NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 19 NUMBER 21
November 2, 1987 Indexed 19 N.J.R. 1927-2086
(Includes adopted rules filed through October 9, 1987)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 17, 1987.
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED SEPTEMBER 21, 1987.

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

RULE ADOPTIONS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **December 2, 1987.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

December 7 issue:
- **Proposals** .... **November 5**
- **Adoptions** .... **November 12**

December 21 issue:
- **Proposals** .... **November 19**
- **Adoptions** .... **November 30**

January 4, 1988 issue:
- **Proposals** .... **December 4**
- **Adoptions** .... **December 11**

January 19 issue:
- **Proposals** .... **December 18**
- **Adoptions** .... **December 23**

NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Monday (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $75 ($150 by First Class Mail); back issues when available, $8 each. Make checks payable to OAL Publications.

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

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 39-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.

RULE PROPOSALS

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Secondary Mortgage Loan Act

Proposed New Rules: N.J.A.C. 3:18-10
Proposed Amendment: N.J.A.C. 3:23-2.1

Authorized By: Mary Little Parell, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8 and 17:11A-54.
Proposal Number: PRN 1987-454.

Submit comments by December 2, 1987 to:
Robert M. Jaworski, Deputy Commissioner
Division of Consumer Complaints, Legal and Economic Research
CN-040
Trenton, New Jersey 08625
Telephone: 609-292-7659

The agency proposal follows:

Summary

The Department of Banking proposes new rules and an amendment to change the license application, examination and bond requirements for secondary mortgage lenders to conform to the recent amendments to the Secondary Mortgage Loan Act (N.J.S.A. 17:11A-34 *et seq.*, amended by P.L. 1987, c.230, effective July 31, 1987). These new rules and the amendment would enable current and new licensees to remain or come in compliance with the statutory requirements.

Social Impact

These proposed new rules and the amendment apply to all current Secondary Mortgage Loan licensees and all applicants for such licenses. The proposal will benefit both borrowers and licensees by providing a clear set of guidelines for licensees to follow in order to become and/or remain licensed.

Economic Impact

The proposed new rules and the amendment will have a minimal economic impact on licensees. The licensing, bonding and application fees are a cost of doing business. There will be an increase in fees to the Department which will cover the additional processing costs required under the statute. Borrowers will not be financially affected by the change in licensing costs.

Regulatory Flexibility Statement

There are at present approximately 550 secondary mortgage loan licensees, of which about 385 are small businesses within the meaning of the Regulatory Flexibility Act, P.L. 1986, c.169.

It is impossible to minimize any adverse impact on small businesses since the statutory amendments require additional protections for the borrowing public, which is reflected in increased bonding requirements, and application and licensing fees.

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

SUBCHAPTER 10. LICENSING

3:18-10.1 Initial license requirements

(a) The "license period" for a secondary mortgage loan license shall run from January 1 in all even numbered years to the second December 31 thereafter or any part of that two-year period.

(b) Regardless of the date of issuance, all licenses shall expire on December 31 in the odd numbered year following the date of issuance, the first expiration date for all licenses being December 31, 1989.

(c) The individual secondary mortgage loan licensee upon whom a corporation, partnership, association or other entity is dependent for its licensure pursuant to the requirements of P.L. 1987, c.230, §2 (N.J.S.A. 17:11A-36(b)) must maintain his or her license at the principal New Jersey office of the licensee.

(d) Additional individual secondary mortgage loan licensees may be licensed at the principal office or at any licensed branch office of the employing secondary mortgage loan licensee. The application of the individual secondary mortgage loan licensee shall indicate the office address of the employing licensee at which he or she is to be located.

(e) License and application fees are as follows:

1. The license fee is $800.00 for each new corporate, partnership or sole proprietorship secondary mortgage loan licensee applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $400.00. There shall also be a $200.00 non-refundable processing fee due for each applicant at the time of application.

2. The license fee is $800.00 for each new individual secondary mortgage loan licensee applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $400.00.

3. Each applicant for an initial individual secondary mortgage loan license shall submit a $200.00 non-refundable application fee at the time of application.

4. The license fee is $600.00 for each new branch secondary mortgage loan license applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $300.00. There shall also be a $100.00 non-refundable processing fee due for each new applicant at the time of application.

5. The license fee for renewal applications shall be the same as for new applications except that it shall not include the non-refundable processing fee.

3:18-10.2 Application requirements

(a) Each applicant for a secondary mortgage loan license must submit to the Department of Banking a completed application in a form prescribed by the Commissioner together with the required fee.

(b) In addition to the application form, the applicant shall file certified consent certificates with the Department permitting the Department to make inquiries to the Department of Law and Public Safety, Division of Criminal Justice, as to any information it may have on file with respect to the applicant, that is, the person, sole proprietor, partners, corporate officers, directors and shareholders owning more than 10 percent of the shares of the corporation.

(c) Each individual and each sole proprietorship applicant must qualify by passing an examination administered under the direction of the Department of Banking unless the examination requirement is waived pursuant to N.J.S.A. 17:11A-56 and N.J.A.C. 3:18-10.4.

(d) All applications must be accompanied by a letter of inquiry from the applicant to a surety company authorized to do business in the State of New Jersey regarding the issuance of a bond in the amounts required by N.J.A.C. 3:18-10.5(c) upon completion of all requirements for the issuance of a license.

(e) All applications for a corporate, partnership or sole proprietorship license shall include a financial statement for the applicant and such additional information as shall be required by the Commissioner for a newly-organized corporation.

(f) An application for a corporate license must be accompanied by a copy of the applicant's Certificate of Incorporation as filed with the New Jersey Secretary of State's Office. A foreign corporation must submit a copy of its Certificate of Authority to do business in New Jersey approved by the New Jersey Secretary of State.

(g) An application for a sole proprietorship or partnership license where a trade name is to be used must be accompanied by a trade name certificate filed with the County Clerk's office in the county in which the licensee is to be located.

3:18-10.3 Examinations

(a) Upon acceptance of an application for an individual or sole proprietorship, the Department will notify the applicant of the date of the next scheduled examination, which shall not be more than 90 days from the date of acceptance of the application.

(b) An applicant is eligible to take the examination no more than twice in any 12 month period. The failure of an applicant to take or pass the examination within one year of the acceptance of the application shall void the application. Any applicant who passes the exam but does not perfect his license by the posting of a bond within one year from the date of passage of the exam must be re-examined.

(c) The examination shall be prepared by the Department of Banking and may cover, but is not limited to, the following topics:

1. The contents of Federal and State legislation and regulations on second mortgage lending;
2. New Jersey real estate laws;
3. Basic knowledge of mortgage documents; and
4. Related State and Federal legislation and regulations such as the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act and Regulation Z.

3:18-10.4 Waiver of examination

(a) An individual or sole proprietorship applicant shall notify the Department of Banking whether he requests a waiver of the examination requirement. The request for a waiver shall be made at the time of application and in a manner prescribed by the Commissioner.

(b) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of secondary mortgage lending in this State for at least two years prior to the filing of the application, he shall provide with his application a list of all employers and places of employment during that period, including addresses, names of immediate supervisors and a description of the duties of the employment.

(c) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of secondary mortgage lending in this State for less than two years and is otherwise qualified, he shall provide with his application a list of all employers and places of employment for the preceding 10 years, including addresses, names of immediate supervisors and a detailed description of the duties involved, as well as a detailed outline of the qualifications on which the request is based.

(d) All requests for waivers from the examination requirement shall be acted upon by the Commissioner within 60 days of receipt of the application by the Department of Banking or of such additional information as may be requested by the Department.

3:18-10.5 Bonds

(a) No license will be issued unless and until the applicant has posted with the Department of Banking a bond in the amount required by this subchapter in a form prescribed by the Commissioner by a surety company authorized to do business in the State of New Jersey.

(b) The minimum amount of the bond posted shall be:

1. For a sole proprietorship: $25,000;
2. For a corporate or non-corporate entity plus one individual licensee: $35,000;
3. For a corporate or non-corporate entity plus two to five individual licensees: $60,000;
4. For a corporate or non-corporate entity plus six to 10 individual licensees: $75,000;
5. For a corporate or non-corporate entity plus 11 to 15 individual licensees: $100,000;
6. For a corporate or non-corporate entity plus 16 or more individual licensees: $125,000.

3:18-10.6 License renewal

(a) A licensee may apply for renewal of his license by filing with the Department of Banking a completed application for that purpose in a form to be prescribed by the Commissioner along with the required fees.

1. The Department shall notify all licensees at least 60 days prior to the expiration date of the license.
2. The completed renewal form must be received by the Department of Banking no fewer than 30 days prior to the expiration of the license.

(b) If a renewal application is filed in a timely fashion and the Commissioner does not approve or disapprove it on or before the expiration date of the license, the applicant or licensee may continue to transact business without interruption until such time as the applicant or licensee is notified that the renewal application has been disapproved.

3:18-10.7 Replacement of license

If a natural person upon whom a corporation, partnership, association, or other entity relies for its license pursuant to N.J.S.A. 17:11A-36(b) discontinues his affiliation or employment with such entity for any reason whatsoever, the entity may continue to operate under its license for a period of 90 days or for such other extended period as the Commissioner determines necessary for the entity to replace that natural person with another licensed natural person; provided, that the entity so notifies the Department of Banking within 10 days of the date upon which that natural person disassociates or leaves the employ of the entity.

3:18-10.8 Office requirements

(a) Each licensee which maintains more than one office must designate one office as the principal office. The designation of the principal office must be filed with the Commissioner of Banking. Any change in the designation must be filed within 10 days of the effective date of the change. The Commissioner shall endorse the change of address on the license.

(b) A licensee shall apply to the Commissioner for permission to establish a branch office or offices on a form prescribed by the Commissioner together with the requred fees.

(c) Each licensee must submit any change of address for the principal office or any branch office or any change in the licensed supervisory individual within 10 days of the change. The Commissioner shall issue confirmation of the change in address.

(d) Unless the Commissioner determines within 30 days of receipt of a completed branch application that the office is located within an establishment which is exclusively devoted to social or recreational activities or is inconsistent with the ability of the public to gain access to the licensee, a license shall be issued.

(e) Each licensee shall display the license so that it is easily observable by the general public. The address and name on the license must be the same as the address of the place of business and name of licensee where the license is on display.

3:18-10.9 Appeal procedure

(a) Before any license is denied, suspended or revoked, or before any penalties are assessed against a licensee, the Commissioner shall afford the aggrieved party a hearing, if requested in writing and received by the Department within 20 days of receipt by the aggrieved party of an order to show cause asking why the denial, suspension, revocation or penalty should not be taken or assessed. The order to show cause shall clearly set forth the ground or grounds upon which the contemplated action is based.

(b) For a period not to exceed 30 days following receipt of the request for a hearing, the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as it deems appropriate.

(c) If the efforts at settlement set forth in (b) above fail, the Department shall proceed according to the applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

3:23-2.1 Licensees

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

LICENSEES	STATUTORY MAXIMUM BIENNIAL FEE	BIENNIAL FEE	ANNUAL FEE
...			
[Secondary Mortgage (N.J.S.A. 17:11A-38)]	[$1,000]	[$600.00]	[$300.00]
...			

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Relocation Assistance
Scheduling of Payments
Proposed Amendment: N.J.A.C. 5:11-3.5.

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:31B-10 and 20:4-10.
Proposal Number: PRN 1987-436.

Submit comments by December 2, 1987 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 804
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposal would reduce from four years to three, the period of time in which rental assistance relocation benefits of over $1,000 are to be paid out. Instead of spreading the equal annual payments over a four year period, upon adoption of this amendment, equal payments will be received over three years. Rental assistance benefits of $1,000 or less are to be paid out at one time. The maximum amount of relocation assistance, $4,000, was established by statute in 1971 and its value in real dollars has diminished significantly in 16 years. Enabling recipients of relocation assistance to receive their benefits over a shorter period of time will provide some small compensation for the reduction of the value of these benefits over time.

Social Impact

Advance payment, in effect, of relocation benefits for the fourth year will better enable displacees to pay the cost of adequate replacement housing, which is the main purpose of relocation assistance. Reduction of the number of payments and the period over which payment must be made will reduce the administrative burden on displacing agencies.

Economic Impact

Displacing agencies will sustain some loss in the time value of money and in the form of increased cash expenditures as a result of having to make relocation payments according to an accelerated schedule, although they will, in many cases, be able to pass this cost along to property owners whose violation of applicable codes caused the displacement. Displacing agencies will benefit from savings resulting from administrative workload reduction. Displacees will benefit from an increased cash flow during the three year period and from the time value of the money which is received earlier.

Regulatory Flexibility Analysis

The proposed amendment affects rental dwelling units only. Small businesses will only be affected if they are landlords who have been convicted of code violations which resulted in displacement and they are therefore obligated by statute to reimburse code enforcement agencies for relocation expenses.

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

5:11-3.5 Rental assistance payments

(a) (No change.)

(b) The actual amount of the rental assistance payment shall be the difference between the average monthly rent, including essential utilities, for the rental dwelling unit and the **lesser of the "fair market rental" for the replacement unit, as determined in accordance with the current schedule issued by the United States Department of Housing and Urban Development, or the** actual monthly rental payment paid for a replacement unit, times 48, not exceeding $4,000 **or such higher amount as may be established by statute.**

1. Once calculated, the amount of this benefit shall remain constant and shall neither increase nor decrease [over the four-year period].

2. If the rental assistance payment is in the amount of $1,000 or less, the displacing agency shall make the entire payment at one time.

(c) If the rental assistance payment exceeds [$750.00] **$1,000** the displacing agency shall make the payment in [four] **three** equal annual installments, upon verification that the tenant remains in comparable standard housing and that rent payments are current, unless the relocation agency finds there to be reasonable cause for any non-payment of rent.

1. Should the tenant move outside the State and farther than 50 miles away from the unit from which he was displaced or fail to occupy comparable standard housing during the [four-year] **three-year** period, the displacing agency may discontinue further rental assistance payments. The 50 mile radius provided herein may be enlarged by the displacing agency, in its discretion.

2. (No change.)

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

EDUCATION

(a)

STATE BOARD OF EDUCATION

Public, School and College Libraries
Standards for Federation of Free Public Libraries; County Library Reorganization

Proposed Readoption with Amendments: N.J.A.C. 6:64

Authorized By: Saul Cooperman, Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 4-15, 40:9A-4, and 40:33-13.2d

Proposal Number: PRN 1987-446.

Submit comments by December 2, 1987 to:

Patricia Joseph, Rules Analyst
Department of Education
225 West State Street
Trenton, New Jersey 08625

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:64-1.1 et seq. expires on May 1, 1988. The State Board of Education has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:1-1 et seq., specifically 18A:4-15, and 40:9A-4, and 40:33-13.2d through 13.2n, proposes to readopt rules concerning Public, School and College Libraries. The rules are designed to implement the provisions of Chapter 108, Public Laws of 1956 (N.J.S.A. 40:9A-1 et seq.), which permits county and municipal governments maintaining public libraries to enter into cooperative arrangements to expand local library service. The rules are also designed to implement the provisions of Chapter 489, Public Laws of 1981 (N.J.S.A. 40:33-13.2 h, i, j, k, and n), which sets forth in detail three voluntary options for county library reorganizations: the branch development option, the service contract option and the tax base sharing option.

The rules in N.J.A.C. 6:64-1, Standards for Federation of Free Public Libraries, establish the legal framework for federations, including the Board's term of office and their activities. The rules in subchapter 1 also specify the types of cooperative activities which may be undertaken by the federation. These activities include interlibrary loan, reciprocal borrowing and cooperative resource sharing of library materials.

The readoption of N.J.A.C. 6:64-1 will allow this type of cooperative activity to continue among public libraries. The rules provide a legal mechanism which permits local governments to share library materials and resources. These rules have also served as a model for cooperative activities among all types of libraries.

The rules in N.J.A.C. 6:64-2, County Library Reorganization, provide counties with a variety of methods for the delivery of library services to their residents and for providing a stable fiscal base. Requirements are set forth in subchapter 2 for each of the three county library options: branch development; service contract; and tax base sharing. A requirement for annual reporting to the State Librarian is included for each option, and an appeal procedure is also provided.

The readoption of N.J.A.C. 6:64-24.2 is intended to continue to provide guidelines for county and public libraries in counties where citizens vote to reorganize under the provisions of N.J.S.A. 40:33-13.2h through n.

Since the adoption of these rules, one county library has appointed a county library study commission.

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

Atlantic County Library
Burlington County Library
Camden County Library
Echelon Urban Center
Cape May County Library
Cumberland County Library
Gloucester County Library
Hunterdon County Library
Mercer County Library
Monmouth County Library
Morris County Library
Morris-Union Federation
New Providence Public Library
North Bergen Federation
Oakland Public Library
Ocean County Library
Somerset County Library
Sussex County Library
Warren County Library

It is necessary to readopt N.J.A.C. 6:64-1.1 et seq. to continue to give full force and effect to the existing statutes on public, school and college libraries cited above. If the rules were not readopted, the Department of Education could not implement these statutes successfully.

Social Impact

Since adopted, rules in N.J.A.C. 6:64-1 have provided for the establishment of library federations. No individual library can meet the challenge of providing all of the informational and recreational materials needed by their clientele. The complexity of modern informational needs demands access to a wider variety of library materials and services. By providing a means for libraries to engage in cooperative activities, these rules have enabled libraries to expand the materials available to their clientele. Such cooperative activities have enhanced libraries' ability to provide a wider variety of materials than otherwise could be purchased by an individual library.

Federation activities, as provided by the rules, have also allowed libraries to plan for the future. Through the development of coordinated acquisition and resource sharing policies, federation libraries can insure their clientele access to a variety of materials in the future.

Since adopted, N.J.A.C. 6:64-2 has provided for the improvement of library services to residents by establishing criteria for library service under each of the three reorganization options in Chapter 489, Public Laws of 1981.

Readoption of N.J.A.C. 6:64-1.1 et seq. will ensure that libraries may continue to provide enhanced access to materials and services through cooperative activities or through election by county libraries of a reorganization plan.

The proposed amendments to the readoption are changes in grammar and punctuation, and non-substantive changes in language, for clarification purposes.

Economic Impact

Fiscal restraints on a local level often limit a library's ability to provide for all of the needs of its clientele through a local library budget. The variety of materials available today could not be purchased by any one library. The activities of a federation as provided in N.J.A.C. 6:64-1 have allowed local libraries to provide a larger selection of materials to their clientele without the necessity of purchasing all of the materials from local budgets.

Since the adoption of N.J.A.C. 6:64-1, federations have also provided for cost effective operation of library service by allowing libraries to engage in cooperative activities which would be cost prohibitive if undertaken by a single library. No cost to the State of New Jersey has been involved.

The rules in subchapter 2 affect those county libraries, county library branches and public libraries contracting for service with county libraries that elect any of the three reorganization options provided. Increases in financial stability can be expected to result for the county library systems electing these reorganization options.

All residents within any county served by a library which selects the tax base sharing option will share in payment of the county library tax. Since the reorganization options are voluntary and have yet to be demonstrated, exact financial costs and/or benefits cannot be anticipated. No cost to the State of New Jersey is involved.

Regulatory Flexibility Statement

The proposed readopted rules impose no reporting, recordkeeping or compliance requirements on small businesses. All requirements of the rules impact upon New Jersey public libraries, therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:64.

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

6:64-1.1 Advisory council of federation of free public libraries; appointment; term

(a) Each federation shall have an advisory council appointed by the boards of trustees of the free public libraries of the municipalities constituting the federation and by the [C]county [L]library [C]commission, if the [C]county [L]library is a participating member.

(b) (No change.)

(c) The number of members on the advisory council and the apportionment [thereof] among the appointing authorities shall be determined by agreement, except that there shall be at least one representative from each appointing authority.

(d) The term of each member of the advisory council shall be two years, or [at the pleasure of the authority which appointed him, as the appointing authority shall determine.] **as determined by the appointing authority.**

6:64-1.2 Duties of advisory council of federation of free public libraries

(a) The advisory council shall advise the appointing authorities on all matters relating to cooperative or joint library services, including the review of all contracts, and shall make [such] recommendations for revision or renewal as may [seem] **be** advisable and practical.

(b) (No change.)

6:64-1.3 Employees of federation of public libraries

(a) (No change.)

(b) At least one-third of the aggregate number of [such] employees **specified in (a) above** [,exclusive of janitorial and custodial employees,] shall hold professional librarians' certificates [provided for] **as specified** in N.J.S.A. 45:8A-1 et seq.

6:64-2.1 Scope and purpose

The rules set forth in this subchapter provide for the implementation of three options for county library reorganization as provided in N.J.S.A. 40:33-13.2d et seq. The options for county library reorganization are designated as the "branch development option[,]", the "service contract option" and the "tax base sharing option".

6:64-2.2 Definitions

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

...

"Member of a county library system" means a municipality providing financial support to a county library pursuant to N.J.S.A. 40:33-9[,] or a municipality receiving first level services pursuant to N.J.S.A. 40:33-15 et seq.

"Patron services" means circulation of library materials, reference assistance[,] and public programs provided by a county library.

"Service contract" means an agreement for library services negotiated among a county library commission, the governing body of a country[,] and the governing body of a municipality.

6:64-2.3 General provision

(a) (No change.)

(b) There must be a library building adequate to house the collection with a separate meeting room and at least three readers' seats for every 1,000 population of its municipality(ies). The building may be owned by [either a] **the** municipality or [the] county, or **the building** may be rented.

(c) (No change.)

(d) After the establishment of a county branch library or a joint branch library, [a] **the** county library must submit annually to the State Librarian a report certifying that the branch library or joint branch library meets the standards enumerated in (a), (b) and (c) above.

(e) After the adoption of a service contract, [a] **the** county library must submit annually to the State Librarian a copy of the service contract with a statement certifying that the services provided to a municipality [will be at least at the level required by] **are as specified in** N.J.A.C. 6:68-1.4 to 1.6. [Consideration will be given to an adjustment of these requirements] **The county library may request from the State Librarian a waiver from the requirements of N.J.A.C. 6:68-1.4 to 1.6** if it can be [shown] **established** that equivalent centralized services are provided.

(f) After the adoption of the tax base sharing option, [a] **the** county library must submit annually to the State Librarian a report certifying that it complies with N.J.A.C. 6:68-1.4 to 1.6.

6:64-2.4 Appeal procedure

Appeals from any action of the State Librarian regarding the rules in this subchapter may be requested, and opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing, a formal hearing may be requested pursuant to N.J.S.A. 18A:6-24. Such hearings 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).], **N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.**

ENVIRONMENTAL PROTECTION

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

DIVISION OF WATER RESOURCES

For proposals number PRN 1987-448, 449, 450 and 451, concerning floodway redelineations, submit written comments by December 2, 1987 to:

Suzanne F. Dice, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, N.J. 08625

(a)

Redelineation of Big Bear Brook, Mercer County
Proposed Amendment: N.J.A.C. 7:13-7.1(d)

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.
DEP Docket Number: 050-87-10.
Proposal Number: PRN 1987-448.

A **public hearing** concerning this proposal will be held on:
November 24, 1987 at 10:00 A.M.
Conference Room
380 Scotch Road
Trenton, New Jersey

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the floodway and flood fringe areas of Big Bear Brook from the downstream East Windsor corporate limit upstream to Dutch Neck Road. The redelineation was requested by Mercer County as part of stream encroachment application Number 11976 for the purpose of building a new bridge on Dorchester Drive along Big Bear Brook. The proposed redelineation is based on detailed field survey information and cross sections taken by the RBA Group, Inc. (previously known as Richard Brown Associates) on behalf of Mercer County.

The redelineation affects the stream differently upstream of the bridge than downstream of the bridge. Upstream of the bridge and in the immediate vicinity of the bridge, the New Jersey Flood Hazard Area flood will be lowered by zero to two feet. Downstream of the bridge, the redelineation will raise the New Jersey Flood Hazard Area flood by zero to 0.5 feet. The redelineation will slightly reduce the overall size of the floodway, but will not significantly change the size of the flood fringe area. Thus, there will be a slight reduction in the flood hazard area.

The redelineation will require no change in the text of N.J.A.C. 7:13-7.1(d), since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this map revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and surroundings and to minimize the threat to the public safety, health and general welfare. By delineating streams, the Department identifies the area subject to the New Jersey Flood Hazard Area Control Act and the rules promulgated pursuant thereto, N.J.A.C. 7:13.

The proposed redelineation more accurately determines the area where flood protection measures will apply along Big Bear Brook in the Raritan River Basin. The proposed floodway and flood fringe revisions affect the residents of the Township of East Windsor and of Mercer County. No additional social impact will result beyond what was reasonably foreseeable at the time of the original delineation of Big Bear Brook.

Economic Impact

The proposed redelineation will have a positive economic impact by reducing the area subject to Department regulation. Because the redelineation will result in a small reduction in the size of the flood hazard area within the Department's jurisdiction under the Flood Hazard Area Control Act, enhancement of property value could result by expanding the possibilities for development in the areas near Big Bear Brook.

Environmental Impact

The delineation program identifies areas subject to the Flood Hazard Area Control Act. These rules restrict the scope of development within the delineated area in order to minimize flood damage to the area. This redelineation will have no adverse environmental impact as its purpose is to more accurately define the flood hazard area of Big Bear Brook.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), the Department has determined that this proposed amendment would not impose compliance, reporting or recordkeeping requirements on small businesses. The proposed redelineation is a clarification of the existing delineation and will result in a narrowing of the flood hazard area. Small businesses' property owners whose property will no longer be in the flood hazard area will be positively affected, because the narrower flood hazard area may allow for additional development.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, N.J. In addition, maps of the proposed delineations have been sent to the East Windsor Town Clerk and to the Mercer County Planning Board.

(b)

Redelineation of Carter's Brook, Middlesex County
Proposed Amendment: N.J.A.C. 7:13-7.1(d)

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.
DEP Docket Number: 049-87-10.
Proposal Number: PRN 1987-449.

A **public hearing** concerning this proposal will be held on:
November 24, 1987 at 10:00 A.M.
Conference Room
Bureau of Radiation Protection
380 Scotch Road
Trenton, New Jersey

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the floodway and flood fringe areas of Carter's Brook from Raymond Road upstream to Old Road, and of the Tributary to Carter's Brook from its mouth upstream to Route 27 within the Township of South Brunswick, Middlesex County. The redelineation was requested by Eastern Properties as part of a stream encroachment application for the purpose of building a residential development, a road (Route 522), and a detention basin.

The proposed redelineation is based on detailed field survey information and cross sections taken by Schoor and DePalma on behalf of Eastern Properties. The Department is updating the present flood hazard area delineations to reflect the new information.

There are two areas of Carter's Brook affected by the redelineation: the area of the detention basin which is directly upstream of the proposed Route 522 and the area immediately downstream of Route 522.

On Carter's Brook immediately upstream of the proposed Route 522, the floodway will increase in size because of the detention basin, and the flood fringe area will stay substantially the same size. The elevation of the New Jersey Flood Hazard Area flood will be raised by zero to 5.9 feet upstream of Route 522 because of the detention basin.

Immediately downstream of the proposed Route 522, the redelineation of Carter's Brook will lower the elevation of the New Jersey Flood Hazard Area flood by zero to 1.2 feet.

There are two areas of Tributary to Carter's Brook affected by the redelineation: the area directly upstream of Route 27 and the area immediately downstream of Route 27.

Along Tributary to Carter's Brook upstream of Route 27, the redelineation will lower the elevation of the New Jersey Flood Hazard Area flood by zero to 2.5 feet. In the area directly downstream of Route 27, the elevation of the New Jersey Flood Hazard Area flood is raised by approximately 1.5 feet. Both the floodway and the flood fringe of Tributary to

Carter's Brook will be reduced. Correspondingly, the New Jersey Flood Hazard Area of Tributary to Carter's Brook will be reduced.

The redelineation will slightly reduce the total size of the flood hazard area within the Department's jurisdiction under the Flood Hazard Area Control Act.

This redelineation will require no change in the text of N.J.A.C. 7:13-7.1(d), since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this map revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and surroundings, and to minimize the threat to the public safety, health and general welfare. By delineating streams, the Department identifies the areas subject to the New Jersey Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

The proposed redelineation more accurately determines the area where flood protection measures will apply along Carter's Brook and Tributary to Carter's Brook in the Raritan River Basin. The proposed floodway and flood fringe revisions affect the residents of the Township of South Brunswick and of Middlesex County. No additional social impact will result beyond what was reasonably foreseeable at the time of the original delineation of Carter's Brook and its tributary.

Economic Impact

The proposed redelineation will have a positive economic impact by reducing the area subject to Department regulation. Because the redelineation will result in a small reduction in the size of the flood hazard area within the jurisdiction of the Department under the Flood Hazard Area Control Act, enhancement of property values could result by expanding possibilities for development in the area near Carter's Brook and Tributary to Carter's Brook. Despite the reduction in area subject to Departmental rules, an indirect economic impact may result from the construction contemplated in the vicinity of Carter's Brook and Tributary to Carter's Brook.

Environmental Impact

The delineation program identifies areas subject to the New Jersey Flood Hazard Area Control Act. These rules restrict the scope of development within the delineated area in order to minimize flood damage to the area. This redelineation will have no adverse environmental impact as its purpose is to more accurately define the flood hazard area of Carter's Brook and Tributary to Carter's Brook.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), the Department has determined that this proposed amendment would not impose compliance, reporting or recordkeeping requirements on small businesses. The proposed redelineation is a clarification of the existing delineation and will result in a slight reduction of the flood hazard area. Small business property owners whose property will no longer be in the flood hazard area will be positively affected because the narrower flood hazard area may allow for additional development.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, N.J. In addition, maps of the proposed delineations have been sent to the South Brunswick Township Clerk and to the Middlesex County Planning Board.

(a)

Redelineation of Lawrence Brook, Ireland Brook, Mae Brook, Harry's Brook, Harry's Brook Branch No. 1, and Oakeys Brook

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

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.
DEP Docket Number: 048-87-10.
Proposal Number: PRN 1987-450.

A **public hearing** concerning this proposal will be held on:
November 24, 1987 at 10:00 A.M.
Conference Room
Bureau of Radiation Protection
380 Scotch Road
Trenton, New Jersey

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the floodway and flood fringe areas of the following waterways: Lawrence Brook from Ryders Lane upstream to Davidsons Mill Road; Ireland Brook from the confluence with Lawrence Brook upstream to Riva Avenue, and from Dunhams Corner-Rhode Hall Road upstream to Fern Road; Oakeys Brook from its mouth upstream 1,000 feet; Mae Brook from its mouth upstream 800 feet; Harry's Brook from its mouth upstream to Poe Road; and Harry's Brook Branch No. 1 from its mouth upstream 310 feet.

The redelineations were requested by Middlesex County as part of four stream encroachment applications (application Number 12740—Ryders Lane bridge; Number 12630—Main Street bridge; Number 11028—Church Lane bridge; Number 11452—Dunhams Corner-Rhode Hall Road bridge) and information supplied by the New Jersey Department of Transportation. The applications and information were submitted for the purpose of building five new replacement bridges.

The proposed redelineations are based on detailed field survey information and cross sections taken by: N.H. Bettigole, Inc. (Ryders Lane replacement bridge); Goodkind & O'Dea, Inc. (Main Street replacement bridge); Pickering, Corts and Summerson (Church Lane replacement bridge); the Middlesex County Engineering Department (Dunhams Corner-Rhode Hall Road replacement bridge); and New Jersey Department of Transportation (Lincoln Highway/Route 27 replacement bridge).

The redelineations affect both the floodway and flood fringe areas of these waterways. The floodway and the flood fringe areas together make up the flood hazard area.

The redelineation of Lawrence Brook for the Ryders Lane replacement bridge will reduce the sizes of both the floodway and the flood fringe areas. The redelineation will lower the elevation of the New Jersey Flood Hazard Area flood by zero to one foot along Lawrence Brook.

The redelineation of Lawrence Brook for the Main Street replacement bridge will not change the elevation of the current water surface profiles, nor will it change the size of the floodway or flood fringe areas.

The redelineation of Lawrence Brook at Mae Brook, Ireland Brook, and Oakeys Brook for the Church Lane replacement bridge will reduce the size of the flood fringe area. The redelineation will lower the elevation of the New Jersey Flood Hazard Area flood by zero to 0.75 feet. The overall size of the New Jersey Flood Hazard Area will be reduced.

The redelineation of Ireland Brook for the Dunhams Corner-Rhode Hall Road replacement bridge will lower the elevation of the New Jersey Flood Hazard Area flood by zero to one foot. The size of the flood fringe area will be reduced, thereby reducing the flood hazard area.

The redelineation of Harry's Brook for the Lincoln Highway/Route 27 replacement bridge will not change the elevation of the New Jersey Flood Hazard Area flood. The overall size of the floodway will be reduced, and the overall size of the flood fringe will be reduced. Accordingly, the size of the New Jersey Flood Hazard Area will be reduced.

This redelineation will require no change in the text of N.J.A.C. 7:13-7.1(d), since only revision of the flood hazard area delineation maps is required. Review of maps and profiles associated with this map revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and surroundings and to minimize the threat to the public safety, health and general welfare. By delineating streams, the Department identifies the area subject to the New Jersey Flood Hazard Area Control Act and the rules promulgated pursuant thereto, N.J.A.C. 7:13.

The proposed redelineations more accurately determine the area where flood protection measures will apply along Lawrence Brook, Ireland Brook, Mae Brook, Harry's Brook, Harry's Brook Branch No. 1, and Oakeys Brook in the Raritan River Basin. The proposed floodway and flood fringe revisions affect the residents of the Townships of East Brunswick, North Brunswick, South Brunswick, and Princeton, the Borough of Milltown and the Counties of Mercer and Middlesex. No additional social impact will result beyond what was reasonably foreseeable at the time of the original floodway delineations of these waterways.

Economic Impact

The proposed redelineations will have a positive economic impact by reducing the area subject to Department regulation. Because the redelineation will result in a small reduction in the sizes of the flood fringe and flood hazard areas, enhancement of property value could result by expanding development possibilities in the vicinity of Lawrence Brook, Ireland Brook, Mae Brook, Harry's Brook, Harry's Brook Branch No. 1, and Oakeys Brook.

Environmental Impact

The delineation program identifies areas subject to the Flood Hazard Area Control Act. These rules restrict the scope of development within the delineated area in order to minimize flood damage to the area. This redelineation will have no adverse environmental impact as its purpose is to more accurately define the flood hazard areas of Lawrence Brook, Ireland Brook, Mae Brook, Harry's Brook, Harry's Brook Branch No. 1, and Oakeys Brook.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), the Department has determined that this proposed amendment would not impose compliance, reporting or recordkeeping requirements on small business. The proposed redelineations are a clarification of the existing delineations and will result in only minor changes in the flood hazard area. Small businesses' property owners whose property will no longer be in the flood hazard area will be positively affected, because the narrower flood hazard area may allow for additional development.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, N.J. In addition, maps of the proposed delineations have been sent to the Clerks of Townships of East Brunswick, North Brunswick, South Brunswick, and Princeton, the Clerk of the Borough of Milltown and the Planning Boards of Mercer and Middlesex Counties.

(a)

Redelineation of the Hackensack River in the Borough of Oradell

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

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.
DEP Docket Number: 047-87-10.
Proposal Number: PRN 1987-451.

A **public hearing** concerning this proposal will be held on:
November 20, 1987 at 10:00 A.M.
Conference Room
Bureau of Radiation Protection
380 Scotch Road
Trenton, New Jersey

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the floodway and flood fringe areas of the Hackensack River from river station 112120 upstream to river station 113900 in the Borough of Oradell. The redelineation was requested by New Jersey Transit as a prerequisite for a stream encroachment application for the purpose of expanding and improving the New Jersey Transit bus parking area in Oradell along the Hackensack River.

