from 19 weeks LMP and later, as only those physicians must have both admitting and surgical privileges at a nearby licensed hospital accessible within 20 minutes driving time during the usual hours of operation of the clinic. The economic impact on those physicians will be that they may be required to pay staff membership dues to that hospital. The Board believes this is a small impact in comparison with the significant protection to the public made available by this provision. The Board anticipates no other adverse impact on the treating physician since accepted standards of practice already include appropriate consideration of surgical risks and availability of proper follow-up care at nearby hospitals so as to avoid further jeopardizing the patient's condition by adding the need for a long emergency transport or taking the chance on the availability of a new surgeon suitable for the task but unknown to and unknowledgeable about the patient. Elective surgeries should minimize the introduction of these new risk factors when an emergency arises, and proper planning by the surgeon will obviate those problems. It is not required that the original surgeon be the one to provide follow-up care at the hospital; only that the original surgeon be ready and able and authorized to do so if necessary.

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

13:35-4.2 Termination of pregnancy

(a) This rule is intended to regulate the quality of medical care offered by licensed physicians for the protection of the public, and is not intended to affect rules of the Department of Health establishing institutional requirements. To the extent that rules of the two agencies may overlap, the Medical Board recognizes and relies upon the regulatory procedures of the Department of Health in establishing minimum acceptable standards for non-physician personnel, equipment and resources, the adequacy of the physical plant of the facility in which surgical procedures shall be performed, and the facility's interrelationship with an adequate network of health care-related resources such as ambulance service, etc.

(b) The termination of a pregnancy at any stage of gestation is a procedure which may be performed only by a physician licensed to practice medicine and surgery in the State of New Jersey.

(c) Provisions of this rule referring to stage of pregnancy shall be in terms of **weeks from start of last menstrual period or** "weeks LMP." For example, the stage of pregnancy at 12 weeks' gestational size, as determined by a physician, is the equivalent of 14 weeks from the first day of the last menstrual period (LMP).

(d) After 14 weeks LMP, any termination procedure other than dilatation and evacuation (D & E) shall be performed only in a licensed hospital.

(e) **15 weeks through 18 weeks LMP:** After 14 weeks LMP and through 18 weeks LMP, a D & E procedure may be performed either in a licensed hospital or in a licensed ambulatory care facility (referred to herein as LACF) authorized to perform surgical procedures in accordance with Department of Health chapter N.J.A.C. 8:33A. The physician may perform the procedure in an LACF which shall have a Medical Director who shall chair a Credentials Committee. The Committee shall grant to operating physicians practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the LACF.

(f) **19 weeks through 20 weeks LMP:** A physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in an LACF shall first file with the Board a certification **signed by the Medical Director** that the physician meets the eligibility standards set forth in 1. through 7. below and shall comply with its requirements and the current guidelines of the Board interpreting the rule.

[Rule provisions for which guidelines have been established are marked with an asterisk. Those guidelines, which shall be available from the Board, shall be based upon medical standards and practices which are deemed to promote the health and safety of patients receiving advanced D & E procedures in a non-hospital setting. Advance notice of any change in guidelines shall be sent to each physician certified pursuant to this rule.]

1. The physician is certified or eligible for certification by the American Board of Obstetrics-Gynecology or the American Osteopathic Board of Obstetrics-Gynecology, and the physician satisfactorily completes at least 15 hours of Continuing Medical Education each year in obstetrics-gynecology.

2. The physician has admitting **and surgical** privileges at a nearby licensed hospital which has an operating room, blood bank, and an intensive care unit. **The hospital shall be accessible within 20 minutes driving time during the usual hours of operation of the clinic.**

3. The procedure shall be done in a location which is designated by the Department of Health as a licensed ambulatory care facility (LACF) authorized to perform surgical procedures as in subsection (e) above. **The LACF shall be**

licensed pursuant to N.J.A.C. 8:33A and 8:43A as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been admitted for surgery and until the patient has been discharged from the recovery room.

4. The procedure shall be done in an LACF which shall have a Medical Director and a Credentials Committee which have duly evaluated the training, experience and skill of the physician at continuous and successive levels of complexity of the D & E procedure in pregnancies advancing in stages from 18 weeks LMP through 19 weeks LMP through 20 weeks LMP, and the physician has been granted successive practice privileges consistent with management of the increased risk to the health and safety of the patient at that stage **documented in the personnel file maintained for that physician.** (Where the applicant physician is also the Medical Director, the physician shall submit a certificate from the Administrator or Chief of Department of a hospital **or the Medical Director of an LACF** where the applicant has been evaluated and credentialed in a comparable manner.) **The physician new to the LACF shall have his or her operating technique evaluated initially and at least yearly by the Medical Director or his or her designee who shall possess appropriate experience with D & E procedures at least as advanced as those for which the applicant physician seeks approval. The applicant shall be evaluated during that number of procedures which shall be adequate to achieve a sufficient professional skill, and the evaluation procedure shall be documented in the personnel file maintained for that physician. The Medical Director shall agree to review the charts of all patients who suffer complications and in addition shall review charts at random, and shall calculate the complication rate of each physician.**

5. The physician shall perform the procedure only on a patient who has been examined and found to be within the eligibility criteria established for advanced D & E procedures in the LACF setting.

6. The procedure shall be performed in an LACF providing adequate staff support and resources for the operative procedure as well as interim follow-up and post-operative care, and where a physician is available and readily accessible 24 hours/day to respond to any postoperative problem.

7. The physician shall cooperate with the Medical Director to maintain contemporaneous and cumulative statistical records demonstrating the utilization and safety record of each stage procedure and of each surgeon. Said records shall be available for inspection by the Board and copies shall be submitted to the Board semi-annually. **These records shall include the following information and data shall be maintained in records compiled monthly, but individual patients comprising the lists shall be identified only by date and by initials and/or case number:**

i. Number of patients who received termination procedures;

ii. Number of patients who received laminaria or osmotic cervical dilators who failed to return for completion of the procedure;

iii. Number of patients who reported for postoperative visits;

iv. Number of patients who needed repeat procedures;

v. Number of patients who received transfusions;

vi. Number of patients suspected of perforation;

vii. Number of patients who developed pelvic inflammatory disease within two weeks;

viii. Number of patients who were admitted to a hospital within two weeks of the procedure;

ix. Number of patients who died within 30 days.

Subparagraphs ii. through ix. above shall be summarized by number and percentage of monthly total for post-18 week procedures. The Board shall inspect such reports monthly for the first five months and at such further monthly intervals as it deems necessary.

(g) **After 20 weeks:** A physician may request from the Board permission to perform D & E procedures in an LACF and after 20 weeks LMP. Such request shall be accompanied by proof, to the satisfaction of the Board, of superior training and experience as well as proof of support staff and facilities adequate to accommodate the increased risk to the patient of such procedure.

(h) The physician shall make suitable arrangements to insure that all tissues removed shall be properly disposed of by submission to a qualified physician for pathologic analysis or by incineration or by delivery to a person/entity licensed to make biologic and/or tissue disposals in accordance with law including [applicable] rules of the Department of Health **applicable to an LACF.**

[GUIDELINES]

[Following are interpretations of the specified rule sections.]

[5. To maximize the likelihood of safe surgeries, the physician shall perform the procedure only in an LACF which has established a list of eligibility-ineligibility criteria. The physician shall require that an adequate medical history be obtained. In addition, there shall be specific inquiry on usage of drugs, whether prescribed or obtained in any other manner; the identify, quantity and last time of usage shall be recorded and brought to the attention of the surgeon. The patient's weight, temperature and blood pressure shall be recorded.

A physical examination shall be performed, by a physician, which will typically include a breast examination where indicated, heart and lungs examination, abdominal palpation, pelvic examination including inspection of the cervix and bimanual examination including estimation of gestational size, and rectal examination if appropriate; inspection and examination of extremities for variscotities and signs of phlebitis and further examination as indicated by history or laboratory findings. All women with significant medical, gynecological, psychological or hematological abnormalities must be considered for referral for medical evaluation.

If the patient is more than 14 weeks LMP, or there is any difficulty in ascertaining uterine size or any question of pelvic pathology, ultrasonography shall be performed.

The physician shall perform the procedure in an LACF only when the absence of contraindications to performance of the procedure in a non-hospital setting has been established and documented in the patient's record. The contraindications shall include but not be limited to the following circumstances; (a) no available veins (b) stage of pregnancy undetermined; (c) stage of pregnancy exceeding physician's current certification from the Board; (d) inadequate instrumentation for all eventualities; (e) patient unable to cooperate; (f) extreme obesity precluding the use of conventional instruments; (g) severe vaginitis; (h) acute infections; (i) large myomas; (j) significant medical conditions including blood dyscrasias, cardio-vascular or respiratory disorders, etc.; (k) hematocrit 30% or less. Referrals for a hospital procedure shall be made promptly for any patient found ineligible for an LACF procedure because of medical contraindications.

6. The physician shall perform the procedure only in an LACF fully staffed and with instrumentation and supplies and emergency equipment appropriate to the advanced procedures, all in accordance with the Department of Health requirements and accepted standards of practice. A policy shall have been established regarding use of laminaria or osmotic cervical dilators, including maintenance of contact and follow-up with patients permitted to leave the LACF overnight while awaiting completion of the procedure. The policy shall include written instructions to the patient in addition to oral counseling, to assure that the patient understands the risks and the necessity of returning and of contacting the LACF in the event of any complication.

The physician may delegate the administration of anesthesia to be given by a Certified Registered Nurse Anesthetist whose registration and certification is current, provided that the operating surgeon or another physician on the premises is available to assist in the event of anesthetic complications, and that physician is knowledgeable in the use of the anesthetic and in resuscitative measures including CPR.

The physician shall assure that drugs on the premises, including those use for anesthesia procedures, are controlled by inventory and specific management policy in accordance with pertinent rules of the federal Drug Enforcement Administration, the State Department of Health, and any applicable rules of the Medical Board.

The physician shall assure that a patient is required to remain in the recovery room for a minimum of one hour and until in satisfactory condition for discharge, which shall be determined and noted in the chart by a professional registered nurse or a physician, and that a physician remains on the LACF premises until the last patient has been discharged from the recovery room. The patient shall be given written instructions on possible complications and directed to contact an LACF physician who shall be available and readily accessible on a 24 hour/day basis.

The physician shall perform the procedure in an LACF having a specific policy for examination of tissues removed, and a report shall be kept in the patient's file.

The physician shall perform the procedure in an LACF, having a specific policy for treatment and follow-up where there is an adverse medical occurrence such as: (a) incomplete termination procedure requiring hospitalization; (b) failed procedure resulting in second procedure off premises or a continuing pregnancy; (c) perforation or suspected perforation; (d) hemorrhage (defined as approximately 500 cc or above at one event); (e) infection (defined as fever of 100.4 degrees F. or greater on 3 or more days).]

(a)

STATE ATHLETIC CONTROL BOARD

Rules to Safeguard Health of Boxers

Proposed Amendments: 13:46-12.1 and 12.6

Authorized By: State Athletic Control Board, Larry Hazzard, Commissioner.
Authority: N.J.S.A. 5:2A-1 et seq., specifically, 5:2A-7(c) (P.L. 1985, c.83).
Proposal Number: PRN 1986-102.

Submit comments by May 7, 1986 to:
Larry Hazzard, Commissioner
State Athletic Control Board
CN 180, Justice Complex
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments are designed to protect the health and safety of boxers competing in New Jersey and to ensure that these boxers are physically and mentally fit for competition.

The amendments to N.J.A.C. 13:46-12.1(a) reflect the fact that under the act creating the State Athletic Control Board, N.J.S.A. 5:2A-1 et seq., physicians who conduct medical examinations of boxers will be appointed by the State Athletic Control Board, rather than by the Commissioner. Similar amendments are proposed in N.J.A.C. 13:46-12.1(e) and N.J.A.C. 13:46-12.6(a). Further amendments of a similar, technical nature will be proposed in the future when the State Athletic Control Board, which became operational on February 27, 1986, has had the opportunity to completely review all of the other existing regulations and to propose changes of a more substantive nature.

The Board, however, has determined, after a thorough review of the matter, that substantive changes must be made in two of the existing regulations at the present time. The amendment to 13:46-12.1(c) will require that the pre-licensure medical examinations specified in N.J.A.C. 13:46-12.1(b) be conducted no earlier than 30 days but no later than one day prior to licensure or the renewal thereof. The existing regulation permits the pre-licensure examination to be conducted up to ten days prior to licensure. It has been the Commissioner's experience that a boxer will usually wait until the last possible day to submit to a pre-licensure examination. Thus, under the existing rule, boxers would usually be examined ten days prior to licensure. In some instances, boxers would continue to contact train after the medical examination was completed, thus creating a risk that the boxer would incur an injury between the time of examination and the time of licensure. The possibility exists that such an injury might go undetected since the pre-fight examination required by N.J.A.C. 13:46-12.2 is not as comprehensive as the pre-licensure examination, which includes an electrocardiogram (EKG) and an electroencephalogram (EEG).

Therefore, the proposed amendment would permit the boxer to wait until the day prior to licensure to submit and complete the pre-licensure medical examinations. If the boxer does so, the Board and its physicians would be assured that

the latest medical information concerning the boxer would be available to them prior to making a licensure determination. In the case where a boxer undergoes his pre-licensure examinations closer to the 30 day outside time limit, the Commissioner would have the authority under N.J.A.C. 13:46-12.1(d) to order additional medical examinations to ensure that a boxer was not injured after the pre-licensure examinations had been completed.

A boxer will not be permitted to undergo the pre-licensure examinations on the day he is licensed or on the day of a bout. It is the Board's belief that a boxer should be resting on the day of the bout and not be undergoing comprehensive medical examinations. A boxer appearing on the day of a bout who has not undergone the required pre-licensure examinations will not be licensed. The pre-licensure medical examinations, therefore, must be completed by the day before licensure. The examination results will then be given to the Board's physicians for review. Pursuant to N.J.A.C. 13:46-12.1(e), no boxer shall be granted a license to box unless the Board's physicians have certified his fitness to engage in a boxing contest.

The amendments to N.J.A.C. 13:46-12.6 will permit the Board's physicians to determine the nature and extent of any medical examinations which a boxer, who is technically knocked out in a boxing match, must undergo as a precondition to entering the ring again. Under the proposed amendment, as under the current regulation, a boxer who is knocked out in a bout will be suspended for at least 60 days and will not be permitted to enter the ring again until a comprehensive medical examination has been performed and a Board physician has certified the boxer's fitness to engage in a boxing contest. Under the proposed amendment, a boxer who is technically knocked out in a bout will still be suspended from boxing for at least 30 days. However, unlike under the existing rule which mandated that a technically knocked-out boxer undergo the same type of medical examination as a knocked-out boxer, the amendment would require the Board's attending physician to determine the nature and extent of any medical examinations to which the boxer must submit as a precondition to entering the ring again.

The proposed amendment is necessary because there are some instances when a boxer who has not been seriously injured or hurt in a bout will be ruled "technically knocked-out." Such instances would include a case where a boxer is too fatigued to continue the bout or where a boxer falls and twists an ankle. Under such circumstances, a comprehensive medical examination (including an EKG and and EEG) might not be necessary to determine the boxer's continued fitness to engage in a boxing contest. Thus, where a boxer has been technically knocked-out in a bout, the determination of the nature and extent of any medical examinations that might be required will be made by the attending physician. The health and safety of the boxer will continue to be protected and the boxer may be saved the expense of a medically unnecessary battery of examinations.

Social Impact

The proposed amendments would have a positive social impact. The proposed amendments will ensure that the health and safety of boxers competing in New Jersey will be protected.

Economic Impact

Because the proposal provides for safer boxing and fosters increased public confidence in the sport, the economic impact would be positive. In the case of a technically knocked-out boxer, the costs of some presently required medical testing might be saved if the proposal is adopted. With regard to boxers who reside outside New Jersey, some travel and lodging costs might be saved since a boxer will be able to have the pre-licensure examinations performed the day before licensure, thus obviating the need for the boxer to come to New Jersey ten days before licensure or a bout to be examined and then again on the day before the bout.

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

13:46-12.1 Pre-licensure medical examinations

(a) A boxer, as a condition to licensure or to the renewal of licensure by the [Commissioner] **State Athletic Control Board** shall undergo a thorough medical examination by a physician or physicians appointed by the [Commissioner] **State Athletic Control Board,** one of whom is certified in neurology or neurosurgery, to establish his physical and mental fitness for competition.

(b) (No change.)

(c) An examination shall be made no earlier than 30 days but no later than [10 days] **one day** prior to licensure or the renewal thereof.

(d) (No change.)

(e) No applicant shall be granted a license unless the physician appointed by the [Commissioner] **State Athletic Control Board** has certified his fitness to engage in a boxing contest.

13:46-12.6 Medical examination of boxer after severe injury or actual knockout

(a) Any boxer who has sustained any severe injury or actual knockout in a bout shall within 24 hours be thoroughly examined by a physician appointed by the [Commissioner] **State Athletic Control Board.** Such examination shall include any or all of the procedures as provided in N.J.A.C. 13:46-12.1(b) as the examining physican may decide are necessary. In all cases, the examination shall include the administration of an electrocardiogram and electroencephalogram and the conduct of a thorough ophthalmological examination and a neurological examination.

(b) Any boxer who is knocked out in a boxing match shall be suspended from boxing for a 60-day period. [Any boxer who is technically knocked out in a boxing match shall be suspended for a 30-day period.] Upon the physician's order, the Commissioner shall extend the suspension already imposed.

1. A boxer who is knocked out in a boxing match shall not be permitted to enter the ring again until a thorough medical examination of the type required by N.J.A.C. 13:46-12.1(b) has been performed by a physician appointed by the State Athletic Control Board and said physician has certified the boxer's fitness to engage in a boxing contest.

[(c) No boxer who has been suspended under the provisions of (b) above shall be permitted to enter the ring again until a thorough medical examination of the type required by (a) above has been performed by a physician appointed by the Commissioner and said physician has certified the boxer's fitness to engage in a boxing contest.]

(c) Any boxer who is technically knocked out in a boxing match shall be suspended from boxing for a 30-day period. Upon the physician's order, the Commissioner shall extend the suspension already imposed.

1. The attending physician shall determine the nature and extent of any medical examinations which a boxer, who is technically knocked out in a boxing match, must undergo as a pre-

condition to entering the ring again. Any medical examinations which are ordered must be performed by a physician appointed by the State Athletic Control Board. The boxer shall not be permitted to enter the ring again until the medical examinations ordered by the attending physician have been completed and a physician appointed by the State Athletic Control Board has certified the boxer's fitness to engage in a boxing contest.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES
Office of Cable Television

Reporting of, and Credit for Service Outages

Proposed Amendments: N.J.A.C. 14:18-1.2 and 3.9

Authorized By: Office of Cable Television, Bernard R. Morris, Director.
Authority: N.J.S.A. 48:5A-6 and 10.
Proposal Number: PRN 1986-85.

A **public hearing** concerning the proposal will be held on:
Tuesday, April 29, 1986 at 10:00 A.M.
Board of Public Utilities
Hearing Room I
1100 Raymond Boulevard
Newark, NJ 07102

Submit comments by May 7, 1986 to:
Bernard R. Morris, Director
Office of Cable Television
1100 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

The primary purpose of this proposal is to formulate a rule by which cable television subscribers may receive credit for instances where the cable company experiences service interruptions. This rulemaking concerns "outages" which are the total loss of the audio and visual portion of any level of cable television service for which the company imposes a separate charge. It includes only interruptions affecting the company's distribution plant. The distribution plant is the hardware, wires, electronics, passive equipment and other instrumentalities which deliver the cable television signal to the drop line feeding an individual subscriber's home. As such, outages can range from affecting one subscriber to affecting the entire system. If a subscriber experiences a service interruption which is not the result of an outage the subscriber would be entitled to a rebate if the interruption lasts more than 24 hours.

The proposed amendments would allow a subscriber to receive a credit on his or her bill for any outage which lasts more than six hours. The amount of credit is to be in one day units and if an outage extends more than 24 hours the subscriber shall receive a credit for each calendar day, or part thereof which exceeds six hours, during which service was out. In order to receive a credit the subscriber must make a request for a credit. Such requests may be by phone or in writing but must be made within 30 days of the outage. Requests may also be received by the Office of Cable Television (Office) or by the municipality's designated complaint officer.

A cable television company would have the option of giving a subscriber a rebate rather than providing a credit on the bill. This option is allowed because the Office recognizes some cable operators may have billing systems which do not allow a credit to appear in an account.

The amended rule would specifically relieve cable television companies from any obligation to subscribers for indirect or consequential damages resulting from an outage unless the company expressly agrees to such liability. In instances where providing such a credit or rebate would impose an undue hardship on the cable company, the rule allows the company to petition the Board for a waiver of the credit requirement.

Cable operators would also be required to notify subscribers on a periodic basis of the procedures by which credits may be obtained. Any manner which is deemed by the Office to be sufficient for a company to inform subscribers as to the identity of the complaint officer pursuant to N.J.S.A. 48:5A-26(c), is sufficient to notify subscribers of the credit procedure.

This proposal differs from the previous proposals in several important respects. (See: 14 N.J.R. 972(a); 15 N.J.R. 612(b), and 15 N.J.R. 1447(a).) The requirement that cable operators credit all subscribers which are affected by an outage, whether they request a credit or not, has been deleted. Cable operators would also now be allowed to receive a waiver of the credit requirement if providing credit would cause an undue hardship to the company. This new proposal, however, does remove the instances where a company would not be liable for the outage. All outages which exceed six hours in length would allow subscriber credits unless a waiver is obtained. The only exception would be that a cable operator would not be required to credit a subscriber if it could demonstrate restoration of service was not possible because of factors beyond the control of the company. A subscriber would be entitled to a credit if the company does not restore service within six hours of the time restoration of service becomes possible.

In the comments to the previous proposals concerning this rule the Board received numerous comments from the cable television industry. The most strenuous opposing comments concerned the "automatic" refund or credit provision of the most recent proposal at 15 N.J.R. 1447(a). The industry has also consistently maintained that there is no need for such a rule since most companies will provide credit in the interest of maintaining subscriber harmony.

In the intervening time since the last proposal the Office has monitored developments in the cable television industry and the attitudes reflected in subscriber complaints. These lead to the conclusion that some type of uniform outage credit rule is appropriate. The Office has found that subscribers object to paying for cable television service in those instances where the service is temporarily unavailable. Even though many companies have credit policies, because of their voluntary nature and varying scope the Office feels that this issue should best be settled through a uniform rule applicable to all cable subscribers across the State.

The threshold level of requiring credits if an outage lasts six or more hours has been chosen because of the nature of cable television service and the public's viewing habits. Based up on the average viewing day, if a subscriber is aware that he or she has been without service for six hours, then that subscriber has been deprived of a full viewing day of cable service. The enactment of such a threshold will provide cable operators with an additional incentive to repair outages quickly. The 24 hour threshold for service interruptions which are not outages is appropriate because the Office recognizes the fact that cable operators treat outages differently than individual complaints. The primary objective is to restore service to the greatest number of subscribers in the most efficient manner. Therefore, outages are generally given a higher priority than individual service calls. The Office believes that this justifies applying a different threshold for outages than for individual service interruptions.

The amended rule would contain only one exception to the applicability of the credit requirement. The exceptions of the previous proposal were based on the cause of the outage. The Office feels that if these exceptions remained they would make the outage rule overly burdensome or even impossible to administer. This is because it is often impossible to make a definite finding as to the cause of an outage. Also, from a subscriber's viewpoint the cause of the outage is not the critical factor, it is the fact that the subscriber is without service. The Office recognizes, however, that it would be unfair to require cable operators to give credits for outages which they are unable to repair because of factors beyond their control. Examples of this would include outages caused by power failures to the company's plant and equipment. The proposal would not require a cable operator to provide credits in these instances. A further protection for companies is that in extreme cases they are allowed to apply to the Board for a waiver of the credit provision.

The Board is cognizant of the concerns of the cable operators with the prior proposals. The requirement that cable companies supply credit to all subscribers affected by an outage, regardless of whether they request on or not, is therefore being removed. The Office has found that the cost and effort involved on a cable company's part in implementing an "automatic" credit would far outweigh any possible gains. To determine with any reasonable degree of specificity which subscribers were out of service would result in a company's field personnel spending more time tracing an outage to the extremities than in correcting the problems. This would also result in an enormous burden on a company's office staff to process the credits.

This rulemaking also proposes to change the reporting requirements which cable operators must follow with respect to outages. The proposed rule would require companies to submit to the Office a brief description of all outages which exceed two hours in length and which affect 50 or more subscribers. Each outage would be summarized in a one page form prescribed by the Director and all outage reports for each month would be sent to the Office at the end of that month. Additionally, a cable system would be required to notify the Office via telephone of any outage which exceeds one hour in length and which affects more than 500 subscribers.

The proposed change will allow the Office to more closely monitor outages in the cable television industry and the response time of the industry in correcting these problems. The Office does not believe this will create an appreciable burden on the industry since cable companies are currently required to keep a record of each outage and maintain that record for one year.

Cable companies will also now be required to notify the Office by telephone of any outage affecting more than 500 subscribers and lasting more than one hour. This replaces the current requirement in which different companies must report outages by differing size depending on the number of subscribers served by the company.

The Office will monitor the continuing changes in cable technology, such as the development of pay-per-view, and will evaluate the effect these changes will have on N.J.A.C. 14:18-3.9.

Social Impact

The proposed amendments will help to ensure that subscribers to cable television are not required to pay for service during periods in which the service is not available. The amendments will also provide added incentives for cable companies to respond quickly to outages. The changes in the outage reporting requirements will give the Office greater information concerning outages and the corresponding industry response.

Economic Impact

The proposed amendments would result in some subscribers receiving credit for instances in which cable television service is not available. Cable operators would be required to pay credits for certain outages and would be required to take the necessary administrative steps to process those credits. The Office believes this balance falls in favor of requiring credits. Cable operators will also be required to submit additional outage reports to the Office. This should not be a large burden since companies are currently required to keep this information.

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

14:18-1.2 Definitions

...

"Distribution plant" is the hardware, wires, electronics, equipment and other instrumentalities which deliver cable television service to the drop line feeding an individual subscriber's home.

...

"Outage" means the total loss of audio and visual portion of any level of cable television service for which the cable television company imposes a separate charge and which affects the cable television company's distribution plant.

...

14:18-3.9 Interruptions **and outages**

(a) Each CATV company shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies of service and, when such interruptions occur, service shall be restored as promptly as possible, consistent with safe practice.

(b) Each CATV company shall keep a record for a period of one year of each [interruption of service] **outage.**

(c) Records of [major interruptions of service] **outages** shall be kept in a manner suitable for analysis for the purpose of minimizing possible future interruptions and shall include the time, cause and duration of the interruptions as well as the remedial action taken.

[(d) Interruption to service by reason of any act of God, accident, strike, legal process or governmental interference, where service to subscribers is interrupted for at least two hours in accordance with the chart on the next page:

Subscribers Served	Interrupted
500 or less	20
501 to 1,000	50
1,001 to 10,000	100
10,001 to 100,000	200
100,001 or more	1,000

Subscribers shall be reported to the Office by CATV company by the speediest means of communication available followed by a detailed written report.]

(d) All outages where service to subscribers is interrupted for at least two hours and which affect 50 or more subscribers shall be reported by each cable television company to the Office on a form prescribed by the Director. Such reports shall be collected and forwarded to the Office monthly, and shall be sent to the Office within 15 days of the end of the month for which the report is filed.

1. In addition to (d) above, cable companies must report to the Office by telephone during the course of the outage all outages which exceed one hour in length and affect more than 500 subscribers.

(e) Planned interruptions for operating reasons shall always be preceded by reasonable notice, preferably on the local organization channel, to all affected subscribers, and the work shall be planned to minimize subscriber's inconvenience.

(f) A cable television company shall credit subscribers for outages as follows:

1. In the event of an outage lasting six or more hours the company shall make an appropriate credit on the subscriber's bill.

2. The amount of credit shall be in one day units, prorated on the basis of the subscribers monthly rate for each service not available.

3. For outages which extend more than 24 hours, subscribers shall receive a credit for each calendar day or part thereof if greater than six hours, during which service is out.

4. The cable television company shall not be liable to a subscriber for any indirect or consequential damages resulting from the outage unless the cable television company expressly agrees to such liability.

5. In order to obtain a credit, subscribers must notify the cable television company by phone or in writing within 30 days after any such outage; or else, within 30 days notify the Office or other designated complaint officer.

6. A cable television company may, at its option, provide a subscriber with a rebate rather than a credit on the subscriber's bill to fulfill the requirements of this subsection.

(g) A cable television company shall not be required to provide a credit or rebate under (f) above if:

1. the cable television company can demonstrate that restoration of service was not possible within the six hour period due to factors beyond control of their company; and

2. If service is restored within six hours after the restoration of service becomes impossible.

(h) Any cable television company may petition the Board for a waiver of providing credit required by (f) above in the event such credits would create an undue hardship on the cable television company.

(i) In instances where a subscriber is without cable television service for at least 24 hours, and the loss of service is not the result of an outage, the company shall credit or rebate at the company's option, the subscriber for one day unit for each 24 hour period in which the subscriber was without service. No cable company shall be required to provide a subscriber with a rebate or credit if the loss of service was caused by an act on the part of the subscriber requesting such a credit or rebate.

(j) Intermittent or cumulative service interruptions and other service related complaints are to be analyzed in accordance with the complaint procedure pursuant to N.J.A.C. 14:17-7.1.

(k) Each company shall periodically inform its subscribers of the procedures by which a subscriber may obtain a credit. Notifying subscribers in a manner sufficient to inform subscribers of the identity of the complaint officer pursuant to N.J.S.A. 48:5A-26(c), shall be deemed sufficient to company with this subsection.

TRANSPORTATION

The following proposals are authorized by Roger A. Bodman, Commissioner, Department of Transportation.

Submit comments by May 7, 1986 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(a)

TRANSPORTATION OPERATIONS

Speed Limits
Routes I-80 in Warren County, I-287 in Morris County and 94 in Sussex County

Proposed Amendments: N.J.A.C. 16:28-1.2, 1.3 and 1.79

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
Proposal Number: PRN 1986-106.

The agency proposal follows:

Summary

The proposed amendments will establish maximum speed limits along Routes I-80 in Knowlton Township, Warren County; I-287 in Harding Township, Morris County and 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 speed limits along Route I-80, I-287 and 94 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.2, 1.3 and 1.79 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish maximum speed limits along Routes I-80 in Knowlton Township, Warren County; I-287 in Harding Township, Morris County and 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 its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limits 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]).

16:28-1.2 Route I-80 including Littleton Road and Cherry Hill interchange, Parsippany-Troy Hills, Frontage Road number 2, Paterson, Landing Road interchange, and Smith Road interchange.

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

(e) (See proposal in March 17, 1986 New Jersey Register.)

(f) The rate of speed designated for the certain parts of State highway Route I-80 eastbound within the entire parking lots of the Rest Area described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. Within the Rest Area in Knowlton Township, Warren County:

i. 20 miles per hour within the entire parking areas (vicinity of milepost 7.50).

16:28-1.3 Lafayette Avenue: Route I-287

(a) (No change.)

(b) The rate of speed designated for the certain parts of State highway Route I-287 within the entire parking lots of the Rest Area described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. Within the Rest Area in Harding Township, Morris County:

i. 20 miles per hour within the entire parking areas.

16:28-1.79 Route 94

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

1. For both directions of traffic:

i.-ix. (No change.)

x. 40 miles per hour to the intersection of Summit Avenue, [Newton;] **Town of Newton, Sussex County;** thence

xi. 30 miles per hour to the Intersection of Spring Street [(Route U.S. 206 regulation intervenes here);] **:**

(1) 30 miles per hour between Summit Avenue and Liberty Street; thence

(2) 25 miles per hour between Liberty Street and High Street—Park Place (Route U.S. 206 intervenes here).

xii.-xxi. (No change.)

2. For Counter Clockwise Directions of traffic:

i. 25 miles per hour between High Street—Park Place and Park Place—High Street.

(a)

Restricted Parking and Stopping Routes U.S. 9 in Ocean County; 27 in Union County; 35 in Monmouth County and 47 in Cape May County

Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.18, 1.25 and 1.33

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Proposal Number: PRN 1986-105.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 9 in Dover Township, Ocean County and 35 in Aberdeen Township, Monmouth County and "no parking" zones along Routes 47 in Middle Township, Cape May County and 27 in Elizabeth City, Union County for the safe and efficient flow of traffic, the enhancement of safety, the safe on/off loading of passengers at established bus stops 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 "no parking bus stop" zones along Routes U.S. 9 and 35 and "no parking" zones along Routes 47 and 27 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.18, 1.25 and 1.33 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. 9 in Dover Township, Ocean County and 35 in Aberdeen Township, Monmouth County and "no parking" zones along Routes 47 in Middle Township, Cape May County and 27 in Elizabeth City, Union County for the safe and efficient flow of traffic, the enhancement of safety, the safe on/off loading of passengers at established bus stops 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 its work force 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 the installation of "no parking bus stops" and "no parking loading zone" 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 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.-16. (No change.)

17. Along the westerly (southbound) side in Dover Township, Ocean County:

i. Near side bus stops:

(1) (No change.)

(2) Roberts Road—Beginning at the northerly curb line of Roberts Road and extending 105 feet northerly therefrom.

18.-41. (No change.)

16:28A-1.18 Route 27

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

(c) [In accordance with the provisions of N.J.S.A. 39:4-138.1] [t]The certain parts of State highway Route 27 described in [(c) of] this section are designated and established as "restricted parking" zones, for use by persons who have been assigned special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas.

1. (No change.)

(d) [In accordance with the provisions of N.J.S.A. 39:4-138.1,] [t]The certain parts of State highway Route 27 described in [(d) of] this section are designated and established as "no parking" zones for designated curb loading zones[.] **and loading zones. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established LOADING ZONES:**

1. No parking **at** loading zones (all times) (for Burry Cookie Co.) in Elizabeth City, Union County:

i. (No change.)

ii. Along the east curb line of Cherry Street:

(1) Beginning at a point 170 feet south of W. Jersey Street and continuing 51 feet southerly thereof between the hours of 8:00 A.M. and 4:30 P.M. from Monday through Saturday.

(e) (No change.)

16:28A-1.25 Route 35

(a) (No change.)

(b) The certain parts of State highway Route 35 described in this section 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.-11. (No change.)

12. Along the northbound (westerly) side in Aberdeen Township, Monmouth County:

i. Near side bus stop:

(1) Cliffwood Avenue—Beginning at the southerly curb line of Cliffwood Avenue and extending 105 feet southerly therefrom.

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

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 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 stopping or standing in Middle Township, [Warren] **Cape May County:**

i. Along both sides:

(1) (No change.)

(2) Between milepost 3.0 and milepost 4.1 including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

ii.-iii. (No change.)

2. No stopping or standing in [Millville] **the City of Millville, Cumberland County:**

[i. Along the northbound side from a point 160 feet south of the southerly curb line of Whitall Avenue to a point 150 feet north of the northerly curb line of Route 49.

iii. Along the northbound side from the northerly curb line of Vine Street to a point 75 feet north of the northerly curb line of East Oak Street.

iv. Along the northbound side of the northerly curb line of "F" Street to the Millville—Vineland Corporate Line.

v. Along the southbound side from the easterly curb of Delsea Drive to a point 350 feet south of the prolongation of the southerly curb line of Whitall Avenue.

vi. Along both sides of Route 47 from a point 1,715 feet south of the southerly curb line of Orange Street to a point 350 feet north of the northerly curb line of Orange Street.]

i. Along the northbound side:

(1) From a point 75 feet south of the southerly curb line of Mulberry Street to a point 75 feet north of the northerly curb line of Mulberry Street.

(2) From the northerly curb line of Vine Street to a point 75 feet north of the northerly curb line of East Oak Street.

(3) From the northerly curb line of "F" Street to the Millville-Vineland Corporate Line.

ii. Along the southbound side:

(1) From the Vineland-Millville Corporate Line to a point 365 feet south of the prolongation of the southerly curb line of Whitall Avenue.

iii. Along both sides:

(1) From a point 1,715 feet north of the southerly curb line of Orange Street to a point 350 feet north of the northerly curb line of Orange Street.

3.-8. (No change.)

[9. No stopping or standing in Middle Township, Cape May County:

1. Along northbound side:

(1) From the center line of Route U.S. 9 to a point 430 feet north of the center line of New York Avenue.]

[10.]**9.** (No change in text.)

(b) (No change.)

(a)

No Passing Zones
Routes 35 in Monmouth County and 28 in Middlesex and Somerset Counties

Proposed Amendment: N.J.A.C. 16:29-1.51
Proposed New Rule: N.J.A.C. 16:29-1.57

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.
Proposal Number: PRN 1986-108.

The agency proposal follows:

Summary

The proposed amendment and new rule will establish "no passing" zones along Route 35 in the Townships of Wall and Neptune and the Boroughs of Neptune City and Red Bank, Monmouth County and 28 in the Boroughs of Middlesex and Dunellen, Middlesex County and Bridgewater Township, the Boroughs of Raritan, Somerville and Bound Brook, Somerset

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 "no passing" zones along Route 35 and 28 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.51 and new rule N.J.A.C. 16:29-1.57 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendment and new rule will establish "no passing" zones along Route 35 in the Townships of Wall and Neptune, the Boroughs of Neptune City and Red Bank, Monmouth County and 28 in the Boroughs of Middlesex and Dunellen, Middlesex County and Bridgewater Township, the Boroughs of Raritan, Somerville and Bound Brook, Somerset 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 of local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:29-1.51 Route 35

(a) The following certain parts of State highway Route 35 shall be designated and established as "No Passing" zones:

1. (No change.)

2. The part within the Townships of Wall and Neptune, the Boroughs of Neptune City and Red Bank, Monmouth County and described in drawing number HNPZ-091 dated October 18, 1985.

16:29-1.57 Route 28

(a) The following certain parts of State highway Route 28 shall be designated and established as "No Passing" zones:

1. That part within the Boroughs of Middlesex and Dunellen, Middlesex County and described in drawing number HNPZ-093 dated December 2, 1985.

2. That part within Bridgewater Township, the Boroughs of Raritan, Somerville and Bound Brook, Somerset County and described in drawing number HNPZ-092 dated December 2, 1985.

(a)

Miscellaneous Traffic Rules Lane Usage—Route I-95

Proposed Amendment: N.J.A.C. 16:30-3.5

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:7-21(i), 39:4-6 and 39:4-88.

Proposal Number: PRN 1986-107.

The agency proposal follows:

Summary

On August 14, 1979, the Department of Transportation adopted regulations providing for a reserved lane for buses and vehicles with three or more occupants on parts of the Route I-95 approach to the George Washington Bridge in Fort Lee, New Jersey. Subsequent activities to reconstruct portions of this roadway provide the opportunity to expand and improve this reserved lane operation. Changes to the regulation are summarized as follows:

1. Reserved lane segments contiguous to both ends of the existing reserved lane are added so that buses and carpools can bypass the entire section of unreserved roadway commonly congested during the A.M. peak hours.

2. Use of the lane by motorcycles will be permissible according to federal law requirements for construction projects completed with federal funds.

3. The hours of operation will be changed to the 7-9 A.M. rush hour period when mass transit and carpool use is the highest.

The Department therefore proposes to amend N.J.A.C. 16:30-3.5 to expand and improve the reserved lane operation along parts of the Route I-95 approach to the George Washington Bridge with the concurrence of the Port Authority.

Social Impact

The revised rules will improve the viability of the reserved lane operation by better matching the amount of roadway reserved to the area of congestion. In this way, the overall capacity for person-movement of the system will be improved.

Economic Impact

Travel time improvement will be made through increased use of currently unused or underutilized roadway space. Improvements in person-movement translate into reduced costs for the traveling public.

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

16:30-3.5 Route I-95

(a) A [special reserved lane for buses and high occupancy vehicles only] **bus and carpool lane** is hereby established on the Route 95 approach to the George Washington Bridge **including the median lane from Milepost 72.4 on the lower level approach roadway to the ramp to the upper level approach roadway, the ramp from the lower level approach roadway to the upper level approach roadway at Milepost 72.5, the right-hand shoulder** from the base of the expressway entrance from Route 4 on the Route 95 approach to the upper level of the George Washington Bridge to the bus stop ramp under Le-Moine Avenue, **and the right-hand lane on the upper level**

approach roadway from the ramp to the bus stop under LeMoine Avenue to a point approximately 150 feet beyond the LeMoine Avenue Bridge, Borough of Fort Lee, Bergen County.

(b) This [section] **regulation** shall be in effect between the hours of 7:00 A.M. and [9:30] **9:00** A.M. on weekdays or as otherwise posted.

(c) For the purpose of this [section] **regulation** a [high occupancy vehicle (H.O.V.) is one] **bus and carpool lane means a lane reserved for buses, motorcycles, and vehicles** that contain[s] at least three persons [per vehicle].

(a)

Turns
U.S. 46 in Morris County and Route 31 in Hunterdon County

Proposed Amendments: N.J.A.C. 16:31-1.3 and 1.18

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6
Proposal Number: PRN 1986-104.

The agency proposal follows:

Summary

The proposed amendments will establish "no left turn" movements along Routes 31 in Clinton Township, Hunterdon County and U.S. 46 in Mount Olive Township, Morris 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 "no left turn" movements along Routes 31 in Hunterdon County and U.S. 46 in Morris County were warranted.

The Department therefore proposed to amend N.J.A.C. 16:31-1.18 and 1.3 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no left turn" movements along Routes 31 in Clinton Township, Hunterdon County and U.S. 46 in Mount Olive Township, Morris 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 its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of 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]).

16:31-1.3 Route **U.S.** 46

(a) Turning movements of traffic on the certain parts of State highway Route **U.S.** 46 described in this section are regulated as follows:

1. No left turns [east on Route 46 to north of the westerly entrance of Village Drive] **in** Mount Olive Township[.]**, Morris County:**

i. East on Route U.S. 46 to north of the westerly entrance of Village Drive.

ii. From Route U.S. 46 eastbound into the Village Green Shopping Center driveway.

2. No left turn [north on Route 46 ramp to west on Richboynton Road.] **in the town of Dover, Morris County:**

i. North on Route U.S. 46 ramp to west on Richboynton Road.

16:31-1.18 Route 31

(a) Turning movements of traffic on the certain parts of State highway Route 31 described [below] **in this section** are regulated as follows:

1. No left turns [North on Route 31 to west into North Hunterdon Regional High School driveway] in Clinton Township, Hunterdon County [.]:

i. North on Route 31 to west into North Hunterdon Regional High School driveway.

ii. North on Route 31 to west onto the southernmost driveway of Beaverbrook Development known as Beaverbrook Driveway.

(b)

CONSTRUCTION AND MAINTENANCE

Permits
Outdoor Advertising

Proposed Amendment: N.J.A.C. 16:41-8.9

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7A-11 and 27:7A-17.
Proposal Number: PRN 1986-81.

The agency proposal follows:

Summary

The proposed amendment will establish permit fees for existing outdoor advertising permittees to obtain a highway permit for the control of vegetation on State right-of-way, which is within 500 feet of an outdoor advertising structure, owned or leased by the permittee. Tree trimming more than 500 feet from an Outdoor Advertising Structure is prohibited. Permits are required for each request for tree trimming. Annual permits are not allowed for Limited Access Highways (Interstate or Freeways), however, they are allowed for non-limited access highways. In the control of vegetation, non-selective herbicides are not to be used and a licensed applicator must be at the location when any selective herbicides are applied. The control of vegetation in scenic areas is not permitted.

The Department therefore proposes to amend N.J.A.C. 16:41-8.9 establishing permit fees for the control of vegetation on State right-of-way for the purpose of Outdoor Advertising.

Social Impact

The proposed amendment will establish permit fees for the control of vegetation on State right-of-way which is within 500 feet of an existing outdoor advertising structure for the preservation of the visibility of motorists along the highway system.

Additionally, with vegetation control this will allow the Department to control activity which would otherwise inevitably occur in an illegal manner.

Economic Impact

The Department will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The permittee will bear the costs for the permit. New permittees may experience this new requirement as an added cost of doing business with the state.

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

16:41-8.9 Permit fees

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

(h) The application and permit fees for the control of vegetation on State right-of-way which is within 500 feet of an existing outdoor advertising structure shall be as stated below:

1. Limited Access Highways:

i. Application fee: $50.00

ii. Permit fee: $500.00

2. Non-limited Access Highways:

i. Single location/Single Incident

(1) Application fee: $5.00

(2) Permit fee: $200.00

ii. Multi location/Single Incident

(1) Application fee: $5.00

(2) Permit fee: $200.00 plus $20.00 per each location

3. Single location/Annual Permit:

i. Application fee: $5.00

ii. Permit fee: $300.00

4. Multi location/Annual permit:

i. Application fee: $5.00

ii. Permit fee: $300.00 plus $20.00 per each location

NOTE: An annual permit begins on the date of Permit Approval and expires one year from the date.

(a)

PUBLIC TRANSPORTATION

Autobuses: Public Liability Insurance

Proposed Amendment: N.J.A.C. 16:53-9.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 1:30-27, and 52:14B-4(c).

Proposal Number: PRN 1986-82.

The agency proposal follows:

Summary

On August 8, 1985, the Department filed an emergency amendment to Title 16 of the New Jersey Administrative Code (R. 1985 d.445 at 17 N.J.R. 2149(a)) regarding liability insurance requirements for intrastate autobus operators in New Jersey. These amendments were adopted as rules on November 18, 1985 (at 17 N.J.R. 2723(a)) and are now part of N.J.A.C. 16:53-9.1.

Subsequent to the rules adoption, the Department discovered through discussions with insurance industry members that one of the terms referenced in the amended rules should be replaced. The amended rules presently refer to a "standard insurance binder", but the more appropriate phraseology is "AIP Designation Notice Card." Accordingly, the Department now proposes to replace the former term with the latter.

Social Impact

The proposed amendment to N.J.A.C. 16:53-9.1 will cause the code provision to more accurately reflect what the practice is in matters concerning proof of replacement insurance for intrastate autobus operators that are placed in assigned risk insurance pools.

Economic Impact

The proposed amendment will have no additional impact on autobus companies operating in the State, because the proposed change in terminology does not affect the purpose for which the original amendment was promulgated.

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

16:53-9.1 Certificate of insurance or evidence of self-insurance

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

1.-3. (No change.)

4. Notwithstanding the requirements of (e) through (i) below, a replacement certificate may be in the form of [a standard insurance binder.] **an AIP Designation Notice Card.** An [insurance binder] **AIP Designation Notice Card** shall be valid as a replacement certificate for a period of 60 days from the date of the letter of authorization. The letter of authorization shall refer specifically to the use of the [binder] **AIP Designation Notice Card** as a replacement certificate and shall warrant that the Department shall be notified immediately upon the insured's receipt of actual or constructive notice of cancellation.

(e)-(n) (No change.)

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Administrative Practices
Elimination of PFRS Entry Age Limit; Transfers

Proposed Amendment: N.J.A.C. 17:1-12.7

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96.

Proposal Number: PRN 1986-74.

Submit comments by May 7, 1986 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
20 West Front Street, CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed new rule is to provide that the elimination of the entry age limit for enrollment in the Police and Firemen's Retirement System by the Federal Age Discrimination in Employment Act shall be applied retroactively.

The Federal Age Discrimination Law was held to be applicable to the states by federal court decisions. Prospective application of this change in the law has resulted in a substantial inequity to persons who were denied entry into the retirement system before the court decisions. These persons continue to be denied the benefits of the retirement system designed for their type of work while newly hired employees receive such benefits. The proposed new rule corrects this inequity by permitting these persons to transfer into the Police and Firemen's Retirement System.

Social Impact

The proposed new rule will benefit persons denied entry into the Police and Firemen's Retirement System because of the entry age limit. The new rule will provide them with the same pension benefits as persons hired after the entry age limit was eliminated.

Economic Impact

The proposed new rule will create a one-time cost for the Police and Firemen's Retirement System. This cost will be borne by the system and not individual employers and employees. The cost will be met by all employers participating in the system through their annual contributions. It is anticipated that this cost will not result in any substantial increase in the annual contribution cost for employers.

Full text of the proposed new rule follows:

17:1-12.7 Elimination of PFRS entry age limit; transfers

Any person whose position is included under the definition of "policeman or fireman" under Section 1 of P.L.1944, c.255 (N.J.S.A. 43:16-1 et seq.) who was denied enrollment in the Police and Firemen's Retirement System because of the entry age limit under Section 3 of this law, may transfer from the Public Employees' Retirement System to the Police and Firemen's Retirement System. The transfer application shall be filed no later than June 30, 1986. The transfer shall take effect on October 1, 1986. If a person files a transfer application before June 30, 1986 and dies or retires before October 1, 1986, the transfer shall be effective and the person or his beneficiaries shall receive the retirement or death benefits provided under the Police and Firemen's Retirement System.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Financial Business Corporations; Entire Net Income; Tangible Personal Property; Property Fraction: Allocation Factor

Proposed New Rule: N.J.A.C. 18:7-1.16
Proposed Amendments: N.J.A.C. 18:7-5.2, 8.4, 8.5 and 13.7

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:10A-27.
Proposal Number: PRN 1986-94.

Submit comments by May 7, 1986 to:
Nicholas Catalano
Assistant Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

The proposed new rule supplies a definition of financial business corporations. A qualifying corporation would be in substantial competition with national banks and employ moneyed capital in a number of enumerated ways. Leasing companies meeting five criteria in the rule would qualify as financial businesses. In addition 80 percent of a corporation's gross income must be derived from listed activities enumerated in the rule. For clarity, the proposal also lists a number of business classifications which would not qualify as financial businesses.

N.J.A.C. 18:7-5.2(a)7.iii is amended to clarify how interest on indebtedness which relates to debt of a financial business corporation owed to an affiliate is computed for determining entire net income.

Amendments to N.J.A.C. 18:7-8.4 and 8.5 redefine the property fraction of the allocation factor to include property leased, rented or used by the taxpayer in addition to property owned by the taxpayer as the basis for formula apportionment of real and tangible personal property. The amendments to N.J.A.C. 18:7-8.4 and 8.5 will become operative on July 1, 1986 for accounting periods ending after June 30, 1986.

At N.J.A.C. 18:7-5.2(b)2 the proposal codified the position of the Division with respect to treatment of distributions from certain money market mutual funds.

At N.J.A.C. 18:7-13.7 the amendment revises the interest rate applicable in certain circumstances where additional tax is payable.

Social Impact

Inasmuch as the rules make clear the position of the Division of Taxation, they simplify the administration of the Corporation Business Tax Act. The rules will facilitate the filing of returns by taxpayers and ease certain aspects of tax administration. It is expected that the rules will tend to minimize controversy.

The proposal will now conform the practice in New Jersey to the accepted multi-state method of property apportionment. The former position of New Jersey had placed it in a minority, holding that only property owned could be used to compute the property fraction. The proposal will simplify the preparation of the return for the multi-state taxpayer. The proposal will also result in a fairer apportionment and eliminate distortions in the determination of the portion of the taxpayer's tax base attributable to New Jersey. Under the present rules the distortion could only be rectified by resort to an adjustment under Section 8 of the Corporation Business Tax Act.

Economic Impact

The proposal will serve to diminish the cost of return preparation and the cost of administration of the tax insofar as the proposal communicates the interpretation put on the tax laws by the Division of Taxation. In and of itself the proposal will not increase or diminish tax yield significantly. However, it will result in considerable savings in cost of tax administration to the taxpayer, both in return preparation costs and in avoiding reaudits and the application of N.J.S.A. 54:10A-8 when the current method had given rise to serious distortion of the taxpayer's allocation factor. The revision of the interest where a recalculation by the Federal government results in an increased state tax conforms the rate found in the rule to statutory amendments. It allows an automatic abatement of one-half the chargeable interest under the circumstances described in the rule and should have no economic effect since the rate of interest is statutorily set.