The proposed redelineation is based on detailed field survey information and cross sections taken by the RBA Group, Inc. (previously known as Richard Brown Associates) on behalf of New Jersey Transit.

The redelineation will reduce the size of the floodway area and will increase the size of the flood fringe area. The floodway and the flood fringe areas taken together make up the flood hazard area. The redelineation will make no significant change in the total size of the flood hazard area within the Department's jurisdiction under the Flood Hazard Area Control Act.

This redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this map revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and surroundings and to minimize the threat to the public safety, health and general welfare. By delineating streams, the Department identifies the area subject to the New Jersey Flood Hazard Area Control Act and the rules promulgated pursuant thereto, N.J.A.C. 7:13.

The proposed redelineation more accurately determines the area where flood protection measures will apply along the Hackensack River. The proposed floodway and flood fringe revisions affect the residents of Oradell Borough and of Bergen County. No additional social impact will result beyond what was reasonably foreseeable at the time of the original delineation of the Hackensack River.

Economic Impact

The proposed redelineation will have a positive economic impact. The redelineation will result in a small reduction in the total size of the floodway and will correspondingly increase the flood fringe area. Since development is less restricted in the flood fringe area than in the floodway, enhancement of property value could result from increased development possibilities in the expanded flood fringe area.

Environmental Impact

The delineation program identifies areas subject to the Flood Hazard Area Control Act. These rules restrict the scope of development within the delineation area in order to minimize flood damage to the area. This redelineation will have no adverse environmental impact as its purpose is to more accurately define the flood hazard area of the Hackensack River.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), the Department has determined that this proposed amendment would not impose compliance, reporting or recordkeeping requirements on small business. The proposed redelineation is a clarification of the existing delineation and will result in a narrowing of the flood hazard area. Small businesses' property owners whose property will no longer be in the flood hazard area will be positively affected, because the narrower flood hazard area may allow for additional development.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, N.J. In addition, maps of the proposed delineations have been sent to the Borough of Oradell Town Clerk and to the Bergen County Planning Board.

DIVISION OF HAZARDOUS WASTE MANAGEMENT

(a)

Hazardous Waste Management: Definition of Authorized Facility, Generator Responsibility for Hazardous Waste Determination, Characteristics of EP Toxicity, Hazardous Waste from Specific Sources, General Facility Standards, Appendix A, Hazardous Waste Facility Permit Requirements, Existing Facilities, Transfer of Ownership or Operational Control and Public Participation in Permit Process.

Proposed Amendments: N.J.A.C. 7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, 9 Appendix A, 12.1, 12.3, 12.5 and 12.12

Authority: N.J.S.A. 13:1E-6.
DEP Docket Number: 046-87-09.
Proposal Number: PRN 1987-438.

Submit comments by December 2, 1987 to:
Marlen Dooley
New Jersey Department of Environmental Protection
Office of Regulatory Services
CN 402
Trenton, N.J. 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection ("Department") is proposing amendments to N.J.A.C. 7:26-1.4, 7.7, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, 9 Appendix A, 12.1, 12.3, 12.5, 12.11 and 12.12. These amendments would correct inaccurate citations, typographical errors, and other minor wording errors. These amendments do not change the rules substantively.

The proposed amendment to N.J.A.C. 7:26-1.4 would change the Federal citation in the definition of "authorized facility" from 40 CFR 122 to 40 CFR 270 and from 40 CFR 123 to 40 CFR 271. This change reflects a recodification of the Federal regulations by the U.S. Environmental Protection Agency ("EPA").

The proposed amendment to N.J.A.C. 7:26-8.2(b) will change the word "an" to "or".

The proposed amendment to N.J.A.C. 7:26-8.3(f)3 will correct the citation to the Federal regulations. The Federal hazardous waste permit regulations will be cited as 40 CFR 270 instead of 40 CFR 122 in N.J.A.C. 7:26-8.3(f)3i. The interim status regulations will be cited as 40 CFR 270 and 265 instead of 40 CFR 122 and 265 in N.J.A.C. 7:26-8.3(f)3ii. The EPA requirements for the authorization of State hazardous waste programs will be listed as 40 CFR 271 instead of 40 CFR 123 in N.J.A.C. 7:26-8.3(f)3iii. These changes reflect recodification by the EPA and are not substantive.

The proposed amendment to N.J.A.C. 7:26-8.5(c) will correct the word "many" to "may" in the last sentence.

The proposed amendment to N.J.A.C. 7:26-8.12 will correct the standard chemical notation for "Endrin" (No. D012) which is incorrectly cited in the rules. In addition, for wastes in D012 and D013, parentheses which were mistakenly omitted have been added.

The amendment to N.J.A.C. 7:26-8.14 will add the word "carbon" which was erroneously dropped from the description of waste number K102.

The proposed amendment to N.J.A.C. 7:26-9.4(a)1 will correct the word "office" to "off-site". The proposed amendment to the end of Appendix A of N.J.A.C. 7:26-9 deletes the language stating that Appendix A is being amended; this process has been completed.

N.J.A.C. 7:26-12.1(b)2 contains an incorrect cross-reference to "(c)5 below". The proposed amendment will correctly list the cross-reference as N.J.A.C. 7:26-9.1(c)5.

The proposed amendments to N.J.A.C. 7:26-12.3(c)4iii and 12.5(b)3 will clarify that in the event of a transfer of ownership or operational control of a hazardous waste treatment, storage or disposal facility, the former owner or operator must continue to comply with the financial assurance requirements of N.J.A.C. 7:26-9.10 to 9.13, until the Department is satisfied that the new owner or operator is in compliance. Previously, through an oversight, the citation for the financial assurance rules was incomplete due, at least in part, to prior rule amendments.

At N.J.A.C. 7:26-12.3(a)2, the proposed amendment will correct the Federal citation from 40 CFR 122.22(a) and (c) to 270.10. The amendment to N.J.A.C. 7:26-12.3(a)3 will correct the Federal citation from 40 CFR 122.22 and 122.23 to 40 CFR 270.10 and 270.70 to 270.73. These changes reflect recodification by the EPA.

In addition, at N.J.A.C. 7:26-12.3(a) the word "all" will be changed to "an" and at N.J.A.C. 7:26-12.3(c) the word "deposition" will be changed to "disposition" to correct typographical errors.

N.J.A.C. 7:26-12.5(b)1 incorrectly cites certain disclosure statement requirements as being listed at N.J.A.C. 7:26-12.2(g). The proposed amendment would correct the citation to read N.J.A.C. 7:26-12.2(h).

The proposed amendment to N.J.A.C. 7:26-12.12(a)2 will correct a typographical error. The cross-reference will be listed as N.J.A.C. 7:26-12.11(a) instead of N.J.A.C. 7:26-12.119(a).

Social Impact

The proposed amendments are not expected to have any social impact since they merely correct inadvertent typographical and citation errors. The Department has required compliance with all State financial assurance rules and the requirements of the appropriate Federal regulations.

Economic Impact

Since this proposal corrects several technical inaccuracies and does not contain any substantive changes, no economic impact is anticipated.

Regulatory Flexibility Statement

This proposal will have no impact on small businesses. The purpose of the amendments is to clarify and correct existing language in the rules.

Environmental Impact

No negative environmental impact is anticipated from the proposed amendments.

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

7:26-1.4 Definitions

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

...

"Authorized facility" means a hazardous waste facility which:

1. Has received a permit to operate from the United States EPA in accordance with the requirements of 40 CFR Parts [122] **270** and 124; or

2.-3. (No change.)

4. Has received a permit or other permission to operate from a state authorized in accordance with 40 CFR [123] **271**; or

5.-6. (No change.)

...

7:26-8.2 Exclusions

(a) (No change.)

(b) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit [an] **or** associated non-waste-treatment-manufacturing unit, is not subject to regulation under N.J.A.C. 7:26-7 through 11 until it exits the unit in which it was generated, unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

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

(f) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

1.-2. (No change.)

3. Either treat or dispose of the generator's hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

i. Permitted under 40 CFR [122] **270**; or

ii. In interim status under 40 CFR [122] **270** and 265; or

iii. Authorized to manage hazardous waste by a [S]state with a hazardous waste management program approved under 40 CFR [123] **271**; or

iv.-vi. (No change.)

(g)-(i) (No change.)

7:26-8.5 Hazardous waste determination: Generator responsibilities
(a)-(b) (No change.)
(c) If the waste generated is not a hazardous waste by reason of the operation of N.J.A.C. 7:26-8.1(a), then the generator shall, upon request by the Department, submit, in a timely manner on a schedule approved by the Department, a plan for analyzing the waste to detect the presence of hazardous waste constituents listed in N.J.A.C. 7:26-8.16 which the generator, through knowledge of the chemical composition of the waste in light of the materials and processes used, determines may be present in detectable quantities in the waste. The generator shall conduct the approved analysis plan and submit to the Department the results of the analysis as well as such other information as [many] **may** be necessary to verify the data provided.
(d)-(e) (No change.)

7:26-8.12 Characteristics of EP Toxicity
(a)-(b) (No change.)

Table I
Maximum Concentration of Contaminants
for Characteristics of EP Toxicity

EPA Hazardous Waste Number	Contaminant	Maximum Concentration (milligrams per liter)
...		
D012	Endrin (1,2,3,4,10, 10-hexachloro-[1]**6**, 7-epoxy-1, 4,4a,5,6,7,8,8a-octahydro-1, 4-endo, endo-5,8 diamethano nephthalene)	0.02
D013	Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.4
...		

7:26-8.14 Hazardous Waste from Specific Sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
Veterinary Pharmaceuticals	K102	Residue from the use of activated **carbon** for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)

...

7:26-9.4 General facility standards
(a) The owner or operator of a facility shall comply with the notice requirements of this subsection.
1. The owner or operator of a facility which receives a new hazardous waste stream from an [office] **off-**site source (except where the owner or operator is also the generator) shall inform the generator in writing that, the owner or operator has the appropriate permit(s) for, and will accept, the waste that the generator is shipping. The owner or operator must keep a copy of this written notice [on] **as** part of the operating record.
2.-3. (No change.)
(b)-(o) (No change.)

7:26-9 Appendix A: Wording of Instruments (See 40 Code of Federal Regulations 264.151)
(a)-(j) (No change.)
[Appendix A of N.J.A.C. 7:26-9 was also being amended. Copies of the amended appendix are available for review at:

Office of Regulatory Services
Room 803
Labor and Industry Building
Trenton, N.J.; or

Office of Administrative Law
Building 9
Quakerbridge Plaza
Quakerbridge Road
Trenton, N.J.]

7:26-12.1 Scope and applicability
(a) (No change.)
(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:
1. (No change.)
2. A farmer who disposes of pesticide wastes generated by the farmer's own use in accordance with [(c)5 below] **N.J.A.C. 7:26-9.1(c)5**;
3.-11. (No change.)
(c) (No change.)

7:26-12.3 Existing facilities
(a) Any person owning or operating a hazardous waste facility which conforms to the definition of [all] **an** "existing hazardous waste facility" (N.J.A.C. 7:26-1.4) may continue to operate the facility prior to final disposition of a permit application pursuant to this subchapter provided the owner or operator:
1. (No change.)
2. Has filed a Part A application for the facility in accordance with 40 CFR [122.22(a) and (c)] **270.10**; or
3. In the case of an owner or operator of a hazardous waste facility not required to notify USEPA or file a Part A application pursuant to 40 CFR [122.22 and 122.23] **270.10 and 270.70-270.73**, has submitted a Part A application to the Department and applied [to the Department] for an EPA identification number within 90 days of the effective date of this [S]subchapter; and
4. Operates the facility in accordance with the standards set out at (e) below[;].
(b) (No change.)
(c) Owners or operators making changes during operation prior to final [deposition] **disposition** of **a** permit application shall comply with the requirements of this section.
1.-3. (No change.)
4. Changes in the ownership or operational control of a facility must be approved in advance by the Department.
i.-ii. (No change.)
iii. When a transfer of ownership or operational control of a facility occurs, the [old] **former** owner or operator shall comply with the hazardous waste facility financial requirements of N.J.A.C. 7:26-9.10 [and N.J.A.C. 7:26-9.11] **through 9.13**, until the new owner or operator has demonstrated to the Department that it is complying with those sections. All other duties are transferred effective immediately upon the date of change of ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26-9.10 [and N.J.A.C. 9.11] **through 9.13**, the Department shall notify the [old] **former** owner or operator in writing that it no longer needs to comply with those sections as of the date of demonstration.
5. (No change.)
(d)-(h) (No change.)

7:26-12.5 Transfer of ownership or operational control
(a) (No change.)
(b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26-16.3(d)). The notice shall include:
1. A disclosure statement or alternative information statement prepared by the prospective new permittee meeting the requirements of N.J.A.C. 7:26-12.2[(g)](**h**);
2. (No change.)
3. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26-9.10 [and N.J.A.C. 7:26-9.11] **through 9.13** will be met by the proposed new permittee.
(c)-(e) (No change.)

7:26-12.12 Public participation in the permit process
(a) The Department shall give public notice that the following actions have occurred:
1. (No change.)
2. A draft permit has been prepared pursuant to N.J.A.C. 7:26-12.11[9](a).
3. (No change.)
(b)-(o) (No change.)

(a)

Identification and Listing of Hazardous Waste from Specific Sources

Proposed Amendment: N.J.A.C. 7:26-8.14

Authority: N.J.S.A. 13:1E-6.
DEP Docket Number: 051-87-10.
Proposal Number: PRN 1987-452.

Submit comments on or before December 2, 1987 to:
Marlen Dooley
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:26-8.14 to conform with 40 CFR 261.32, a final rule adopted by the United States Environmental Protection Agency (USEPA) on October 24, 1986 and effective on April 24, 1987, which lists as hazardous four wastes generated during the production and formulation of ethylene bisdithiocarbamic acid (EBDC) and its salts. These hazardous wastes will be listed as K123, K124, K125 and K126. For a discussion on the bases for the listing of these hazardous wastes, see 49 FR 49562-49565, 1986.

These proposed amendments will require that the four newly listed wastes be handled, treated and disposed of as hazardous wastes.

Social Impact

The proposed amendments will have a positive social impact. The hazardous constituent in these wastes is ethylene thiourea (ETU). ETU is typically present in each of the four hazardous wastes in significant volumes. ETU is listed as toxic (T) under N.J.A.C. 7:26-8.15(f). Its EPA ID number is U116. It is carcinogenic, teratogenic, and shows evidence of mutagenicity. It is also moderately persistent in groundwater and, due to its high solubility in water and polar organic solvents, is mobile in the environment. In addition, waste K124 is corrosive.

These proposed amendments will require that the listed wastes be handled, treated and disposed of as hazardous wastes.

Economic Impact

The proposed amendments may have a negative economic impact by requiring that the listed wastes be handled, treated and disposed of as hazardous wastes. The possibility exists that they may, in isolated incidences, cause some generators to lose their small quantity status by increasing their total monthly hazardous waste output above the 100 kilogram cutoff. However, for the vast majority of generators, this should not be the case, and the proposed amendments should not significantly increase their reporting or other regulatory requirements.

Environmental Impact

The proposed amendments will have a positive environmental impact. The listed wastes will be handled, treated and disposed of as hazardous waste. Consequently, their discharge and migration into the environment will be prevented.

Regulatory Flexibility Statement

By requiring that the listed wastes be handled, treated and disposed of as hazardous wastes, the proposed amendments may have a negative economic impact upon certain small businesses. However, these requirements were adopted by the USEPA on October 24, 1986 and have been in effect and enforceable since May 24, 1987. Consequently, failure by the Department to adopt them will not relieve New Jersey's small businesses of their obligation to comply with their provisions. Therefore, there are no exemptions for small businesses.

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

7:26-8.14 Hazardous Waste from Specific Sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
Pesticides	K031-K099 (No change.)		
	K123	**Process waste water (including supernates, filtrates, and washwaters) from the production of ethylene-bisdithiocarbamic acid and its salts.**	**(T)**
	K124	**Reactor vent scrubber water from the production of ethylene-bisdithiocarbamic acid and its salts.**	**(C,T)**
	K125	**Filtration, evaporation and centrifugation solids from the production of ethylene-bisdithiocarbamic acid and its salts.**	**(T)**
	K126	**Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene-bisdithio-carbamic acid and its salts.**	**(T)**

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Volatile Organic Substances; Stage II Vapor Recovery

Proposed Amendments: N.J.A.C. 7:27-16.1 and 16.3

Authority: N.J.S.A. 13:1B-3 and 26:2C-8.
DEP Docket Number: 052-87-10.
Proposal Number: PRN 1987-453.

A **public hearing** concerning this proposal will be held on:
December 3, 1987 at 10:00 A.M.
New Jersey State Library
First Floor Meeting Room
185 West State Street
Trenton, New Jersey

Submit written comments by December 3, 1987 to:
Roger S. Haase, Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

Copies of this notice and of the proposed amendment are being deposited and will be available for inspection during normal office hours until December 3, 1987 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, New Jersey 08330

New Jersey Department of Environmental Protection
Central Field Office
Twin Rivers Professional Building
Route 33
East Windsor, New Jersey 08520

New Jersey Department of Environmental Protection
Environmental Enforcement
Northern Field Office
1259 Route 46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Environmental Enforcement
Southern Field Office
20 East Clemonton Road
100A Larwin Road
Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection
Environmental Enforcement
Metropolitan Field Office
2 Babcock Place
West Orange, New Jersey 07052

Warren County Health Department
151 West Washington Avenue
Washington, New Jersey 07882

The amendment will become operative 60 days after adoption by the Commissioner (See N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-16, hereinafter referred to as subchapter 16. This subchapter controls emissions of volatile organic substances (VOS) to the atmosphere. The Department is proposing to control the emissions of VOS during the refueling of motor vehicles through requirements known as Stage II Vapor Recovery. The Department has previously proposed rules which required Stage II Vapor Recovery. The more recent proposal, published on September 22, 1986 at 18 N.J.R. 1867(a), included an implementation schedule which assumed prompt adoption of the proposed rules. The Department conducted a public hearing on October 28, 1986. No final action was taken on that proposal.

On September 14, 1987, the United States District Court ordered the Department to propose a schedule for prompt implementation of Stage II Vapor Recovery. (American Lung Ass'n v. Kean, Civ. No. 87-288). By that time, various deadlines in the September 22, 1986 proposal had already passed, necessitating revisions to the proposal. To assure adequate public notice and participation and to assure the enforceability of Stage II Vapor Recovery under State law, the Department is now reproposing Stage II Vapor Recovery which it intends to adopt prior to the end of this year and implement in an expeditious manner.

Volatile organic substances, in the presence of sunlight, form ozone and other highly reactive pollutants commonly referred to as smog. Ozone is a known respiratory irritant seriously affecting those with chronic respiratory illnesses. Further, it significantly reduces the yield of important food crops and causes serious degradation of plastics and rubber. Control strategies for reducing atmospheric ozone concentrations are primarily directed toward the control of emissions of VOS. Subchapter 16 is designed to control industrial and commercial sources of VOS.

The Stage II Vapor Recovery requirements are set forth in N.J.A.C. 7:27-16.3. N.J.A.C. 7:27-16.3(f) requires that the transfer of gasoline into vehicular fuel tanks be performed using a vapor control system approved by the Department which is designed, operated and maintained to prevent VOS emissions to the outdoor atmosphere by no less than 95 percent by weight at all facilities and to prevent overfilling of vehicular fuel tanks and spillage. California's experience with certifying vapor control systems demonstrates that vapor control systems capable of preventing VOS emissions to outdoor atmosphere by no less than 95 percent by weight are readily available. N.J.A.C. 7:27-16.3(f) does not apply to gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less. The provisions of N.J.A.C. 7:27-16.3(f) will require that approximately 4,200 facilities be equipped with Stage II Vapor Recovery controls.

Stage II Vapor Recovery systems capture gasoline vapors which are forced out of the vehicle tank and prevent their emission to the atmosphere using vapor balance, vapor aspirator, or vacuum assist control systems. These systems are currently installed on most of the gasoline stations in 26 counties of California and many of the stations in the District of Columbia and St. Louis, Missouri. The most commonly used system is the vapor balance system, which depends on the pressure created by the incoming gasoline to force the vapors through a hose into the storage tank. As the gasoline vapor in the vehicle fuel tank is displaced, it is prevented from escaping into the atmosphere by a flexible rubber "boot" which creates a seal at the vehicle fillneck and dispensing nozzle interface. The effectiveness of this system is dependent on a tight seal between the boot and vehicle fillneck.

The vacuum assist system relies on a vacuum inducing device to draw the gasoline vapors from the vehicle tank. The vacuum at the fillneck and nozzle interface precludes the need for a seal created by the "boot" of the vapor balance system. The vacuum draws a volume of gasoline vapor and ambient air which is greater than the underground storage tank can accommodate. Thus, a form of secondary processing, such as incineration, is necessary.

The vapor aspirator system is a hybrid of the balance of assist systems and is designed so that a small amount of gasoline is routed before metering to an aspirator, which creates a slight vacuum. The vacuum draws vapors into the rubber boot at the fillneck and nozzle interface. The vacuum is small and very little excess air is drawn into the boot, thus eliminating the need for secondary processing.

The Department is proposing a two phase implementation schedule for Stage II Vapor Recovery. N.J.A.C. 7:27-16.3(r) will require that facilities having an average monthly throughput of 40,000 gallons or greater achieve compliance with the provisions of N.J.A.C. 7:27-16.3(f) by December 30, 1988. N.J.A.C. 7:27-16.3(s) will require that facilities having an average monthly throughput of less than 40,000 gallons achieve compliance by December 29, 1989. The two phase implementation schedule will achieve the majority of the air quality benefits available from the Stage II Vapor Recovery program as quickly as is practicable.

The Department has updated the data in this proposal based on a reexamination of the State's gasoline dispensing facility population conducted in 1987. Stations with throughputs of 40,000 gallons per month and greater produce approximately 74 percent of the gasoline vapors emitted during motor vehicle refueling. N.J.A.C. 7:27-16.3(t) and (u) will require that any facility with a monthly throughput greater than 10,000 gallons per month installing a new underground gasoline storage tank after the operative date of these rule amendments install Stage II Vapor Recovery equipment at the same time.

The purpose of the Stage II Vapor Recovery program is to reduce VOS emissions in order to attain the National Ambient Air Quality Standards (NAAQS) for ozone, but there are added benefits. There will be a reduction in the emissions of benzene, a known human carcinogen, and ethylene dibromide and ethylene dichloride, which are regulated by the Department as hazardous air pollutants (see N.J.A.C. 7:27-17). In addition, gasoline which would otherwise be lost as a vapor, will be recovered and recycled. California reports that in 1981, 15 million gallons of gasoline were saved by the Stage II Vapor Recovery program. It is estimated that New Jersey can save over 3.7 million gallons per year when the program is fully implemented.

Social Impact

The proposed revisions to subchapter 16 are designed to control emissions of organic substances which are part of a mixture of pollutants that react to form ozone, a pollutant for which the Federal government has established a NAAQS of 0.12 parts per million. Attainment of this standard will alleviate the effects of exposure to elevated ozone concentrations on the inhabitants and environment of New Jersey.

Exposure to ozone in concentrations greater than the NAAQS causes a significant decrease in the pulmonary functions in humans. Ozone also increases the ability of an inhaled infectious virus to survive within the lung. A reduction of the ambient ozone concentration in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ozone concentrations.

Foliar damage is one of the earliest and most obvious manifestations of ozone injury in the environment. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve foliar damage to plants and thereby increase fruit and grain production.

Research conducted over the past two decades has shown that materials such as rubber, textiles and dyes and paints are susceptible to ozone degradation. The damaging effect of ozone is due to its oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate by oxidation due to high ozone levels than by oxidation due to atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate the increased rate of degradation of natural and man-made materials.

Implementation of the Stage II Vapor Recovery requirements as proposed in N.J.A.C. 7:27-16.3(f) will have several effects in New Jersey. Gasoline vapor control technology at dispensing facilities will substantially reduce the concentration of organic vapors in the atmosphere which react to form ozone. It will also greatly reduce exposure to gasoline vapors and other hazardous air contaminants such as benzene, ethylene dichloride, and ethylene dibromide at gasoline stations for both employee and customers. The new nozzle/hose combination is slightly heavier than conventional equipment and the new system will transfer gasoline at a slower rate. The absence of self-service gas stations in New Jersey will alleviate some of the public acceptance problems with the vapor recovery equipment encountered in areas where Stage II has already been implemented.

Economic Impact

The costs incurred by gasoline dispensing station owners subject to proposed N.J.A.C. 7:27-16.3(f) will depend on the type of Stage II Vapor Recovery system installed, the station throughput, station layout and the number of nozzles and pumps. The costs of the system include new nozzles and hoses, underground plumbing and, for vacuum assist systems, vapor transfer and processing systems. It has been demonstrated in California that Stage II Vapor Recovery systems as proposed in N.J.A.C. 7:27-16.3(f) can significantly reduce gasoline vapor emissions from motor vehicle refueling and that a Stage II program is cost effective.

The capital cost for equipment and installation of a vacuum assist vapor recovery system is usually the highest of the three available systems and is approximately $28,000 for a facility with a monthly throughput of 200,000 gallons. By contrast, a vapor balance system is the least expensive. The approximate capital cost for equipment and installation ranges from $7,000 to $18,000 for facilities with monthly throughputs of 10,000 and 200,000 gallons, respectively. All costs presented in this economic impact statement are in 1985 dollars.

Estimated operating costs for Stage II Vapor Recovery systems include nozzle replacement once per year. The approximate annual operating cost for a vacuum assist vapor recovery system at a facility with a monthly throughput of 200,000 gallons is $1,600. The approximate annual operating cost ranges from $300.00 to $1,600 for facilities which install vapor balance systems and have monthly throughputs of 10,000 and 200,000 gallons, respectively.

The economic impact of expending capital to control a given source of pollution is commonly evaluated in terms of a cost effectiveness ratio. Cost effectiveness is a measure of the economic efficiency of a pollution control technique and may be defined as the net annualized cost for implementation of control technology divided by the pollution emission reduction gained annually. The estimated cost effectiveness of the proposed Stage II program, not including the value of recovered gasoline, is approximately $1.36 to $0.22 per pound of emission controlled for stations with a 10,000 to 200,000 gallon monthly throughput which install vapor balance systems. Vacuum assist systems are expected to cost about $0.29 per pound of emission controlled for stations with monthly throughputs of 200,000 gallons. The average cost effectiveness of the entire Stage II Vapor Recovery program is estimated to be $0.35 per pound of emission controlled, not including the value of recovered gasoline.

The cost incurred by a gasoline dispensing facility is a net cost in the sense that the value of gasoline recovered is subtracted from the total cost. The value of gasoline recovered for an individual facility depends on throughput and the efficiency of the vapor control system. On a statewide basis, the 3.7 million gallons of gasoline recovered is available for resale at a current value of $0.90 per gallon, and has a total value of $3.3 million dollars. This improves the cost effectiveness of the statewide Stage II program from $0.35 per pound of emission controlled to $0.24 per pound of emission controlled. It is assumed that the costs of a vapor control system at a gasoline station will be passed on to the customers as an increase in price. The expected price increase ranges from a minimum of approximately $0.002 per gallon for large stations (200,000 gallons per month) installing a vapor balance system to a maximum of approximately $0.011 per gallon for small stations (10,000 gallons per month) that install a vapor balance system.

Proposed N.J.A.C. 7:27-16.3(r) and (s) providing for a two phase compliance schedule for small stations will not significantly affect the cost effectiveness of the Stage II Vapor Recovery program.

Environmental Impact

The Stage II Vapor Recovery program, when fully implemented, will prevent approximately 13,500 tons of gasoline vapor and 270 tons of benzene from being emitted to the atmosphere each year from vehicle refueling operations based on the volume of gasoline transferred in New Jersey in 1984 and an estimate of the volume of gasoline which will be recovered by Stage II vapor recovery. Seventy-four percent of these annual emission reductions will be achieved by December 30, 1988 from the approximately 2,000 gasoline dispensing facilities having 40,000 gallons or greater monthly throughputs. The remaining 26 percent of the annual reductions will be achieved in the following year from the approximately 2,200 facilities having throughputs less than 40,000 gallons per month and greater than 10,000 gallons per month. The reduction in statewide emissions of VOS provided by the Stage II Vapor Recovery program will provide significant progress towards achieving attainment with the NAAQS for ozone.

Regulatory Flexibility Statement

The proposed amendments will apply to gasoline dispensing facilities that dispense more than 10,000 gallons of gasoline per month. Based on information obtained in the 1985 National Petroleum News Factbook, approximately 62 percent of gasoline dispensing facilities are owned and operated by major oil and semi-major oil companies. If this percentage is correct as applied to the station population in New Jersey, approximately 38 percent or 1600 facilities would be considered "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 986, c.169).

In order to comply with these proposed amendments, gasoline dispensing facilities will have to comply with the requirements as set forth in the Summary above. In doing so, it is likely that gasoline dispensing facilities will need to engage construction contractors and equipment distributors. It is expected that the initial capital costs could range from $7,000 to $31,000 with annual costs to compliance ranging from $300.00 to $1,600.

In developing this proposal, the Department exempted the approximately 2,000 facilities with a throughput of 10,000 gallons or less per month because the quantity of emissions reduced would not be sufficient to justify the capital cost of the vapor recovery equipment at this time. The majority of the facilities falling within this exemption are small businesses. Any larger exemption would endanger the environment, public health and public safety and hinder the State's efforts to achieve attainment of the ozone standard. Therefore, no larger exemption from coverage is provided.

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

7:27-16.1 Definitions

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

. . .

"Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

. . .

7:27-16.3 Transfer operations

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

(f) Unless in compliance with (g), (h), (r), (s), (t), and (u) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent VOS emissions to the outdoor atmosphere by no less than 95 percent by weight at all gasoline dispensing facilities except those facilities exempted in (g) below; and

2. To prevent overfilling and spillage.

(g) The provisions of (f) above shall not apply to a gasoline dispensing facility with an average monthly throughput of 10,000 gallons (37,850 liters) or less or to any gasoline dispensing devices at a marina used exclusively for refueling of marine vehicles.

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. The average monthly throughput shall be based on the average of the monthly throughputs between September 1, 1986 and August 31, 1987; and

2. Documentation of the monthly throughput shall be made available upon request by the Department,

Redesignate existing (f)-(g) as **(i)-(j)** (No change in text.)

[(h)](**k**) No person shall cause, suffer, allow, or permit VOS to be emitted into the outdoor atmosphere during a transfer of gasoline, subject to the provisions of (c), (d), [and] (e), **and (f)** above, from leaking components of vapor control systems or delivery vessels being loaded or unloaded if:

1.-2. (No change.)

Redesignate existing (i)-(n) as **(l)-(q)** (No change in text.)

(r) Any person subject to the provisions of (f) above and having an average monthly throughput of 40,000 gallons (151,400 liters) or greater shall comply with the following schedules:

1. By March 21, 1988, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. By June 21, 1988, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. By December 30, 1988, compliance with (f) above shall be achieved.

(s) Any person subject to the provisions of (f) above and having an average monthly throughput of less than 40,000 gallons (151,400 liters) shall comply with the following schedules:

1. By November 1, 1988, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. By March 1, 1989, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. By December 29, 1989, compliance with (f) shall be achieved.

(t) Notwithstanding the provisions of (r) above, any existing gasoline dispensing facility with an average monthly throughput of greater than 10,000 gallons replacing an underground gasoline storage tank after the operative date of this subsection shall, prior to using that tank for dispensing gasoline, install equipment meeting the requirements of (f) above.

(u) Notwithstanding the provisions of (r) above, any new gasoline dispensing facility which begins the installation of an underground gasoline storage tank after the operative date of this subsection shall install equipment meeting the requirements of (f) above prior to the use of that tank for dispensing gasoline.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Public Employee Occupational Safety and Health Procedural Standards for Public Employees

Proposed New Rules: N.J.A.C. 12:110

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

Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-32.

Proposal Number: PRN 1987-388.

Submit comments by December 2, 1987 to:
William J. Clark, Assistant Commissioner
Division of Workplace Standards
New Jersey Department of Labor
CN 054
Trenton, NJ 08625-0054

The agency proposal follows:

Summary

N.J.S.A. 34:6A-32 entitled Regulations for enforcement and administration of the act, provides that the Commissioner of Labor, in consultation with the Commissioner of Health, and the Commissioner of Community Affairs, and with the advice and consent of the Public Employees Occupational Safety and Health Advisory Board, shall promulgate "all regulations which he deems necessary for the proper administration and enforcement of the Act." These proposed new rules comprise such administrative rules. These rules instruct the compliance officers, public employers and public employees in New Jersey in the steps necessary to achieve the goals of safe and healthful work environments.

The proposed new rules, N.J.A.C. 12:110, are divided into eight subchapters. Subchapter 1 covers general provisions; Subchapter 2 addresses definitions; Subchapter 3 is administration; Subchapter 4 addresses inspections, orders to comply and penalties; Subchapter 5 addresses recording and reporting occupational injuries and illnesses; Subchapter 6 covers applications for variances and hearings before the Commissioner; Subchapter 7 addresses discrimination against employees and describes methods for protecting the rights of employees; and the final Subchapter 8, makes references to the availability of standards and publications referred to in this chapter.

Social Impact

The proposed new rules will furnish required guidance to those charged with the enforcement and administration of the New Jersey Public Employees Occupational Safety and Health Act in the performance of their duties. The direction of these rules will assist all enforcement officers to perform in a uniform and standard manner. The rules establish procedures that can be understood by any public employer, and will prevent erratic individual actions and minimize contentions of discrimination or persecution. In addition to a function as a compliance manual for compliance officers administering the program, these rules provide detailed direction to the public employer to assist them in achieving compliance with the provisions of the Act.

Economic Impact

These rules will have a substantial economic impact on the public employer. The public employer is charged with providing each of his employees with employment and a place of employment which are free from recognized hazards. Each employer will have to provide a staff to carry out the many responsibilities imposed by these rules and the Act. Inspections must be made to insure that there is compliance with the adopted safety and health standards. There is a substantial program in the recording and reporting of occupational injuries and illnesses. Staff will have to be provided to do this work. Provision is made in the rules for variances and protection of employees against discrimination. Each of these issues are administrative tasks that must be performed that involve additional manpower and time.

Regulatory Flexibility Statement

Since only public employers in the State of New Jersey will be affected by the proposed new rules, the proposal does not impact small businesses and a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows.

CHAPTER 110
PROCEDURAL STANDARDS FOR
PUBLIC EMPLOYEES

SUBCHAPTER 1. GENERAL PROVISIONS

12:110-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:110, Procedural Standards for Public Employees.

12:110-1.2 Authority

These rules are promulgated pursuant to the authority of the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

12:110-1.3 Purpose

The purpose of this chapter is to provide rules to administer basic program elements to achieve a safe and healthy place of employment for the public employee.

12:110-1.4 Scope

This chapter shall apply to employers, employees, and agencies as described in the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

12:110-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:110-8.

12:110-1.6 Construction

(a) These rules shall be construed to secure a just determination of every issue arising under the Act and the rules promulgated under the Act which shall be as expeditious and inexpensive as possible under the circumstances.

(b) Words importing the singular number may extend and be applied to the plural and vice versa.

(c) Words importing the masculine gender may be applied to the feminine gender.

12:110-1.7 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:110-2.1 Definitions

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

"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

"Agency" means:

1. An executive department, or any employing unit or authority of the executive branch of the State, or any department, division, bureau, board, council, employer or authority of the State; except any bi-State agency; or

2. Any county, municipality, or any department, division, bureau, board, council, employer or authority of any county or municipality, or any school district or special purpose district created pursuant to law.

"Approved" means acceptable to the Commissioner of Labor, Commissioner of Health or the Commissioner of Community Affairs, as applicable.

"Commissioner" means the Commissioner of the New Jersey Department of Labor or his designee.

"Commissioner of Community Affairs" means the Commissioner of the New Jersey Department of Community Affairs or his designee.