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

18:7-1.16 [(Reserved)] **Financial business corporation; definition**

(a) Financial business corporation means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with the object of making profit by its use as money through any of the following:

1. Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt;

2. Buying and selling exchange;

3. Making of or dealing in secured or unsecured loans and discounts;

4. Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;

5. Investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or

6. Dealing in or underwriting obligations of the United States, any state or any political subdivision thereof or of a corporate instrumentality of any of them;

7. Certain leasing transactions which approximate secured loans by meeting the following tests:

i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment;

ii. Lessor may not rely on repetitious leasing of the same property;

iii. The lease must be a net lease;

iv. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property;

v. For purposes of this section tax benefits are defined as those benefits derived from depreciation and any investment tax credit related to the financed property;

vi. For purposes of this section, residual value of the property is defined as the value of the leased property at the end of the original lease and such value may not exceed 20 percent of the lessor's full investment.

(b) A financial business corporation shall not include:

1. Any enterprise that is not a corporation;

2. National banks;

3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 92-181 (12 U.S.C. §2091 et seq.);

4. Stock or mutual insurance companies authorized to transact business in this State;

5. Securities brokers or dealers, investment companies, or investment bankers not employing moneyed capital with the object of making profit by its use as money or in substantial competition with the business of national banks;

6. Real estate investment trusts;

7. Credit unions organized under the laws of this State;

8. Savings banks organized under the laws of this State;

9. Savings and loan or building and loan associations organized under the laws of this State;

10. Pawn brokers organized under the laws of this State; and

11. State banks and trust companies organized under the laws of this State.

(c) A financial business corporation may not qualify as an investment company as that term is used in N.J.A.C. 18:7-1.15.

(d) The business of national banks is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C.A. 21, et seq. (The National Banking Act).

(e) A corporation may qualify as a financial business corporation provided that 80 percent of its gross income is derived from any of the activities enumerated in (a)1 through (a)7 above. This percentage is determined by computing the proportion of its gross income entering into the determination of entire net income which is derived from the activities enumerated in (a)1 through (a)7 above to the entire gross income entering into the determination of entire net income reported by the corporation. For purposes of making this computation, gross income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form CBT-100.

18:7-5.2 Entire net income; how computed

(a) Add to Federal taxable income:

1.-6. (No change.)

7. The amount deducted, in computing Federal taxable income, for interest on indebtedness (whether or not evidenced by a written instrument) directly or indirectly owed to an individual stockholder or members of his immediate family who, in the aggregate, own beneficially ten percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder, including its subsidiaries, which owns beneficially, directly or indirectly, ten percent or more of the taxpayer's outstanding shares of capital stock minus ten percent of the amount so deducted or $1,000.00, whichever is larger. Thus, if the amount of such interest is $1,000.00 or less, then none of said amount need be added back.

i.-ii. (No change.)

iii. **Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C. 18:7-1.16. A debt is owed to an "affiliate" corporation when it is owing directly or indirectly to holders of ten percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes as defined in N.J.A.C. 18:7-4.5. The deduction may not be claimed on the Corporation Business Tax Return, Form CBT-100. Any corporation which is a financial business corporation must file the Corporation Business Tax Return for Banking and Financial Corporations, Form BFC-1, and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38; and**

[iii.] **iv.** (No change in text.)

8.-12. (No change.)

(b) Deduct from Federal taxable income:

1. (No change.)

2. 50 percent of all other dividends included in Federal taxable income or added to Federal taxable income in accordance with (a) above[;] **. Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection (b).**

3.-7. (No change.)

18:7-8.4 "Tangible personal property;" definition and scope

(a) (No change.)

(b) Tangible personal property within New Jersey:

1.-2. (No change.)

3. Mobile or movable property, such as construction equipment or trucks, is within New Jersey based on the ratio of time the property is used within the state to the time the property is used everywhere during the period covered by the return.

4. Ships are within New Jersey based on the ratio of time the vessels are in operation in New Jersey to the time the vessels are in operation everywhere, and including all sailing days, days in port for loading, unloading, ordinary repairs, refueling or provisioning as operation.

5. Aircraft used by airlines are within New Jersey based on the ratio of takeoffs in regular scheduled or charter flights that occur during revenue service from points in New Jersey to the total of all such takeoffs everywhere. Aircraft used other than by airlines in revenue service are within New Jersey based on the ratio of takeoffs from points in New Jersey to the total of all takeoffs everywhere when the aircraft are in use.

6. Consistent with N.J.S.A. 54:10A-6(b), satellites used in the communications industry are included in the denominator of the property fraction but the numerator shall include a portion of such property based upon the ratio of ground stations serviced in New Jersey to the number of all such ground stations.

(c) (No change.)

18:7-8.5 Business allocation factor; property fraction derived from average values

(a) (No change.)

1. (No change.)

[2. Only property owned by the taxpayer during the period covered by the return is to be included in either the numerator or denominator.]

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

[3.] **(c)** The average values used in determining the property fraction of the allocation factor [shall be] **are normally** based on book value[.] **with respect to property owned, leased, rented or used. Property is valued at eight times its annual rent, including any amounts (such as taxes) paid or accrued in addition to or in lieu of rent during the period covered by the return. Subrents do not reduce annual rents, but rather enter into the determination of the receipts fractions. Leasehold improvements are treated as owned by the taxpayer.** The numerator and the denominator shall take into account depreciation disallowed at N.J.A.C. 18:7-5.2 where the taxpayer accounts for its property on a Federal income tax basis on its books.

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented or used in this state.

Example 1: Taxpayer is the lessor of equipment. Consistent with generally accepted accounting principles it accounts for its capital leases as completed sales. Consistent with principles of tax accounting, it accounts for that same leasing as net rental income which is reported as entire net income.

That entire net income is apportioned by use of the allocation factor which must include the property fraction. That property fraction must reflect the percentage of the taxpayer's real and tangible personal property within New Jersey, including the leased property, despite the fact that the property no longer appears on the books of the corporation in order to effect a fair and reasonable apportionment of entire net income.

Example 2: Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the state and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

18:7-13.7 Additional tax; change in Federal tax

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of [audit or reaudit of the tax return or] an amended **Federal** return [or report of change in Federal net income,] **or a change or correction in taxable income by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States,** that additional tax together with interest thereon at the rate of [six] **3/4 of one** percent per [annum,] **month or fraction thereof,** from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment, must be paid by the taxpayer within 15 days after service of the notice.

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

OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

The following proposals are authorized by the Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.

Submit comments by May 7, 1986 to:
Gregory E. Nagy, Esq.
Staff Counsel
Election Law Enforcement Commission
28 W. State Street, Suite 1215
Trenton, NJ 08608

(a)

Designation of Joint Campaign Fund (Form SR-1)

Proposed Amendment: N.J.A.C. 19:25-9.2

Authority: N.J.S.A. 19:44A-6.
Proposal Number: PRN 1986-97.

The agency proposal follows:

Summary

Candidates required to file campaign reports pursuant to "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter, "the Act"), may choose to authorize a political committee to file reports on their behalf if all of the contributions and expenditures on behalf of the candidate are received or expended by that political committee; see N.J.S.A. 19:44-16(h). The certification (that is, Form SR-1) filed by a candidate for this purpose must designate the treasurer of the political committee as the candidate's campaign treasurer, and must be signed by that treasurer. If the designated committee commits a filing violation, the candidate and treasurer are subject to penalties in complaint proceedings undertaken by the commission; see N.J.S.A. 19:44A-22(a). The purpose of this amendment is to include the campaign treasurer of the candidate signing the certification (SR-1) in the text of N.J.A.C. 19:25-9.2(f), which currently lists only the candidate as a person liable to a civil penalty for a filing violation. The commission reads the Act to the effect that both the candidate and campaign treasurer are liable for civil penalties for late filing or other violations, and the omission of the campaign treasurer from such penalties would be detrimental to the enforcement of the Act.

Social Impact

The proposed amendment will not have any significant social impact because it incorporates the existing enforcement practice of the commission, that is to impose penalties on the candidate and the campaign treasurer who signs the certification of designation of a political committee (that is, Form SR-1) as the filing agent of the candidate. If campaign treasurers are permitted to avoid penalties for campaign reporting derelictions after being designated by a candidate, and after agreeing to serve as campaign treasurers by acknowledging the certification of designation (that is, Form SR-1), the commission believes there would be an adverse effect on its ability to enforce compliance with the Act.

Economic Impact

The amendment will not have any significant economic impact because it incorporates existing enforcement practice. The Act provides for penalties of up to $1,000 for a first offense, and up to $2,000 for a second and each subsequent offense; see N.J.S.A. 19:44A-21.

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

19:25-9.2 Designation of joint campaign fund (Form SR-1)

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

(f) A candidate filing a certification under this section **and the designated campaign treasurer of the candidate signing the certification** shall be liable, in addition to any other penalty provided by law, to the civil penalties provided by the act if the committee fails, neglects or omits to file any report or document at the time and in the manner prescribed by the act, or omits or incorrectly states any of the information required by the act in such report or document.

(b)

Contributions Made Immediately Before Election

Proposed Amendment: N.J.A.C. 19:25-10.6

Authority: N.J.S.A. 19:44A-6.
Proposal Number: PRN 1986-98.

The agency proposal follows:

Summary

The purpose of this amendment is to relax the requirement that a continuing political committee give notice within 48 hours of any contribution it receives in excess of $250.00 prior to an election in which it is participating. Under the proposed amendment, notices of receipt of such contributions may be filed collectively in a single report due no later than the eleventh day prior to the election in which the continuing political committee is participating.

A continuing political committee is required to file quarterly reports of campaign contributions and expenditures covering three month periods that end April 1, July 1, October 1 and January 1 of each year; see N.J.S.A. 19:44A-8(b)(2). If the continuing political committee receives a contribution in excess of $250.00 after the final day included in a quarterly report and on or before the date of an election as to which it is participating or intends to participate in, the continuing political committee must file notice with the commission setting forth the amount, date of the contribution and the name and address of the contributor within 48 hours of receiving the contribution. Therefore, a continuing political committee receiving such contributions after October 1, 1986 but prior to the November 4, 1986 general election would be required to file notices within 48 hours after each such contribution it receives. The commission believes that this requirement can become burdensome on a continuing political committee receiving several such contributions at various dates prior to an election, and further believes that the public interest in disclosure would only incidentally be affected if continuing political committees were permitted to file such notices collectively in a single report due no later than 11 days before the election. Contributions in excess of $250.00 received after the period of time covered by the report filed on the eleventh day prior to the election will continue to be subject to a 48-hour notice requirement. Therefore, by way of illustration, under this proposed amendment a continuing political committee could be relieved of filing notices within 48 hours of receipt of contributions in excess of $250.00 for the period of time from October 2, 1986 until the closing date of the report filed eleven days before the election. Contributions in excess of $250.00 received after the closing date of the report filed eleven days before the election and therefore not appearing on that report continue to be subject to the 48 hour notice up to the date of the election.

Social Impact

The proposed amendment will have a favorable social impact because it will permit continuing political committees to file fewer reports of contributions in excess of $250.00, but this contributor information will still be available to the public by the filing date of the 11-day preelection report. Generally, candidates and political committees file preelection reports 29-days and 11-days before an election. There would be no purpose in requiring continuing political committees to file a collective report of major contributions they had received on the 29-day preelection report deadline because that deadline almost precisely coincides with the quarterly report deadlines of April 1 in the case of municipal and primary elections, and of October 1 in the case of general elections. Therefore, the Commission believes that this relaxation will not significantly compromise the access of the public to campaign report information, but will significantly improve compliance by continuing political committees.

Economic Impact

The proposed amendment relaxes the reporting requirements for continuing political committees in regard to certain 48-hour notices for contributions in excess of $250.00 received by such continuing political committees, and therefore should result in some slight savings in compliance cost.

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

19:25-10.6 Contributions made immediately before election

(a) (No change.)

(b) In lieu of the 48-hour notice requirement in (a) above, a continuing political committee, prior to any election in which the continuing political committee is participating, may file a single, cumulative report on a form provided by the commission of contributions received in excess of $250.00. This report shall be filed on the eleventh day preceding the election. Contributions in excess of $250.00 received by a continuing political committee before an election but not included on the 11-day preelection report are subject to 48-hour notice as provided in (a) above.

[(b)] **(c)** Whether a contribution received by a continuing political committee qualifies for reporting hereunder shall be determined according to the calculation set forth in N.J.A.C. 19:25-11.4, except that the base for any proration shall be $250.00 for the purposes of this regulation.

(a)

Inaugural Event Contributions

Proposed New Rules: N.J.A.C. 19:25-15.48, 15.49, 15.50 and 15.51

Authority: N.J.S.A. 19:44A-6 and 19:44A-38.

Proposal Number: PRN 1986-99.

The agency proposal follows:

Summary

A contribution by any person to an inaugural fund raising event cannot exceed $250.00; see N.J.S.A. 19:44A-18.1. The purpose of these proposed new rules is to set forth standards for applying this contribution limit to a contribution made by the owner of a joint checking account; a contribution from affiliated corporations or unions; a contribution from a partnership or unincorporated association, or a contribution from a child or trust. The standards incorporated in these rules are similar to those used by the commission for the application of the $800.00 contribution limit for gubernatorial candidates; see N.J.S.A. 19:44A-29.

Proposed N.J.A.C. 19:25-15.48 governs contributions from a joint checking account to a gubernatorial fund raising event. The proposed new rule provides that the contribution will be deemed to have been made by the owner of the joint checking account who signs the check. However, if more than one owner signs a check, the contribution will be attributed equally among the signees unless there are written instructions to the contrary. The proposed new rule is based on the existing N.J.A.C. 19:25-15.15(a) governing contributions subject to the gubernatorial $800.00 contribution limit.

Proposed N.J.A.C. 19:25-15.49 governs contributions from related or affiliated corporations, associations or labor organizations. The purpose of the proposed rule is to establish criteria for determining whether two or more entities making contributions to a gubernatorial inaugural fund raising event are in fact related or affiliated. If they are related, the contributions from the related entities will be aggregated in determining compliance with the $250.00 contribution limit. The proposed new rule is based on the existing N.J.A.C. 19:25-15.12(c).

Proposed N.J.A.C. 19:25-15.50 governs contributions from partnerships or unincorporated association. Such contributions shall be deemed to have been made by the individual whose signature appears on the check drawn against the partnership or unincorporated association account. However, if more than one partner or member signs such a check, and appropriate written instructions are submitted, the contributions may be attributed among such contributing partners or members. The proposed new rule is based on the existing N.J.A.C. 19:25-15.15(c).

Proposed N.J.A.C. 19:25-15.51 governs the circumstances under which a contribution by a child under the age of 18 shall be deemed made by the parent who is responsible for the contribution unless certain specified evidence is submitted that the child is making the contribution independently of the parent. The proposed new rule also provides that a contribution from an escrow or trust account will be deemed to be made by the beneficial owner. The text is based on N.J.A.C. 19:25-15.15(b) and (d).

Social Impact

The commission believes that adoption of these regulations will provide both contributors to and treasurers of gubernatorial inaugural fund raising events with standards for determining whether a contribution is within the permissible $250.00 limit. These standards have been applied by the commission for inaugural gubernatorial fund raising events conducted in 1981 and 1985, and are parallel to the standards used in applying the $800.00 contribution limit to gubernatorial candidates.

Economic Impact

The commission does not anticipate that the adoption of these regulations will have any significant economic impact, other than to preserve the integrity of the $250.00 contribution limit by establishing standards for applying that limitation to various classes of contributors.

Full text of the proposed new rules follows.

19:25-15.48 Inaugural event contributions from joint checking account

(a) A contribution to a gubernatorial fund raising event by check drawn on a joint checking account shall be deemed to be made by the joint checking account owner whose signature appears on the check.

(b) If a check drawn on a joint checking account bears the signatures of more than one contributing owner, the contribution will be deemed to have been made equally by all contributing owners whose signatures appear on the check.

(c) If a check drawn on a joint checking account is accompanied by a written statement signed by each contributing owner and containing information identifying the amount of contribution of each contributing owner, the amount of the contribution made by each contributing owner shall be determined as specified in the signed written statement.

19:25-15.49 Inaugural event contributions from affiliated corporations or unions

A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to a gubernatorial fund raising event which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds $250.00 in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contributions and the degree to which the decisions whether or not to contribute, to what candidate and in what amount are independent decision.

19:25-15.50 Inaugural event contributions from partnerships or unincorporated associations

A contribution to a gubernatorial fund raising event by check drawn on a partnership account, or on an account of an unincorporated association or business, shall be deemed to be made by the individual whose signature appears on the check unless specific identification as to the contribution by other partners or members is contained on the check or on an accompanying written statement and the check is signed by each partner or member who is a contributor.

19:25-15.51 Inaugural event contributions from children or trusts

(a) A contribution to a gubernatorial fund raising event by a child under the age of 18 shall be deemed made by the parent who is responsible for the contribution unless:

1. The child is 14 years of age or older and a signed statement from the child and the child's parent or guardian is submitted to the commission that the decision to contribute was solely that of the child and the funds used to make the contribution were legally and beneficially controlled by the child and were not the proceeds of a gift made for the purpose of the contribution; or

2. The child is 11 years old or older and, in addition to the signed statements set forth in 1 above, evidence is submitted satisfactory to the commission that the child acted independently and with full knowledge of the contribution.

(b) A contribution to a gubernatorial fund raising event by a check drawn on an escrow or trust account shall be deemed to be made by the person who is the beneficial owner of the account, and the check or an accompanying written instrument must bear the signature of such beneficial owner.

(a)

Default for Failure to Answer Complaint

Proposed New Rule: N.J.A.C. 19:25-17.1

Authority: N.J.S.A. 19:44A-6, 19:44A-38, 19:44B-7 and 52:13C-22.3.

Proposal Number: PRN 1986-100.

The agency proposal follows:

Summary

The commission is given the statutory authority to institute penalty proceedings for violations of "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq.; the personal financial disclosure requirements of gubernatorial and legislative candidates contained in N.J.S.A. 19:44B-1 et seq., and violations of the "Legislative Activities Disclosure Act of 1971," N.J.S.A. 52:13C-18 et seq. These penalty proceedings are initiated by the Commission with a formal written complaint that is served on all parties named as respondents. The purpose of this proposed new rule is to codify the practice of the commission of defaulting any named respondent who, after receiving service of the written complaint, fails or otherwise neglects to file any written answer or other responsive pleading to the commission's complaint within 20 days. Service of the written complaint of the commission must be made in accordance with the rules and regulations of the New Jersey Office of Adminsitrative Law; see N.J.A.C. 1:1-7.1 et seq.

Social Impact

The commission believes that respondents must be compelled to file written answers to its complaints within a reasonable period of time in order to insure that violations are prosecuted and are not unnecessarily delayed. The 20-day period provided for the filing of a written answer or responsive pleading is the same period of time permitted under the New Jersey Court Rules for filing of an answer to a summons and complaint in Superior Court; see R.4:6-1. The proposed rule is intended to strike a fair balance between the interest of the commission in proceeding reasonably expeditiously with its complaints, and yet providing adequate time for a respondent to prepare an answer to the commission's allegations.

Economic Impact

The commission does not anticipate that the adoption of the proposed new rule will have any significant economic impact.

Full text of the proposed new rule follows.

SUBCHAPTER 17. COMPLAINTS AND OTHER PROCEEDINGS

19:25-17.1 Default for failure to answer complaint

In any penalty proceeding undertaken by the commission pursuant to N.J.S.A. 19:44A-22, 19:44A-41, 19:44B-8 or 52:13C-22.2 or other statutory authority the commission may enter a Final Decision, including penalty, against any respondent who fails to file with the commission a written responsive pleading or answer within 20 days after service on such respondent in conformity with the rules of the New Jersey Office of Administrative Law of a copy of a complaint alleging a specific violation of the law within the commission's jurisdiction to enforce.

OFFICE OF ADMINISTRATIVE LAW NOTE: The existing text of Subchapter 17 in the New Jersey Administrative Code (N.J.A.C. 19:25-17) expired March 15, 1984 pursuant to Executive Order No. 66(1978). The ELEC has decided not to readopt those rules because it considers them unnecessary. The expired text will therefore be deleted from the Code.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Consolidated Cases
Exempt Agency Conduct

Adopted Amendment: N.J.A.C. 1:1-14.6

Proposed: January 21, 1986 at 18 N.J.R. 130(a).
Adopted: February 25, 1986 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: February 27, 1986 as R.1986 d.79, **without change.**

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): May 15, 1990.

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

Full text of the adoption follows:

1:1-14.6 Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct

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

(d) When an agency exempt under N.J.S.A. 52:14F-8(a) is determined to have a predominant interest in a contested case, the matter shall be heard by an administrative law judge unless the exempt agency decides, in its final order reviewing the judge's consolidation order, to have the matter heard by its own personnel. If the exempt agency decides to have its own personnel hear the matter, but the hearer does not have jurisdiction over all issues within the scope of the agency's predominant interest, the hearer shall be designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b).

(b)

Uniform Administrative Procedure Rules of Practice
Rules of Special Applicability
Special Education Hearings

Adopted Amendment: N.J.A.C. 1:6A-5.4

Proposed: November 4, 1985 at 17 N.J.R. 2586(a).
Adopted: March 3, 1986 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: March 4, 1986 as R.1986 d.85, **without change.**

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 1, 1988.

Summary of Public Comments and Agency Responses:

The Office of Administrative Law received three comments concerning the proposed amendment. Joseph F. Green, Jr., Esq. disputed the implication contained in the summary of the proposed rule that the Supreme Court decision in Burlington School Committee v. Department of Education, 105 S.Ct. 1996 (1985) required school boards to begin paying for a placement immediately notwithstanding an appeal of an adverse decision. The OAL concurs that the decision in Burlington holds that 20 U.S.C. Section 1415(e)(3) does not bar any right to reimbursement. The financial consequences of such reliance must be left for later resolution on a case by case basis. The rule does not intend to require boards to immediately pay for a new placement notwithstanding appeal of an unfavorable decision. The proposed amendment merely intended to remove the regulatory bar preventing either party from relying on a favorable ALJ decision on placement.

The Department of Public Advocate, Division of Advocacy for the Developmentally Disabled suggested that the regulation should state that parents do have a right to change their children's placement regardless of the pendency of an administrative hearing. 20 U.S.C. Section 1415(e)(3) provides that "the child shall remain in the then current educational placement" unless the state or local educational agency and the parents or guardian agree otherwise. Prior to the issuance of a decision, and absent such agreement, the OAL does not believe that its rules should permit a change of placement by the parents.

The final comment was from David Carroll, Esq. who supported the proposed amendment to N.J.A.C. 1:6A-5.4(a) but suggested that subsection (b), which permits a party to request the ALJ to stay his or her decision pending an appeal, is an intrusion upon the jurisdiction of the appellate court. OAL agrees that the language seems to assert OAL's jurisdiction over an appealed case. The OAL has proposed in this issue of the Register an amendment clarifying the fact that stay applications may be made to OAL prior to perfecting an appeal.

Full text of the adoption follows:

1:6A-5.4 Stay of implementation

(a) Unless the parties otherwise agree, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.513.

(b) (See proposal in this issue of the Register.)

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program Rules

Adopted Amendments: N.J.A.C. 2:32-2

Proposed: February 3, 1986 at 18 N.J.R. 236(a).
Adopted: March 3, 1986 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: March 4, 1986 as R.1986 d.84, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

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

Full text of the adoption follows.

2:32-2.3 Registration of stallions

(a) All standardbred horses, to be eligible to compete in the New Jersey Sire Stakes Program, must be bred in the State of New Jersey and be the product of a registered New Jersey stallion.

(b) The stallion must be registered with the Standardbred Breeders and Owners Association of New Jersey, P.O. Box 839, Freehold, New Jersey 07728.

(c) The registration must be returned by November 1st for stallions that have previously registered and/or stood in New Jersey, and December 1st for any new stallions, with the certification of good health enclosed. The certificate of examination must be completed by a licensed New Jersey veterinarian during the months of October or November which precede the approaching breeding season for which the registration is issued.

(d) The fee for annual registration of a stallion shall be due on or before November 1st of the approaching breeding season and December 1st for new registration. The fee must accompany the registration.

1. The following fees shall be applicable:

i. $500 if stud fee is under $1,000, private treaty or free.

ii. $750 if stud fee is $1,000, but under $10,000.

iii. $1,000 if stud fee is $10,000 or higher.

2. The following late fee may be assessed:

i. Any stallion not registered by November 1st (or December 1st for new registrations) may pay an additional fee (registration fee plus late fee) of $1,500 if registered and standing by January 1st.

(e) Once the registration fee has been paid, there will be no refunds.

(f) The stallion must be on the farm by January 1st.

(g) The registration makes the foals of the stallion eligible to be nominated to the following:

1. Charles I. Smith Trotting Classic;
2. Harold R. Dancer Memorial Trot (foals of participating stallions only);
3. Lou Babic Two-Year-Old Pace;
4. Miss New Jersey Pacing Classic;
5. New Jersey Sired Races;
6. New Jersey Breeders Awards;
7. New Jersey Futurity;
8. New Jersey Pacing Classic;
9. New Jersey Sire Stakes;
10. New Jersey Yearling Show.

(h) Sires of horses eligible for the events listed above must have been registered with the SBOA/NJ at the time of mating.

2:32-2.4 Adoption of bylaws

The bylaws of the New Jersey Sire Stakes Board of Trustees are hereby adopted as follows:

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

(c) Said Sire Stakes Program shall be administered by a Board of Trustees consisting of five members, four appointed by the Governor, two of whom shall be members of the Standardbred Breeders and Owners Association of New Jersey, two representatives of racing interests generally, and the Secretary of Agriculture ex officio. Of the members first appointed, the Breeders and Owners Association shall be two years, the other appointed member of such association shall be one year, the term of office of one appointee representing racing interests generally shall be for two years and the other appointee representing racing interests generally shall be for a term of one year. Thereafter, appointment shall be for terms of two years.

(d)-(h) (No change.)

(i) Sire Stakes Races shall be run at all licensed harness tracks in the State of New Jersey. Said races and purses and awards awarded therefor shall be pursuant to the rules and regulations of the Board of Trustees hereunder and the New Jersey Racing Commission.

(j)-(o) (No change.)

2:32-2.5 Closing of yearling nominations

(a) The date for the closing of nominations of yearlings to the pari-mutuel and fair divisions shall be May 15 or the next business day following May 15 in the event that that date falls on a Saturday, Sunday or a holiday, of each year, with no exceptions.

(b) The yearling registration fee shall be $40.00, if a copy of the United States Trotting Association certificate of registration accompanies the yearling nomination form and an additional $10.00 processing fee shall be due of the copy of the United States Trotting Association is not submitted. The nomination payment covers the nomination fee to both the Fair and Pari-mutuel divisions. Thereafter, each division will have separate sustaining payments with separate due dates. In addition, the yearling nomination payment form will also include the nomination to the Lou Babic Pace at $25.00. If one chooses to nominate to both of these events, the yearling nomination payment will be a total of $65.00 (or $75.00) and be due on or before May 15 of each year. Fillies may be nominated to the Babic Filly Division at the cost of $15.00 in addition to the $40.00 registration fee.

(c) Supplementary nominations may be made to the New Jersey Sire Stakes commencing with foals of 1984. Parties delinquent to the required May 15 yearling nomination fee are given until January 15th of the two-year-old yearling to fulfill the aforementioned conditions of nominations for a fee of $400. An additional $400.00 is needed to supplement to the Lou Babic Pace.

2:32-2.6 Stallion standing full season

(a) A stallion, in order for his foals to be eligible for the New Jersey Sire Stakes Program, must stand for breeding purposes the full season, extending from January 1 through December 31, on a farm in New Jersey, and shall not be moved from the farm on which he was registered without the prior permission (excluding medical emergency) of the Sire Stakes Board of Trustees.

(b) A stallion shall not be permitted to race during a registered breeding year, that is, January 1 through December 31.

(c) The foals of a stallion that race or is moved without prior permission of the Sire Stakes Board of Trustees during a registered breeding year will not be eligible to the Sire Stakes.

2:32-2.7 Eligibility

In order for Sire Stakes eligible two-year-old to remain eligible as three-year-olds, their owners must have made the yearling nomination and the first two-year-old sustaining payment. In order for eligible three-year-old horses to remain eligible as four-year-olds, their owners must also have made the first three-year-old sustaining payment as well as the nomination and the first two-year-old sustaining payment. This condition applies to both the Fair and Pari-mutuel Divisions.

2:32-2.8 Allocation for Sire Stakes purse money

After deduction of the Fair Division portion of the Sire Stakes purse money and special event money is made, the Pari-mutuel Division of the Sire Stakes purse money will be allocated as determined by the Board of Trustees.

2:32-2.9 Starting fees

Only the starting fees will be added to the basic purse. Starting fees for the 1986 season will be:

Pari-mutuel Division	Fair Division
2 year olds . . . $500.00	2 year olds . . . $75.00
3 year olds . . . $500.00	3 year olds . . . $75.00
4 year olds . . . $200.00	4 year olds . . . $75.00

2:32-2.10 Division of purse monies
(No change in text.)

2:32-2.11 Number of Sire Stakes Races
(No change in text.)

2:32-2.12 Fees to follow horse
(No change in text.)

2:32-2.13 Entry fee deadline

(a) All Sire Stakes Race entry fees must be paid at the time of the race or the horse will not be allowed to start.

(b) All New Jersey Sire Stakes horses entered and drawn to post positions are required to pay starting fees at the track. This starting fee is required even though a horse is scratched.

(c) The starting fee must be paid or the horse will not be permitted to race in any Sire Stakes event until the fee is paid and collected.

(d) The starting fee will not be refunded unless the horse dies between the time of declaration to start and the start of the race.

(e) When an owner has outstanding debts owed to the New Jersey Sire Stakes, every horse owned in whole or in part by that owner shall be subject to be declared ineligible by the Board of Trustees or its representatives to be entered or to start in any New Jersey Sire Stakes Race until such time that debt is collected.

2:32-2.14 Qualifying standards

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the qualifying conditions of this section for the 1986 racing season.

(b) All other qualifying standards in effect at the track where the race is being conducted must be adhered to.

(c) The 1986 New Jersey Sire Stakes qualifying times at the Pari-mutuel tracks will be as follows:

	1 Mile Track	5/8 Mile Track	1/2 Mile Track
Two-Year Old Trot	2:08	2:09	2:10
Three-Year Old Trot	2:04	2:05	2:06
Four-Year Old Trot	2:02	2:03	2:04
Two-Year Old Pace	2:04	2:05	2:06
Three-Year Old Pace	2:02	2:03	2:04
Four-Year Old Pace	2:01	2:02	2:03

NOTE: When racing at the mile track, two seconds are allowed off the half mile, but when racing on a 1/2 mile track, two seconds are subtracted.

(d) If a horse initially makes the qualifying standards but then fails to meet qualifying standards in a subsequent event, it must then requalify to meet the standards of the raceway at which the race is to be contested.

(e) Official workouts are not acceptable as a substitute for a qualifying racing line.

(f) All starters in the New Jersey Sire Stakes Fair Division must meet the following conditions for the 1986 Racing Season:

1. All starters in the New Jersey Sire Stakes Fair Division shall have raced within 30 days of the race in which they have been entered. They shall show a satisfactory racing line in one of their last two starts (three starts for two-year-olds). A satisfactory racing line is defined as a qualifying or racing line charted in the following times or better with allowances for track conditions:

	Trotters	Pacers
Two-year-olds	2:13	2:11
Three-year-olds	2:11	2:09
Four-year-olds	2:09	2:07

2. Horses may be placed on the stewards list for subsequent poor performance.

2:32-2.15 Splitting races
(No change in text.)

2:32-2.16 Registration of foals

All foals must be registered with the United States Trotting Association with a certificate of registration dated on or before the time of nomination. In the event of a change of name or ownership, the New Jersey Sire Stakes office must be notified immediately.

2:32-2.17 Purse distribution
(No change in text.)

2:32-2.18 Time of declaration
Starters declare in at the same time as in practice for overnight events at the raceway where Sire Stakes Races will be contested. Entries for the New Jersey Sire Stakes Fair program will close at 9:00 A.M., three days prior to the race with Sundays excepted.

2:32-2.19 Entry blanks
All entry blanks must specify as to gait to be contested for age, sex, trainer, owner, preference date, and location of eligibility papers, if they are not in the race office at time of declaration. In the event that incomplete information is provided and cannot be located, the horse may be drawn in, but may be scratched with the starting fee still payable if it is later determined that the horse is not eligible or qualified. Under no circumstances will late entries be taken.

2:32-2.20 Sustaining fees
In 1986 the sustaining fee schedule will be as follows:
(No change in remainder of section.)

2:32-2.21 Transfer of race
(No change in text.)

2:32-2.22 Number of starters
In all Pari-mutuel and Fair Sire Stakes races, the number of starters permitted in the first tier shall be at the discretion of the judges. No more than two trailers will be permitted in the second tier. However, no trailers shall be permitted in the races designated as finals.

2:32-2.23 Eligibility papers
(No change in text.)

2:32-2.24 Splitting and carrying over divisions
In the event a Sire Stakes event is split into divisions, such Sire Stake event shall be divided and each division shall race for an equal share of the total purse. All Sire Stakes events shall be advertised added, divided. In the event that Pari-mutuel event splits into more than three divisions, one or more of the divisions in excess of three may be carried over to the following racing day.

2:32-2.25 Payment dates
(a) In the Pari-mutuel Division, the first sustaining payment on a two- or three-year-old must be made on or before February 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before April 15 of a year in order to remain eligible in that year. In the case of four-year-olds, the first sustaining payment must be made on or before January 15 of a year, and the second sustaining payment on or before March 15 of a year in order to remain eligible in that year.
(b) In the Fair Division, the first sustaining payment on a two-, three-, or four-year-old must be made on or before January 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before March 15 of a year in order to remain eligible in that year. In the event that the 15th day of the aforementioned month falls on a Saturday, Sunday, a holidy, the payment must be postmarked on or before the next business day following the 15th of that month.

2:32-2.26 Refund request
All requests for refunds on sustaining or nominating payments must be made by letter to the Board Secretary postmarked on or before the 15th of the month in which the payment is due. In the event that the 15th falls on a Saturday, Sunday or holiday, the due date will be the next business day following the 15th.

2:32-2.27 Four-year-old split
If the four-year-old division(s) split in a Pari-mutuel race or in a Fair Division race, the split races will be segregated by sex when possible and applicable.

2:32-2.28 Point standings
Total points accumulated towards Final Race eligibility in the Pari-mutuel Division shall include only Pari-mutuel Division points. Only Fair Division race points count toward the Fair Final eligibility.

2:32-2.29 Four-year-old division
The four-year-old pari-mutuel New Jersey Sire Stakes program will expire in 1989 with the completion of the four-year-old season of those yearlings registered on May 15, 1985 (foals of 1984).

2:32-2.30 Name change notification
Owners, trainers, drivers, or Stake Services shall notify the New Jersey Sire Stakes Program of a name or gait change of a horse by the time of declaration to a race, or the entry will not be accepted for that race.

2:32-2.31 Final races
(a) There will be a two- and three-year-old "Final" race in each Pari-mutuel Division at the Pari-mutuel raceways as scheduled by the New Jersey Sire Stakes Board of Trustees. There will be a minimum $10,000 Fair "Final" Race in Each Division. There will be no entry fees for these events and each is open to the highest New Jersey Sire Stakes point winners declared in at the Meadowlands, Garden State and Freehold and the highest New Jersey Sire Stakes point winners at the Fairs in each Division that are declared in and can be drawn to post in first tier. Trailers are not permitted to start in any New Jersey Sire Stakes Finals.
(b) All horses competing in both the Pari-mutuel and Fair finals at all tracks will be determined on a point basis. The point value will be awarded as follows:
1.-5. (No change.)
(c) In the event of less than five starters, the points shall be awarded in the same fashion as the purse breakdown with less than five starters as in N.J.A.C. 2:32-2.18.
(d) (No change in text.)
(e) In the event of a dead heat for any position in a New Jersey Sire Stakes race, the points will be split equally between the two horses as is currently done with the monies. In the event of a tie for the last spot in the top ten or top eight money winners at the Meadowlands, Garden State, Freehold or the Fairs. The last spot in the Final will be drawn by lot from among the horses tied in both points and money winnings in the Sire Stakes and having the highest point totals and not already included in the Final.

2:32-2.32 Supervising Race Secretary
(a) A member of the New Jersey Sire Stakes staff will be appointed Supervising Race Secretary at all Fair meets. The New Jersey Sire Stakes Board Secretary is responsible for the complete supervision of the New Jersey Sire Stakes Program as it pertains to the Fair.
(b) Nothing herein shall be construed to rescind or replace any of the powers, rules or regulations of the New Jersey Racing Commission at any race.

2:32-2.33 Dress requirements

Racing colors, helmet, and white pants in accordance with the New Jersey Racing Commission rules, will be required to be worn by any person warming up a horse on a New Jersey fair track one hour before post time. Violators will be subject to a fine or suspension.

2:32-2.34 Dishonored checks

An individual whose check for a sustaining payment, nominating payment or starting fee is dishonored by the bank will be turned over to the New Jersey Racing Commission for appropriate action and the horse or horses will be immediately declared ineligible for all future Sire Stakes events until the check is made good.

2:32-2.35 Separate Fair Division

A separate New Jersey Sire Stakes Fair Division, with a separate payment schedule will be in force.

2:32-2.36 Fund policy

(No change in text.)

2:32-2.37 Qualification for Fairs' Universal Driver's Rating Award

(No change in text.)

2:32-2.38 No cash payment or partial payment

The New Jersey Sire Stakes Program will accept no cash payment on nominating and sustaining payments. All fees will be paid in United States funds. No post-dated checks or partial payments on a nominating, sustaining, or entry fee will be accepted on individual horses.

2:32-2.39 Qualification for the New Jersey Sire Stakes

(No change in text.)

2:32-2.40 Broadcasting revenues

(No change in text.)

(a)

DIVISION OF RURAL RESOURCES

Soil and Water Conservation
Project Cost Sharing: Eligible Projects

Adopted Amendments: N.J.A.C. 2:90-2.15, 2.17, 2.18 and 2.24

Proposed: January 21, 1986 at 18 N.J.R. 131(a).
Adopted: March 17, 1986 by Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.
Filed: March 14, 1986 as R.1986 d.105, **without change.**

Authority: N.J.S.A. 4:24-3 and 4:1C-24

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): June 24, 1990.

Summary of Public Comments and Agency Responses:

One comment was received from the Cape-Atlantic Soil Conservation District requesting that cost sharing be authorized for all above ground application equipment, including riser sections and sprinkler heads.

RESPONSE: The State Soil Conservation Committee determined that above ground riser and sprinkler heads are, in general, readily removable and must be considered portable equipment, and therefore are not authorized for state cost sharing in accordance with N.J.A.C. 2:90-2.15(c)1.i. of the existing rule, and as such, should not be included in the rule.

Full text of the adoption follows.

2:90-2.15 Irrigation systems

(a) (No change.)

(b) The following types of practices are approved for irrigation systems:

1.-3. (No change.)

4. Where existing systems are converted to, or new systems are installed for trickle or similar low volume, low-loss systems, cost-sharing is authorized for pumping, filtering and application equipment where such components are permanently installed.

(c) The following special conditions are applicable to irrigation systems:

1. Cost-sharing is not authorized for:

i. Portable pipe or any other normally portable equipment.

ii. Pipe installed in the well (other than casing), pumps, and pumping equipment except as specified in (b)4 above.

iii. Installation of power supplies.

iv. Sprinklers or other above-ground water application equipment except as specified in (b)4 above.

2.-3. (No change.)

(d) (No change.)

2:90-2.17 Permanent open drainage systems

(a) Permanent open drainage systems which dispose of excess water on farmlands may be applied to cropland that has been cropped for at least three out of the last five years.

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

2:90-2.18 Underground drainage systems

(a) Underground drainage systems which dispose of excess water may be applied to cropland that has been cropped for at least three out of the last five years.

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

2:90-2.24 Cost-share rates

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

(c) The least cost practice or system which is determined to be effective and functional shall be the basis for cost-share rates. An applicant may install a more expensive practice or system if it is determined to be effective and conforms to the standards and specifications in N.J.A.C. 2:90-2.3, but shall be eligible for reimbursement only for up to 50 percent of the least cost option described above.

BANKING

(a)

DIVISION OF BANKING

Savings Banks: Credit Cards

Readoption: N.J.A.C. 3:11-10

Proposed: February 3, 1986 at 18 N.J.R. 241(a).
Adopted: March 7, 1986 by Mary Little Parell, Commissioner, Department of Banking.
Filed: March 7, 1986 as R.1986 d.93, **without change.**

Authority: N.J.S.A. 17:9A-182.1 and 182.2.

Effective Date: March 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:11-10.

CIVIL SERVICE

(b)

CIVIL SERVICE COMMISSION

Noncompetitive and Labor Appointments Allocation and Reallocation of Titles Appointments and Promotions

Adopted Amendments: N.J.A.C. 4:1-10.1 and 10.2

Proposed: December 16, 1985 at 17 N.J.R. 2937(b).
Adopted: February 25, 1986 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.
Filed: March 17, 1986 as R.1986 d.117, **without change.**

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:5-1b, 11:7-1, 11:7-2, 11:7-11, 11:22-4, 11:22-45, 11:22-48.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 28, 1990.

Summary of Public Comments and Agency Responses:

Two persons testified at the public hearing held on January 8, 1986, concerning the proposal: Peter J. Calderone, Assistant Commissioner, Department of Civil Service and Robert Pursell, CWA. In addition, one person submitted written testimony, Don Philippi, IFPTE, Local 195.

Peter J. Calderone indicated that N.J.A.C. 4:1-10.1 establishes the criteria for the Civil Service Commission to allocate titles between the competitive and non-competitive divisions. The amendment intends to clarify and define one of these criteria: "practicability of testing" to "practicability of testing due to job duties or special circumstances." Moreover, in appropriate cases an employee would be able to promote beyond the first level competitive title. He indicated that the intent of the amendment would be to provide the employee more options and to provide an avenue for gaining tenure.

Robert Pursell indicated that close scrutiny should be applied to any reallocation of titles because of the potential for managerial manipulation and political patronage. He felt that reallocation to the non-competitive division may help to reduce the number of provisionals, but noted N.J.A.C. 4:1-10.1 should be carefully applied when determining whether testing is practicable. Regarding N.J.A.C. 4:1-10.2(e), he saw a possible need in some cases, but in other cases, he saw the potential for abuse if non-competitive employees could be promoted over competitive employees.

Don Philippi endorsed the proposed amendments.

N.J.S.A. 11:7-1, 11:7-2 and 11:22-4 provide for the allocation and reallocation of titles to the competitive and non-competitive divisions of the classified service. Further, N.J.S.A. 11:10-7 and 11:22-34 provide that, as far as it is consistent with the best interests of the service, vacancies shall be filled by promotion based on competitive examinations.

Pursuant to statute, N.J.A.C. 4:1-10.1 establishes the criteria for the Civil Service Commission to allocate and reallocate titles in the competitive and non-competitive divisions. The proposed amendment clarifies and defines the term, practicability of testing. Indeed, as governmental institutions are called upon to act efficiently and accountably, flexibility is needed to accomplish its goals. Accordingly, the Commission ruled that N.J.A.C. 4:1-10.1 be adopted as published.

The amendment to N.J.A.C. 4:1-10.2(e) provides that an employee may be promoted from the labor or non-competitive division to a related above entry level title in exceptional circumstances. This amendment is similar to the first in that it promotes flexibility in the personnel system. It would enhance employee opportunity for upward mobility and provides an opportunity to gain job tenure. CWA raises the issue of potential abuse in administration of this regulation. Therefore, the Commission directed that internal administrative mechanisms be established to protect against such abuse. Nevertheless, a good faith effort in carrying out this proposal would benefit the Civil Service system, its employees and its employers. Accordingly, the Commission ruled that proposed N.J.A.C. 4:1-10.2 be adopted as published.

Full text of the adoption follows.

SUBCHAPTER 10. NONCOMPETITIVE AND LABOR APPOINTMENTS

4:1-10.1 Allocation and reallocation of titles

(a) The Civil Service Commission may allocate or reallocate titles between the competitive and noncompetitive divisions. The following factors shall be considered in determining such allocations:

1. Salary;
2. Geographic location;
3. Working conditions;
4. Nature of the work;
5. Availability of candidates; and
6. Practicability of testing due to job duties or special circumstances.

(b) Unskilled labor jobs shall be in the labor division.

(c) The appointing authority shall be advised of any contemplated reallocation before it goes into effect and shall be given 20 days to state objections.

4:1-10.2 Appointments and promotions

(a) The President of the Civil Service Commission may authorize an appointing authority to appoint a qualified applicant to a title in the labor or noncompetitive division without examination.

(b) The President of the Civil Service Commission may order that a noncompetitive examination be held to determine the qualification of applicants for noncompetitive and labor division titles. Such examinations may be held after due notice. Public advertising shall not be required.

(c) Eligible lists shall not be ranked and any eligible may be appointed. Formal certification shall not be necessary.

(d) The duration, extension and termination of noncompetitive and labor eligible lists shall be governed by the same rules as those applying to open competitive examinations.

(e) At the discretion of the President of the Civil Service Commission, an employee may be promoted from the labor or noncompetitive division to a related entry level title or in exceptional circumstances a related above entry level title in the competitive division through normal promotional examination procedures provided that he or she meets the open competitive requirements.

(f) A probationary employee who has permanent status in the noncompetitive or labor divisions and is appointed to a new title at the same salary range or is promoted, shall continue to accrue seniority in his or her permanent title until attaining permanent status in the new title.

(a)

Grievances and Minor Discipline

Adopted New Rules: N.J.A.C. 4:1-23.1 and 23.2; 4:2-23.1 through 23.8

Adopted Repeal: N.J.A.C. 4:1-23.1 through 23.7; 4:2-23.1 through 23.3; 4:3-23.1 and 23.2

Proposed: November 4, 1985 at 17 N.J.R. 2587(a).
Adopted: February 25, 1986 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.
Filed: March 17, 1986 as R.1986 d.126, **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. 11:5-1a and f.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 28, 1990.

Summary of Public Comments and Agency Responses:

Four persons testified at the public hearing held on November 22, 1985 concerning the proposal: Herbert Hall, Department of Civil Service; Donald Philippi, IFPTE, Local 195; Robert Pursell, CWA; and John DeVaney, New Jersey State Personnel Council. In addition two persons submitted written testimony: Robert A. Fagella, Esq. and Richard A. Dunn, CWA, Local 1085.

Oral Testimony:

Mr. Hall stated that, in accordance with the "Sunset" Provisions of Executive Order 66(1978), the Civil Service Commission reviewed the rules codified at N.J.A.C. 4:1-23; 4:2-23 and 4:3-23. He indicated that proposed N.J.A.C. 4:1-23 and 4:2-23 repeal the four step process and provide a streamlined two step grievance process for classified employees whose positions are not covered by a negotiated State labor contract. Further, grievants are entitled to a more formalized hearing if the grievance proceeds beyond step two. Employer discretion and employee entitlements are clearly stated. In addition, the longstanding commission standard of review of issues of general applicability as they interpret law, rule, regulation or policy is codified both for grievances and minor disciplinary actions.

Mr. Philippi recommended that N.J.A.C. 4:2-23.1(f) be modified to allow for union representation for employees without management veto. He felt that in N.J.A.C. 4:2-23.2, the group grievance process could lead to unfairness because some grievances are unique and should be heard individually. He urged that, in N.J.A.C. 4:2-23.3, it should be provided that if the appointing authority fails to respond to the grievant at the departmental level, the grievance should be upheld. He also believed that the appointing authority should be obligated to render a decision at step two rather than allowing it to be automatically reviewed by the Civil Service Commission. Mr. Philippe claimed that in N.J.A.C. 4:2-23.5, hearings on minor disciplinary actions ought to be available to all employees and not limited to permanent classified employees. Further, he felt that, if the appointing authority did not dispose of the charges within 20 days, the employee should automatically prevail. In N.J.A.C. 4:2-23.6, he urged that witnesses be granted time off with pay when they appear at a time other than their shift. He also felt that supervisory personnel ought not be involved in the grievance procedure as hearing officers or deciders of fact in cases in which they have a direct relationship. Finally, he claimed that the provisions were unfair by providing that failure of an employee to submit certain specific documents and forms will result in losing the grievance.

Mr. Pursell agreed with Mr. Philippi's concerns and cited additional items. He believed that the proposal preempted what his union could bargain for through negotiations. He was concerned that the proposed rule does not permit confidential employees to be allowed union representation. He claimed that the rule's definition of minor discipline did not agree with some departmental definitions of minor discipline. In particular, he questioned whether or not it included written and oral warnings. Further, he asked that the rules address minor discipline and grievances in local government. Moreover, he asked whether N.J.A.C. 4:1-23 and 4:2-23 precluded the appeal of oral reprimands or suspensions to the contractual minor disciplinary appeal panel. In addition, he stated that the procedures, which are within the discretion of the appointing authority in N.J.A.C. 4:2-23.2(a), (c) and (d), ought to be done by mutual consent of the appointing authority and the union. Finally, he proposed the reinstitution of the present subchapter 23 and urged restoration of its language regarding the grievance procedure, the grievance settlement, the employer's responsibility and the employee's rights.

Mr. DeVaney indicated that any changes in working conditions sought by the unions ought to be at the bargaining table rather than in a rule change. In the interest of efficiency he felt there ought to be a limit of witnesses, particularly those who had seen the same thing. Otherwise, he supported N.J.A.C. 4:1-23 and 4:2-23 as presented.

Written Testimony:

Mr. Fagella recommended that N.J.A.C. 4:2-23.1(f) be modified to provide the employee the right to designate an individual to represent him or her in a grievance proceeding or to provide that a duly authorized collective bargaining representative be entitled to represent such employee without the appointing authority's consent. Further, he suggested that N.J.A.C. 4:2-23.3 and 23.4 provide for no penalty for the employee if he or she does not adhere precisely to procedural requirements, and for the appointing authority to respond affirmatively or negatively to a grievance rather than allowing a non-response. In addition, he petitioned that N.J.A.C. 4:2-23.4(c) require the appointing authority to schedule a hearing date within a reasonable time after receipt of the grievance.

Mr. Dann believed that N.J.A.C. 4:1-23.16(b) exceeds the Commission's statutory authority by prohibiting the use of grievance procedures where a specific right of appeal to Civil Service exists. He also raised the issue that N.J.A.C. 4:1-23.1(b) provides a limiting definition of minor discipline which implies that only official reprimands, demotions, or suspensions or fines of 5 or fewer days may be appealed through the grievance or disciplinary review procedures. He maintained that all disciplinary actions may be appealed through negotiated procedures except where certain statutory appeal procedures exist.

Agency Response:

N.J.S.A. 11:2A-1, which provides for general Commission control over Civil Service employees, sets forth a right to appeal to the Civil Service Commission in cases of suspension, fine or demotion for more than three times in a year, more than 5 days at a time, or for more than fifteen days in the aggregate in a year. N.J.S.A. 11:5-1(f) expressly authorizes the Commission to establish procedures for the orderly consideration of grievances and to make decisions thereon in State service. Accordingly, the Civil Service Commission considered N.J.A.C. 4:1-23 and 4:2-23 only in the context of its existing legislative authorization.

Several comments sought to apply the regulatory procedures to local government and to cover managerial and exempt employees not covered by a negotiated contract. To perfect these changes, however, would require the Commission to go beyond its express statutory authorization. Similarly, CWA requested that managerial and confidential employees be represented by a union in grievance/minor disciplinary matters. However, N.J.S.A. 34:13A-5.3 does not require such representation.