"Commissioner of Health" means the Commissioner of the New Jersey Department of Health or his designee.

"Compliance Officer" means the person authorized by:

1. The Commissioner of Labor to conduct safety inspections, or

2. The Commissioner of Health to conduct health inspections, or

3. The Commissioner of Community Affairs to conduct building, structural or fire safety inspections.

"Discrimination" means any act of restraint, interference, or coercion against an employee for exercising his or her rights under the Act and this chapter or for participating in the agency's safety and health program.

"Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in the act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the act.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State, except any bistate agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"Employee representative" means a "representative" as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

"Establishment" means a single physical location where business is conducted or where services or operations are performed, such as a field activity, regional office, area office, installation, or facility.

"First aid" means any one-time treatment, and any follow-up visit for the purpose of observation, of minor wounds, scratches, cuts, burns, or splinters, which do not ordinarily require medical care. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

"Imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm.

"Inspection" means any inspection of an employer's workplace, establishment, construction site, or other area or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint, any reinspection, follow-up inspection, accident investigation or other inspection conducted under the Act.

"Lost workdays" means the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

"Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional person.

"Program Chief" means the officer regularly or temporarily in charge and designated by the Commissioner of Labor or the Commissioner of Health or the Commissioner of Community Affairs to administer the Public Employee Occupational Safety and Health Program for their State Agency in accordance with their statutory obligations under the Act.

"Program Director" means the officer regularly or temporarily in charge designated by the Commissioner of Labor to administer the public employee occupational safety and health program or any other person who is authorized to act for such officer. The latter authorization may include general delegation of the authority of the Program Director for limited purposes.

"Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness; or

2. Lost workday cases, other than fatalities, that result in lost workdays; or

3. Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

"Review Commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42.

"Serious" as used in "serious hazard," "serious violation" or "serious condition" means a hazard, violation or condition such that there is a substantial probability that death or serious physical harm could result.

"Serious injury" means any injury which would require treatment beyond first aid.

"Serve" means forwarding the document by first class mail, return receipt requested, postage prepaid, to the last known address of the employee, employer or employee representative as appropriate.

"Shall" means a mandatory requirement.

"Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, Federal holidays, or State holidays. For the purpose of notice in computing working days, the day of receipt of any notice shall not be included, and the last day of the working days shall be included.

"Workplace" means a place where public employees are assigned to work.

SUBCHAPTER 3. ADMINISTRATION

12:110-3.1 Scope of subchapter

This subchapter sets forth the responsibilities and rights for the procedures developed for the safety and health programs under the Act.

12:110-3.2 Program direction

The Commissioner, with the advice of the Commissioner of Health or the Commissioner of Community Affairs, as the case may be, shall be the administrator of this safety and health program set forth in this chapter under the Act.

12:110-3.3 Duties of employer

(a) Every employer shall provide each of his employees with employment and a place of employment which are free from recognized hazards which may cause serious injury or death to his employees.

(b) Every employer shall comply with the occupational safety and health standards promulgated under the Act.

(c) Every employer, in the absence of existing standards, shall take all prudent measures to comply with the written recommendations made by the Commissioner, the Commissioner of Health or the Commissioner of Community Affairs, as the case may be, to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health or safety.

12:110-3.4 Employee responsibilities and rights

(a) Every public employee shall comply with the occupational safety and health standards and all regulations promulgated under the Act which are applicable to his own actions and conduct.

(b) Each employee shall comply with all orders issued by the agency in accordance with the Act and with this chapter which are applicable to his own actions and conduct.

(c) Employees shall use safety equipment, personal protective equipment, and other devices and procedures provided or directed by the agency which have been deemed necessary for their protection.

(d) Employees or employee representaives shall have the right to report unsafe and unhealthful working conditions to appropriate officials.

12:110-3.5 Dissemination of program information

(a) Copies of the Act, program elements published in this chapter, details of the agency's occupational safety and health program, and applicable safety and health standards shall be made available by the employer upon request to employees or employee representatives for review.

(b) A copy of the agency's written occupational safety and health program applicable to the establishment shall be made available to each supervisor and to employee representatives.

(c) Each agency shall post conspicuously in each establishment, and keep posted, a poster informing employees of the provisions of the Act and the agency occupational safety and health program under this chapter.

1. If the agency needs assistance and advice on the content and development of its poster, such may be requested of the Commissioner prior to printing and distribution.

(d) Agency heads shall promote employee awareness of occupational safety and health matters through their ordinary information channels, such as newsletters, bulletins, handbooks and employee orientations.

SUBCHAPTER 4. INSPECTIONS, ORDERS TO COMPLY, AND PENALTIES

12:110-4.1 Scope of subchapter

This subchapter establishes procedural rules on inspections, orders to comply, and penalties.

12:110-4.2 Posting of notice and availability of Act and rules

(a) Each employer shall post and keep posted a notice or notices, informing employees of the protections and obligations provided for in the Act and that for assistance and information, including copies of the Act and, of specific safety and health standards, employees should contact the employer or the New Jersey Department of Labor.

1. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted.

2. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(b) Copies of the Act and all rules shall be available at the Office of Division of Workplace Standards of New Jersey Department of Labor. The employer shall obtain copies of these materials and make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed within three working days of the day the request is made.

12:110-4.3 Authority for inspection

(a) The Compliance Officer is authorized to enter without delay and at reasonable times any establishment or workplace of an agency where work is performed by an employee where there is reason to believe that a violation of a safety or health standard exists and to conduct such investigations as he may deem necessary.

(b) The Compliance Officer shall inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein.

(c) The Compliance Officer is authorized to question privately any employer or employee; and to review records required by the Act and this subchapter, and other records which are directly related to the purpose of the inspection.

(d) In the interests of State security prior to inspecting areas containing classified information, the Compliance Officer shall obtain the appropriate security clearance.

12:110-4.4 Advance notice of inspection

(a) Advance notice of inspections shall not be given except in the following situations:

1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

3. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

4. In other circumstances where the Program Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in (a) above, advance notice of inspections may be given only if authorized by the Program Chief, except in cases of apparent imminent danger advance notice may be given by the Compliance Officer without such authorization if the Program Director is not immediately available. When advance notice is given and where the identity of the employee representative is known, the Compliance Officer, shall immediately inform the employee representative of the inspection.

(c) The employer shall furnish the Compliance Officer with the identity of the authorized representative of employees and with such other information as is necessary to enable the Compliance Officer promptly to inform such representative of the inspection. Where there is no authorized employee representative, the Compliance Officer shall advise a reasonable number of employees of the inspection.

12:110-4.5 Conduct of inspections

(a) Subject to the provisions of N.J.A.C. 12:110-4.3, inspections shall take place at such times and in such places of employment as the Program Chief or the Compliance Officer may direct.

(b) At the beginning of an inspection there shall be an opening conference where the Compliance Officer shall present his credentials to the employer in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in N.J.A.C. 12:110-4.3 which he wishes to review. However, such designation of records shall not preclude access to additional records specified in N.J.A.C. 12:110-4.3.

(c) A Compliance Officer shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection. The Compliance Officer shall employ other reasonable investigative techniques, such as personal dosimetry devices, and question privately any employer, owner, operator, agent or employee of an establishment.

1. In taking photographs and samples, the Compliance Officer shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. A Compliance Officer shall comply with all employer safety and health rules and practices at the establishment being inspected, and he shall wear and use appropriate protective clothing and equipment.

(d) The inspection shall be conducted in such a manner as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, there shall be a closing conference. During the closing conference, the Compliance Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Officer any pertinent information regarding conditions in the workplace. The Compliance Officer shall advise the employee and employer of their respective rights related to the inspection.

(f) A complaining party and employee representative shall have the opportunity to be present at and participate in all phases of the inspection from the opening conference through the closing conference. If the employer, the complaining party or the employee representative requests separate opening or closing conferences, or both, written summaries of these conferences shall be provided by the Compliance Officer to all parties affected.

12:110-4.6 Representation at inspections

(a) A Compliance Officer shall be in charge of inspections and questioning of persons. A representative of the employer, complaining party, and a representative authorized by his employees shall be given an opportunity to accompany the Compliance Officer during the physical inspection of any workplace for the purpose of aiding such inspection.

1. A Compliance Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him when he determines that an additional representative will further aid in the inspection. Another employer and employee representative may accompany the Compliance Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

(b) For the purpose of this section, a Compliance Officer shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees to assist in the inspection.

1. If there is no authorized representative of employees, or if the Compliance Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative authorized by employees shall be a fellow employee or employee representative.

1. If, in the judgment of the Compliance Officer, good cause has been shown why accompaniment by a third party who is not an employee or employee representative, such as an industrial hygienist or a safety engineer, is reasonably necessary to conduct an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Officer during the inspection.

(d) A Compliance Officer is authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

1. With regard to information classified by an agency in the interest of State security, only persons authorized to have access to such information may accompany a Compliance Officers in areas containing such information.

12:110-4.7 Consultation with employees

(a) A Compliance Officer may consult with employees concerning matters of occupational safety or health to the extent necessary for the conduct of an effective and thorough inspection.

(b) During the course of an inspection, an employee shall be afforded the opportunity to bring to the attention of the Compliance Officer any apparent violation of the Act or the rules under the Act which he has reason to believe exists in the workplace.

(c) Employee interviews shall be conducted in private. Where such inquiry cannot be conveniently conducted at the workplace, the Compliance Officer shall arrange for private interviews at a site other than the workplace.

12:110-4.8 Complaints by employees

(a) Any employee or representative of employees who believes that a violation of the Act exists in the workplace where such employee is employed may request an inspection by giving notice of the alleged violation to the Program Chief or to a Compliance Officer.

1. Any such notice shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees.

2. A copy of the notice shall be provided the employer or his agent by the Program Chief or Compliance Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein, shall not appear in such copy or on any record published, released, or made available by the New Jersey Department of Labor.

(b) The name of the person giving the notice as described in (a) above and the names of the individual employees as described in (a) above shall not appear in the record published, released, or made available by the New Jersey Department of Labor, unless specifically requested by such persons.

(c) If upon receipt of the notice in (a) above the Program Chief determines that the complaint meets the requirements set forth in (a) above, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violations exists.

1. Inspections under this section shall not be limited to matters referred to in the complaint.

2. Such investigation, when requiring an on-site inspection, shall be initiated within 24 hours for imminent danger situations, within three working days for potentially serious conditions, and within 10 working days for other safety and health risk conditions.

(b) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Compliance Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with (a) above.

12:110-4.9 Inspection not warranted and informal review

(a) If the Program Chief determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under N.J.A.C. 12:110-4.8, he shall notify the complaining party in writing of such determination.

1. The complaining party may obtain review of such determination by submitting a written statement of position with the Program Director and, at the same time, providing the employer with a copy of such statement by certified mail.

2. The employer may submit an opposing written statement of position with the Commissioner and, at the same time, provide the complaining party with a copy of such statement by certified mail.

3. Upon the request of the complaining party or the employer, the Commissioner at his discretion, may hold an informal conference in which the complaining party and the employer may speak their views.

4. After considering all written and spoken views presented, the Commissioner shall affirm, modify, or reverse the determination of the Program Director and furnish the complaining party and the employer written notification of his decision and the reasons therefor. The decision of the Commissioner shall be final and not subject to further review.

(b) If the Program Chief determines that an inspection is not warranted because the requirements of N.J.A.C. 12:110-4.8(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of new complaint meeting the requirements of N.J.A.C. 12:110-4.8(a).

(c) All procedures described in this section involving health issues shall be conducted in consultation with the Commissioner of Health.

(d) All procedures described in this section involving building, structural or fire safety issues shall be conducted in consultation with the Commissioner of Community Affairs.

12:110-4.10 Imminent danger

(a) Whenever, and as soon as a Compliance Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger. The Compliance Officer shall also inform the affected employees and employers that he is recommending a civil action to abate such conditions or practices and for other appropriate relief in accordance with the Act.

(b) Any order issued with respect to an imminent danger may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists.

12:110-4.11 Order to comply and penalties

(a) If the Commissioner, determines that an employer has violated a provision of the Act or a safety or health standard or any rules promulgated under the Act, he shall, with reasonable promptness, issue to the employer a written order to comply which shall describe:

1. The nature of the violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated;

2. The sanction therefore, where appropriate, and;

3. Shall fix a reasonable time for compliance.

(b) Determinations regarding health standards, and written orders issued pursuant thereto, shall be made in consultation with the Commissioner of Health. The Commissioner of Health shall certify to the Commissioner of Labor that a violation exists and the nature of the violation in order for the Commissioner of Labor to issue an order to comply.

(c) Where the Commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof at or near each location of the violation cited in the order so that it is clearly visible to affected employees. The Commissioner shall make such order available to employee representatives and affected employees.

(d) If the time for compliance with an order of the Commissioner issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, within its power and financial resources, the employer shall be liable to a penalty of not more than $1,000 per day to be collected in a civil action commenced by the Commissioner by a summary proceeding under The Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. in the Superior Court, county district court, or a municipal court, all of which shall have jurisdiction to enforce the Penalty Enforcement Law in connection with the Act.

1. If the violations are of a continuing nature, each day during which the violation continues after the date given for compliance in accordance with the order of the department shall constitute an additional separate and distinct offense.

(e) The Commissioner is authorized to compromise and settle any claim for a penalty under this section in such amount as, in the discretion of the Commissioner, may appear appropriate and equitable under all of the circumstances, including a rebate of any such penalty paid up to 90 per cent thereof where such person satisfies the Commissioner within one year or such other period as the Commissioner may deem reasonable that such violation had been eliminated or removed or that such order or injunction had been met or satisfied, as the case may be.

1. In any claim involving investigations conducted by the Department of Health, the Commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health.

12:110-4.12 Employer contests before the Review Commission

(a) Any employer to whom an order to comply or notice of proposed penalty has been issued may notify the Program Director in writing that he intends to contest such order or proposed penalty before the Review Commission.

(b) Such notice of intention to contest in (a) above shall be postmarked within 15 working days of the receipt by the employer of the order or the notice of proposed penalty.

(c) Every notice of intention to contest shall specify whether it is directed to the order to comply or to the proposed penalty, or both.

(d) The Program Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Review Commission.

12:110-4.13 Failure to correct violation for which an order to comply has been issued

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which an order to comply has been issued within the period permitted for its correction, the Program Director shall, if appropriate, consult with the Attorney General, and he shall notify the employer by certified mail or by personal service from the Compliance Officer of such failure and of the penalty proposed under N.J.S.A. 34:6A-41(d) by reason of such failure.

1. In the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties, the period for the correction of a violation for which an order to comply has been issued shall not begin to run until the entry of a final order of the Review Commission.

(b) Any employer receiving a notification of failure to correct a violation and of proposed penalty may notify the Program Director in writing that he intends to contest such notification before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notification of failure, and of proposed penalty.

1. The Program Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedures prescribed by the Commission.

(c) Each notification of failure to correct a violation and of proposed penalty shall state that it shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notification, the employer notifies the Program Director in writing that he intends to contest the proposed penalty before the Review Commission.

12:110-4.14 Informal conferences

(a) At the request of an affected employer, employee, or representative of employees, the Commissioner may hold an informal conference for the purpose of discussing any issues raised by an inspection, order to comply, notice of proposed penalty, or notice of intention to contest.

(b) The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the Review Commission.

(c) If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate.

(d) If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate.

(e) Any party may be represented by relevant third party at such conference.

(f) No such conference or request for such conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest as prescribed in N.J.A.C. 12:110-4.12.

SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

12:110-5.1 Scope of Subchapter

This subchapter establishes procedural rules for recording and reporting occupational injuries and illnesses of public employees.

12:110-5.2 Log and summary of occupational injuries and illnesses

(a) Each employer shall, except as provided in (b) below, maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment and enter each recordable injury and illness on the log and summary as early as practicable but no later than six working days after receiving information that a recordable injury or illness has occurred.

1. For these purposes form NJOSH No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used.

2. The log and summary shall be completed in the detail provided in the form and instruction on form NJOSH No. 200.

(b) Any employer may maintain the log of occupational injuries and illnesses, in (a) above, at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

1. There is available at the place where the log is maintained sufficient information to complete the log to a date within six working days after receiving information that a recordable case has occurred, as required by (a) above.

2. At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days of the date the log is inspected.

12:110-5.3 Period covered

Records shall be established on a calendar year basis.

12:110-5.4 Supplementary record

(a) In addition to the log of occupational injuries and illnesses required under N.J.A.C. 12:110-5.2, each employer shall have available for inspection at each establishment no later than the start of the second work day after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment.

1. The supplementary record shall be completed in the detail prescribed in the instructions required by L & I 1, Employer's First Report of Accidental Injury or Occupational Illness.

(b) The L & I 1, Employer's First Report of Accidental Injury or Occupational Illness shall be acceptable as the supplementary record as required by (a) above.

(c) Worker's compensation, insurance, or other reports are acceptable alternative records to (a) above, if they contain the information required by N.J.A.C. 12:235, Rules of the Division of Worker's Compensation.

12:110-5.5 Annual summary

(a) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment, using form NJOSH No. 200. This summary shall consist of a copy of the year's totals from the Form NJOSH No. 200 and the following information from that form:

1. Calendar year covered;
2. Agency name;
3. Establishment name and address;
4. Signature of certifier and his title, and,
5. The date.
6. If no injuries or illnesses occurred in the year, zeros shall be entered on the totals line.

(b) The summary in (a) above shall be completed by February 1 for the previous calendar year.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the summary is true and complete.

(d) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under N.J.A.C. 12:110-4.2(a). The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1.

1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who is paid during that month.

2. For multi-establishment employers where operations have closed down in some establishments during the calendar year, the employers need not post summaries for those establishments.

(e) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to N.J.S.A. 34:6A-41.

12:110-5.6 Retention of records

Records required by N.J.A.C. 12:110-5.2, 5.4 and 5.5 shall be retained in each establishment for five years following the end of the year to which they relate.

12:110-5.7 Access to records

(a) Each employer shall provide, upon request, records required by N.J.A.C. 12:110-5.2, 5.4 and 5.5, for inspection and copying by any representative of the Commissioner for the purpose of carrying out the provisions of the Act, or by any representative of a State accorded jurisdiction for occupational safety and health inspections or for statistical compilation under N.J.S.A. 34:6A-40.

(b) The log and summary of all recordable occupational injuries and illnesses (NJOSH No. 200) in N.J.A.C. 12:110-5.2, the supplementary record of N.J.A.C. 12:110-5.4, and the annual summary of N.J.A.C. 12:110-5.5 shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(c) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(d) Access to the log provided under this section shall pertain to all logs retained under N.J.A.C. 12:110-5.6.

12:110-5.8 Reporting of fatality, injury or illness

(a) As promptly as possible but not later than the start of the second work day, the employer shall report in writing:

1. Every accidental injury or illness which causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or

2. Every accidental injury or illness which requires medical treatment beyond ordinary first aid; or

3. An occurrence of an occupational illness whether or not time is lost.

(b) Every fatality or serious injury shall be reported, orally and in writing, immediately to the Program Director. The reporting may be by telephone or telegraph.

(c) The written report required by (a) and (b) above shall mean the execution of the Employer's First Report of Accidental Injury or Occupational Disease.

(d) The Program Director may require such additional reports, in writing or otherwise, as he deems necessary, concerning the fatality, injury or illness.

12:110-5.9 Falsification, or failure to keep records or reports

Failure to maintain records or file reports required by this subchapter, or in the necessary detail required by forms and instructions issued under this subchapter, may result in the issuance of citations and assessment of penalties as provided for in N.J.S.A. 34:6A-41.

12:110-5.10 Change of agency

(a) Where an establishment is assigned to another agency, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he was assigned to such establishment.

(b) In the case of any change in agency, the employer shall preserve those records, if any, kept by the agency previously overseeing that establishment which are required to be kept under this subchapter. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under N.J.A.C. 12:110-5.6.

12:110-5.11 Employees not in fixed establishments

(a) Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of N.J.A.C. 12:110-5.2, 5.4 and 5.6 with respect to such employees by:

1. Maintaining the required records in an established central place for each operation or group of operations which is subject to common supervision;

2. Having the address and telephone number of the central place available at each worksite; and

3. Having personnel available at the central place during normal business hours to provide by telephone and by mail information from the records maintained.

12:110-5.12 Duties of employers

Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return the form in accordance with the aforesaid instruction.

SUBCHAPTER 6. VARIANCES

12:110-6.1 Scope of subchapter

This subchapter establishes rules of practice for administrative proceedings to grant variances under N.J.S.A. 34:6A-39.

12:110-6.2 Effect of variances

All variances from a standard which are granted pursuant to N.J.S.A. 34:6A-39 shall have only future effect. In his discretion, the Commissioner may decline to entertain an application for a variance on a subject or issue when an order has been issued to the employer involved and a proceeding on the order or a related issue concerning a proposed penalty pending before the Review Commission.

12:110-6.3 Public notice of a granted variance

Every final action granting a variance shall be published. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

12:110-6.4 Form of documents for variance

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings for a variance. Any applications and other papers shall be clearly legible.

(b) An original and two copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies, copies or photocopies are acceptable copies.

(c) Each application or other paper which is filed in proceedings for a variance shall be signed by the person filing the same or by his attorney or other authorized representative.

12:110-6.5 Temporary variance

(a) Pursuant to N.J.S.A. 34:6A-3.9, any employer, or class of employers, may request a temporary variance from a standard, or portion thereof, and may file a written application containing the information specified in (b) below with the:

Commissioner of Labor
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

(b) An application filed pursuant to (a) above shall include:

1. The name and address of the applicant;

2. The address of the place or places of employment involved;

3. A citation of the standard or portion thereof from which the applicant seeks a temporary variance;

4. A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

5. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

6. A statement of when the applicant expects to comply with the standard and the steps taken and intends to take, with specific dates where appropriate, to come into compliance with the standards;

7. A statement of the facts the applicant would list to establish that:

i. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date

ii. The applicant is taking all available steps to safeguard his employees against the hazards covered by the standard; and

iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

8. A request for a hearing;

9. A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting the statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

10. A description of how affected employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) The Commissioner may issue an interim order granting relief pending the hearing.

(d) A copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

12:110-6.6 Permanent variance

(a) Pursuant to N.J.S.A. 34:6A-39, any employer, or class of employers, may request a permanent variance and may file a written application containing the informing specified in (b) below with the:

Commissioner of Labor
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

(b) An application filed pursuant to (a) above shall include:

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
4. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;
5. A certification that the applicant has informed his employees of the application by:

i. Giving a copy of the explanation to their authorized representative;
ii. Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and
iii. By other appropriate means;

6. Any request for a hearing; and
7. A description of how employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) The Commissioner may issue an interim order granting relief pending the hearing.

(d) A copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

12:110-6.7 Modification, revocation and renewal of orders

(a) An affected employer or an affected employee may apply in writing to the Commissioner for a modification or revocation of an order issued under N.J.S.A. 34:6A-39. The application shall contain:

1. The name and address of the applicant;
2. A description of the relief which is sought;
3. A statement setting forth with particularity the grounds for relief;
4. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

i. Giving a copy thereof to their authorized representative;
ii. Posting at the place where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
iii. Other appropriate means.

5. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
6. Any request for a hearing.

(b) The Commissioner may, on his own motion, proceed to modify or revoke an order issued under N.J.S.A. 34:6A-39. In such event, the Commissioner shall cause to be published a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short statement of:

1. How the proposed modification or revocation would affect the requesting party; and
2. What the requesting party would seek to show on the subjects or issues involved.

(c) Any final order issued under N.J.S.A. 34:6A-39 may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

(d) Any final order issued under N.J.S.A. 34:6A-39 may be modified or revoked upon application by an employer, any employee, or by the Commissioner on his own motion, at any time after six months from its issuance.

12:110-6.8 Action on application

(a) If an application filed pursuant to N.J.A.C. 12:110-6.5, 6.6 or 6.7 does not conform to the provisions required in the applicable section, the Commissioner may deny the application.

(b) Prompt notice of the denial of an application shall be given to the applicant.

1. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
2. A denial of an application pursuant to this section shall be without prejudice to the filing of another application.

(c) If an application has not been denied pursuant to (a) above, the Commissioner shall cause to be published a notice of the filing of the application.

(d) A notice of the filing of an application shall include:

1. The terms or an accurate summary of the application;
2. A reference to the Act under which the application has been filed;
3. An invitation to interested persons to submit, within a stated period of time, written data, views, or arguments regarding the application; and
4. Information to affected employers and employees covered in the application of any right to request a hearing on the application.

12:110-6.9 Requests for hearing on application

(a) Within the time allowed by a notice of the filing of an application, any affected employer or employee, may file with the Commissioner, an original and four copies, a request for a hearing on the application.

(b) A request for a hearing filed pursuant to (a) above shall include:

1. A concise statement of facts showing how the employer or employee would be affected by the relief sought;
2. A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
3. Any views or arguments on any issue of fact or law presented.

12:110-6.10 Consolidation of proceedings

The Commissioner, on his own motion or that of any party, may consolidate or simultaneously consider two or more proceedings which involve the same or closely related issues.

12:110-6.11 Hearings

Hearings for an order to grant a variance shall be pursuant to N.J.S.A. 34:6A-39; N.J.S.A. 52:14B-1 et seq., Administrative Procedure Act; N.J.S.A. 52:14F-1 et seq., and N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES

12:110-7.1 Scope of subchapter

This subchapter establishes the procedural rules governing a public employee's allegations of discrimination by a public employer or person.

12:110-7.2 Employer responsibility and employee rights

(a) No employer shall discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Instituted or caused to be instituted any proceeding under or related to the Act;
3. Testified or is about to testify in any proceeding under or related to the Act; or
4. Exercised on his own behalf or on behalf of others any right afforded by the Act.

(b) Any employee who believes that he has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first has knowledge such violation did occur, bring an action in the Superior Court against the person alleged to have violated the provisions of this section. In any such action, the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay.

12:110-7.3 Persons prohibited from discriminating

(a) No person shall discharge or in any manner discriminate against any employee because the employee has exercised rights under the Act or these rules.

(b) The prohibitions of the Act are not limited to actions taken by employers against their own employees.

(c) A person may be chargeable with an act of discrimination against an employee of another person. The Act extends to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee.

12:110-7.4 Unprotected activities

(a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of the Act apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or disciplines for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(b) To establish a violation of the Act, the employee's engagement in protected activity need not be the sole consideration behind the discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place but for engagement in protected activity, the Act has been violated. Ultimately, the issue as to whether a discharge was because of protected activity shall be determined on the basis of the facts in the particular case.

12:110-7.5 Complaints under the Act

(a) Discharge of, or discrimination against, an employee because the employee has filed a complaint under or related to the Act is prohibited by the Act.

1. For example, such complaint includes, but is not limited to, an employee request for inspection.

(b) Complaints made to State or local agencies regarding occupational safety and health conditions shall relate to the Act. Such complaints shall relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Complaints about occupational safety and health matters made to employers, if made in good faith, shall relate to the Act, and an employee shall be protected against discharge or discrimination caused by a complaint to the employer.

12:110-7.6 Proceedings under the Act

(a) Discharge of, or discrimination against, any employee because the employee has instituted or caused to be instituted any proceeding under or related to the Act is prohibited by the Act.

1. Examples of proceedings which could arise specifically under the Act include inspections of worksites, employee initiation of proceedings for promulgation of an occupational safety and health standard, employee application for modification of revocation of a variance, and employee judicial challenge to a standard.

(b) An employee need not directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

12:110-7.7 Testimony

(a) Discharge of, or discrimination against, any employee because the employee has testified or is about to testify in proceedings under or related to the Act is prohibited by the Act.

(b) The protection in (a) above is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but extends to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions.

(c) If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he shall be protected against discrimination resulting from such testimony.

12:110-7.8 Exercise of any right afforded by the Act

(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, the Act shall protect employees from discrimination occurring because of the exercise of any right afforded by the Act.

1. Certain rights are explicitly provided in the Act.

i. For example, there is a right to participate as a party in enforcement proceedings.

2. Certain other rights exist by necessary implication.

i. For example, employees may request information from the Public Employee Occupation Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act.

ii. Employees interviewed by designees of the Commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b) The Act does not afford employees the right to walk off the job because of potential unsafe conditions at the workplace.

1. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have the opportunity to request inspection of the workplace, or to seek the assistance of other public agencies which have responsibility in the field of safety and health.

2. An employer would not ordinarily be in violation of the Act by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety and health hazards.

3. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination.

i. The condition causing the employee's apprehension of death or injury shall be of such a nature that a reasonable person under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

ii. The employee, where possible, shall also have sought from his employer, and been unable to obtain a correction of the dangerous condition.

12:110-7.9 Filing of complaint for discrimination

The filing of a complaint for discrimination shall be in accordance with N.J.S.A. 34:6A-45.

12:110-7.10 Employee refusal to comply with rules

(a) Employees who refuse to comply with occupational safety and health standards or valid safety or health rules implemented by the employer in furtherance of the Act are not considered to be exercising any rights afforded by the Act.

(b) Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules, shall not ordinarily be regarded as discriminatory action prohibited by the Act. This situation shall be distinguished from refusals to work.

SUBCHAPTER 8. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:110-8.1 Documents referred to by reference

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

1. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

12:110-8.2 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
Station Plaza—Bldg. 4
East State St. & South Clinton Avenue
Trenton, New Jersey

12:110-8.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed in N.J.A.C. 12:110-8.1

N.J.S.A. New Jersey Statutes Annotated
Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, New Jersey 08625-0386

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS
Hearing Aid Dispensers Examiners Committee
Hearing Aid Dispensers
Proposed Repeal: N.J.A.C. 13:35-8.1 to 13:35-8.25
Proposed New Rules: N.J.A.C. 13:35-8.1 to 13:35-8.16

Authorized By: Hearing Aid Dispensers Examining Committee, William O. Jones, Ed.D., President.

Authority: N.J.S.A. 45:9A-7.

Proposal Number: PRN 1987-443.

Submit comments by December 2, 1987 to:
William O. Jones, Ed.D., President
Hearing Aid Dispensers Examining Committee
28 West State Street
Trenton, New Jersey, New Jersey 08608

The agency proposal follows:

Summary

This proposal represents a major reorganization of the current rules governing hearing aid dispensers. While there are several substantive changes between this proposal and the current rule, the major change has been in entire design. Sections N.J.A.C. 13:35-8.4 to 8.22 of the current rule which address the complaint and hearing procedure have been eliminated because they have been superseded by N.J.S.A. 45:1-14 et seq. and N.J.A.C. 1:1-1 et seq. (rules governing contested cases). The proposed new rules concerning the licensing and practice of hearing aid fitting and dispensing are summarized herein.

N.J.A.C. 13:35-8.1 sets forth the purpose of the subchapter.

N.J.A.C. 13:35-8.2 sets forth the definition of words and terms used in the subchapter.

N.J.A.C. 13:35-8.3 sets forth the requirements for any person who has been issued a training permit. It requires the permit holder to complete a minimum of six months continuous or interrupted training within a 24-month period ending with the deadline for making application to take the next examination. The proposed rule also states the amount and type of training required, that is, all training must be done in the same office or business location as that of the trainer and in his or her physical presence and during regular business hours; 40 hours of audiometer training and 160 hours of training in hearing aid dispensing procedures must also be completed. Finally a list of books and articles relating to hearing aid dispensing must be read.

N.J.A.C. 13:35-8.4 sets forth the requirements for issuing a temporary license. A temporary license will be given to applicants who have shown sufficient training and experience in fitting and dispensing.

N.J.A.C. 13:35-8.5 sets forth the requirements for a person who has been issued a temporary license. It requires the temporary licensee to spend a minimum of 20 days in the office or business location of his or her sponsor within a 60-day period. A temporary licensee is not permitted to complete a sale of hearing aids without the physical presence of the sponsor and without obtaining his or her signature on the purchase agreement. A temporary licensee is required to submit a daily written report of his or her activities which shall be made available to the Committee on request.

N.J.A.C. 13:35-8.6 sets forth the duties and responsibilities of a sponsor. A sponsor is not permitted to supervise more than two temporary licensees and/or permit holders at one time. A sponsor must be present in the same physical location and shall not presign purchase agreements. A sponsor must maintain a daily log of his or her supervision and provide an affidavit to the Committee attesting to the amount and type of supervision given. A sponsor must notify the Committee when the sponsorship arrangement has been terminated and the reasons for the termination.

N.J.A.C. 13:35-8.7 sets forth the scope of practice for fitting and dispensing hearing aids. The proposed rule indicates that the activities of an audiologist do not fall within the provisions of this subchapter. It also states that a license to fit and dispense hearing aids does not give a licensee the right to claim any medical or audiological competence.

N.J.A.C. 13:35-8.8 sets forth the requirement that every incorporated or unincorporated business for the purpose of fitting and dispensing hearing aids must designate a licensed hearing aid dispenser to act as a supervising licensee. Each business must file the name and license number of the supervising licensee with the Committee annually.

N.J.A.C. 13:35-8.9 sets forth the requirement that every licensee notify the Committee of any change of residence and place of practice. It requires that a license which has been terminated or expired must be returned to the Committee within five days. It also advises licensees about the consequences of the failure to renew a license.

N.J.A.C. 13:35-8.10 requires that all equipment necessary to dispense hearing aids be available for use at all place(s) of practice. It also requires electrical equipment to be inspected and calibrated in accordance with recognized standards.

N.J.A.C. 13:35-8.11 sets forth the requirement that a hearing examination must precede the dispensing of any hearing aid. It also states the minimum standards for a hearing examination.

N.J.A.C. 13:35-8.12 states that any advertising which is false, fraudulent, deceptive or contains misrepresentations or material omissions is deemed professional misconduct. The proposal sets forth certain words and phrases which will constitute a per se violation. The name and title designation of the supervising licensee must appear on every advertisement, sign, stationery or business card. The supervising licensee and any licensee who is an officer or an owner of the business is responsible for the form and content of the advertisement. It is also deemed professional misconduct for a licensee to visit the home or office of a potential customer without his or her express prior consent.

N.J.A.C. 13:35-8.13 defines professional misconduct as the abandonment of services and the assessment of excessive fees for services or equipment.

N.J.A.C. 13:35-8.14 requires that a written itemization of the costs of all services and equipment be presented to a customer before dispensing a hearing aid. This requirement is in addition to the written receipt requirements set forth in N.J.S.A. 45:9A-23.

N.J.A.C. 13:35-8.15 describes the licensing examination. The examination consists of a written and practical examination. A score of 70 percent is required to pass each section of the written examination and to sit for the practical. A passing score on each of three sections is required to pass the practical examination.

N.J.A.C. 13:35-8.16 states that the failure to comply with any Committee rule, regulation or statute may result in disciplinary action.

Social Impact

In general, the proposed new rules governing the licensing and practice of hearing aid dispensing will have a favorable impact upon the public and prospective and present licensees. The proposed rules set forth with clarity the requirements and procedures utilized by the Hearing Aid Dispensers Examining Committee. The proposed rules will act to fully inform the public about the fitting and dispensing of hearing aids as well as to educate and notify all licensees and prospective licensees about the requirements governing the practice of hearing aid fitting and dispensing in this State.

With regard to the design of the proposed rule, it revises the structure of the current rules governing hearing aid dispensing. In this way, it will have a favorable social impact because it simplifies and clarifies the responsibilities of hearing aid dispenser licensees.

In addition there are a limited number of substantive changes contained in the proposed rule. All of these changes, summarized herein, will also have a favorable social impact upon the public:

N.J.A.C. 13:35-8.2 and 8.6(a)

The requirement that a sponsor train and supervise all temporary licensees is not a new concept. However, the proposed rules for the first time contain an adequate definition of a sponsor which explains the qualifications and the scope of responsibilities necessary to serve in this capacity and will therefore clarify and educate the sponsor about his or her responsibilities. The new rules also require the sponsor to submit an affidavit indicating that he or she is providing proper supervision and training. This requirement will have a favorable impact upon the public because it will assure that a sponsor has performed his responsibilities in an acceptable manner. The burden on the sponsor to prepare this affidavit is minimal.