The union representatives objected to consolidating actions arising out of the same event. N.J.A.C. 4:2-23.2(b) provides that grievants have the discretion to appeal as a group to the first level of supervision. N.J.A.C. 4:2-23.2(c) provides discretion for a department to consolidate two or more grievances on the same issue. Such a consolidation would be based on the extent to which common questions of fact and law are involved. Such a consolidation may result in savings in time and expense and would avoid duplication and inconsistency.

The union representatives found fault with the various default mechanisms in the grievance and minority disciplinary procedures under which employees would automatically lose their grievance and minor disciplinary actions if they did not follow certain procedures. N.J.A.C. 4:2-23.3 and 23.4 do provide for appeal to step two or to the Civil Service Commission, should the appointing authority not respond within 20 calendar days. Further, N.J.A.C. 4:2-23.5 intended to provide for appeal to the Civil Service Commission if the appointing authority did not respond within 20 days. To clarify this time limitation, the Commission amended N.J.A.C. 4:2-23.5(d) to provide that the appointing authority's lack of response be interpreted as a negative response as it does in the grievance procedure. See N.J.A.C. 4:2-23.4(e).

Testimony concerned the use of compensatory time for witnesses appearing on one shift when they were assigned to another shift. N.J.A.C. 4:2-23.7(b) clearly provides:

> The grievant, a designated employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings.

The union representatives sought to change N.J.A.C. 4:2-23.1(f) which provides that an employee may be represented by him/her self, legal counsel or by a representative only with the consent of the appointing authority. The intent of this regulation was to provide fair and expeditious procedures for managerial and confidential employees not covered under a collective bargaining agreement. The Commission determined that, to clarify this intention, N.J.A.C. 4:2-23.1(f) be moved to 4:2-23.6(a)2 which section deals with only those employees not covered by a negotiated labor contract.

The union representatives stated that these Civil Service regulations would preempt matters to be discussed in collective negotiation. However, N.J.A.C. 4:2-23.1(b) provides that, "where departmental grievance and/or minor discipline appeal procedures are established by a negotiated labor contract, such contract shall be the applicable process for departmental reviews." Thus, such a claim of preemption is generally without foundation.

CWA was concerned that the elimination of the present language would expunge employer responsibilities and employee rights. Such language changes represent an effort to remove jargon and make regulations as clearly readable as possible. The employer responsibilities and employee rights are fully enumerated in PERC and Civil Service statutes and, accordingly, would be redundant in a regulation.

CWA expressed concern that the definition of minor discipline be modified to include oral and written warnings to conform with certain departmental definitions. Such warnings are not categorized as disciplinary actions, but rather serve as notice to employees of the possibility of discipline if such non-conforming actions continue. Minor disciplinary actions are placed in the official personnel folder whereas corrective actions, such as oral and written warnings, are not generally placed in the official personnel folder. In addition, to allow appeals of all such warnings would either chill the disciplinary process or would inundate the department and Commission appeals mechanisms.

Therefore, the Commission adopted the rule with the two minor changes mentioned above.

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

SUBCHAPTER 23. GRIEVANCES AND MINOR DISCIPLINE

4:1-23.1 General

(a) "Grievance" means a complaint by an employee regarding any term or condition of employment which is beyond the employee's control and is remediable by an element of management.

(b) Grievance procedures shall not be used to address any matter for which there is a specific right of appeal to Civil Service.

(c) "Minor Discipline" means a formal written reprimand or a suspension, fine or demotion of five days or less.

4:1-23.2 Grievance and minor discipline: Processing

(a) In State service, grievances and minor discipline appeals shall be processed and reviewed pursuant to N.J.A.C. 4:2-23.1 et seq.

(b) In local service, an appointing authority may establish procedures for processing grievances and minor disciplines.

SUBCHAPTER 23. GRIEVANCES AND MINOR DISCIPLINE

4:2-23.1 General

(a) The Civil Service Commission may review grievances and minor discipline appeals meeting the Standard of Review set forth in N.J.A.C. 4:2-23.8(b) only after departmental processes have been concluded. This review shall not extend to an alleged violation of a matter exclusively covered in a negotiated labor contract.

(b) Where departmental grievance and/or minor discipline appeal procedures are established by a negotiated labor contract, such contract shall be the applicable process for departmental reviews. Affected employees may petition for Civil Service Commission review after exhaustion of the departmental procedures. See N.J.A.C. 4:2-23.8.

(c) Except as limited in (d) below, employees not covered by a negotiated labor contract and those covered by a negotiated labor contract that does not address departmental grievance and/or minor discipline appeal processes may utilize the departmental procedures set forth in N.J.A.C. 4:2-23.2 through N.J.A.C. 4:2-23.7.

(d) The minor discipline appeal processes set forth in this subchapter shall be available to permanent classified employees and employees in their work test period.

(e) The burden of proof in departmental proceedings set forth in this subchapter shall rest with:

1. The employee in grievance matters; and
2. The appointing authority in minor discipline matters.

[(f) An employee may be represented by legal counsel or appear on his or her own behalf. Additionally, an employee may be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative.]

4:2-23.2 Grievance processing

(a) A grievant shall be entitled to at least one hearing on a grievance prior to the conclusion of Step Two unless the grievance is satisfactorily resolved at Step One. However, a department, at its option, may schedule a grievance meeting in lieu of a hearing at either Step One or Step Two of the grievance process.

(b) When a grievance directly concerns and is shared by more than one grievant, the grievants may appeal as a group to the first level of supervision common to the grievants.

(c) A department may consolidate two or more grievances on the same issue and process them as a group grievance circumstance at its discretion. All grievants shall be promptly notified of this action.

(d) A department may, at its option, advance a grievance to the second step of the grievance procedure. Timely notice of this action shall be supplied to the grievant.

(e) An employee may amend a grievance during the initial step at which it is processed. Such amendment may only be made for the purpose of clarification and shall not be utilized to change the nature of the grievance or to include additional items.

(f) See N.J.A.C. 4:2-23.6 as to the conduct of the hearings and grievance meetings and N.J.A.C. 4:2-23.7 as to the scheduling of hearings and grievance meetings.

4:2-23.3 Grievance procedure: Step One

(a) Grievances shall be presented in writing on grievance form CS-251 to the office or individual designated by the department to process the matter within 20 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;
2. State the requested remedy; and
3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date with seven calendar days of receipt of the grievance.

(d) A written decision shall be rendered within 14 calendar days after the conclusion of the hearing or grievance meeting.

(e) The lack of response by the department within the time frames set forth in (c) and (d) above, unless time limits have been extended by mutual agreement, shall be considered a negative response.

4:2-23.4 Grievance procedure: Step Two

(a) A grievant may appeal to the Department head or his or her designee within 10 calendar days of:

1. Receipt of the written decision at Step One; or
2. A negative response as set forth in N.J.A.C. 4:2-23.3(e).

(b) The appeal shall be accompanied by material presented at Step One and any written records or decisions emanating from Step One proceedings.

(c) The department shall notify the employee of the scheduled hearing or grievance meeting date within 10 calendar days of receipt of the grievance.

(d) A written decision shall be rendered within 21 calendar days after the conclusion of the hearing or grievance meeting.

(e) The lack of response by the department within the time frames set forth in (c) and (d) above, unless time limits have been extended by mutual agreement, shall be considered a negative response.

(f) See N.J.A.C. 4:2-23.8 as to Civl Service Commission review.

4:2-23.5 Minor discipline appeals

(a) Permanent classified State employees and employees in their work test period may request a hearing at the affected department level regarding minor discipline measures specified in N.J.A.C. 4:1-23.1(c) within 10 days of receipt of a notice of discipline.

(b) The departmental proceedings shall consist of one hearing.

1. The hearing shall be conducted within 30 days of such request unless adjourned by consent of the parties.
2. The department shall make a final written disposition of the charges within 20 days of the hearing on form CS-335, Appeal of Minor Discipline Action.

(c) See N.J.A.C. 4:2-23.6 as to the conduct of the hearings and N.J.A.C. 4:2-23.7 as to the scheduling of the hearings.

(d) The lack of response by the department within the time frames set forth in (b)1 and 2 above shall be considered a negative response, unless such time limits have been extended by mutual consent.

[(d)] *(e)* See N.J.A.C. 4:2-23.8 as to Civil Service Commission review.

4:2-23.6 Hearings and grievance meetings: Conduct

(a) The following shall apply during a hearing at the affected department level on a grievance or minor discipline matter.

1. Permission for a reasonable number of witnesses shall be granted upon the request of a grievant or his or her representative;

2. An employee may be represented by legal counsel or appear on his or her own behalf. Additionally, an employee may be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative;

[2.] ***3.*** The grievant or his or her counsel or agent shall act as a spokesperson for the grievant and one person shall act as a spokesperson for the department; and

[3.] ***4.*** The spokesperson for either party shall have the right to directly examine or cross examine witnesses.

(b) Any grievance meeting scheduled in lieu of a hearing shall be attended only by a designated supervisor, a spokesperson for the department, the grievant, or a spokesperson in a group grievance situation, and the grievant's counsel or agent. The department may also permit the attendance of resource persons possessing direct information important to the clarification of the matter.

4:2-23.7 Scheduling

(a) Departmental management shall schedule grievance or minor discipline hearings or grievance meetings during a grievant's regular work hours as far as possible.

(b) The grievant, a designated employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings. Such time off shall include reasonable travel time and shall not extend to any time necessary for the preparation of a grievance.

(c) The time limits set forth in this subchapter may be changed by mutual agreement. Requests for extension of the time limits shall not be unreasonably denied.

4:2-23.8 Civil Service Commission Review

(a) An employee may request Civil Service Commission review within 20 calendar days of:

1. The conclusion of Step Two grievances processes set forth in N.J.A.C. 4:2-23.4;

2. The completion of departmental review under grievance procedures set forth in a negotiated labor contract provided that the grievance does not involve an alleged violation of a matter exclusively covered in the labor contract;

3. The conclusion of departmental minor discipline proceedings set forth in N.J.A.C. 4:2-23.6; or

4. The completion of departmental review under minor discipline appeal mechanisms set forth in a negotiated labor contract provided all further appeal rights to contractually negotiated mechanisms beyond departmental review are waived.

(b) The Civil Service Commission's review is discretionary and generally extends only to those matters which present issues of general applicability in that they interpret law, rule, regulation or policy.

(c) The burden of proof in Commission proceedings shall be borne by the employee.

(d) The request shall include:

1. A copy of the grievance form CS-251 or the Appeal of Minor Discipline Action form CS-335 and all written records and decisions established during departmental reviews;

2. Written argument and documentation specifying how the matters meet the Standard of Review set forth in (b) above; and

3. Written argument regarding the merits of the matter.

(e) A copy of all material submitted to the Department of Civil Service must be served on the grievant's department.

(f) Failure to submit the material specified in (d) above may result in the dismissal of the matter.

(g) The President of the Civil Service Commission shall review the grievances and minor discipline appeals and determine whether or not they meet the Standard of Review set forth in (b) above.

1. If the matter does not meet the Standard of Review, the President of the Civil Service Commission may deny the appeal which shall be the final administrative determination.

2. If the grievance meets the Standard of Review, the Commission will render a decision based upon the written record or such other proceedings as the Commission shall direct. The Commission's decision shall be the final administrative determination.

EDUCATION

STATE BOARD OF EDUCATION

(a)

Bookkeeping and Accounting in Local School Districts
Overexpenditure of Funds

Adopted New Rules: N.J.A.C. 6:20-2.13

Proposed: December 16, 1985 at 17 N.J.R. 2939(b).

Adopted: March 17, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: March 17, 1986 as R.1986 d.118, **without substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-14, 18A-4.15.

Effective Date: April 7, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): August 9, 1990.

Summary of Public Comments and Agency Responses:

Sixteen letters with comments were received. All 16 letters expressed opposition to the new rule. The comments can be summarized as follows:

1. The proposed new rule is a burden and should be withdrawn in its entirety.

2. The term "major accounts" is not clearly defined in the proposal.

3. The proposal severely handicaps a school district's ability to transfer funds between line item accounts as needed.

4. The overwhelming majority of school districts are being held accountable due to the fiscal shortcomings of a few.

The responses of the Department of Education were that:

1. The new rule is necessary to fully implement the requirements contained in N.J.A.C. 18A:22-8.1 concerning the transfer of funds among line items or program categories.

2. Additional language was added to the rule at subsection (b) to clarify the meaning of "major accounts."

3. The new rule will not handicap school districts' ability to transfer funds between line items. It merely requires that they comply with the requirements which now exist in statute.

4. All districts must be required to implement the procedures required by the statute concerning line item transfer.

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

[6:10-20-2.13] ***6:20-2.13*** Overexpenditure of funds

(a) A district board of education shall not incur any obligation or approve any payment in excess of the amount appropriated by the district board of education in the applicable line item pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1

(b) Whenever a district board of education anticipates an overexpenditure *[of any major account]* ***in either the current expenses, capital outlay (sites, buildings and equipment) or debt service account as*** designated in N.J.A.C. 6:20-2.2(b) *[,]* ***;***

1. The district board of education shall direct the chief school administrator to immediately notify the county superintendent of schools, of the following:

i. The projected amount of the overexpenditure;

ii. The reason or reasons for the projected overexpenditure; and

iii. The action being taken by the district board of education to avoid the projected overexpenditure.

2. The county superintendent shall immediately notify the commissioner, in writing, if the projected amount of the overexpenditure exceeds 5 percent of the district's current expense budget or $100,000, whichever is lower.

3. The county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education is sufficient to avoid an overexpenditure. If necessary, the county superintendent shall assist the district board of education in determining what further corrective action can be taken, or request assistance from the Division of Finance.

4. The county superintendent shall immediately notify the commissioner in writing should it appear that an overexpenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) A district board of education secretary shall report to the district board of education, at each regular meeting, the amounts appropriated, expended and transferred into or out of an item of appropriation, for each item of appropriation shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report shall be in addition to the report required by N.J.S.A. 18A:17-9.

(d) By August 15, the county superintendent shall report to the commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(e) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the state's monitoring procedure. In those cases where the commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the commissioner shall recommend to the State Board of Education that the district's certification be rescinded.

(f) In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating state aid entitlements for the second year following the year in which the deficit occurred.

(a)

Vocational and Technical Education Schools Designated as Other than Full-Time Day Schools

Adopted New Rule: N.J.A.C. 6:43-1.3

Proposed: December 16, 1985 at 17 N.J.R. 2940(a).
Adopted: March 17, 1986 by State Board of Education, Saul Cooperman, Secretary.
Filed: March 17, 1986 as R.1986 d.119, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15, 18A:54-9 and 18A:54-32.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1991.

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

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

6:43-1.3 Schools designated as other than full-time day schools

(a) Schools designated as "other than full-time day schools" are defined as an entity which must meet the following criteria:

1. The school must be designated by the district board of education as an entity separate and distinct from any and all other schools within the district.

2. The school must have a curriculum approved by the district board of education and the county superintendent of schools for each program offered. Each program must have as its objective the preparation of shared-time secondary students or adults for gainful employment.

3. The school must maintain a separate register. The school may use either the Department of Education's New Jersey School Register or the New Jersey Adult High School Register format.

4. The building(s) must be approved by the New Jersey

Department of Education, Bureau of Facility Planning Services. When the district board of education has designated a facility other than a school building approvable by the New Jersey Department of Education, Bureau of Facility Planning, the *[County Superintendent of Schools]* ***county superintendent of schools*** must approve the off-site facility for training.

5. Each school must have the services of a certificated supervisor or administrator who must be present while the school is in session.

(b) When an "other than full-time day school" meets the definition in (a) above it will be eligible for state aid pursuant to N.J.S.A. 18A:54-9 and 18A:54-32 provided that:

1. The program(s) provide for the preparation of individuals for gainful employment requiring other than a baccalaureate or advanced degree.

2. Buildings approved as either full-time or shared-time day schools are not subdivided within the same time frame for funding purposes.

3. The laboratory portion of an existing instructional program housed apart from the basic program is not designated as a separate school.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Interim Environmental Cleanup Responsibility

Readoption: N.J.A.C. 7:1-3

Proposed: February 3, 1986 at 18 N.J.R. 242(a).
Adopted: March 5, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: March 5, 1986 as R.1986 d.87, **without change.**

Authority: N.J.S.A. 13:1K-6 et seq., specifically 13:1K-10.

Effective Date: March 5, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): March 5, 1987.
DEP Docket No. 003-86-1.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("NJDEP") received only one written comment during the comment period which ended on March 5, 1986. The ECRA Committee of the Corporate and Business Law Section, New Jersey Bar Association offered to assist NJDEP in the revisions and ultimate adoption of final ECRA regulations by the new expiration date of March 5, 1987 of the interim ECRA regulations. NJDEP plans to seek the assistance of all interested parties in the revision of the ECRA regulations and plans to contact the ECRA Committee of the Corporate and Business Law Section, New Jersey Bar Association prior to adopting the new rules.

Full text of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1-3.

(b)

DIVISION OF PARKS AND FORESTRY

Open Lands Management Program

Adopted New Rule: N.J.A.C. 7:2-12

Proposed: April 15, 1985 at 17 N.J.R. 866(b).
Adopted: March 10, 1986 by Richard T. Dewling, Commissioner, Department of Protection.
Filed: March 17, 1986 as R.1986 d.124, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-15.133 et seq., specifically 13:1B-15.137.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order 66(1978): July 19, 1988.
DEP Docket No. 015-85-03.

Summary of Public Comments and Agency Responses:

The comment period for the proposed new rule closed on May 15, 1985. Several comments were received from a conservation association, an animal protection association, and governmental agencies within the State of New Jersey.

COMMENT: The terms "program" and "program income" should be defined.

RESPONSE: The Department concurs. Definitions of these terms have been added to the rules.

COMMENT: The phrase, "form a contiguous project area" at proposed N.J.A.C. 7:2-12.4(a)(3) is unclear. Does it mean that the subject parcel must be next to another subject parcel. (that is, that it cannot stand alone) or does it mean that the subject parcel cannot be a series of unconnected tracts? In either case the land may still have valid Open Lands value.

RESPONSE: Upon review of this provision, the Department concurs that there might be situations in which a series of unconnected tracts does have valid Open Lands value. Accordingly, this provision has been deleted from the rule. The physical configuration of any property will be reviewed on an individual case basis during the eligibility determination.

COMMENT: There is no need to prohibit land from being eligible simply because there is a lien or other cloud upon title (see proposed N.J.A.C. 7:2-12.4(a)(4)). Some liens or clouds are minor and pose little threat to any interest in property.

RESPONSE: It was not the intent of the Department to impose a blanket prohibition upon any grant to a landowner where there is a lien upon the property. This provision is meant to address those situations in which a lien or other cloud upon title could inhibit the use or ownership of the property. The relevant provision has been modified to more accurately reflect this intent.

COMMENT: N.J.A.C. 7:2-12.5(a)2; 7:2-12.6(c)4; and 7:2-12.8(g) appear to be inconsistent in that the amount of land clearing and development is required to be minimal yet eligible projects include parking areas and access roads as well as boat launch areas.

RESPONSE: These provisions are not inconsistent. A certain amount of land clearing may be necessary to a project and is therefore eligible. At the same time, however, it is desirable to limit such land clearing to no more than what is necessary for the project. It is this intent that is reflected in the rule.

COMMENT: Signs listing rules of conduct should be an allowable expense pursuant to N.J.A.C. 7:2-12.5(a)2 because such signs are required by N.J.A.C. 7:2-12.10(h).

RESPONSE: The Department concurs and has modified the section so that it clearly provides that any necessary signs may be included.

COMMENT: The Open Lands Management Program is largely worthwhile. There are, however, specific provisions which are objectionable. These relate to the use of public funds to finance stocking of fish and game for recreational fishing and hunting and to the reference to hunting as one of the activities which are encouraged to be included in projects for which financial assistance will be provided.

It is submitted that any land upon which hunting is permitted cannot be considered "free of any public health hazard" as required by N.J.A.C. 7:2-12.4. As a result, property used for hunting could not be used for any other purpose.

It is also pointed out that the Division of Fish, Game and Wildlife presently receives over six million dollars a year from private sources to finance consumptive use activities. It is suggested that the taxpayers of this State would object to the use of these additional tax moneys to finance a destructive enterprise such as hunting.

It is claimed, additionally, that hunting cannot be considered a recreational activity which promotes the knowledge and appreciation of the State's earth, water and biotic resources (N.J.A.C. 7:2-12.6). This commenter states that hunting is not a "project involving the protection and appreciation of natural resources", (see N.J.A.C. 7:2-12.8) but simply an activity which involves the maining, crippling and killing of wild animals.

For the above reasons, it is suggested that proposed N.J.A.C.7:2-12.5(a)7 be eliminated, the term, "hunting" be eliminated from proposed N.J.A.C. 7:2-12.6(b)3 and the term, "non-consumptive" be inserted before "outdoor recreational activities" in proposed N.J.A.C. 7:2-12.6(b)4.

RESPONSE: In response to the issues raised by this commenter, the Department has re-examined the provisions of the regulations dealing with what is termed consumptive use activities. The Department concurs that the stocking of fish and wildlife to provide recreational fishing and hunting should be removed from the list of projects eligible for financial assistance. It is noted that there is a significant source of funds already available to the Division of Fish and Game for the stocking of fish and game. Therefore, the Department believes that it is more desirable to use the moneys granted pursuant to this program for improvements to the property which are of a more permanent nature. Accordingly, proposed N.J.A.C. 7:2-12.5(a)7 has been deleted from the regulations.

Upon an evaluation of the policies of Open Lands Management Program, and of the statute pursuant to which the program is administered, the Department finds that permitting hunting and fishing, as outdoor recreation, is within the intent of the Act and, therefore, has decided that the program will not categorically prohibit hunting and fishing upon property which is the subject of an Open Lands Management Grant. These activities will remain on the list of recreational activities which can be included as part of an approvable project (see N.J.A.C. 7:2-12.6(b)).

The Open Lands Management Act provides at N.J.S.A. 13:1B-15.136 that its purpose is to provide assistance for the development and maintenance of privately owned land for "recreational purposes in accordance with the provisions of this act". Hunting and fishing are specifically included as recreational activities in the Outdoor Recreation Plan of New Jersey. This plan, which is updated periodically, and available from the Department has been developed to provide accurate information regarding the supply, demand and need for outdoor recreation facilities, open space and water resources. As part of this process, hunting and fishing have been identified as recreational activities for which outdoor recreation facilities must be provided.

As part of the review of all applications, the Department will evaluate the uses to which the land will be put. In those cases in which multiple uses are intended, close attention will be given to the proposed plan to assure that concurrent uses are conducted as safely as possible. In the case of certain activities such as hunting, horseback riding or trail biking, multiple uses will not necessarily occur concurrently. A staggered arrangement would better minimize the risks attendant to the activity and allow for a fuller use of the property throughout the year.

COMMENT: Professional fees for design, construction, repair, replacement and maintenance of the project can be included in the application (See proposed N.J.A.C. 7:2-12.5(a)10.) Can this include payment to the property owner or owners for the work he or she may complete and/or work completed by other organizations such as environmental groups?

RESPONSE: The Department will provide financial assistance for expenses incurred by the landowner in furtherance of this program. It will not compensate the landowner for services which he or she may personally render.

COMMENT: Activities involving off-road motorized vehicles have been found to be generally detrimental to the environment. (See proposed N.J.A.C. 7:2-12.6(b)1.) Flora is seriously damaged and there are increased soil erosion problems and noise pollution. This type of recreational activity does not involve the protection and appreciation of our natural resources and should not be an encouraged activity under this program.

RESPONSE: The Department agrees that the unrestricted use of recreational vehicles may cause environmental harm. It is for this reason that it would consider funding for the development of an area specifically set aside for this purpose. Such an area could be developed in such a way as to minimize damage and it is hoped that such an area would help to keep these vehicles away from more sensitive areas.

COMMENT: The application procedure set forth in N.J.A.C. 7:2-12.7 is unclear. It appears that the Department is imposing a three-step process with the first step being a "preliminary determination", followed by a "preliminary approval", and then finally an approval. If so, an extra step has been added to the statutory requirement which says that applications are to be acted upon within 30 days. (N.J.S.A. 13:1B-15.139(b)). The "preliminary determination" step should be deleted or at least made voluntary.

RESPONSE: The proposed language at N.J.A.C. 7:2-12.7(a)1 through 3 does not impose an additional step in the application process. This procedure, which is completely voluntary, is intended to provide the means by which any person may seek an informal advisory opinion from the Department concerning the potential eligibility of a proposed project. The proposed language has been modified and shortened so that it more clearly reflects this intent. As set forth in 7:2-12.7(d), the Department will provide a decision on a completed application within 30 days.

COMMENT: The flat prohibition of grants larger than $10,000 in N.J.A.C. 7:2-12.9(d) has no statutory basis and should be deleted or at least made to read that such grants are unlikely but not completely prohibited.

RESPONSE: The Department concurs that there is no statutory basis for the imposition of a flat prohibition of grants in excess of $10,000.00. Reference to such a cap has therefore been deleted. Each grant application will be reviewed on an individual case basis and its merits will be measured against the substantive standards enumerated in the regulations.

COMMENT: There is no mention of auditing requirements or standards of maintaining records. This should be added.

RESPONSE: The Department agrees and has modified the rule accordingly at N.J.A.C. 7:2-12.9(e). This rule modification will not in any way change the substantive requirements imposed on the grantee. It is the policy of the Department to require adequate record-keeping and from time to time to audit those records. This requirement is also addressed by the agreement pursuant to which funds are granted.

COMMENT: The proposed anti-discrimination language in N.J.A.C. 7:2-12.10(e) is not as broad as New Jersey's anti-discrimination statute. See N.J.S.A. 10:5-1, et seq. Specifically the statute lists race, creed, color, national origin, ancestry, age, sex, marital status, liability for service in the Armed Forces, nationality, and the handicapped.

RESPONSE: The Department concurs and has modified the rule so that it is consistent with the statutory standard.

COMMENT: To promote this program the covenant period should not be determined by the Department but by the property owner or owners for a period of not less than one year. (N.J.A.C. 7:2-12.10(j)).

RESPONSE: This program is intended to expand the stock of land open for public recreation by providing financial assistance for the development and maintenance of such land. In return, the Department must obtain from the property owner a guarantee, in the form of an access covenant that the public be permitted recreational use of the land. In order to assure that the public access obtained is commensurate with the financial assistance provided, the Department must maintain some degree of control over the duration of the covenant.

COMMENT: While the cost of liability insurance for the project is an eligible expense, it is, in most cases, obtained on an annual basis. The agreement requires the continuance of insurance throughout the covenant period. Will DEP continue to provide annual reimbursement to the property owners for insurance costs after the project has initially been developed.

RESPONSE: Where appropriate, an individual grant can address insurance and other costs which will arise after the project has initially been developed provided that these cost estimates are included in the initial application.

COMMENT: There may be a potential problem for the State Department of Transportation if private lands developed for recreation with State funds need to be purchased for roadway projects. Before acquiring public recreation land for transportation use, Federal law requires a finding by the agency that there is no reasonable alternative other than the public land. There is concern that the proposed acquisition of any land which is developed through this program would trigger this process.

RESPONSE: It has not been established that private land developed with Open Lands Management funds becomes "public land" for the purpose of this Federal requirement. The Department believes, however, that if such a requirement is triggered, it would not be undesirable. Any land so developed is valuable and should not be diverted to another use without some assurance that all alternatives were evaluated.

Regardless of this Federal process, if there is any diversion of Program lands prior to the expiration of the access covenant, then there will need to be some compensation of grant funds back to the program.

In addition to the changes to the proposal made in response to comments received, the Department has also made a change to N.J.A.C. 7:2-12.10(c). As proposed, this provision requires that the landowner maintain liability and property damage insurance in the minimum amount of $1,000,000.00. Upon a review of this section, the Department believes that some projects will not necessarily require insurance coverage in such an amount. This subsection has, therefore, been changed so that the required minimum coverage is $500,000.00. The subsection, as adopted would also provide for additional coverage as the Department might deem necessary on a case by case basis.

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 12. OPEN LANDS MANAGEMENT

7:2-12.1 Purpose and scope

This subchapter implements P.L. 1983, Chapter 560 (N.J.S.A. 13:1B-15.133 et seq.) which directs the Department of Environmental Protection to establish the Open Lands Management Program and provide financial assistance to private landowners for the development and maintenance of their lands for public recreational purposes.

7:2-12.2 Definitions

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

"Access covenant" means an agreement which guarantees public access for a specified period of time, for specified recreational purposes to a specified parcel or parcels of land in return for appropriate and reasonable financial assistance or in kind services, or both, as determined by the commissioner.

"Act" means the Open Lands Management Act, N.J.S.A. 13:1B-15.133 et seq., as amended.

"Agent" means an individual or organization designated by one or multiple property owners involved in a single project to represent them in all transactions with the Department.

"Application" means a request form for financial assistance.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Fee simple" means direct ownership of real property without condition or limitation.

...

***"Program" means the Open Lands Management Program*.**

***"Program income" means income earned by the landowner from the collection of fees for the use of the project area during the period of time in which the access covenant is in effect*.**

...

"Project" means those activities described in the application submitted in accordance with the provisions of this subchapter and approved by the Department for the development and maintenance of specific lands for recreational purposes.

"Real Property" means land and that which is affixed to it.

7:2-12.3 General provisions

Any person, including but not necessarily limited to individuals, corporations, clubs, associations and non profit organizations, who owns real property in fee simple, may apply for financial assistance to develop and maintain the real property for certain public recreational purposes as hereinafter provided.

7:2-12.4 Eligible real property

(a) To be eligible for financial assistance, real property shall:

1. Include an open space which is not dominated by buildings, structures or other man-made facilities;

2. Be free of any public health hazards which would affect, or tend to affect, the health, safety and welfare of those using the property; ***and***

[3. Form a contiguous project area; and]

*[4.]****3.*** Have no lien or other cloud against the title *[except that the real property may be the subject of a mortgage given by the landowner to secure a portion of the purchase price.]* ***which would interfere or tend to interfere with the use and enjoyment of the property for the purpose intended by the program.***

7:2-12.5 Projects eligible for financial assistance

(a) Financial assistance is available for any of the following:

1. Installation, repair or replacement of protective structures, such as fencing, water bars, berms or stiles.

2. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking areas, access roads, trails, *[interpretive]* signs, picnic areas, rest areas, portable sanitary facilities*[,]* ***and*** boat or canoe launch areas *[, and signs stating ownership, and use]*;

3. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas;

4. Repair or restoration of any vandalized crops or improvements located on, or adjacent to***,*** agricultural land which is subject to an access covenant provided that the damage occurred as a result of the public use;

5. Installation, repair, replacement and maintenance of litter and trash control facilities;

6. Installation, repair or replacement of facilities which provide or improve recreational access for the handicapped;

[7. Stocking of fish and wildlife to provide recreational fishing and hunting;]

*[8.]****7.*** Purchase of additional liability insurance made necessary because of use of the property by the public.

*[9.]****8.*** Filing fees for access covenant and associated legal fees; and

*[10.]****9.*** Professional fees for design, survey and construction of project in accordance with the approved application.

(b) Financial assistance is available for other activities, provided that they are directly related to recreational activities listed under N.J.A.C. 7:2-12.6.

7:2-12.6 Recreational activities

(a) Applications for financial assistance shall include a full description of the recreational activities and uses to which the real property will be put.

(b) The following types of activities are encouraged to be included in projects for which financial assistance will be provided:

1. Trail uses for hiking, jogging, nature observation, ski-touring, bicycling, horseback riding, and off-road motorized vehicles;

2. Water-related activities including boating, canoeing, swimming, fishing, and ice-skating;

3. Area-wide outdoor recreational uses including primitive camping, hunting, orienteering, and picnicking;

4. Outdoor recreational activities promoting knowledge and appreciation of the State's earth, water and biotic resources.

(c) The following types of activities shall not be eligible for financial assistance:

1. Court and field games including but not necessarily limited to baseball, basketball, football, soccer and softball;

2. Firearm or archery ranges;

3. Motor vehicle events including but not limited to automobile or motorcycle racing; and

4. Any activity requiring major construction or clearing of land, permanent installation of public utilities or enclosed structures.

7:2-12.7 Application and review procedures

(a) The landowner, or the landowner's agent designated by a property executed Power of Attorney shall submit an application for financial assistance on a form provided by the Department. In the case of multiple landowners one agent, designated by all such landowners shall submit an application.

*[1. An applicant may request from the Department a preliminary determination of eligibility by submitting a letter to the Department which contains identification of landowner, general description of the proposed project, approximate amount of land to be affected, project cost estimates and a general location map showing the real property and proposed affected area;

2. The Department will review the letter and make a preliminary determination as to the eligibility of landowner, real property, project activities and estimated costs. If a preliminary determination of eligibility has been made, the applicant will be so notified and provided with the proper form so that full application may be made.

3. If the Department determines that the project is not eligible then the applicant will be notified of this finding and of the specific deficiencies upon which this determination is based.]*

1. Any person may, prior to the submission of a formal application pursuant to this subchapter, obtain an advisory opinion from the Department regarding the likely acceptability of a proposed project. Such an advisory opinion shall not constitute a determination of eligibility which will be made only upon review of a complete application submitted pursuant to these rules.

(b) The applicant shall forward, by certified mail, a copy of the application to the clerks of the county and the municipality within which the real property is located.

(c) The Department may at any time during its review or at the request of the applicant meet with the applicant to discuss the proposed project, inspect the property and recommend and changes it deems necessary.

(d) Within 30 days of receipt of the application the Department will either deny the application citing the reasons for denial or grant preliminary approval. The Department will forward copies of its decision to clerks of the county and the municipality within which the project is located.

(e) Final approval shall be specifically contingent upon compliance by the applicant, with the following terms and conditions:

1. Receipt by the landowner of all permits which may be necessary in order to implement the proposed project as described in the approved application;

2. Execution by the Department and the landowner, of an agreement in accordance with the provisions of N.J.A.C. 7:2-12.9 which sets forth the substantive terms and conditions by which all financial assistance will be disbursed;

3. Execution by the landowner and the Department, of an access covenant in accordance with the provisions of N.J.A.C. 7:2-12.10 which assures public access for a specified time period; and

4. Submittal by the applicant, of any additional information which the Department may require.

7:2-12.8 Factors supporting grant approval

(a) The factors which the Department will consider in its determination of eligibility of a proposed project include but are not limited to the following:

1. Project allows for more than one encouraged recreational use;

2. Project provides ease of operation and maintenance;

3. Project involves the protection and appreciation of natural resources;

4. Project provides for long term use and public access;

5. Site is currently used by the public for an encouraged recreational use;

6. There is a lack of similar facilities within the immediate area;

7. Project minimizes new land clearing to an amount appropriate for the proposed use;

8. Project use does not distract from or have a negative impact on surrounding areas;

9. Site is an integral part of a larger public recreational activity.

7:2-12.9 Terms of financial assistance

(a) All financial assistance granted pursuant to this subchapter shall be disbursed in accordance with the terms and conditions of an agreement executed by the Department and the landowner for this purpose on a form provided by the Department. The agreement shall contain the following:

1. Amount of grant;

2. The approved application, incorporated by reference, which sets forth the proposed activities for which financial assistance is being provided;

3. A schedule setting forth the time requirements for the completion of each specific proposed activity and setting forth the amount of the grant to be paid to the applicant upon such completion; and

4. Any other requirement which the Department deems necessary;

(b) Project approval and the award of all grant monies shall be conditioned upon compliance, by the landowner and applicant, if other than the landowner, with the terms of the agreement and the access covenant and with all applicable local, county, regional and State laws, rules and regulations.

(c) All sums shall be made payable to the landowner or landowners or the designated agent.

(d) Financial assistance shall be awarded in a sum to be determined by the Department. *[but in no case shall said sum exceed $10,000.00 for a single project]*.

(e) The grantee shall maintain, in a manner that is consistent with good business practice, records of all expenditures of grant money for a period of three years after the last expenditure is made and shall make such records available for audit by the Department or its authorized representatives at all reasonable times.

7:2-12.10 Access covenant

(a) The access covenant shall be a covenant executed by and between the Department and the landowner for a specified period of time as required by the Department, by which the landowner shall, in exchange for financial assistance or in-kind services from the Department in accordance with this subchapter, grant public access to specified parcels of real property for specified recreation activities.

(b) The access covenant shall be recorded with the clerk of the county in which the real property is located along with the deed to the real property in the same manner as the deed was originally recorded. If there is more than one deed to the real property, then an original access covenant shall be recorded with each deed.

(c) The landowner shall maintain liability and property damage insurance for the period coinciding with the effective period of the access covenant with an insurance company registered to do business in the State of New Jersey in an amount not less than *[$1,000,000]* ***$500,000*** liability and property damage coverage. ***The Department may, in some cases, require a higher amount of insurance coverage if it determines that it is necessary.***

(d) Facilities shall not be used for the sole purpose of the landowner or invited guests.

(e) The landowner may restrict the number, duration and frequency of visits so as not to exceed the capacity of the facility. Such restrictions shall be incorporated as part of the access covenant and shall *[not discriminate on the basis of race, color, religion, sex or affiliation.]* ***comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.***

(f) Real property covered under the terms of the covenant shall not be diverted to other uses during the extent of the time period without prior approval of the commissioner. Such change in status may cause termination of the covenant and reimbursement to the Department of all or part of the grant monies awarded.

(g) Fees charged for admittance or use of facilities shall be reasonable, non-discriminatory and consistent with costs for maintenance and repair of the property.

(h) Signs shall be posted and maintained stating ownership of the area, allowed use, and appropriate rules of conduct.

(i) The Department may include additional conditions in the access covenant which would be specific to the particular use and location of the project.

(j) The covenant between the landowner and the Department shall run for a period of one or more years as determined by the Department.

(a)

Flood Hazard Area Delineations
Delineated Floodways for Various Tributaries and Streams in the Central Passaic Basin (Projects G and R)

Adopted Amendment: N.J.A.C. 7:13-7.1(i)

Proposed: May 20, 1985 at 17 N.J.R. 1176(a).
Adopted: March 15, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection
Filed: March 17, 1986 as R.1986 d.120, **with technical map changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

Effective Date: April 7, 1986.
Expiration Date Pursuant to Executive Order No. 66 (1978): May 4, 1989.
DEP Docket No. 019-85-04.

Summary of Public Comments and Agency Response:

Notice of the proposed rule change was published on May 20, 1985 in the New Jersey Register at 17 N.J.R. 1176(a). That notice also advised that a Public Hearing had been scheduled for Tuesday, June 4, 1985 at 1:00 P.M. at the Council Chambers, Wayne Municipal Building, 475 Valley Road, Wayne Township, Passaic 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 May 2, 1985. Both notices invited written comments to be submitted on or before June 18, 1985.

It was determined at the beginning of the hearing that the affected municipalities had not received copies of maps of the amended flood plain delineations and could not therefore offer comments regarding their accuracy or appropriateness. The hearing was adjourned with the understanding that it would be continued at a future date.

On June 12, 1985, a notice of rescheduling of public hearing was sent to all affected municipalities indicating that the public hearing in the matter of Projects G and R had been resheduled for Monday, June 24, 1985, at 1:00 P.M. in the Council Chambers of the Wayne Municipal Building, 475 Valley Road, Wayne, New Jersey. The comment period was extended through July 19, 1985.

COMMENT: Several municipalities questioned the readability of the maps and noted that several maps were missing street designations. Some maps had streets and right-of-ways incorrectly located and adjacent streets were mismatched when the maps were pieced together. Some maps left certain streets out altogether and the maps were not all drawn to the same scale.

RESPONSE: The graphics were rechecked and a series of minor cosmetic changes were made, adding some physical features of the area that had been missing. The Department explained that the hearing process is a vehicle by which municipalities can bring to the Department's attention omissions and corrections which should be made to the maps in order to make them as accurate as possible. The readability and interpretation of the maps is now satisfactory.

COMMENT: Several residents of Lincoln Park questioned the methodology used in determining the delineations. One resident indicated that his home was located within a flood plain even though his area was one of the few places in town that did not flood during the April 1983 flood. The commenters asked for a summary of the procedure to be followed to remove their properties' designation from within the Federal Flood Plain.

RESPONSE: The Department explained that the procedure would entail engaging a surveyor to survey the property and certify that the ground elevation around their houses is at least 181 feet mean sea elevation and that the lowest habitable floor of the houses is above 180 feet mean sea elevation. Based upon this information, a letter of amendment could be issued removing this property from the Federal Flood Plain. This would eliminate the need to buy flood insurance. The integrity of the floodway and the flood hazard area remains sound, however, and no revision of the mapping is warranted.

COMMENT: Residents of Pequannock Township observed inconsistencies between the State Flood Hazard Area maps and the FEMA delineations as well as the absence of revision dates.

RESPONSE: There was some mislabeling on the state maps. The delineations in question have been reworked and are all consistent with the Flood Insurance Study and revision dates have been added. The originals of the graphics had revisions noted in blue which did not reproduce on the draft copies provided to the Township. The clarity of the graphics has been improved and they have been carefully labelled.

COMMENT: The April 1983 flood caused substantial flow at high velocity over Route 23 in Pequannock Township and this flood flow passed through a residential area and was funneled across the Newark-Pompton Turnpike. The Township questioned whether it should be designated a floodway.

RESPONSE: The Department believes that this area should not be designated a floodway. The computer analysis indicates that the Pompton River bridges and channel with a modest over bank area are sufficient to carry the flood flows of a 100-year event consistent with the State's 0.2 foot floodway criteria. While the Department acknowledges that flooding does cross Route 23 under both existing conditions and the reconstructed roadway configuration currently being proposed by NJDOT, the flow area should not be considered an effective flow area. It should be noted that the 50 year event (April flood) is at a significantly lower flood elevation and due to the topography is funneled at a high velocity in this reach while the 100 year event is at a higher flood stage and results in a sheet flow condition with lower velocities. To help Pequannock Township understand the Department's position, the detailed computer output has been forwarded to the Township Engineer.

COMMENT: Wayne Township questioned the inconsistencies between the Flood Insurance Study (FIS) and the State delineations for the Wayne area.

RESPONSE: The FIS was based on old mapping while most of the State delineations were based on the use of 1978 Corps of Engineers mapping. Officials of FEMA, Region II, in New York have agreed to prepare new FEMA graphics.

COMMENT: Areas outside of the channel are designated as floodways. The top of the bank should provide the floodway limits.

RESPONSE: This would not be consistent with the 0.2 foot floodway requirement.

COMMENT: Wayne Township questioned the designation of the entire Pompton River flood plain as floodway along the Pompton River Study reach in the Layette Street Area.

RESPONSE: The floodway limits were not shown on the preliminary maps of this area. They have been added to the graphics.

COMMENT: The Singac Brook flood plain graphics were not legible.

RESPONSE: The Department has prepared new graphics for the Singac Brook Study reach and has field checked the results.

COMMENT: The State Flood Hazard Area delineation should not extend upstream of the Lake Packanack Dam, and the new alignment of Route 23 should be added to the maps.

RESPONSE: The Department concurs. The Packanack Lake Dam is the upstream limit of study. No structures were within the delineation upstream of the dam. The new alignment of Route 23 has also been added.

COMMENT: The reasonableness of flood delineations in the area of Farmingdale Road 2500 feet upstream of the Route 23 bridge along the Pompton River was questioned.

RESPONSE: The Department has rechecked this delineation and has field checked the results and finds the delineation to be reasonable. The results are consistent with the delineation prepared by the Corps of Engineers. The Department's review did disclose that the State Flood Hazard Area delineation was omitted from the plates upstream of the site and this delineation has been added to the plates.

COMMENT: The Township of Fairfield questioned the reasonableness of and opposed the flood hazard area flood elevations along the Passaic River and Deepavaal Brook. These elevations are approximately 2 feet higher than the 100 year profiles and constitute an unreasonable burden when combined with the Department's Central Passaic Basin and 20 percent fill requirements.

RESPONSE: The results are consistent with State criteria.

COMMENT: Most of the additional comments concerned corrections to the maps such as mistakes in elevations and the additions of new structures.

RESPONSE: These corrections have been made by the Department.

Full text of the adoption follows.

7:13-7.1 Delineated floodways.

(a)-(h) (No change.)

(i) A list of delineated streams in the Central Passaic Basin follows:

The floodway and flood hazard area of the Passaic River from Beatties Dam upstream to the Borough of Fairfield—Township of West Caldwell municipal boundary, Deepavaal Brook from the confluence with the Passaic River upstream to Clinton Road Bridge, Green Brook from the confluence with Deepavaal Brook upstream to Mountain Avenue, Singac Brook from the junction with Passaic River upstream to 6,300 feet upstream of Valley Road, Naachtpunkt Brook from the junction with Singac Brook upstream to Totowa Road, Pompton River from junction with Passaic River upstream to confluence with the Pequannock and Ramapo River, Beaver Dam Brook from the confluence with Pompton River upstream to Lincoln Park, Montville municipal boundary, East Ditch from the confluence with Beaver Dam Brook upstream to Mountain Avenue, West Ditch from the confluence with Beaver Dam Brook to 2,000 feet upstream of Sunset Road, Ramapo River upstream from the Pequannock River—Ramapo-Pompton River junction to the Oakland—Mahwah municipal boundary, Allerman Brook (Pond Run) from the junction with the Ramapo River upstream to Oakland-Franklin Lakes municipal boundary, Acid Brook from the junction with the Ramapo River upstream to railroad tracks, Pequannock River from the Pequannock River—Ramapo-Pompton River junction to the Butler-Bloomingdale-West Milford municipal boundary, Wanaque River from the Pequannock River to the Pompton Lakes-Wanaque municipal boundary, Stone House Brook from confluence with Pequannock River upstream to 3,100 feet upstream of Route 23, Van Dam Brook from confluence with Pequannock River upstream to 750 feet upstream from Knools Road, Cold Spring Brook from confluence with Pequannock River upstream 1600 feet upstream of West Shore Road, Oakwood Lake Brook from confluence with Pequannock River upstream to Glen Wild Revenue, Post Brook and Tributaries from the junction with Wanque River upstream to Lake Ioscoe.

(a)

Flood Hazard Area Delineations
Delineated Floodways for the Nomahegan Brook, West Brook, Blue Brook and Branch No. 22 and Robinson's Branch

Adopted Amendment: N.J.A.C. 7:13-7.1(d)49

Proposed: August 19, 1985, at 17 N.J.R. 1965(a).
Adopted: March 10, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: March 17, 1986 as R.1986 d.122, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66 (1978): May 4, 1989.
DEP Docket No. 043-85-07.

Summary of Public Comments and Agency Responses: **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 follow:

1.-48. (No change.)

49. Nomahegan Brook from the upstream limit if Echo Lake; approximately 600 ft. downstream of Mountain Avenue, upstream to Lawrence Avenue, within Mountainside Borough and West Brook and St. Georges Avenue upstream to the downstream face of the Conrail Bridge, approximately 100 ft. upstream of 1st Street within Roselle Borough and Blue Brook from its confluence with Green Brook near Diamond Hill Road upstream to the Scotch Plains Township—Mountainside Borough municipal boundaries, approximately 365 ft. upstream of a foot bridge crossing and along

the Scotch Plains Township and Berkeley Heights Township municipal boundaries and Winding Brook from its confluence with Robinson's Branch upstream to the downstream face of Elizabeth Avenue within Scotch Plains Township and Branch 22 from its confluence with Robinson's Branch upstream to the South Plains Township—City of Plainfield municipal boundaries, approximately 1550 ft. upstream of the Sleepy Hollow Lane Bridge and revising the floodway and flood hazard area of Robinson's Branch from its confluence with the Middlesex Reservoir upstream to the Middlesex County—Union County boundary, approximately 2800 ft. upstream of the confluence of Branch 22 along Robinson's Branch within Scotch Plains and Clark Townships.

50.-52. (No change.)

(e)-(h) (No change.)

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineation
Delineated Flood Hazard Area along the Lamington River; Hunterdon-Somerset-Morris County Line

Adopted Amendment: N.J.A.C. 7:13-7.1(d)14

Proposed: October 7, 1985 at 17 N.J.R. 2324(b)
Adopted: March 10, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: March 17, 1986 as R.1986 d.123, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66 (1978): May 4, 1989.
DEP Docket No. 053-85-09.

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

Full text of the adopted 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.-13. (No change.)

14. 4-23-73	Lamington River	Mouth to 1080 feet downstream of the Somerset-Morris County boundary line. From the Hunterdon-Somerset-Morris County line to 1350 feet downstream of Ironia Road.

15.-52. (No change.)

(e)-(h) (No change.)

(b)

FLOOD HAZARD AREA DELINEATION

Redelineation of Pine Brook in Washington Township, Bergen County

Adopted Amendment: N.J.A.C. 7:13-7.1(d)47 (Plate No. 21)

Proposed: September 3, 1985 at 17 N.J.R. 2074(a).
Adopted: March 10, 1986, by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: March 17, 1986 as R.1986 d.125, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1989.
DEP Docket No. 044-85-08.

Summary of Public Comments and Agency Responses:

Notice of the proposed rule change was published on September 3, 1985 in the New Jersey Register at 17 N.J.R. 2074(a). That notice also advised that a Public Hearing had been scheduled for Monday, September 23, 1985 at 1:00 P.M. at the Washington Township Municipal Building, 350 Hudson Avenue, Westwood, 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 August 26, 1985. Both notices invited written comments to be submitted on or before October 3, 1985.

COMMENT: Concern was expressed over whether the proposed redelineation would cause a backup of storm water into the area.

RESPONSE: The Department's analysis indicates that there would be no backup of stormwater. This particular project consists of relocating Pine Brook to a 355 foot enclosed culvert, filling in one pond and creating a new pond to allow construction of 42 residential units. The engineer for the project indicated that the stormwater drainage system in the area would be about double its present size and would therefore alleviate present problems rather than cause further problems.

Full text of the adoption follows.

The redelineation of Pine Brook, N.J.A.C. 7:13-7.1(d)47, is specified on the Plate specifically entitled: State of New Jersey, Department of Environmental Protection, Division of Water Resources, "Delineation of Floodway and Flood Hazard Area, Pine Brook", Plate No. 21.

(a)

THE COMMISSIONERS

Hard Shell Clam Depuration Pilot Plant Program

Jointly Adopted Amendments: N.J.A.C. 7:17

Proposed: January 21, 1986 at 18 N.J.R. 141(a).
Adopted: February 27, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection, and February 24, 1986 by J. Richard Goldstein, M.D., Commissioner, Department of Health.
Filed: February 28, 1986 as R.1986 d.82, **without change.**

Authority: N.J.S.A. 13:1D-9, 24:2-1 et seq., 24:15-13, and 58:24-1 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1991.
DEP Docket No. 070-85-12.

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

Full text of the adoption follows.

7:17-1.3 (Reserved)

7:17-1.4 Definitions

The definitions of those words and terms used in this chapter already defined at N.J.A.C. 7:12-1 shall be the same as the definitions of those words and terms set forth in N.J.A.C. 7:12-1.

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

"Alternate craft" means the vessel that is allowed to be used by a depuration/controlled purification plant owner or manager in the same manner and for the same purpose as a mother-craft in the absence of the latter.

"Bureau" means the Bureau of Shellfish Control in the Division of Water Resources.

"Designated enforcement unit(s)" means Marine Enforcement Unit in the Division of Fish, Game and Wildlife, Marine Bureau in the Division of State Police, and any authorized employee of the Bureau of Shellfish Control in the Division of Water Resources.

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

"Mother-craft" means the vessel used by a depuration/controlled purification plant owner or manager for harvest supervision, collection, and transportation, in conjunction with the hard clam depuration/controlled purification program.

7:17-1.5 Procedures for obtaining necessary approvals

(a) An applicant who wishes to participate in the Hard Shell Clam Pilot Plant Program shall obtain the necessary approval documents in the order set forth in this section:

(b) The following approvals are required for pilot plant operation:

1. (No change.)