N.J.A.C. 13:35-8.4(c)

The proposed rules add the requirement that a temporary licensee must appear before the Committee prior to its reaching a determination on whether to grant the applicant a temporary license. While this requirement is not in the current rules, it has been the long established policy of the Committee to conduct personal interviews with temporary licensee applicants and their sponsors. This requirement has had a favorable social impact on all concerned because it promotes a clear understanding of the responsibilities of temporary licensees and their sponsors.

N.J.A.C. 13:35-8.14(d)

The proposed rules add the requirement that all records maintained by a hearing aid dispenser must contain the name or initials of the dispenser who prepared them and the date the record was prepared. This requirement will have a favorable social impact on the public because it will assure that each licensee will be held accountable for the work he or she performs. It will eliminate the difficulty often encountered by the Committee in trying to determine, after receiving a consumer complaint, who is responsible for providing the service to the customer.

N.J.A.C. 13:35-8.15(e)

The proposed rule requirement that all records may be inspected by the Committee gives the licensee additional notice that the Committee may ask to see pertinent records in order to determine whether a violation has occurred. Such inspection is already permissible under N.J.S.A. 45:1-18 and will further encourage compliance with the Committee's rules.

N.J.A.C. 13:35-8.13(a)

The proposed rule defines the abandonment of a customer as professional misconduct. This will have a favorable social impact in that it will assure the public that when they contract with a hearing aid dispenser they will be provided with full and adequate service.

N.J.A.C. 13:35-8.12

The proposed rule further clarifies the scope of permissible advertising by prohibiting false, fraudulent, misleading and deceptive advertising, thereby allowing all advertising which is not expressly proscribed. The language which states that "the use of the term 'licensed by the State of New Jersey' is acceptable" has been eliminated. It was the Committee's opinion that the use of this phrase indirectly encouraged a hearing aid dispenser to utilize specific language in his or her advertising and therefore was inconsistent with the proscriptive intent of the rule.

N.J.A.C. 13:35-8.4(b)

The proposal clarifies N.J.S.A. 45:9A-9 and 16(a) which allows an individual to be eligible to sit for the licensing exam upon proof of adequate experience gained in another jurisdiction where there is no licensing requirement. This will have a favorable social impact on prospective licensees because it provides them with an additional avenue to become licensed, while assuring the public that standards of competency will be maintained.

N.J.A.C. 13:35-8.9(c)

The proposal rule requires licensees who fail to renew their biennial registration in a timely manner to pay an administrative fee of $25.00. This requirement will encourage timely renewal and should reduce the administrative costs of license renewals.

N.J.A.C. 13:35-8.13(b)

The definition of "excessive fees" has been expanded. The language of the current rule states that a "retail charge greater than three times the manufacturer's price may be deemed evidence of overreaching and fraud." The proposed rules broaden the Committee's discretion to determine, after examining all the surrounding circumstances, whether the fee was so high that it was "manifestly unconscionable." The new language will provide greater protection to the public from excessive fees which may be less than three times the manufacturer's price, but are still determined to be excessive by the Committee, after reviewing all of the relevant circumstances of the transaction. The new language will provide the Committee with more flexibility to determine the excessiveness of fees. The Committee's authority to promulgate rules governing the propriety of fees of hearing aid dispensers was broadly upheld in *New Jersey Guild of Hearing Aid Dispensers v. Long,* 75 *N.J.* 544 (1978).

Economic Impact

The proposed new rules will have no substantial adverse economic impact on the public or its licensees. The proposed rules require no payment of money beyond that of the examination, licensee application and renewals as indicated in the fee rule. The proposal clarifies Committee procedure and may avoid time and effort necessary to answer questions relating to licensing and practice.

The expanded definition of excessive fees will provide additional protection to the public from excessive fees and will prevent hearing aid dispensers from charging exorbitant fees which are less than three times the manufacturer's price, but are still considered excessive by the Committee.

The requirement that licensees who fail to renew their biennial registration in a timely manner must pay an administrative late fee of $25.00 will impose a minimal economic burden on licensees. However, the burden is justified and significantly outweighed by the increased administrative costs borne by the State in processing additional paperwork for late renewals.

Regulatory Flexibility Statement

The proposal affects licensees and prospective licensees who fit and dispense hearing aids. As of January 1987 there are approximately 400 licensees in the State. The number of licensees who own or operate a small business cannot be determined by information currently available to the Committee. Although a number of licensees do own or operate small businesses, the impact of the proposed rules upon them is not substantial. The reporting and recordkeeping requirements will have a minimal impact on the resources of small businesses and the requirements are justified by the need of the Committee to assure that the licensees maintain information necessary to promote adherence to its rules.

Full text of the rules proposed to be repealed may be found in the New Jersey Administrative Code at N.J.A.C. 13:35-8.

Full text of the proposed new rules follows:

SUBCHAPTER 8. HEARING AID DISPENSERS

13:35-8.1 Purpose

The rules in this subchapter are established pursuant to N.J.S.A. 45:9A-7 and govern the licensing and the practice of hearing aid dispensing in the State of New Jersey.

13:35-8.2 Definitions

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

"Act" means the New Jersey Hearing Aid Dispensers Act, N.J.S.A. 45:9A-1 et seq. as amended and/or supplemented.

"Advertisement" means any attempt, directly or indirectly, by publication, display, dissemination or circulation, in print or electronic media, which induces or attempts to induce any person to purchase or enter into an agreement to purchase a hearing aid, services and/or merchandise from a licensee.

"Board" means the State Board of Medical Examiners.

"Committee" means the Hearing Aid Dispensers Examining Committee.

"Hearing aid" means a hearing aid as defined by N.J.S.A. 45:9A-2(c) and includes the earmold system.

"Licensee" means any person who has been duly issued a license to fit and dispense hearing aids in accordance with N.J.S.A. 45:9A-1 et seq. and this subchapter.

"Place of practice" means the actual physical location of the office and business address from which the licensee conducts his or her business and where relevant books and records are maintained.

"Sponsor" means any person holding a valid license pursuant to N.J.S.A. 45:9A-1 et seq. for two or more years who is deemed qualified by the Committee to instruct, train and supervise in the requisite skills, methods and techniques so as to insure competency in the fitting and dispensing of hearing aids and who has assumed the responsibilities for supervising and training in accordance with N.J.S.A. 45:9A-16 and the provisions of this subchapter.

"Temporary license" means a temporary license as defined by N.J.S.A. 45:9A-16(a) and the provisions of this subchapter.

"Training permit" means a temporary license as defined by N.J.S.A. 45:9A-16(b) and the provisions of this subchapter.

13:35-8.3 Training permits; issuance and practice

(a) The Committee may issue a training permit in accordance with N.J.S.A. 45:9A-16(b) and the provisions of this subchapter.

(b) The requisite training and experience referred to in N.J.S.A. 45:9A-9 and 16(b) shall be a minimum of six months continuous or interrupted training within a 24-month period ending with the deadline for making application to take the next examination. Where proof of successful completion of a course of study approved by the State Board of Education or the Department of Higher Education is presented to the Committee, the Committee may accept this training as a substitute for any portion of the training and experience requirement.

(c) No person shall commence training as a hearing aid dispenser until such time as he or she has received a training permit. The training period shall be calculated to have commenced on the date the permit is issued.

(d) Upon being issued a training permit, the trainee shall train in the same office or business location as that of his or her sponsor and in the physical presence of the sponsor. The training shall consist of the following:

1. 40 hours of training with an audiometer;

2. 160 hours of hearing aid dispensing procedures, including the taking of earmold impressions, the alteration of earmolds and hearing aids, and application and fitting techniques;

3. Reading all the books and articles relating to hearing aid dispensing specified in a list formulated by the Committee.

(e) No trainee shall be permitted to sell, fit or dispense hearing aids or to engage in the potential fitting or dispensing of hearing aids except in the same office or business location of his or her sponsor and in the physical presence of the sponsor.

(f) A trainee shall complete the training only with the sponsor designated by the Committee and only during regular business hours.

13:35-8.4 Temporary licenses; issuance

(a) The Committee may issue a temporary license in accordance with N.J.S.A. 45:9-16(a) and the provisions of this subchapter to an applicant provided he or she has not previously held a training permit or has not previously taken the licensing examination described in N.J.S.A. 45:9A-10 and N.J.A.C. 13:37-8.15. A temporary license shall not be renewed when an applicant has failed the licensing examination, except on showing of good cause (such as illness or emergency) precluding the taking of the examination.

(b) Persons from another jurisdiction who are not eligible for license by endorsement under N.J.S.A. 45:9A-13 who wish to sit for the licensing examination shall demonstrate a minimum of two years of full-time independent experience in dispensing, fitting and selling hearing aids as defined by N.J.S.A. 45:9A-2(d) and N.J.A.C. 13:35-8.6. The applicant must submit documentation and verification of said experience satisfactory to the Committee, or submit verification of current licensure to practice audiology in the State of New Jersey.

(c) Applicants shall be interviewed by the Committee, at which time their training and experience will be examined. Where an applicant's documentation and/or training and experience appears unsatisfactory, the Committee may deny a temporary license, but may permit the applicant to sit for the next licensing examination.

13:35-8.5 Temporary licenses; practice

(a) A temporary licensee shall spend a minimum of 20 days in the office or business location of his or her sponsor within any 60-day period.

(b) A temporary licensee shall not maintain an independent office or a place of business for the purpose of dispensing hearing aids, but shall at all times operate in the sponsor's office in a manner consistent with the ability of his or her sponsor to provide responsible supervision.

(c) No temporary licensee shall complete a sale of hearing aids without the physical presence of his or her sponsor, and without obtaining the sponsor's signature on the purchase agreement.

(d) Every temporary licensee shall submit a daily written report of his or her activities to his or her sponsor which shall be retained as part of the permanent records.

(e) Upon submitting an application for a license, every temporary licensee shall submit an affidavit from his or her sponsor attesting to the supervision requirements of N.J.S.A. 45:9A-1 et seq. and this subchapter.

(f) Upon request, all records shall be made available to the Committee for its review and evaluation.

13:35-8.6 Sponsors

(a) Every trainee and temporary licensee shall be supervised and trained by a sponsor who has fulfilled the requirements of N.J.S.A. 45:9A-16 and the provisions of this subchapter.

(b) In addition, a sponsor shall:

1. Supervise at any one time no more than a total of two persons who may be temporary licensees and/or permit holders;

2. Be present in the same physical location for purposes of training and supervision;

3. Not pre-sign purchase agreements;

4. Maintain a daily log for each day of supervision and training as part of the permanent record;

5. Provide an affidavit attesting to the supervision requirements of N.J.S.A. 45:9A-1 et seq. and this subchapter and

6. Notify the Committee within five days of any termination in the sponsorship arrangement, stating the reasons therefor.

13:35-8.7 Scope of practice

(a) The practice of fitting a hearing aid as defined by N.J.S.A. 45:9A-2(d) shall include:

1. The evaluation or measurement of the power or range of human hearings utilizing customary and appropriate instrumentation available in the field;

2. The making of an ear impression;

3. The cleaning, change of design or alteration of an earmold (including tubing);

4. The change of frequency response of any instrument;

5. The selection or adaptation of a hearing aid; and

6. The interpretation and evaluation of hearing tests and the physical examination of a person's ear, where such interpretation, evaluation or examination is used in conjunction with the dispensing of a hearing aid.

(b) The practice of dispensing a hearing aid as defined by N.J.S.A. 45:9A-2(d) shall include the sale, rental or lease of hearing aids, the evaluation of the necessity for repair of a hearing aid, and the delivery after repair.

(c) The practice of fitting and dispensing a hearing aid shall include any activity which reasonably may be expected to result in the sale of a hearing aid, including but not limited to canvassing, counselling, soliciting and screening for potential hearing aid users.

(d) The terms of this subchapter are not to be construed to include activities of a licensed audiologist under N.J.S.A. 45:3B-21 et seq., unless he or she is also engaged in the dispensing of hearing aids.

(e) A license to fit and dispense hearing aids does not confer upon a licensee the right to hold oneself out to the public as an audiometrist, audiologist, otologist, otorhinolaryngologist or any such title which connotes medical or audiological competence.

13:35-8.8 Supervising licensee

(a) Every corporation, partnership, trust, association or unincorporated business entity operating for the purpose of fitting and dispensing hearing aids shall designate a duly licensed hearing aid dispenser to act as a supervising licensee.

(b) All such businesses shall file annually with the Committee the name and license number of the designated supervising licensee.

(c) The supervising licensee shall be responsible for assuring that all records are maintained in accordance with N.J.A.C. 13:35-8.14.

13:35-8.9 Notification to the Committee; suspension of license for failure to renew

(a) Every licensee shall notify the Committee of any change of residence or place of practice within seven days following such change.

(b) Every licensee, temporary licensee or trainee whose license or permit has expired or has been terminated shall return the license or permit to the Committee office within five days of such invalidation.

(c) Every licensee who does not respond to the computerized notice for renewal of his or her registration will be notified by certified mail that unless the renewal fee plus a late fee of $25.00 is received within 30 days, his or her license will be suspended in accordance with N.J.S.A. 45:9A-15.

1. A licensee may petition for license reinstatement by making written application to the Committee.

2. The Committee may require payment for any missed registration period caused by his or her failure to renew.

3. The Committee may make reasonable inquiry to evaluate his or her qualifications for continued licensure.

(d) A licensee may retire his or her licensure by surrendering the registration for any period of time when he or she is not engaged in hearing aid dispensing. Prior to reinstatement of the license, the Committee may make reasonable inquiry to evaluate his or her qualifications for continued licensure.

13:35-8.10 Equipment

(a) The equipment necessary to dispense hearing aids in accordance with N.J.S.A. 45:9A-1 et seq. and the provisions of this subchapter shall be available for use at all place(s) of practice.

(b) All electrical equipment used in testing hearing aids including the audiometer shall be inspected as often as necessary to assure accuracy and calibrated no less often than once a year. Audiometers shall be calibrated in accordance with the American National Standard Specifications for Audiometers (ANSI S3.6-1969) and the American National Standard for an Artificial Head Bone for the Calibration of Bone Vibrations (ANSI S3.13-1972). Complete records of calibration shall be maintained as part of the licensee's permanent records.

13:35-8.11 Hearing testing

(a) No hearing aid shall be sold to a person who has not first been given a hearing examination utilizing appropriate established procedures and instrumentation for the measurement of the hearing and the fitting of hearing aids, unless the dispensing consists solely of making an exact make and model replacement or spare aid of an immediately preceding hearing aid fitted within the last 12 months.

1. The appropriate hearing test which must precede any hearing aid fitting shall include at a minimum pure tone air conduction and bone conduction thresholds. In such cases, the testing shall be performed under conditions suitable to obtain valid and reliable thresholds.

2. Where indicated and appropriate, SRT, MCL, TD, speech discrimination and other tests which may be necessary shall be provided by using customary and appropriate instrumentation.

(b) A significant air bone gap as referred to in N.J.S.A. 45:9A-24(f) shall be a gap of 15 db or more measured at 500 HZ, 1,000 HZ or 2,000 HZ. In the event that there is a gap at any of these frequencies, or higher, the individual shall be referred to a medical doctor.

13:35-8.12 Advertising and Solicitation

(a) Any licensee who engages in the use of advertising, stationery, business cards or signs which contain any of the following shall be deemed to have committed professional misconduct in violation of N.J.S.A. 45:1-21:

1. Any statement, claim or format which is false, fraudulent, misleading or deceptive;

2. Any misrepresentation of material fact;

3. Any omission or concealment of material fact, under circumstances where a licensee knows or should know that the omission is improper or is likely to hamper a customer from making a full and informed judgment on the basis of the information set forth;

4. Any claim that the service performed or the materials used are superior to that which is ordinarily performed or used in the business unless such claim can be documented as truthful and not misleading;

5. A technique or communication which appears to intimidate, exert undue pressure or undue influence on a customer;

6. The use of terms such as "prescription made" and "certified hearing aid audiologist" or "audiologist," unless the person to whom reference made is a licensed audiologist as defined by N.J.S.A. 45:3B-21(a);

7. The use of any term that connotes a medical competence that does not exist; or

8. The use of the name of a temporary licensee or trainee in an advertisement, sign, stationery or business card.

(b) The name, license number and title designation ("Hearing Aid Dispenser") of the supervising licensee shall appear on every advertisement, stationery or business card. The name and title designation of the supervising licensee shall appear on every sign.

(c) The responsibility for the form and content of every advertisement, sign, stationery or business card shall be jointly and severally that of each licensee who is a principal, partner or officer of the firm or entity so identified as well as the supervising licensee whose name and license number is displayed therein.

(d) It shall be professional misconduct for a licensee to visit the home or office of a potential customer for the purpose of inducing a sale of a hearing aid without having obtained the express prior consent of such potential customer.

13:35-8.13 Abandonment; excessive fees

(a) It shall be professional misconduct for a licensee to unilaterally terminate without good cause as determined by the Committee, an agreement to deliver service(s) and/or equipment to a customer without first making arrangements for the orderly continuation of said services and/or equipment delivery.

(b) It shall be professional misconduct for any licensee to demand or accept excessive fees for service(s) or equipment rendered in connection with the sale or fitting of hearing aids. The excessiveness of such fee shall be determined by the Committee based on whether, after a review of the facts, a reasonable person would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances and as further described in N.J.A.C. 13:35-6.11.

13:35-8.14 Itemization of services and equipment; retention of records

(a) In addition to the written specified data and receipt requirements defined in N.J.S.A. 45:9A-23, a written itemization of the costs of all services and equipment shall be presented to a customer before dispensing a hearing aid. The itemization shall include all services and equipment including:

1. Hearing test and examination of the ear;

2. Fitting of an earmold;

3. Dispensing services;

4. Necessary cleaning, servicing and refitting for at least the first year following sale;

5. The cost of the earmold; and

6. The cost of the hearing aid.

(b) Every licensee shall prepare and retain a copy of all records including the itemization for a period of seven years following the sale.

(c) Every licensee shall obtain and maintain a medical waiver or medical clearance in accordance with applicable federal law.

(d) Every licensee shall designate his or her name or initials and license number and the date the service was rendered on all records maintained for the purpose of fitting or dispensing hearing aids.

(e) Every licensee shall make available upon the request of the Committee any and all records maintained for the purpose of fitting or dispensing hearing aids. Every customer or authorized representative of the customer shall be promptly given a copy of his or her own record as described in N.J.A.C. 13:35-6.5.

13:35-8.15 Licensing examination

(a) The licensing examination shall consist of a written and practical examination in accordance with N.J.S.A. 45:9A-11.

(b) The written examination shall contain sections relating to theory and knowledge about fitting and dispensing hearing aids and knowledge relating to the laws and regulations governing the practice of fitting and dispensing hearing aids.

1. In order to pass the licensing examination the candidate shall attain a score of 70 percent or greater on each section.

2. Candidates who fail all or any section of the written examination shall be required to sit for the entire written examination during the next regularly scheduled examination with one exception: candidates failing only the law and regulation section may be admitted to a make-up examination for this section only.

(c) A candidate will only be permitted to take the practical examination if he or she has successfully passed the written examination. In order to pass the practical examination, a candidate shall attain a passing grade on each part of the practical examination. A candidate shall be eligible to re-take the part(s) failed for one additional examination. No passing credit shall be carried over to a third examination and the candidate failing two exam sessions shall be required to take all sections of the examination.

(d) All examinations and re-examinations will be offered only during the regularly scheduled examination session.

13:35-8.16 Violation of the Rules

(a) Failure to comply with any provision of N.J.S.A. 45:9A-1 et seq., or this subchapter shall be deemed a violation of the Hearing Aid Dispensers Act and may result in disciplinary action pursuant to N.J.S.A. 45:1-21 and 45:1-22.

(b) The notice of proposed suspension or revocation shall inform the licensed individual of the right to request a hearing. The hearing shall be pursuant to the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq. and 52:14F-1 et seq.

(a)

BOARD OF PHARMACY

Board of Pharmacy Rules

Proposed Repeal and New Rules: N.J.A.C. 13:39

Authorized By: New Jersey State Board of Pharmacy,
H. Lee Gladstein, R.P., President.
Authority: N.J.S.A. 45:14-1 et seq.
Proposal Number: PRN 1987-349.

Submit comments by January 4, 1988 to:
Robert Terranova, Executive Secretary
State Board of Pharmacy
1100 Raymond Boulevard, Room 325
Newark, New Jersey 07102

The agency proposal follows:

Summary

Chapter 39 embodying the Board of Pharmacy rules was originally adopted by the State Board of Pharmacy, Department of Law and Public Safety, pursuant to authority contained in N.J.S.A. 45:14-1 et seq. and was effective prior to September 1, 1969. Since the original rules were first promulgated, various changes have been made through amendments of a minor nature, satisfying the need to increase various fees, requirements of internship and externship, etc., and the requirements and criteria of Executive Order No. 66(1978).

The State Board of Pharmacy recognized that the constant changes in the nation's system of health care delivery, the new and sophisticated changes in the treatment of disease and the concurrent changes in the methodologies of dispensing drugs warranted a complete review of the existing rules. This review resulted in recognition that a "band aid" approach of amending existing rules was not sufficient or satisfactory in controlling the practice of pharmacy to the end that the health of the public be fully protected. Accordingly, a complete repeal of the existing rules, and promulgation of new rules is proposed. The proposed new rules consist of 10 subchapters as follows: Subchapter 1, General Provisions; Subchapter 2, Applicant Qualifications and Examinations Requirements; Subchapter 3, Registration of Pharmacists; Subchapter 4, Pharmacy Permits; Subchapter 5, Prescriptions; Subchapter 6, Dispensing and Advertising Drugs; Subchapter 7, Pharmacy Facility and Records; Subchapter 8, Internships: Externships: Approved Training Pharmacy; Subchapter 9, Pharmaceutical Services Within Health Care Facilities; Subchapter 10, Intravenous Admixture Services.

The major changes in the new rules include: (1) expansion of the scope and detail of institutional pharmacy rules; (2) requiring "satellite pharmacies" in institutions to meet the requirements for institutional pharmacies; (3) free standing clinics in which dispensing is done would be licensed as institutions; (4) the Board would have specific authority to issue a specialized pharmacy permit; (5) detailed rules are proposed to govern enteral/parenteral pharmacy operations to ensure that intravenous medicines and nutritions are prepared using specialized equipment and an appropriate environment to ensure proper sterility in preparation and delivery; (6) all pharmacies would be required to post a sign on the exterior of the building or otherwise visible from a public roadway to conspicuously identify the existence of a pharmacy located on the premises; (7) advertising which "maligns" the profession of pharmacy or other professionals would be prohibited; (8) inquiries would have to be made by pharmacists of their patients as to prescription and non-prescription drugs currently being used by the patient, and that information would have to be noted on the patient profile record cards, and (9) prescriptions for either controlled dangerous substances or prescription legend drugs may only be dispensed under the direct personal supervision of a registered pharmacist, and direct personal supervision includes observation by the pharmacist of all functions pertinent to dispensing.

The purpose of the new rules is four-fold: (1) to ensure accountability of dispensing pharmacists; (2) to ensure the highest level of patient safety; (3) to ensure easy retrievability of patient information for professional consultation, law enforcement and regulatory purposes, and (4) to maintain Board records of licensees in the most up-to-date fashion possible.

Social Impact

The advent of rapid changes in health care delivery such as intravenous medicating and feeding of patients in a home environment as well as the establishment of new types of nursing homes, health maintenance organizations, and so forth have brought about needed changes in the control of dispensing and preparation of medication. These changes have also brought about the necessity for clear rules to govern such operations and rules which authorize the Board to grant limited permits to enable special-purpose pharmacies to operate as such. It is expected that the proposed rules will enhance the protection and safeguarding of public health. It is also anticipated that as a result of the new rules, direct communication and interaction between pharmacist and patient will be enhanced, which will clearly benefit the public health and welfare inasmuch as it is the pharmacist who often protects the consumer in the event of adverse drug interactions of which his or her physician may not be aware.

Economic Impact

Generally, the proposed new rules are not expected to bring about any additional public or private costs. However, specialized pharmacies will be expected to spend what is necessary to bring their operations into line with the new rules. This cost may be incurred by the patient by way of pass through to the patient. Institutional pharmacies may incur some increased costs because of the necessity of upgrading their "satellite pharmacies".

Regulatory Flexibility Statement

These proposed new rules impact small businesses. Whether it is within a health care institution or it is a community pharmacy, whether owned by a sole proprietor or by a chain, and whether free-standing or a department in a larger store, pharmacies are by their nature almost always within the statutory definition of a small business.

In the fiscal year ending June 30, 1986 there were 1,703 pharmacy permits renewed and 56 new pharmacies licensed, for a total of 1,759. The vast majority of these were free standing community pharmacies or pharmacy departments.

There are few if any recordkeeping or reporting requirements contained in the proposal which differ materially from those presently in force. Pharmacy permits must still be renewed each year; the Board must be notified when there is a change in over 10 percent of the ownership, in the hours the pharmacy is open for business or when there is a change in who is the pharmacist-in-charge of the pharmacy. Also, prescriptions must be maintained and appropriately numbered and filed for five years (N.J.S.A. 45:14-15); records of refills must be made; each prescription must be initialed by the pharmacist who dispensed it; patient profile records must be maintained for each patient by individual or family, and computerized recordkeeping is permitted provided that certain requirements are met. Pharmacies are also subject to the recordkeeping requirements mandated by the federal government and the State Department of Health with respect to controlled dangerous substances ("CDS") (21 U.S.C. §822-843; 21 CFR §1300-1316; N.J.S.A. 24:21-1 et seq., N.J.A.C. 8:65-1 et seq.).

An estimate of the "cost" of compliance with these new rules is impossible, but it is not expected that any professional services other than those of the owner or pharmacist-in-charge of the pharmacy would be needed. Naturally, the amount would vary based on the prescription volume of the store and the scope of the store's practice. For example, some stores are temporarily or permanently barred by other government agencies such as the Drug Enforcement Administration, the New Jersey Department of Health or the New Jersey Department of Health and Human Services (Medicaid) from dispensing controlled dangerous substances or accepting reimbursements from Medicaid or the Pharmaceutical Assistance to the Aged and Disabled Program.

There is one section of the proposal which may impose new costs of compliance on licensees. N.J.A.C. 13:39-9.18 would require that all institutional decentralized pharmacies, commonly known as "satellite pharmacies", be upgraded to meet a specific set of requirements. This could potentially affect all 150 institutional licensees. These requirements include, among other things, a sink with hot and cold running water in the satellite pharmacy, counting devices, a refrigerator used only for medicines, a minimum reference library, a permanent patient profile system and prescription filing device, and a secure storage place for Schedule II Controlled Dangerous Substances.

Costs of compliance might include capital construction and plumbing, acquisition of many sets of reference books, acquisition of many refrigerators, and installation of a separate prescription filing system and patient profile system for each decentralized pharmacy. The larger the institution and the greater the number of these satellites, the greater the outlay to be required.

It should be noted that the requirements for the satellites are less than those for the main pharmacy (the "original institutional permit location"). Proposed N.J.A.C. 13:39-9.18 sets forth what the Board views as the minimum requirements for safeguarding patient health and safety with respect to the storage, compounding and dispensing of drugs. An exemption for particular institutions is thus neither feasible nor desirable.

The purpose of the proposed new rules as noted in the Summary is to ensure pharmacist accountability, patient safety, retrievability of information and maintenance of Board records. It is not the Board's intention to burden pharmacies with recordkeeping requirements. Any "adverse economic consequences" caused by the necessity of maintaining patient profile records and taking the time to be sure that all prescriptions are initialed and all refills recorded cannot be avoided.

The recordkeeping obligations imposed by these rules are an integral part of safe pharmacy practice as determined by the Board of Pharmacy. Most of these requirements have been considered part of the practice for years, for example, the Patient Profile Record System was instituted in 1972.

Modifying the rules in any way for small businesses is not feasible because doing so would frustrate the intended purposes of the proposal and the Pharmacy Act.

Full text of the rules proposed to be repealed may be found in the New Jersey Administrative Code at N.J.A.C. 13:39.

Full text of the proposed new rules follows.

CHAPTER 39
STATE BOARD OF PHARMACY

SUBCHAPTER 1. GENERAL PROVISIONS

13:39-1.1 Purpose and scope

(a) This chapter is promulgated by the New Jersey State Board of Pharmacy. The rules contained in this chapter implement the provisions of the Pharmacy Act, N.J.S.A. 45:14-1 et seq. and regulate the practice of pharmacy within the State of New Jersey.

(b) This chapter shall apply to all registered pharmacists, pharmacist applicants, interns, externs, supportive personnel and anyone within the jurisdiction of the Board of Pharmacy.

13:39-1.2 Definitions

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

"Board" means the New Jersey State Board of Pharmacy.

"Compounding" means the act of preparing pharmaceutical components into medications, pursuant to a licensed practitioner's prescription or medication order, including, but not limited to, prescription compounding, bulk compounding and intravenous admixture preparation.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent or other similar or related article, including any component part or accessory, which is required under Federal or State law to be prescribed by a licensed practitioner and dispensed by a pharmacist.

"Direct personal supervision" means the observation by a registered pharmacist of all functions of the process of preparation or compounding and dispensing of drugs, including the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

"Dispense or dispensing" means the procedure entailing the interpretation of a licensed practitioner's prescription order for a drug or device, and pursuant to that order, the proper selection, measuring, labeling, and packing in a proper container, and the issuance of the drug or device to a patient or other individual entitled to receive the drug or device. The act of dispensing shall include, if necessary, a pharmacist's, extern's or intern's consultation with the prescribing physician and/or the patient or individual administering the drug to assure proper preparation, use and administration of medication.

"Drug or medicine" means:

1. Articles recognized in the official United States Pharmacopeia/National Formulary, official Homeopathic Pharmacopeia of the United States, or any official supplement to any of them;

2. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

3. Articles (other than food) intended to affect the structure of any function of the body of human beings or animals; and

4. Articles intended for use as a component of any article specified in 1, 2 aor 3 above, but does not include devices or their components, parts or accessories. Articles, such as sugar or starch, which may be components of any article in 1, 2, or 3 above are not considered drugs or medicines when sold as food.

"Legend drug or device" means any drug or pharmaceutical that:

1. Bears the statement, "Caution: Federal law prohibits dispensing without a prescription" or words of similar import; or

2. Requires a prescription or order by a licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders.

"Licensed practitioner" means a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders.

"Pharmaceutical" means any drug as defined above and all other adjunct substances or materials required in the preparation of the drug for use.

"Pharmaceutical services" means all services provided by or under the direct supervision of a registered pharmacist. These services shall be concerned with, but not limited to: interpreting the prescription or medication order; selecting, preparing, compounding, packaging, labelling, distributing and dispensing prescribed drugs; the proper and safe storage of drugs; the monitoring of drug therapy; the reporting and recording of adverse drug reactions and the provision of appropriate drug information; teaching and counselling on the proper and safe use of drugs and medications.

"Poison" means:

1. Any drug, chemical, substance or preparation which according to standard works on medicine, *materia medica* or toxicology is liable to be destructive of adult human life in doses of 60 grains or metric equivalent or less;

2. Any substance recognized by standard authorities on medicine, *materia medica* or toxicology as poisonous;

3. Any item enumerated in Schedule A of N.J.S.A. 45:14-19 or any item enumerated in Schedule B of N.J.S.A. 45:14-20, and

4. Any drug, chemical, substance or preparation which is labeled "poison".

"Prescription" means any order for drugs and related items as defined in N.J.S.A. 45:14-14.

"Professional judgment" means judiciousness and discretion based upon thorough knowledge and sound application of the specialized body of knowledge peculiar to the practice of pharmacy, and an understanding of the relationship of this knowledge and its application to the well-being of the patient and to the judgment of the prescriber.

"Registered pharmacist" or "pharmacist" means a person holding an unsuspended and unrevoked license as a pharmacist issued by the Board whose certificate is in good standing by virtue of a renewal certificate having been obtained for the current registration period.

13:39-1.3 Fee schedule

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

1. Examination: $50.00 plus the cost of the NABPLEX examination.

i. Repeat of law examination only: $25.00.

2. Reciprocal registration: $25.00.

3. Reinstatement of licensure: $50.00.

4. Duplicate registration: $10.00.

5. Certification fee: $5.00.

6. Biennial registration: $85.00.

7. Duplicate renewal: $5.00.

8. Duplicate permit: $5.00.

9. Pharmacy permits:

i. New: $200.00.

ii. Change of ownership: $200.00.

iii. Change of location: $200.00.

10. Registered pharmacist biennial renewal: $80.00.

11. Transfer of grades: $50.00.

13:39-1.4 Payment of penalties

(a) Any penalties levied by the Board must be paid within 30 calendar days of the receipt of a penalty letter or final order of the Board unless otherwise prescribed by statute or terms of a final order.

(b) Failure to comply with this rule will result in action by the Board according to the provisions of N.J.S.A. 45:1-24.

13:39-1.5 Hearings

(a) Any time the Board seeks to impose a disciplinary sanction upon a licensee, the licensee may request a hearing.

(b) Any hearings held shall be conducted pursuant to the N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Practice Rules, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 2. APPLICANT QUALIFICATIONS AND EXAMINATIONS REQUIREMENTS

13:39-2.1 Education requirements

(a) An applicant for the written examination shall have been duly granted or have fully completed all the requirements for graduation as certified by the registrar of a minimum five-year pharmacy course leading to a degree of a Bachelor of Science in pharmacy given in a school or college of pharmacy approved by the Board.

(b) Before being admitted to the examination, either a transcript of the applicant's record or a certificate by the registrar of the school or college of pharmacy attended must be supplied stating that the applicant has either graduated or has completed all of the requirements for graduation. If the transcript or certificate does not state that the applicant has graduated or has completed all the graduation requirements, the Board may require other forms of proof to be supplied by the applicant.

13:39-2.2 Application to be filed

An applicant for the written examination must file an application for such examination at least 60 days prior to the date of the examination unless this requirement is waived by the Board because of extenuating circumstances. The required fees as prescribed in N.J.A.C. 13:39-1.3 must also be submitted.

13:39-2.3 Birth certificate

An applicant for the written examination who was born in the United States shall submit the original of a certified copy of his or her birth certificate which will be retained by the Board. The birth certificate must bear the name under which the application for the examination is being made. In those instances where there has been a legal name change, documentation attesting to the legal name change must be submitted along with the birth certificate.

13:39-2.4 Proof of citizenship

(a) An applicant for the written examination who was born outside of the United States but is a citizen of the United States must present either citizenship papers or derivative citizenship papers. If the applicant is not a citizen, he or she must first present proof of intention to become a citizen.

(b) An applicant who presents citizenship papers of his or her parents which list the applicant's name as a minor child or who presents other proof of citizenship from the United States Immigration and Naturalization Bureau may be admitted to the written examination pending the submission of derivative citizenship papers.

13:39-2.5 Language comprehension requirement

All applicants for licensure who earned their undergraduate pharmacy degree in countries wherein the primary language is other than English, prior to being granted licensure shall comply with the requirements of N.J.A.C. 13:39-3.11.

13:39-2.6 Age requirement

An applicant who is not of legal age, that is, the age of majority in the State of New Jersey, but who has otherwise met the application requirements, with the exception of the internship requirement, may be admitted to the written examination, however, the applicant shall not be eligible for licensure until attaining legal age.