2. Special Permit For A Depuration/Controlled Purification Facility To Possess Hard Clams (Mercenaria mercenaria), Permit No. 10 to be issued by the Bureau of Shellfish Control, Division of Water Resources, Department of Environmental Protection;

3.-4. (No change.)

(c) The following approvals are required for harvesters:

1. (No change.)

2. Special Permit to Harvest Hard Clams (Mercenaria mercenaria) from specified Special Restricted and Seasonal Special Restricted Waters of New Jersey For Further Processing At A State Permitted Depuration/Controlled Purification Facility, Permit No. 9 to be issued by the Bureau of Shellfish Control, Division of Water Resources, Department of Environmental Protection.

SUBCHAPTER 2. INITIAL PILOT PROGRAM

(a) Commencing from the effective date of these rules, the interagency Task Force appointed by the Commissioners of Health and Environmental Protection will continue to sanction a hard shell clam depuration pilot plant. Any submissions required below should be sent to:

Hard Clam Depuration Task Force
New Jersey State Department of Health
Environmental Health Services
CN 364
Trenton, N.J. 08625

1. A change in location or ownership of the sanctioned depuration plant shall require that the owner submit a new application available from the Task Force and obtain the necessary approval documents identified under N.J.A.C. 7:17-1.5.

i. If the plant location is changed, the operator of the translocated plant shall also submit plant construction plans for the new location which must be approved by the Task Force prior to construction. Before resumption of operations, the licenses, permits, and certifications required under N.J.A.C. 7:17-1.5, issued by the Department of Environmental Protection and the Department of Health, must be in possession of the plant owner.

ii. If the operation of the hard clam depuration plant is discontinued, the Task Force will accept proposals for the construction and operation of a new pilot plant from any person; provided, however, if the owner of the discontinued plant provides the Task Force with a copy of an executed contract evidencing the sale of the pilot depuration plant at the time the operation is discontinued and the buyer submits a new application to the Task Force within 30 days of contract execution, then the Task Force will not accept additional proposals for the construction and operation of a new pilot plant.

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

(e) No proposal will be accepted which does not demonstrate that all local requirements, including zoning approval, have been met.

(f) The Task Force will formally respond to all proposals. Each response shall state the reason for acceptance (in the case of the program chosen by the task force) or denial. Only the chosen pilot program shall be announced publicly.

(g) If a pilot plant owner does not initiate construction within six months of its approval, the Task Force may withdraw its approval and publish public notice inviting submission of new proposals.

(h) (No change.)

(i) The Task Force will consider the overland transportation of clams from State waters to the depuration plant site. The pilot plant applicants shall be required to submit a detailed plan outlining the means of transportation and the distance to the depuration plant from the landing site(s). The overland transportation system and site selection must be approved by the Task Force and the designated enforcement unit(s). The criteria to be considered include but are not limited to:

1.-2. (No change.)

3. Travel time; and

4. (No change.)

(j) Site selection and means of transportation will be considered in the evaluation of proposals submitted to the Task Force. If an overland transportation plan is approved, the Task Force in conjunction with the designated enforcement unit(s) will issue written approval containing specific guidelines which shall be followed. Violation of the conditions of this approval may subject the holder to prosecution under N.J.S.A. 58:24-3 and N.J.A.C. 8:13-2.3. The permittee shall be responsible for the cost of any such enforcement action. The need for such enforcement shall be determined solely by the Task Force and designated enforcement unit(s).

Redesignate existing (j) as (k) (No change in text.)

(l) If a new pilot plant is constructed and operational, the Department of Health may issue a provisional depuration certificate upon the approval of the Task Force.

Redesignate existing (l)-(n) as (m)-(o) (No change in text.)

7:17-2.2 Specifications for hard clam depuration

(a) The specifications for the construction and operation of a hard clam (species Mercenaria mercenaria) depuration plant shall be the same as those regulations governing the depuration of soft shell clams (N.J.A.C. 8:13-2) which regulations are hereby adopted by reference as if set forth in this subchapter at length with the following exceptions:

Redesignate existing (a)-(b) as (b)-(c) (No change in text.)

(d) The tank(s) shall have the capacity to supply at least eight cubic feet of seawater per U.S. bushel of clams at the overflow level. (See N.J.A.C. 8:13-2.9(b)7i);

(e) The bacteriological quality of depurated hard shell clams will be established by the Task Force based on evaluation of data obtained during the pilot plant study. The Task Force reserves the right to establish adjunct bacteriological testing in addition to the fecal coliform standards currently being utilized. (See N.J.A.C. 8:13-2.12); and

(f) The clam processing containers referred to in N.J.A.C. 8:13-2.9(c) shall be no deeper than three inches for hard clam depuration.

SUBCHAPTER 3. SPECIAL PERMITS

7:17-3.1 General Requirements

(a) The Department of Environmental Protection may issue permits to take or harvest shellfish from waters restricted by regulations, as set forth in N.J.A.C. 7:12.

(b) Permits may be issued to persons making application for purposes of transplanting, relaying, depletion, bait harvesting, depuration/controlled purification, research or other purposes approved by the Department of Environmental Protection.

(c) Each application shall be accompanied by a fee in the amount of $25.00 (check or money order made payable to N.J. Department of Environmental Protection). Forms may be obtained from the Bureau of Shellfish Control.

(d) Permits may contain special conditions relating to their purpose, duration, area limitations, time limitations, methods of handling, identification and disposition of the shellfish, limitation on species and/or size of shellfish, and any other conditions deemed necessary by the Department of Environmental Protection to protect the health, safety and welfare of the public.

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

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

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

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

7:17-3.2 Applications

(a) Applications for the special permits required under this chapter shall be submitted on forms supplied by the Department of Environmental Protection as follows:

(b) Harvest of hard clams from Special Restricted and Seasonal Special Restricted waters for further processing, permit application WR9; and

(c) Possession of hard clams from Special Restricted and Seasonal Special Restricted waters for further processing, permit application WR10.

7:17-3.3 Permit programs

(a) The purpose of Permit No. 9 (Hard Clam Depuration Harvesters Permit) is to allow hard clams to be harvested from Special Restricted and Seasonal Special Restricted waters and ultimately marketed after processing through a State permitted and certified depuration/controlled purification facility. Permit No. 9 shall be valid only under the following specific conditions:

1. Only hard clams (Mercenaria mercenaria) shall be harvested under this permit.

2. Area(s) of harvest are limited to those specified on the charts attached to each permit or amended charts sent by the Bureau to the current mailing address of the permittee on record at the Bureau's Leeds Point office. These areas specified for harvest may consist of Special Restricted and Seasonal Special Restricted waters as classified by the department. All harvesters transferring clams to the same depuration/controlled purification plant shall at all times work both within one nautical mile and with sight of the associated mother-craft.

3. The permit shall apply only to the waters specified on the charts attached to the permit (as amended where applicable) provided with each permit and as further restricted on a day-to-day basis by the designated enforcement unit(s).

4. The inclusive dates of the permit are specified on the face of the permit by the Department of Environmental Protection.

5. (No change.)
6. The permittee harvesting from the specified area(s) shall be subject to all State laws and regulations applicable to the harvest of oysters, clams or mussels from Approved waters.
7. Harvesting from the specified area(s) may be permitted Monday through Saturday of each week between the hours of sunrise and one hour before sunset, as listed in Trenton, except as provided by N.J.S.A. 50:2-11.
8. The harvester shall have this permit in his possession while operating in the specified waters.
9. Vessels used by special permit holders in harvesting shall be marked with signs having a white background with legible black lettering (minimum six inches in height) giving the permittee's first initial and last name, special permit number, and associated depuration plant identification code letter assigned by the department, on both sides (amidships) of the permittee's harvest vessel, while participating in any phase of the program.
10. Upon completion of the day's harvesting, all hard clams shall be transferred to the mother-craft. No clams shall remain in the specially marked harvest vessel or be transferred to vessels other than the designated mother-craft.
11. Harvest vessels and harvesters shall be under the direct supervision of the depuration/controlled purification facility's mother-craft which shall remain in the area(s) reported to the designated enforcement unit(s) by the depuration plant owner or manager. The harvest vessels and harvesters shall remain both within one nautical mile and within sight of the designated mother-craft, unless otherwise specified by the designated enforcement unit(s), during harvesting operations. Harvesting and transportation of shellfish beyond the aforementioned distances are prohibited. Only upon completion of the day's harvest and transfer thereof, may the permittee leave the area.
12. Dredging and other illegal methods of harvesting are prohibited except as provided in N.J.S.A. 50:2-10.1 and 11.
13. All hard clams harvested under this permit shall be immediately sold to or sent to the depuration/controlled purification facility(s) for further processing. All other species of shellfish shall not be removed from the harvest site. Only "U.S. Standard" bushels shall be used in the harvesting, transportation, and receiving of clams at the depuration/controlled purification facility unless written approval is given by the State Department of Health to use an alternate standard type of container. All reasonable measures shall be taken to assure that the containers of hard clams transported to the depuration/controlled purification facility are filled to capacity.
14. Under adverse conditions of weather, (for example, bay and river icing) as determined by the designated enforcement unit(s), alternative methods of harvest and transportation of clams may be developed jointly between that segment of the shellfish industry associated with the depuration/controlled purification program and the various State agencies involved in the program's control. Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained express written permission from the designated enforcement unit(s).
15. Violations of these permit conditions shall subject the violator to prosecution under N.J.S.A. 58:24-1 et seq.
16. Any change of a permittee's address shall be reported by the permittee to the Bureau's Leeds Point office within one week of the change.

(b) The purpose of Permit No. 10 (Depuration Plant Permit To Possess Hard Clams) is to allow a depuration/controlled purification facility to possess hard clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration/controlled purification program at (a) above and the next or processing phase latter which is regulated by the New Jersey Department of Health. Permit No. 10 shall be valid only under the following specific conditions.
1. Only hard clams (Mercenaria mercenaria) shall be possessed under this permit.
2. Purchases are limited to shellfish harvested from specified areas. Included with every permit are charts (which may be amended by the Bureau of Shellfish Control) of the harvest sites showing specific areas within the estuaries that may be harvested on any particular day. The depuration/controlled purification plant owner or manager shall verbally notify, on a day-to-day basis, the designated enforcement unit(s) as to the area(s) and hours intended to be worked under the provisions of this permit. All harvesters transferring clams to the same depuration/controlled purification plant shall at all times work both within one nautical mile and within sight of the associated mother-craft.
3. The permit shall apply only to the waters specified on the attached charts attached to the permit (as amended where applicable) provided with each permit and as further restricted on a day to day basis by the designated enforcement unit(s).
4. The inclusive dates of the permit are specified on the face of the permit by the Department of Environmental Protection.
5. The harvester from which the shellfish are purchased shall possess a valid NEW JERSEY COMMERCIAL SHELLFISH HARVESTING LICENSE issued by the New Jersey Division of Fish, Game and Wildlife and a valid Permit No. 9 issued by the Bureau.
6. The permittee shall comply with all laws, rules and regulations promulgated by the Department of Environmental Protection and other agencies of the State of New Jersey.
7. Purchases of clams from the specified Special Restricted waters area(s) shall be subject to all State laws and regulations applicable to the purchaser of oysters, clams or mussels from Approved waters.
8. Records of purchases, including the harvester's name, address, date, quantity of purchase, and harvest site, shall be maintained for a period of not less than one year and shall be available for inspection by any authorized agent of the State. In addition, the depuration plant operator shall provide monthly harvest reports to the Division of Fish, Game and Wildlife. Reporting forms and charts of the designated harvest areas shall be provided by the Division of Fish, Game and Wildlife. Such reports shall have the following information listed for each day:
i. Harvest area (sub-area) worked;
ii. Number of men working each area; and
iii. Total number of clams harvested from each area.
9. This permit and these regulations do not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey.
10. Vessels used by special permit holders in harvesting shall be marked with signs having a white background with legible black lettering (minimum six inches in height) giving the permittee's first initial and last name, special permit number and associated depuration plant identification code letter assigned by the department, on both sides (amidships) of the permittee's harvest vessel while participating in any phase of the program.

11. Harvest vessels and harvesters shall be under the direct supervision of the depuration/controlled purification facility's mother-craft which shall remain in the area(s) reported to the designated enforcement unit(s) by the depuration plant owner or manager. Said harvest vessels and harvesters shall remain both within one nautical mile and with sight of the designated mother-craft, unless otherwise specified by the designated enforcement unit(s), during harvesting operations. Harvesting and transportation of shellfish beyond the aforementioned distances are prohibited. Only upon completion of the day's harvest and transfer thereof, may the permittee may leave the area.

12. It shall be the responsibility of the depuration/controlled purification facility to designate a mother-craft to be used for the direct supervision of clamming operations, a central point for the collection of the day's harvest of hard clams, and the transportation of these clams to the depuration/controlled purification plant. The identification of the mother-craft shall be reported verbally to the designated enforcement unit(s) on a daily basis.

13. The maximum number of mother-craft allowed for use at any one time by any single depuration/controlled purification facility shall be limited to two. The designated mother-craft is required to be present at all times during harvesting operations. In addition, alternate craft, which shall be subject to identification requirements identical to those imposed upon mother-craft, shall be allowed only as follows:

i. Where one or both designated mother-craft are not in use, the corresponding number of alternate craft shall be allowed to function in the same manner as the designated mother-craft that it replaces; provided, however, that the designated enforcement unit(s) is notified in advance of this substitution. Any single depuration/controlled purification facility shall be limited to the use of two craft, including both designated mother-craft and alternate craft functioning as mother-craft at any one time.

ii. While harvesting operations are in process, one alternate craft shall be allowed to transport clams from one or both of the designated mother-craft (or alternate craft functioning thereas) to the depuration/controlled purification plant.

14. To permit ready identification of the mother-craft during harvesting and transportation operations, a rigid yellow pennant shall be flown. This pennant shall be marked on both sides, with the associated depuration plant identification code letter in a contrasting color. The plant identification code letter shall be assigned by the department. The pennant shall be of such dimensions as to be readily visible by the unaided eye at a distance of one nautical mile. In addition, the mother-craft shall be identified with the name of the depuration facility painted in large letters, at least six inches high and of contrasting color, above the water line of the vessel.

15. Upon completion of the day's harvesting, all hard clams shall be transferred to the mother-craft. No clams shall remain in the specially marked harvest vessel or transferred to other vessels. These clams shall be immediately transported by the mother-craft to the respective depuration/controlled purification facility for storage and/or processing. Only "U.S. Standard" bushels shall be used in the harvesting, transportation, and receiving of clams at the depuration facility unless written approval is given by the State Department of Health to use an alternate standard type of container. All reasonable measures shall be taken to assure that the containers of hard clams transported to the depuration/controlled purification facility(s) are filled to capacity. During the unloading procedures from the mother-craft at the depuration/controlled purification facility, the containers of clams shall not be covered and shall be open to view.

16. Under adverse conditions of weather (for example, bay and river icing) as determined by the designated enforcement unit(s), alternate methods of harvest and transportation of clams may be developed jointly between the segment of the shellfish industry associated with the depuration/controlled purification program and the various State agencies involved in the program's control. Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained express written permission from the designated enforcement unit(s).

17. Harvesting from the specified area(s) may be permitted Monday through Saturday of each week between the hours of sunrise and one hour before sunset, as listed in Trenton, except as provided by N.J.S.A. 50:2-11.

18. Should overland transportation be utilized on a regular basis for the movement of hard clams from State waters to the depuration plant site, the operational plan for such a movement shall be approved by the Task Force on Hard Clam Depuration and the designated enforcement unit(s).

19. Violation of the above conditions shall subject the holder to prosecution under N.J.S.A. 58:24-1 et seq.

SUBCHAPTER 4. ENFORCEMENT

7:17-4.1 Enforcement

Violations of N.J.A.C. 7:17-2 shall be enforced by the Department of Health pursuant to its authority under N.J.S.A. 24:2-1 et seq., N.J.S.A. 24:15-13, and N.J.S.A. 24:17-1 et seq. Violations of N.J.A.C. 7:17-3 shall be enforced by the Department of Environmental Protection pursuant to its authority under N.J.S.A. 13:1D-9 and N.J.S.A. 58:24-1 et seq.

SUBCHAPTER 5. PERMIT CONDITIONS

7:17-51 Permit conditions

The permit contains specific conditions that are deemed necessary for the proper operation of the hard clam depuration program. No person shall violate any requirement or provision of any permit. All permittees are also required to comply with all other applicable statutes and regulation. Included in every permit are charts of the harvest sites showing specific areas within the estuaries allowed to be harvested on a particular day as determined by the designated enforcement unit(s).

(a)

THE COMMISSIONERS

Hard Shell Clam Depuration Pilot Plant Program

Jointly Adopted New Rules: N.J.A.C. 7:17

Proposed: January 21, 1986 at 18 N.J.R. 140(a).
Adopted: February 27, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection, and February 24, 1986 by J. Richard Goldstein, M.D., Commissioner, Department of Health.
Filed: February 28, 1986 as R.1986 d.83, **without change.**

Authority: N.J.S.A. 13:1D-9, 24:2-1 et seq., 24:15-13, and 58:24-1 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1991.
DEP Docket No. 069-85-12.

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

Full text of the expired rules adopted as new appears in the New Jersey Administrative Code at N.J.A.C. 7:17.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Adopted New Rule: N.J.A.C. 7:25-18

Proposed: January 6, 1986 at 18 N.J.R. 102(a).
Adopted: March 15, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: March 17, 1986 as R.1986 d.121, **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. 23:2B-6, 23:2B-14, 23:5-24.2, 23;10-21, 23:10-21.1, and P.L. 1985, c.108.

Effective Date: April 7, 1986.
DEP Docket No. 066-85-12.
Expiration Date pursuant to Executive Order No. 66(1978): February 18, 1991.

Summary of Relevant Public Comments and Agency Responses:

Comments were received at a public hearing concerning the proposed final adoption of the new rule held on January 22, 1986 and in written submissions received by the department during the comment period which closed on February 5, 1986.

COMMENT: Eliminate any size limit on summer flounder in favor of the 4½ inch mesh regulation on nets.

RESPONSE: Although the mesh requirement is a key element to N.J.A.C. 7:25-18.1, the recommendation would eliminate the size limit for the sale of fluke under N.J.A.C. 7:25-18.1(a) which has been in effect since 1952 and the possession size limit under N.J.A.C. 7:25-18.1(b) which applies to both commercial and recreational fishermen. The recommended change would eliminate all management measures on the recreational fishery and some for the commercial fishery and would not be consistent with good resource management. Therefore, the department, although changing the minimum size from 14 inches to 13 inches continues to retain size limits.

COMMENT: Reduce summer flounder size limit for sale to 13 inches until such time as a federal plan comes into effect.

RESPONSE: Due to the uncertainty as to when and if the federal plan will become effective, as well as the difficulty in complying with the Office of Administrative Law requirement that the specific section of federal law be cited and made available for public inspection by the department (a requirement that cannot be satisfied because currently there is no specific section of the Code of Federal Regulations to which summer flounder conservation and management has been assigned), the department has decided not to use the adoption of the federal plan as a trigger to change summer flounder size limits. Notwithstanding these difficulties and based upon the concerns and recommendations of the Marine Fisheries Council, the department adopts the proposal with a change in summer flounder size limits from 14 inches to 13 inches. The department will, however, reevaluate the status of this fishery during 1986 and intends to adopt the proposed 14 inch limits on January 1, 1987 should it determine conditions so warrant.

COMMENT: Increase the quantity of summer flounder between 13 and 14 inches in length permitted to be sold from 15 percent by weight to 25 percent by weight.

RESPONSE: Due to the change in size limit to 13 inches, increasing the "tolerance" of the 14-inch limit is unnecessary.

COMMENT: Eliminate the requirement of the mesh size in the body of the net used in a summer flounder directed fishery, so that the regulation applies only to the cod-end of the net.

RESPONSE: Since the majority of the ecsapement of small fish through the mesh of the net occurs in the cod-end portion, the proposal has been modified as suggested.

COMMENT: Change the definition for having been engaged in a directed fishery for summer flounder from possession of 500 pounds to possession of a percentage of the catch.

RESPONSE: Using a percentage of the catch, by weight, would be more representative of the activities of a fishing trip than would a specific weight of fish. This is especially true when considering trips of varying durations (for example, one day versus three days). The proposal has been modified accordingly. The possession of summer flounder weighing more than 20 percent of the total catch upon any otter or beam trawl vessel shall constitute having been engaged in a directed fishery for summer flounder.

COMMENT: Eliminate N.J.A.C. 18:1(c)5 because it might unreasonably require the stopping of a fishing vessel while pulling a net which could potentially damage the gear.

RESPONSE: The agency agrees that requesting an otter trawl vessel to stop while actively engaged in trawling a net is not practical. The boarding of a vessel, however, does not require a vessel to stop. Therefore, a change to delete "to stop a vessel" from the proposal while still providing for facilitating a safe boarding has been made in this adoption.

COMMENT: Eliminate the penalty section at N.J.A.C. 18.1(d) providing for a $20.00 per fish penalty and rely solely on the $100.00 to $3000.00 per transaction penalty provision of N.J.S.A. 23:2B-14a(1) for enforcement penalties.

RESPONSE: The $20.00 fine per sub-legal sized fish was proposed to allow enforcement personnel to issue violations for recreational fishermen at a limit lower than the $100.00 minimum fine established under N.J.S.A. 23:2B-14a(1). Therefore, the department continues this provision in the adoption.

COMMENT: Have the provisions of N.J.A.C. 18.1(d) apply only to the unlicensed fishermen.

RESPONSE: To provide for fines at different levels based upon the violator's possession of a license would be constitutionally impermissible. A New Jersey fisherman may fish outside of the three mile territorial sea and land fish in New Jersey without a license. It would be a denial of equal protection to fine this individual at a rate different from a license holder. Therefore, the department continues this provision in the adoption.

COMMENT: Set up a combined scale wherein possession of up to 100 sub-legal sized fish (or some other number of fish) would subject the violator to the $20.00 per fish penalty provision of this section and possession of more than 100 sub-legal sized fish would be punishable by the $100.00 to $3000.00 per transaction statutory fine under N.J.S.A. 23:2B-14a(1).

RESPONSE: Establishing such a penalty schedule would be difficult to administer and potentially unfair. The violator possessing 100 sub-legal sized fish would be subject to a penalty of $2000.00 ($20.00 x 100 fish), while the violator possessing 101 sub-legal sized fish would be liable to a penalty as small as $100.00.

COMMENT: A member of the Marine Fisheries Council asked whether the five percent allowance of N.J.A.C. 18.2(b)5 addressing pound net catch permits some level of possession of striped bass.

RESPONSE: Because N.J.S.A. 23:5-47 states that the taking of striped bass by pound net or any other type of net is prohibited, the five percent allowance is inapplicable to striped bass. In order to clarify N.J.A.C. 18.2(b)5, the reference therein to striped bass has been eliminated in this adoption.

COMMENT: Several commercial and recreational fishermen suggested that N.J.A.C. 18.5(c) and (d) be amended so that a 100 yard rather than a 100 foot separation be established between netters and anglers.

RESPONSE: The Marine Fisheries Council pointed out that the proposed 100 foot separation was an error and should have been proposed as 300 feet. N.J.A.C. 18.5(c) and (d) have been changed upon adoption to correct the error.

COMMENT: Concern was expressed with that portion of N.J.A.C. 18.5(f) regarding the discretionary powers granted to the commissioner in the issuance of a net license.

RESPONSE: The language in this section is taken directly from the authorizing statute, was part of the previously existing statute, and would require legislative action to amend said language. Therefore, the adoption continues this discretion in the commissioner.

COMMENT: There were a number of comments received regarding damage to gear, primarily fyke nets and staked gill nets, by persons other than the licensee. The commenters requested assistance from the department in this regard.

RESPONSE: Although N.J.S.A. 23:2B-11 already affords some protection to the licensee, the change to the proposal at N.J.A.C. 18.5(f) will provide for more effective enforcement based upon the required correspondence between license and gear identification numbers.

COMMENT: A large number of comments were received regarding the change in the license fee for miniature fykes on the Atlantic coast from $1.00 per pot to $100.00 for an unlimited number of pots. The public comment on this issue was about evenly split between those recommending the defining a killipot differently from a miniature fyke and those recommending either not requiring the killipot to be licensed or reducing the license fee therefor.

RESPONSE: At least part of the problem on this issue was that many of the individuals engaged in harvesting killies were unaware that a miniature fyke license had always been required. To redefine a killipot, either without a license requirement or at a reduced fee, would require a change in the existing statute. No change regarding this issue has been made in this adoption, but the agency is willing to pursue legislative change to address the issue.

COMMENT: By definition, miniature fykes may not exceed 16 inches in diameter. Clarification is needed where rectangular pots are used.

RESPONSE: A change has been made in the adoption of this rule to provide for rectangular pots as well as the more typical cylindrical pots.

COMMENT: The prohibition of drifting, staked and anchored gill nets in the Atlantic Ocean within one-half mile of any inlet is too restrictive in areas such as Brigantine, where there are many inlets over a small section of coastline.

RESPONSE: The applicable sections have been changed from one-half mile of any inlet to 100 fathoms of the marked channel of any inlet.

COMMENT: It was requested that a one-half mile net prohibition be established around public launching facilities in the Delaware Bay and that the portion of the Delaware Bay known from May 15 to June 15th as the Brandywine Shoal Restricted Area have that designation from April 15 rather than from May 15.

RESPONSE: Those aspects of the proposal designed to address the sport-commercial conflicts in Delaware Bay were developed in conjunction with the Delaware Bay Fisheries Advisory Committee. While the adoption retains the May 15 commencement date, additional suggestions such as these will be put to this committee.

COMMENT: Written comment was received regarding the required use of a grass comb with a shrimp trawl. It was stated that a grass comb could only be used by a boat with a boom. Smaller vessels would have a great deal of difficulty getting a shrimp trawl with a grass comb on board. It was recommended that the grass comb requirement be dropped.

RESPONSE: That portion of section N.J.A.C. 18.5(g) regarding the requirement for a grass comb has been eliminated.

Additional Agency Changes: In response to requests from New Jersey's sea bass fishermen, the federal regulations regarding escape vents in lobster and fish pots were changed to permit sea bass fishermen south of Barnegat Inlet to use fish pots without escape vents. In conformity therewith, the same change was made to the adoption at N.J.A.C. 7:25-18.5(g)11v.

Full text of the new rule appears in the New Jersey Administrative Code at N.J.A.C. 7:25-18.

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

7:25-18.1 Size limits

(a) No person shall purchase, sell, offer for sale, or expose for sale any sea sturgeon measuring less than 42 inches in length, codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than 9 inches in length, sea bass or kingfish measuring less than 8 inches in length, blackfish, mackerel, or porgy measuring less than 7 inches in length, winter flounder measuring less than 6 inches in length, or *[any quantity of]* summer flounder, commonly called fluke, *[where more than 15 percent by weight measure]* ***measuring*** less than *[14]* ***13*** inches in length.

(b) No person shall take from the marine waters in the State or have in his possession any summer flounder, commonly called fluke, under 13 inches in length *[from the effective date of this regulation through December 31, 1986 and under 14 inches in length after December 31, 1986]*.

(c) Special provisions applicable to summer flounder directed fishery are as follows:

1. No person utilizing an otter or beam trawl in a directed fishery for summer flounder, commonly called fluke, shall use a net of not less than four and one-half inches stretched mesh ***in the cod end***.

2. Stretched mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of two and three-tenths millimeter, inserted into the meshes under pressure or pull of five kilograms. The mesh size of the *[body]* ***cod end*** of the net will be the average measurements of any series of 20 consecutive meshes *[. The cod end will be]* measured *[in the same manner,]* at least 10 meshes from the lacings, beginning at the after end, and running parallel to the long axis.

3. (No change.)

4. The possession of ***summer flounder weighing*** more than *[500 pounds]* ***20 percent of the total catch*** upon any otter or beam trawl vessel shall constitute having been engaged in a directed fishery for summer flounder.

5. The operator of, or any other person aboard, any fishing vessel subject to this regulation must immediately comply with instructions and signals issued by an authorized law enforcement officer *[to stop the vessel]* and comply with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch, for the purpose of enforcement of this regulation.

6. (No change.)

(d)-(e) (No change.)

7:25-18.2 Pound nets

(a) (No change.)

(b) General requirements for all pound net users are as follows:

1.-4. (No change.)

5. Any person operating any fish pound net in the marine waters of New Jersey, must, at the time of emptying the net, return to the waters wherein the net is located all *[striped bass]* codfish less than ten inches in length, bluefish or weakfish less than nine inches in length, sea bass or kingfish less than eight inches in length, black fish, mackerel and porgy less than seven inches in length, winter flounder less than six inches in length and summer flounder less than 14 inches in length. This paragraph does not apply to less than five percent by weight of the total catch of each species.

6.-8. (No change.)

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

7:25-18.5 General net regulations

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

(c) It shall be illegal to catch fish or attempt to catch fish by means of a rod and line or hand line, commonly called angling, within *[100]* ***300*** feet of a set (operating) fish net as licensed pursuant to this section.

(d) It shall be illegal to set a fish net as licensed pursuant to this section within *[100]* ***300*** feet of any person actively fishing with a rod and line or hand line, commonly called angling.

(e) (No change.)

(f) No person shall set, tend, tamper with or damage in any way or remove fish or other organisms from any net requiring a license without having in his possession the numbered license issued to said person which corresponds to the gear identification number marked on such net.

[(f)] ***(g)*** Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the commissioner for a license. Upon receipt of the application and the prescribed license fee, the commissioner may, in his discretion, issue single season licenses as specified for each net type for the taking of fish with nets only as follows:

1.-2. (No change.)

3. Miniature fykes or pots shall only be used for the taking of catfish, suckers, killifish (Cyprinodontidae) and eels. This net type shall not exceed 16 inches in diameter ***if cylindrical or 201 square inches in cross section if any other configuration*** in any of the marine waters of this State.

i.-iii. (No change.)

4. (No change.)

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched beginning February 1 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. These nets shall not individually exceed 20 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 1 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i.-ii. (No change.)

iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 1 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within *[one-half]* ***100 fathoms of the marked channel*** of any inlet;

iv.-vii. (No change.)

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and the Delaware Bay and its tributaries. Staked or anchored gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 1 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15.

i.-ii. (No change.)

iii. Staked and anchored gill nets may be used in the Atlantic Ocean for any species except those specifically protected only beginning February 1 through December 15, where individual gill net length shall not exceed 50 fathoms. the smallest mesh of any such net used in the Atlantic Ocean shall not be less than five inches stretched beginning February 1 through February 29 and not less than 2.75 inches stretched beginning

March 1 through December 15. Staked or anchored gill nets shall not be used in the Atlantic Ocean within *[one-half mile]* ***100 fathoms of the marked channel*** of any inlet;

iv.-vii. (No change.)

7.-9. (No change.)

10. Shrimp trawls shall be used for the taking of grass shrimp (Palaemonetes spp.) or sand shrimp (Crangon spp.) only. Any organisms other than these shrimp taken with a shrimp trawl shall immediately be returned to the waters from which such organisms were taken. The internal opening of the trawl shall have a maximum width of 60 inches and a maximum height of 12 inches. *[The full length of the bottom bar of a shrimp trawl must ride on top of, or be attached to, a grass comb that has teeth at least 18 inches in length and not more than six inches apart. The grass comb must precede the trawl net and slide horizontally across the bottom.]* The mesh of the net shall not be greater than one-half inch stretched. No boat shall have more than two trawls working at the same time, and each trawl shall be independently and separately attached to the vessel by a single cable or tow line.

i.-ii. (No change.)

11. Lobster or fish pots may be used for the taking of all species except those specifically protected and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay, and Sandy Hook Bay.

i.-iv. (No change.)

v. Effective January 1, 1987, all lobster ***and fish*** traps ***set north of Barnegat Inlet (LORAN C 9960-Y-43300)*** must be constructed to include one of the following escape vents in the parlor section of the trap located in such a manner that it would not be blocked or obstructed in normal use by any portion of the trap, associated gear, or the sea floor:

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

vi.-viii. (No change.)

[(g)] ***(h)*** (No change in text.)

HEALTH

(a)

LOCAL AND COMMUNITY HEALTH SERVICES

Designated Fluid Milk Products

Adopted New Rule: N.J.A.C. 8:21-10

Proposed: January 6, 1986 at 18 N.J.R. 59(b).
Adopted: March 11, 1986 by J. Richard Goldstein, M.D. Commissioner, Department of Health.
Filed: March 12, 1986 as R.1986 d.96, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 24:10-57.1 et seq., specifically 24:10-57.1, 24:10-57.20 and 24:10-57.24b.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 18, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Milk Industry Association, Inc. suggested that the Department change the standard of identity for "Eggnog" by citing the Code of Federal Regulations (CFR) 21 CFR 131.170 definition for "Eggnog". This change was recommended since the Federal standard is currently under review by the Food and Drug Administration (FDA). Any new changes made by FDA would then automatically be incorporated into New Jersey's requirements.

RESPONSE: The Department agrees with the Milk Industry Association's proposal and has rewritten the "Eggnog" definition to read: "Eggnog" means the product defined in 21 CFR 131.170.

COMMENT: The Milk Industry Association also suggested a change to the definition for "Cultured milk", paragraph (d), "Other optional ingredients". The FDA is currently studying changes to the acceptability of certain optional ingredients for this milk product. The Association felt it would not be advisable to restrict the use of optional ingredients, but to word the standard in a manner that provides for FDA approval of optional ingredients.

RESPONSE: The Department concurs with the Association's recommendation and the text has been changed.

A review of the text by Department staff during the comment period revealed a technical flaw which the Department has corrected. The original language which was published at 8:21-10.4(d), (g) and (h) would have prohibited the Department from suspending the permit of a milk producer without first conducting a hearing. The language has been corrected to reflect the Department's statutory authority to suspend the permit of a milk producer pending the conduct of a hearing.

The Department received an update of the Pasteurized Milk Ordinance (PMO) from the Food and Drug Administration regarding screening tests for somatic cell count as specified under 8:21-10.6(d)1.ii. (3) and (4). Under the latest revision of the PMO, the test result on the Wisconsin mastitis test which is now deemed to approximate a count of 1,000,000 cells/milliliter by the Direct Microscopic Somatic Cell Count method is 18 millimeters (mm) rather than the 20 millimeters (mm) initially proposed by the Department. The Single Strip Reticle method is no longer a recognized test. Therefore, the Department has altered the appropriate section of the regulations to reflect this change in the PMO.

Typographical errors in the New Jersey Register as published have been corrected at sections 8:21-10.1; 8:21-10.2(a)1.; 8:21-10.3(a); 8:21-10.4(b); 8:21-10.6(b), (c), (d)5.iv., (d)12., (d)19., (d)21., (e)10., (e)11., (e)13., (e)19. and (e)23.; 8:21-10.7(c); and 8:21-10.8.

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

SUBCHAPTER 10. DESIGNATED FLUID MILK PRODUCTS

8:21-10.1 Definitions of product standards

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following standards of identity conform to the code of Federal Regulations for milk and cream (21 CFR 131).

"Acidified Sour Cream":

(a) Description. Acidified sour cream results from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic acid producing bacteria. Acidified sour cream contains not less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Acidified sour cream has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) Optional ingredients.

1. Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

2. Rennet.

3. Safe and suitable nutritive sweeteners.

4. Salt.

5. Flavoring ingredients, with or without safe and suitable coloring, as follows:

6. Fruit and fruit juice, including concentrated fruit and fruit juice.

ii. Safe and suitable natural and artificial food flavoring.

(c) Methods of analysis. Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Titratable acidity—"Acidity—Official Final Action."

(d) Nomenclature. The name of the food is "Acidified sour cream." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in section 101.22 of Title 21 CFR. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of Title 21 CFR, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream."

"Acidified Sour Half-and-Half":

(a) Description. Acidified sour half-and-half results from the souring of pasteurized half-and-half with safe and suitable acidifiers, and with or without addition of lactic acid producing bacteria. Acidified sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Acidified sour half-and-half has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) Optional ingredients.

1. Safe and suitable ingredients to improve texture, prevent syneresis, or extend the shelf life of the product.

2. Rennet.

3. Safe and suitable nutritive sweeteners.

4. Salt.

5. Flavoring ingredients, with or without safe and suitable coloring, as follows:

i. Fruit and fruit juice, including concentrated fruit and fruit juice.

ii. Safe and suitable natural and artificial food flavoring.

(c) Methods of analysis. Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Titratable acidity—"Acidity—Official Final Action."

(d) Nomenclature. The name of the food is "Acidified sour half-and-half." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in section 101.22 of Title 21 CFR. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of Title 21 CFR, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream."

"And/or" where the term "and/or" is used, "and" shall apply where appropriate, otherwise "or" shall apply.

"Aseptically processed milk and milk products" means products which are hermetically sealed in a container and so thermally processed in conformance with 21 CFR 113 and the provisions of these regulations so as to render the product free of microorganisms capable of reproducing in the product under normal non-refrigeration conditions of storage and distribution. The product shall be free of viable microorganisms (including spores) of public health significance.

"Aseptic processing" means that the product has been subjected to sufficient heat processing, and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR 113 and these regulations and maintain the commercial sterility of the product under normal non-refrigerated conditions.

"Butter" means the food product known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 percent of milkfat, all tolerances having been allowed for.

"Buttermilk" means a fluid product resulting from the manufacture of butter from milk or cream. It contains not less than 8-1/4 percent of milk solids-not-fat.

"Bulk Milk Pickup Tanker" means a vehicle including the truck, tank and those appurtenances necessary for its use, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a transfer station, receiving station or milk plant.

"Butter oil" means the clean, wholesome and unadulterated milkfat obtained from milk, cream, or butter, and which contains not less than 99 percent milkfat.

"Certified industry inspector" means an individual certified by the Department to conduct dairy farm inspections of producers shipping to New Jersey permit holders. Such certification shall be in accordance with the procedures established by the Department pursuant to the provisions of the Grade A Pasteurized Milk Ordinance (1978) (PHS-FDA Publication 229).

"Certified milk" means milk produced in compliance with the laws of this State, the State Sanitary Code, rules and regulations of the Department, and such methods and standards as may be established by the certifying Medical Milk

Commission so empowered by law and shall include certified milk which may have been pasteurized, homogenized or modified in accordance with practices approved by the Department and the Certifying Medical Milk Commission.

"CFR" means the Code of Federal Regulations of the United States Government.

"Cheese" shall mean and include those cheeses, processed cheeses, cheese foods, cheese spreads and related food for which definitions and standards of identity have been promulgated under the provisions of the Federal, Drug and Cosmetics Act and shall conform to such definitions and standards of identity as set forth therein.

"Commissioner" shall mean the Commissioner of the State Department of Health or his/her duly appointed agent.

"Concentrated milk and/or fluid milk products" means and includes the fluid products resulting from the removal of a considerable portion of the water from the milk and/or fluid milk products, which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding product as defined.

"Cream" means the liquid milk product high in fat separated from milk, which may have been adjusted by adding thereto: Milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Cream contains not less than 18 percent milkfat.

"Cultured milk":

(a) Description. Cultured milk is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (c) of this standard with characterizing microbial organisms. One or more of the other optional ingredients specified in paragraphs (b) and (d) of this standard may also be added. When one or more of the ingredients specified in paragraph (d)(1) of this standard are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Cultured milk contains not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat and has a titratable acidity of not less than 0.5 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultrapasteurized prior to the addition to the microbial culture, and when applicable, the addition of flakes or granules of butterfat or milkfat.

(b) Vitamin addition (optional).

1. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units (400 ug of retinol equivalence) thereof, within limits of good manufacturing practice.

2. If added, Vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 ug) thereof, within limits of good manufacturing practice.

(c) Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

(d) Other optional ingredients.

1. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, ***and the use of any other ingredients as approved by the FDA,*** to increase the nonfat solids content of the food *[: Provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present, shall not be decreased as a result of adding such ingredients]*.

2. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract, dried malt extract; malt sirup, dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

3. Flavoring ingredients.

4. Color additives that do not impart a color simulating that of milkfat or butterfat.

5. Stabilizers.

6. Butterfat or milkfat, in the form of flakes or granules.

7. Aroma and flavor-producing microbial culture.

8. Salt.

9. Citric acid, in a maximum amount of 0.15 percent by weight of the milk used, or an equivalent amount of sodium citrate, as a flavor precursor.

(e) Methods of analysis. Referenced methods in paragraph (e)(1),(2) and (3) of this standard are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by "Total Solids, Method I—Official Final Action."

3. Titratable acidity—"Acidity—Official Final Action."

(f) Nomenclature. The name of the food is "cultured milk." The full name of the food shall appear on the principal display panel in type of uniform size, style and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22, and may be accompanied by a declaration such as a traditional name of the food or the generic name of the organisms used, thereby indicating the presence of the characterizing microbial organisms or ingredients, e.g., "kefir cultured milk," "acidophilus cultured milk," or when characterizing ingredients such as those in paragraphs (d)(6), (7), (8) and (9) of this standard, and lactic acid-producing organisms are used the food may be named "cultured buttermilk."

1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

i. The phrase "vitamin A" or "vitamin A added" or "vitamin D" "or vitamin D added," or "vitamin A and D added," as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavor.

2. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

(g) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Dairy drink" means a product consisting of fluid skim milk or concentrated or dried skim milk recombined with water, with or without added milkfat, to which has been added a syrup or flavoring material, and which contains not less than 7-1/2 percent milk solids-non-fat.

"Department" means the State Department of Health.

*["Eggnog":

(a) Description. Eggnog is the food containing one or more of the optional dairy ingredients specified in paragraph (b), one or more of the optional egg yolk-containing ingredients specified in paragraph (c) of this standard and one or more of the optional nutritive carbohydrate sweeteners specified in paragraph (d) of this standard. One or more of the optional ingredients specified in paragraph (e) of this standard may also be added. All ingredients used are safe and suitable. Eggnog contains not less than 6 percent milkfat and not less than 8.25 percent milk solids not fat. The egg yolk solids content is not less than 1 percent by weight of the finished food. The food shall be pasteurized or ultra-pasteurized and may be homogenized.

(b) Optional dairy ingredients. Cream, milk, partially skimmed milk or skim milk, used above or in combination.

(c) Egg yolk-containing ingredients. Liquid egg yolk, frozen egg yolk, dried egg yolk, liquid whole eggs, frozen whole eggs, dried whole eggs or any one or more of the foregoing ingredients with liquid egg white or frozen egg white.

(d) Nutritive carbohydrate sweeteners. Sugar (surcrose), beet or cane; invent sugar (in paste or sirup form); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup, dried maltose sirup; malt extract, dried malt extract; malt sirup, dried malt sirup, honey; maple sugar, or any of the sweeteners listed in 21 CFR 168 except table sirup.

(e) Other optional ingredients.

1. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food: Provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

2. Salt.

3. Flavoring ingredients.

4. Color additives that do not impart a color simulating that of egg yolk, milkfat or butterfat.

5. Stabilizers.

(f) Methods of analysis. Referenced methods in paragraph (f)(1) and (2) of this standard are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids contents as determined by "Total Solids, Method I—Official Final Action."

(g) Nomenclature. The name of the food is "eggnog." The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22. If the food is ultra-pasteurized, the phrase "ultra-pasteurized" shall accompany the name of the food wherever it appears on the label in letters not less than one-half of the height of the letters used in the name. The following terms may accompany the name of the food on the label:

1. The word "pasteurized" if the food has been pasteurized.

2. The word "homogenized" if the food has been homogenized.

(h) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.]*

"Eggnog" means the product defined in 21 CFR 131-170.

"Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats. The word "milk" shall be interpreted to include goat milk.

"Grade A dry milk products" means milk and whey products which have been produced for use in Grade A pasteurized fluid milk products and which have been manufactured under the provisions of the Grade A Condensed and Dry Milk Products and Condensed and Dry Whey 1978 Recommended Sanitation Ordinance for Condensed and Dry Milk Products and Condensed and Dry Whey Used in Grade A Pasteurized Milk Products.

"Half-and-Half":

(a) Description Half-and-Half is the food consisting of a mixture of milk and cream which contains not less than 10.5 percent but less than 18 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) Optional ingredients. The following safe and suitable optional ingredients may be used.

1. Emulsifiers.

2. Stabilizers.

3. Nutritive sweeteners.

4. Characterizing flavoring ingredients (with or without coloring) as follows:

i. Fruit and fruit juice (including concentrated fruit and fruit juice.)

ii. Natural and artificial food flavoring.

(c) Methods of analysis. The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition under "Fat—Official Final Action."

(d) Nomenclature. The name of the food is "half-and-half." The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22.

1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

i. The word "ultra-pasteurized" if the food has been ultra-pasteurized.

ii. The word "sweetened" if no characterizing flavor ingredients are used, but nutritive sweetener is added.

2. The following terms may appear on the label:

i. The word "pasteurized" if the food has been pasteurized.

ii. The word "homogenized" if the food has been homogenized.

(e) Label declaration. When used in the food, each of the ingredients specified in paragraph (b) of this section shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Health Authority" means the duly authorized agent of the State Department of Health to act in the enforcement of the sanitary laws of the State.

"Heavy Cream":

(a) Description. Heavy cream is cream which contains not less than 36 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) Optional ingredients. The following safe and suitable optional ingredients may be used:

1. Emulsifiers.

2. Stabilizers.

3. Nutritive sweeteners.

4. Characterizing flavoring ingredients (with or without coloring) as follows:

i. Fruit and fruit juice (including concentrated fruit and fruit juice).

ii. Natural and artificial food flavoring.

(c) Methods of analysis. The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition, under "Fat—Official Final Action."

(d) Nomenclature.

1. The name of the food is "heavy cream" or alternatively "heavy whipping cream." The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

i. The word "ultra-pasteurized" if the food has been ultra-pasteurized.

ii. The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

2. The following terms may appear on the label:

i. The word "pasteurized" if the food has been pasteurized.

ii. The word "homogenized" if the food has been homogenized.

(e) Label declaration. When used in the food, each of the ingredients specified in paragraph (b) of this section shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of micro-organisms and thereby maintain the commercial sterility of its contents after processing.

"Homogenized milk" means milk which has been treated to insure breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 45°F. (7°C), no visible cream separation occurs on the milk, and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10 percent from the fat percentage of the remaining milk as determined after thorough mixing.

"Ice cream mix" means the unfrozen fluid mixture from which ice cream is made by freezing and shall contain not less than ten percent by weight of milkfat except when fruit, nuts, cocoa, chocolate cakes or confections are added for the purpose of flavoring when it shall contain not less than ten percent by weight of milkfat except for such reduction of milkfat as is due to the addition of such flavoring, but in no case shall it contain less *[thn]* ***than*** eight percent by weight of milkfat. Chocolate and cocoa flavored ice cream mix shall in no event contain less than ten percent by weight of total fat.

"Ice milk mix" means the unfrozen fluid mixture from which ice milk is made by freezing and shall contain not less than three percent by weight of milkfat and not less than 14 percent by weight of total milk solids.

"Item" as listed in N.J.A.C. 8:21-10.6(d) and (e) means the Grade "A" Pasteurized Milk Ordinance (1983 Revision) (PHS/FDA Publication No. 229). The letter "r" refers to raw milk; the letter "p" refers to pasteurized milk.

"Lactose-Reduced Milk or Lactose-Reduced Lowfat Milk or Lactose-Reduced Skim Milk" means the product resulting from the treatment of milk, lowfat milk or skim milk by the addition of safe and suitable enzymes to convert sufficient amounts of the lactose to glucose and/or galactose so that the remaining lactose is less than 30 percent of the lactose in milk, lowfat milk or skim milk.

"Light Cream":

(a) Description. Light cream is cream which contains not less than 18 percent but less than 30 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

1. Stabilizers.

2. Emulsifiers.

3. Nutritive sweeteners.

4. Characterizing flavoring ingredients (with or without coloring) as follows:

i. Fruit and fruit juice (including concentrated fruit and fruit juice).

ii. Natural and artificial food flavoring.

(c) Methods of analysis. The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition, under "Fat—Official Final Action."

(d) Nomenclature. The name of the food is "Light cream," or alternatively "Coffee cream" or "Table cream." The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22.

1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

i. The word "ultra-pasteurized" if the food has been ultra-pasteurized.

ii. The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

2. The following terms may appear on the label:

i. The word "pasteurized" if the food has been pasteurized.

ii. The word "homogenized" if the food has been homogenized.

(e) Label declaration. When used in the food, each of the ingredients specified in paragraph (b) of this standard shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Light Whipping Cream":

(a) Description. Light whipping cream is cream which contains not less than 30 percent but less than 36 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) Optional ingredients. The following safe and suitable optional ingredients may be used:

1. Emulsifiers.

2. Stabilizers.

3. Nutritive sweeteners.

4. Characterizing flavoring ingredients (with or without coloring) as follows:

i. Fruit and fruit juices (including concentrated fruit and fruit juice).

ii. Natural and artificial food flavoring.

(c) Methods of analysis. The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition, under "Fat—Official Final Action."

(d) Nomenclature. The name of the food is "Light whipping cream" or alternatively "Whipping cream." The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22.

1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

i. The word "ultra-pasteurized" if the food has been ultra-pasteurized.

ii. The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

2. The following terms may appear on the label:

i. The word "pasteurized" if the food has been pasteurized.
ii. The word "homogenized" if the food has been homogenized.
(e) Label declaration. When used in the food, each of the ingredients specified in paragraph (b) of this standard shall be declared on the label as required by the applicable sections of 21 CFR 101.
"Lowfat Milk":
(a) Description. Lowfat milk is milk from which sufficient milkfat has been removed to produce a food having, within limits of good manufacturing practice one of the following milkfat contents: 1/2, 1, 1-1/2, or 2 percent. Lowfat milk is pasteurized or ultra-pasteurized, contains added vitamin A as prescribed by paragraph (b) of this standard and contains not less than 8-1/4 percent milk solids not fat. Lowfat milk may be homogenized.
(b) Vitamin addition
1. Vitamin A shall be present in such quantity that each 946 milliliters (quart) of food contains not less than 2,000 International Units (400 ug of retinol equivalence), within limits of good manufacturing practice.
2. Addition of vitamin D is optional. If added, Vitamin D shall be present in such quantity that each 946 milliliters (quart) of food contains 400 International Units (10 ug), within limits of good manufacturing practice.
(c) Optional ingredients. The following safe and suitable ingredients may be used:
1. Carriers for Vitamins A and D.
2. Concentrated skim milk, nonfat drymilk, or other milk derived ingredients to increase the nonfat solids content of the food: Provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present, shall not be decreased as a result of adding such ingredients.
3. When one or more of the optional milk derived ingredients in paragraph (c)(2) of this standard are used, emulsifiers, stabilizers, or both, in an amount not more than 2 percent by weight of the solids in such ingredients.
4. Characterizing flavoring ingredients (with or without coloring, nutritive sweetener, emulsifiers, and stabilizers as follows:
i. Fruit and fruit juice (including concentrated fruit and fruit juice).
ii. Natural and artificial food flavorings.
(d) Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.
1. Milkfat content—"Fat—Official Final Action."
2. Milk solids not fat content (or total nonfat solids content)—Calculated by subtracting the milkfat content from the total solids content as determined by the method. "Total Solids, Method I—Official Final Action."
3. Vitamin D content—"Vitamin D—Official Final Action."
(e) Nomenclature. The name of the food is "Lowfat milk." The name of the food shall appear on the label in type of uniform size, style, and color. The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22.
1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:
i. The phrase ". . . % milkfat," the blank to be filled ***in** * with *[in]* the fraction 1/2, or multiple thereof, to indicate the actual fat content of the food.
ii. The phrase "vitamin A" or "vitamin A added," or, if vitamin D is added, the phrase "vitamin A and D added." The word "vitamin" may be abbreviated "vit."
iii. The word "ultra-pasteurized" if the food has been ultra-pasteurized.
iv. The phrase "with added milk solids not fat" if the food contains not less than 10 percent milk derived nonfat solids.
2. The following terms may appear on the label:
i. The word "pasteurized" if the food has been pasteurized.
ii. The word "homogenized" if the food has been homogenized.
(f) Label declaration. When ingredients are used in the food as specified in paragraphs (b)(2) and (c)(2), (3) and (4) of this section, such ingredients shall be declared on the label as required by the applicable sections of 21 CFR 101 except that concentrated skim milk and nonfat dry milk may be declared as "nonfat milk solids."
"Lowfat yogurt" means the product defined in 21 CFR 131.203.
"Milk":
(a) Description. Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8-1/4 percent milk solids not fat and not less than 3-1/4 percent milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized.
(b) Vitamin addition (Optional).
1. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2000 International Units (400 ug of retinol equivalence) thereof within limits of good manufacturing practice.
2. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 ug) thereof within limits of good manufacturing practice.
(c) Optional ingredients. The following safe and suitable ingredients may be used:
1. Carriers for vitamins A and D.
2. Characterizing flavoring ingredients (with or without coloring, nutritive sweetener, emulsifiers, and stabilizers) as follows:
i. Fruit and fruit juice (including concentrated fruit and fruit juice).
ii. Natural and artificial food flavorings.
(d) Methods of analysis. Referenced methods in paragraphs (d)(1), (2) and (3) of this standard are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.
1. Milkfat content—"Fat—Official Final Action."
2. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."
3. Vitamin D content—"Vitamin D—Official Final Action."
(e) Nomenclature. The name of the food is "milk." The name of the food shall be accompanied on the label by a

declaration indicating the presence of any characterizing flavoring, as specified in section 21 CFR 101.22.

1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

i. If vitamins are added, the phrase "vitamin A" or "vitamin A added," or "vitamin D" or "vitamin D added," or "vitamin A and D" or "vitamins A and D added," as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The word "ultra-pasteurized" if the food has been ultra-pasteurized.

2. The following terms may appear on the label:

i. The word "pasteurized" if the food has been pasteurized.

ii. The word "homogenized" if the food has been homogenized.

(f) Label description. When used in the food, each of the ingredients specified in paragraphs (b) and (c)(2) of this standard shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Milk Hauler" means any person who collects or transports raw milk and/or raw milk products to or from a milk plant, receiving or transfer station.

"Milk shake mix or milk shake base" means a fluid milk product prepared from a combination of optional ingredients as prescribed in the definition for ice cream. It shall contain not less than 3-1/4 percent milkfat and not less than 14 percent total milk solids.

"Milk Transport Tank"—A milk transport tank is a vehicle including the truck and tank used by a milk hauler to transport bulk shipments of milk from a transfer station, receiving station or milk plant to another transfer station, receiving station or milk plant.

"Nonfat Yogurt" means the product defined in 21 CFR 131.206.

"Official laboratory" means a biological, chemical, or physical laboratory which is under the direct supervision or approval of the State.

"Officially designated laboratory" means a commercial laboratory authorized to do official work by the supervising agency, or a milk industry laboratory officially designated by the supervising agency for the examination of producer samples of Grade A raw milk for pasteurization.

"Optional ingredients" shall mean and include Grade A dry milk products, concentrated milk, concentrated fluid milk products, flavors, sweeteners, stabilizers, emulsifiers, acidifiers, vitamins, and minerals. Similar ingredients may be added to fluid milk products when approved by the Department under the Administrative Procedures Act.

"Pasteurization," "pasteurized," and similar terms shall mean the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
+145°F (63°C)	30 minutes
+161°F (72°C)	15 seconds
191°F(89°C)	1 second
194°F (90°C)	0.5 second
201°F (94°C)	0.1 second
204°F (96°C)	*[0.5]** **0.05***second
212°F (100°C)	0.01 second

+If the *[fate]* ***fat*** content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F (3°C). Provided, that eggnog shall be heated to at least the following temperature and time specifications:

Temperature	Time
155°F (69°C)	30 minutes
175°F (80°C)	25 seconds
180°F (83°C)	15 seconds

Provided further, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the Food and Drug Administration to be equally efficient and which is approved by the State Health Department.

"Reconstituted or recombined milk and/or fluid milk products" shall mean milk and fluid milk products as defined which result from the recombining of milk constituents with potable water.

"Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the health authority.

"Skim Milk":

(a) Description. Skim milk is milk from which sufficient milkfat has been removed to reduce its milkfat content to less than 0.5 percent. Skim milk that is in final package form for beverage use shall have been pasteurized or ultra-pasteurized, shall contain added vitamin A as prescribed by paragraph (b) of this standard and shall contain not less than 8-1/4 percent milk solids not fat. Skim milk may be homogenized.

(b) Vitamin addition.

1. Vitamin A shall be present in such quantity that each 946 milliliters (quart) of food contains not less than 2,000 International Units (400 ug of retinol equivalence), within limits of good manufacturing practice.

2. Addition of vitamin D is optional. If added, Vitamin D shall be present in such quantity that each 946 milliliters (quart) of food contains 400 International Units (10 ug), within limits of good manufacturing practice.

(c) Optional ingredients.

The following safe and suitable optional ingredients may be used:

1. Carriers for vitamin A and D.

2. Concentrated skim milk, nonfat dry milk, or other milk derived ingredients to increase the nonfat solids content of the food: Provided, that the ratio of protein to total nonfat solids of the food, and protein efficiency ratio of all protein present, shall not be decreased as a result of adding such ingredients.

3. When one or more of the optional milk derived ingredients in paragraph (c)(2) of this standard are used, emulsifiers, stabilizers or a combination of both may be added in an amount not to exceed 2 percent by weight of the solids in such ingredients.

4. Characterizing flavoring ingredients (with or without coloring, nutritive sweetener, emulsifiers, and stabilizers) as follows:

i. Fruit and fruit juices (including concentrated fruit and fruit juice).

ii. Natural and artificial food flavorings.

(d) Methods of Analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Milk solids not fat content (or total nonfat solids content)—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

3. Vitamin D content—"Vitamin D—Official Final Action."

(e) Nomenclature. The name of the food is "Skim milk" or alternatively "Nonfat milk." The name of the food shall appear on the label in type of uniform size, style, and color. The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in section 21 CFR 101.22.

1. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

i. The phrase "vitamin A" or "vitamin A added," or, if vitamin D is added, the phrase "vitamin A and D" or "vitamins A and D added." The word "vitamin" may be abbreviated "vit."

ii. The word "ultra-pasteurized" if the food has been ultra-pasteurized.

iii. The phrase "with added milk solids not fat" if the food contains not less than 10 percent milk derived nonfat solids.

2. The following terms may appear on the label:

i. The word "pasteurized" if the food has been pasteurized.

ii. The word "homogenized" if the food has been homogenized.

(f) Label declaration. When used in the food, each of the ingredients specified in paragraphs (b)(2) and (c)(2), (3), and (4) of this section shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Sour Cream":

(a) Description. Sour cream results from the souring, by lactic acid producing bacteria, of pasteurized cream. Sour cream contains not less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 14.4 percent milkfat. Sour cream has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) Optional ingredients.

1. Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

2. Sodium citrate in an amount not more than 0.1 percent may be added prior to culturing as a flavor precursor.

3. Rennet.

4. Safe and suitable nutritive sweeteners.

5. Salt.

6. Flavoring ingredients, with or without safe and suitable coloring, as follows:

i. Fruit and fruit juice (including concentrated fruit and fruit juice).

ii. Safe and suitable natural and artificial food flavoring.

(c) Method of analysis. Referenced methods in paragraphs (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Titratable acidity—"Acidity"[(2)] —Official Final Action."

(d) Nomenclature. The name of the food is "Sour cream" or alternatively "Cultured sour cream." *[the]* ***The*** full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in 21 CFR 101.22. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream."

"Sour Half-and-Half":

(a) Description. Sour half-and-half results from the souring, by lactic acid producing bacteria, of pasteurized half-and-half. Sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat; except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of milkfat is not less than 10.5 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food; but in no case does the food contain less than 8.4 percent milkfat. Sour half-and-half has a titratable acidity of not less than 0.5 percent, calculated as lactic acid.

(b) Optional ingredients.

1. Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

2. Sodium citrate in an amount not more than 0.1 percent may be added prior to culturing as a flavor precursor.

3. Rennet.

4. Safe and suitable nutritive sweeteners.

5. Salt.

6. Flavoring ingredients, with or without safe and suitable coloring, as follows:

i. Fruit and fruit juice (including concentrated fruit and fruit juice).

ii. Safe and suitable natural and artificial food flavoring.

(c) Methods of analysis. Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

1. Milkfat content—"Fat—Official Final Action."

2. Titratable acidity—"Acidity[(2)] —Official Final Action."

(d) Nomenclature. The name of the food is "Sour half-and-half" or alternatively "Cultured sour half-and-half." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in 21 CFR 101.22. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened."

(e) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream."

"Sterilized" means the condition achieved by application of heat, chemical sterilant(s) or other appropriate treatment that renders the piping, equipment and containers used for milk and milk products free of viable microorganisms.

"Ultra-pasteurized"—The term "ultra-pasteurized," when used to describe a dairy product, means that such product shall have been thermally processed at or above 280°F (138°C) for at least 2 seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

"Whipped cream" means the product defined in 21 CFR 131.150 or 131.157 into which air or gas has been incorporated. If nitrous oxide is used as the propellant in whipped cream, a permit is required from the State Department of Health, Drug Control Program pursuant to N.J.S.A. 24:6B.

"Whipping cream" means cream which contains not less than 30 percent milkfat.

"Yogurt" means the product defined in 21 CFR 131.200.

8:21-10.2 *[Labelling]* ***Labeling***

(a) All bottles, containers and packages enclosing milk or milk products defined in N.J.A.C. 8:21-10.1 shall be labeled in accordance with the applicable requirements of the Federal Food*,* Drug and Cosmetic Act, (21 USC 301), as amended, the Fair Packaging and Labeling Act, (15 USC 1451), the labeling provisions established under N.J.A.C. 8:21-10.1, and in addition, shall comply with the applicable requirements of this section as follows:

1. The words "Grade A" for milk and milk products handled, processed and packaged under the terms of the National Conference *[of]* ***on*** Interstate Milk Shipments (IMS);

2. The identity of the plant where pasteurized;

3. The word "reconstituted" or "recombined" if the product is made by reconstitution or recombination;

4. The volume or proportion of water to be added for recombining in the case of concentrated milk or fluid milk products;

5. The words "keep refrigerated after opening" in the case of aseptically processed milk and milk products;

6. In the case of aseptically processed and packaged milk and milk products, "UHT;"

7. The words "ultra-pasteurized" if the milk or milk product has been ultra-pasteurized;

8. The word "Goat" shall precede the name of the milk or milk product when the product is or is made from goat milk.

(b) All vehicles and transport tanks containing milk or fluid milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents.

(c) Tanks transporting raw milk and fluid milk products to a milk plant from sources of supply not under the routine supervision of the health authority are required to be marked with the name and address of the milk plant or hauler and shall be sealed. For each such shipment, a shipping statement shall be prepared containing at least the following information:

1. Shipper's name, address, and permit number;

2. Permit identification of hauler, if not employee of shipper;

3. Point of origin of shipment;

4. Tanker identity number;

5. Name of product;

6. Weight of product;

7. Grade of product;

8. Temperature of product;

9. Date of shipment;

10. Name of supervising health authority at the point of origin;

11. Whether the contents are raw, pasteurized, or in the case of cream, lowfat or skim milk whether it has been heat-treated.

(d) The shipping statement required in (c) above shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the health authority.

(e) The labeling information which is required on all bottles, containers or packages of milk or fluid milk products shall be in letters of an acceptable size, style, and color satisfactory to the Department and shall contain no marks or words which are misleading.

(f) The use of super grade designations such as "Grade AA Pasteurized," "Selected or Special Grade A Pasteurized," etc., shall not be permitted.

8:21-10.3 Inspection of dairy farms and milk plants

(a) Each dairy farm, milk plant, receiving station, and transfer station whose milk and fluid milk products are intended for consumption *[with]* ***within*** New Jersey or its police jurisdiction and each milk hauler who collects samples of raw milk for pasteurization, for bacterial, chemical or temperature standards and hauls milk from a dairy farm to a milk plant, transfer station or receiving station and his bulk milk pickup tanker and its appurtenances shall have an approved inspection prior to the issuance of a permit.

1. Following the issuance of a permit, each bulk milk pickup tanker and its appurtenances shall be inspected at least once every 12 months; each milk hauler who collects milk samples shall be evaluated at least once every 24 months; each milk plant and receiving station shall be inspected at least once every three months; and each dairy farm supplying milk and each transfer station shall be inspected at least once every six months.

2. Should the violation of any requirement set forth in N.J.A.C. 8:21-10.6, or in the case of a milk hauler also N.J.A.C. 8:21-10.4, be found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three days; this second inspection shall be used to determine compliance with the requirements of N.J.A.C. 8:21-10.6, or in the case of milk hauler also N.J.A.C. 8:21-10.4.

3. In the case of dairy plants producing aseptically processed milk and milk products, when an inspection of the dairy plant and its records reveal that the process used has been less than the required scheduled process, it shall be considered an imminent hazard to public health and the health authority shall immediately take enforcement action to abate the hazard.

(b) One copy of the inspection report shall be handed to the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the establishment. Said inspection report shall not be defaced and shall be made available to the health authority upon request. An identical copy of the inspection report shall be filed with the records of the health authority.

(c) Every milk producer, hauler, distributor, or plant operator shall, upon request of the health authority, permit access of officially designated persons to all parts of his establishment or facilities to determine compliance with the provisions of these regulations. A distributor or plant operator shall furnish the health authority, upon request, for official use only, a true statement of the actual quantities of milk and fluid milk products of each grade purchased and sold, and a list of all sources of such milk and fluid milk products, records of inspections, tests, and pasteurization time and temperature records.

(d) It shall be unlawful for any person who, in an official capacity, obtains any information under the provisions of these regulations which is entitled to protection as a trade secret (including information as to quantity, quality, source or disposition of milk or fluid milk products, or results of inspections or tests thereof) to use such information to his own advantage or to reveal it to any unauthorized person.

8:21-10.4 Examination of milk and fluid milk products

(a) It shall be the responsibility of the milk hauler to collect a representative sample of milk from each farm bulk tank prior to transferring milk from a farm bulk tank, truck, or other container. All samples shall be collected and delivered to a milk plant, receiving station, transfer station, or other location approved by the health agency.

(b) During any consecutive six months, at least four samples of raw milk for pasteurization shall be taken from each producer and four samples of raw milk for pasteurization, ultra pasteurization or aseptic processing shall be taken from each milk plant after receipt of the milk by the milk plant and prior to pasteurization, ultra pasteurization or aseptic processing. In addition, during any consecutive six months, at least four samples of pasteurized milk and at least four samples of defined fluid milk product *[ecept]* ***except*** aseptically processed, shall be taken from every milk plant. Samples of milk and fluid milk products shall be taken while in possession of the producer or distributor at any time prior to delivery to the store or consumer. Samples of milk and fluid milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and fluid milk products are sold shall be examined periodically as determined by the health authority; and the results of such examination shall be used to determine compliance with standards, labeling and cooling requirements. Proprietors of such establishments shall furnish the health authority, upon request, with the names of all distributors from whom milk or fluid milk products are obtained.

(c) Required bacterial counts, somatic cell counts, and cooling temperature checks shall be performed on raw milk for pasteurization. In addition, antibiotic tests on each producer's milk or on commingled raw milk shall be conducted at least four times during any consecutive six months. When commingled milk is tested, all producers shall be represented in the sample. All individual sources of milk shall be tested when test results on the commingled milk are positive. Required bacterial counts, antibiotic tests, coliform determinations, phosphatase, and cooling temperature checks shall be performed on pasteurized milk and fluid milk products.

(d) Whenever two of the last four consecutive bacteria counts (except those for aseptically processed milk and milk products), somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and/or milk products, the health authority or a representative so designated shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. Any additional sample*[s]* shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit and/or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, cooling temperatures, or somatic cell counts. *[Prior to taking any such action, the]* ***The*** Department shall offer to the person concerned a hearing pursuant to N.J.S.A. 24:10-57.8.

(e) Whenever a phosphatase test is positive, the cause shall be determined. Where the cause is improper pasteurization, it shall be corrected and any milk or fluid milk product involved shall not be offered for sale.

(f) Whenever an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for antibiotic or pesticide residues and no milk shall be offered for sale until it is shown by a subsequent sample to be free of antibiotic or pesticide residues or below the actionable levels established for such residues.

(g) Whenever a test indicates that milk from a producer is unsafe due to an antibiotic, the permit holder or Department shall immediately notify and suspend the producer for two days. *[Prior to taking any such action, the]* ***The*** Department shall offer to the producer concerned a hearing pursuant to N.J.S.A. 24:10-57.8. A test shall be made of the subsequent milking after *[suspensin]* ***suspension***, and it must be free of antibiotic before offering that milk for sale.

(h) Whenever a container or containers of aseptically processed milk or milk products is found to be unsterile due to underprocessing, the Department shall consider this to be an imminent hazard to public health and shall take immediate enforcement action*[, pursuant to N.J.S.A. 24:10-57.8]* to abate the hazard. No aseptically processed milk and milk product shall be sold until it can be shown that the processes, equipment and procedures used are suitable for consistent production of a sterile product. All products from the lot that was found to contain one or more unsterile units shall be recalled and disposed of as directed by the Department.

(i) Samples shall be analyzed at an official or appropriate officially designated laboratory. All sampling procedures and required laboratory examinations shall be in substantial compliance with the current edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association, and the current Edition of Official Methods of Analysis of the Association of Official Analytical Chemists. Such procedures, including the certification of sample collectors, and examinations shall be evaluated in accordance with the current edition of Evaluation of Milk Laboratories, Recommendations of the United States Public Health Service/Food and Drug Administration. Examinations and tests to detect adulterants, including pesticides, shall be conducted as the health authority requires. Assays of milk and fluid milk products to which vitamin(s) A and/or D have been added, shall be made at least annually in a laboratory acceptable to the health authority.

8:21-10.5 Animal health

(a) All milk for pasteurization shall be from herds which are located in modified accredited tuberculosis areas as determined by the U.S. Department of Agriculture (U.S.D.A.), provided, that herds located in an area that fails to maintain such accredited status shall have been accredited by the U.S.D.A. as tuberculosis free, or shall have passed an annual tuberculosis test.

(b) All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

1. Located in a certified brucellosis-free area as defined by the U.S.D.A. and enrolled in the testing program for such areas; or

2. Located in a modified certified brucellosis area as defined by the U.S.D.A. and enrolled in the testing program for such areas; or

3. Meet U.S.D.A. requirements for an individually certified herd; or

4. Participating in a milk ring test program which is conducted on a continuing basis at intervals of not less than every three months or more than every six months, with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

5. Having an individual blood agglutination test annually with an allowable maximum grace period not exceeding two months.

(c) For diseases other than brucellosis and tuberculosis, the health authority shall require such physical, chemical, or bacteriological tests as they deem necessary. The diagnosis of other diseases in dairy cattle shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of an official agency. Any diseased animal disclosed by such test(s) shall be disposed of as the health authority directs.

8:21-10.6 Standards for milk and fluid milk products

(a) All raw milk for pasteurization, ultra pasteurization or aseptic processing, and all pasteurized, ultra-pasteurized or aseptically processed, milk and fluid milk products shall be produced, processed and pasteurized, ultra-pasteurized or aseptically processed to conform with the chemical, bacteriological, and temperature standards in (c) below and the sanitation requirements in (d) and (e) below.

(b) No process or manipulation other than pasteurization, ultra*-*pasteurization or aseptic processing methods integral therewith, and appropriate refrigeration shall be applied to milk and fluid milk products for the purpose of removing or deactivating microorganisms: Provided, that in the bulk shipment of raw cream, skim milk, or lowfat milk, the heating of the raw milk to temperatures no greater than 125 degrees *[Farenheit]* ***Fahrenheit*** (52 degrees *[Celcius]* ***Celsius***) for separation purposes is permitted when the resulting bulk shipments of cream, skim*[,]* milk, and lowfat milk are labeled heat-treated.

(c) The chemical, bacteriological, and temperature standards for milk and fluid milk products are as follows:

Raw milk for pasteurization, ultra-pasteurization or aseptic processing*.* Temperature-Cooled to 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less within two hours after milking, provided that the blend temperature after the first and subsequent milkings does not exceed 50 degrees *[Farenheit]* ***Fahrenheit*** (10 degrees *[Celcius]* ***Celsius***).

Bacterial limits—Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk.

Not exceeding 300,000 per ml. as commingled milk prior to pasteurization.

Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

Somatic Cell Count—Individual producer milk not to exceed 1,000,000 per ml. (Effective July 1, 1986).

Pasteurized milk and fluid milk products.

Temperature—Cooled to 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less and maintained thereat at the plant. A maximum of 50 degrees *[Farenheit]* ***Fahrenheit*** (10 degrees *[Celcius]* ***Celsius***) will be allowed on delivery vehicles.

Bacterial limits+—Milk and fluid milk products—20,000 per ml.—At processor level prior to delivery.

Coliform limits—Not exceeding 10 per ml. prior to delivery; provided, that in the case of bulk milk transport tank shipments, shall not exceed 100 per ml.

Phosphatase—Less than 1 ug phenol per ml. by Scharer Rapid Method (or equivalent by other means).

Antibiotics—No zone equal to or greater than 16 mm with the *Bacillus Stearothermophilus* disc assay method.

Aseptically processed milk and fluid milk products*.*

Temperature—None

Bacterial limits—No growth by test specified in N.J.A.C. 8:21-10.4.

Antibiotics—No zone equal to or greater than 16 mm with the *Bacillus Stearothermophilus* disc assay method.

Pasteurized mixes for frozen desserts.

Temperature—Same as pasteurized milk and fluid milk products above.

Bacterial limits—50,000 bacteria per gm.

Coliform limits—Not exceeding 10 per gm.

Phosphatase—Less than 1 ug phenol per ml. by Scharer Rapid Method (or equivalent by other means).

+Not applicable to cultured products.

(d) Sanitation requirements for raw milk for pasteurization, ultra pasteurization or aseptic processing are as follows:

1. Item 1r. Abnormal Milk: Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the health authority, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the health authority may direct.

i. A strip cup shall be used to examine the first stream of milk from each teat of each milking animal at each milking for the purpose of detecting abnormalities and all such fore-milk shall be discarded. When any abnormal fore-milk is detected from any quarter of the udder, the producer shall immediately exclude all the milk from such animal from the supply and such milk shall not be sold, offered for sale or delivered for consumption as milk.

ii. Whenever a herd milk sample exceeds any of the following screening test results, a confirmatory count, using a Direct Microscopic, Electronic or Optical Somatic Cell counting technique, shall be made on that sample and *[thre rest]* ***the results*** of this count shall be the official result:

(1) California mastitis test—1;

(2) Modified Whiteside test—1+;

(3) Wisconsin mastitis test—*[20]* ***18*** mm (effective July 1, 1986).*

[(4) Single trip reticle method—1,100,000;]

iii. Whenever the confirmatory count indicates the presence of greater than 1,000,000 somatic cells per ml., the following procedure shall be followed:

(1) A notice shall be given to the producer warning him of the excessive somatic cell count. The notice should also list the more likely causes of high somatic cell count.

(2) Whenever two of the last four consecutive somatic cell counts exceed 1,000,000 cells per ml., written notice thereof shall be sent to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed 1,000,000 somatic cells per ml. In addition to the written notice, an inspection should be made by certified personnel. This inspection should be made at milking time to be most effective.

(3) An additional sample shall be taken within 21 days of the written notice and inspection required above, but not before the lapse of three days. If three of the last five samples

within any consecutive six months indicate a confirmatory count greater than 1,000,000 somatic cells per ml., the receipt of milk from the producer shall be discontinued for a period of at least two days or until such time as additional samples show correction of the condition.

2. Item 2r.—Milking Barn, Stable, or Parlor Construction: A milking barn, stable, or parlor shall be provided on all dairy farms in which the cows being milked shall be housed during milking operations. The areas used for milking purposes shall:

i. Have floors constructed of concrete or equally impervious material;

ii. Have walls, and ceiling which are smooth, painted or finished in an approved manner, in good repair, ceilings dust tight;

iii. Have separate stalls or pens for horses, calves, and bulls;

iv. Be provided with natural and/or artificial light, well distributed for day and/or night milking;

v. Provide sufficient air space and air circulation to prevent condensation and excessive odors;

vi. Not be overcrowded; and,

vii. Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped or concentrated feed.

3. Item 3r.—Milking Barn, Stable, or Parlor Cleanliness: The interior shall be kept clean. Floors, walls, windows, pipelines, and equipment shall be free of filth and/or litter and shall be clean. Swine and fowl shall be kept out of the milking barn.

4. Item 4r.—Cow Yard: The cow yard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes: Provided, that in loafing or cattle-housing areas, cow droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the cow's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a reasonably firm footing. Swine shall be kept out of the cow yard.

5. Item 5r.—Milkhouse or Room *-* Construction and Facilities: A milkhouse or room of sufficient size shall be provided, in which the cooling, handling, and storing of milk containers and utensils shall be conducted, except as provided for in Item 12r. below.

i. The milkhouse shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

ii. The walls and ceilings shall be constructed of smooth material, in good repair, well painted, or finished in an equally suitable manner.

iii. The milkhouse shall have adequate natural and/or artificial light and be well ventilated.

iv. The milkhouse shall be used for no other purpose than milkhouse operations. There shall be no direct opening *[to]* ***into*** any barn, stable, or into a room used for domestic purposes; Provided, that a direct opening between the milkhouse and milking barn, stable or parlor is permitted when a tight-fitting self-closing solid door(s) hinged to be single or double acting is provided.

v. Water under pressure shall be piped into the milkhouse.

vi. The milkhouse shall be equipped with a two-compartment wash vat and adequate hot water heating facilities.

vii. When a transportation tank is used for the cooling and storage of milk on the dairy farm, such tank shall be provided with a suitable shelter for the receipt of milk. Such shelter shall be adjacent to, but not a part of, the milkroom and shall comply with the requirements of the milkroom with respect to construction, light, drainage, insect and rodent control, and general maintenance.

6. Item 6r.—Milkhouse or Room-Cleanliness: The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, non-product contact surfaces of milk containers, utensils, and equipment, and other milkroom equipment shall be maintained in a clean condition. Only articles directly related to milkroom activities shall be permitted in the milkroom. The milkroom shall be free of trash, animals, and fowl.

7. Item 7r.—Toilet: Every dairy farm shall be provided with one or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface nor contaminate any water supply.

8. Item 8r.—Water Supply: Water for milkhouse and milking operations shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

9. Item 9r.—Utensils and Equipment Construction: All multiuse containers, equipment, and utensils used in the handling, storage or transporation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, stored, and handled in a sanitary manner and shall comply with the applicable requirements of (e)13 item 11p below. Articles intended for single-service use shall not be reused.

i. Farm holding/cooling tanks, welded sanitary piping, and transportation tanks shall comply with the applicable requirements of (e)13 items 10p and 11p below.

10. Item 10r.—Utensils and Equipment Cleaning: The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

11. Item 11r.—Utensils and Equipment Sanitization: The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each usage.

12. Item 12r.—Utensils and Equipment Storage: All containers, utensils, and equipment used in the handling, storage, or transporation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use; Provided, that milk pipelines and pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers and milk pumps and tubular coolers which are designed for mechanical cleaning may be stored in the milking barn or parlor provided this equipment is designed, installed and operated to protect the product and solution contact surfaces *[form]* ***from*** contamination at all times.

13. Item 13r.—Utensils and Equipment Handling: After sanitization, all containers, utensils, and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

14. Item 14r.—Milking, Flanks, Udders, and Teats: Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies, and tails of all milking cows shall be free from visible dirt and clipped as necessary. All brushing shall be completed prior to milking. The udders and teats of

all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be relatively dry before milking. Wet hand milking is prohibited.

15. Item 15r.—Milking: Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

16. Item 16r.—Protection from Contamination: Milking and milkhouse operations, equipment, and facilities shall be located and conducted to prevent any contamination of milk, equipment, containers, and utensils. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination.

17. Item 17r.—Personnel Handwashing Facilities: Adequate handwashing facilities shall be provided, including a lavatory fixture with running water, soap or detergent, and individual sanitary towels, convenient to the milkhouse, milking barn, stable, parlor, and flush toilet.

18. Item 18r.—Personnel Cleanliness: Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of any of these activities. Milkers and milk haulers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

19. Item 19r.—Cooling: Raw milk for pasteurization shall be cooled to 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less within 2 hours after milking: Provided, that the blend temperature after the first milking and subsequent milkings does not exceed 50 degrees *[Farenheit]* ***Fahrenheit*** (10 degrees *[Celcius]* ***Celsius***).

20. Item 20r.—Vehicles: Vehicles used to transport milk from the dairy farm to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing, and contamination. Such vehicles shall be kept clean, inside and out; and no substance capable of contaminating milk shall be transported with milk.

21. Item 21r.—Insect and Rodent Control: Effective *[measure]* ***measures*** shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents, and by chemicals used to control such vermin. Milkrooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

(e) Sanitation requirements for pasteurized, ultrapasteurized and aseptically processed milk and fluid milk products.

1. A receiving station shall comply with Items 1p to 15p, inclusive, and 17p, 20p, and 22p below, except that the partitioning requirement of Item 5p shall not apply.

2. A transfer station shall comply with Items 1p, 4p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 14p, 15p, 20p, and 22p below; and as climatic and operating conditions require, the applicable provisions of Items 2p and 3p: Provided, that in every case, overhead protection shall be provided. Facilities for the cleaning and sanitizing of bulk transport tanks shall comply with Items 1p, 4p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 14p, 15p, 20p, and 22p below; and as climatic and operating conditions require, the applicable provisions of Items 2p and 3p: Provided, that in every case, overhead protection shall be provided. Facilities for the cleaning and sanitizing of milk tank trucks shall comply with Items 1p, 4p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 14p, 15p, 20p, and 22p below; and as climatic and operating conditions require, the applicable provisions of Items 2p and 3p: Provided, that in every case, overhead protection shall be provided.

3. Item 1p.—Floor Construction: The floors of all rooms in which milk or fluid milk products are processed, handled, or stored, or in which milk containers, equipment, and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material; and shall be smooth, properly sloped, provided with trapped drains, kept in good repair; Provided, that cold-storage rooms used for storing milk and fluid milk products need not be provided with floor drains when the floors are sloped to drain to one or more exits; Provided further, that storage rooms for storing dry ingredients and/or packaging materials need not be provided with drains; and the floors may be constructed of tightly joined wood.

4. Item 2p.—Walls and Ceilings—Construction: Walls and ceilings of rooms in which milk or fluid milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed, shall have a smooth, washable, light-colored surface, in good repair.

5. Item 3p.—Doors and Windows: Effective means shall be provided to prevent the access of flies and rodents. All openings to the outside shall have solid doors or glazed windows which shall be closed during dusty weather.

6. Item 4p.—Lighting and Ventilation: All rooms in which milk and fluid milk products are handled, processed, or stored and/or in which milk containers, equipment, and utensils are washed shall be well lighted and well ventilated.

7. Item 5p.—Separate Rooms: There shall be separate rooms for:

i. Pasteurizing, processing, cooling and packaging of milk and fluid milk products;

ii. Cleaning of milk cans, bottles and cases; and

iii. Cleaning and sanitizing facilities for milk tank trucks;

iv. Provided that, in a receiving station cooling may be done in the room where milk tank trucks are unloaded and/or cleaned and sanitized.

v. Rooms in which milk or fluid milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed or stored, shall not open directly into any stable or any room used for domestic purposes. All rooms shall be of sufficient size for their intended purposes.

8. Item 6p.—Toilet/Sewage Disposal Facilities: Every milk plant shall be provided with toilet facilities which comply with the requirements of the health authority and the Uniform Construction Code, N.J.A.C. 5:23-1.1 et seq.

i. Toilet rooms shall not open directly into any room in which milk and/or fluid milk products are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Dressing rooms, toilet rooms, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted. Sewage and other liquid wastes shall be disposed of in a sanitary manner.

9. Item 7p.—Water Supply: Water for milk plant purposes shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

10. Item 8p.—Handwashing Facilities: Convenient handwashing facilities shall be provided, including hot and cold and/or warm (90 degrees *[Farenheit]* ***Fahrenheit*** to 105 degrees *[Farenheit]* ***Fahrenheit***) running water, soap, and individual sanitary towels or other approved hand-drying devices. Handwashing facilities shall be kept in a clean condition and in good repair.

11. Item 9p.—Milk Plant Cleanliness: All rooms in which milk and fluid milk products are handled, processed, or stored, and/or in which containers, utensils, or equipment are wash-

ed, or stored, shall be kept clean, neat, and free of evidence of insects and rodents. Pesticides *[shll]* ***shall*** be safely used. Only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, shall be permitted in the pasteurizing, processing, cooling, packaging, and bulk milk storage rooms.

12. Item 10p.—Sanitary Piping: All sanitary piping, fittings, and connections which are exposed to milk and fluid milk products, or from which liquids may drip, drain, or be drawn into milk or fluid milk products, shall consist of smooth, impervious, corrosion-resistant, nontoxic, easily cleanable material. All piping shall be maintained in good repair and identified as to whether it is carrying raw or pasteurized milk or milk products. Identification of all piping shall be in a manner acceptable to the Department. Recommended colors are: red—raw milk, blue—pasteurized milk, green—clean-in-place system and yellow—non potable water system. Pasteurized milk and fluid milk products shall be conducted from one piece of equipment to another only through sanitary piping.

13. Item 11p.—Construction and Repair of Containers and Equipment: All multiuse containers and equipment with which milk or fluid milk products come into contact shall be of smooth, impervious, corrosion-resistant, nontoxic material; shall be constructed for ease of cleaning; and shall be kept in good repair. All single-service containers, closures, gaskets, and other articles with which milk or fluid milk products come in contact shall be nontoxic, and shall have been manufactured, packaged, transported, *[an]* ***and*** handled in a sanitary manner. Articles intended for single-service use shall not be reused.

14. Item 12p.—Cleaning and Sanitizing of Containers and Equipment: The product-contact surfaces of all multiuse containers, utensils and equipment used in the transportation, processing, handling, and storage of milk and fluid milk products shall be effectively cleaned and shall be sanitized before each use. Provided, that piping, equipment and containers used to process, conduct or package aseptically processed milk or milk products beyond the final heat treatment process shall be sterilized before any aseptically processed milk or milk product is packaged and shall be resterilized whenever any unsterile product has contaminated it.

15. Item 13p.—Storage of Cleaned Containers and Equipment: After cleaning, all multiuse milk or fluid milk product containers, utensils, and equipment shall be transported and stored to assure complete drainage, and shall be protected from contamination before use.

16. Item 14p.—Storage of Single-Service Containers, Utensils, and Materials: Single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk and fluid milk products shall be purchased and stored in sanitary tubes, wrappings, or cartons; shall be kept therein a clean, dry place until used; and shall be handled in a sanitary manner.

17. Item 15p.—Protection from Contamination: Milk plant operations, equipment, and facilities shall be located and conducted to prevent any contamination of milk or fluid milk products, ingredients, equipment, containers, and utensils. All milk or fluid milk products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than milk and fluid milk products in the pasteurization plant shall be performed to preclude the contamination of such milk and fluid milk products. The storage, handling, and use of poisonous or toxic materials shall be performed to preclude the contamination of milk and fluid milk products or ingredients of such milk and fluid milk products or the product-contact surfaces of all equipment, containers or utensils.

18. Item 16p.—Pasteurization and Aseptic Processing: Pasteurization shall be performed as required in N.J.A.C. 8:21-10.1. Aseptic processing shall be accomplished in accordance with the provisions of 21 CFR 113 and 108.

19. Item 17p.—Cooling of Milk: All raw milk and fluid milk products shall be maintained at 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less until processed. All pasteurized milk and fluid milk products, except those to be cultured, shall be cooled to a temperature of 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less immediately in approved equipment prior to filling and packaging. All pasteurized milk and fluid milk products shall be stored at a temperature of 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less. On delivery vehicles, the temperature of milk and fluid milk products shall not exceed 50 degrees *[Farenheit]* ***Fahrenheit*** (10 degrees *[Celcius]* ***Celsius***). Every room or tank in which milk or fluid milk products are stored shall be equipped with an accurate thermometer. Provided, that aseptically processed milk and milk products to be *[package]* ***packaged*** in hermetically sealed containers shall be exempt from the cooling requirements of this item.

20. Item 18p.—Bottling and Packaging: Bottling and packaging of milk and fluid milk products shall be done at the place of pasteurization in approved mechanical equipment.

21. Item 19p.—Capping: Capping or closing of milk and fluid milk product container shall be done in a sanitary manner by approved mechanical capping and/or closing equipment. The cap or closure shall be designed and applied in such a manner that the pouring lip is protected to at least its largest diameter and, with respect to fluid product containers, removal cannot be made without detection.

22. Item 20p.—Personnel Cleanliness: Hands shall be thoroughly washed before commencing plant functions and as often as may be required to remove soil and contamination. No employee shall resume work after visiting the toilet room without thoroughly washing his hands. All persons engaged in the processing, pasteurization, handling, storage, or transportation of milk and fluid milk products, containers, equipment and utensils shall wear clean outer garments. The use of tobacco by any person while engaged in the processing of milk or fluid milk products is prohibited. Adequate hair coverings shall be worn by persons engaged in the processing of milk and fluid milk products.

23. Item 21p.—Vehicles: All vehicles used for transportation of pasteurized milk and fluid milk products shall be constructed and operated so that the milk and fluid milk products can be maintained at 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less, and are protected from sun, from freezing, and from contamination; provided, however, that the provisions of *[item]* ***Item*** 17p above are adhered to.

24. Item 22p.—Surroundings: Milk plant surroundings shall be kept neat, clean, and free from conditions which might attract or harbor flies, other insects and rodents, or which otherwise constitute a health nuisance.

8:21-10.7 Transferring; delivery containers; cooling

(a) Except as permitted in these regulations, no milk producer, milk hauler or distributor shall transfer milk or fluid milk products from one container or milk tank truck to another on the street, in any vehicle, store, or in any place except a milk plant, receiving station, transfer station, or milkhouse especially used for that purpose. The dipping or ladling of milk or fluid milk products is prohibited.

(b) It shall be unlawful to sell or serve any milk or fluid milk product except in the individual, original container received from the distributor, or from an approved bulk dispenser; Provided that, this requirement shall not apply to milk for mixed drinks requiring less than one-half pint of milk, or to cream, whipped cream or half-and-half which is consumed on the premises and which may be served from the original container of not more than one-half gallon capacity, or from a bulk dispenser approved for such service by the health authority.

(c) It shall be unlawful to sell or serve any pasteurized milk or fluid milk product which has not been maintained at a temperature of 45 degrees *[Farenheit]* ***Fahrenheit*** (7 degrees *[Celcius]* ***Celsius***) or less, except as allowed in Item 17p above. If containers of pasteurized milk or fluid milk products are stored in ice, the storage container shall be properly drained.

8:21-*[18.8]****10.8*** Milk and milk products from points beyond the limits of routine inspections

Milk and fluid milk products from points beyond the limits of routine inspection of the Department may be sold in New Jersey; Provided that they are produced and pasteurized, ultra-pasteurized, or aseptically processed under regulations which are substantially equivalent to these regulations and have been awarded an acceptable milk sanitation compliance and enforcement rating made by a State Milk Sanitation Rating Officer certified by the U.S. Food and Drug Administration; Provided further, that said unit of government accepts New Jersey milk and fluid milk products certified by a certified New Jersey milk sanitation rating officer.

8:21-10.9 Personnel health

No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage, or transporation of milk, fluid milk products, containers, equipment and utensils; and no dairy farm or milk plant operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any producer or distributor of milk or fluid milk products, upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become carrier of such disease, shall notify the health authority immediately.

8:21-10.10 Procedure when infection is suspected

(a) When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk and/or fluid milk products, the health authority is authorized to require any or all of the following measures:

1. The immediate exclusion of that person from milk handling;

2. The immediate exclusion of milk supply concerned from distribution and use; and,

3. Adequate medical and bacteriological examination of the person, or his associates, and of his and their body discharges.

8:21-10.11 Future dairy farms and milk plants

(a) Properly prepared plans for all milk houses, milking barns, stables and parlors which are hereinafter constructed, reconstructed or extensively altered shall be submitted to the certified industry inspector or Department for review before work is begun.

(b) Properly prepared plans for all transfer stations, receiving stations and milk plants which are hereinafter constructed, reconstructed or extensively altered shall be submitted to the Department for review before work is begun.

(c) The certified industry inspector or Department shall review these plans and respond accordingly within 30 days of the date of submission.

(d) No milk house, milking barn, stable, parlor, transfer station, receiving station or milk plant shall be constructed, reconstructed or extensively altered except in accordance with plans previously submitted to the appropriate certified industry inspector, health and construction authorities.

8:21-10.12 Dating of milk and fluid milk products

(a) All packages or containers of:

1. White whole milk, certified milk, Vitamin D milk, homogenized milk, lowfat milk, protein fortified lowfat milk, skim milk, protein fortified skim milk, nonfat milk, protein fortified nonfat milk and flavored milks shall be legibly marked with a "shelf-life expiration date" which shall be no later than nine days following the date of pasteurization; except, when the above products are ultra-pasteurized the dating shall comply with 2. below.

2. Fluid milk products as defined in N.J.S.A. 24:10-57.1 other than those enumerated in (a)1 above and all types and varieties of cottage and soft cheeses designated by the Department, intended for direct sale to consumers, shall be legibly marked with a "shelf-life expiration date." This date shall be determined and applied on the final consumer package or container by the initial processor or manufacturer. Prior to determining this date, each processor or manufacturer shall notify the Department of the intended date selected by him for each fluid milk product. All data and material used by the processor or manufacturer in his determination of this date shall be made available to the Commissioner upon request. If the data and material submitted does not, in the opinion of the Commissioner, justify the "shelf-life expiration date," the Commissioner shall prohibit the sale of the product until such time as satisfactory data is supplied or until a new "shelf-life expiration date" consistent with the data is applied to the product.

(b) The packages or containers shall be marked with the legend "not to be sold after," or "sell by," or any other clearly understandable legend approved by the Department, followed by the "shelf-life expiration date." The designation of the month and date of the month after which the product shall not be sold may be numerical, such as "9-15" or "0915" for September 15 or with the use of an abbreviation for the month such as "Sep 15" or "Se 15."

(c) The "shelf-life expiration date" shall appear in a clear and legible manner and shall be placed on the part of the package or container most likely to be displayed, presented, or shown or examined under customary conditions of display for retail sale, and shall not interfere with the legibility of other mandatory labeling requirements of the product. However, cup containers that are labeled with the date on the bottom of the container shall have displayed on the cap or other conspicuous position information indicating the location of the date. The same provision applies for dates molded into plastic containers. Individual portion-pak containers not intended for direct resale to consumers shall be exempted, provided the bulk container in which they are distributed is properly dated. Containers and packages of frozen cream and frozen desserts mixes not intended for resale to consumers shall also be exempted from the provisions of this regulation.

(d) No milk product referred to in this regulation shall be sold or offered for sale after 11:59 P.M. of the date appearing on the package or container. Products delivered prior to the "shelf-life expiration date" may be consumed on the premises beyond the date appearing thereon.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Hospital Long-Range Strategic Plans

Adopted Repeal and New Rule: N.J.A.C. 8:31-16.1

Proposed: January 21, 1986 at 18 N.J.R. 148(a).
Adopted: March 14, 1986 by John H. Rutledge, M.D., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: March 17, 1986 as R.1986 d.112, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-12, and 47:1A-1 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 5, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: Alexian Brothers Hospital, while noting that the proposed new rule was "better than the old," expressed two concerns. The first is that the five year time frame to be covered by the plan is not realistic, given the dynamic nature of the health care field. They asked that the requirement be dropped to three years or that it be at the option of the hospital.

Their second concern was the statement of N.J.A.C. 8:31-16.1(e) that the failure to include a particular certificate of need request in the plan or the forecast filed with the Department cannot constitute the sole criterion for denying a Certificate of Need application. The commentor feels that such failure to include a particular request should not be a criterion at all.

RESPONSE: While the Department agrees that the health care environment is dynamic, it also believes that a five-year planning period is not unrealistic. A hospital engaged in good strategic planning, especially one considering expansion, renovation, or major new service implementation must look at least this far into the future, if not beyond.

The Department also does not agree with the commentor's second concern, especially since the Certificate of Need forecast time-frame has been reduced from five years to two years. It is expected that a Certificate of Need request comes at the culmination of an appropriate planning process. Its inclusion in a Certificate of Need forecast submitted to the Department is one indication of the effectiveness of that planning process. Thus, while the Department will not use the failure for a given Certificate of Need request to be included in the required forecast (implying a possible breakdown in the planning process) as a sole denial criterion, it may use this as one of several criteria.

COMMENT: The Hospital Planning and Marketing Society of New Jersey, the Bergen-Passaic Hospital Council, Chilton Memorial Hospital, and the New Jersey Hospital Association and its Council on Planning fully support the Department's initiative in developing these rule changes.

Full text of the adoption follows.

8:31-16.1 Hospital long-range strategic plans

(a) All hospitals shall prepare and maintain within their administrative offices a current Board-approved five year plan. These plans shall not be deemed to be public records under N.J.S.A. 47:1A-1 et seq., except for the information provided in response to the requirements specified in (i) below.

(b) The plan will be developed under the direction of the governing body of the hospital and will be prepared by a committee deemed appropriate by the hospital. The group will include representatives of the community served by the hospital.

(c) The plan should consist of information and analysis deemed necessary by the hospital to plan realistically and accurately for its future development and role in the health care system. However, the plan must include:

1. Identification of actions requiring certificate of need or Section 1122 approval of the Social Security Act (P.L. 92-603) for two years into the future;
2. Anticipated submission dates of such certificate of need requests;
3. Anticipated costs and sources of funding for such certificate of need requests.

(d) All hospitals shall file that portion of the plan identified in (c)1 through 3 above with the Department of Health by July 1 of each year. Such information shall not be deemed to be public records under N.J.S.A. 10:4-1 et seq. The Department is prohibited from making public with institutional identifiers any information obtained under this section, except as provided in (f) below.

(e) Failure to include a given certificate of need request within the hospital's plan or within the certificate of need forecast filed with the Department in response to the requirements set forth in (d) above cannot constitute the sole criterion for denying a certificate of need application.

(f) The Department and the local health systems agencies may request hospitals to submit information from their current Board approved plans to support specific certificate of need requests. Any information obtained by the Department and/or the health systems agencies as a result of such requests may be made public only at the time or subsequent to the Department's acceptance of the certificate of need applications for processing.

(g) The Department reserves the right at any time to require any licensed hospital subject to the provisions of this section to submit to it copies of its current Board approved plan for purposes of insuring compliance to this rule and with the convenants so specified in (a) and (d) that these plans shall not be deemed to be public records under N.J.S.A. 10:4-1 et seq.

(h) The provisions of N.J.A.C. 8:33-2.2 concerning long-range plans will no longer apply to facilities submitting applications for certificate of need.

(i) All hospitals shall report under separate cover to the Department of Health and Health Systems Agency in its area on July 1 of each year the following hospital-specific data, which shall be considered public information:

1. Patient origin studies by major service;
2. Description of the health professional staff;
3. Utilization patterns by service;
4. Medically underserved populations.

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Efficiency Standard

Adopted Amendments: N.J.A.C. 8:31B-3.5, 3.22 and 3.54

Proposed: December 16, 1985 at 17 N.J.R. 2946(a).
Adopted: March 14, 1986 by John H. Rutledge, M.D., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: March 17, 1986 as R.1986 d.114, **without change.**

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b, and 26:2H-18d.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT by Newark Beth Israel: The change should be prospective for the 1986 Rate Year and not retrospective for prior rate years.

RESPONSE: The change will be applied only to matters resolved in 1986 except as determined by the Hospital Rate Setting Commission on the basis of equity.

COMMENTS by New Jersey Hospital Association (NJHA) and St. Joseph's Hospital and Medical Center: The Department in 1981 changed the efficiency standard definition from the median cost per case to the median hospital cost per case.

RESPONSE: During 1980 and 1981, there were not sufficient hospitals and attendant patient loads to have utilized the median cost per case for the small sample of hospitals in each group. It was the Department's intent to use median cost per case once the more expansive data base was developed.

COMMENT by NJHA and St. Joseph's: The economic impact of the change could result in an increase or decrease of not more than $1,000 per case. These differences should be determined prior to the regulation change.

One respondent included an exhibit comparing payments to all hospitals under the Incentive Standard and the Efficiency Standard.

RESPONSE: The $1,000 per case figure is by necessity an estimate based on retrospective data. The relative position of median hospital and median cost per case would vary from year to year and can only be determined retrospectively.

The Department's estimate was based on a study of five high cost DRG's in which median hospital's cost per case exceeded the median cost per case by less than $1,000 in all but one case.

The Department does not intend to minimize the impact of the Efficiency Standard. It was designed as a significant cost containment measure.

The figures in the exhibit assume that all teaching hospitals have rejected their rates. In this instance, all the hospitals would be placed on the Efficiency Standard. Moreover, the exhibit shows a comparison between payments under the correct Efficiency Standard and the Incentive Standard rather than between the correct and incorrect definitions of the Efficiency Standard.

COMMENTS by NJHA and St. Joseph's: The Efficiency Standard by the Department is applied when hospitals seek approval for establishment of new services. Hospitals have made decisions based on the current regulation.

RESPONSE: The Department agrees that it may recommend the use of the Efficiency Standard in a limited number of DRG's affected by new services. It is precisely for this reason that the logic of the Efficiency Standard is better served by the larger number of cases in the median cost per case definition.

COMMENT by St. Joseph's: The change in the definition from the median hospital cost per case to the median case is less appropriate to the intent of the term "Efficiency Standard."

RESPONSE: The intent of the Efficiency Standard is to relate hospital costs, under certain circumstances, to statewide standards. This is done with greater specificity under the proposed definition of median case.

Full text of the adoption follows.

8:31B-3.5 Development of standards

(a) (No change.)

(b) The median cost per case, the Efficiency Standard, shall be used to identify presumptively excess cost; however, supplementary standards including but not limited to the lowest cost per case at any institution which has treated more than ten patients in a given Diagnosis Related Group during the current cost base year, shall be used to identify potential areas for management review and action, and may be used by all parties in appeals. The Commissioner shall also calculate the mean cost per case, the Incentive Standard, which shall be used in developing the Proposed Schedule of Rates. Standards so developed shall remain unaffected during the rate period by any appeals and no adjustments, modifications or any other changes to the standards shall be made during a rate period, unless so ordered by the Commission. All standards developed herein may be used in evaluating effectiveness and efficiency with respect to the health care system taken as a whole.

8:31B-3.22 Standard costs per case

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

(d) Calculation of standards:

1. The calculation of standards will be based on the group of hospitals first receiving a PCB, or other appropriate sample of hospitals thereafter. The cost per case of each hospital's patients with UB-PS records categorized by inpatient DRG are multiplied by each hospital's equalization factor. (See N.J.A.C. 8:31B-3.24(c)). The mean equalized cost of all such records in teaching or non-teaching hospitals, respectively, is the incentive standard for each DRG. Other standards to be calculated shall be, but are not limited to, the Efficiency Standard (median cost per case) or lowest cost per case in a hospital which has treated more than 10 patients (See N.J.A.C. 8:31B-3.5)

2. (No change.)

8:31B-3.54 Operating costs: Prospective exceptions

(a) Issues concerning intensity and management changes proposed for the initial rate period shall be grouped according to the subsections set forth below and evaluated as follows:

1.-2. (No change.)