13:39-2.7 Proof of character

(a) An applicant for the written examination shall submit, in advance, an application containing evidence of good moral character and that he or she:

1. Is not a chronic or persistent inebriate;

2. Is not addicted to the use of any controlled dangerous substance or other habit-forming drug;

3. Has not been convicted of violating any law of this or any other state of the United States relating to controlled dangerous substances or other habit-forming drugs;

4. Has not been convicted of violating the provisions of any laws relating to the sale of liquors;

5. Has not been convicted of violating any law relating to the practice of pharmacy;

6. Has not been convicted of a crime involving moral turpitude; and

7. Has not had his or her license or, if a permit holder, the permit, suspended or revoked in the last five years as a result of any administrative or disciplinary proceedings in this or any other jurisdiction which proved the applicant to be in violation of any laws, rules or regulations pertaining to the practice or pharmacy, and that the applicant is not currently under suspension or revocation.

13:39-2.8 Proof of identity of applicant

An applicant for the written examination must submit to the Board 60 days in advance of the date of the written examination a bust photograph mounted on a document to be supplied by the Board requesting certain identification information.

13:39-2.9 Alleged violations of Pharmacy Act

If an applicant for any Board examination is involved in any alleged violation of the Pharmacy Act, N.J.S.A. 45:14-1 et seq., the Board in its discretion may deny the applicant the opportunity to take the examination.

13:39-2.10 Written examinations; grades

(a) The written examination shall be that of the National Association of Boards of Pharmacy (NABPLEX). An applicant shall attain a passing grade of not less than 75. If an applicant fails the examination, he or she will be required to repeat the examination.

(b) The applicant shall also pass a written examination on the laws governing the practice of pharmacy in the State of New Jersey. A passing grade of not less than 75 shall be attained. If an applicant fails the examination, he or she will be required to repeat the examination.

(c) If the applicant should fail either the NABPLEX or the law examination three times, the applicant shall be required to take review courses as approved by the Board prior to retaking the failed examination(s).

SUBCHAPTER 3. REGISTRATION OF PHARMACISTS

13:39-3.1 Certificate of registration

An applicant who has successfully passed all Board examinations shall receive an authorization signed by the Secretary of the Board granting the applicant the right to practice pharmacy in the State of New Jersey until such time as an original certificate of registration may be issued.

13:39-3.2 Duplicate certificate of registration

A duplicate certificate of registration may be issued by the Board upon payment of a fee as prescribed in N.J.A.C. 13:39-1.3 and upon proof of the applicant's identity and reasonable proof of the loss or destruction of the original certificate of registration is submitted or the damaged original certificate is returned to the Board.

13:39-3.3 Change of name

If a registered pharmacist legally changes his or her name, the name change shall be recorded upon the Board's records. The registered pharmacist shall submit original proof of the change of name or a certified copy of the court order or marriage certificate which will be retained by the Board. When a duplicate certificate is issued, the original certificate must be returned for cancellation along with the required fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-3.4 Change of employment or address

(a) A registered pharmacist shall notify the Board in writing of any change in address within 10 days.

(b) A registered pharmacist shall notify the Board in writing within 10 days of any change in his or her place of employment and the number of hours to be worked each week.

13:39-3.5 Certification of records

Upon payment of the required fee as prescribed in N.J.A.C. 13:39-1.3, a certification of any of the information on file in the Board records concerning an application for registration of a registered pharmacist will be supplied.

13:39-3.6 Reproduction of original certificate of registration prohibited

The original certificate of registration issued by the Board to any pharmacist shall not be reprinted, photographed, photostated, duplicated or reproduced by any other means either in whole or in part, without the express written authorization of the Board.

13:39-3.7 Limitation of reciprocal registration

(a) Reciprocal registration of out-of-State pharmacists shall be limited to those pharmacists who have been duly licensed in mutually reciprocating states.

(b) Applicants who have graduated from pharmacy schools which have not been accredited by the American Council on Pharmaceutical Education but who have been licensed by the District of Columbia, a reciprocating state or a United States territory shall be eligible for reciprocity if the Board is satisfied that the licensing procedures applicable to graduates of non-accredited schools in the state of original licensure provide for an adequate evaluation of the applicant's education, training and experience.

13:39-3.8 Basic requirement for reciprocity

An applicant for reciprocal registration to the State of New Jersey shall fully meet all of the requirements in effect in this State as of the date of his or her registration in the state of original licensure, or in any other state of licensure by examination, including the District of Columbia and territories of the United States.

13:39-3.9 Out-of-state practice

An applicant for reciprocal registration to the State of New Jersey must have practiced in a pharmacy licensed by the Board of Pharmacy of the mutually reciprocating state for at least one year immediately prior to application and be in good standing with that state.

13:39-3.10 Clear record of law observance

No person shall be eligible for reciprocal registration against whom there is pending any indictment for any alleged violation of the law governing the practice of pharmacy or the dispensing of narcotics, alcohol or other regulated drugs, or who has been convicted of any crime within the past five years. All applicants for reciprocity must meet the character requirements outlined in N.J.A.C. 13:39-2.7.

13:39-3.11 TOEFL examination

(a) All pharmacist applicants from countries wherein the primary language is other than English, prior to being granted licensure as a professional pharmacist in this State, shall submit to the Board evidence that they have successfully completed the Test of English as a Foreign Language (TOEFL) Examination and have attained a minimum score of 560. This test shall be taken within two years of application for licensure in this State.

(b) A request for waiver of the TOEFL examination shall be made to the Board in the applicant's own handwriting and must delineate reasons for the waiver request. The Board may after due consideration and within its own discretion, waive the TOEFL examination.

13:39-3.12 Physical and mental fitness of reciprocal registrants

(a) An applicant for reciprocal registration shall be physically and mentally fit to perform all the duties normally required of a registered pharmacist.

(b) The Board, at its discretion, may require proof of the applicant's physical and mental fitness to practice pharmacy in this State.

13:39-3.13 Preliminary application

A preliminary application obtained from the Board for reciprocal registration shall be submitted to the National Association of Boards of Pharmacy, One East Wacker Drive, Chicago, Illinois 60602.

13:39-3.14 New Jersey pharmacy law examination: reciprocal registration

(a) The applicant for reciprocal registration shall pass a written test on the laws governing the practice of pharmacy in this State. A passing grade of not less than 75 shall be attained. If an applicant fails the examination, he or she will be required to repeat the examination.

(b) If the applicant for reciprocal registration fails the examination three times, the applicant shall be required to take review courses as approved by the Board prior to retaking the law examination.

13:39-3.15 Biennial registration renewal

(a) Every registered pharmacist, on or before April 30 of each odd-numbered year, shall renew his or her certificate of registration through the payment of a registration renewal fee as prescribed by N.J.A.C. 13:39-1.3 and the filing of a renewal application to be obtained from the Board.

(b) The renewal application shall list the name, home address, original certificate of registration number, date of issuance of original certificate of registration, places and hours of employment, and other information as requested by the Board.

(c) The renewal application shall be signed by the applicant.

13:39-3.16 Duplicate renewal certificate of registration

If a renewal certificate of registration is lost or destroyed, a duplicate renewal certificate may be obtained upon payment of a fee as prescribed in N.J.A.C. 13:39-1.3. Proof of the applicant's identity and proof of loss or destruction of the applicant's renewal certificate originally issued must be submitted.

13:39-3.17 Reinstatement in good standing

(a) If a registered pharmacist permits his or her registration to lapse for a period of less than five years through failure to renew his or her certificate of registration, the registration may be brought into good standing through payment of the current renewal fee and upon submission of proof of identity and the filing of an application to be obtained from the Board.

(b) If the registration has lapsed for a period of five years or longer, the applicant for such reinstatement must pass the New Jersey pharmacy law examination. Copies of excerpts of the laws governing the practice of pharmacy in the State of New Jersey will be supplied to the applicant by the Board beforehand for study purposes. The applicant shall also submit payment of the current renewal fee and proof of identity along with an application to be obtained from the Board.

(c) Every applicant for reinstatement must submit evidence of satisfactory completion of the continuing education requirements which are 15 credits per year up to a maximum of five years or 75 credits.

13:39-3.18 Reproduction of renewal certificate prohibited

A renewal certificate of registration issued by the Board to any registered pharmacist shall not be reprinted, photographed, photostated, duplicated or copied by any other means either in whole or in part, without the express written authorization of the Board.

13:39-3.19 Pharmacist-in-charge

(a) A registered pharmacist shall not assume the responsibilities of a registered pharmacist-in-charge of more than one pharmacy or pharmacy department simultaneously.

(b) There shall not be more than one registered pharmacist-in-charge of any one pharmacy or pharmacy department.

(c) Whenever there is a change of a pharmacist-in-charge of a pharmacy or other Board-licensed establishment, the incoming and outgoing pharmacists-in-charge shall each take an inventory of all controlled dangerous substances as defined in N.J.S.A. 24:21-5 through 24:21-8.

(d) Whenever a registered pharmacist assumes the duties of a pharmacist-in-charge of a pharmacy or other Board-licensed establishment, he or she shall so advise the Board in writing within ten days by completing a form provided by the Board.

(e) A registered pharmacist-in-charge shall be physically present in the pharmacy or pharmacy department for a sufficient amount of time to ensure the fulfilling of the following responsibilities:

1. Employment and supervising personnel in a prescription department or pharmacy department;
2. Maintaining accurate records of all prescription medication received and dispensed;
3. Ensuring that medication dispensed conforms with the prescription recieved;
4. Maintaining the security of the prescription area and its contents;
5. Ensuring that only pharmacists, interns or externs provide professional consultation with patients and physicians;
6. Ensuring that only pharmacists, interns or externs accept telephone prescriptions and renewal authorizations;
7. Ensuring that all dispensed medication is properly labeled;
8. Ensuring the use of prescription labels naming the pharmacist-in-charge;
9. Ensuring the posting of the name of the pharmacist-in-charge on the entrance to the pharmacy or pharmacy department in such a way as to be visible to the public;
10. Prohibiting the presence of misbranded, deteriorated or outdated drugs in the active stock in the pharmacy;
11. Operating the prescription area in an orderly and sanitary manner;
12. Ensuring the delivery of a complete service to the community;
13. Ensuring that the pharmacy area is operated in conformance with good pharmaceutical practices;
14. Overseeing the advertising utilized by the pharmacy;
15. Notifying the Board in writing within ten days when his or her duties as pharmacist-in-charge terminate at a specific location; and
16. Ensuring compliance with all statutes, rules and regulations governing the practice of pharmacy.

SUBCHAPTER 4. PHARMACY PERMITS

13:39-4.1 Issuance of permits

All permits shall be issued by the Board in the name of the owner of the pharmacy or other licensed establishment for the operation of which the permit is issued.

13:39-4.2 Display of permits

A permit issued by the Board for the operation of a pharmacy or other licensed establishment shall be conspicuously displayed.

13:39-4.3 Death of owner or partner

In the case of death of an individual owner or a partner, the permit issued to the deceased owner or to the partnership becomes null and void. If the operation of the pharmacy is to be continued, the estate or heirs of the deceased partner and the remaining partners shall apply immediately for a new permit on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.4 Change of ownership

Whenever there is any change in ownership of more than ten percent of the stock of a partnership or sole proprietorship, the new ownership shall apply for a new permit 30 days in advance of the change of ownership on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.5 Change of corporate officers or stockholders, non-public companies

If there is a change of registered agents or officers or a change of stock ownership involving ten percent or more of the outstanding stock, the corporation shall file an affidavit with the Board within 30 days indicating the changes that have taken place and any other information requested by the Board.

13:39-4.6 Change of location

(a) Change of location is defined as a physical move of a pharmacy by the same owners to a new location that is within a five mile radius of the original location. Any move beyond a five mile radius is considered to be the opening of a new pharmacy and is subject to the requirements of N.J.A.C. 13:39-4.7.

(b) Whenever a pharmacy or licensed establishment changes location, the pharmacy or licensed establishment shall apply for a new permit on a form prescribed and furnished by the Board at least 30 days in advance of the proposed date of opening at the new location. The pharmacy or licensed establishment shall pay a fee for the new permit pursuant to N.J.A.C. 13:39-1.3.

(c) Prior to the remodeling of a pharmacy prescription compounding area or a licensed premise, where such remodeling entails a physical change of location within the premises or a change of the physical specifications of the premises or the compounding area, it shall be necessary to notify the Board at least 30 days in advance on a form prescribed by the Board.

13:39-4.7 New pharmacies eligibility and application

(a) A permit application shall be submitted to the Board by every person or corporation desiring to operate a new pharmacy. Such application shall be made on a form furnished by the Board.

(b) The permit application shall indicate the exact intended location and plan or physical arrangement of the proposed pharmacy area and shall indicate any premises contiguous to but not necessarily a part of the pharmacy.

(c) The permit application shall bear the exact trade name, if any; the corporate name, if any; the name and addresses of the owners and operators, if a sole proprietorship or partnership; the names and addresses of the officers and principal stockholders holding 10 percent or more stock, if the pharmacy is a non-publicly held corporation.

(d) The permit application shall include the name of the pharmacist-in-charge who shall be a registered pharmacist in good standing in the State of New Jersey.

(e) No person or other business entity shall be eligible for a permit who is not of high moral character or against whom there is pending any indictment or any alleged violation of local, state or federal law pertaining to the practice of pharmacy or the dispensing of controlled dangerous substances or any drug under N.J.S.A. 24:18-2.

(f) A person submitting an application may be interviewed by the Board to review his or her qualifications and eligibility.

(g) Upon approval of the permit application, the Board shall issue a permit number that will allow the applicant to place prescription legend drugs in stock.

13:39-4.8 Discontinued pharmacies

(a) Whenever a pharmacy is terminated by suspension, retirement or death of the owner, sale or other cause including insolvency, all drug signs shall be removed from both the inside and outside of the discontinued pharmacy, and the permit shall be returned to the Board for cancellation within 30 days of the closing. Prescription records and other information may be requested by the Board as outlined in N.J.A.C. 13:39-5.8.

(b) Whenever a pharmacy is to be discontinued, it shall be the responsibility of the permit holder to immediately notify by telephone the State Board of Pharmacy, the Drug Control Program in the State Department of Health and the Drug Enforcement Administration of the proposed closing at least 15 days beforehand, followed by a letter in writing to those agencies. All medication (both prescription legend and controlled drugs) shall remain on the licensed pharmacy premises with all licenses and registrations in effect until such medications are disposed of in the manner prescribed by the above agencies.

13:39-4.9 Change of business hours

If any changes are made in the opening or closing hours of a pharmacy or other Board-licensed establishment, the Board office shall be notified in writing of these changes within 30 days.

13:39-4.10 Duplicate Permit

A duplicate permit may be issued by the Board upon payment of a fee pursuant to N.J.A.C. 13:39-1.3 and submission of an affidavit describing the loss or destruction of the permit originally issued, or upon return of the damaged permit.

13:39-4.11 Change of name

(a) A change in the name of a pharmacy or other Board-licensed establishment shall be made upon the submission to the Board for approval of the new name and of prescription labels bearing the new name.

(b) An amended permit bearing the new name may be obtained upon return of the original permit to the Board for cancellation and payment of the permit fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-4.12 Reproduction of permits

Any permit issued by the Board for the operation of a pharmacy or other Board-licensed establishment shall not be printed, photographed, photostated, duplicated or reproduced by any other means either in whole or in part, without the express written authorization of the Board.

13:39-4.13 Certification of records

A certification of any of the information not obtained by the Board on a confidential basis, which appears in the Board records and concerns the ownership or registration of a pharmacy or other Board-licensed establishment will be supplied only upon written request and payment of a certification fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-4.14 Contract pharmaceutical services

An institutional permit is required of any institution that performs dispensing functions as determined by the Board, that maintains an area where drugs are stored, manufactured or compounded and that is serviced by outside vendors.

13:39-4.15 Permit; prescription department or pharmacy department

(a) If the area for which a pharmacy permit is sought is less than the total store area of the enterprise, the area subject to permit shall be known as the "Prescription Department" or "Pharmacy Department".

(b) The holder of a permit to operate a Prescription or Pharmacy Department and the registered pharmacist-in-charge of the department shall be subject to the following additional requirements:

1. The Prescription or Pharmacy Department shall be constructed so as to enable the closing off and securing of the department from the remainder of the store area. The department shall be separated from the store area by a permanent secured barrier or partition extending from the floor or fixed counter to the ceiling of either the department or main store and attached thereto. The entrance to the barrier or partition, door or doors and the Prescription or Pharmacy Department shall be capable of being locked and wired to a local sounding, motion detection security device.

2. The registered pharmacist on duty shall be responsible for keeping the Prescription Department secure and locked and the alarm system turned on at all times when he or she does not have full vision or control of the department or when he is not present within the department. Only the registered pharmacist(s) shall maintain possession of the keys to the department.

3. No unauthorized person shall be permitted in the department while a registered pharmacist is not present.

4. No prescription shall be accepted or medication delivered to anyone during the period that a registered pharmacist is not present within the department.

5. All medications requiring supervision of a pharmacist, including dispensed medication, shall remain within the confines of the department when the pharmacist is not in the Prescription Department.

6. The hours that the department is open shall be posted in plain view at the entrance to the department and at the public entrance to the enterprise containing the department.

7. When the enterprise in which the department is located maintains different store hours from the Pharmacy or Prescription Department, all advertising, announcements, signs or statements indicating store hours and the presence of the Pharmacy or Prescription Department shall clearly and distinctly indicate the hours that the department is open.

8. Any advertising, announcements, signs or statements relating to the business enterprise and containing the words "pharmacy," "prescription," "drugs," or other terms shall include the word "department" and shall in no way indicate that the entire business enterprise is a drugstore, pharmacy, or apothecary.

9. The Prescription Department shall have a published telephone number different from that of the establishment in which the department is located. No extensions of this phone shall be located outside of the department.

10. The name of the pharmacist-in-charge shall be posted so as to be visible from outside of the department. The telephone number of the pharmacist-in-charge shall be available in the office of the manager of the establishment.

11. There shall be provided a secure area for the receiving of prescription drugs from suppliers. No prescription drug shall be accepted from any supplier during the hours the Prescription or Pharmacy Department is closed unless adequate security for the storage of department shipments has been provided and approved by the Board.

12. If a drop-off area is utilized it shall be of a one-way, irretrievable design.

13:39-4.16 Permits; specialized, limited use

(a) For good cause, the Board may issue a special or limited-use permit, wherein the type of service is of a limited nature. The permit so issued, being based on special conditions of use imposed by the Board, may necessitate the waiver of certain rule requirements.

(b) Specialized or limited-use pharmacies shall mean pharmacies providing miscellaneous pharmacy services as determined by the Board that are generally not provided for within the pharmacy practice permitted in the Act. An applicant for any specialized pharmacy permit shall provide the Board with an application and a Policy and Procedure Manual which sets forth a detailed description of the type of specialized pharmacy services to be provided within the pharmacy practice. The Policy and Procedure Manual shall also contain detailed provisions which ensure the protection of the public welfare as determined by the Board.

13:39-4.17 Steering prohibited

It shall be unlawful for a pharmacist or a pharmacy permit holder to enter into an arrangement with a health care practitioner who is licensed to issue prescriptions, for the purpose of directing or diverting patients to or from a specific pharmacy or restraining in any way a patient's freedom of choice to select a pharmacy.

13:39-4.18 Responsibilities of pharmacists and permit holders

(a) All pharmacists and all permit holders are responsible for compliance with all the rules, regulations and laws governing the practice of pharmacy.

(b) Any pharmacist and any permit holder may be held liable for violations of the Act and these rules and may be subject to disciplinary action.

SUBCHAPTER 5. PRESCRIPTIONS

13:39-5.1 Imprinted prescription blanks

No prescriber's prescription blanks shall bear the imprint of the name of any pharmacy or other licensed premises or bear the name and address of any person registered under N.J.S.A. 45:14-1 et seq.

13:39-5.2 Lack of directions on original prescription

(a) If the prescriber fails to include on the original prescription directions to the patient for use of the medication, the registered pharmacist shall indicate on the label the words "use as directed" or "as ordered by the physician" or similar words to the same effect.

(b) When, in the judgment of the pharmacist, directions to the patient or cautionary messages are necessary, either for clarification or to ensure proper administration of the medication, the pharmacist may add such directions or cautionary messages to those indicated by the prescriber on the original prescription.

13:39-5.3 Record of prescription refills

If a prescription is refilled, a record of the date on which the prescription is refilled shall appear on at least one of the following: the original prescription, the permanent prescription record book, the patient profile record system, or an electronic data system.

13:29-5.4 Authorization for renewal of prescriptions

(a) A prescription for medication or devices which pursuant to State or Federal law may be sold, dispensed or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber, and the prescription may not be refilled after one year from the date of the original prescription.

1. Prescriptions marked "PRN" or other letters or words meaning refill as needed shall not be renewed beyond one year past the date of the original prescription.

(b) When the renewals listed on the original prescription have been depleted, no additional renewals may be added to the original prescription. For additional dispensing, a new prescription must be authorized by the prescribing physician as provided in N.J.S.A. 45:14-14, which must be reduced to writing by the pharmacist and entered into either a manual or into the electronic data processing system as a new prescription. A new prescription shall be generated and the original prescription shall remain in the prescription files in chronological order.

13:39-5.5 Approval of FDA necessary

No drug or medicine other than a compounded prescription order shall be sold or dispensed in any pharmacy within the State of New Jersey until such drug or medicine has received an approved NDA, ANDA or INDA from the Federal Food and Drug Administration for a "new drug clearance order."

13:39-5.6 Copies of prescriptions; transfers

(a) Copies of prescriptions issued directly to the patient by the pharmacy where the medication was dispensed, pursuant to the receipt of the prescription, shall state in letters at least equal in size to those describing the medication dispensed, the underlined statement: "COPY—FOR INFORMATION ONLY".

(b) Presentation of a prescription label or a prescription marked "COPY—FOR INFORMATION ONLY" shall be for information purposes only and have no legal status as a valid prescription order. The recipient pharmacist of such copy or prescription label shall contact the prescribing practitioner or transferor pharmacy and obtain all information required by (c)2 below for authorization to dispense the prescription, which is the same as obtaining an original prescription order.

(c) A copy of a prescription may be transferred by telephone by pharmacists between pharmacies for the purpose of refill dispensing provided that:

1. The transferor pharmacist invalidates the prescription on file as of the date the copy is transferred by writing "VOID" on its face, and records on the back of the invalidated prescription order that a copy has been issued, to whom, the date of issuance of such copy, and the initials of the pharmacist issuing the transferred prescription order.

2. The transferee pharmacist, upon receiving such prescription directly from another pharmacist, records the following:

i. The name, address and original prescription number of the pharmacy from which the prescription was transferred;

ii. The name of the transferor pharmacist;

iii. All information constituting a prescription order, including the following:

(1) Date of issuance of original prescription;

(2) Original number of refills authorized on original prescription;

(3) Complete refill record from original prescription;

(4) Date of original dispensing;

(5) Number of valid refills remaining.

3. The transferee pharmacist informs the patient that the original prescription has been cancelled at the pharmacy from which it was obtained.

(d) Computerized systems shall perform all information as required in the manual system, including invalidation of the original hard copy prescription when transferred between pharmacists possessing the same prescription records or between pharmacies of the same ownership.

(e) When a copy of a prescription is issued in writing or by telephone, refill authorizations shall be cancelled on the original prescription and the fact that a copy has been issued shall be noted on the original prescription along with the date the copy was issued.

13:39-5.7 Record of pharmacist filling prescription

(a) A registered pharmacist who fills or compounds a prescription or who supervises the filling or compounding of a prescription by an intern or extern shall place his or her signature or readily identifiable initials on the face of the original prescription. In using an electronic data processing system, the initials of the pharmacist responsible for the filled prescription shall also be recorded.

(b) A registered pharmacist who refills a prescription shall place his or her signature or readily identifiable initials on the reverse side of the original prescription next to the date of the refill and the amount dispensed in refilling the prescription if it is different than the original amount prescribed. In using an electronic data processing system, the refill information shall also be recorded.

(c) An intern or extern who refills or compounds a prescription under the direct supervision of a registered pharmacist shall place his or her signature or readily identifiable initials on the face of the original prescription. In using an electronic data processing system, the initials of the intern or extern responsible for the filling of the prescription shall also be recorded.

(d) An intern who refills a prescription under the direct supervision of a registered pharmacist shall place his or her signature of a registered or readily identifiable initials on the reverse side of the original prescription next to the date of the refill and the amount dispensed in refilling the prescription if different than the original amount prescribed. In using an electronic data processing system, this information shall also be recorded.

(e) When a prescription is filled or refilled by an intern or extern under the supervision of a registered pharmacist, the intern or extern filling or refilling the prescription shall place his or her signature or readily identifiable initials on the prescription as required in (c) and (d) above prior to submitting the prescription to the registered pharmacist, who shall place his or her signature or readily identifiable initials on the prescription, in accordance with (a) and (b) above, directly below the signature or readily identifiable initials of the intern or extern who filled or refilled the prescription under the registered pharmacist's supervision. A record identifying such initials with the signature and the address of the pharmacist or intern or extern shall be maintained for a period of five years after the termination of employment of said pharmacist or intern or extern.

(f) If an electronic data processing system is utilized in connection with the dispensing of medication and the required recording of prescription information, a means acceptable to the Board shall be utilized to identify the pharmacist or intern or extern dispensing the medication.

(g) In using an electronic data processing system, the pharmacist in charge shall maintain a document log in which each pharmacist shall sign a statement at the beginning of the pharmacist's next working day attesting to the fact that the prescription information he or she entered in the electronic data processing system on the previous working day is accurate and complete and that the identifying designations are correct. The document log shall be maintained at the pharmacy for a period of five years after the date of the last entry. The five years of record information shall be kept in such a manner as to be sight-readable within two weeks. The most recent one year of record information shall be immediately retrievable.

(h) In using an electronic data processing system, the system shall have the capability of producing sight-readable documents of all original and refilled prescription data, and, in addition, the number of refills authorized by the prescribing physician for a period of not less than five years. Five years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of record information shall be immediately retrievable. The term "sight-readable," as it appears in all rules of the Board shall mean that the Board or Attorney General shall be able to examine and read the record of information. During the course of an on-site inspection, the record may be read from a cathode ray tube (CRT), microfiche, microfilm, hard copy printout or other acceptable method. For the purpose of administrative proceedings before the Board, records shall be provided in a paper printout form.

(i) Initials of the dispensing pharmacist and intern or extern, if applicable shall be entered into the system each time a prescription is filled or refilled. Computer programs which automatically generate pharmacist's initials without requiring a direct entry by the dispensing pharmacist at the time of dispensing are prohibited.

13:39-5.8 Availability of records upon termination of business

(a) Where a pharmacy ceases operation as the result of a suspension, retirement or death of the owner, sale, or other cause including insolvency, the licensee, or the one responsible for supervising the disposition of the practice, shall make every effort to notify patrons of their right to retrieve currently valid prescriptions and the location of the prescriptions for a six-month period following notice, using all of the following methods:

1. Notification in writing to the Board;
2. Publication, once weekly for two successive weeks in a newspaper whose circulation encompasses the major area of the licensee's former practice, of a notice advising patrons of the right to retrieve their prescriptions and the location of the prescriptions for a six-month period following publication; and
3. A sign placed in the pharmacy location informing the patrons of the right to retrieve their prescriptions and the location of the prescriptions.

SUBCHAPTER 6. DISPENSING AND ADVERTISING DRUGS

13:39-6.1 Professional judgment in dispensing drugs

(a) The pharmacist shall have the right to refuse to fill a prescription if, in his or her professional judgment, the prescription is outside the scope of practice of the prescriber; or if the pharmacist has sufficient reason to question the validity of the prescription; or to protect the health and welfare of the patient.

(b) A pharmacist may dispense an emergency supply (no more than a 72-hour quantity) of a chronic maintenance drug (except Controlled Dangerous Substances) or device in the absence of a current valid prescription, if, in his or her professional judgment, refusal would endanger the health or welfare of the patient.

1. The pharmacist must first ascertain to the best of his or her ability, by direct communication with the patient, that such a medication or device was prescribed for that patient by order of a licensed practitioner.
2. The pharmacist shall document the communication and require the patient to provide suitable identification and sign a statement attesting to the need before dispensing.
3. A patient's signature is not required for emergency refilling of a previously valid prescription.

13:39-6.2 Prescriptions prepared, compounded or dispensed by pharmacy externs or interns

A pharmacy intern or extern may prepare, compound or dispense prescriptions only under the direct personal supervision of a registered pharmacist of this state.

13:39-6.3 Sale of controlled dangerous substance and prescription legend drugs by other than a registered pharmacist

A non-registered person shall only sell or furnish a controlled dangerous substance or prescription legend drug under the direct personal supervision of a registered pharmacist.

13:39-6.4 Direct personal supervision of dispensing and compounding

The registered pharmacist supervising the activities of a non-registered individual must be physically present in the compounding/dispensing area and must be personally responsible for the overall accuracy of the filled prescription.

13:39-6.5 Restriction on display of prescription legend drugs and controlled dangerous substances

Prescription legend drugs and controlled dangerous substances may not be displayed in the licensed establishment in such a manner that they can be accessible to the public.

13:39-6.6 Foreign prescriptions

Prescriptions written or signed by other than a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions in the United States, District of Columbia, or any territory of the United States are not considered valid prescription orders and shall not be honored.

13:39-6.7 Function of supportive personnel

(a) Supportive personnel may only assist the registered pharmacist in a clerical manner such as the retrieving of prescription files, profile cards, and other such records, the typing of labels and the completing of prescription receipts and other such forms.

(b) Supportive personnel shall not interpret a prescription order, professionally consult with a patient or physician or the agent of the physician or weigh, measure or otherwise compound or dispense a prescription. Supportive personnel may, however, count or pour prescription medication, but only under the direct personal supervision of the registered pharmacist after the appropriate medication is selected from stock by the attending registered pharmacist.

13:39-6.8 Advertising and sale of prescription drugs

(a) "Advertisement" shall mean any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services or goods from a Board licensee.

(b) Price quotations for prescription drugs appearing in any advertisement shall stipulate the strength and quantity required to be purchased for the offered cost. Price quotations shall include the usual and customary prescription cost. All services including, but not limited to, delivery charges rendered by the pharmacy which will add additional costs to the price quoted, must be set forth in the advertisement.

(c) Any reference in any form of advertisement to the quality of a drug or its beneficial use is prohibited.

(d) Price quotations for drugs appearing in any advertisement shall stipulate the effective period of price quotation.

(e) Upon request by any consumer, the pharmacist shall be required to give price information over the telephone and shall stipulate the effective period of the price quotation.

(f) Any advertisement maligning the profession of pharmacy, or the quality of professional services rendered by another licensee or permittee, as determined by the Board, shall be hereby prohibited.

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

13:39-7.1 Retail pharmacy access and egress

Retail pharmacies shall be required to maintain entrances which are easily and safely accessible to the general public. Access to and egress from the pharmacy shall not be such that the public must traverse or traffic through any enterprise in which prescriptions are generated.

13:39-7.2 Retail pharmacy signs

Retail pharmacies shall be required to post a sign on the exterior of the building or a sign which is otherwise visible from a public roadway, conspicuously identifying the existence of a pharmacy on the premises.

13:39-7.3 Special requirements of a prescription area

(a) For pharmacies in operation prior to July 1, 1963, the area devoted to the prescription area and laboratory shall not be less than ten percent of the main floor area of the pharmacy or drugstore, and in no instance shall it be less than 50 square feet. If the main floor area of such pharmacy exceeds 1,200 square feet, the ten percent requirement does not apply and the minimum area of the prescription area shall not be less than 120 square feet.

(b) For all other pharmacies including pharmacies subject to the provisions of (a) above which are moving to a new location, the prescription area must occupy exclusively a minimum of 150 square feet.

13:39-7.4 Prescription counter

There shall be a prescription counter on which to work and the free working surface shall not be less than 18 inches in width and 12 contiguous feet in length. This minimum free working surface must be kept clear at all times for the compounding of prescriptions and for other pharmaceutical manufacturing.

13:39-7.5 Aisle space in prescription area

The free floor space behind the prescription counter shall not be less than three feet in width.

13:39-7.6 Prescription area sink

An adequate sink with hot and cold running water shall be provided in the prescription area of retail and institutional pharmacies, easily accessible to the prescription counter and at a workable height. The sink shall be available during the hours the pharmacy, drugstore or other Board-licensed establishment is normally open for business. A similarly equipped sink must be provided in institutional satellite pharmacies as well as institutional and retail pharmacy intravenous admixture rooms.

13:39-7.7 Storage and adequate stock

There shall be sufficient shelf, drawer or cabinet space within the prescription area for proper storage of a representative stock of prescription labels, an assorted stock of prescription containers, an adequate stock of prescription drugs and chemicals and the required equipment.

13:39-7.8 Minimum equipment and facilities

(a) The following minimum amount of equipment and facilities shall be required to be in every prescription area, and this equipment shall be stored so as to be readily accessible and shall be kept in a clean condition:

1. The current USP/DI (2 volume set) and suitable reference texts including at least the current edition on pharmacology, the general practice of pharmacy, drug interactions and drug product composition;
2. Poison record book;
3. Exempt narcotic record book;
4. Permanent prescription filing device and patient profile record system;
5. Properly safeguard storage place for schedule II controlled substances if not dispersed;
6. Prescription balance capable of weighing up to 2 pounds or 1 kilogram;
7. Set of metric weights;
8. Set of apothecary weights (optional);
9. Counter scale capable of weighing up to 2 pounds or 1 kilogram;
10. Glass graduates capable of measuring 5 minims to 1 pint and 1 cc. to 500 cc. or the metric equivalent thereof—SHAPE:
   i. A graduate of a capacity of more than 4 fluid grams (15 milliliters) may be of either the cylindrical or circular conical type. A graduate of a capacity of 4 fluid grams (15 milliliters) or less shall be of the single-scale cylindrical type.
   ii. Syringes, pipettes and other suitable volumetrical measuring devices may be used in lieu of cylindrical graduates of 15 cc. or less.
11. Mortars and pestles:
   i. Wedgewood: approximately 4 oz. and 24 oz. or the metric equivalent thereof;
   ii. Glass: 4 oz. and 8 oz. or the metric equivalent thereof.
12. Glass funnels: 1 oz., 4 oz. and 8 oz. or the metric equivalent thereof;
13. Stirring rods;
14. A small, medium and large steel spatula and a spatula of rubber or composition;
15. Ointment tile or parchment paper;
16. Refrigerator for the exclusive storage of biologicals and other medicinal products requiring refrigeration;
17. Filter papers and powder papers;
18. Suitable counting trays or approved counting device;
19. Labels containing the name of the registered pharmacist-in-charge, address and telephone number and D.E.A. number of pharmacy;
20. Poison labels containing name of the registered pharmacist-in-charge, address and telephone number of pharmacy;
21. Suppository mold;
22. Two Generic Drug availability Placards (D.U.R.C.);
23. Certification of occupancy from local building authorities for new permit applications.

13:39-7.9 Cleanliness, orderliness and sanitation

The entire prescription area shall at all times be kept in a clean, orderly and sanitary condition.

13:39-7.10 Television in prescription area prohibited

No commercial television, other than for security measures, may be operated in a prescription area or in any location outside of a prescription area such that its operation may be viewed from the prescription area.

13:39-7.11 Return of prescription medication

No prescription medication shall be placed in stock for reuse or resale which has been returned after leaving the pharmacy.

13:39-7.12 Prescription balances, scales, weights and automatic counting devices

The Board requires any drugstore or other Board-licensed establishment to prove to the satisfaction of the Board that all balances, scales, weights and automatic counting devices have been currently inspected by the Department of Weights and Measures of either the municipality, county, or state in which such pharmacy, drugstore, or other Board-licensed establishment is located, and that such balances, scales, weights and automatic counting devices have been properly sealed by the applicable authority.

13:39-7.13 Disposal of unwanted drugs

Unwanted drugs shall be disposed of in a manner that shall not cause them to become a health hazard.

13:39-7.14 Outdated or drugs marked "sample"

No outdated, misbranded, deteriorated or adulterated drugs, or any drugs marked "sample" or with any like designation or meaning shall be placed or maintained in active stock for use or sale.