3. All proposed mangement or intensity changes other than those considered in (a)1 above, and any other exceptions not considered in N.J.A.C. 8:31B-3.53 through 3.57, shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any benefits resulting from the program which cannot be given a dollar value. With respect to any detailed review, appeal or application arising under this paragraph, the entire Preliminary Cost Base shall be reviewed, and case-mix material developed in accordance with N.J.A.C. 8:31B-3.5, including but not limited to the lowest cost per case, Efficiency Standard (median cost per case) and mean cost per case and shall be made available upon request to all parties directly affected by these regulations in order to, among other things: rebut or support presumptions of reasonableness set forth in these regulations; rebut or support an appellant's exceptions; and to judge effectiveness and efficiency with respect to the health care delivery system, taken as a whole. In all such cases the Commission shall determine whether or not it is appropriate that proposed management or intensity changes be financed out of an adjustment to the Schedule of Rates, or out of incentive monies in excess of cost, the development of potential efficiencies at the given institution, or from other sources.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services
Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services

Adopted Amendments: N.J.A.C. 8:33F-1.2 and 1.6
Adopted Repeal: Appendix B

Proposed: December 15, 1985 at 17 N.J.R. 2948(a).
Adopted: March 14, 1986 by John H. Rutledge, M.D., Acting Commissioner, Department of Health (with Approval of the Health Care Administration Board).
Filed: March 17, 1986 as R.1986 d.113, **without change.**

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

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 14, 1990.

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

Full text of the adoption follows.

8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services:

1. (No change.)

2. Hospital ESRD dialysis center:

i.-iv. (No change.)

v. When the dialysis station need methodology referred to in N.J.A.C. 8:33F-1.6(a) of this regulation indicates a need in a health service area:

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

vi. If any hospital ESRD dialysis center experiences less than 75% utilization for all its approved chronic stations (hemodialysis and peritoneal dialysis) for an entire 24 month period, it will automatically lose a sufficient number of stations to bring its utilization to at least 75%. Pediatric stations will not be included in the calculation of the utilization rate. Pediatric stations are those stations approved by the Department of Health to be used at least 75% of the time for those patients 16 years old or younger. Utilization is determined by the formula shown in Appendix B.

3. ESRD dialysis facility:

i.-iv. (No change.)

v. When the dialysis station need methodology referred to in N.J.A.C. 8:33F-1.6(a) of this regulation indicates a need in a health service area:

(1) Preference will be given to presently approved hospital ESRD dialysis centers or ESRD dialysis facilities over non-approved applicants whenever the non-approved applicant is within a radius of 20 straight miles from the presently approved service.

vi. If an ESRD dialysis facility experience less than 75 percent utilization for all of its approved chronic stations (hemodialysis and peritoneal dialysis) for an entire 24 month period, it will automatically lose a sufficient number of stations to bring its utilization to at least 75 percent. Pediatric stations will not be included in the calculation of the utilization rate. Utilization is determined by the formula shown in Appendix B.

4.-8. (No change.)

(b) (No change.)

8:33F-1.6 Planning standards

(a) The Department of Health shall utilize the methodology for determination of projected need for chronic renal dialysis services, as contained in the most current End-Stage Renal Disease Services Element of the State health Plan. For planning and certificate of need review purposes, the Department will differentiate between chronic renal dialysis stations used for hemodialysis and peritoneal dialysis. Within these two categories, there will be no further differentiation, although the Department realizes that subcategories will be at the discretion of the governing body of the facility. However, an approved hospital ESRD dialysis center is expected to have at least two machines available for acute hemodialysis.

APPENDIX A (No change.)

APPENDIX B

Utilization is determined by the following formula:

$$\frac{\text{Total number of Chronic Renal Dialyses in 24 months (hemodialysis + peritoneal dialysis) + transplants}^{\dagger}}{(1872 \times \text{number of hemodialysis stations}) + (624 \times \text{number of peritoneal stations})} \times 100$$

Note: Based on optimum performance of 3 hemodialysis shifts per day, 6 days per week, 104 weeks in a two year period, each hemodialysis station capacity for that period = 3 x 6 x 104 = 1872.

Based on the performance of 1 peritoneal dialysis shifts per day, 6 days per week, 104 weeks in a two year period, each peritoneal dialysis station capacity for that period = 1 x 6 x 104 = 624.

†Hospitals having referred their patients for transplant will receive credit for these patients in their calculation of utilization.

DIVISION OF HEALTH FACILITIES EVALUATION

(a)

Health Care Facilities Licensure
Licensing Nursing Home Administrators

Adopted Amendment: N.J.A.C. 8:34-1.8

Proposed: January 6, 1986 at 18 N.J.R. 74(a).
Adopted: March 3, 1986 by J. Richard Goldstein, M.D., Commissioner of Health (with approval of the Nursing Home Administrator's Licensing Board).
Filed: March 5, 1986 as R.1986 d.88, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-27, 26:2H-28 and 26:2H-51.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 18, 1988.

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

Full text of the adoption follows.

8:34-1.8 Suspension regulations for Nursing Home Administrators

(a) Pursuant to the authority in N.J.S.A. 30:11-1 et seq., and in accordance with applicable provisions of the Administrative Procedure Act of 1968, these regulations shall be applicable to all licensed nursing or convalescent home administrators and all existing and new facilities licensed or approved as nursing or convalescent facilities under provisions of N.J.S.A. 30:11-1 et seq.

1. (No change.)

2. The following limitations shall apply to licensed administrators:

i. A licensed administrator shall only be responsible for one facility, except that an administrator may be responsible for two facilities, if such facilities are within a 20-mile radius, and if the total number of beds for which both facilities are licensed is no more than 120.

3.-6. (No change.)

(b)

Health Care Facilities Licensure
Licensing Nursing Home Administrators

Adopted Amendment: N.J.A.C. 8:34-1.9

Proposed: January 6, 1986 at 18 N.J.R. 75(a).
Adopted: March 3, 1986 by J. Richard Goldstein, M.D., Commissioner of Health (with approval of the Nursing Home Administrator's Licensing Board).
Filed: March 5, 1986 as R.1986 d.89, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-27, 26:2H-28 and 26:2H-51.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 18, 1988.

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

Full text of the adoption follows.

8:34-1.9 Conditional admission to examination; disqualification; reexamination

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

(e) A candidate who is qualified to take the Nursing Home Administrator's Licensing Board Examination will be allowed to take no more than a total of four examinations.

1. Following a second examination failure, a candidate must take 50 hours of courses or seminars approved by the Nursing Home Administrator's Licensing Board.

2. Following a third examination failure, a candidate must take 50 hours of courses or seminars approved by the Nursing Home Administrator's Licensing Board.

3. Before a candidate will be able to take a third or fourth examination, documentation of successful completion of the courses and seminars, as required in 1. and 2. above, in the form of a notice from the course instructor must be submitted to the Executive Secretary, N.H.A.L. Board, New Jersey State Department of Health, CN 367, Trenton, N.J. 08625.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Fund for Improvement of Collegiate Education Policies and Procedures

Adopted New Rules: N.J.A.C. 9:2-2

Proposed: November 18, 1985 at 17 N.J.R. 2724(a).
Adopted: March 12, 1986 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 14, 1986 as R.1986 d.99, **with a technical change,** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:62-12.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): June 17, 1990.

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

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

SUBCHAPTER 2. FUND FOR THE IMPROVEMENT OF COLLEGIATE EDUCATION: POLICIES AND PROCEDURES

9:2-2.1 Definitions

The following words shall have the following meanings unless the context clearly indicates otherwise.

"Board" means the Board of Higher Education of New Jersey.

"Chancellor" means the Chancellor of the New Jersey Department of Higher Education.

"Department" means the New Jersey Department of Higher Education.

"Fund" means the Fund for the Improvement of Collegiate Education.

"Institution" means an institution of collegiate grade in New Jersey which is approved or licensed by the State Board of Higher Education.

9:2-2.2 Fund priorities

(a) The purpose of the Fund is to make grants to institutions including, but not limited to, grants for:

1. The improvement of teaching and learning processes;
2. The improvement of access to and the academic quality of higher education;
3. The enhancement of the quality of student life on campus; and
4. The improvement of collegiate retention of students, in particular, students receiving assistance through State financial aid programs.

(b) The specific objectives for the Fund may vary from year to year, but must be consonant with the above purpose of the Fund. These objectives shall be stated in the annual request for proposals issued by the Department to the institutions.

9:2-2.3 Competitive grant procedures

(a) A request for proposal shall be issued annually by the Department to all New Jersey institutions sufficiently in advance of the deadline for receipt of proposals. The ***request for*** proposal will:

1. Describe the purpose of the Fund;
2. State the goals and objectives;
3. Set forth funding categories and policies; and
4. Provide guidelines for the development and submission of the proposal, budget and attachments.

(b) Proposal review shall be performed by independent consultants retained by the Department for this purpose.

(c) The review process shall be in conformity with procedural and content guidelines developed by the Department as set forth in the request for proposals.

(d) Grants shall be awarded based upon competitive criteria established by the Board, including but not limited to:

1. Their ability to accomplish the objectives delineated in the annual request for proposals;
2. Their congruence with the funding restrictions and the evaluation requirements set forth in the annual request for proposals;
3. Their individual merit and worthiness for funding relative to other competing proposals; and
4. Other criteria consistent with the purpose of the Fund, annually set forth in the request for proposal as developed by the Department.

9:2-2.4 Consortial arrangements

(a) Consortial arrangements of institutions, including public and private agencies and organizations are jointly eligible, but a single institution must serve as the fiscal agent.

(b)

Veterans Tuition Credit Program

Adopted New Rules: N.J.A.C. 9:2-11 (to be recodified as 9:7-7)

Proposed: December 2, 1985 at 17 N.J.R. 2844(a).
Adopted: March 12, 1986 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 14, 1986 as R.1986 d.103, **with technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:71-64, 18A:71-71.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No 66 (1978): April 13, 1988.

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

Full text of the expired rules adopted as new appears in the New Jersey Administrative Code at N.J.A.C. 9:2-11 (to be recodified as 9:7-7).

Full text of the adopted amendment to the new rules follows (addition to proposal shown in boldface with asterisks ***thus***; deletion from proposal shown in brackets with asterisks *[thus]*).

9:7-7.8 Application procedure

(a) Upon completion of written agreement with the institution and the Chancellor of Higher Education, application forms will be mailed to the eligible institution.

1.-3. (No change.)

4. Applications shall be mailed to:

New Jersey Department of Higher Education
Veterans Tuition Credit Program
[CN 542] ***CN 540***
Trenton, NJ 08625

(a)

STUDENT ASSISTANCE BOARD

Tuition Aid Grant Program 1986-87 Award Table

Adopted Amendment: N.J.A.C. 9:7-3.1

Proposed: January 6, 1986 at 18 N.J.R. 19(b).
Adopted: March 14, 1986 by Student Assistance Board, Joseph Streit, Chairman.
Filed: March 14, 1986 as R.1986 d.106, **without change.**

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 13, 1988.

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

Full text of the adoption follows.

9:7-3.1 Tuition Aid Grant Award Table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs. The award tables below show approximate award levels depending upon tuition and ability to pay:

1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1985-86
APPROXIMATE TUITION AID GRANT VALUES
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ[1]	NJ Inst. of Tech.
A	B	C	D	E	F
Under 950	$825	$1184	$2300	$1748	$1940
950-1349	725	1080	2150	1640	1820
1350-1749	625	980	2000	1540	1700
1750-2149	525	880	1850	1440	1580
2150-2549	425	780	1700	1340	1460
2550-2949	325	680	1550	1240	1340
2950-3349	200	580	1400	1140	1220
3350-3749	0	480	1250	1040	1100
3750-4149		380	1100	940	980
4150-4549		280	950	840	860
4550-4949		200	800	740	740
4950-5349		0	650	640	640
5350-5749			550	540	540
5750-6149			450	440	440
6150-6549			200	200	200
Over 6549			0	0	0

[1]Rutgers Engineering, Pharmacy, and Cook College students will have their awards increased to offset the higher tuition charged for these programs of study. Students enrolled in eligible programs at UMDNJ. Contact the financial aid office for details.

2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1986-87
APPROXIMATE TUITION AID GRANT VALUES
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ[1]	NJ Inst. of Tech.
A	B	C	D	E	F
Under 950	$825	$1184	$2650	$1748	$1940
950-1349	725	1080	2500	1640	1820
1350-1749	625	980	2350	1540	1700
1750-2149	525	880	2200	1440	1580
2150-2549	425	780	2050	1340	1460
2550-2949	325	680	1900	1240	1340
2950-3349	200	580	1750	1140	1220
3350-3749	0	480	1600	1040	1100
3750-4149		380	1450	940	980
4150-4549		280	1300	840	860
4550-4949		200	1150	740	740
4950-5349		0	1000	640	640
5350-5749			850	540	540
5750-6149			700	440	440
6150-6549			550	200	200
6550-6949			400	0	0
6950-7349			250		
7350-7749			200		
Over 7749			0		

[1]Rutgers Engineering, Pharmacy, and Cook College students will have their awards increased to offset the higher tuition charged for these programs of study. Students enrolled in eligible programs at UMDNJ. Contact the financial aid office for details.

(b)

Garden State Scholars
Eligibility Requirements; Award Amounts; Recruitment and Awarding Responsibilities; Institutional Eligibility, Allocations, and Funding of Awards; Renewal of Scholarships

Adopted Amendments: N.J.A.C. 9:7-4.1 and 4.2
Adopted Repeal and New Rule: N.J.A.C. 9:7-4.5
Adopted New Rules: N.J.A.C. 9:7-4.3 and 4.8

Proposed: November 18, 1985 at 17 N.J.R. 2726(a).
Adopted: March 14, 1986 by Student Assistance Board, Joseph Streit, Chairman.
Filed: March 14, 1986 as R.1986 d.108, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 13, 1988.

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

Full text of the adoption follows (addition to proposal shown in boldface with asterisks ***thus***; deletion from proposal shown in brackets with asterisks *[thus]*).

9:7-4.1 Eligibility requirements

(a) Undergraduate Garden State Scholarship recipients must meet minimum academic requirements as defined in N.J.A.C. 9:7-4.6, demonstrate financial need as defined herein, and be selected by the institution they attend or plan to attend. In addition to the financial need determination explained in N.J.A.C. 9:7-2.4 and 2.9, undergraduates must have demonstrated financial need to qualify for an award. Demonstrated financial need is the difference between the applicant's total resources (Estimated Family Contribution and other aid) and the total cost of college attendance (college budget). The undergraduate's demonstrated financial need will be reviewed annually by the institution to determine renewal eligibility.

(b) Distinguished Scholarship recipients must meet the academic requirements as defined by the Student Assistance Board. The academic requirements shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test scores. Each year the Student Assistance Board shall determine and publicize the actual academic requirements prior to the distribution of awards. Such scholarships may be awarded on the basis of indicators of academic merit defined by the Board, without consideration of financial need, and must satisfy the requirements as stipulated in N.J.A.C. 9:7-2.9. Distinguished Scholarship recipients must attend an eligible New Jersey institution and may be eligible to receive a Garden State Scholarship or an Educational Opportunity Fund Grant. Distinguished Scholarship recipients will be selected without regard to their course of study and awards will not be limited by institutions. Distinguished Scholarships are renewable for up to four or five years, depending upon the course of study and providing the student continues to achieve satisfactory academic progress. Eligible scholars may receive assistance under the Tuition Aid Grant Program.

(c) (No change.)

9:7-4.2 Award amounts

Undergraduate scholarship award amounts shall be a minimum of $200.00. The maximum Garden State Scholarship award shall be $1,000 and the Student Assistance Board shall annually establish award amounts in recognition of various levels of academic achievement. The exact amount of the Garden State Scholarship award shall be determined by the college financial aid officer and *[depend upon]* ***take into account*** the student's financial need as defined in N.J.A.C. 9:7-2.9. The Garden State Distinguished Scholarship award and the graduate fellowship award amounts shall be established annually by the Student Assistance Board.

9:7-4.3 Recruitment and awarding responsibilities

Institutions must develop and implement recruitment activities designed to promote the Garden State Scholarship Program. Institutional allocations received through this program must be linked to institutional recruitment activities. Expenditures and recruitment results will be reviewed by the department and unutilized funds will be subject to reallocation by the Student Assistance Board.

9:7-4.5 Institutional eligibility, allocations, and funding of awards

(a) An eligible institution is one that is located in New Jersey, is approved or licensed by the State Board of Higher Education, and is accredited by a regional accrediting association recognized by the Council on Postsecondary Accreditation.

(b) The Student Assistance Board will annually allocate scholarship funds to all eligible institutions to assist eligible renewal and initial award recipients. All eligible institutions will be guaranteed a minimum allocation of funds for undergraduate scholarships annually by the Student Assistance Board.

(c) The Board may periodically redistribute, transfer, or adjust any uncommitted scholarship funds. Under no circumstances shall the Board be held responsible for commitments made by institutions in excess of their annual allocation.

9:7-4.8 Renewal of scholarships

Students receiving undergraduate or graduate scholarship assistance will continue to receive aid provided they continue to meet all of the eligibility criteria as stipulated in statute and in the regulations adopted by the Student Assistance Board. Award eligibility based upon academic achievement, as defined in N.J.A.C. 9:7-4.6, must only be evaluated when initial awards are being determined and the academic eligibility criteria used at the time scholarships are awarded shall remain throughout the student's remaining period of eligibility.

(a)

HIGHER EDUCATION ASSISTANCE AUTHORITY

Student Loans
Insurance Fees

Adopted Amendment: N.J.A.C. 9:9-1.6

Proposed: November 18, 1985 at 17 N.J.R. 2727(a).
Adopted: March 11, 1986 by Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Filed: March 14, 1986 as R.1986 d.102, **without change.**

Authority: N.J.S.A. 18A:72-10.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): September 8, 1988.

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

Full text of the adoption follows.

9:9-1.6 Insurance and origination fees

(a) An applicant for a student loan must:

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

2. (No change.)

(b) (No change.)

(a)

Guaranteed Student Loan Program
Defaulted Loan Interest Payments; Procedure for Filing Claim

Adopted Amendment: N.J.A.C. 9:9-1.16

Proposed: November 18, 1985 at 17 N.J.R. 2728(a).
Adopted: March 11, 1986 by Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Filed: March 14, 1986 as R.1986 d.101, **without change.**

Authority: N.J.S.A. 18A:72-10.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): September 8, 1988.

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

Full text of the adoption follows.

9:9-1.16 Procedure for filing claim
(a)-(b) (No change.)
(c) Separate claims must be submitted on each loan accruing interest at different rates. It is permissible to combine more than one loan on one claim form as long as the interest rate is the same. Two sets of claims forms will be sent with both copies expected to be returned in completed form. The lender will be reimbursed for the total unpaid principal and interest due for a period not to exceed 90 days beyond the date of default on both non-converted and installment accounts. A photostatic copy of the note must be forwarded with the claims. By law, the Authority may not reimburse the lender for late charges.

(b)

Direct PLUS Program
Loan Prerequisites

Adopted Amendment: N.J.A.C. 9:9-9.2

Proposed: November 18, 1985 at 17 N.J.R. 2728(b).
Adopted: March 11, 1986 by Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Filed: March 14, 1986 as R.1986 d.100, **without change.**

Authority: N.J.S.A. 18A:72-10.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): October 3, 1988.

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

Full text of the adoption follows.

9:9-9.2 Loan prerequisites
(a) Prior to obtaining a direct PLUS loan, the borrower must satisfy the following additional requirements:
1.-2. (No change.)
3. Each applicant may be required to have a co-signer for each loan at the discretion of the Authority; and
4.-5. (No change.)

(c)

EDUCATIONAL OPPORTUNITY FUND BOARD

Administrative Policies and Procedures
Program Support

Adopted Amendments: N.J.A.C. 9:11-1.1, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 1.11, 1.12, 1.13, 1.17, 1.18, 1.19, 1.20 and 1.21; N.J.A.C. 9:12-1.2, 1.3, 1.6, 1.7, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 1.17, and 1.19; N.J.A.C. 9:12-2.2, 2.4. 2.5 and 2.6
Adopted New Rules: N.J.A.C. 9:11-1.9 and 1.10; N.J.A.C. 9:12-1.17; N.J.A.C. 9:12-2.7, 2.8 and 2.9

Proposed: September 16, 1985 at 17 N.J.R. 2214(a).
Adopted: March 14, 1986 by the Educational Opportunity Fund Board, T. Edward Hollander, Chairman.
Filed: March 14, 1986 as R.1986 d.107, **without change,** but with 9:12-1.4 and 9:12-2.3 not adopted but still pending.

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 17, 1989.

Summary of Public Comments and Agency Responses:
Nine letters of comments concerning the proposal were received from two private citizens and two colleges.

COMMENT: The language change in N.J.A.C. 9:11-1.1(c)4i.-iv. regarding eligibility requirements from the use of the word "or" to the word "and," thereby requiring students to meet all four criteria rather than any one of four criteria, will have a negative impact on incoming enrollments. This change limits the flexibility in admitting students who may not meet each criteria, but who by virtue of their background, meet the spirit and intent of the program.

RESPONSE: The Board determined to not modify the proposal language in this area as the use of the word "or" in N.J.A.C. 9:11-1.1(c)4i.-iv. created too much flexibility and thus allowed institutions to admit students into the program who did not meet the spirit and intent of the program.

COMMENT: Income eligibility criteria set forth in N.J.A.C. 9:11-1.5 should be raised from current levels as rising incomes combined with static EOF income eligibility criteria has resulted in the inadmissibility of many minority students who could benefit from the program.

RESPONSE: The Board's staff is currently reviewing family income data to determine the feasibility of raising the income eligibility criteria. Upon the completion of this study, the Board will determine whether program income eligibility criteria should be raised.

COMMENT: N.J.A.C. 9:11-1.10 provides for a student to complete only nine credits per semester to maintain academic progress in certain limited circumstances but otherwise an E.O.F. student must complete 12 credits per semester to maintain satisfactory academic progress. The nine credit per semester standard should apply in all situations.

RESPONSE: The Board firmly believes that academic progress standards are a necessary part of the program. Further, the regulations as they were noticed, provide sufficient flexibility to accommodate those students who require additional assistance in meeting those standards.

COMMENT: N.J.A.C. 9:11-1.10 should not be applicable to students who were enrolled in college under the EOF program prior to its enactment.

RESPONSE: The Board believes that this section should apply to all students within the program.

COMMENT: N.J.A.C. 9:11-1.11 encourages an institution to provide financial aid packages to EOF students in their freshmen and sophomore years which meet 100 percent of the student's need. This should be expanded to include EOF students in their junior and senior years.

RESPONSE: This provision simply encourages institutions to maximize grants in EOF financial aid packaging to freshmen and sophomore students if sufficient resources exist. It is not binding upon the institutions.

Full text of the adoption follows.

9:11-1.1 Student eligibility

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

(c) To be eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-3. (No change.)

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate in an institution of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i. Has not demonstrated a sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (where applicable); and

ii. Whose standardized test scores are below the institutional norms; and

iii. Whose educational background indicates a need for improvement of basic skills; and

iv. Whose economic background reflects a history of poverty.

5. (No change.)

6. Students may not receive assistance under the programs administered by the Educational Opportunity Fund Board if information is made known that they owe a refund on a grant or scholarship previously received from a state or federal program through any institution, or are in default on any student loan made or insured by the federal government at any institution.

7. (No change.)

9:11-1.3 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United State Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1.-2. (No change.)

3. Be the holder of an arrival departure record form I-94 endorsed by the Immigration and Naturalization Service showing one of the following:

i. Parole Edition: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act; or

ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act; or

iii. Employment Authorized and Adjustment Applicant: A Foreign National holding form I-94 with this endorsement would normally meet the requirements of this regulation. However, if the institution has knowledge that the student is planning to leave the United States following the completion of his or her educational program, the Office of Student Assistance shall be notified and the award canceled.

(b) Foreign nationals with student visa status, F1 or F2 Exchange visitor visa status or J1 or J2 visa status, even when stamped "employment authorized", are considered to be in the United States for the sole purpose of obtaining an education and are therefore not eligible for student assistance.

9:11-1.5 Financial eligibility for undergraduate grants

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

(e) (No change in text.)

(f) (No change in text.)

9:11-1.6 Verification of financial eligibility

(a) (No change in text.)

(b) It is required that all recipients of undergraduate E.O.F. grants apply for the Federal Pell Grant and the New Jersey Tuition Aid Grant and all students' files shall contain information from the New Jersey Financial Aid Form indicating application for the above.

(c) (No change in text.)

(d) In those instances where earnings are not the source of income, regardless of the status of dependency of the awardee, files must contain appropriate documentation and verification on which to base awards (e.g., statements from the Welfare Department, Social Security Administration, Bureau of Children's Services, Veteran's Administration or any other approved administrative agency).

(e) In every case, a student's file must contain evidence that the College Scholarship Service, Uniform Methodology, which forms the basis on which the financial aid officer has recommended the E.O.F. grant, has been performed.

(f) In every case, files should contain completed forms indicating all relevant data such as annual income, household size, sources of income, parent(s) or guardian(s) income, etc. Students' records should include the application for financial aid, the student's signed acceptance of the financial aid package and proof that the grant was actually received by the student.

9:11-1.7 Grant amount

(a) The dollar amount of each E.O.F. grant will be based on two factors:

1. The financial need of the student: and
2. The type of institution which the student will be attending.

(b) Financial need is to be ascertained through the use of the College Scholarship Service, Uniform Methodology. Financial need is to be defined as the difference between a student's cost of education and his expected family contribution.

(c) Once it is determined that a student is eligible, he shall not receive less than the minimum grant nor more than the maximum grant. Under no circumstance shall an E.O.F. award be granted which, in combination with other aid, exceeds documented financial need, as defined above.

(d) The E.O.F. Board of Directors shall annually review the state grant amounts of E.O.F. students and make adjustments if necessary. The minimum and maximum awards for Graduate and Undergraduate E.O.F. grants for each type of institution follows:

Undergraduate	Minimum	Maximum
2-Year Public Colleges	$200	$ 450
4-Year Public Colleges:		
Commuter	200	450
Residential	200	700
Rutgers, NJIT:		
Commuter	200	450
Residential	200	700
Independent Colleges	200	1,400
Graduate	**Minimum**	**Maximum**
4-Year Public Colleges	$200	$1,500
4-Year Independent Colleges	200	2,500
Rutgers, NJIT	200	2,500
UMDNJ/FDU Dental School	200	4,000

(e) The Minimum Award, as set forth in this section, shall be granted to all eligible E.O.F. students.

(f) The awarding of all grants within the above stated minimum and maximum shall be based upon a careful analysis of the student's total financial situation and financial need. The neediest students must be accorded priority.

9:11-1.8 Duration of student eligbility

(a) Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree study as long as he or she maintains full-time enrollment. In addition, students shall retain eligibility for an E.O.F. grant as long as the student has demonstrated financial need as determined by the institution through submission of a New Jersey Financial Aid Form, in accordance with annually established deadline dates. The information on the Financial Aid Form will be evaluated by employing the National Uniform Methodology, as represented in the College Scholarship Service System or by approaches modified to meet the purposes of New Jersey student assistance programs.

(b) Students are eligible for a maximum of 12 semesters or its equivalent of undergraduate study. Students in an established 5 year undergraduate course of study shall be eligible for an additional two semesters beyond the 12 semesters.

(c) Students attending four-year institutions will receive ten terms of E.O.F. payment to complete four class levels. Additional term awards up to the maximum allowable terms are available upon formal written request from the institution and approval by the Executive Director of E.O.F.

(d) Students attending two-year institutions will be eligible to receive six terms of E.O.F. payment to complete two class levels. Additional term awards up to the eight maximum allowable terms are available upon formal request from the institution and approval by the Executive Director of E.O.F.

(e) Graduating seniors in their last semester of study, and sophomores in their last semester at a county college, may take less than 12 credits (full-time status) and remain eligible for E.O.F.

9:11-1.9 Non-funded students

(a) Students who have received an initial E.O.F. grant, but as a result of a change in income status or enrollment status no longer demonstrate need for Article III funds, shall be termed non-funded.

(b) Students who are denied Article III grants due to inability to meet satisfactory academic progress, as defined in N.J.A.C. 9:11-1.10 of the E.O.F. Financial Aid Guidelines, who enroll full-time the subsequent term, may be considered non-funded and are entitled to Program Support Services for one year.

(c) Students who, due to extenuating circumstances, are advised to enroll at less than full-time status, may be considered non-funded, and are entitled to Program Support Services for one year. Documentation of advisement shall be maintained in the student's record.

(d) Non-funded students must continue to file the New Jersey Financial Aid Form, and have been determined eligible and received Article III academic year funds during initial enrollment into the program.

(e) A student who enrolls into the pre-freshman summer program prior to the completion of eligibility determination and who is determined financially ineligible at the end of the eligibility determination process cannot be considered as a non-funded student.

(f) Non-funded students shall constitute no more than 10 percent of the total institutional Educational Opportunity Fund Program enrollment.

9:11-1.10 Academic progress

(a) Before payment may be made to an eligible student, the institution shall have satisfactory evidence that the student is eligible for an Educational Opportunity Fund Article III student grant by maintaining academic progress and standing according to the institution's established policy for academic progress of Educational Opportunity Fund students.

(b) Academic progress criteria for E.O.F. Article III Student Grants is as follows:

1. E.O.F. students must complete 12 credits, or their equivalent, in a semester. With the written approval of the E.O.F. campus director, a student may, for academic reasons, complete no less than nine credits in a semester. Directors approving such circumstances must maintain documentation on file. The provision permitting completion of less than 12 credits in a semester may only be used during the first four terms of a degree course and in the first year following transfer for transfer students.
2. E.O.F. students will be required to complete all remedial courses within the first four terms of E.O.F. payment, excluding the pre-freshman summer program. Approval for additional remedial/developmental work beyond the four terms

may be granted upon formal written request to and approval by the Executive Director of E.O.F.

3. Students and institutions shall have the right to appeal the denial of financial aid based upon these guidelines through the established appeal procedures in N.J.A.C. 9:11-1.21. The Executive Director of E.O.F. will consider individual cases and shall have the authority to make such exceptions as unusual circumstances may warrant.

(c) The Educational Opportunity Fund Board of Directors shall recognize minimum standards for academic progress that an institution adopts for determining financial aid eligibility if these standards are the same as or stricter than those outlined in this section.

9:11-1.11 Financial aid packaging

(a) A total financial aid package shall be granted to all freshmen and sophomore E.O.F. students, wherever possible, to meet 100% of need.

(b) All sources of student financial aid should be used to augment the financial aid package.

(c) Because E.O.F. students are from historically poor backgrounds, loan encumbrance shall be a low priority and loans shall be given to complete the package only after all other forms of financial aid are exhausted.

9:11-1.12 Transfer of grant

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

9:11-1.13 Student notification and payment

(a) A student(s) should be notified in writing, by the institution's financial aid officer, of the content of his or her financial aid package. The institution's written notification to the student shall contain a clause absolving the State of any responsibility for funding in the event that the grant is based upon fraudulent, inaccurate or misleading information.

(b) (No change.)

9:11-1.14 Discontinuance of E.O.F. grants and program support services

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

9:11-1.15 Liability

(a) (No change.)

(b) In the event that an institution has knowingly conveyed fraudulent and misleading information in order to obtain E.O.F. grants for ineligible students, the institution will be held liable and will be required to make restitution.

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

9:11-1.16 Grant usage

(No change.)

9:11-1.17 Grant awarding cycle

(No change.)

9:11-1.18 Eligibility requirements for graduate grants

(No change.)

9:11-1.19 Operational provisions for undergraduate and graduate grants

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

(e) A timetable for submission of reports and payment request forms shall be made available to each participating institution.

(f) (No change.)

(g) All participating institutional programs shall be required to cooperate fully in specified program analysis and evaluation activities carried out by the E.O.F. central office.

9:11-1.20 Application procedures for E.O.F. graduate and undergraduate grants

(a) (No change.)

(b) Applicants for undergraduate E.O.F. must complete a New Jersey Financial Aid Form and submit it to the College Scholarship Service, Princeton, New Jersey for processing. Students must apply for the Pell Grant and State student assistance programs by authorizing release of information to the New Jersey Department of Higher Education.

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

9:11-1.21 Appeals

(a) A student(s) or his or her parents may file a written appeal with the Executive Director of E.O.F. regarding institutional decisions of ineligibility.

(b) The first step in appealing E.O.F. grant eligibility begins within the institution. As a campus based program, the verification of E.O.F. grant eligibility is the responsibility of institutional officials.

(c) A student(s) must have already appealed through institutional channels before his or her appeal will be heard by the Executive Director of E.O.F.

(d) The letter of appeal must furnish detailed information as to the nature of the case and contain the names of institutional officials who have been contacted.

(e) For academic progress appeals, the following are offered as examples of circumstances that institutions might consider for appeal of institution policies when they are more rigorous than the E.O.F. requirements:

1. Documented medical excuse of personal or immediate family illness or death, when such an event causes significant change in course or class status;

2. Incomplete grant from previous semester, with assurances documented by faculty or staff that grade is to be made up in the current semester and that the credits in question are not counted in the current semester's 12 credit requirement;

3. When considering the student's cumulative academic progress, the student has demonstrated a clear history of meeting academic progress standards and has earned an average of 12 credit hours per semester.

(f) If, after State payment deadline dates, new information or evidence has been presented regarding previous institutional eligibility decisions, the institution may request consideration by the E.O.F. Executive Director for payment in the same fiscal year. Such requests must be submitted before fiscal year end reconciliation and should be submitted through payment rosters co-endorsed by the E.O.F. campus director and financial aid officer.

(g) In no case should institutional requests for opinions, clarification, or consideration based on new evidence constitute an appeal for a student or students who have not met the minimum standards set forth in State regulations. These standards are intended to be the "floor" above which institutional standards and appeals may operate, but no appeals, institutional or central, should result in an E.O.F. student not meeting these State minimum standards for eligibility.

9:11-1.22 Refunds and repayments of disbursements made to students

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

(d) The above formula should be applied if a student reduces his academic course load to less than full-time prior to the date full tuition liability is required by the institution. However, if the student reduces his academic course load to less than full time after the date full tuition liability is due the institution, and the student budget for the payment period is not reduced by the institution, a refund to the State is not necessarily required.

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

(g) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessfull, the institution shall notify the Office of Student Assistance of the amount owed for each State assistance program. Non-institutional costs may include, but are not limited to room and board, books and supplies, transportation, and miscellaneous expenses.

(h) (No change.)

CHAPTER 12
PROGRAM SUPPORT

SUBCHAPTER 1. ACADEMIC YEAR PROGRAM SUPPORT FUNDS

PREFACE

N.J.S.A. 18A:71-39 provides that the Chancellor of Higher Education shall develop, establish and maintain programs of remedial and supplementary education for students who receive assistance under the Educational Opportunity Fund. These regulations govern the process by which institutions receive and utilize funds pursuant to this statutory authority. E.O.F. students, as students of the institution who pay tuition and for whom the institution receives State support other than E.O.F., are entitled to all services available to all other students at the institution. E.O.F. funds are intended to supplement and not supplant existing services provided by the institution. The E.O.F. Program may not be charged directly nor through the institutional match provision of these regulations for services which are not over and above those provided to the general student population.

9:12-1.1 Institutional eligibility
(No change.)

9:12-1.2 Eligible E.O.F. program requirements

(a) Any program shall be eligible for funding consideration which increases access to higher education for students eligible for E.O.F. grants, improves E.O.F. student academic performance and promotes student retention, promotes student progress toward graduation within the established period of program eligibility and within the academic regulations of the institution, and provides effective administrative support for the operation of the E.O.F. Program within the institution. All programs must meet all of these objective mandates for funding under this provision. Such programs may include, but are not limited to:

1. Recruitment and screening of prospective students for college enrollment;
2. Testing of prospective and admitted students;
3. Academic and financial advisement;
4. Personal and career counseling;
5. Tutorial services;
6. Remedial/developmental instruction;
7. A structured summer orientation program with academic and counseling support services;
8. Financial assistance;
9. Experimental projects for research and development of innovative practices; and
10. Administration of the above services.

9:12-1.3 Application process

(a) The E.O.F. Executive Director will distribute a standard proposal application form to all eligible participating colleges and universities in the State each year.

(b) Each institution shall submit the proposal application to the Executive Director of the Educational Opportunity Fund each year. All applications must include written endorsement of the campus E.O.F. Director, the Community Advisory Board, the President and/or the governing board of the institution.

(c) The application will be reviewed by the E.O.F. Executive Director in the Department of Higher Education for compliance and development of program recommendations to the E.O.F. Board of Directors. The Board shall conduct an annual meeting to determine funding allocations for the next academic year for each institution. The Executive Director shall provide written notification of the Board's decision on each proposal. This shall be in the form of a preliminary notification specifying the funding level and any stipulations regarding the conduct of the program or the disbursement of funds. This preliminary notification shall be endorsed by the institutional president and returned to the Executive Director.

(d) Institutions may appeal the funding decision of the Board by submitting a written request to the Executive Director within 30 days of issuance of the preliminary notification. The E.O.F. Executive Director will conduct a review of the appeal and make appropriate recommendations to the Board of Directors.

(e) The E.O.F. Executive Director shall execute a contract with each participating institution which indicates provisions of the grant with a statement of intent to comply with all E.O.F. Program regulations.

9:12-1.5 Institutional commitment

(a) Institutions which participate in the E.O.F. Program shall provide a broad range of supportive services to students enrolled in the program. Institutions shall provide funding equivalent to no less than 50% of the proposed total cost of each program to be supported by E.O.F. grant funds in the following manner:

1. With regard to matching funds, it is expected that high level institutional officers who are required to serve all students will normally not be included as part of the institutional match. In cases where these individuals are included, a detailed justification must accompany the proposal. The justification should include services provided to the E.O.F. students which would not normally accrue to the student as a result of his/her tuition payment. Generally, personnel who provide direct services to students will be allowed, but must meet the above criteria for institutional match.

2. Indirect expenses should not exceed 10 percent of the total program cost in meeting the match (for example, space, light, heat, etc.).

(b) (No change.)

9:12-1.6 Accountability of institutional share
(No change.)

9:12-1.7 Institutional administration

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

(c) Each participating institution shall insure that provisions are made for the director to fulfill the following responsibilities:

1. Program planning;

2.-9. (No change.)

9:12-1.8 Requirement and admission

(a) Each participating institution shall develop and implement an annual plan for the recruitment of potential students for the E.O.F. Program. This plan shall be appended to the proposal application. The plan will identify a significant pool of potential students from specific disadvantaged groups in the geographic region. Target populations shall include significant numbers of students with a background of historical poverty (in the black, Puerto Rican, and other Hispanic communities, as well as other disadvantaged ethnic groups of the region). In addition, the plan shall identify a significant pool of potential non-traditional students such as welfare recipients, unemployed or underemployed adults, and participants enrolled in JTPA and Veterans Programs, as well as various social rehabilitation services in the community. The recruitment plan shall include the timetable, goals, objectives and selection process for E.O.F. students at the participating institution.

(b) Each participating public institution shall enroll E.O.F. freshmen as a minimum of 10 percent of the entering fall first-time, full-time, New Jersey residents in the freshman class each year. Independent institutions are encouraged to meet this goal.

(c) The institution, through its admissions and E.O.F. staff, has the primary responsibility for the recruitment of E.O.F. students. The staff must have the requisite skills and information to accurately convey the goals and objectives of the E.O.F. institutional program. E.O.F. staff will give support to the primary recruitment program (that is, assist in identifying, interviewing and selecting prospective program participants) but, ultimately, the institution is to be held accountable for the recruitment yield on an annual basis.

9:12-1.9 Criteria for admission

(No change.)

9:12-1.10 Eligible program support components

(No change.)

9:11-1.11 Students for whom English is a second language

(No change.)

9:11-1.12 Transfer procedure

Each participating institution shall develop and maintain a policy to facilitate transfer of E.O.F. students from two-year to four-year institutions and between institutions. The E.O.F. Program shall have procedures to demonstrate delivery of services to students who are eligible for funding consideration under N.J.A.C. 9:11-1.12, Transfer of Grant, of the E.O.F. Financial Aid Guidelines.

9:12-1.13 Academic progress

(a) (No change.)

(b) To remain eligible for E.O.F. Program Support Services, students shall maintain satisfactory academic standing and progress according to the institution's established policy for the academic progress of E.O.F. students and sections 9:11-1.8, 9:11-1.9, and 9:11-1.10 of the E.O.F. Financial Aid Guidelines.

9:12-1.14 Academic probation/dismissal of E.O.F. students

(a) Program support services may be discontinued for reasons outlined in N.J.A.C. 9:11-1.14 of the E.O.F. Financial Aid Guidelines.

(b) Each participating institution shall develop and implement a procedure to notify the E.O.F. campus director of each program participant who is placed on academic probation. In such cases, the E.O.F. staff shall conduct a personal interview with each student requiring that such students participate in such support programs as may be appropriate.

(c) Each participating institution will be expected to establish a standing committee to review the record and circumstances of any program participant prior to academic dismissal. This committee may include the E.O.F. Campus Director, faculty from the student's academic study area, and an administrative official to be selected by the institutional president. This committee will make recommendations to the institution regarding the retention or dismissal of a student.

9:12-1.15 Experimental programs

(a) The Executive Director may request proposals from institutions to support research and developmental projects that may increase program effectiveness and encourage innovative practices. The Executive Director of E.O.F., upon approval of the Board of Directors, is authorized to grant awards to the institutions for such projects. Experimental areas may include, but are not limited to, projects that would:

1. Increase student placement into careers traditionally underrepresented to minority populations;

2. Increase student placement into professional schools of medicine, law, science, and technology; and

3. Increase the development of exemplary programs which have the potential for expansion and extension to other institutions.

9:12-1.22 Annual program report

(a) The institutions shall submit to the E.O.F. Central Office reports of program activities and outcomes, and fiscal expenditures. The format for reports shall be established prior to the period for which reports will be submitted.

(b) The timetable for submission of reports shall be included in the final contract executed with each participating institution.

(c) Periodic reports will be requested in accordance with a timetable established in advance by the Executive Director. Failure to submit reports in a timely manner may result in cancellation or non-payment of the grant award.

9:12-1.16 Program audits and evaluations

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

9:12-1.17 Transfer of funds

(a) E.O.F. grant funds may not be transferred to establish items that were not a part of the original contract, without prior approval by the Executive Director.

(b) Transfers within existing personnel lines or within existing other than personnel services (O.T.P.S.) lines (as included in the original contract) do not require Central Office approval, however, the Central Office must receive written notification that such transfers have taken place.

(c) Approved budgets are based upon a specified ratio between personnel and O.T.P.S. categories. Transfers from personnel to O.T.P.S. (and vice versa) do not need approval from the Central Office unless such transfer falls outside of the specified ratio. Written approval must be granted by the Executive Director prior to the transfer being made. Requests for approval must be made in accordance with the deadlines contained in Attachment F (Required Submissions Timetable) of the current year contract.

9:12-1.18 Program non-compliance

(a) (No change.)

(b) The Executive Director shall make a written report of the findings and a copy of the report will be transmitted to the institutional president and campus E.O.F. Director. This report shall include a specific description of the violation or practice with specific recommendations to correct the situation within a specified time period as the Executive Director shall determine.

(c) The institution may appeal the findings of this report. Such appeal shall be in writing and directed to the Chairman of the E.O.F. Board. When such an appeal is taken, the E.O.F. Board of Directors shall schedule a hearing of the appeal within a reasonable time period. The E.O.F. Board may uphold or overturn the report of the Executive Director and modify recommendations as it deems appropriate.

9:12-1.19 Program probationary status

(a) The E.O.F. Board of Directors may place an institutional program on probation for failure to correct program deficiencies within the time directed by the Executive Director. The E.O.F. Board shall place such restrictions as it believes are necessary upon an institutional program which is placed on probation. Restrictions which may be imposed include—but are not limited to—the following:

1. Restrict the recruitment of new students into the program.

2. Withhold funds for the program pursuant to the provisions of the contract.

3. Terminate an institutional program pursuant to the contractual provisions.

9:12-1.20 Community Advisory Board

(No change.)

9:12-1.21 Record keeping and data collection

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

(c) Each institution participating in this program shall maintain thorough academic and financial aid files on program participants. This information shall include, but not be limited to, the following:

1. Data and assessment of student performance in the area of basic skills;

2. Data and assessment of counseling programs designed to assist students in improving academic performance;

3. Data and assessment of tutorial services directed toward the resolvement of academic difficulty;

4. Financial data including eligibility determination and annual notification;

5. Current registration and academic transcripts;

6. Data and assessment of the career and graduate placement assistance provided to program participants.

(d) Each institution participating in this program shall maintain adequate financial documentation of all program budgets and expenditures. Accounts must be structured to reflect E.O.F. and institutional monies by line item. State, institutional, Federal and other grant funds must be clearly delineated.

(e) The Program Director, along with appropriate institutional officials, must be involved in and responsible for the preparation of budgetary documents and coordination of E.O.F. fiscal affairs.

9:12-2.2 Summer program requirements

(a) (No change.)

(b) All participating institutions shall operate program objectives one through five to receive funds for summer program. Any program may elect to develop projects according to objectives six, seven, and eight.

(c) In addition, participating institutions must demonstrate evidence of:

1. Assessment and evaluation of program and student outcomes;

2. Orientation and training activities for summer program staff;

3. Continuity with academic year programming activities and offerings.

9:12-2.4 Application process

Each institution shall submit a summer program plan in addition to its regular academic year funding application in accordance with provisions of N.J.A.C. 9:12-1.3, 9:12-1.4, and 9:12-1.5 (Program Support Regulations).

9:12-2.5 Funding process

(a) Funds will be allocated to eligible institutions according to program proposal budgets submitted to the E.O.F. Central Office and approved by the E.O.F. Board of Directors.

(b) (No change.)

9:12-2.6 Verification of financial eligibility

(a) Entering students participating in the summer program must have filed the New Jersey Financial Aid Form prior to summer program enrollment or as part of summer program enrollment procedures (to be established prior to the summer program).

(b) Procedures for verification of student eligibility for summer program attendance shall be consistent with those outlined in N.J.A.C. 9:11-1.6 Verification of Financial Eligibility, of the Financial Aid Regulations.

9:12-2.7 Liability

(a) The basic responsibility for submitting accurate information to institution officials rests with the student.

(b) In the event that an institution has conveyed fraudulent and misleading information in order to obtain E.O.F. grants for ineligible students, the institution will be held liable and will be required to make restitution.

(c) In cases where institutions have made awards in good faith based upon fraudulent and misleading information which has been conveyed by the student(s), the student(s) is liable for the return of the E.O.F. grant. A written statement to this effect shall accompany each student's award notification.

(d) The Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the Educational Opportunity Fund from ineligible students.

9:12-2.8 Operational provisions for summer program payment

(a) Participating institutions are to submit a summer program request for student allocations.

(b) Notification of action on institutional requests from the Executive Director of E.O.F. will be given in writing to the President of each institution.

(c) To apply for summer program grant funds, the campus E.O.F. Directors are to complete a payment request form (to be established prior to the summer program for which funds are being requested) for both initial and renewal (if applicable) students.

(d) All files of students receiving E.O.F. grants will be subject to a fiscal audit conducted by the Department of Higher Education, Management Compliance Unit.

9:12-2.9 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received financial aid under any State student assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\frac{\text{Amount of State assistance (minus work earnings) awarded for the payment period}}{\text{Total amount of financial aid (minus work earnings) awarded for the payment period}}$$

(b) The payment period is the time between the day a student registers for a summer term and the end of that term according to the institutional calendar.

(c) The enrollment period is the time between the day a student registers for an academic term and the date the student officially or unofficially withdraws from an institution, is expelled by an institution, or reduces his academic course load such that he is no longer eligible for State assistance.

(d) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Office of Student Assistance of the amount owed for each State assistance program. Non-institutional costs may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

9:12-2.10 Summer program evaluation

(a) The E.O.F. Executive Director shall distribute a standard summer program evaluation form to participating programs. Each institution shall submit the completed form according to the required submission timetable to the E.O.F. Central Office.

(b) The E.O.F. Central Office may, in addition, conduct summer program evaluations to insure maximum program effectiveness and accountability.

(c) A report on the summer program shall be provided to the E.O.F. Board of Directors on an annual basis.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Vision Care Manual Billing Procedures

Readoption: N.J.A.C. 10:62-3

Proposed: November 18, 1985 at 17 N.J.R. 2731(b).
Adopted: March 5, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: March 6, 1986 as R.1986 d.90, **without change.**

Authority: N.J.S.A. 30:4D-6a(5)b(6)(7).

Effective Date: March 6, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): March 3, 1991.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:62-3.

Full text of the amendment to the readoption follows.

10:62-3.8 Mailing instructions

(a) For items requiring prior authorization detach the last copy for your records and forward the original and first copy (carbon attached) to:

Vision Care Unit
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625

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

(b)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook Available Support; Determining the Amount of Support; Deeming of Income of Parents and Guardians of Adolescent Parents; Contributions of Support

Adopted Amendment: N.J.A.C. 10:82-3.9, 3.11, 3,14, and 4.13

Proposed: January 6, 1986 at 18 N.J.R. 20(b).
Adopted: March 14, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: March 17, 1986 as R.1986 d.115, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3, 45 CFR 303.3-303.6.

Effective Date: April 7, 1986.
Operative Date: May 1, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): October 29, 1989.

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

Full text of the adoption follows.

10:82-3.9 Available support

(a) The CWA IV-A unit shall determine what contributions, whether in cash or in kind, the relative is currently contributing or is willing to contribute toward the support of the eligible unit.

1.-2. (No change.)

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

(f) Absent parent: To determine the capacity of an absent parent to support his or her dependent children, the procedures at N.J.A.C. 10:81-11.18 shall be followed by the CWA IV-D unit.

10:82-3.11 Determining amount of support

(a) Monthly income standards: Two sets of standards provide the basis for evaluation of an LRR's capacity to contribute to the support of the eligible unit:

1. (No change.)

2. Schedule IV-B applies to all other legally responsible relatives, including parents of adolescent parents not living in the same home as the adolescent parent, and is based on the U.S. Bureau of Labor Statistics' moderate standard of living.

(b)-(d) (No change)

10:82-3.14 Deeming income of parents and guardians of adolescent parents

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

(c) If the adolescent parent does not live in the same home as his or her parents, the legally responsible relative provisions of N.J.A.C. 10:82-3.8 apply, and Schedule IV-B of N.J.A.C. 10:82-3.11(d) shall apply.

10:82-4.13 Contributions of support

(a) (No change.)

(b) When shelter is being provided by a legally responsible relative (LRR) who has been determined by the CWA IV-A unit to have a capacity to provide support, the actual cash value shall, whenever possible, be determined and recognized as unearned income to the eligible unit. Where the actual value cannot be established, and is not stipulated by a court order to be made in an identifiable cash amount to a third party, the monthly monetary values shall be recognized according to Schedule VI and shall not exceed the LRR's evaluted capacity.

(c) (No change.)

(a)

General Assistance Manual Disposal of Assets

Adopted Amendment: N.J.A.C. 10:85-3.4

Proposed: December 16, 1985 at 17 N.J.R. 2952(a).
Adopted: March 10, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: March 13, 1986 as R.1986 d.98, **without change.**

Authority: N.J.S.A. 44:8-111(d).

Effective Date: April 7, 1986.
Operative Date: May 1, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 30, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: Comments submitted by a Community Health Law Project objected to the increase in the disqualification period from one to two years since such period is essentially excessive, unnecessary, and punitive.

RESPONSE: The increase in the disqualification period will not negatively impact on the entire General Assistance program caseload but rather penalize only those few individuals who have acted to defraud or abuse the General Assistance program. If the resource is disposed for legitimate reasons there will be no penalty. As current regulations state, the penalty is imposed on those individuals who dispose of a resource "for the purpose of qualifying for assistance or of avoiding repayment of assistance." The particular intent of the amendment is to preclude the granting of long term care medical benefits in situations of disposal of resources without good cause. Thus, the alignment with the statutory disposal period governing Medicaid is deemed appropriate.