13:39-7.15 Patient profile record system

(a) A patient profile system must be maintained by all pharmacies for persons for whom prescriptions are dispensed. The Patient Profile Record System (PPRS) shall be devised so as to enable the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile record may be maintained for members of a family living at the same address and possessing the same family name.

(b) The following information shall be recorded in the PPRS:

1. The family name and the first name of the person for whom the medication is intended (the patient);
2. The address of the patient;
3. Indication of the patient's age, birth date or age group (infant, child, adult);
4. The original date the medication is dispensed pursuant to the receipt of the physician's prescription;
5. The number or designation identifying the prescription;
6. The prescriber's name;
7. The name, strength and quantity of the drug dispensed;
8. The initials of the dispensing pharmacist, and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the back of the original prescription.

(c) The pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic conditions which may relate to drug utilization, as communicated to the pharmacist by the patient.

1. If there are no patient allergies, idiosyncrasies or chronic conditions which may relate to drug utilization, the pharmacist shall so indicate on the patient profile record system.

(d) The pharmacist shall, through periodic inquiry, review and monitoring of the patient profile, determine if there should be any adjustment in the original patient information and so indicate the appropriate change in the patient profile record.

(e) Upon receipt of a new or refill prescription, a pharmacist shall examine the patient's profile record either in a manual or electronic data processing system before dispensing the medication, to determine the possibility of a harmful drug interaction, reaction or misutilization of the prescription. Upon determining a harmful drug interaction, reaction or misutilization, the pharmacist shall take the appropriate action to avoid or minimize the problem, which shall, if necessary, include consultation with the patient and/or the physician.

1. Upon receipt of a new prescription for a drug which has not been previously dispensed to a patient, the pharmacist shall determine if the patient requires additional information or consultation to support the prescriber's instructions, and if so, proceed appropriately.

2. Upon receipt of a refill prescription, a pharmacist shall determine if a substantial time, as is appropriate for that drug in the pharmacist's professional judgment, has elapsed from the last filling, and the pharmacist shall consult with the prescriber and/or the patient to assure himself that continued use is appropriate.

3. When patient profile records indicate sporadic, erractic or irrational use of medication by a patient, the pharmacist shall consult with the patient and/or the prescriber to determine if continued use is appropriate.

4. All patients who patronize a pharmacy shall have a profile record card as specified by this section, and the pharmacist shall inquire as to whether other drugs are being concomitantly utilized in order to establish a current drug history for the patient.

5. All of the foregoing assumes the patient is willing and capable of participating in his or her own plan of care.

(f) A patient profile record must be maintained for a period of not less than five years from the date of the last entry in the profile record. The oldest four years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of record information must be immediately retrievable.

(g) If the pharmacy uses an electronic data processing system, an auxiliary recordkeeping system shall be established when the electronic data processing system is inoperative for any reason. When the electronic data processing system is restored to operation, the patient profile information and number of refills authorized during the time the electronic system was inoperative shall be entered into the electronic data processing system within 72 hours.

(h) If an electronic data processing system is used, the system shall provide adequate safeguards against manipulation and alteration of records and to protect confidentiality of the information in the data bank.

(i) The holder of the pharmacy permit shall make arrangements with the supplier of data processing services or materials to ensure that the pharmacy will continue to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason.

(j) Failure to comply with this section shall subject the pharmacist to disciplinary sanctions.

SUBCHAPTER 8. INTERNSHIPS: EXTERNSHIPS: APPROVED TRAINING PHARMACY

13:39-8.1 Definitions

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

"Approved training pharmacy" means a pharmacy or pharmacy department approved by the Board to provide accredited practical experience to pharmacy interns or externs.

"Certified preceptor" means a pharmacist registered in this State who assumes the responsibility to supervise and tutor a pharmacy intern or extern as outlined in N.J.A.C. 13:39-8.2.

"Pharmacy intern" means any person who has graduated from an accredited school or college of pharmacy approved by the Board, or if a foreign pharmacy graduate, who has met all of the requirements of the National Association of Boards of Pharmacy (NABP) Foreign Pharmacy Graduate Examination Commission order to qualify to take the National Association of Boards of Pharmacy Licensing Examination (NABPLEX), who is employed in an approved training pharmacy for the purpose of acquiring accredited practical experience and who has first registered for said purposes with the Board.

"Pharmacy extern" means any person who is in the fifth college year (or third professional year) at an accredited school or college of pharmacy approved by the Board, who is assigned to an approved training pharmacy for the purpose of acquiring accredited practical experience under the supervision of the school or college at which he or she is enrolled.

"Pharmacy internship or externship" shall mean the program of acquiring practical experience by a pharmacy intern or extern respectively.

13:39-8.2 Preceptor certification; application; procedures; responsibilities

(a) A registered pharmacist who wishes to be a certified preceptor shall make application to the Board upon such form as shall be prescribed and shall furnish evidence satisfactory to the Board that he or she:

1. Has been registered and employed as a pharmacist on a full-time basis for at least two years in the State of New Jersey.

2. Has been engaged in the compounding and dispensing of pharmaceutical preparations and prescriptions and the supplying of drug products in a registered pharmacy for a period of at least two years, one year of which must have been immediately prior to the beginning of any pharmacy internship he or she is to supervise;

3. Has had a record of law observance deemed satisfactory by the Board; and

4. Has attended professional meetings or preceptor training conferences as may be designated by the Board.

(b) The Board shall assign a certified preceptor to each pharmacy intern or extern. At no time may one certified preceptor supervise the training of more than one pharmacy intern or extern. The Board reserves the right to determine the suitability of pharmacists to serve as preceptors.

(c) The certified preceptor in an approved training pharmacy must indicate a willingness to cooperate with the Board in developing pharmacy intern or extern training and shall report to the Board from time to time as requested by the Board on the progress and aptitude of any pharmacy intern or extern under his or her supervision.

(d) The compounding and dispensing of all prescriptions and drugs by the pharmacy intern or extern must be done under the direct supervision of a registered pharmacist.

(e) The certified preceptor is charged with the responsibility of:

1. Supervising the activities of the pharmacy intern or extern and ensuring that the intern or extern will keep abreast of developments in pharmacy by reading current professional literature and journals and by attending seminars and meetings of professional and scientific organizations;

2. Providing the pharmacy intern or extern with experiences that will make the intern or extern proficient in compounding and dispensing of pharmaceutical preparations, drug products, health aids and related items;

3. Providing the pharmacy intern or extern with instruction and guidance in:

i. Procedure for opening and closing a pharmacy;

ii. General pharmacy operation;

iii. Ordering drugs and checking drug orders;

iv. Over the counter preparations, including their composition and consultation with consumers;

v. Drug Enforcement Agency inventory and preparation of Drug Enforcement Agency orders;

vi. Sale of Drug Enforcement Agency Schedule V preparations and sale of poisons;

vii. Third-party prescriptions programs;

viii. Telephone procedure with physicians and patients;

ix. Consulting with physicians and patients; and

x. Usage of reference books in the pharmacy and reference material from other sources.

4. Arranging an interview with a physician for the intern or extern; and

5. Preparing the intern or extern in any other area of pharmacy important to good management and professional practice.

13:39-8.3 Training pharmacy approval

(a) To be approved as a training pharmacy for interns and externs, a pharmacy shall meet the following requirements:

1. Have a satisfactory record of observance of federal, state and municipal laws and ordinances governing the activity in which it is or has been engaged.

2. Have a total number of prescriptions or medication orders filled annually, including renewals, of at least 10,000, with no more than one pharmacy intern or extern in training for each 10,000 prescriptions filled in the pharmacy.

3. Establish and maintain as part of the service it renders, a medication recordkeeping system for its patients that is approved by the Board.

4. Have available an adequate reference library for use by the pharmacy intern or extern.

13:39-8.4 Internship and externship practical experience

(a) The minimum accredited internship and externship practical experience requirements shall be the equivalent of 1,000 hours as follows:

1. One thousand hours for completion of a structured internship conducted after graduation from an accredited college of pharmacy and consisting of no less than 24 weeks supervised by a certified preceptor. Each week of practical experience shall consist of no less than 35 hours and no more than 45 hours of actual service per week. If the intern is

a foreign pharmacy graduate, he or she must have met all of the requirements of the NABP Foreign Pharmacy Graduate Examination Commission necessary to qualify to take the NABPLEX Examination.

2. In lieu of the requirements set forth in (a)1. above, an applicant may obtain up to 1,000 hours practical experience by completion of a structured, college-credited externship and clinical pharmacy clerkship program of an accredited college of pharmacy. Such programs shall first be approved by the Board.

3. In cases of a structured, college-credited externship and clinical pharmacy clerkship program of an accredited college of pharmacy, where less than 1,000 hours are accepted and approved by the Board, the balance of hours to make a total of 1,000 must be gained through completion of a structured internship, conducted after graduation from an accredited college of pharmacy and supervised by a certified preceptor with each week of practical experience consisting of no less than 35 and no more than 45 hours of actual service per week.

(b) A Board-approved College of Pharmacy Externship Program shall provide that no less than 75 percent of the hours credited toward the practical experience requirement of the Board be gained in settings in which there is direct involvement with consumers or patients, registered pharmacists, and other licensed health care practitioners such as physicians, dentists and nurses. No less than 50 percent of the hours credited toward the practical experience requirement of the Board shall be acquired in an approved training pharmacy under the supervision of a certified preceptor. Not more than 40 hours of Board-accredited experience shall be acquired per week.

(c) Credit for college externships or other experience programs shall not be allowed for experience gained prior to the fifth college year (or third professional year) in the College of Pharmacy Program.

(d) The preceptor and the pharmacy intern shall keep accurate records of the time spent by the pharmacy intern for credit toward the requirements of (a)1. above. The Board shall provide appropriate forms to be submitted to the Board for approval of postgraduate practical experience.

(e) The pharmacy college shall certify that the requirements of (a)2. above have been met. The Board shall provide appropriate forms for such certification.

13:39-8.5 Change in intern status

(a) A pharmacy intern applying for registration as a pharmacist in the State of New Jersey shall notify the Board within ten days of:

1. The beginning of a term of intership;
2. The termination of an internship;
3. Change in number of hours of employment;
4. Change in the scheduled hours of employment;
5. Change of preceptor;
6. Change in employing pharmacy.

(b) Each certified preceptor shall file reports quarterly or whenever requested by the Board.

13:39-8.6 Committee on Pharmacy Internship and Externship

A committee which shall consist of a member or members of the Board, faculty and student representatives of the college or colleges of pharmacy located within the State of New Jersey, and a certified preceptor, all of whom shall be approved by the Board, is established to advise and assist the Board in all matters relating to the pharmacy internship/externship program. All meetings of this committee shall be held in a public place and shall be open to attendance by members of the public. The President of the Board shall designate a member of the Board to be the chairperson of this committee.

13:39-8.7 Pharmacist intern log

(a) Pharmacist interns shall maintain a log for the internship period.

1. The log shall consist of an 8 inches by 11 inches looseleaf notebook.

2. Entries shall be made in the log weekly and shall contain:

i. The total number of prescriptions filled in the pharmacy and the number filled by the intern;

ii. A brief summary of all new prescription drug products (new generic entities only) dispensed such as physical-chemical characteristics, dosage, forms and usage; and

iii. One example of the most noteworthy of each of the following professional responsibilities:

(1) Usage of profile record card requiring contact with patient, physician or hospital to resolve potential problems;

(2) Consulting with patient, physician or nurse if in a hospital concerning method of taking or special instructions concerning use of prescription; or

(3) Assistance to patient in area of non-prescription medication use (if applicable).

(b) The log shall be submitted to the Board at the completion of the internship period.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES WITHIN HEALTH CARE FACILITIES

13:39-9.1 Definitions

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

"Authorized prescriber" means a medical practitioner licensed to write prescriptions, or a medical school graduate who is a member of the house staff of the institution and who is authorized to write medication orders under the supervision of a licensed medical practitioner of the institution.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and regulations governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying the medication with the prescriber's orders, giving the individual dose to the patient, seeing that the patient consumes the medication (if oral), and recording the required information, including the method of administration.

"Formulary" means a continually revised compilation of pharmaceuticals available in the pharmacy for use in the facility developed by representatives to the facility's medical and pharmaceutical staff, working through the Pharmacy and Therapeutics Committee.

"Health care facility" means:

1. A place where the sick and injured are cared for under a common roof, that is, hospitals (proprietary and non-proprietary); skilled nursing facilities; convalescent and rehabilitation homes, diagnostic and therapeutic clinics; homes for the aged;

2. Health Maintenance Organizations; or

3. Government institutions (regardless of classification) including Federal, State and local prisons and jails; and other institutions of custodial care.

"Institutional pharmacy" means the area in the health care facility licensed by the Board as a pharmacy that maintains an institutional permit. This area shall include, but is not limited to, all other areas of the health care facility where pharmaceuticals are stored in bulk, manufactured, compounded and dispensed.

"Medication order" means a written request for medication originated by a licensed practitioner or authorized prescriber or by a certified nurse midwife acting pursuant to and within the scope of regulations of the Board of Medical Examiners, N.J.A.C. 13:35-2.12, and intended for patient use in the health care facility, and not for use of the institution's employees or their dependents or outpatients of the facility's clinics. A valid medication order contains the date ordered; the patient's name and location within the facility; the name, dose, route and frequency of administration of the medication; any additional instructions or directions needed; the date written, and the signature of the authorized prescriber.

"Pharmacy and Therapeutics Committee" means the active standing committee of the hospital medical staff in the health care facility which is the organizational line of communication and liaison between the medical and pharmacy staff and which acts to review and promote rational drug therapy and utilization in the facility. Its organization and function are described under N.J.A.C. 13:39-9.11.

"Unit dose drug distribution system" means a system of dispensing drugs and biologicals to be administered to patients of the facility whereby the medications are delivered daily (or more frequently) by the pharmacy to the patient care units in amounts equal to a 24-hour supply or less and are prepared, whenever possible, in single unit use packaging.

13:39-9.2 Licensure of institutional pharmacies

Any institutional pharmacy as defined under N.J.A.C. 13:39-9.1 shall be registered with and possess a permit issued by the Board. The permit shall be conspicuously displayed in the facility's pharmacy. The institutional pharmacy is subject to and shall be conducted in accordance with all existing State and Federal rules and regulations.

13:39-9.3 Control of institutional pharmaceutical services

(a) The pharmaceutical services of the health care facility shall be the responsibility of and under the control, supervision, and direction of the pharmacist-in-charge.

(b) If a health care facility does not have an institutional pharmacy on its premises, it may enter into an agreement with a community pharmacy licensed by the Board. The pharmacist-in-charge of the community pharmacy shall direct, control, supervise and be responsible for the pharmaceutical services provided in the facility. Both the pharmacist-in-charge and the facility shall notify the Board of the agreement within one week of its inception and termination.

(c) The pharmacist-in-charge (institutional or local), with the cooperation of the Pharmacy and Therapeutics Committee, shall develop written policies and procedures as needed to provide the pharmaceutical services of the facility. The written policies and procedures shall be available to the Board and shall be known as the "Policy and Procedure Manual".

13:39-9.4 Pharmaceutical services

The pharmaceutical services shall be provided in accordance with the accepted professional principles and appropriate Federal, State and local laws. These services shall be responsive to the medication needs of the patient and the educational and research needs of the facility, and shall include a program for the control and accountability of all drug products throughout facility.

13:39-9.5 Pharmaceuticals

(a) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall be responsible for determining the specifications for drugs, chemicals, pharmaceutical preparations and biological products and accessories used in the treatment of patients of the facility as to quality, quantity and source of supply. An authorized purchasing agent and/or materials manager of the facility may perform the actual procurement through a centralized department. In such a case, the purchase shall be approved and countersigned by the pharmacist-in-charge or his or her designee, who shall be a pharmacist.

(b) Drugs approved by the Pharmacy and Therapeutics Committee for use in the facility shall be of an amount sufficient to compound or dispense all medication orders and prescriptions which may reasonably be expected to be compounded or dispensed by the pharmacist.

(c) The institutional pharmacy shall have an adequate inventory of drugs and biologicals to assure timely initiation and continuation of routine, emergency and disaster drug therapy.

(d) The storage and dispensing of all Investigational New Drugs shall be a pharmaceutical service provided in cooperation with, and in support of the principal investigator. The use of these drugs shall be approved by the Pharmacy and Therapeutics Committee and also by the institutional review committee or its equivalent committee or group. Under these parameters the dispensing of these drugs shall not be construed to be a violation of N.J.A.C. 13:39-5.5.

(e) The pharmacist-in-charge, in cooperation with the Pharmacy and Therapeutics Committee, shall establish a system of control for all drugs dispensed for use in the drug therapy of patients of the facility. Routine inspections shall be conducted by a pharmacist of all medication areas located in the facility or any other service area of the facility. These inspections shall be fully documented and the reports retained by the pharmacy. Written inspection reports shall be prepared and signed by the inspecting pharmacist. Procedures for the review of these reports shall be developed and instituted by the pharmacist-in-charge and can be incorporated into the overall quality assurance program for the pharmacy.

13:39-9.6 Drug disbursement

(a) The pharmacist-in-charge shall develop and implement policies and procedures for the following activities to ensure a safe and effective drug disbursement system with adequate drug control:

1. The pharmacist shall review the prescriber's original order, a direct copy thereof, or an electro-mechanical facsimile before any initial dose of medication is dispensed, except as provided for in (a) 2. below. Drugs not specifically limited as to time or number of doses when ordered shall be controlled by the automatic stop order procedure or other methods in accordance with written policies of the facility. Orders involving abbreviations and chemical symbols shall be carried out only if the abbreviations and symbols are included on a standard list that has been approved by the medical staff. When appropriate, the pharmacist shall make necessary clarifying entries into the patient medical record relative to drug use after consultation with the prescriber.

2. Physicians' oral orders for drugs may be given to another licensed practitioner, a pharmacist, a registered nurse or an authorized prescriber. Such orders shall be immediately recorded and signed by the person receiving the order on the physician's order sheet. Oral orders for Schedule II controlled substances shall be permitted only in the case of a bona fide emergency situation. Oral orders shall be countersigned by the prescriber as required by the Code of Federal Regulations 20:3-405.1024(g)(6) and 405.1123(h).

3. All compounding of individual medication orders or prescriptions and all formulation of special drug needs and all bulk compounding (sterile or non-sterile) shall be done by or under the direct supervision of a pharmacist according to N.J.A.C. 13:39-6.1. Aseptic control procedures shall be maintained for the preparation of intravenous admixtures, the reconstitution of other sterile parenteral preparations, and the compounding and sterilization of other pharmaceutical products as needed.

4. All prepackaging and labeling of drugs shall be done by or under the direct supervision of a pharmacist. Procedures shall be established for maintaining the quality assurance and manufacturer's control identity of prepackaged material. The prepackaging records shall be initialed by the supervising pharmacist.

5. The pharmacist shall be responsible for monitoring the drug therapy of patients in the facility. This shall include, but is not limited to, maintaining and reviewing the patient medication profile prior to the dispensing of medications. When the pharmacy is closed, and in instances involving the issuance and administration of STAT orders (orders requiring immediate attention) these drugs shall be documented on the patient's medication profile immediately after the pharmacy is reopened.

6. Only the pharmacist or personnel under the direct supervision of the pharmacist shall prepare medications for dispensing or perform labeling functions. The pharmacist shall be responsible for providing medication in a finished form that requires no further alterations, preparation, reconstitution, dilution or labeling by other licensed personnel and is ready for administration to patients.

i. Whenever drugs are added to intravenous solutions, supplementary labeling shall be affixed to the container indicating the names and amounts of all ingredients, the name and location of the patient, the date and time of expiration and the initials of the supervising or dispensing pharmacist.

ii. Labeling of medications, other than intravenous solutions, shall be in conformance with written policies and procedures controlling the drug distribution system in use within the facility and in accord with current acceptable standards of pharmaceutical practice. Dispensing and labeling of outpatient prescriptions shall conform to the rules of the Board.

7. Written policies and procedures that govern the safe administration of drugs shall be developed by the Pharmacy and Therapeutics Committee and approved by the medical staff.

8. No drugs shall be administered to a patient except those provided through the pharmacy. Any exception to this rule must be governed by written policies and procedures developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee and the medical staff. Drugs in this category include, but are not limited to, investigational, veterinary and radioactive drugs and drugs brought into the facility by the physician or the patient or the patient's family or friends.

i. If a patient's previously acquired medication is to be used, a written order to this effect shall be given and signed by the patient's attending physician. Such medications shall be given to the pharmacist for identification of contents and dispensing origin and for proper relabeling for use in the facility. Also, these medications shall be documented as part of the pharmacy's patient profile record system.

ii. Investigational drugs shall be properly labeled and stored in the pharmacy until dispensed. Essential information on the investigational drug shall be maintained in the pharmacy. The investigational drug may be administered only after basic chemical, pharmaceutical and pharmacological information has been made available to all concerned and all the requirements of the Federal Food and Drug Administration and the facility are satisfied.

9. There shall be procedures established to assure the immediate and efficient removal of all outdated and recalled drugs from patient care areas and from the active stock of the pharmacy. These drugs shall be either returned to the manufacturer or safely destroyed and documented. The pharmacist-in-charge shall develop written policies and procedures governing the removal from the facility of outdated or recalled drugs.

10. Limited quantities of emergency drugs shall be placed under controlled conditions in secure locations within the facility to assure immediate access by authorized licensed health care personnel for use in an emergency situation. Written policies and procedures for the maintenance, content, control and accountability of emergency drugs supplied and located throughout the facility shall be developed and designated by

the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee and the medical staff.

11. Controlled Dangerous Substances shall be purchased, received, stored, dispensed, administered, recorded and controlled in accordance with State and Federal laws and regulations. Written policies and procedures concerning control, use and accountability of controlled drugs shall be maintained by the pharmacist-in-charge. Administration records shall include name, dose and dosage form of the drug, the date and time, the patient's name and location, the prescribing physician's name, and the signature of the administering licensed individual.

12. Where the use of a drug-dispensing device is approved as an integral part of the drug, distribution system by the facility, the pharmacist-in-charge and the Pharmacy and Therapeutics Committee, the device may be used when the pharmacist is not on duty (absent during either the day or night), provided that any absence of the pharmacist does not exceed 24 hours, or the device may be used when the pharmacist is on duty, provided that proper review of the use of the drug-dispensing device can be ascertained, and the drug-dispensing device shall be checked for accuracy and cleanliness every 24 hours by a pharmacist when on duty and so documented.

i. Packaging and labeling of medication for drug-dispensing devices, when done in the facility, shall be performed under the direct supervision of a pharmacist in the employ of or under contract to the facility. Records shall be maintained in accordance with (a)4. above.

ii. Stocking of the drug-dispensing devices with pre-packaged medications shall be performed by or under the direct supervision of a pharmacist. Only a pharmacist shall have access to that area of the drug-dispensing device where drugs are stored.

iii. At least every 12 hours, a pharmacist shall check medications withdrawn from the drug-dispensing device. Other than a pharmacist, only one authorized registered nurse shall have access to the withdrawal of medication from each drug-dispensing device during authorized times of use. A record of all withdrawals, including the identity of the registered nurse making the withdrawal, shall be recorded and available to the pharmacist.

iv. A pharmacist shall check the record of all medications withdrawn from the drug-dispensing device against the order as written by the licensed practitioner or authorized prescriber. This check shall be performed and documented within 12 hours from the time of the original order and so noted on the pharmacy's patient medication profile.

v. When there is no licensed pharmacy on the premises and when the drug-dispensing devices are an integral part of the approved drug distribution system of the facility, the devices shall be controlled by the pharmacist-in-charge who is responsible for the pharmaceutical services of the institution. Under these circumstances, the time between medication order checks shall not exceed 24 hours. The drugs stored in these drug-dispensing devices shall be selected by the pharmacist-in-charge with the approval of the Pharmacy and Therapeutics Committee.

vi. The pharmacist-in-charge shall be responsible for checking the drugs in the drug-dispensing devices at least monthly for expiration date, misbranding, physical integrity, security and accountability.

13. Written policies and procedures governing unused medications shall be established and implemented by the pharmacist-in-charge and shall comply with the following requirements:

i. All unused medications in the facility shall be returned to the pharmacy. Medications in open containers, where the seal of the container is broken or where the drug source, control number or expiration date are missing, shall be sent to the pharmacy for a final disposition as required.

ii. If a unit dose medication has been out of the control of the pharmacy but stored in a medication room, and the medication seal and control number are intact, the medication may be recycled and dispensed.

iii. Any and all medication returned by outpatients of the facility shall not be redispensed.

iv. The record of disposal of unused or nonadministered Controlled Dangerous Substances expended or wasted either by accident or intentionally shall be signed and witnessed by a supervising nurse and returned to the pharmacy with a written explanation.

(b) Prescriptions written for employees of the institution or their dependents, or for outpatients of the facility's clinic, shall conform to the prescription requirements of N.J.S.A. 45:14-14.

13:39-9.7 Records and reports

(a) Records of the pharmaceutical services of the facility shall be the responsibility of the pharmacist-in-charge. These records shall be maintained and made available to persons authorized to inspect them under State and Federal law.

(b) The institutional pharmacy shall maintain a patient profile record for each patient receiving drug therapy.

1. The profile records for inpatients shall contain: the date of each entry; the name; sex; age or birthdate; location of the patient; the drug name, dose, route of administration and quantity dispensed; the initials of the pharmacist performing the dispensing or supervising; the reported diagnosis of the patient, and reported allergies and chronic condition(s) of the patient.

2. All notations made on the inpatient's profile record by supportive personnel shall be countersigned by the supervising pharmacist.

3. The inpatient profile record shall become a permanent part of the patient medical record and filed as such.

(c) All outpatient prescriptions dispensed in the institutional pharmacy shall be signed or initialed by the dispensing pharmacist, dated, filed and kept for not less than five years from the last dispensing record date as provided in N.J.A.C. 13:39-7.15.

(d) Records for receipt, use and final disposition of controlled dangerous substances shall be maintained by the institutional pharmacy in compliance with the requirements of Federal and State controlled dangerous substances laws and regulations. Nursing administration of and audit for controlled dangerous substances records shall be available for review by the pharmacy.

(e) Records of the receipt, dispensing and disposal of investigational drugs shall be maintained by the institutional pharmacy in compliance with Federal and State laws and regulations. Unused drugs shall be returned to the principal investigator or destroyed at the end of the clinical study.

(f) The pharmacist-in-charge shall be responsible for maintaining a system by which all reported adverse drug reactions are recorded and reviewed by the Pharmacy and Therapeutics Committee. This information shall be made available to the Federal Food and Drug Administration or other appropriate agencies upon request.

13:39-9.8 Drug information and education

(a) The pharmacist-in-charge shall be responsible for maintaining drug standards, references and sources of drug information current and adequate to meet the needs of the pharmacists, physicians, nurses, other health care personnel, and patients of the facility. Reference texts shall include, but not be limited to, those required by the Board under N.J.A.C. 13:39-7.8.

(b) On each patient care unit, the pharmacist shall maintain:

1. A metric-apothecary conversion table;
2. A copy of the current institutional formulary;
3. A reference drug compendium which will give basic information concerning drugs approved by the Pharmacy and Therapeutics Committee; and
4. The telephone number of either the local or regional poison control center.

(c) The pharmacist shall participate in the drug-education programs of the facility.

13:39-9.9 Access to the institutional pharmacy

(a) Only a pharmacist shall have access to the institutional pharmacy.

(b) A pharmacist shall be designated to be on-call during those hours that the pharmacy is closed.

13:39-9.10 Advisory committees

(a) The pharmacist-in-charge, or designee, shall be an actively participating member on the:

1. Pharmacy and Therapeutics Committee;
2. Drug Utilization Review Committee;
3. Infection Control Committee;
4. Institutional Review Committee; and
5. Other committee of the facility that may be concerned with drugs and their utilization and impact.

13:39-9.11 Pharmacy and Therapeutics Committee

In all health care facilities providing pharmaceutical services to patients, an active standing committee of the medical staff entitled the "Pharmacy and Therapeutics Committee" or other appropriate name shall be established. A Pharmacy and Therapeutics Committee shall be composed of at least one physician, the administrator or representative, the director of nursing services or representative, and the pharmacist. The committee shall meet at least quarterly and shall report to the medical staff by written report.

13:39-9.12 Institutional pharmacy staff

The institutional pharmacy shall be staffed by sufficient competent personnel in keeping with the size, scope and complexity of the pharmaceutical services provided.

13:39-9.13 Pharmacist staff

(a) The institutional pharmacist staff shall include the following:

1. A pharmacist-in-charge, who shall direct the institutional pharmacy service and be responsible to the administration of the facility.

2. Pharmacists who shall assist the pharmacist-in-charge as required depending on the size, scope and complexity of the operation.

3. Any pharmacy interns, externs, and students, who shall function in accordance with Board rule and under qualified preceptor(s).

13:39-9.14 Non-pharmacist staffing

Non-pharmacist personnel employed in the institutional pharmacy shall work under the direct supervision and control of a registered pharmacist as provided in N.J.A.C. 13:39-2.1.

13:39-9.15 Pharmacy facilities; space

(a) Adequate facilities (space, lighting, equipment, temperature control and supplies) shall be provided for the control of the professional, technical and administrative functions of the institutional pharmacy as needed for the effective and efficient assurance of patient safety through proper purchasing, receipt, storage, dispensing, administration and control of drugs.

(b) The facilities shall include, but are not limited to, those requirements provided in N.J.A.C. 13:39-7.3.

(c) The space provided for the institutional pharmacy shall be in accord with the size of the facility and the scope and complexity of the pharmaceutical services.

13:39-9.16 Storage and security

(a) Provisions shall be made for adequate, safe storage of drugs and biologicals wherever they are stored in the health care facility.

1. All drugs shall be secured for safe use and protected against illicit diversion. Controlled dangerous substances in the institutional pharmacy and throughout the facility shall be stored and protected in conformance with State and Federal laws and regulations.

2. Supplies of external preparations stored in patient care areas shall be kept separate from internal medications.

3. The pharmacist-in-charge shall be responsible for all the medications in the facility, that is, the drugs in the pharmacy service area, drugs in transit, and the drugs in the patient care areas. The pharmacist's staff shall routinely inspect all medications wherever they are stored with particular reference to the degree of security needed for assuring the safety of patients.

4. The drugs throughout the facility shall be maintained under adequate storage conditions including proper lighting, ventilation and temperature control as required by the United States Pharmacopoeia/National Formulary and other professionally recognized standards.

5. Adequate storage for pharmacy records shall be provided. Records not currently in use need not be stored in the pharmacy, but the storage facilities must be secure, and the records shall be readily retrievable by the pharmacy staff and authorized inspectors.

13:39-9.17 Equipment

(a) Adequate equipment shall be provided for the compounding, packaging, labeling, refrigeration, sterilization, testing and safe distribution of drugs and biologicals, and other functions. The equipment shall be sufficient to process drugs required by the facility to maintain a continuing source of medications necessary to supply the facility on a routine basis.

(b) In an institutional pharmacy, equipment shall be provided for the compounding and dispensing of intravenous solutions, and admixtures thereof, and other parenteral and nonparenteral sterile preparations.

13:39-9.18 Institutional decentralized pharmacies

(a) Institutional decentralized pharmacies, that is, "satellite pharmacies", means areas within the health care institution other than the original institutional permit location, where the preparation, dispensing and compounding of medications are performed.

(b) Institutions utilizing or desiring to utilize institutional decentralized pharmacies shall file a remodeling application to the Board to conduct a decentralized pharmacy.

(c) Institutional decentralized pharmacies will be subject to normal Board inspections and each location shall be issued a certificate of compliance.

(d) The minimum equipment requirements for an institutional decentralized pharmacy shall be the following:

1. The current USP/DI (2 volume set) and suitable reference texts including at least the current edition of texts on pharmacology, the general practice of pharmacy, drug interactions and drug product composition;

2. Permanent Prescription Filing Device and Patient Profile Record System;

3. Properly safeguarded storage place for Schedule II Controlled Dangerous Substances if not disbursed;

4. A small, medium and large steel spatula and a spatula of rubber or composition;

5. Refrigerator for the exclusive storage of biologicals and other medicinal products requiring refrigeration;

6. Suitable counting trays or approved counting device;

7. Labels containing the name of the Registered Pharmacist-in-charge and name, address, telephone number and Drug Enforcement Agency number of the pharmacy;

8. Poison labels containing the name of the Registered Pharmacist-in-charge and name, address and telephone number of the pharmacy;

9. A sink with hot and cold running water.

(e) The Board may also require any other equipment and/or special specifications that the Board deems necessary for the institutional decentralized pharmacy to perform as a satellite pharmacy.

SUBCHAPTER 10. INTRAVENOUS ADMIXTURE SERVICES

13:39-10.1 Intravenous admixture service defined

An intravenous admixture service is a pharmacy dispensing and specializing in the compounding and distribution of sterile parenteral products intended for administration to patients in the home or in or out of an institutional setting.

13:39-10.2 Compliance

A pharmacy which intends to compound and dispense intravenous medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements contained in this subchapter.

13:39-10.3 General requirements

(a) A pharmacy presently supplying or intending to supply an intravenous admixture service shall apply to the Board to conduct an intravenous admixture service.

(b) A pharmacy meeting the requirements of this subchapter will be issued a certificate by the Board, denoting compliance with the criteria for an intravenous admixture service. This certificate shall be conspicuously displayed in the pharmacy.

(c) A pharmacy which is limited to providing intravenous admixture service only shall be issued a certificate by the Board denoting that the pharmacy is limited to this service. The pharmacy shall conspicuously post a sign at the entrance to the premises notifying the public of this limitation.

13:39-10.4 Pharmacist-in-charge

(a) A pharmacy which provides an intravenous admixture service shall be under the control and direct supervision of a pharmacist licensed to practice in this State who has practical or academic training in sterile product compounding, clean room technology, laminar flow technology, and quality assurance techniques. The registered pharmacist shall have an adequate pharmacy background in the clinical application of intravenous drug therapy either through experience or academic training.

(b) In addition to those responsibilities described in N.J.A.C. 13:39-3.18, the pharmacist-in-charge of an intravenous admixture service shall have the responsibility for, at a minimum, the following:

1. Preparation and sterilization of intravenous admixtures for parenteral medications compounded within the pharmacy;

2. Storage of all materials pertinent to the preparation of intravenous admixtures, including drugs, chemicals and biologicals, and the establishment of specifications for procurement of the materials;

3. Labeling of all containers of intravenous admixture preparations;

4. Recording all transactions of the pharmacy as may be required by applicable State and Federal laws and rules, as may be necessary to maintain accurate control over, and accountability for, all pharmaceutical materials;

5. Assuring that only licensed pharmacists meeting the requirements of (a) above prepare, compound and dispense intravenous admixture preparation.

(c) The pharmacy shall provide pharmacists on duty at all hours, on an emergency basis, 24 hours a day, seven days a week.

13:39-10.5 Handling, packaging and delivery

(a) The pharmacy shall provide preparations for delivery from the pharmacy to the patient in order to assure and maintain sterility and stability of these preparations. The dispensed container shall bear a permanently affixed label with at least the following information:

1. Date dispensed;
2. Name of physician;
3. Name of the patient;
4. Directions for use;
5. Name and amount of drug(s) added;
6. Name of the basic solution;
7. Name or identifying code of the pharmacist who prepared the admixture;
8. Expiration date of the solution as follows:

i. Parenteral nutrition solutions shall have a maximum expiration of seven days unless an extended time can be substantiated with adequate documentation.

ii. If medication with expiration dates of less than seven days is added to the parenteral solution, the shortest expiration date will become the expiration date of the final solution and shall appear on the label.

iii. For all other intravenous preparations, the manufacturer's recommended expiration or 24 hours, unless otherwise stated by the manufacturer, shall appear on the label.