Full text of the adoption follows.

10:85-3.4 Resources

(a) (See adoption at 18 N.J.R. 274(a).)

1. (No change.)

2. No person shall be eligible for assistance within two years after having disposed of a resource for less than adequate consideration or after having abandoned a resource of value when such disposal or abandonment was made for the purpose of qualifying for assistance or of avoiding repayment of assistance. Any assistance granted by reason of nondisclosure during such two year period represents an overpayment and is to be processed accordingly.

i.-ii. (No change.)

3. (See adoption at 18 N.J.R. 274(a).)

(c)-(g) (No change.)

(a)

Medicaid Only Manual
Availability of Resources in Third-Party Situations

Adopted Amendment: N.J.A.C. 10:94-4.1

Proposed: December 16, 1985 at 17 N.J.R. 2954(a).
Adopted: March 10, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: March 13, 1986 as R.1986 d.97, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: April 7, 1986.
Operative Date: May 1, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 6, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received from a county welfare agency. The commenter suggested that in the determination of resource eligibility of nursing home patients, any amount of the patient's funds which is properly owed to the nursing home should be considered as though it were subject to a lien and, therefore, excludable from resources as unavailable funds. Thus, the countable value of an individual's resources as of the first moment of the first day of the month would exclude funds due the nursing home even though the patient had not yet drawn a check against his or her funds for payment.

RESPONSE: The subject of this proposal is the availability of funds resulting from a claim against a third party. Therefore, the comment is not germane to the proposal. However, the Department advises that Federal policy precludes the reduction of countable resources by amounts properly owed any creditor, including a nursing home. In order to be resource eligible in any calendar month, countable resources must be within program limits as of the first moment of the first day of that month. Federal policy allows only for reduction of funds held in an account by the amount for which the individual has, as of the first moment of the first day of the month, properly drawn drafts or checks.

Full text of the adoption follows.

10:94-4.1 Financial eligibility standards; resources

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

(c) Availability of resources: In order to be considered in the determination of eligibility, a resource must be "available". A resource shall be considered available to an individual when:

1. The person has the right, authority, or power to liquidate real or personal property, or his or her share of it;

2. Resources have been deemed available to the applicant (see N.J.A.C. 10:94-4.6 regarding deeming of resources); or

3. Resources arising from a third-party claim or action are considered available from the date of receipt by the applicant/recipient, his or her legal representative or other individual acting on his or her behalf in accordance with the following definition and provisions:

i. Definition of "availability of resources in third-party situations": In third-party situations in which applicants/recipients have brought an action or made a claim against a third party who is or may be liable for payment of medical expenses related to the cause of the action or claim, funds are considered available or countable at the moment of receipt by the applicant/recipient, his or her legal representative, guardian, relative or any person acting on the applicant's/recipient's behalf. Such funds should be considered available or countable at the earliest date of receipt by any of the aforementioned entities.

(1) In determining resource eligibility in accordance with N.J.A.C. 10:94-4.5(a), those funds actually available to the applicant/recipient or any person acting on his or her behalf as of the first day of the month subsequent to the month of receipt shall be considered a countable resource, unless otherwise excluded (see N.J.A.C. 10:94-4.4).

(2) If a bona fide lien or judgment exists against such funds, making all or some portion of the funds inaccessible to the applicant/recipient, CWAs shall deduct the encumbrances and consider the remaining amount as a countable resource.

(3) If between the date of receipt of such moneys and the first day of the subsequent month the applicant/recipient pays outstanding medical expenses and/or other expenses, the CWA shall consider only the funds remaining after such payment as a countable resource.

(d) (No change.)

(e) (See proposal at 17 N.J.R. 2524(a).)

(b)

Ruling 11
Public Assistance Staff Development Program

Readoption with Amendment: N.J.A.C. 10:109-1
Adopted Repeal: N.J.A.C. 10:109-2, 3, and Appendices I-II

Proposed: January 6, 1986 at 18 N.J.R. 22(a).
Adopted: March 14, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: March 17, 1986 as R.1986 d.116, **without change.**

Authority: N.J.S.A. 44:7-6, 44:7-6.1, and 44:10-3.

Effective Date of Readoption: March 17, 1986.
Effective Date for Amendment and Repeal: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): March 17, 1991.

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

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:109-1.

Full text of the adopted amendment follows.

10:109-1.4 Components of the staff development and training program

(a) (No change.)

(b)-(d) (Deleted.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Care
Manual of Standards for Child Care Centers

Adopted Amendment: N.J.A.C. 10:122-4.4

Proposed: January 21, 1986 at 18 N.J.R. 155(a).
Adopted: March 14, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: March 17, 1986 as R.1986 d.109, **without change.**

Authority: N.J.S.A. 30:5B-1 to 15.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

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

Full text of the adoption follows.

10:122-4.4 Exceptions

(a) Centers with day programs serving from 16 to 30 children that were utilizing a consulting head teacher as of January 1, 1982 shall:

1. Be permitted to continue utilizing a consulting head teacher and a full-time staff member who possesses:

i. Two years of teaching experience in a group program for children under six years of age and six college credits in early childhood education and/or child development. (The college credits should be acquired in teaching methods courses.); or

ii. Three years of teaching experience in a group program for children under six years of age. (The staff member should be enrolled in courses leading to six college credits in early childhood education and/or child development and the college credits should be acquired in teaching methods courses); and

2. Be permitted to utilize a consulting head teacher and a full-time staff member as specified in (a)1 above until January 1, 1988, at which time the center shall utilize a full-time head teacher or a consulting head teacher and a full-time group teacher.

(b) Centers with day programs serving from 16 to 30 children that were:

1. Utilizing a consulting head teacher as of January 1, 1982 and a full-time staff member from January 1, 1983 to July 1, 1985; and

2. Utilizing a full-time staff member with twenty (20) years of teaching experience as of July 1, 1985 in a group program for children under six years of age;

shall be permitted after January 1, 1988 to continue utilizing the consulting head teacher and the full-time staff member who was employed at the center as of 1/1/83, until the full-time staff member is no longer employed at the center due to his/her resignation, retirement, or termination from employment at which time the center shall ensure that the staff possesses the qualifications as specified in N.J.A.C. 10:122-4.3(d)2.

(c) Centers with day programs serving from 31 to 60 children that were utilizing a consulting head teacher as of January 1, 1982 shall:

1. Be permitted to continue utilizing a consulting head teacher and a full-time group teacher or a consulting head teacher and a full-time staff member who possesses the staff qualifications requirements as specified in (a)1 above, until January 1, 1988, at which time the center shall utilize a full-time head teacher.

(d) Any center qualifying for this exception that achieves compliance with the full-time group teacher/head teacher requirements, as appropriate, after July 1, 1985, shall continue to meet those requirements as specified in N.J.A.C. 10:122-4.3(d)2. and 3.

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Automobile Insurance
Reporting Financial Disclosure and Excess Profit Reports

Adopted New Rule: N.J.A.C. 11:3-20

Proposed: November 4, 1985 at 17 N.J.R. 2597(a)
Adopted: March 17, 1986, by Hazel Frank Gluck, Commissioner, Department of Insurance.
Filed: March 17, 1986 as R.1986 d.111, **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. 17:1-8.1, 17:1C-6(e); 17:29A-5.2 through 17:29A-5.5.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department received seven comments on the proposed rule N.J.A.C. 11:3-20 concerning financial disclosure and reporting of excess profits. The commenters were: State Farm Insurance Companies, The National Association of Independent Insurers, Travelers, Motor Club of America Companies, Selected Risks Insurance Company/Select Way Insurance Company, Allstate and the American Insurance Association.

COMMENT: Four commenters expressed concern about the definition of "due recognition to investment income" in N.J.A.C. 11:3-20.3.

The first commenter felt that the definition was redundant and should be deleted since its rate proposals were already keyed to the Clifford Formula. This commenter suggested that the definition, if continued, could refer to "investment income as approved by the Commissioner for use in the automobile rate filings for the applicable years."

The second commenter, a mutual company, also suggested deletion of the definition. This commenter felt that the Clifford Formula is a narrow methodology which is inapplicable to its filings. Thus, it would be inappropriate for use in this rule. This commenter also argued that the use of the Clifford Formula to determine anticipated profit and contingency allowances would reduce the incentive to increase participation in the voluntary market. Finally, this commenter felt that there was no statutory authority for the Commissioner to conduct a subsequent review of rates.

The third commenter felt that reference to the Clifford Formula in the regulation without explanation was inappropriate and confusing. This commenter also interpreted the rule as authorizing the Commissioner to conduct a subsequent review of rates and questioned the statutory authority for such a procedure.

The fourth commenter felt that the definition was unnecessary and confusing since the subsequent definition of profit and contingency factors included reference to due recognition to investment income.

RESPONSE: In general, the Department disagrees with all the commenters' views. The Clifford Formula is the current method approved by the Department for calculating the underwriting profit provision in a rate. Until a new profit formula is developed, tested and approved by the Department, use of the Clifford Formula will remain the appropriate method of giving due recognition to investment income by all insurers including mutuals.

Rather than constituting a subsequent review of rate, the standard specifying use of the Clifford Formula to calculate due recognition of investment income simply provides insurers with formal notice of the applicable standards.

Also, mutual insurers are not exempt from using the Clifford Formula. The 1973 New Jersey Supreme Court decision, *In Re Application of Insurance Rating Board,* 63 N.J. 413, stood for the proposition that all insurers must consider investment income as part of the ratemaking process. The Clifford Formula was developed by the Department as a result of that case. Thus, the Clifford Formula is applicable to all insurers including mutuals.

Furthermore, the Department feels that no further explanation of the Clifford Formula is needed. The Clifford Formula has been used by insurers for many years, thus, a reiteration is unnecessary.

Finally, the Department feels the definition does not cause confusion with the definition of "profit and contingency factors." The definition of "due recognition to investment income" appears in the rule prior to the definition of "profit and contingency factors" and facilitates the reader's understanding of the latter definition.

COMMENT: Four commenters expressed concern about the Actuarial Results Report required in N.J.A.C. 11:3-20.5. One commenter recommended that N.J.A.C. 11:3-20.5(d)5 be amended to require "profit and contingency factors as contained in the insurer's automobile rate filings for the applicable years" as required by statute and the requirement that the Commissioner approve profit and contingency factors be deleted. This commenter argued that the Commissioner has no statutory authority to approve profit and contingency factors.

Other commenters suggested that the language "as approved by the Commissioner" in (d)5 created an ambiguity and should be deleted.

One commenter requested clarification as to whether the language referred to the profit and contingency factor utilized by the insurer in its rate filing or whether it requires approval of the filing. It was this writer's view that the filing should be deemed approved by the Department to avoid the administrative burden and expense which would arise from requiring a company to readjust its profit and contingency factors due to Departmental disapproval.

The fourth commenter on this section suggested that the requirement of an Actuarial Results Report by coverage be deleted since the statute only required an Actuarial Results Report on a combined basis.

RESPONSE: In regard to the first three commenters' concerns, the Department included the language "as approved by the Commissioner for use" to clarify what profit and contingency factors are applicable for the purposes of this subchapter. The language in N.J.S.A. 17:29A-5.3 is unclear as to whether an insurer can use profit and contingency factors that were deemed unacceptable by the Commissioner even though a rate change was subsequently granted. To avoid any misinterpretation, the Department requires only profit and contingency factors that have been approved for use. Such profit and contingency factors must reflect due recognition to investment income utilizing the Clifford Formula.

The Department disagrees with the fourth commenter. N.J.S.A. 17:29A-5.2(a) specifies that separate financial information is required for each coverage as well as on a combined basis. Separate information for each coverage is necessary because profit and contingency factors may be different for each coverage. This information will enable the Department to determine the accuracy of the insurers excess profits calculations

COMMENT: Two commenters expressed concern about N.J.A.C. 11:3-20.6(e). Both commenters requested elimination of the by-coverage reporting requirement because they felt it placed an undue burden on them to comply. One commenter also argued there was no statutory authority to impose this requirement. The second commenter suggested that the by-coverage reporting would serve no useful purpose.

RESPONSE: The Department disagrees with both commenters. N.J.S.A. 17:29A-5.2(b) is silent as to whether the data required by this paragraph is to be reported by coverage, by line or on a combined basis. The Commissioner, pursuant to the authority of N.J.S.A. 17:29A-5.5, has required this information to be reported by line. By line data is necessary to enable the Department to check market share information.

COMMENT: Two commenters expressed concern over when the Department would publish the market share data in the **New Jersey Register** as set forth in N.J.A.C. 11:3-20.7(c). One commenter suggested that this subsection be amended to require the publication of market share data by June 1 of each year to allow timely reports by the July 1 deadline.

The second commenter suggested that this section be amended to include recognition of New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) experience. This commenter argued that since the NJAFIUA comprises almost 40 percent of the private passenger market in the State, any regulation that failed to take its experience into account was defective. This commenter also pointed out that the definition of insurer in N.J.A.C. 11:3-20.3 would probably include the NJAFIUA.

RESPONSE: The Department agrees with the commenter's suggestion that N.J.A.C. 11:3-20.7(c) should be amended to require the publication of market share data by June 1. This subsection has been amended accordingly.

The Department, however, does not agree with the second commenter's suggestion that subsection (c) should reflect NJAFIUA experience. The NJAFIUA is not part of the voluntary market. The Department is interested in only voluntary market share data.

Inclusion of NJAFIUA data in this subsection would distort the market base. This distortion would enable several medium-sized insurers to avoid the requirements of this rule.

Furthermore, to eliminate any confusion that the definition of "insurer" in N.J.A.C. 11:3-20.3 may have caused in regard to whether the NJAFIUA is an insurer under this rule, this definition has been clarified to show that the NJAFIUA is not an insurer for the purpose of this rule.

COMMENT: Three commenters expressed concern about N.J.A.C. 11:3-20.9. One commenter recommended deletion of subsection (d) which requires certification by the insurer's chief actuary or corporate official that a refund or credit has occurred. This commenter did not explain why the deletion was necessary.

The other two commenters expressed concern with subsection (b) which requires insurers to file a plan to refund excess profits within 60 days after the submission of the Excess Profits Report. Both commenters felt that it was inappropriate to require an insurer to file a refund credit plan prior to a determination by the Commissioner that an insurer made an excess profit. Both commenters recommended that the Commissioner should approve the Excess Profits Report first and then require submission of a plan to refund or credit policy holders within 60 days after the approval.

RESPONSE: The Department disagrees with the first commenter. A certification is necessary to prove that a refund has occurred. The Department, however, recognizes that in some situations a chief actuary may not be connected with the insurer. Therefore, the words chief actuary have been deleted from the adopted rule.

In regard to the two other commenters, the Department has specific authority, pursuant to N.J.S.A. 17:29-5.5, to adopt regulations with respect to refund plans. Since N.J.S.A. 17:29A-5.4 is silent as to when a refund plan is to be submitted for approval, the Commissioner may determine that date even if it is prior to the determination that excess profits have been made. However, the Department recognizes that requiring a plan for refund prior to a determination of excess profits may create an administrative burden for the Department as well as insurers. Therefore, this subsection has been amended to require insurers to submit their refund plans 30 days after a determination by the Commissioner that an excess profit has been made.

COMMENT: Five commenters noted an inconsistency in the date for filing the method for distributing any excess profits. Proposed N.J.A.C. 11:3-20.9(b) required the plan for distributing excess profits to be submitted within 60 days after the submission of the Excess Profit Report or September 1. Proposed N.J.A.C. 11:3-20.10(e) required the method to be filed by August 1.

RESPONSE: The Department recognizes the inconsistency. N.J.A.C. 11:3-20.10(e) has been deleted. N.J.A.C. 11:3-20.9(b) has been changed to inform insurers that refund plans must be submitted within 30 days after a determination of excess profits by the Commissioner.

COMMENT: Four commenters expressed concern about lines 14 and 15 in Form FA, Appendix A to the proposal. Three commenters recommended that lines 14 and 15 should be deleted since they require calculations not required by N.J.S.A. 17:29A-5.2. A fourth commenter suggested that lines 14 and 15 should be deleted from Form FA since the calculation required in line 15 was not appropriate in a "by-line" report. This commenter suggested that a line for "Allowance for Profit and Contingencies" be added to Appendix D since it would conform to the legislative intent that excess profits be on a combined basis rather than by line. This commenter also reasoned that the addition of a line for profit and contingencies in Form FD would enable the Department to have this information for the small insurers (under .5 percent) since they would not be filing Form FA.

RESPONSE: In regard to the first three commenters, lines 14 and 15 are necessary to make the information in the Actuarial Results Report consistent with the Financial Disclosure Report.

In regard to the fourth commenter, Form FA is a by coverage report not by line. As mentioned above, the Department feels the calculation required by line 15 is necessary to make this report consistent with the financial disclosure report. Also, the profit and contingency information for small insurers has been addressed in a note added to the Excess Profits Report, Form FD.

COMMENT: Two commenters expressed concern about Form FD, Appendix D. Both commenters suggested clarification of certain lines to more closely track the legislative intent of N.J.S.A. 17:29A-5.2. One commenter thought line 1 should require information concerning actuarial gain instead of direct premiums earned. The other commenter wanted line 3 to include an allowance for profit and contingencies.

RESPONSE: The Department feels the present Form FD more closely follows the legislative intent than does the commenters' suggestions.

COMMENT: Two commenters expressed concern about the constitutionality of the regulation if 1983 data were included within the first calculation of excess profits. Both commenters felt that the Florida Supreme Court case, *Department of Insurance v. Teacher's Insurance Company,* 404 So. 2d 735 (1981), would apply to New Jersey's Excess Profits law and regulation and thereby render them unconstitutional.

RESPONSE: The Department of Insurance is an administrative agency and in promulgating N.J.A.C. 11:3-20 is simply responding to the requirements of a duly enacted statute. The decision of the Florida Supreme Court is not binding in New Jersey. Of course, the issue of the constitutionality of any statute is subject to judicial review.

An internal review of the proposed rule revealed a problem small insurers (less than .5 percent market share) will face in regard to the Excess Profit Report, Form FD. Under the proposed form, small insurers will not be able to calculate line 2 since they do not file an Actuarial Results Report. To rectify this problem a note, which explains to small insurers how to produce this figure, has been added to Form FD.

The Department also has made certain editorial changes to the rule. In N.J.A.C. 11:3-20.4(c), "fire and casualty" has been amended to read "fire or casualty." In N.J.A.C. 11:3-20.5(c), "type of coverage" and "types of coverage" have been amended to read "category of coverages" and "categories of Coverage." In N.J.A.C. 11:3-20.5(d)5 and 7, the word "stated" has been changed to "estimated." In N.J.A.C. 11:3-20.6(a), line "13" has been changed to line "15."

In Form FA, footnotes, "†", have been added to lines 4b and 6b with an explanation appearing at the bottom of the form. This editorial change was necessary to coordinate N.J.A.C. 11:3-20.5(d)7 and 9 with Form FA. The footnote in line 14 has been amended to correspond with the addition of footnotes to lines 4b and 6b. The calculation in line 15, "(14)-(12)" is incorrect. The correct calculation, (13-14), has been added.

In Form FD, the footnotes in lines 1, 2, 3 and 4 have been deleted for clarity. Under "notes for companies that file Form FA," each sentence refers to the corresponding line. Finally, a footnote has been added to the word "Combined."

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 20. REPORTING FINANCIAL DISCLOSURE AND EXCESS PROFIT REPORTS

11:3-20.1 Purpose

This subchapter sets forth the financial disclosure and excess profit reporting requirements for all private passenger automobile insurers, pursuant to N.J.S.A. 17:29A-5.2 and 17:29A-5.3.

11:3-20.2 Scope

The provisions of this subchapter apply to all insurers transacting private passenger automobile insurance business in this State.

11:3-20.3 Definitions

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

"Annual statement" means the report prescribed by the National Association of Insurance Commissioners (NAIC) and annually filed with the Insurance Department by insurers licensed to do business in New Jersey.

"Accident year losses" means the incurred losses resulting from accidents that occurred during the period January 1 to December 31.

"Calendar year losses" means the losses paid during the 12-month period plus the loss reserves on December 31, the end of the 12-month period, less the loss reserves on January 1, the beginning of the 12-month period.

"Calendar-accident year data" means the premiums for the calendar year and the losses for the accident year.

"Calendar year" means the year beginning January 1 and ending December 31.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Direct earned premiums" mean the pro rata portion of the premium in force applicable to the expired period of the policy term arising from policies issued by the insurer collecting the premium and acting as the primary insurance carrier.

"Direct written premiums" means all premiums (less return premiums) as recorded by the insurer arising from policies issued by the insurer collecting the premium and acting as the primary insurance carrier.

"Due recognition to investment income" means use of the Clifford *[f]* ***F***ormula to determine underwriting profit margin.

"Insurance Expense Exhibits (IEE)" means the detailed analysis of expenses by line of insurance prescribed by the National Association of Insurance Commissioners (NAIC).

"Insurer" means any person or persons, corporation, association, partnership or company transacting private passenger automobile insurance business in the State of New Jersey. As applicable in this subchapter, the term shall include affiliated insurers ***but excludes the New Jersey Automobile Full Insurance Underwriting Association***.

"Line of coverage" means the three lines on page 14 of the Annual Statement on which private passenger automobile insurance is reported, 19.1 private passenger automobile no-fault, 19.2 private passenger automobile other liability, and 21.1 private passenger automobile physical damage.

"Private passenger automobile insurance" means business as reported in the (NAIC) Annual Statement, page 14, lines 19.1 private passenger no-fault, 19.2 private passenger other liability and 21.1 private passenger physical damage for automobiles as defined in N.J.S.A. 39:6A-2.

"Profit and contingency factors" means factors determined with due recognition to investment income from funds generated by New Jersey business.

11:3-20.4 General reporting requirements

(a) Every private passenger automobile insurer, except as provided at (c) below, shall file with the Commissioner an Actuarial Results Report on or before July 1 of each year. The contents of an Actuarial Results Report are set forth in N.J.A.C. 11:3-20.5. The required form is a part of this rule at Appendix A.

(b) Each insurer required to file an Acutarial Results Report shall also file a Financial Disclosure Report if there is an actuarial gain for all coverages combined for the three years combined. Financial Disclosure Reports shall be filed with the Commissioner no later than April 15 of the year following the submission of the Actuarial Results Report. The contents of the Financial Disclosure Report are set forth in N.J.A.C. 11:3-20.6. The required form is a part of this rule at Appendix B.

(c) Any insurer that does not write at least 0.5 percent of the New Jersey private passenger automobile market, based on direct premiums written, shall not be required to file the Actuarial Results Report required by this section, but shall file a Market Share Report. Every group of affiliated insurers which includes more than one fire *[and]* ***or*** casualty insurer shall file reports under N.J.A.C. 11:3-20.4 where the market share of the affiliated insurers in aggregate exceeds 0.5 percent. The content of a Market Share Report and the method of calculating market share percentage are set forth in N.J.A.C. 11:3-20.7. The required form is a part of this rule at Appendix C.

(d) Each insurer including those exempted from filing financial information as provided in (c) above, shall also file an Excess Profits Report. Excess Profits Reports shall be filed with the Commissioner on or before July 1 of each year. The contents of the Excess Profits Report and method of calculating excess profits are set forth in N.J.A.C. 11:3-20.8. The required form is a part of this rule at Appendix D.

11:3-20.5 Actuarial results report

(a) Each Actuarial Results Report shall contain financial information to be reported for all direct private passenger automobile business reported in the Annual Statement on page 14, lines 19.1, 19.2 and 21.1, transacted in this State on a calendar-accident year basis.

(b) Each Actuarial Results Report shall contain separate financial information for each of the previous three calendar-accident years with loss evaluations as of March 31 of the reporting year. All prior year reports submitted are to be updated, so that ultimately each calendar-accident year will be reported at three separate reporting periods.

(c) A separate Actuarial Results Report form is required to be submitted for each *[type]* ***category*** of coverage specified, and one form must be submitted for all coverages combined. If an insurer writes any of the specified coverages on a combined basis and the data are inseparable, the financial information required shall be shown under the most appropriate coverage and the explanation footnoted on the form. The liability coverages are to be on a total limits basis. Collision and comprehensive shall include all deductibles, including policies without deductibles. Personal injury protection coverage shall include additional personal injury protection coverage and include all deductible and options. The *[types]* ***categories*** of coverage are:

1. Bodily injury liability;
2. Property damage liability;
3. Uninsured motorist and underinsured motorist;
4. Personal injury protection;
5. Comprehensive (including named peril policies); and
6. Collision.

(d) Financial information required to be reported shall include:

1. Direct premiums earned;
2. Policyholder dividends incurred;
3. Expenses for acquisition and general expenses;
4. Expenses for agents' commissions, taxes, licenses, and fees;
5. Profit and contingency factors as approved by the Commissioner for use in the insurer's automobile rate filings for the applicable years;
6. Losses paid;
7. Losses unpaid stated at the final settlement value based on development to an ultimate basis and data supporting the calculation of these figures.
8. Loss adjustment expenses paid;
9. Loss adjustment expenses unpaid stated at the final settlement value based on development to an ultimate basis and data supporting the calculation of these figures.
10. Actuarial gain or loss.

(e) Expense information reported shall conform to the kinds of expense on page 1 of the Insurance Expense Exhibit. Insurers shall provide a statement describing the allocation method for determining New Jersey specific data at (d)3, 4, 8, and 9 above.

(f) Insurers shall use Form FA, appended to this subchapter, to report financial information required by this section.

11:3-20.6 Financial disclosure report

(a) An insurer shall file calendar year information as specified in this section in a Financial Disclosure Report when the total on Form FA for all coverages for the three calendar-accident years combined (line *[13]* ***15***) displays an actuarial gain.

(b) Each Financial Disclosure Report shall contain separate calendar year information for each of the three calendar-accident years reported on the Actuarial Results Report. All prior year reports submitted are to be updated, so that ultimately each calendar year will be reported at three separate reporting periods.

(c) Calendar year information shall be on direct private passenger automobile insurance business transacted in New Jersey.

(d) Calendar year information shall be reported separately for each item listed below:

1. Direct premium written;
2. Direct premium earned;
3. Loss reserves for all known claims for beginning and end of the year;
4. Reserves for losses incurred but not reported for the beginning and the end of the year;
5. Incurred allocated loss adjustment expenses;
6. Incurred unallocated loss adjustment expenses;
7. Direct losses paid;
8. Underwriting income or loss;
9. Commissions and brokerage fees;
10. Taxes, licenses, and fees;
11. Other acquisitions costs;
12. General expenses;
13. Policyholder dividends; and
14. Net investment gain or loss and other income gain or loss allocated pro rata by direct earned premium to New Jersey business utilizing the investment allocation formula contained in the NAIC Profitability Report by line by state.

(e) A separate Financial Disclosure Report shall be filed by annual statement line of insurance for private passenger automobile no-fault, private passenger automobile liability, and private passenger automobile physical damage. A summary report for all private passenger automobile lines written by the insurer must be filed.

(f) Other information requirements are:

1. Items under (d)1, 2, and 7 above shall agree with the amounts reported on the insurer's Annual Statement, page 14.
2. Items under (d)5, 6, 9, 10, 11, 12, and 14 shall be allocated on the same basis as on the insurer's Insurance Expense Exhibit. Insurers shall provide a statement describing the allocation method for determining New Jersey data on each item included in this provision.

(g) Insurers shall use Form FB, appended to this subchapter, to report financial information required by this section.

11:3-20.7 Market share report

(a) Market share percentage shall be calculated by dividing the insurer's most recent calendar year direct written premiums reported in the Annual Statement, page 14, lines 19.1, 19.2 and 21., by the total direct written premiums for all insurers in this State for the same Annual Statement lines.

(b) An insurer which writes fewer than three lines of insurance (for example, physical damage on line 21.1) shall provide a Market Share Report on the basis of the direct written premium for the insurance line(s) divided by the total direct written premium for all insurers in New Jersey for the specific line(s). Where this market share exceeds 0.5 percent the insurer shall file the report required under N.J.A.C. 11:3-20.4.

(c) The total direct written premium for all insurers in New Jersey for the specific line(s) shall be published ***annually*** by the Department of Insurance in the New Jersey Register ***on or before June 1***.

(d) Insurers required to submit Market Share Reports shall file such reports with the Commissioner no later than July 1 of the year following the end of the calendar year.

(e) Insurers shall use Form FC, appended to this subchapter, to report market share information.

11:3-20.8 Excess profits report

(a) An insurer shall report excess profits for all private passenger automobile lines of insurance for the three previous calendar-accident years combined.

(b) Each Excess Profits Report shall contain separate financial information for each of the previous three calendar-accident years.

1. The actuarial gain or loss shall agree with the sum of the types of coverage gains and/or losses reported on Form FA line 14.

(c) Insurers shall use form FD, appended to this subchapter, to report excess profits.

11:3-20.9 Refund or renewal credits of excess profits

(a) This section shall apply to those insurers whose combined actuarial gain for the three years reported exceeds the insurer's anticipated underwriting profit plus five percent of direct premiums earned, as indicated in the Excess Profits Report.

[(b) Insurers shall file a fair, practicable, and non-discriminatory plan to refund or credit to policyholders the excess profits within 60 days after the submission of the Excess Profit Report for approval by the Commissioner.]

***(b) If the Commissioner determines that an insurer has made excess profits, the Commissioner shall issue a written notice to the insurer of such determination.**

(c) The insurer shall submit a fair, practicable and non-discriminatory plan to refund or credit to policyholders the excess profits within 30 days after written notice has been given.

1. The refund of credit plan shall be subject to approval by the Commissioner.

2. If the refund or credit plan is disapproved, the Commissioner shall issue a written notice to the insurer containing the reasons for disapproval.

(d) Upon approval of the insurer's refund or credit plan, the Commissioner shall issue an order requiring the insurer to distribute all excess profits according to the insurer's approved plan.*

*[(c)]***(e)* Any refund or renewal credit shall be deemed a policyholder dividend applicable to the year in which it is incurred for reporting in subsequent excess profits reports.

*[(d)]***(f)* Within fifteen days after excess profits have been refunded or credited to policyholders, the insurer's *[chief actuary or other]* corporate official shall certify that such refund or credit has occurred.

11:3-20.10 Effective date

(a) The first three Actuarial Results Reports shall be filed no later than July 1, 1986. One Actuarial Results Report shall be required for calendar-accident years 1983, 1982 and 1981, another Actuarial Results Report shall be required for calendar-accident years 1984, 1983 and 1982, and the third Actuarial Results Report shall be required for calendar-accident years 1985, 1984, and 1983.

(b) If required, the first three Financial Disclosure Results Reports shall be filed no later than April 15, 1987. Reports may be required for calendar years 1983, 1982 and 1981, calendar years 1984, 1983 and 1982, and/or calendar years 1985, 1984 and 1983.

(c) The first three Market Share Reports shall be filed no later than July 1, 1986. Reports will be required for calendar years 1983, 1984 and 1985.

(d) The first Excess Profits Report shall be filed no later than July 1, 1986. This report will be required for calendar-accident years 1985, 1984 and 1983.

[(e) Insurers with excess profits must file a proposed method for distributing the excess profits to policyholders by August 1 of the calendar year in which any excess profits earned have been reported.]

APPENDIX A
NEW JERSEY DEPARTMENT OF INSURANCE
FORM FA
PRIVATE PASSENGER AUTOMOBILE
ACTUARIAL RESULTS REPORT

Company Name/Group Name ______________________

Company/Group N.A.I.C. Code Number ______________________

Calendar-Accident Years 19___ valued as of March 31, 19___
19___
19___

Line of Coverage
___ B.I. ___ P.I.P.
___ P.D. ___ UM—UNM
___ COMP. ___ COLL.
___ ALL COVERAGES

Coverage______________

Enter Whole Dollar Amounts Calendar-Accident Year Valued as of March 31 (For the Year Following the Latest Year of Data Reported)

	19	19	19	Combined
1. Direct Premiums Written—Calendar Year	___	___	___	___
2. Direct Premiums Earned—Calendar Year	___	___	___	___
3. Direct Paid Losses	___	___	___	___
4. Direct Losses Unpaid				
a. Outstanding losses reported	___	___	___	___
b. Outstanding losses as developed*†*	___	___	___	___
5. Paid Loss Adjustment Expenses	___	___	___	___
6. Unpaid Loss Adjustment Expenses				
a. Outstanding expenses as reported	___	___	___	
b. Outstanding expenses as developed*†*	___	___	___	___
7. Total (Lines 5 and 6b)	___	___	___	___
8. Agents' Commissions, Brokerage Fees and taxes, licenses, fees	___	___	___	___
9. Other Acquisition Costs and General Expenses	___	___	___	___
10. Total (lines 8 & 9)	___	___	___	___
11. Policyholders' Dividends Incurred	___	___	___	___
12. Losses and Expenses (3)+(4b)+(7)+(10)+(11)	___	___	___	___
13. Actuarial Gain or Loss (2)-(12)	___	___	___	___
14. Allowance*[s]* for Profit and Contingencies*††*	___	___	___	___
15. Excess of Actuarial Gain or Loss over Anticipated Gain or Loss *[(14)-(12)]* ***(13-14)***	___	___	___	___*[*]* *†*

NOTES: ***†Data supporting the calculation of these figures shall be simultaneously provided.***

*††*Allowance for profit and contingencies shall be determined by applying the factors utilized in the insurer's automobile rate filings,

as approved by the Commissioner for use, to the appropriate earned premiums in line 2. If allowance for profit and contingencies has changed because of a filing made during the experience period, appropriate pro rata parts of the year calculations shall be made and appended to this form.

APPENDIX B
NEW JERSEY DEPARTMENT OF INSURANCE
FORM FB
PRIVATE PASSENGER AUTOMOBILE
FINANCIAL DISCLOSURE REPORT
CALENDAR YEAR ____

Company Name/Group Name ______________________

Company/Group N.A.I.C. Code Number ______________________

Direct Business	Enter Whole Dollar Amounts Calendar Year Valued as of December 31 (For the Year Following the Latest Year of Data Reported)			
Line	19	19	19	Combined
1. Direct Premiums Written	____	____	____	____
2. Direct Premiums Earned	____	____	____	____
3. Direct Losses Paid	____	____	____	____
Loss Reserves for All Known Claims				
4. At the Beginning of the Year	____	____	____	____
5. At the End of the Year	____	____	____	____
6. Change in Loss Reserves	____	____	____	____
Reserves for Losses Incurred but not Reported				
7. At the Beginning of the Year	____	____	____	____
8. At the End of the Year	____	____	____	____
9. Change in Reserves for IBNR	____	____	____	____
Loss Adjustment Expenses Incurred				
10. Allocated	____	____	____	____
11. Unallocated	____	____	____	____
12. Total	____	____	____	____
Underwriting Expenses				
13. Agent's Commissions and Brokerage Fees	____	____	____	____
14. Other Acquisition Costs	____	____	____	____
15. General Expenses	____	____	____	____
16. Taxes, Licenses and Fees	____	____	____	____
17. Total	____	____	____	____
18. Policyholders' Dividends	____	____	____	____
19. Underwriting Income or Loss*†*	____	____	____	____
20. Net Investment Gain or Loss and Other Income Gain or Loss*††*	____	____	____	____

NOTES: *†*Equal to the difference of Line (2) and the sum of Lines (3), (6), (9), (12), (17) and (18).

*††*Allocated pro rata by earned premium to New Jersey business, utilizing the investment income allocation formula contained in the N.A.I.C.'s Profitability Report by line by state.

APPENDIX C
NEW JERSEY DEPARTMENT OF INSURANCE
FORM FC
PRIVATE PASSENGER AUTOMOBILE
MARKET SHARE REPORT

Company Name/Group Name ______________________

Company/Group N.A.I.C. Code Number ______________________

Calendar Year 19____

Line	Direct Business*†*	Enter Whole Dollar Amount Calendar Year 19____
1.	Current Direct Written Premium by Insurer	______
2.	Current Direct Written Premium All Insurers	______
	Percentage of the New Jersey private passenger automobile market 100	______

NOTES: *†*Based on lines of business (Annual Statement page 14 lines 19.1, 19.2 and 21.1 as applicable).

APPENDIX D
NEW JERSEY DEPARTMENT OF INSURANCE
FORM FD
PRIVATE PASSENGER AUTOMOBILE
EXCESS PROFITS REPORTING FORM

Private Passenger Automobile

	Year 1 19____	Year 2 19____	Year 3 19____	Combined*†*
1. Direct Premiums Earned*[†]*	____	____	____	____
2. Excess of Actuarial Gain or Loss over Anticipated Gain or Loss*[††]*	____	____	____	____
3. Five Percent of line 1	____	____	____	____
4. Excess Profit*[†††]*				____

*[*]**†*Refers to the three private passenger lines reported on page 14 of the Annual Statement

Notes for companies that file Form FA:

[†Must] ***Line 1 shall*** agree with the sum of direct premiums earned on an all coverages combined basis.

[††Must] ***Line 2 shall*** agree with the excess actuarial gain and/or loss on an all coverages combined basis on Form FA, line 15.

[†††Line 2 minus line 3, a positive number is an excess profit.] ***Line 4 is an excess profit if line 2 minus line 3 is a positive number***.

***Notes for companies that do not file Form FA**

Companies not required to file Form FA shall complete Form FD using data from Part II of the Insurance Expense Exhibit (IEE). Item 1 of Form FD shall be taken from line 15 of the IEE. From this amount shall be subtracted lines 16 and 17, also the product of line 1 times the sum of the percentages shown on lines 19, 6, 7 and 11 and 8 adjusted for New Jersey tax and assessment rates. Item 2 of Form FD shall equal the excess of this difference over the anticipated gain or loss not including investment income as provided in collected rates. New Jersey assessments shall exclude the excess medical portion of the Unsatisfied Claim and Judgment Fund assessment.*

DIVISION OF REAL ESTATE COMMISSION

(a)

Advertising
Sales of Interstate Property

Adopted Amendments: N.J.A.C. 11:5-1.15 and 1.25

Proposed: March 18, 1985 at 17 N.J.R. 666(a).
Adopted: March 6, 1986 by Hazel Frank Gluck, Commissioner, Department of Insurance.
Filed: March 7, 1986 as R.1986 d.91, **without change.**

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

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:

The Department received written comments from the representatives of three out-of-state developers on the proposed amendments.

COMMENT: One commenter suggested the New Jersey Real Estate Commission conduct on-site inspections of every property registered.

RESPONSE: A program of on-site inspections of every property registered with the Bureau of Subdivided Lands has not previously been done. Present staffing does not permit it, nor have there been any serious regulatory problems as a result of a failure to inspect every property.

COMMENT: A suggestion was made that the broker of record be held strictly accountable for the activities of any cooperating broker.

RESPONSE: The Real Estate Licensing Act, N.J.S.A. 45:15-17 and 45:15-18 requires "guilty knowledge" to prosecute an administrative action that may result in a sanction.

COMMENT: Two comments were received concerning the amended language to N.J.A.C. 11:5-1.25(j). The commenters apparently interpreted the amendments as restricting the types of acceptable financial assurances for completion of contemplated improvements.

RESPONSE: The amendments to N.J.A.C. 11:5-1.25(j) did not change the substance of the existing regulation; rather, the language was simplified. To the extent that the commenter requested acceptance of alternative forms of financial assurances, this issue is covered by the "similar undertaking posted with a public authority and acceptable to the Commission" language.

COMMENT: A commenter suggested that very few exemptions should be granted in accordance with new subsection (n).

RESPONSE: It is contemplated that very few exemptions will be granted; subsection (n) articulates appropriate standards.

COMMENT: One comment was received from a developer concerning the requirements of N.J.A.C. 11:5-1.25(h) that advertising be submitted for approval 30 days in advance of proposed use. The commenter requested that in lieu of submitting advertising for approval, penalties be levied for violation of advertising standards as is presently done under the Planned Real Estate Development Fund Disclosure Act, which governs the sale of projects within the State of New Jersey.

RESPONSE: The present system of requiring developers to submit advertising at least 30 days prior to use has not resulted in any regulatory problems or unwarranted inconvenience for the developers. In most cases the advertising is reviewed and approved in less than the 30-day time frame. Nevertheless, the agency opposes a reduction in the time period as the full 30 days are occassionally necessary to complete the review. Likewise, the agency opposes eliminating prior approvals because of the difficulty in enforcing such penalties against out-of-state developers and projects without assets or a permanent location in New Jersey.

COMMENT: One commenter raised the question of whether this regulation interferred with commercial free speech.

RESPONSE: This regulation is not felt to be an infringement on commercial free speech since all it requires is truth in advertising, which is a reasonable state requirement.

Full text of the adoption follows.

11:5-1.15 Advertising rules

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

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

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

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

11:5-1.25 Sale of interest properties

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

1. All statements of record submitted to the Commission shall be bound, referenced and properly indexed with the exception of those received from the Office of Interstate Land Sales Registration, Department of Housing and Urban Development.

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

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

4. An applicant may submit verified copies of original documents.

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

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

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

7. A certified report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, may be filed in lieu of a statement of record conforming to the requirements of N.J.S.A. 45:15:16.10, provided the following documentation shall also be submitted:

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

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

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

1. The subdivider must designate an original broker-of-record with the initial registration. The subdivider may thereafter substitute another broker for the one initially designated. The initially designed broker or any substitute must join in the execution of all documents and affidavits as prescribed by the Commission.

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

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

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

2. Should the subdivider fail to renew his registration within 30 days after his annual anniversary date, the order of registration will be cancelled. Any further application to reinstate the order of registration shall be a new registration and fees will be paid in accordance with N.J.S.A. 45:15-16.8(a).

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

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

(d) The Commission at its discretion may make on-site inspections of any offering submitted under this Act.

The Commission may at its discretion conduct annual renewal on-site inspections.

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

(f) A homebuilder selling house and lot packages is a "subdivider" as defined in N.J.S.A. 45:15-16.4(d) if selling as part of a common promotional plan, even if the lots are not contiguous.

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

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

1. General standards:

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

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

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

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

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

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

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

viii. Advertising shall not use a name or trade style which implies that the advertiser is a nonprofit research organization or public bureau or group.

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

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

2. In reviewing any advertising submitted by an applicant, the Commission shall determine whether it makes a full and fair disclosure or is false and misleading within the intent and meaning of the Act and these rules, by examining the form, language and content of the advertising and supporting data and any other available information to ascertain whether the express and implied representations therein are true and make a full and fair disclosure. If it appears that the representations

are not true and do not make a full and fair disclosure as to all subdivided lands to which the filing relates, the Commission will reject the advertisement. All advertisements must be submitted for approval by the subdivider or agent to the Commission at least 30 days prior to use.

3. Any advertising in newspapers or periodicals, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, must be submitted to the Commission, for review, acceptance and assignment of an advertising number before being used. Each such advertisement must contain the following legend:

A statement of record filed with the New Jersey Real Estate Commission permits this property to be offered to New Jersey residents, but does not pass upon its merits or value. Obtain the New Jersey Public Offering Statement and read it before signing anything.

4. Literature, circulars, fliers, cards, letters and other promotional items used in connection with the advertising or offering for sale must be submitted to the Commission for review, and if accepted will be assigned a registration number with the prefix "N.J.A." The above legend as set forth in paragraph 3 and the assigned NJA number must be shown in these materials in a place reasonably calculated to capture the attenton of the public.

5. The Commission may authorize that the following brief legend be used for written advertisements of a page or less, or radio or television advertisements of 30 seconds or less:

A statement of record filed with the New Jersey Real Estate Commission in no way passes upon the merits or value of the property.

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

6. At least 30 days prior to any advertised sales promotion presentation in this State, the subdivider or agent must file a notice with the Commission containing the following information:

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

ii. Time, date and place of the presentation;

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

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

v. Number of people invited or expected;

vi. Copy of the advertisement announcing the presentation;

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

viii. Such other information that may be specifically requested.

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

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

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

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

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

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

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

(i) An instrument evidencing sale or disposition of an interest in a subdivision shall be executed in accordance with the laws of the state where the land is located. An applicant may be required to submit proof of compliance.

(j) A subdivision or a part thereof on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by substantial completion, bond or similar undertaking posted with a public authority and acceptable to the Commission, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

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

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

3. Monthly statements shall be furnished to the Commission for a new account for the first six months, and annually thereafter or upon request by the Commission.

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

5. The Commission, by its director, shall execute an acknowledgment on the face of each agreement. This acknowledgment shall indicate approval of the form and content of the agreement, but shall not make the Commission a party thereto.

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

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

2. A trust or escrow account.

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

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

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

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

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

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

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

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

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

7. Any exemption granted shall permit the subdivider to offer the property to New Jersey residents without obtaining an Order of Registration and to distribute advertising without prior approval. An exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the act or these rules, or to revoke the exemption after notice and an opportunity to be heard.

(a)

Payment of Fees as Prescribed by Statute

Adopted Amendment: N.J.A.C. 11:5-1.20

Proposed: October 7, 1985 at 17 N.J.R. 2353(a).
Adopted: March 6, 1986 by Hazel Frank Gluck, Commissioner, Department of Insurance.
Filed: March 7, 1986 as R.1986 d.92, **without change.**

Authority: N.J.S.A. 45:15-6, 45:15-42 and 45:15-15.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:

The Department of Insurance received only one comment on the proposed amendment to N.J.A.C. 11:5-1.20 which mandates that the payment of fees to the Real Estate Commission be made in the form of bank or certified checks, or money orders, or upon checks drawn on the business accounts of real estate brokers.

COMMENT: The commenter recommended that rather than adopting the proposed amendment, the real estate license of any licensee who submits a check to the Real Estate Commission in payment of licensure fees which is drawn upon an account containing insufficient funds be automatically cancelled. The commenter argued that this recommendation represented a "positive approach" to eliminating the problem of bad checks being submitted to the Real Estate Commission.

RESPONSE: The Department considers the commenter's suggested alternative as overly harsh. In addition, due process considerations are raised in any procedure whereby a license is "automatically cancelled." Finally, it is more efficient for the Real Estate Commission to require that fees be submitted in a form which virtually guarantees payment, rather than to take action against persons whose checks are subsequently dishonored.

Full text of the adoption follows.

11:5-1.20 Payment of fees as prescribed by statute

Any and all fees prescribed by the Real Estate License Act shall be paid by broker's business account check, certified or bank check or money order payable to the State Treasurer of New Jersey. No cash or currency shall be accepted.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Enforcement Service
Safety Glazing Material; Other Equipment

Adopted New Rules: N.J.A.C. 13:20-25
Adopted Amendment: N.J.A.C. 13:20-25.5

Proposed: January 6, 1986 at 18 N.J.R. 47(a).
Adopted: February 11, 1986 by Robert S. Kline, Acting Director, Division of Motor Vehicles.
Filed: February 28, 1986 as R.1986 d.80, **without change.**

Authority: N.J.S.A. 39:3-43 and 39:3-75.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): December 18, 1990.

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

Full text of the expired rules as new appears in the New Jersey Administrative Code at N.J.A.C. 13:20-25.

Full text of the adopted amendment to the expired rule follows.

13:20-25.5 Safety glazing material approval procedure
(a) Standards and specifications for the approval of safety glazing materials shall conform to the American National Standard "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," Z26.1a-1969, March 7, 1969.
(b)-(c) (No change.)

(b)

Enforcement Service
Standards and Procedures to be Used by Licensed Reinspection Centers

Adopted Amendment: N.J.A.C. 13:20-33.1

Proposed: January 21, 1986 at 18 N.J.R. 158(a).
Adopted: February 24, 1986 by Robert S. Kline, Acting Director, Division of Motor Vehicles.
Filed: March 14, 1986 as R.1986 d.104, **without change.**

Authority: N.J.S.A. 39:8-23, 39:8-26 and 39:8-27(b).

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): December 18, 1990.

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

Full text of the adoption follows.

13:20-33.1 General provisions; Class I and II licensees
(a)-(q) (No change.)
(r) A fee which an authorized reinspection center may charge for an initial inspection of a motor vehicle other than a commercial motor vehicle registered in excess of 6,000 pounds shall not exceed one-half of the reinspection center's hourly labor charge. A fee which an authorized reinspection center may charge for an initial inspection of a commercial motor vehicle registered in excess of 6,000 pounds shall not exceed the reinspection center's hourly labor charge and shall be limited to a charge for one hour of labor. The maximum fee for an initial inspection shall be posted on a prominent place on the premises. A copy of the fee shall also be sent to the Licensing Section of the Vehicle Inspection Bureau.
(s)-(u) (No change.)

(c)

Licensing Service
Special Permits

Adopted New Rules: N.J.A.C. 13:21-7
Adopted Amendments: N.J.A.C. 13:21-7.2, 7.3, 7.4

Proposed: January 6, 1986 at 18 N.J.R. 48(a).
Adopted: February 11, 1986 by Robert S. Kline, Acting Director, Division of Motor Vehicles.
Filed: February 28, 1986 as R.1986 d.81, **without change.**

Authority: N.J.S.A. 39:3-10 and 39:3-13.1.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): December 16, 1990.

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

Full text of the expired rules adopted as new appears in the New Jersey Administrative Code at N.J.A.C. 13:21-7.

Full text of the adopted amendments to the expired rule follows.

13:21-7.2 Driving test appointment requirements
(a) Driving test appointments may be granted and recorded on the driver examination permits prior to the 17th birthday of the applicant; provided that:
1. The student will be at least 17 years of age on the date of appointment;
2. The student has passed the law-knowledge test administered by a representative of the Division of Motor Vehicles, and submits an approval certificate indicating that he has passed. An oral law-knowledge test may be administered by a representative of the Division of Motor Vehicles to a student having a hearing impairment. An interpreter of sign language approved by the New Jersey Division of the Deaf, Interpreter Referral Service must accompany the student for the oral test.

3. The special permit, when presented for the driving test, bears the Snellen eye reading recorded by the school nurse or a representative of the Division of Motor Vehicles;

4. The special permit, when presented for the driving test, bears the signatures of the principal, commercial driver school owner, school nurse and student. A school principal, commercial driver school owner or school nurse may use a signature stamp in place of hand-written signature.

5. The student will have completed an approved "behind-the-wheel" training course on the date of appointment.

13:21-7.3 Method of securing appointment

A student may present his special permit at any Driver Testing Center for the purpose of securing an appointment for the driving test; provided, however, that the applicant has completed six hours of "behind-the-wheel" automobile driver training.

13:21-7.4 Validation of special driver examination permits

(a) A special driver examination permit may be validated for practice driving a motor vehicle of the class for which a basic driver's license is required during the hours between sunrise and sunset while in the company and under the control of a licensed driver of this State who has had at least three years experience as a licensed motor vehicle driver when:

1. A student has completed "behind-the-wheel" driver training and has successfully completed the law-knowledge test administered by a representative of the Division of Motor Vehicles, and submits an approved certificate indicating that he has passed.

2.-4. (No change.)

(a)

BOARD OF PROFESSIONAL PLANNERS

Permissible Division of Responsibility in Submission of Site Plans and Major Subdivision Plats

Readoption: N.J.A.C. 13:41-4.1 through 13:41-4.5

Proposed: May 20, 1985 at 17 N.J.R. 1240(a).
Adopted: March 10, 1986 by State Board of Professional Planners, Mary Winder, President.
Filed: March 17, 1986 as R.1986 d.110, **without change.**

Authority: N.J.S.A. 45:14A-4 and 45:1-21(d)(e).

Effective Date: March 17, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): September 3, 1990.

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

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 13:41-4.

TRANSPORTATION

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes U.S. 9 in Atlantic County; 17 in Bergen County; U.S. 30 in Atlantic County; 47 in Gloucester County; 49 in Salem County; 72 in Ocean County and 73 in Camden County

Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39 and 1.40

Proposed: January 21, 1986 at 18 N.J.R. 158(b).
Adopted: February 24, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.
Filed: March 12, 1986 as R.1986 d.94, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

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

At 16:28A-1.34, the proposed amendment was to be made to (b); the amendment was correct but the text of (a) was mistakenly submitted and printed as (b). The correct text of (b) is being printed upon adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[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 subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-38. (No change.)

39. Along the westerly (southbound) side in Absecon City, Atlantic County.

i. Near side bus stops:

(1) New Jersey Avenue—Beginning at the northerly curb line of New Jersey Avenue and extending 105 feet northerly therefrom.

(2) Pitney Road—Beginning at the northerly curb line of Pitney Road and extending 105 feet northerly therefrom.

16:28A-1.9 Route 17

(a) (No change.)

(b) The certain parts of State highway Route 17 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.-6. (No change.)

7. Along the westerly (southbound) side in Ramsey Borough, Bergen County:

i. Near side bus stops:

(1) Entrance ramp from Franklin Turnpike to Roue 17 southbound—Beginning at the northerly curb line of the Entrance Ramp from Franklin Turnpike to Route 17 southbound and extending 105 feet northerly therefrom.

(2) Nottingham Road—Beginning at the northerly curb line of Nottingham Road and extending 120 feet northerly therefrom.

8. Along the westerly (southbound) side in Upper Saddle River Borough, Bergen County:

i. Far side bus stop:

(1) Lake Street—Beginning at the southerly curb line of Lake Street and extending 135 feet southerly therefrom.

(c) (No change.)

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 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 as granted to erect appropriate signs at the following established bus stops:

1.-15. (No change.)

16. (See proposal at 17 N.J.R. 2742(a).)

17. Along the southerly (eastbound) side in Mullica Township, Atlantic County:

i. Near side bus stop:

(1) Wharton Park Boulevard—Beginning at the prolongation of the westerly curb line of Wharton Park Boulevard and extending 105 feet westerly therefrom.

18. Along the northerly (westbound) side in Mullica Township, Atlantic County:

i. Far side bus stop:

(1) Union Avenue—Beginning at the westerly curb line of Union Avenue and extending 100 feet westerly therefrom.

16:28A-1.33 Route 47

(a) (No change.)

(b) The certain parts of State highway Route 47 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.-5. (No change.)

6. Along the northbound (easterly) side in Westville Borough, Gloucester County:

i. Near side bus stop:

(1) Almonesson Avenue—Beginning at the southerly curb line of Almonesson Avenue and extending 110 feet southerly therefrom.

16:28A-1.34 Route 49

(a) (No change.)

[(b) The certain parts of State highway Route 49 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.]

(b) The certain parts of State highway Route 49 described herein below shall be and hereby are designated and established as no parking zones for cleaning purposes during certain designated days and hours except as provided in N.J.S.A. 39:4-139.

1.-5. (No change.)

6. No stopping or standing in Pennsville Township, Salem County.

i. Along the northerly (westbound) side:

(1) From the westerly curb line of East Pittsfield Street to a point 445 feet westerly therefrom.

16:28A-1.39 Route 72 and (Service Road, Old Route 72)

(a) The certain parts of State highway Route 72 and (Service Road, Old Route 72) 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 stopping or standing along both sides in Stafford Township, Ocean County:

i. From its easterly terminus at West Thorofare and its westerly terminus at Manahawkin Bay.

ii. From the easterly curb line of Jennings Road to a point 2000 feet east of the easterly curb line of Jennings Road.

2. No stopping or standing in Stafford Township, Ocean County:

i. Along the northerly (westbound) side:

(1) From a point 250 feet east of the easterly curb line of Mermaid Drive to a point 250 feet west of the westerly curb line of Mermaid Drive.

16:28A-1.40 Route 73

(a) The certain parts of State highway Route 73 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.-6. (No change.)

7. (See proposal at 17 N.J.R. 2744(a).)

8. No stopping or standing in Berlin Township, Camden County:

i. Along both sides:

(1) For the entire length in Berlin Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Administration
Due Dates: Transmittals and Reports

Adopted Amendment: N.J.A.C. 17:1-1.3

Proposed: January 6, 1986 at 18 N.J.R. 59(a).
Adopted: February 27, 1986 by Douglas R. Forrester, Director, Division of Pensions.
Filed: March 5, 1986 as R.1986 d.86, **without change.**

Authority: N.J.S.A. 52:18A-95 et seq.

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): June 6, 1988.

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

Full text of the adoption follows.

17:1-1.3 Due dates for transmittals and reports
(a)-(e) (No change.)
(f) Quarterly transmittals and reports, including the remittance for the third month of the calendar quarter, for the Public Employees' Retirement System, the Judicial Retirement System and the Teachers' Pension and Annuity Fund are due in the Division of Pensions the 10th day of the month following the close of the preceding quarter.
(g)-(i) (No change.)

OTHER AGENCIES

CASINO CONTROL COMMISSION

(b)

Accounting and Internal Controls

Procedure for Exchange of Checks Submitted by Gaming Patrons

Adopted Amendments: N.J.A.C. 19:45-1.1 and 1.25

Proposed: September 16, 1985 at 17 N.J.R. 2245(a).
Adopted: February 26, 1986 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: February 27, 1986 as R.1986 d.77, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(l) and 5:12-101(g).

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1988.

Summary of Public Comments and Agency Responses:
The Division of Gaming Enforcement supports the adoption of the proposed amendments.
The Atlantic City Casino Association is of the opinion that the amendment should allow a casino to accept checks drawn for payment of a slot machine jackpot. In addition, the Association feels that only the casino accepting the check should document the necessary verifications.
The agency rejects this comment because an amendment to the Casino Control Act is necessary prior to the Commission promulgating regulations which would allow the acceptance of checks drawn in payment of a slot machine jackpot. Furthermore, the casino providing the information should also document the verification in order to provide an adequate audit trail.

Full text of the adoption follows.

19:45-1.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k) or in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips or in return of funds on account with the casino licensee.

. . .

19:45-1.25 Procedures for exchange of checks submitted by gaming patrons

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

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashier's cage by general cashiers. Prior to acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. Prior to the acceptance of a cash equivalent made payable to the presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino which issued the check and shall verify the following information:

1. The date of the check;
2. The check number;
3. The name of the payee appearing on the check;
4. The amount of the check; and
5. That the check represents either:

i. The return of a patron's deposit money; or

ii. The redemption of the casino's gaming chips.

(g) The general cashier accepting a casino check shall document the verifications performed in (f) above in a log and record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his name and license number in the log.

(h) A general cashier of the New Jersey casino which issued the casino check shall provide such information, as required by (f) above, to the casino licensee accepting such check and shall indicate that verification was requested by notating in a log the following information:

1. The date and time of the request;
2. The name of the casino requesting the information;
3. The name of the general cage cashier making the request;
4. The check number;
5. The date of the check;
6. The name of the payee appearing on the check; and
7. The reason for the check as either:

i. The return of a patron's deposit money; or

ii. The redemption of the casino's gaming chips.

Redesignate existing (f) and (g) and (i) and (j) (No change in text.)

(k) For each Counter Check exchanged at a gaming table, the casino clerk shall:

1. Verify the patron's identity by either:

i. Obtaining the patron's signature, on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the patron's credit file. The casino clerk shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his credit file. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (p) below.

(1) After the patron's identity has been verified by the casino clerk as required above, the requirements for subsequent verification of the patron's identity during the same shift and in the same gaming pit may be satisfied by that casino clerk signing a form attesting to the patron's identity before each subsequent Counter Check is exchanged. The form shall include the patron's name and the serial number of the initial Counter Check exchanged by the patron. Such form shall be attached to the accounting copy of the Counter Check prior to forwarding it to the accounting department in conformity with (p) below; or

ii. Obtaining the attestation of a casino supervisor as to the identity of the patron. The casino supervisor shall sign a form attesting to the patron's identity and shall record his license number thereon. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (p) below.

2.-6. (No change.)

Redesignate existing (i) through (l) as (l) through (o) (No change in text.)

(p) At the end of the gaming activity each day, at a minimum, the following procedures and requirements shall be observed:

1. The original and all copies of void Counter Checks and the accounting and acknowledgment copies of the Counter Check shall be forwarded by a representative of the accounting or security department to the accounting department for agreement, on a daily basis, with the issuance copy of the Counter Check removed from the drop box or stored data.

2. The redemption copy of Counter Check maintained and controlled in conformity with subsection (i)6i above shall be forwarded to the accounting department subsequent to the redemption, consolidation or deposit of the original Counter Check for agreement with the accounting and issuance copies of the Counter Check or stored data.

(a)

Investment Tax Credits: Deferral of Obligation Determination of Extreme Financial Hardship

Readopted New Rule: N.J.A.C. 19:54-3

Proposed: January 6, 1986 at 18 N.J.R. 108(a).
Adopted: February 26, 1986 by Casino Control Commission, Walter N. Read, Chairman.
Filed: February 27, 1986 as R.1986 d.78, **without change.**

Authority: N.J.S.A. 5:12-144.1(c).

Effective Date: April 7, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1988.

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

Full text of the adoption follows.

SUBCHAPTER 3. SECTION 144.1 INVESTMENT TAX CREDITS

19:54-3.1 Definitions

As used in this subchapter, the following words and terms shall have the meaning herein ascribed to them unless a different meaning clearly appears from the context.

"Authority" or "CRDA" means the Casino Reinvestment Development Authority established pursuant to the provisions of N.J.S.A. 5:12-153.

"Extreme financial hardship" is defined in N.J.A.C. 19:54-3.2(c).

19:54-3.2 Deferral petitions: Determination of extreme financial hardship

(a) In accordance with the provisions of N.J.S.A. 5:12-144.1(c), a contract between a casino licensee and the CRDA may provide for the deferral of the payment for and delivery of bonds otherwise required to be purchased by the licensee or for the deferral of the making of approved eligible investments otherwise required to be made by the licensee. A deferral of a casino licensee's obligation to purchase bonds or make other approved eligible investments may not be granted by the CRDA unless, among other things, the licensee obtains a determination from the Commission that the purchase of the bonds would cause extreme financial hardship to the casino licensee.

(b) A casino licensee shall apply for a deferral pursuant to N.J.S.A. 5:12-144.1(c) by filing a petition with the CRDA in accordance with its rules and regulations. Copies of this petition and all application materials submitted to the CRDA by the licensee shall be simultaneously filed with the Commission and the Division. The CRDA shall give notice of its receipt of a petition for deferral to the Commission and Division within three days of the date which the licensee files the petition. The Commission shall render a decision on whether the licensee has established extreme financial hardship within 60 days after notice of the petition has been received from the CRDA. Notwithstanding the foregoing, the Commission shall not consider any request for a determination of extreme financial hardship unless the petitioning casino licensee demonstrates that the contract required by N.J.S.A. 5:12-144.1(c) and (a) above has been executed.

(c) In order to obtain a determination of extreme financial hardship from the Commission, a licensee shall be required to demonstrate by a preponderance of the evidence that the economic effect of purchasing the bonds or making the investments which are sought to be deferred would be to increase materially the risk that the licensee would be unable to maintain its qualification for a casino license under the financial stability criterion of N.J.S.A. 5:12-84(a).

(d) In addition to supplying the Commission and Division with any documentation or information filed with the CRDA in support of its petition for deferral, it shall be the affirmative obligation of the casino licensee to produce or cooperate in the production of any other information, documentation or assurances relating to the assets, liabilities, resources and operating performance of the licensee, its holding and intermediary companies and any other related entity which is required to qualify or hold a casino license under the Act, necessary to establish its entitlement to a determination of extreme financial hardship. A casino licensee shall promptly provide any information or assistance requested by the Commission or Division within the time period specified. Failure to provide in a timely manner any such information or assistance to the Commission and Division upon request by either agency may, in the discretion of the Commission, result in the information being excluded from consideration and an adverse inference being drawn against the interests of the casino licensee.

(e) A determination of extreme financial hardship shall be decided on the basis of the information submitted by the casino licensee with its petition and any other information or documentation requested by the Commission or Division or previously obtained from the casino licensee unless the casino licensee requests in writing that a hearing be provided in accordance with the relevant provisions of N.J.S.A. 19:42; provided, however, the Commission may on its own motion direct that a hearing be held. Unless otherwise permitted by the Commission for good cause shown, a licensee shall submit its written request for a hearing simultaneously with the filing of its petition pursuant to (b) above.

(b)

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Schedule of Charges: Kennedy International, Newark International and LaGuardia Airports
Revisions to Airport Rules and Regulations

Adopted: March 5, 1986 by The Port Authority of New York and New Jersey, Doris E. Landre, Secretary.
Filed: March 12, 1986 as R.1986 d.95, (**Exempt,** from **Administrative Procedure Act** as "Exempt Agency," see N.J.S.A. 52:14B-2(a)).

Effective Date: Schedule of Charges—Kennedy International, Newark International and LaGuardia Airports: March 15, 1986. Revisions to Airport Rules and Regulations: April 1, 1986.

Full text of the adoption follows.

Kennedy International, Newark International and LaGuardia Airports
Revision to Schedule of Charges—Public Vehicular Parking Fees

KENNEDY INTERNATIONAL AIRPORT

	PRESENT RATES	NEW RATES
"Hourly" Lot #6 (Pan Am Rooftop)	$ 2.00 for first 2 hours or part thereof 1.00 per hour or part after first 2 hours $24.00 maximum each 24 hours	$ 3.00 for first 2 hours or part 2.00 per hour or part after first 2 hours to $24.00 maximum each 24 hours
"Daily" Central Terminal Area (Except Lot 6)	$ 2.00 for first 2 hours or part thereof 1.00 per hour or part third to fifth hour 1.00 per two hours or part sixth to 24th hour $11.00 maximum to 24 hours 1.00 per hour or part after first 24 hours $11.00 maximum each 24 hours	$ 3.00 for first 2 hours or part 1.00 per hour or part after first 2 hours to $12.00 maximum to 24 hours 1.00 per hour or part after first 24 hours to $12.00 maximum each 24 hours
Remote Long Term Parking Reduced Rate Lots 8&9	$ 2.00 for first 12 hours or part thereof 1.00 per six hours or part thereafter $ 4.00 maximum each 24 hours	$ 2.00 for first 12 hours or part 1.00 per hour or part after first 12 hours to $ 5.00 maximum first 24 hours 1.00 per hour or part after first 24 hours to $ 5.00 maximum each 24 hours

NEWARK INTERNATIONAL AIRPORT

	PRESENT RATES	NEW RATES
"Hourly" Lots A,B,C and 1	$ 2.00 for first 2 hours or part thereof 1.00 per hour or part third to 24th hour $24.00 maximum to 24 hours 2.00 per hour or part after 24 hours $48.00 maximum each 24 hours	$ 2.00 for first hour or part plus 2.00 per hour or part after first hour to $24.00 maximum to 24 hours 2.00 per hour or part after 24 hours to $48.00 maximum each 24 hours
"Daily" Lots A,B,C and 2	$ 2.00 for first 2 hours or part thereof 1.00 per hour or part third to fifth hour 1.00 per 2 hours or part sixth to 24th hour $11.00 maximum to 24 hours 1.00 per hour or part after first 24 hours $11.00 maximum each 24 hours	$ 2.00 for first hour or part 1.00 per hour or part after first hour to $12.00 maximum to 24 hours 1.00 per hour or part after first 24 hours to $12.00 maximum each 24 hours
Remote Long Term Parking Reduced Rate Lots Lots D,E, 3 and 4	$ 2.00 for first 2 hours or part thereof 1.00 for third hour or part 1.00 fourth to 24th hour $ 4.00 maximum to 24 hours 1.00 per six hours or part after first 24 hours $ 4.00 maximum each 24 hours	$ 2.00 for first hour or part 1.00 per hour or part after first hour to $ 5.00 maximum to 24 hours 1.00 per hour or part after first 24 hours to $ 5.00 maximum each 24 hours

LA GUARDIA AIRPORT

	PRESENT RATES	NEW RATES
All Lots Except Metered Areas	$ 2.00 for first 2 hours or part thereof	$ 3.00 for first 2 hours or part
	1.00 per hour or part third to fifth hours	1.00 per hour or part after first two hours
	$ 1.00 per two hours or part sixth to 24th hour	
	$14.00 maximum to 24 hours	to $15.00 maximum to 24 hours
	$ 1.00 per hour or part after 24 hours	$ 1.00 per hour or part after first 24 hours
	$14.00 maximum each 24 hours	to $15.00 maximum each 24 hours.
Metered Areas	$ .25 per 10 minutes	$ .25 per 10 minutes

All Airports and Heliports—Revisions to Airport Rules and Regulations

RESOLVED, that the Airport Rules and Regulations be revised, effective April 1, 1986, in accordance with the copy thereof attached hereto.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Extension of Commercial Shooting Preserve Season

Take notice that the Commissioner, Department of Environmental Protection, hereby extends the commercial shooting preserve season from March 15, 1986 to April 15, 1986, upon recommendation of the Director of the Division of Fish, Game and Wildlife, pursuant to statutory authority granted at N.J.S.A. 23:3-32.

(b)

BUREAU OF SHELLFISHERIES

Increase of Sea Clam Quota

Take notice that, because the New Jersey sea clam harvest quota of 500,000 bushels for the 1985-86 season will be attained on or about March 1, 1986, with the advice of the Shellfisheries Councils and the Department of Zoology, Rutgers University, the season will be extended by an additional 100,000 bushels as provided in the Sea Clam Regulations, N.J.A.C. 7:25-12.1(d)3. The weekly vessel quota will be reduced from 512 bushels to 448 bushels. These changes shall become effective March 2, 1986. If prior to May 31, 1986 the Department determines that the additional 100,000 bushels has been harvested, the Department may close the State's waters to harvesting upon two days public notice as provided by N.J.A.C. 7:25-12.1(d)3. Authority: N.J.S.A. 50:2-6.1 and 50:2-6.3.

(c)

Bureau of Marine Fisheries General Netting Fees

Authority: P.L. 1985, c.108

Take notice that, effective March 7, 1986, the resident license fees for a person intending to take fish with a net in the waters described at N.J.S.A. 23:5-24.1 shall be as follows:

(1) Haul seines, $25.00 per net;
(2) Fykes, $12.00 per net;
(3) Miniature fykes or pots, $100.00 regardless of the number;
(4) Bait seines greater than 50 feet long but less than 150 feet long, $3.00 per net;
(5) Drifting gill nets, $20.00 per net;
(6) Staked or anchored gill nets, $3.00 per net;
(7) Pound net, $100.00 per net;
(8) Wire pound net, $25.00 per net;
(9) Parallel nets, $10.00 per net;
(10) Lobster or fish pots, $100.00 regardless of the number of pots used;
(11) Horseshoe crab dredge, $15.00 per vessel; and
(12) Shrimp trawl, $12.00 per net.

Notice of these fees was provided in applications for the 1986 general netting licenses sent from the division to all 1985 license holders and to those applicants applying in person for any of these licenses.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Statewide Water Quality Management Program Plan

Public Notice

The New Jersey Department of Environmental Protection intends to propose an amendment to the Statewide Water Quality Management Program Plan (Statewide WQM Plan). The amendment would identify, as one of the components of that Plan, a document prepared by the Department, entitled "The New Jersey Continuing Planning Process for Water Quality Management—Descriptions of Selected Management Processes." The Department is now completing a final draft of this document, which was prepared in response to a request made by the United States Environmental Protection Agency (USEPA) in 1983.

The federal Clean Water Act (33 U.S.C. 1251 et seq.) and the New Jersey Water Quality Planning Act (N.J.S.A. 58:10A-1 et seq.) require the Department to have a Continuing Planning Process (CPP) for water quality management. Department rules provide that the Statewide WQM Plan contains the written provisions of the CPP (N.J.A.C. 7:15-2.2(a)). The phrase "Selected Management Processes" in the title of the draft document refers to eight CPP management processes that were of particular nationwide interest to the USEPA in 1983:

Determining Priority Waterbodies
Identifying Water Quality Limited Segments
Developing Total Maximum Daily Loads and Wasteload Allocations
Reviewing Water Quality Standards
Conducting Water Quality Monitoring Activities and Developing Monitoring Strategies
Developing the Construction Grant Priority List
Reviewing Discharge Permits and Construction Grants for Consistency With Water Quality Management Plans
Completing the Water Quality Inventory (305(b)) Report

The Department expects that the document will become a component of the Statewide WQM Plan that provides descriptive information and outlines suggested future actions, but that is not binding on the Department or other persons. In this respect, the document would resemble the "strategies" in the present Statewide WQM Plan.

This notice is being given to inform the public that the Department intends to propose a plan amendment for the Statewide WQM Plan, and to inform the public how interested persons may obtain a copy of the final draft document that will be the subject of the proposed plan amendment. After the Department completes the final draft of the document, notice of the proposed amendment to the Statewide WQM Plan will be published in the New Jersey Register. As will be described in that notice, copies of the final draft document will be made available for inspection at public depositories throughout the State, and at the office of the Department of Environmental Protection, Division of Water Resources, Bureau of Planning and Standards, located at 25 Arctic Parkway, CN 029, Trenton, NJ 08625. For reasons of economy due to the expected length of the final draft document, copies of that document will be mailed only to those interested persons who request a copy of that document by writing to Mr. George Horzepa at the Department address cited above. Requests may be made before or after that document is completed; the Department would prefer to receive requests as early as practicable.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Change of Hospital Bed Additions; Modernization/Renovation, New Construction in Excess of $10,000,000 Certificate of Need Batching Cycle

Public Notice

Take notice that the Commissioner of Health, in cooperation with the Health Care Administration Board, has changed the batching cycle scheduled to begin August 15, 1986 for certificate of need applications for hospital bed additions or modernization/renovation and new construction projects in excess of $10,000,000.

Applications for projects below the $10,000,000 threshold will not be affected by this notice and will continue to be accepted by the Department of Health. This will allow the processing of projects of relatively minor scope and impact on statewide capital expenditures. Those applications of an emergency nature which address patient safety and licensure deficiencies will also not be affected where the $10,000,000 cost threshold is not exceeded.

The batching cycle for certificate of need applications scheduled to begin on August 15, 1986 will be postponed 60 days. The next deadline for the submission of new or revised certificate of need applications for hospital bed additions or modernization/renovation and construction projects in excess of $10,000,000 will be on September 1, 1986 for an October 15, 1986 cycle. The change shall have no effect on subsequent batching cycles for certificate of need applications for hospital bed additions or modernization/renovation and construction projects.

This deferral of the batching cycle is being implemented in order to provide sufficient time to the Health Care Administration Board to act on an overall hospital capital expenditure policy for New Jersey. The Department has proposed specific recommendations which modify current policies and regulations affecting both reimbursement and health planning procedures. Discussion of these proposals have been initiated between the Department and the hospital industry.

During the referral period, the Health Care Administration Board will continue to consider adoption of amendments to the Hospital Policy Manual (N.J.A.C. 8:43E-1.1 et seq.). However, the new statewide capital policy proposals addressing an affordability principle, prioritization criteria, and community need standards are being withheld at this time.

Any inquiries should be addressed to:

John A. Calabria, Chief
Health Planning Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

General Assistance Rate in Residential Health Care Facilities

Public Notice

In accordance with N.J.A.C. 10:85-3.3(f)4i, the Department of Human Services announces that the rate to be paid for General Assistance recipients in Residential Health Care Facilities has been increased from $475.05 to $486.05 monthly. This change is effective January 1, 1986 and is the same in both the amount and effective date as the change in the rate for the same service paid to recipients under the Federal program of Supplemental Security Income.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Procedure for Control of Coupon Redemption and Other Complimentary Programs

N.J.A.C. 19:45-1.46

Petitioners: Resorts International Hotel, Inc.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on March 7, 1986, petitioners filed a petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.46, concerning the procedure for control of coupon redemption and other complimentary distribution programs.

Specifically, petitioners are requesting an amendment to the present requirement that detailed procedures be followed as noted in the regulation including notice to the Commission and Division 90 days prior to implementation by casino licensees offering bus coupon redemption programs which entitle patrons to redeem coupons for complimentary cash or slot tokens "including, but not limited to complimentary cash or slot tokens issued in connection with bus programs." Petitioners wish to amend N.J.A.C. 19:45-1.46(a) so that it will regulate only those coupon redemption programs which entitle patrons to redeem coupons for complimentary cash or slot tokens in connection with bus programs. With this amendment, N.J.A.C. 19:45-1.46(b), which now applies to certain programs entitling patrons to complimentary cash or slot tokens which are not regulated by N.J.A.C. 19:45-1.46(a) and which requires detailed procedures including notice to the Commission and Division 15 days prior to implementation of the program, will apply to those coupon redemption programs entitling patrons to redeem coupons for complimentary cash or slot tokens which are not offered in connection with bus programs. Petitioners state that "the amendment proposed is appropriate since coupon redemption programs entitling patrons to redeem coupons for complimentary cash or slot tokens not in connection with bus programs are generally of a much smaller scale, and the procedures applicable to such promotions in connection with bus programs are generally not applicable."

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments: March 4, 1986

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated February 4, 1986.

The following assignments have been made:

DBC	PROJECT	A/E	CCE
R001	Facility Consultant Dept. of Human Services	L. J. Mineo, Jr., AIA	$ 10,000 Services
R003	Facility Consultant Dept. of Human Services	Kolbe & Poponi, PA	$ 10,000 Services
Y007	Facility Consultant Dept. of Transportation	Thomas Torricelli	$ 20,000 Services
H844	Site Drainage Improvements Kean College of New Jersey Union, NJ	Tighe-Firtion-Carrino & Associates	$125,000
M672	Monitor Wells Trenton Psychiatric Hospital Trenton, NJ	Applied Wastewater Technology, Inc.	$ 2,000 Services
T177	Renovations-Thiokol Building DOT Testing Laboratories Trenton, NJ	London, Kantor, Umland & Associates	$ 2,000 Services
C279	Cost Estimate Verification Close Custody Units-Yardville, Bordentown (-01) Rahway (-50)	O'Brien-Kreitzberg & Associates, Inc.	$ 7,415 Services
S202	Additional Inspection Lane Division of Motor Vehicles Inspection Station Delanco, NJ	The Lisiewski Group, PA	$400,000
P481	Development/Management Plan Leonardo State Marina Middleton Township Monmouth County, NJ	Lippincott Engineering Associates, Inc.	$ 23,950 Services

COMPETITIVE PROPOSALS

The Lisiewski Group, PA	10.00%
Lammey & Giorgio, PA	10.50%
Armstrong, Jordan, Pease	14.00%
Lippincott Engineering Assoc., Inc.	$23,950 Lump Sum
Ernst, Ernst Lissenden	$48,000 Lump Sum
Post, Buckley, Schuh & Jernigan, Inc.	$58,555 Lump Sum

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 February 3, 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: JANUARY 21, 1986.

NEXT UPDATE WILL BE DATED FEBRUARY 18, 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

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 763 and 858	April 1, 1985	17 N.J.R. 2485 and 2584	October 21, 1985
17 N.J.R. 859 and 1006	April 15, 1985	17 N.J.R. 2585 and 2710	November 4, 1985
17 N.J.R. 1007 and 1158	May 6, 1985	17 N.J.R. 2711 and 2814	November 18, 1985
17 N.J.R. 1159 and 1358	May 20, 1985	17 N.J.R. 2815 and 2934	December 2, 1985
17 N.J.R. 1359 and 1460	June 3, 1985	17 N.J.R. 2935 and 3032	December 16, 1985
17 N.J.R. 1461 and 1608	June 17, 1985	18 N.J.R. 1 and 128	January 6, 1986
17 N.J.R. 1609 and 1700	July 1, 1985	18 N.J.R. 129 and 234	January 21, 1986
17 N.J.R. 1701 and 1818	July 15, 1985	18 N.J.R. 235 and 376	February 3, 1986
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-14.6	Consolidated cases involving exempt agencies	18 N.J.R. 130(a)	R.1986 d.79	18 N.J.R. 634(a)
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:2-2.1, 2.4	Conference hearings and employee/employer disputes	17 N.J.R. 2712(a)	R.1986 d.33	18 N.J.R. 414(a)
1:6A-5.4	Special education hearings: placement of child pending an appeal	17 N.J.R. 2586(a)	R.1986 d.85	18 N.J.R. 634(b)
1:30	Agency rulemaking	18 N.J.R. 3(a)	R.1986 d.60	18 N.J.R. 469(a)
	(TRANSMITTAL 17, dated January 21, 1986)			
AGRICULTURE—TITLE 2				
2:5-3	Avian influenza	Emergency	R.1986 d.58	18 N.J.R. 488(a)
2:53-3	Milk sales below cost by stores	17 N.J.R. 3014(a)	R.1986 d.43	18 N.J.R. 476(a)
2:32-2	Sire Stakes Program	18 N.J.R. 236(a)	R.1986 d.84	18 N.J.R. 635(a)
2:32-2.36, 3	Sire Stakes Program: appeals	17 N.J.R. 2320(a)	R.1986 d.18	18 N.J.R. 266(a)
2:71-2.28, 2.29, 3.21	Fees for inspection and grading of fruit and vegetables	18 N.J.R. 448(a)		
2:76-3.12	Farmland preservation programs: deed restrictions	18 N.J.R. 508(a)		
2:76-4.11	Municipally-approved preservation programs: deed restrictions	18 N.J.R. 511(a)		
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
2:90-2.15, 2.17, 2.18, 2.24	Soil and water conservation projects	18 N.J.R. 131(a)	R.1986 d.105	18 N.J.R. 638(a)
2:90-3.6, 3.9	Time extensions to complete conservation projects	18 N.J.R. 449(a)		
	(TRANSMITTAL 36, dated January 21, 1986)			
BANKING—TITLE 3				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:1-15	Availability of funds deposited in individual accounts: written disclosure	18 N.J.R. 13(a)	R.1986 d.73	18 N.J.R. 553(a)
3:6-10	Savings banks: unsecured days funds transactions	17 N.J.R. 2936(a)	R.1986 d.48	18 N.J.R. 477(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
3:6-11	Short-term investments for trust cash	17 N.J.R. 2937(a)	R.1986 d.49	18 N.J.R. 477(b)
3:11-10	Savings banks: credit card services	18 N.J.R. 241(a)	R.1986 d.93	18 N.J.R. 639(a)
3:11-11	Leeway investments	18 N.J.R. 132(a)		
3:19-1	Home repair financing	18 N.J.R. 15(a)	R.1986 d.72	18 N.J.R. 555(a)
3:26-4.1	State savings and loan parity with Federal associations	17 N.J.R. 2713(a)	R.1985 d.720	18 N.J.R. 266(b)
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		

(TRANSMITTAL 30, dated January 21, 1986)

CIVIL SERVICE—TITLE 4

4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-10.1, 10.2	Noncompetitive and labor appointments	17 N.J.R. 2937(b)	R.1986 d.117	18 N.J.R. 639(b)
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)	Expired	
4:1-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:3-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:6	Overtime compensation	18 N.J.R. 515(a)		

(TRANSMITTAL 28, dated January 21, 1986)

COMMUNITY AFFAIRS—TITLE 5

5:10-24.4	Parking for handicapped residents of multiple dwellings	18 N.J.R. 16(a)	R.1986 d.61	18 N.J.R. 555(b)
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)		
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)		
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)		
5:23-3.15	UCC: Plumbing Subcode	17 N.J.R. 2714(a)	R.1986 d.12	18 N.J.R. 267(a)
5:23-5.11	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)		
5:23-8	Asbestos hazard abatement subcode	18 N.J.R. 378(a)		
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(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)		
5:26	Planned real estate full disclosure	18 N.J.R. 392(a)		
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)		

(TRANSMITTAL 37, dated January 21, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:12	Governor's Teaching Scholars Program	18 N.J.R. 135(a)		
6:20-2.13	Local districts: overexpenditure of funds	17 N.J.R. 2939(b)	R.1986 d.118	18 N.J.R. 643(a)
6:20-5.5	State aid for asbestos removal and encapsulation	18 N.J.R. 392(b)		
6:20-5.6	Minimum salaries and State aid	18 N.J.R. 393(a)		
6:21-16.1	Pupil transportation contracts	18 N.J.R. 138(a)		
6:22	School facility planning services	17 N.J.R. 650(a)	R.1985 d.527	17 N.J.R. 2540(a)
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
6:24	Controversies and disputes under school law	18 N.J.R. 404(b)		
6:43-1.3	Vocational and technical education: schools designated "other than full-time day"	17 N.J.R. 2940(a)	R.1986 d.119	18 N.J.R. 644(a)
	(TRANSMITTAL 38, dated January 21, 1986)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1-3	Interim Environmental Cleanup Responsibility Act rules	18 N.J.R. 242(a)	R.1986 d.87	18 N.J.R. 645(a)
7:1-3.20	ECRA review process: exempt industrial categories	18 N.J.R. 529(a)		
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1E-2.3	Discharge of hazardous substances: department response	18 N.J.R. 456(a)		
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:2-12	Open lands management	17 N.J.R. 866(b)	R.1986 d.124	18 N.J.R. 645(a)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Revisions to Coastal Resources and Development rules	17 N.J.R. 1466(a)	R.1985 d.715	18 N.J.R. 314(a)
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)		
7:13-7.1	Flood hazard area along Long Brook and Manasquan River	17 N.J.R. 2324(a)	R.1986 d.50	18 N.J.R. 477(c)
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)14	Flood hazard along Lamington River in Morris County	17 N.J.R. 2324(b)	R.1986 d.123	18 N.J.R. 652(a)
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)	R.1986 d.125	18 N.J.R. 652(b)
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)	R.1986 d.122	18 N.J.R. 651(a)
7:13-7.1(d)53	Floodway delineations in Raritan Basin (Project H)	17 N.J.R. 2492(a)	R.1986 d.51	18 N.J.R. 477(d)
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)	R.1986 d.40	18 N.J.R. 414(b)
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)	R.1986 d.120	18 N.J.R. 650(a)
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 140(a)	R.1986 d.83	18 N.J.R. 657(a)
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 141(a)	R.1986 d.82	18 N.J.R. 653(a)
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:24	Dam restoration grants	18 N.J.R. 395(a)		
7:25-5.12	Use of steel-jaw leghold traps	17 N.J.R. 2714(b)	R.1986 d.24	18 N.J.R. 354(a)
7:25-8.1	Repeal clam dredging rule	18 N.J.R. 396(a)		
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)		
7:25-10	Possession of captive game animals and birds	18 N.J.R. 533(a)		
7:25-17	Disposal and possession of dead deer	17 N.J.R. 2715(a)	R.1986 d.41	18 N.J.R. 415(a)
7:25-18	Marine fisheries	18 N.J.R. 102(a)	R.1985 d.121	18 N.J.R. 657(b)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)		
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-1.8	Solid waste disposal: land application operations	17 N.J.R. 2945(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)		
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)	Expired	
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:27B-4.6	Lead test paper procedure	17 N.J.R. 781(a)		
7:45	Delaware and Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

(TRANSMITTAL 38, dated January 21, 1986)

HEALTH—TITLE 8

8:9-1.11	State Sanitary Code: disposal of unclaimed cremains	17 N.J.R. 2325(a)	R.1986 d.39	18 N.J.R. 416(a)
8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:21-10	Designated fluid milk products	18 N.J.R. 59(b)	R.1986 d.96	18 N.J.R. 660(a)
8:31-16.1	Hospital long-range strategic plans	18 N.J.R. 148(a)	R.1986 d.112	18 N.J.R. 675(a)
8:31A-7.4, 7.5, 7.14	SHARE: Medicaid rates and transfer of ownership	18 N.J.R. 150(a)		
8:31B-3.5, 3.22, 3.54	Hospital reimbursement: "efficiency standard"	17 N.J.R. 2946(a)	R.1986 d.114	18 N.J.R. 676(a)
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31, 3.51	Hospital reimbursement: graduate medical education	17 N.J.R. 2947(a)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33F-1.2, 1.6, App. B	Renal disease: regional end-stage services	17 N.J.R. 2948(a)	R.1986 d.113	18 N.J.R. 677(a)
8:34-1.8	Nursing home administrators: limitations on responsibility	18 N.J.R. 74(a)	R.1986 d.88	18 N.J.R. 678(a)
8:34-1.9	Reexamination for Nursing Home Administrator's License	18 N.J.R. 75(a)	R.1986 d.89	18 N.J.R. 678(b)
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)	Expired	
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)		
8:43B-8.33—8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)	R.1986 d.1	18 N.J.R. 267(a)
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)		
8:60-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-8	Controlled dangerous substances: manufacture, distribution, disposal and nondrug use	17 N.J.R. 2721(a)	R.1986 d.65	18 N.J.R. 555(c)
8:65-10.1	Temporary placement of Meperidine analogs MPPP and PEPAP into Schedule I	17 N.J.R. 2950(a)	R.1986 d.66	18 N.J.R. 559(a)
8:65-10.1	Controlled dangerous substances: analogs of fentanyl	18 N.J.R. 254(b)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a), 18 N.J.R. 182(a))	17 N.J.R. 1043(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a))	17 N.J.R. 1733(a)	R.1986 d.35	18 N.J.R. 418(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:71	Generic drug list additions	17 N.J.R. 2842(a)	R.1986 d.34	18 N.J.R. 417(a)
8:71	Generic drug list additions: public hearing	18 N.J.R. 537(a)		
	(TRANSMITTAL 35, dated January 21, 1986)			
HIGHER EDUCATION—TITLE 9				
9:2-2	Fund for Improvement of Collegiate Education: policies and procedures	17 N.J.R. 2724(a)	R.1986 d.99	18 N.J.R. 679(a)
9:2-11	Veterans Tuition Credit Program	17 N.J.R. 2844(a)	R.1986 d.103	18 N.J.R. 679(b)
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)		
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:7-3.1	Tuition Aid Grant Progam: 1986-87 Award Table	18 N.J.R. 19(b)	R.1986 d.106	18 N.J.R. 680(a)
9:7-4.1, 4.2, 4.3, 4.5, 4.8	Garden State Scholarship Program	17 N.J.R. 2726(a)	R.1986 d.108	18 N.J.R. 680(b)
9:9-1.6	Guarantee Student Loans and payment of insurance fee	17 N.J.R. 2727(a)	R.1986 d.102	18 N.J.R. 681(a)
9:9-1.16	Interest liability on defaulted student loans	17 N.J.R. 2728(a)	R.1986 d.101	18 N.J.R. 682(a)
9:9-9.2	Direct PLUS program and co-signer requirement	17 N.J.R. 2728(b)	R.1986 d.100	18 N.J.R. 682(b)
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)	R.1986 d.107	18 N.J.R. 682(c)
9:12-1.4, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
	(TRANSMITTAL 30, dated January 21, 1986)			
HUMAN SERVICES—TITLE 10				
10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(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)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:49-1.1	Administration Manual: retroactive Medicaid eligibility	17 N.J.R. 2729(a)		
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:51-1, App. B, D, E	Pharamceutical Services Manual	18 N.J.R. 255(a)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-4	Consultant Pharmacist Services	17 N.J.R. 2731(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)	R.1985 d.704	18 N.J.R. 560(a)
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:56-3	Dental Services: procedure codes and descriptions	18 N.J.R. 154(a)		
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:62-3	Vision Care Manual: billing procedures	17 N.J.R. 2731(b)	R.1986 d.90	18 N.J.R. 689(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)	R.1986 d.69	18 N.J.R. 561(a)
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:66	Independent Clinic Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:81-2.7, 3.18	PAM: continued absence; WIN registration	17 N.J.R. 2333(a)	R.1986 d.9	18 N.J.R. 272(a)
10:81-2.16, 3.18	PAM: photo IDs; ex-WIN children	17 N.J.R. 2335(a)	R.1986 d.6	18 N.J.R. 273(a)
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.2, 11.7, 11.9, 11.20	PAM: child support paternity	17 N.J.R. 2845(a)	R.1986 d.55	18 N.J.R. 480(a)
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)		
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)	R.1986 d.62	18 N.J.R. 562(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)		
10:82-2.19	ASH: recovery of overpayments	17 N.J.R. 2847(a)	R.1986 d.54	18 N.J.R. 481(a)
10:82-3.9, 3.11, 3.14, 4.13	ASH: evaluation of legally responsible relatives in AFDC	18 N.J.R. 20(b)	R.1986 d.115	18 N.J.R. 689(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.2	GAM: nursing home patients from out-of-state	17 N.J.R. 2338(a)	R.1985 d.692	18 N.J.R. 192(b)
10:85-3.3	GAM: unearned income exclusion	17 N.J.R. 2849(a)	R.1986 d.57	18 N.J.R. 482(a)
10:85-3.3, 5.2	GAM: hospital notices and billings	17 N.J.R. 2519(a)	R.1986 d.47	18 N.J.R. 483(a)
10:85-3.4	GAM: eligibility in other programs	17 N.J.R. 2520(a)	R.1986 d.4	18 N.J.R. 274(a)
10:85-3.4	GAM: disposal of assets	17 N.J.R. 2952(a)	R.1986 d.98	18 N.J.R. 690(a)
10:85-3.4	GAM: parent-sponsored aliens	18 N.J.R. 21(a)	R.1986 d.76	18 N.J.R. 563(a)
10:85-5.2, 11.2	GAM: inpatient hospital care	17 N.J.R. 2521(a)	R.1986 d.7	18 N.J.R. 274(b)
10:85-5.3	GAM: nursing home bed-hold payments	17 N.J.R. 2953(a)	R.1986 d.70	18 N.J.R. 564(a)
10:85-10.1	GAM: "Workfare" defined	17 N.J.R. 2849(b)	R.1986 d.56	18 N.J.R. 483(b)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-1.6, 3.14	Medicaid Only: ineligible individuals	17 N.J.R. 2522(a)	R.1986 d.71	18 N.J.R. 564(b)
10:94-3.6	Medicaid Only: change of county of residence	17 N.J.R. 2523(a)	R.1986 d.8	18 N.J.R. 275(a)
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)		
10:94-4.1	Medicaid Only: availability of resources in third-party situations	17 N.J.R. 2954(a)	R.1986 d.97	18 N.J.R. 691(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	18 N.J.R. 215(a)	R.1986 d.74	18 N.J.R. 565(a)
10:94-5.5	Medicaid Only: deeming of income	17 N.J.R. 2732(a)	R.1986 d.53	18 N.J.R. 484(a)
10:94-7, 8, 9	Medicaid Only program for aged, blind and disabled	17 N.J.R. 2340(a)	R.1986 d.5	18 N.J.R. 276(a)
10:100-App. A	Supplemental Security Income payment levels	18 N.J.R. 216(a)	R.1986 d.75	18 N.J.R. 566(a)
10:109	Public Assistance Staff Development Program	18 N.J.R. 22(a)	R.1986 d.116	18 N.J.R. 691(b)
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:122-4.4	Child care centers: staff qualification	18 N.J.R. 155(a)	R.1986 d.109	18 N.J.R. 692(a)
10:123-3.2	Personal needs allowance: residential health care and boarding homes	17 N.J.R. 2955(a)	R.1986 d.42	18 N.J.R. 419(a)

(TRANSMITTAL 36, dated January 21, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
CORRECTIONS—TITLE 10A				
10A:4	Inmate discipline	18 N.J.R. 27(a)		
10A:4	Inmate discipline: public hearing	18 N.J.R. 544(a)		
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:34	County correctional facilities	17 N.J.R. 2525(a)		
	(TRANSMITTAL 12, dated December 16, 1985)			
INSURANCE—TITLE 11				
11:1-18	Approval of business names	17 N.J.R. 41(a)	R.1986 d.10	18 N.J.R. 278(a)
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)	R.1986 d.11	18 N.J.R. 280(a)
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20, 22	Commercial policies: cancellation and nonrenewal	18 N.J.R. 457(b)		
11:1-20.1	Property and casualty/liability coverage	17 N.J.R. 2915(a)	R.1986 d.27	18 N.J.R. 419(b)
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)		
11:3-20	Automobile insurers: financial disclosure and excess profit reporting	17 N.J.R. 2597(a)	R.1986 d.111	18 N.J.R. 692(b)
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-27	Reporting of liquor law liability loss experience	18 N.J.R. 45(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)	R.1986 d.91	18 N.J.R. 699(a)
11:5-1.20	Payment of fees prescribed by Real Estate License Act	17 N.J.R. 2353(a)	R.1986 d.92	18 N.J.R. 702(a)
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)	R.1986 d.63	18 N.J.R. 566(b)
11:16	Provider verification of services	17 N.J.R. 47(a)	R.1986 d.13	18 N.J.R. 281(a)
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		
	(TRANSMITTAL 34, dated January 21, 1986)			
LABOR—TITLE 12				
12:16-4.8	Determining employee's 1986 taxable wage base	17 N.J.R. 2850(a)	R.1986 d.23	18 N.J.R. 284(a)
12:16-4.10	Temporary disability payments under private plans	17 N.J.R. 2850(b)	R.1986 d.21	18 N.J.R. 284(b)
12:16-5.2	Due dates of employer's combined Forms UC-27/WR-30	17 N.J.R. 2851(a)	R.1986 d.22	18 N.J.R. 285(a)
12:17-11	Unemployment compensation and pension offset	17 N.J.R. 2736(a)	R.1985 d.718	18 N.J.R. 285(b)
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:120-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)		
	(TRANSMITTAL 27, dated January 21, 1986)			
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-4.6	Police training: certification of firearms instructors	18 N.J.R. 397(a)		
13:2-5.2	Alcoholic beverage control: special concessionaire permit	18 N.J.R. 545(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:20-25	Approval of motor vehicle safety glazing materials and other equipment	18 N.J.R. 47(a)	R.1986 d.80	18 N.J.R. 703(a)
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)	Expired	
13:20-33.1	Motor vehicle reinspection centers: fees for initial inspections	18 N.J.R. 158(a)	R.1986 d.104	18 N.J.R. 703(b)
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:21-5.11	Registration of vehicles subject to Federal Heavy Vehicle Use Tax	17 N.J.R. 2737(a)	R.1986 d.38	18 N.J.R. 421(a)
13:21-7	Student driver permits	18 N.J.R. 48(a)	R.1986 d.81	18 N.J.R. 703(c)
13:21-8.2	Photo IDs and driver license application procedure	18 N.J.R. 49(a)	R.1986 d.68	18 N.J.R. 567(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:29-1.14	Board of Accounting licenses: notification requirement concerning convictions	18 N.J.R. 264(a)		
13:30-2.2, 2.3, 2.18, 8.1	Board of Dentistry registration fees	18 N.J.R. 398(a)		
13:31-1.11	Fees for electrical contractor's license	18 N.J.R. 462(a)		
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.11	Licensure of foreign medical school graduates	18 N.J.R. 50(a)	R.1986 d.67	18 N.J.R. 568(a)
13:35-4.2	Termination of pregnancy	17 N.J.R. 2738(a)	R.1986 d.25	18 N.J.R. 286(a)
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)	Expired	
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)		
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)		
13:40-6.1	Professional engineers and land surveyors: application, examination, and licensing fees	17 N.J.R. 2860(a)	R.1986 d.37	18 N.J.R. 421(a)
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)	R.1986 d.110	18 N.J.R. 704(a)
13:44-2.3, 2.11	Advertising by licensed veterinarians	18 N.J.R. 399(a)		
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)		
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)		
13:70-12.1, 12.2	Thoroughbred racing: claiming privileges	18 N.J.R. 546(a)		
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-12.16	Thoroughbred racing: filing of claims	18 N.J.R. 402(a)		
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		

(TRANSMITTAL 38, dated January 21, 1986)

PUBLIC UTILITIES—TITLE 14

14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:3-7.15	Discontinuance of residential service: notice to local fire officials	18 N.J.R. 463(a)		
14:6-1.1	Intrastate transportation of natural gas	17 N.J.R. 2740(a)	R.1986 d.46	18 N.J.R. 486(a)
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)		
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 26, dated December 16, 1985)

ENERGY—TITLE 14A

14A:20	Energy conservation planning and evaluation	16 N.J.R. 3293(a)	R.1985 d.619	18 N.J.R. 290(a)

(TRANSMITTAL 17, dated December 16, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
STATE—TITLE 15				
15:10	Election rules	17 N.J.R. 2381(a)	R.1986 d.32	18 N.J.R. 422(a)
	(TRANSMITTAL 15, dated August 19, 1985)			
PUBLIC ADVOCATE—TITLE 15A				
	(TRANSMITTAL 1, dated March 20, 1978)			
TRANSPORTATION—TITLE 16				
16:22	Urban revitalization, special demonstration and emergency project rules	17 N.J.R. 2385(a)	R.1986 d.3	18 N.J.R. 304(a)
16:28-1.2	Temporary speed rate on portion of I-80	18 N.J.R. 546(b)		
16:28-1.23, 1.25, 1.57, 1.79, 1.81	Speed rates on Routes 18, 23, U.S. 30, 94, and 49	18 N.J.R. 463(b)		
16:28-1.25	Wantage school zone along Route 23 in Sussex County	18 N.J.R. 547(a)		
16:28-1.41, 1.51, 1.75	Speed rates on U.S. 9 in Lakewood, Route 36 in Long Branch, and Route 55 in Cumberland, Salem and Gloucester counties	18 N.J.R. 465(a)		
16:28A-1.2, 1.10, 1.15, 1.18, 1.19, 1.21, 1.23, 1.36, 1.46, 1.67	Bus stops and parking restrictions throughout State	17 N.J.R. 2742(a)	R.1986 d.14	18 N.J.R. 304(b)
16:28A-1.4, 1.7, 1.52	No parking zones on Route 4 in Englewood, U.S. 9 in Howell and Route 173 in Hunterdon county	18 N.J.R. 466(a)		
16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39, 1.40	Bus stop zones in Atlantic, Bergen, Camden, Gloucester, Ocean and Salem counties	18 N.J.R. 158(b)	R.1986 d.94	18 N.J.R. 704(b)
16:28A-1.13, 1.21, 1.23, 1.26, 1.42	No parking zones along U.S. 22 in Phillipsburg, U.S. 30 in Galloway Twp., Routes 33, 36 and 79 in Monmouth county	18 N.J.R. 547(b)		
16:28A-1.23, 1.34	No parking zones along Routes 33 in Hightstown and 49 in Pennsville	18 N.J.R. 549(a)		
16:28A-1.32, 1.34, 1.36, 1.40, 1.42	Additional parking restrictions in Essex, Monmouth, Cumberland, Camden and Warren counties	17 N.J.R. 2744(a)	R.1986 d.16	18 N.J.R. 307(a)
16:28A-1.46	No parking zone along U.S. 130 in Salem county	18 N.J.R. 549(b)		
16:28A-1.71	Bus stops along Route 67 in Fort Lee	17 N.J.R. 2967(a)	R.1986 d.44	18 N.J.R. 487(a)
16:29-1.6, 1.7, 1.52-1.56	No passing zones along Routes 34, 36, 181, 70, U.S. 30, 57 and 77	18 N.J.R. 550(a)		
16:29-1.49, 1.50, 1.51	No passing zones on Routes 26, 91 and 35	17 N.J.R. 2967(b)	R.1986 d.45	18 N.J.R. 487(b)
16:30-1.6	One-way traffic along Route 35 in Shrewsbury	18 N.J.R. 551(a)		
16:30-2.10	Elmwood Park: stop intersection at Columbia and Parkview	18 N.J.R. 551(b)		
16:30-3.1	Left turns on Route 35 in Shrewsbury	18 N.J.R. 552(a)		
16:31-1.4	No left turn on Route 35 in Old Bridge, Aberdeen and Keyport	17 N.J.R. 268(a)	R.1986 d.15	18 N.J.R. 308(a)
16:31-1.4	Turns on Route 35 in Shrewsbury	18 N.J.R. 467(a)		
16:44-1.2	Classification of project bidders	17 N.J.R. 2746(a)	R.1986 d.29	18 N.J.R. 427(a)
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:54	Licensing of aeronautical facilities	18 N.J.R. 403(a)		
16:56-7.1	Airport safety improvement aid	17 N.J.R. 2017(a)	R.1985 d.719	18 N.J.R. 308(b)
16:72	NJ TRANSIT: procurement policies and procedures	18 N.J.R. 404(a)		
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