9. Name, address and telephone number of the pharmacy; and
10. Any ancillary and cautionary instructions as needed.

(b) Delivery of compounded parenteral preparations from the pharmacy to the patient shall be made within a reasonable time.

13:39-10.6 Patient records

A patient profile record shall be maintained and monitored for each patient. The patient profile record must contain available medical information consistent with prevailing pharmacy standards, and the complete record of the formulations of the intravenous solutions which have been compounded.

13:39-10.7 Policy and procedure manual

(a) A policy and procedure manual shall be maintained at each pharmacy and be available for inspection by authorized agents of the Board of Pharmacy. The Policy and Procedure Manual shall set forth, in detail, the objectives and operational guidelines of the permit holder. The Policy and Procedure Manual shall be maintained in current status. The Manual shall contain written policies and procedures for cleaning and maintenance of the work area and written documentation of such, including regularly scheduled:

1. Microbiological evaluation, consistent with current standards for preparation of total parenteral nutrition, antineoplastic agents, antibiotics, large and small volume parenterals or other intravenous therapy;
2. Security;
3. Equipment;
4. Sanitation;
5. Reference materials;
6. Drug storage;
7. Drug dispensing;
8. Drug labeling;
9. Drug destruction and returns;
10. Delivery of drugs;
11. Recordkeeping;
12. Investigation of new drugs;
13. A Quality Assurance Program which monitors personnel qualifications, training and performance, equipment facilities, and random product sampling consistent with recommended standards for compounding and dispensing intravenous admixtures as set forth by the National Coordinating Committee on Large Volume Parenterals, and such others as may be specified by the Board.

13:39-10.8 Pharmacy environment

(a) The compounding and dispensing of sterile intravenous admixture preparations shall be conducted in a pharmacy environment subject to the pharmacy permit laws of this State and in accordance with those requirements for the safe handling of drugs.

(b) The environment for this practice shall be set apart and designed and equipped to provide controlled aseptic conditions. Aseptic techniques shall prevail in this environment to minimize the possibility of microbial contamination.

13:39-10.9 Minimum requirements for space

(a) The area for preparing sterile intravenous admixtures as provided for in these rules, shall be referred to as the sterile admixture area and shall be set apart from general work and storage areas. This area shall be adequately air conditioned to maintain a maximum of 75 degrees Fahrenheit. This separated area is to be used solely for the aseptic compounding of intravenous admixture solutions.

(b) The sterile admixture area shall provide space for a minimum of one class 100 air flow cabinet. The space shall be of adequate size to accommodate other equipment as provided in these rules and sufficient space to allow the pharmacist and other employees in the sterile admixture area to adequately, safely and accurately fulfill their duties related to intravenous compounding.

(c) For the compounding and dispensing of antineoplastic agents, there shall be sufficient additional space to accommodate a class 100 air containment cabinet (vertical laminar flow hood).

(d) The sterile admixture area shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs, and additional space as needed, depending on the size and scope of pharmaceutical services.

(e) The sterile admixture area shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

13:39-10.10 Minimum requirements for equipment

(a) The sterile admixture area shall contain the following equipment:

1. Air flow cabinets:

i. Class 100 air flow cabinet (horizontal laminar flow hood) and/or

ii. Class 100 air containment (vertical laminar flow hood).

2. A sink with hot and cold running water exclusive of restroom facilities, easily accessible by the personnel preparing intravenous admixtures. This sink shall be maintained in a sanitary condition at all times.
3. A refrigerator as required by U.S.P. standards.
4. Appropriate waste containers for:

i. Used needles and syringes; and

ii. All waste including disposal of apparel used in preparation of neoplastics.

13:39-10.11 Supplies

(a) The sterile admixture area shall maintain the following supplies:

1. Gloves, masks, and gowns (when compounding neoplastics, etc. as needed);
2. Needles and syringes of various sizes;
3. Disinfectant cleaning agents;
4. Clean towels;
5. Handwashing materials, including antimicrobial skin cleaner;
6. Any and all supplies necessary for the aseptic preparation of intravenous admixture solutions as outlined by the National Coordinating Committee on Large Volume Parenterals.

13:39-10.12 Library references

(a) In lieu of the minimum reference library mandated in N.J.A.C. 13:39-7.8, each sterile admixture area room shall contain:

1. A Handbook of Injectable Drugs by the American Society of Hospital Pharmacists;
2. A current edition of guidelines published by the National Coordinating Committee on Large Volume Parenterals;
3. Facts and Comparisons, with current supplements.
4. Other references as needed.

(b) Where the sterile admixture room is part of a full-service pharmacy, the requirements of N.J.A.C. 13:39-7.8 also apply in addition to the requirements of this section.

13:39-10.13 Compounding requirements

(a) All intravenous admixture compounding shall be performed within a certified flow cabinet. Air flow cabinet(s) shall be certified and so documented at least semi-annually.

(b) Proper aseptic procedures must be used at all times to prevent bacterial contamination of the product.

13:39-10.14 Disposal of drugs and materials

All unused drugs and materials used in the preparation of intravenous admixture solutions, including antineoplastic agents, must be incinerated or otherwise disposed of properly in accordance with accepted professional standards and applicable laws. Unused drugs and materials shall be disposed of in a manner so as not to endanger the public health.

13:39-10.15 Security

The sterile admixture area and its contents shall be secured, so as to prevent access by unauthorized personnel.

(a)

DIVISION OF CONSUMER AFFAIRS
Sellers of Health Club Services
Fee for Registration
Proposed New Rule: N.J.A.C. 13:45A-25.1

Authorized By: W. Cary Edwards, Attorney General of New Jersey.
Authority: P.L. 1987, c.238 (N.J.S.A. 56:8-4).
Proposal Number: PRN 1987-442.

Submit comments by December 2, 1987 to:
James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

Summary

P.L. 1987, c.238, an Act regulating the sellers of health club services and supplementing the Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.) requires sellers of health club services to register with the Division of Consumer Affairs and to pay a registration fee. The proposed new rule establishes a biennial registration fee of $100.00 for each club facility operated by the seller.

Social Impact

The proposed rule implements legislation designed to protect the consumer by ensuring that sellers of health club services provide relevant data on ownership and operations to the Division of Consumer Affairs.

Economic Impact

The proposal creates the economic impact of $50.00 per year for registration of a health club facility, to be paid every two years; an estimated 400 establishments will be affected. This amount is expected to cover present administrative costs for the mandated registration program. No economic effect on the public is anticipated.

Regulatory Flexibility Statement

The proposed rule applies to all sellers of health club services; the Department estimates that of approximately 400 health clubs, fitness centers, gym and tennis clubs, etc., in the state, some 250 are small businesses under the criteria of the Regulatory Flexibility Act. The annual cost of compliance with the proposed rule is, as a business expense, slight, and was specifically designed to minimize the financial impact on small firms. There are no reporting or recordkeeping requirements related to the fee, other than completion of the registration application which will accompany payment. P.L. 1987, c.238 does not provide for the exemption of small businesses, thus this proposed rule does not, as well.

Full text of the proposed new rule follows.

SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

13:45A-25.1 Fee for registration

Any person who sells or offers for sale health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of $100.00 every two years, for each health club facility operated.

(b)

VIOLENT CRIMES COMPENSATION BOARD
Eligibility of Claims
Proposed Amendment: N.J.A.C. 13:75-1.6

Authorized By: Violent Crimes Compensation Board, Kenneth W. Welch, Chairman.
Authority: N.J.S.A. 52:4B-9.
Proposal Number: PRN 1987-315.

Submit comments by December 2, 1987 to:
Kenneth Welch, Chairman
Violent Crimes Compensation Board
60 Park Place
Newark, NJ 07102

The agency proposal follows:

Summary

The proposed amendment is in response to the requirements of the Federal Victims of Crime Act of 1984, 42 U.S.C. 10601 et seq., which provides grant money to State crime boards to pay to victims. The added language to N.J.A.C. 13:75-1.6(d) makes it clear that the Board complies with the Federal requirement of encouraging crime victims to cooperate with law enforcement authorities. The proposed amendment will ensure that the Board will continue to receive Federal grants under the Act in the future.

Social Impact

The proposed amendment will allow the Board to consider whether victims cooperated with law enforcement authorities when determining if a claim is eligible for compensation. The continued receipt of Federal grants will enable the Board to make more awards of compensation to eligible victims each year.

Economic Impact

In 1986, the Board qualified for approximately $1.3 million in federal funds from the Federal Victims of Violent Crimes Act of 1984. The Federal grant was 33 percent of the total amount the Board paid to victims in the previous year. This grant was a substantial amount of funding for the Board which was passed on to violent crime victims. The proposed amendment will help to ensure that the Board receives further grants under the Act.

Regulatory Flexibility Statement

The proposed amendment does not affect small businesses because it does not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposal affects victims of violent crimes and possibly law enforcement authorities.

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

13:75-1.6 Eligibility of claims

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

(d) The Board reserves the right to consider any circumstances it deems to be relevant, including but not limited to, provocation, consent or behavior on the part of the victim which directly, or indirectly contributed to his injury or death, [and] the prior case history of the victim which may also include matters pertaining to the victim's medical history**, and whether the victim cooperated with reasonable requests of law enforcement authorities or showed a compelling health or safety reason why they could not cooperate.**

PUBLIC UTILITIES

(c)

BOARD OF PUBLIC UTILITIES
Administrative Orders
Interest on Fuel Clause Overrecoveries
Proposed New Rule: N.J.A.C. 14:11-6

Authorized By: Board of Public Utilities, Barbara A. Curran, President
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: EX87091120.
Proposal Number: PRN 1987-437.

Submit comments by December 2, 1987 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule would require gas and electric public utilities to calculate and pay interest on fuel clause cumulative overrecoveries only and without any offset by an interest charge to underrecoveries. Adherence to the proposed rule will be evaluated in conjunction with the energy clause filings of the affected public utilities. The rule would also require that the public utilities' allowed overall rates of return be used as the interest rate to be applied to any overrecovery balance.

At present, there is no uniformity among the electric and gas public utilities in the calculation of interest on over/underrecoveries. In some cases, the approach set forth in the proposed rule is utilized. In others, interest on underrecoveries is used to offset interest on overrecoveries. The proposed rule is intended to provide fairness to ratepayers and a clear directive to the affected public utilities as to the method which is to be applicable to all gas and electric public utilities, including any gas or electric system owned or operated by any governmental entity, and under the Board's ratemaking jurisdiction.

Social Impact

The proposed new rule will benefit the customers of electric and gas public utilities subject to the jurisdiction of the Board of Public Utilities, by removing a possible incentive to overestimate fuel costs in an energy clause filing. Ratepayers will be adequately compensated at the companies' rates of return for the use of their funds when overcollections occur.

Economic Impact

The proposed addition to the Board's Administrative Orders (N.J.A.C. 14:11) will benefit residential and commercial customers of electric and gas companies. Included in the commercial customers are small businessmen and enterprises for which electric and gas rates are a substantial cost of conducting business, just as they are to large industrial customers. A direct beneficial impact will result by compensating ratepayers for the use of their money where the public utility overrecovers through its rates.

In addition, the payment of interest by the utility will remove any incentive to overestimate fuel costs.

The proposed new rule equitably balances the interests of the public utility and its ratepayers in the use of a levelized energy clause. The utility enjoys stability of revenues and deferred accounting which permits dollar-for-dollar recovery of all reasonably incurred fuel undercollections. The ratepayer, on the other hand, will be permitted to earn interest on any cumulative overrecoveries which the utility has incurred.

Regulatory Flexibility Statement

The only small business to which this rule will apply is the Borough of Butler Municipal Electric Utility. The rule will not impose additional costs or require additional compliance activities or professional services. The records and reports presently maintained and filed by the utility will be sufficient to enable it to comply with the rule.

Full text of the proposed new rule follows:

SUBCHAPTER 6. INTEREST ON FUEL CLAUSE OVERRECOVERIES

14:11-6.1 Definition of public utility

As used in this subchapter, the term "public utility" means any electric or gas distribution system owned or operated by the State, county, authority, local government or other public entity which is within the rate jurisdiction of the Board of Public Utilities.

14:11-6.2 Calculation of interest

(a) In reconciling projected and actual fuel costs in a public utility's levelized energy adjustment clause proceeding or levelized raw material adjustment clause, a cumulative monthly balance of fuel costs overrecoveries/underrecoveries must be recorded by the utility.

(b) Each month, interest shall be applied to the cummulative monthly balance of fuel costs overrecoveries/underrecoveries only if the cumulative balance is an overrecovery. If the cumulative balance is zero or the utility has a cumulative underrecovery balance for the month, no interest calculation is made. While a utility may incur an underrecovery for the month, if the cumulative balance is an overrecovery, interest shall be applied.

(c) The applicable interest rate is the utility's annual overall rate of return most recently allowed by the Board of Public Utilities.

TRANSPORTATION

(a)

Speed Limits

Routes U.S. 46 in Warren County and N.J. 34 in Monmouth County and N.J. 38 in Burlington County

Proposed Amendments: N.J.A.C. 16:28-1.10, 1.18 and 1.120

Proposed By: Hazel Frank Gluck, Commissioner, Department of Transportation.

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

Proposal Number: PRN 1987-441.

Submit comments by December 2, 1987 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish "speed limit" zones along Route U.S. 46 in White Township, Warren County; N.J. 34 in Matawan Borough, Monmouth County and N.J. 38 in Lumberton, Mount Holly, Eastampton and Southampton Townships, Burlington County.

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 limit" zones along Routes U.S. 46, N.J. 34 and N.J. 38 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.10, 1.18 and 120 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "speed limit" zones along Route U.S. 46 in White Township, Warren County; N.J. 34 in Matawan Borough, Monmouth County and N.J. 38 in Lumberton, Mount Holly, Eastampton, and Southampton Townships, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, P.L. 1986, c.169, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.10 Route U.S. 46 including Routes U.S. 1, 9 and 46.

(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this section shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. Zone one: 50 mph from Route I-80, Route 46 and Route 94 interchange, Knowlton Township (milepost 0.00) to 1,900 feet west of Route 31, White Township, **Warren County** (milepost 9.63), except

(1) (No change.)

(2) School zone: 35 mph speed limit within the White Township Consolidated School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.

ii.-viii. (No change.)
2.-5. (No change.)
(b) (No change.)

16:28-1.18 Route 34

(a) The rate of speed designated for the certain parts of State highway Route 34, described **below** in this section] shall be [and hereby is established and adopted as] the maximum legal rate of speed [thereat]:

1. For both directions of traffic[:] **in Monmouth County:**

[i. Fifty-five mph from the Routes 34, 35 and 70 traffic circle in Wall Township (milepost 0.0) to the Routes 33 and 34 traffic circle (milepost 7.6); thence

ii. Fifty mph to Van Brackle road, Aberdeen Township (milepost 21.10); thence

iii. Forty mph to the northerly Aberdeen Township—Matawan Borough line (milepost 22.25); thence

iv. Thirty-five mph to the intersection of Franklin Street in the Borough of Matawan (milepost 22.55); thence

v. Fifty mph to the intersection of Spring Hill Road in Old Bridge Township (milepost 26.08);

(1) Except 35 mph in the Whited Brown School zone during recess or while children are going to or leaving school, during opening or closing hours; thence

vi. Forty-five mph to the intersection of Route U.S. 9 in Old Bridge Township (milepost 26.79)]

i. Wall Township:

(1) Zone 1: Fifty-five mph between Routes 34-35 and 70 traffic circle and Routes 33 and 34 traffic circle (mileposts 0.0 to 7.6); thence

(2) Zone 2: Fifty mph between Routes 33 and 34 traffic circle and Howell Township line (mileposts 7.6 to 8.34); thence

ii. Howell Township: Fifty mph within respective corporate limits (mileposts 8.34 to 10.56); thence

iii. Colts Neck Township: Fifty mph within respective corporate limits (mileposts 10.56 to 17.39); thence

iv. Holmdel Township: Fifty mph within respective corporate limits (mileposts 17.39 to 19.68); thence

v. Marlboro Township: Fifty mph within respective corporate limits (mileposts 19.68 to 20.44); thence

vi. Aberdeen Township:

(1) Fifty mph between Marlboro Township line and Van Brackle Road (mileposts 20.44 to 21.20); thence

(2) Zone 3: Forty mph between Van Brackle Road and the southerly Aberdeen Township—Matawan Borough line (mileposts 21.20 to 21.65); thence

vii. Aberdeen Township and Matawan Borough:

(1) Forty mph between the southerly Aberdeen Township and Matawan Borough line and the northerly Aberdeen Township—Matawan Borough line (mileposts 21.65 to 22.25); thence

viii. Matawan Borough:

(1) Zone 4: Thirty-five mph between the northerly Aberdeen Township—Matawan Borough line and Edgewater Drive (mileposts 22.25 to 22.83); thence

(2) Zone 5: Forty mph between Edgewater Drive and Fierro Avenue (mileposts 22.83 to 23.08); thence

i. Fifty mph between Fierro Avenue and the Old Bridge Township line (mileposts 23.08 to 23.28); thence

2. For both diretions in Middlesex County:

i. Old Bridge Township:

(1) Fifty mph between the Matawan Borough line and Spring Hill Road except 35 mph in the Whited Brown School zone during recess or while children are going to or leaving school, during opening or closing hours (mileposts 23.28 to 26.08); thence

(2) Zone 6: Forty-five mph between Spring Hill Road and Route U.S. 9 (mileposts 26.08 to 26.79)

16:28-1.120 Route 38

(a) The rate of speed designated for State highway Route 38 described [herein] below shall be [and hereby is established and adopted as] the maximum legal rate of speed [thereat] for both directions of traffic:

1.-5. (No change.)

6. Lumberton, Mount Holly, Eastampton and Southampton Townships, Burlington County:

i. Fifty mph between Pemberton Road (milepost 16.78 and Route U.S. 206 (milepost 19.23)

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

TREASURY-GENERAL

(a)

NEW JERSEY STATE LOTTERY COMMISSION

Rules of the Lottery Commission

Proposed Amendments: N.J.A.C. 17:20-4.1, 4.2, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9

Proposed Repeal: N.J.A.C. 17:20-4.2

Proposed New Rule: N.J.A.C. 17:20-4.3

Authorized By: Barbara A. Marrow, Executive Director, New Jersey State Lottery Commission

Authority: N.J.S.A. 5:9-7(a), 5:9-8(g), 5:9-11, 5:9-12.1, 5:9-14, 5:9-14.1, 5:9-15 and 5:9-16.

Proposal Number: PRN 1987-455.

Submit comments by December 2, 1987 to:
Christopher Kniesler
Administrative Procedure Office
State Lottery Commission
Lawrenceville Shopping Center
Alternate Route 1, Texas Avenue
CN 041
Lawrenceville, New Jersey 08648

The agency proposal follows:

Summary

The proposed amendments, repeal and new rule constitute a redrafting of Subchapter 4 of the Rules of the State Lottery Commission, N.J.A.C. 17:20. Apart from changes in grammar and syntax, the proposed amendments and new rule embody greater specifics to describe the process by which applications for licensure as a lottery ticket sales agent are handled. The proposed amendments and new rule do not depart from existing practices except to designate certain types of locations deemed unsuitable for licensure and to give the Director of the Division of the State Lottery explicit power to grant licenses conditionally or for a trial period.

The amendments to N.J.A.C. 17:20-4.1 provide for a preliminary field investigation prior to the granting of a request for a license application, the application form itself, divulgence of an applicant's criminal record and any prior State licenses or license applications, and various consents, waivers and releases by the applicant.

The present N.J.A.C. 17:20-4.2 is proposed for repeal as redundant, being an unnecessary repetition of factors to be considered in review of a license application which are otherwise set forth by statute and these rules as proposed.

The present N.J.A.C. 17:20-4.3 is recodified as N.J.A.C. 17:20-4.2 and subjected to minor language changes.

Proposed new rule N.J.A.C. 17:20-4.3 sets forth the review procedures each application will undergo, including specific aspects of a prospective licensee's business that will be examined. The rule also provides for a public hearing at the Director's discretion to gather further information on an application.

The amendments to N.J.A.C. 17:20-4.4 permit licensure subject to conditions and trial period licensure. This section, as amended, also forbids granting a license to an applicant whose business primarily involves, "the sale, rental or display of sexually explicit material" or "the sale of literature or equipment dealing with the cultivation or use of controlled dangerous substances". In addition, the Division's requirement for annual certifications from licensed agents regarding continuing statutory and regulatory compliance is codified.

Clarifying minor language changes are proposed for N.J.A.C. 7:20-4.5 through 4.9.

Economic Impact

The proposed amendments and new rule will have no direct impact on the revenues raised by the New Jersey Lottery. Insofar as the rules embody no operational changes, there is no ascertainable indirect impact either. To the extent that the rules provide clearer notice to the general public regarding the standards governing the lottery agent licensure process, it can be expected to avoid unnecessary expenditures of time and effort, both in the private sector (making applications) and by the Division of the State Lottery (processing them).

Social Impact

The proposed amendments and new rule are basically a reworking of existing rules. Therefore, and since they embody no major changes in the activities of the Division of the State Lottery, the rule's social impact is minimal. To the extent that they clarify the lottery agent licensing process, the rules achieve the beneficial social goal of informing the affected public (applicants for lottery licenses) about the process they are confronting. The granting of conditional or "test period" licensing authority to the Lottery Director is aimed at maximizing net lottery revenues by selling tickets most efficiently, while the provisions regarding suitability of sales locations respond, in addition, to the stationary mandate that the Lottery's operations be "consonant with the dignity of the State and the general welfare of the people" (N.J.S.A. 5:9-7a).

Regulatory Flexibility Statement

The proposed amendments and new rule do not impose additional reporting, recordkeeping or other requirements on small businesses, since the proposal primarily affects the operations of the Division of the State Lottery. The Commission has considered the prospects of easing the requirements which affect small business (which comprise a majority of licensed lottery ticket sales agents), and has determined that the proposal sets forth the lowest tolerable level of requirements consistent with the integrity of ongoing Lottery operations.

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

17:20-4.1 Application; **form**

(a) Any person [interested in being] **who wishes to be licensed as an agent of the Division of the State Lottery must first** [file] **request** an "Application for Lottery Agent's License" [with] **from** the Division [of the State Lottery]. **Upon receipt of such request, the Director shall cause a preliminary field investigation to be made. If the investigation discloses reasons why the requesting party or the involved location is obviously unsuitable for licensing based on the standards set forth in the Act and this chapter, no application shall be issued, and the requesting party shall be so informed. Such action shall be tantamount to the denial of an application for purposes of N.J.A.C. 17:20-5.3.**

(b) The Director may prescribe a form of application to call for such information as may be deemed necessary or helpful in evaluating the factors for licensing as set forth in the Act and this chapter.

(c) An applicant for licensure must divulge any previous application to or licensure with the New Jersey State Lottery or any other State agency, along with any record of arrests or convictions in this or any other State.

(d) The application form shall include the applicant's consent to credit checks and criminal record searches, along with such waiver and release provisions as may be needed to assure a full and complete review of the application.

[17:20-4.2 Eligibility for license]

[(a) No person shall be eligible to be a licensed agent of the Division of the State Lottery if such person intends to engage in business exclusively as an agent of the State Lottery.

(b) Before issuing a license, the Director shall consider:

1. The financial responsibility and security of the person and his or her business or activity;

2. The accessibility of his or her place of business or activity to the public;

3. The sufficiency of existing licenses to serve the public convenience;

4. The volume of expected sales; and

5. The moral character of the applicant, including his or her criminal record.]

17:20-4.[3]**2** Ineligibility of minors

No person under the age of legal majority [at the time of his or her] **may make** application [shall] **or** be licensed as an agent.

17:20-4.3 Review

(a) Upon receipt of an application which appears to be complete and in order, the Director shall subject it to a thorough review, including:

1. Verification of references;

2. A check of credit reporting sources and criminal justice agencies;

3. A separate marketing study which may include (but need not be limited to) the following factors:

i. The applicant's hours of operation;

ii. The type of business in which the applicant engages;

iii. The presence or absence of similar type businesses among nearby licensed agents;

iv. The distance from the applicant's location to nearby licensed agents;

v. Traffic patterns, parking access, store type and other factors which affect public access;

vi. The potential for increased ticket sales, arrived at by comparing 10-week average sales for agents in the applicant's municipality with the statewide per-agent average for the same time period and by analyzing the public cross-section frequenting establishments for the applicant's type;

vii. The relative saturation of the involved municipality (arrived at by computing the ratio of agents per capita by use of census data); and

viii. The applicant's business experience and marketing attitude; and

4. Such other procedures as may be needed to substantiate the applicant's moral character and the ability to satisfy the other licensing criteria as set forth in the Act and this chapter.

(b) The Director may schedule and hold a public information gathering hearing to facilitate the review of a license application, in addition to any hearing which may be requested pursuant to N.J.A.C. 17:20-5.3.

(c) The Director may dispense with such of the above procedures or factors as are deemed unnecessary in completing a particular application review.

17:20-4.4 Issuance of license; **conditions**

(a) [The Director shall, in accordance with the provisions of the State Lottery Law and the rules and regulations of the State Lottery Commission, license as agents of the Division of the State Lottery, such persons as in his or her opinion will best serve the public convenience and promote the interest of the State Lottery.] **The Director may license an applicant to be a manual agent or a machine agent as the facts and circumstances may warrant.**

(b) The Director may grant a license subject to such conditions as may reasonably assure satisfaction of the licensing criteria set forth in the Act and this chapter.

(c) The Director may grant a license for a trial period, subject to further review and evaluation.

(d) No license shall be issued to an applicant whose business primarily involves:

1. The sale, rental or display of sexually explicit material; or

2. The sale of literature or equipment dealing with the cultivation or use of controlled dangerous substances.

[(b)]**(e)** [An] **Subject to (f) below, an** agent's license shall remain in full force and effect until the license is suspended or [terminated] **revoked** by the Director or until the Director receives a written resignation from the agent [in accordance with the provision set forth herein].

[(c) An applicant for licensure must divulge any previous licensure with the New Jersey State Lottery.]

[(d) All applicants and agents shall report any change in status, such as ownership, control, address or other data relevant to licensure, within 10 days of occurrence. Failure to do so shall be cause for discipline under N.J.A.C. 17:20-5.1.]

(f) The Director may require annual certifications from any agent regarding continuing compliance with the Act and with this chapter, and providing such other information as the Director may deem necessary for the proper administration of the Division's activities. Failure to submit the completed form when requested may be cause for license suspension or revocation.

17:20-4.5 License to be displayed

(a) Every agent shall prominently display in an area visible to the general public:

1. [His or her] **The** license [or a copy thereof]; and

2. Lottery promotional signs.

(b) In addition, the "Authorized Lottery Agent [Decal]" **decal** shall be mounted on a prominent public window of the agent's premises.

(c) The agent shall maintain and display all Lottery flyers, betting cards and other circulating material in an area open to the public.

17:20-4.6 Bonding of agents

The Director may require a non-refundable **annual bonding fee** [bond] from any or every licensed agent. [Exceptions may be made for special/seasonal agents, whereby] **For agents operating less than a full calendar year,** the fee may be determined proportionately.

17:20-4.7 Conversion of agents

The Director may in **the exercise of** [his or her sole] discretion convert any licensed location from a manual[-type operation] **agent** to a machine [-type operation] **agent,** or vice versa [machine-type operation to manual-type operation].

17:20-4.8 Sale of lottery tickets at specific locations licensed

[The sale of lottery tickets shall be made only pursuant to a lottery agent's license at a specific location named therein.]

An agent shall not sell tickets at any location other than that which is specified in the license.

17:20-4.9 Special[/Seasonal] **or seasonal** lottery agents

(a) The Director may, upon proper application, license special **or seasonal** lottery agents.

(b) A special license may be issued subject to such special conditions or limitations as the Director in [his or her] **the exercise of** discretion may deem prudent, [and] consistent with the dignity of the State, the general welfare of the people and the dignity and integrity of the [New Jersey State] Lottery.

(c) These limitations or conditions may include, but are not limited to the following:

1. Length of licensure period;
2. Hours [of day] of sale;
3. Location [of sale];
4. Specific persons who may sell lottery tickets; or
5. Specific sporting, charitable, social or other special events where lottery tickets may be sold.

(d) Agents holding special lottery licenses shall be subject to all rules and regulations of the Lottery Commission not inconsistent with this rule.

17:20-4.10 Transfers of ownership (of license premise)

(No change.)

(b)

STATE PLANNING COMMISSION

Municipal and County Cross-Acceptance of State Development and Redevelopment Plan

Proposed New Rules: N.J.A.C. 17:32

Authorized By: State Planning Commission, John W. Epling, Secretary and Principal Executive Officer.

Authority: N.J.S.A. 52:18A-203.

Proposal Number: PRN 1987-447.

Submit comments by December 2, 1987 to:

John W. Epling, Secretary and Principal Executive Officer
State Planning Commission
New Jersey Department of the Treasury
150 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Planning Act of 1985 (N.J.S.A. 52:18A-196 et seq.) creates a State Planning Commission and an Office of State Planning in the Department of Treasury for the purposes of establishing a cooperative planning process that involves the full participation of State, county and local governments. According to the Act, New Jersey needs integrated and coordinated planning in order to conserve its natural resources, to revitalize its urban centers, to provide affordable housing and adequate public facilities at a reasonable cost, to promote equal social and economic opportunity for New Jersey's citizens, and to prevent sprawl and promote the suitable use of land.

The primary duty and responsibility of the State Planning Commission is the preparation of a "State Development and Redevelopment Plan." N.J.S.A. 52:18A-202 establishes parameters for preparation and approval of the Plan. Prior to adoption, the Commission is required to distribute a "preliminary plan" to each county planning board, each municipal planning board, and other requesting agencies, including state agencies and metropolitan planning organizations. In conjunction with the distribution of preliminary plans, the Commission is required to hold, no sooner than 45 days after distribution and no later than 90 days after distribution, a "public informational meeting" in each county to provide information on the plan, to respond to inquiries concerning the plan, and to receive informational comments and recommendations from county and municipal planning boards, local public officials, and other interested parties.

The centerpiece of the Act's program for promoting vertical coordination and integration of State, county and local plans is the "cross-acceptance" process. The new proposed rules set forth the procedures and standards to govern the cross-acceptance process. The Act contemplates that the Commission will prepare the preliminary plan, submit it to county and municipal governments, and then attempt to negotiate a resolution of any disagreement which exists between the preliminary plan and county and municipal plans.

Through "cross-acceptance," the Act and the proposed rules seek to afford county and municipal government a full and open opportunity to be involved in reconciling conflicts between state and local policies. The Act presumes that the Commission will negotiate cross-acceptance with the planning boards of each of the counties and that each of the county planning boards will in turn negotiate cross-acceptance with each of the municipalities in each county. This process is to ensure a vertically integrated set of local, regional and state plans.

The Act allows a county planning board to opt out of the municipal cross-acceptance process by so notifying the Commission within 45 days of receipt of the preliminary plan. When this occurs, the Commission may either designate any appropriate agency to negotiate cross-acceptance with the affected municipalities, or negotiate municipal cross-acceptance itself. The county planning boards, or agencies designated by the Commission, are required to complete the cross-acceptance process within six months of receiving the preliminary plan and are required to submit to the Commission a formal report of findings, recommendations an objections concerning the Plan. Each municipality is also authorized under the Act to submit its own report to the Commission if the municipality's plan is inconsistent with the State Development and Redevelopment Plan after completion of the cross-acceptance process.

After the cross-acceptance process is completed and the formal reports of participating counties have been considered, the Commission is required to prepare and distribute a final plan.

The proposed rule is an outgrowth of the proposed "Rule for Municipal and County Cross-Acceptance of the State Development and Redevelopment Plan," which appeared in the April 6, 1987 edition of the New Jersey Register at 19 N.J.R. 509(a). The State Planning Commission received eleven letters in comment to that proposed cross-acceptance rule.

The comments received focused on several key concerns regarding the contents of the rule. Specifically, the language of the proposed rule did not clearly present the timeframe in which cross-acceptance was to be conducted, nor did it make evident the occasions for public comment during cross-acceptance. The role of State agencies in the cross-acceptance process was not included in the first proposal. In addition, the criteria by which compatibility between the State Development and Redevelopment Plan and other local, county and State plans would be determined was found to be in need of clarification.

In response to the comments received regarding the cross-acceptance rules proposed in April, the State Planning Commission has determined to withdraw its prior proposal and to substitute instead the rules set forth in this proposal. The new proposed rules are intended to provide greater detail and more clarity with regard to the respective responsibilities of the various parties involved in the development of a State Development and Redevelopment Plan and to consequently provide for an orderly and more effective cross-acceptance process.

The new proposed rules accordingly differ in a number of important respects from the rules previously proposed by the Commission in April. First, the definition section of the rules, now N.J.A.C. 17:32-1.4, has been substantially expanded to include definitions of important terms such as "consistency," "compatibility," "goal," "policy," "standard," "strategy" and "objective." Second, the new proposed rules include new provisions which provide for both State agency review and public comment with regard to the draft preliminary State Development and Redevelopment Plan prior to the commencement of the cross-acceptance process. Third, the Commission has substantially revised those provisions of the proposed rules which prescribe the manner in which the cross-acceptance process is to be carried out. The subchapter contained in the previously proposed rules regarding Presumptions and Standards for Cross-Acceptance has been deleted and new rules concerning the comparison process to be undertaken during cross-acceptance have been inserted and set forth at N.J.A.C. 17:32-3.10. Finally, in accordance with the authorization set forth in the Appropriation Act, P.L. 1987, c.154, for the provision of financial assistance to counties or other negotiating entities in carrying out cross-acceptance, the proposed rules provide for the submission of applications to the Office of State Planning for such assistance.

Social Impact

It is anticipated that the proposed new rules will establish a process for cooperative, coordinated planning among all levels of government in New Jersey which will promote the public health, safety, welfare and convenience, through beneficial growth, development and renewal of New Jersey's communities.

Economic Impact

The proposed new rules will have an economic impact on the municipalities and the counties in that commitment of staff and/or consultant resources to the cross-acceptance process will be required.

Positive economic benefits may be expected to result from the development of the State Plan which is the goal of the cross-acceptance process, although economic impact may be positive or negative in certain instances as a result of changes in policy and implementation of the State Plan itself.

Regulatory Flexibility Statement

The proposed rules affect the planning activities of State, county and local governments and their planning agencies and boards and will not impose recording, recordkeeping, or other compliance requirements on small businesses. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed new rules follows:

CHAPTER 32
STATE PLANNING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

17:32-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 17:32, "State Planning Rules."

17:32-1.2 Purpose and authority

(a) This chapter is adopted by the State Planning Commission pursuant to N.J.S.A. 52:18A-203 in order to establish an orderly and efficient process for the preparation, adoption, and implementation of the State Development and Redevelopment Plan. In support thereof, it is determined that in order to fulfill the purposes and to satisfy the requirements of the State Planning Act, it is necessary and appropriate that:

1. The cross-acceptance process be structured so as to establish vertically integrated and compatible local, county, regional and State plans;
2. A process be established for State agency review of and comment upon the Preliminary State Development and Redevelopment Plan to assure the proper and timely consideration of State functional plans and regulations in the formulation of the State Development and Redevelopment Plan;
3. The counties participate in cross-acceptance and that the State Planning Commission take all reasonable steps to ensure county participation;
4. The detail and substance of the Preliminary State Development and Redevelopment Plan be enhanced by early and direct county participation in the review and revision, if necessary, of the Plan and Implementation maps for the Preliminary State Development and Redevelopment Plan; and
5. The State Planning Commission prepare rules pursuant to authority granted by N.J.S.A. 52:18A-202 and 203 of the State Planning Act, which establishes detailed procedures for the participation of appropriate governmental units at all levels in the formulation and implementation of the State Development and Redevelopment Plan.

17:32-1.3 Applicability

This chapter shall apply to all activities and actions of municipal and county governments, the State Planning Commission, State agencies, and any negotiating entity designated by the Commission in the preparation, review and implementation of the State Development and Redevelopment Plan.

17:32-1.4 Definitions

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

"Compatibility" means that a policy or standard in a local, county or regional plan or regulation is equally effective in achieving the pertinent State goal, objective or strategy set forth in the Preliminary State Development and Redevelopment Plan.

"Consistency" means that a policy or standard in a local, county or regional plan or regulation is substantially the same as the policy or standard in the Preliminary State Development and Redevelopment Plan.

"County" means any board, department, division, office, agency or other subdivision of the county duly authorized by the county governing body, or executive, as appropriate, to carry out the requirements of this chapter.

"Cross-acceptance" means the process of comparing the provisions and maps of local, county and regional plans and regulations with those of the Preliminary State Development and Redevelopment Plan and the dialogue which occurs among participants during and after this process to achieve compatibility or consistency between local, county, regional and State plans.

"Cross-Acceptance Manual" means a document prepared by the Office of State Planning for the purpose of guiding negotiating entities through the cross-acceptance process. The manual shall contain, at a minimum, a prototype work program and schedule, and a final report outline and instructions.

"Final Report" means a written statement submitted by the negotiating entity to the State Planning Commission describing the findings, recommendations, objections and other information as set forth in the Cross-Acceptance Manual, resulting from the comparison of plans by the negotiating entity.

"Functional state agency" means the following Departments of the State of New Jersey and any division, office or other subdivision of such Departments:

1. Agriculture;
2. Banking;
3. Board of Public Utilities;
4. Commerce and Economic Development;
5. Community Affairs;
6. Corrections;
7. Defense;
8. Education;
9. Environmental Protection;
10. Health;
11. Higher Education;
12. Human Services;
13. Insurance;
14. Labor;
15. Law and Public Safety;
16. Personnel;
17. Public Advocate;
18. State;
19. Transportation; and
20. Treasury.

"Goal" means a desired state of affairs to which planned effort is directed. The goals of the plan are general statements of values derived from the State Planning Act of 1986 and public comments.

"Implementation Map" means a graphic depiction of the boundaries of tiers, as defined in the Plan.

"Municipality" means any board, department, division, office, agency or other subdivision of the municipality duly authorized by the municipal governing body, or executive, as appropriate, to carry out the requirements of this chapter.

"Negotiating entity" means a county, or where a county has declined to participate in the cross-acceptance process, some other entity designated by the State Planning Commission to carry out cross-acceptance.

"Negotiation" means the dialogue which occurs among participants during the period of cross-acceptance which could lead to a state of consistency or compatibility in their plans and regulations.

"Objective" means a more specific articulation of a goal formulated in a manner which enables it to be the object of action.

"Period of Cross-Acceptance" means that period of time extending from the date of receipt of the Preliminary State Development and Redevelopment Plan by the negotiating entity to 30 days beyond the last of the six public hearings held by the State Planning Commission pursuant to the Act.

"Plan Map" means that map contained in, or referenced within, the State Development and Redevelopment Plan, or drafts thereof, which describes an appropriate and desirable state of development of New Jersey at some future year.

"Policy" means a general rule for action focused on a specific issue, derived from more general goals, objectives and strategies. Some policies can be implemented directly through institutional procedures or regulations, others require the establishment of more specific and extensive plans, programs, or standards.

"Regional" means a geographical area encompassing land in more than one county.

"Regional agency" means an agency which performs planning for land development for an area of the State encompassing land in more than one county.

"Standard" means a criterion that defines the meaning of a policy by providing a way to measure its attainment. A standard is specified whenever a particular outcome is desirable or well-established.

"State Development and Redevelopment Plan" means that document, and all maps, appendices, and other material included by reference adopted by the State Planning Commission as its plan for the development and redevelopment of the State, pursuant to its duties set forth in the Act.

"Strategy" means a general course of action, linking goals and objectives of the Plan with Plan Policies.

"Tier" means a geographic unit employed by the State Development and Redevelopment Plan to identify specific areas of the State to which strategies, policies and standards in the Plan have applicability.

SUBCHAPTER 2. PREPARATION OF PRELIMINARY STATE DEVELOPMENT AND REDEVELOPMENT PLAN

17:32-2.1 Functional state agency review of a Draft Preliminary State Development and Redevelopment Plan

(a) At least 90 days prior to the initiation of the cross-acceptance process, the State Planning Commission shall authorize the Office of State Planning to distribute to each of the functional state agencies at least three copies of the Draft Preliminary State Development and Redevelopment Plan, together with three copies of supporting and background materials.

(b) Within 45 days after receipt of the Draft Preliminary State Development and Redevelopment Plan, each functional state agency shall transmit to the Office of State Planning comments about, and recommendations for amendments to, the Draft Plan.

17:32-2.2 Public comment on Draft Preliminary State Development and Redevelopment Plan

(a) Copies of the Draft Preliminary Plan will be available at the Office of State Planning for 45 days after the date of release, and will be available for inspection and copying thereafter at locations to be determined by the State Planning Commission.

(b) The Office of State Planning shall make at least three public presentations of the Draft Preliminary Plan within 10 working days after the date of release of the Draft.

(c) Any written comments and recommendations of the general public on the Draft Preliminary Plan distributed in accordance with N.J.A.C. 17:32-2.5 shall be submitted to the Office of State Planning no later than 60 days after the date of release of the Draft.

17:32-2.3 Approval of the Preliminary State Development and Redevelopment Plan and authorization to transmit for cross-acceptance

(a) As soon as practicable after receiving and considering comments on the Draft Preliminary State Development and Redevelopment Plan, the Office of State Planning shall submit copies of written comments, summaries of public meetings and staff recommendations for revisions to the Draft Preliminary Plan to the State Planning Commission.

(b) The State Planning Commission shall, after due consideration, approve a Preliminary State Development and Redevelopment Plan for cross-acceptance and authorize its transmittal to each county and municipality and to others as it deems appropriate.

SUBCHAPTER 3. PROCEDURES FOR CONDUCTING CROSS-ACCEPTANCE

17:32-3.1 Negotiating entities for county and municipal cross-acceptance

(a) With the distribution of the Preliminary State Development and Redevelopment Plan to the counties and municipalities, the Office of State Planning shall transmit to each county a copy of the Cross-Acceptance Manual, an application form for financial assistance, and a request for either a Notice of Participation or a Notice of Waiver.

(b) Notices of Waiver or Participation shall be transmitted by each county to the Office of State Planning no later than 45 days after receipt by the county of the Preliminary State Development and Redevelopment Plan.

1. A Notice of Participation shall be a duly adopted resolution of the governing body authorizing participation of the county in the cross-acceptance process.

2. A Notice of Waiver is a duly adopted resolution of the governing body stating its intent to forfeit and waive its statutory authority to participate in cross-acceptance.

(c) In the event that a county transmits a Notice of Waiver or fails to transmit a Notice of Participation within 45 days after its receipt of the Preliminary State Development and Redevelopment Plan, the State Planning Commission shall designate a negotiating entity for cross-acceptance for each such county.

17:32-3.2 Optional joint municipal cross-acceptance agreements

The Office of State Planning shall encourage the governing bodies of the counties, especially those located within the purview of an existing regional planning agency or metropolitan planning organization, to enter into intergovernmental agreements for consolidated or coordinated participation in cross-acceptance. If a county notifies the Office of State Planning of that county's desire to enter into such an agreement or to involve a regional planning agency or metropolitan planning organization in cross-acceptance, the Office of State Planning shall provide, at the county's request, technical assistance in the preparation of appropriate intergovernmental agreements and designations of negotiating entities.

17:32-3.3 Designation of negotiating entity by the State Planning Commission in lieu of county participation

(a) In the event that a county advises the Office of State Planning that the governing body of the county has determined that the county will not participate in the cross-acceptance process, or fails to respond within the time period specified in N.J.A.C. 17:32-3.1, the State Planning Commission shall designate an appropriate entity to participate in cross-acceptance in the place of the non-participating county, after having first consulted with the entity to be designated and having secured that entity's commitment to participate in the cross-acceptance process.

(b) A county may request designation of a specific entity (including a joint program subject to an intergovernmental agreement) as the negotiating entity for that county within the 45 day notice period in N.J.A.C. 17:32-3.1.

1. The State Planning Commission shall accept the recommendation of the county and designate the recommended entity, unless the Commission finds that the recommended designation would interfere with the practical application of the spirit and intent of the State Planning Act.

17:32-3.4 Cross-acceptance work programs and grants-in-aid

(a) Within 45 days after receipt of the Preliminary State Development and Redevelopment Plan, each county serving as the negotiating entity shall submit to the Office of State Planning a proposed work program and, at the county's option, an application for a cross-acceptance grant-in-aid approved by the governing body.

(b) In the event that the negotiating entity is designated pursuant to N.J.A.C. 17:32-3.3, the negotiating entity shall submit to the Office of State Planning, within 30 days of the date of designation, a proposed work program and, at the entity's option, an officially approved application for a cross-acceptance grant-in-aid.

(c) In the event that the work program submitted to the Office of State Planning is determined to be inadequate in any way by the State Planning Commission, the Office of State Planning shall provide the negotiating entity with work program changes necessary to overcome the inadequacies and to ensure an effective and efficient cross-acceptance process.

17:32-3.5 Municipal participation in the cross-acceptance process

(a) Each municipality in the State shall participate in the cross-acceptance process by:

1. Providing to the negotiating entity the most up-to-date copies of municipal master plans, land development regulations and other information and materials necessary for an effective and efficient comparison of the State Plan with the plans and regulations of the municipality.

2. Participation through official representation at cross-acceptance meetings convened by the negotiating entity.

(b) If a municipality fails to participate, the State Planning Commission shall take whatever steps are appropriate to carry out the provisions of this chapter and N.J.S.A. 52:18A-196 et seq.

17:32-3.6 Public informational meetings in each County in regard to the Preliminary State Development and Redevelopment Plan

No later than 15 days after the distribution of the Preliminary State Development and Redevelopment Plan, the Office of State Planning shall transmit to each county, or the negotiating entity if known, a schedule for joint public informational meetings to be held in each county of the State. These meetings shall be held not less than 45 days and not more than 90 days after the date of distribution of the Preliminary State Development and Redevelopment Plan. The joint informational meetings shall be convened by the negotiating entity.

17:32-3.7 Technical assistance from Office of State Planning during negotiation of cross-acceptance

(a) During the cross-acceptance process, the Office of State Planning shall provide technical assistance to the negotiating entities in regard to the negotiating entities' review and revision, of any Implementation Maps and in regard to their comparison of goals, objectives, strategies, policies and standards contained in the Preliminary State Development and Redevelopment Plan with those contained in municipal and county plans and regulations.

(b) Technical assistance shall be in the form of the provision of reproducible base maps at a scale of 1:24,000, a cross-acceptance manual, advice and consultation on tier delineation and issues of comparison, and other assistance as may be requested by the negotiating entity which is within the capability and expertise of the Office of State Planning.

17:32-3.8 Public participation in the cross-acceptance process

Cross-acceptance shall be carried out in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. Due consideration shall be given by the negotiating entity to the desirability of, and the need for, public participation in the process and a plan for public participation shall be included in each negotiating entity's work program.

17:32-3.9 Preparation of implementation maps by the negotiating entities during the cross-acceptance process

During the cross-acceptance process each negotiating entity shall review and revise or otherwise complete a set of Implementation Maps at a scale of 1:24,000, delineating the boundaries of the tiers established and defined in the Preliminary State Development and Redevelopment Plan and using the tier descriptions and designation criteria set forth in the Preliminary Plan.

17:32-3.10 Comparison of the preliminary state development and redevelopment plan with local and county plans

(a) To ensure that the cross-acceptance process achieves maximum consistency and compatibility among all governmental levels, the negotiating entity shall compare municipal and county plans and regulations with the goals, objectives, strategies, policies, standards and Implementation Maps of the Preliminary State Development and Redevelopment Plan.

(b) The negotiating entity shall, taking into account any findings, recommendations, or objections from local and county planning bodies concerning the goals, objectives and strategies contained in the Preliminary Plan, identify areas of agreement and disagreement and, in the event of disagreement, the nature of the disagreement and recommendations for modification. The entity also may identify any additional goals, objectives and strategies which should be included in the State Plan.

(c) The negotiating entity shall, based on an assessment of municipal and county plans and regulations, and any findings, recommendations, or objections concerning the policies of the Preliminary Plan from local and county planning bodies, identify any inconsistencies between the policies of the Preliminary Plan and provisions of local and county plans and regulations, indicating whether:

1. Notwithstanding the inconsistency, compatibility exists because the provisions of local and county plans or regulations are as effective as the policies contained in the Preliminary Plan in meeting the goals, objectives and strategies of the Preliminary Plan (see definitions of "consistency" and "compatibility"); or

2. Compatibility should be achieved through the modification policies contained in the Preliminary Plan; or

3. Compatibility should be achieved through modification of local or county plans or regulations.

(d) The negotiating entity shall, based on an assessment of municipal and county plans and regulations, and any findings, recommendations, or objections concerning the standards of the Preliminary Plan from local and county planning bodies, identify any inconsistencies between the standards of the Preliminary Plan and provisions of local and county plans and regulations, indicating whether:

1. Notwithstanding the inconsistency, compatibility exists because the provisions of the local and county plans or regulations are as effective as the standards contained in the Preliminary Plan in meeting the policies of the Preliminary Plan (see definitions of "consistency" and "compatibility"); or

2. Compatibility should be achieved through the modification of the standards contained in the Preliminary Plan; or

3. Compatibility should be achieved through modification of local or county plans or regulations.

(e) The negotiating entity shall, based on an assessment of municipal and county plans and regulations, and any findings, recommendations, or objections concerning the tier delineations on the implementation maps from local and county planning bodies, identify any inconsistencies between tier delineations and any maps contained in local and county plans and regulations, indicating that:

1. The inconsistency is the result of a tier delineation which is based upon inaccurate or outdated information and should be resolved by redrawing the tier delineation based upon more accurate and up-to-date information; or

2. Consistency should be achieved through modification of designation criteria contained in the Preliminary Plan; or

3. Consistency should be achieved through modification of maps contained in, or provisions of, local or county plans and regulations.

17:32-3.11 Negotiating entity reports

(a) Within six months of the date of receipt of the Preliminary State Development and Redevelopment Plan, each negotiating entity shall prepare and file with the State Planning Commission a formal report of findings, recommendations and objections concerning the Plan in the form specified by the Office of State Planning in the Cross-Acceptance Manual and any amendments thereto.

(b) The final reports of each negotiating entity shall not be filed with the State Planning Commission until the governing body of each such county shall have authorized the transmittal of the Formal Report.

17:32-3.12 Individual municipal reports in regard to cross-acceptance

(a) If a municipality is not satisfied with the cross-acceptance report, in whole or in part, prepared by the negotiating entity, the municipality may file a separate report in the form specified by the Office of State Planning in the Cross-Acceptance Manual not later than 30 days after the negotiating entity for the county in which the municipality is located files its formal report of findings, recommendations and objections pursuant to N.J.S.A. 52:18A-202.

(b) Should a municipality fail to participate in the negotiation of cross-acceptance and/or fail to file an individual municipal report, the municipality shall be deemed to have concurred and agreed in the final report filed by the negotiating entity and to have waived its statutory right to file a separate report under N.J.S.A. 52:18A-202.

17:32-3.13 Office of State Planning Report on cross-acceptance

(a) As soon as practicable after the deadline for receipt of negotiating entity final reports, the Office of State Planning shall prepare and transmit to the State Planning Commission for its consideration a staff report on cross-acceptance which includes proposed revisions, if any, on the Plan and Implementation Maps and which summarizes the findings, recommendations and objections contained in the reports of the negotiating entities and municipalities in a manner sufficient for the State Planning Commission to effectively and efficiently consider appropriate revisions to the Preliminary Plan.

(b) The report shall include recommendations for amendments to the provisions and maps of the Preliminary Plan and shall describe any provision of existing state law, or the absence thereof, that poses an obstacle to achieving compatibility between state, regional, county and municipal plans.

17:32-3.14 Adoption of the State Development and Redevelopment Plan

(a) Upon receipt of the cross-acceptance report required by N.J.A.C. 17:32-3.11, the State Planning Commission shall give due public notice and shall hold no fewer than six public hearings at geographically dispersed sites throughout the State.

(b) As soon as practicable thereafter, the State Planning Commission shall consider and adopt the State Development and Redevelopment Plan.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

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

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

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

Proposal Number: PRN 1987-445.

A **public hearing** concerning this rule will be held on:
November 19, 1987 at 10:00 A.M.
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit comments by December 2, 1987 to:
Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The proposed amendment to the Hackensack Meadowlands District Official Zoning Map will change the zoning designation of Block 108A, Lot 38A and Block 1088, Lot 38 in the Borough of East Rutherford from Marshland Preservation to Waterfront Recreation.

Social Impact

The site in question is privately owned property zoned for marshland preservation, which is a public use. The proposed rezoning would change the use of the subject property from marshland preservation to waterfront recreation, which is a compatible use found elsewhere along the Hackensack River. There is no negative social impact.

Economic Impact

The proposed zoning amendment will give the property owner an economical use for his property which does not exist as it is presently zoned. The proposed development is consistent and compatible with the neighboring lands along the Hackensack River. Development of this site will not cause undue hardship to the Borough of East Rutherford, or to any other party.

Regulatory Flexibility Statement

The effect of this proposal would be to rezone certain properties in the Borough of East Rutherford. The proposal will have no impact on small businesses, therefore no regulatory flexibility analysis is required. The zoning change affects a single individual in a beneficial manner that increases the potential use of the property. No recordkeeping or bookkeeping is required.

Full text of the proposal follows:

19:4-6.28 Official Zoning Map

The zoning designation of Block 108A, Lot 38A and Block 1088, Lot 38 in East Rutherford, New Jersey from Marshland Preservation to Waterfront Recreation.

OAL NOTE: A map showing the proposed change in zoning designation was submitted as part of the Commission's notice of proposed rule.

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Reporting of Complimentary Items and Services

Proposed Amendments: N.J.A.C. 19:45-1.2 and 1.46

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a) and 5:12-70(1), (m) and (n).

Proposal Number: PRN 1987-439.

Submit comments by December 2, 1987 to:
Carole R. Jacobson
Assistant Counsel
Legal Division
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposal would amend N.J.A.C. 19:45-1.46(b) to eliminate the current requirement that non-coupon complimentary services or items shall be reported on both a daily and quarterly basis. Instead, such items or services would be reported on a monthly and quarterly basis pursuant to N.J.A.C. 19:45-1.46(l) and (n). The amendments to N.J.A.C. 19:45-1.46(l) would require casinos to record and report to the Commission and the Division on a monthly basis, among other things, the total amount of money expended and the total number of persons provided with each category of non-coupon complimentary service or item. The amendment to N.J.A.C. 19:45-1.46(l) would also establish a monetary threshold to be applied in determining whether casino licensees shall be required to report the names of individuals receiving N.J.A.C. 19:45-1.46(b) complimentaries. Under the proposal, casinos would be required to include in the monthly report the name of each person receiving a non-coupon complimentary item or service the dollar amount of which equals or exceeds $100.00. The amendment to N.J.A.C. 19:45-1.2(c) would establish a separate monetary threshold to be applied in determining whether casino licensees shall be required to report the names of individuals receiving complimentary tickets for theater or other entertainment events. Under the proposal, casinos would be required to include in the daily report required by N.J.A.C. 19:45-1.2(c) the name of each person receiving a ticket the face value of which was more than $25.00.

Social Impact

The elimination of the daily reporting requirements for complimentary services or items, including cash or slot tokens, distributed through programs regulated by N.J.A.C. 19:45-1.46(b) establishes a more convenient and efficient reporting procedure for casino licensees while continuing to assure the integrity of these programs. The substitution of a monthly and quarterly reporting requirement and the inclusion of a monetary threshold for the reporting of the names of individuals receiving non-coupon complimentary services or items promotes the goal of accurate and consistent complimentary reporting by casino licensees without diluting the effectiveness of complimentary reporting by including items of minimal cost.

Economic Impact

The proposed amendments establish less exacting complimentary reporting procedures for casino licensees than are currently required under N.J.A.C. 19:45-1.46 and therefore should reduce recordkeeping costs. The additional time and expense required to report the names of persons authorizing or receiving tickets for theater or other entertainment events with a face value over $25.00 should be minimal, and is more than offset by the elimination of the daily reporting requirement for other complimentary services or items under N.J.A.C. 19:45-1.46.

Regulatory Flexibility Statement

This proposal will only affect the operations of casino licensees, and will not impact on any small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., therefore a regulatory flexibility analysis is not required.

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

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

1.-2. (No change.)

3. Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services. Such records shall include, on a daily basis, the name of each person provided with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such person, and the person authorizing the receipt of such service. A copy of this record shall be submitted to the Division of Gaming Enforcement's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary **tickets for** theatre [tickets] **or other entertainment events with a face value of less than $25.00,** parking, [or] beverages served in bars and the casino **or complimentary services or items, including cash or slot tokens, issued pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.**

4.-9. (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) (No change.)

(b) Detailed procedures controlling all programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to the Commission and Division at least 15 days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all programs entitling patrons to complimentary items or services other than cash or slot tokens shall be prepared prior to implementation as an accounting record by the casino licensee. **Complimentary items or services, including cash or slot tokens, distributed through programs regulated by this subsection shall be reported in accordance with the procedures contained in (l) and (n) below.**

(c)-(k) (No change.)

(l) Each licensee shall file a monthly report with the Commission and Division which **shall include the following information:**

1. For all programs regulated by (a) above, each licensee shall list[s,] by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash or slot tokens given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; **and**

2. For all programs regulated by (b) above, each licensee shall list, by program offered during the month, a description of the complimentary items and services provided, the total number of persons receiving complimentary items or services, the total dollar amount of complimentary items or services provided, and the names of all persons receiving complimentary items or services in a dollar amount equal to or greater than $100.00.

(m) (No change.)

(n) In addition to the monthly report required to be filed in (l) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons **pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above,** and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. **Complimentary items or services, including cash and slot tokens, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.2.**

HUMAN SERVICES

The following proposals are authorized by Drew Altman, Ph.D., Commissioner, Department of Human Services.

(a)

OFFICE OF THE COMMISSIONER

Communication with Communities regarding Development of Group Homes

Proposed Readoption with Amendments: N.J.A.C. 10:4

Authority: N.J.S.A. 30:1-12.

Proposal Number: PRN 1987-456.

Summit comments by December 2, 1987 to:
E. John Walzer, Esq.
Regulatory Officer
Department of Human Services
222 South Warren Street
CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:4 concerning communicating with communities regarding the development of group homes. The entire chapter will expire on January 8, 1988.

Effective July 1, 1982, the Commissioner of the Department of Human Services directed that State and local officials, and the public at large, be notified of any plans to establish group homes for clients of the Department. This chapter outlined specific procedures to be followed by Divisions and provider agencies to ensure that concerned parties are aware of group home development.

While the rule was effective in its overall goal of advising the community of new program development, a number of problems were encountered in the day-to-day implementation of the rule. The Residential Services Committee of the Department of Human Services, made up of representatives of the three Divisions involved in group home development, was convened to recommend any necessary changes to the rule. A summary of the problems and proposed changes follows:

N.J.A.C. 10:4-2.3, Responsibility of provider agency prior to the selection of a specific site, directs provider agencies to offer in a letter to meet with local officials from towns under consideration for a group home program. This requirement has resulted in confusion on the part of local officials, who in many instances misunderstand the meeting to be mandatory. This section has been changed to require that the letter provide local officials with general information regarding group homes, and a contact person for further information. Local officials may continue to request meetings with provider agencies and/or division staff, whose cooperation is mandated.

N.J.A.C. 10:4-2.4, Responsibility of the Department of Human Services prior to the selection of a specific site, requires the sponsoring division to inform State Senators and Assemblymen of the possibility of locating a group home in their district. Because a specific site has not yet been selected, the value of notification of legislators at this point in the development of the program is questionable. Once a site has been selected, it is useful to legislators to be advised of new developments in their district. Hence, it is herein proposed that this section be eliminated. Senators and Assemblymen will, however, continue to be advised upon the selection of a specific site.

N.J.A.C. 10:4-2.5, Responsibility of a provider agency after site selection, has been changed to encourage small, informal meetings among local officials, neighbors of the home, and provider agency staff.

In addition, to clarify the scope of the policy, a definition of group home programs has been developed.

Social Impact

Readoption of this chapter will ensure that State and local officials and neighbors are aware of the Department's plans to locate a group home in a particular municipality. It has been demonstrated that the provision of information regarding group homes in small, informal meetings does help to foster an understanding and greater acceptance of our clients and the group home program.

The proposed changes are intended to promote positive communication between the provider agency and the public.

Economic Impact

The notification procedures outlined in this rule do entail certain administrative expenses; however, the cost is minimal.

Regulatory Flexibility Statement

The proposed amendments do not affect small businesses as they do not impose reporting, recordkeeping or other compliance requirements on small businesses.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:4.

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

CHAPTER 4
COMMUNICATION WITH COMMUNITIES REGARDING THE DEVELOPMENT OF GROUP HOMES

SUBCHAPTER 1. STATEMENT OF POLICY AND SCOPE

10:4-1.1 Policy

[(a) Individual development for the Department of Human Services' clients is a continuing process which requires increasing degrees of personal autonomy. A Department goal is the provision of a comprehensive service system which will accommodate the normalized living environment needs of these clients. Community residential living is an integral part of that service system.]

(a) The Department of Human Services is committed to the development of each client's potential to exercise increasing degrees of personal autonomy. The provision of a normalized living environment through the use of community residential programs provides clients with an opportunity to exercise this basic right.

(b) Community awareness of the group home program and the [Department's clients it serves is important for everyone.] **clientele it serves will benefit all parties.** Formalizing communication with citizens and municipal officials will enhance cooperation among the division responsible for the clients, the agency operating the program and the municipality in which [it] **the home** is to be located. This chapter shall not be construed as an abrogation of the clients' human and civil rights, including the right to live in [residential zones of any municipality.] **the community.**

10:4-1.2 Scope

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

(c) This chapter shall not apply to group homes which are utilized for victims of domestic violence, as defined by N.J.S.A. 40:55-D-66.2b.

10:4-1.3 Definitions

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

"Group home" means a family style community-based residential program which is leased or purchased by an agency and regulated in accordance with N.J.S.A. 40:55D-66.1 et seq. providing room, board, and personal guidance to up to 15 persons who require assistance, either temporarily or permanently, in order to live in the community.

SUBCHAPTER 2. PURPOSE AND GENERAL PROCEDURES

10:4-2.1 (No change.)

10:4-2.2 Divisional assessment of need

(a) Each division will request proposals from appropriate provider agencies based [on pre-determined needs of the division for a particular service] **upon the needs of the clients for a particular service** and the availability of funding.

(b) (No change.)

10:4-2.3 Responsibility of provider agency prior to the selection of a specific site

(a) Once a general area is selected, the provider agency shall write, by registered letter, to the local officials of the community informing them that there is a possibility of establishing a group home within that community. The letter shall [include an offer that the provider agency meet informally, within 15 working days, with the local officials of the community to provide general information and facts about group homes, and/or subsequently, with civic or service organizations and others, upon request.] **provide general information on group home programs, and a contact person for further information.** A copy of this letter shall be sent to the appropriate division.

(b) **If at any time in the notification process, an interested party requests** [If the provider agency and/or local officials request] the attendance of [Department] **provider agency staff and/or a Division** representative[s] at any meeting(s), [the provider agency shall notify the appropriate Division] **appropriate staff shall be made available.**

[10:4-2.4 Responsibility of Department of Human Services prior to the selection of a specific site

(a) Upon receipt of the letter sent to the local officials by the provider agency, the division shall inform, in writing, the Senators and Assemblymen in whose district the community is located that there is a possibility of establishing a group home within that community. The letter shall indicate that the local officials have been informed by the provider agency and that the provider agency and the appropriate division stand ready to provide information regarding the program to all segments of the public.

(b) Staff from the division funding the program shall attend any meeting(s), when requested by the provider agency, with local and/or state officials and community groups, regarding the establishment of group homes.]

10:4-2.[5]**4** Responsibility of provider agency after site selection

[(a) Following the completion of the notification process required by this chapter, a site for the group home will be selected in conformance with standards provided by the division funding the program.]

(a)[(b)] Upon the execution of a valid agreement of sale **or lease,** the local officials shall be notified of the specific location, by registered mail, by the provider agency. Simultaneously, copies of this notification will be sent to the appropriate **State** Senators, Assemblymen and to the appropriate division. This letter shall: [include:

1. A suggestion that a meeting be held with local officials within 15 working days in order to meet with staff of the appropriate division and the provider agency;

2. Specific information about the group home program, client characteristics, division standards;

3. An offer that the provider agency and the appropriate division share specific information regarding the group home with the immediate neighbors; and,

4. An invitation for both local officials and neighbors to visit the home when it opens.]

1. Inform all parties that the provider agency and the appropriate division plan to share specific information regarding the group home with immediate neighbors; and,

2. Invite all parties to visit the home when it opens.

10:4-2.[6]**5** Group Home Citizens Advisory Board

(a) (No change.)

(b) The Citizens Advisory Board can be formed at any time [but must be appointed within 60 days after a particular home has been licensed or contracted with]. **While it is advisable to appoint the board prior to the development of a group home program, the Board must be appointed within 60 days of licensing of, or contracting with, a specific home.**

(c) The Citizens Advisory Board shall be composed of interested individuals whose knowledge and expertise can contribute to the development of the home. Membership shall minimally include participation from each of the following groups:

1. Consumers of the sponsoring Division's services, with consumers including present and past **service** recipients and the parents, guardians and siblings of such recipients;

2. Individuals from **the** local community;

3.-4. (No change.)

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

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual, Hospital and Special Hospital Manual, Physicians' Manual, Nurse-Midwifery Services, Independent Clinic Manual

Comprehensive Maternity Care Services and Comprehensive Pediatric Care Services (HealthStart)

Proposed New Rule: N.J.A.C. 10:49-3

Proposed Amendments: N.J.A.C. 10:49-1.3, 1.4, 1.5; 10:52-1.7; 10:53-1.6; 10:54-1.1, 1.2; 10:58-1.2, 1.3; 10:66-1.3, 1.6
Proposed Repeal: N.J.A.C. 10:49-1.6
Authority: N.J.S.A. 30:4D-2, 30:4D-3, 30:4D-5, 30:4D-6, 30:4D-7, 30:4D-12, and 1920(a) of the Social Security Act.
Proposal Number: PRN 1987-457.

Submit comments by December 2, 1987 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Department of Human Services, in cooperation with the New Jersey Department of Health, is proposing to implement a program of comprehensive maternal and child health care for all pregnant women and children under two years of age in the state of New Jersey who are eligible for Medicaid benefits. This program shall be known as HealthStart. Services for comprehensive maternity care include: all medical services recommended by the American College of Obstetricians and Gynecologists, as well as a program of health support services involving case coordination, nutrition assessment and counseling, social-psychological assessment, counseling, referral, and health education assessment and instruction.

Comprehensive pediatric care includes the nine preventive visits recommended by the American Academy of Pediatrics and all necessary immunizations. Providers of pediatric care are required to provide or arrange for continuity of care in the event the child becomes ill during the first two years of life.

HealthStart providers are required to be Medicaid providers and to hold a valid HealthStart Certificate, which shall be issued by the New Jersey Department of Health.

The following paragraphs describe HealthStart services in more detail. HealthStart includes two major categories of services—Maternity (Comprehensive) Care Services and Pediatric (Comprehensive) Care Services.

HealthStart Maternity Comprehensive Care Services providers shall provide or arrange for comprehensive maternity care to Medicaid eligible pregnant women. "Comprehensive Maternity Care" includes services under two categories—Health Support Services and Medical Maternity Care. "Health Support Services" include case coordination services; referral and follow-up; health education services; social/psychological services and home visitations. Medical Maternity Care shall include ambulatory prenatal and postnatal medical care; obstetrical delivery; and admission arrangements for delivery.

All medical services are those recommended as accepted standards for maternity care by the American College of Obstetricians and Gynecologists. It should be noted that the statutory standard (N.J.S.A. 30:4D-2) requires the development of a comprehensive program of maternity care services in accordance with recommendations of the American College of Obstetricians and Gynecologists.

HealthStart Pediatric (Comprehensive) Care Services providers shall provide or arrange for comprehensive pediatric care to Medicaid eligible children from birth up to two years of age. "Comprehensive Pediatric Care" includes preventive child health visits; sick care; case coordination; 24 hour telephone access; and referral and follow-up for complex or extensive medical, social, psychological and nutritional needs.

Pediatric care also includes all of the necessary immunization and nine preventive visits recommended by the American Academy of Pediatrics. Providers of pediatric care are required to provide or arrange for continuity of care in the event the child becomes ill during the first two years of life.

It should be noted that the statutory standard requires the development of a comprehensive program of child health services in accordance with recommendations of the American Academy of Pediatrics.

The Division of Medical Assistance and Health Services anticipates promulgating additional rules pertaining to eligibility standards and determinations for Medicaid patients. These standards will include presumptive eligibility.

The reference to the Medicaid program not paying for "free services" has been transferred from N.J.A.C. 10:49-1.6 to N.J.A.C. 10:49-1.5(a). This is a codification change. HealthStart is a reimbursable service.

Social Impact

The enhanced package of services available to low income pregnant women in the state of New Jersey should enable them to deliver healthier babies. Over time, infant mortality and morbidity, including low birth weight, should be reduced and long term child health status should be improved.

Similarly, an expanded program of pediatric care should enable many more New Jersey children to avoid illness, as a result of preventive health care during the first 24 months of life. The continuous care provision is expected to enable Medicaid patients to receive necessary medical care and services on an outpatient basis. The rule will impact on those Medicaid providers who become HealthStart Maternity Care Providers and/or HealthStart Pediatric Care Providers.

The rule will also impact on County Welfare Agencies and/or Boards of Social Services who will be responsible for processing Medicaid applications for those persons who have been referred by a HealthStart provider, or who make application directly to the county.

Economic Impact

The total cost of the comprehensive maternal and child health program in the state of New Jersey is expected to amount to $9 million for fiscal year 1988 (federal and state share combined).

There is no cost to the Medicaid patients.

HealthStart providers will be reimbursed according to the policies, procedures, and fee schedules established by this rule for HealthStart providers. In addition, HealthStart providers will be responsible for submitting claims within the time frames specified in N.J.A.C. 10:49-1.12.

The HCPCS (Health Care Financing Administration Common Procedure Coding System) codes and corresponding fee schedules begin at N.J.A.C. 10:49-3.18.

Regulatory Flexibility Statement

The Department of Human Services has determined that compliance with the proposed amendments and new rules is required by all HealthStart providers. Some providers may be considered small businesses under the provisions of N.J.S.A. 52:14B-17. However, the Department must require the equitable and uniform application of these amendments and new rules in order to promote the safety and welfare of the general public. Providers will be required to maintain reports and records of services rendered to Medicaid patients. However, Medicaid providers are already required to keep and maintain sufficient records to fully identify the recipient to whom the service was rendered, the dates and nature of the service, etc. (N.J.S.A. 30:4D-12(d)). In addition, the enabling legislation (P.L. 1987, c.115, N.J.S.A. 30:4D-2) required the development and implementation of a system for monitoring the quality and delivery of comprehensive maternity and pediatric care services, and a system for evaluating the program's effectiveness. Therefore, providers are required to maintain the appropriate records.

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

10:49-1.3 Eligible providers

(a) An eligible provider is any individual, partnership, association, corporation, institution or any other public or private entity designated below, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program; and, where applicable, holding a current valid license. Providers are required to complete a provider application form (FD-20), to sign a provider participation agreement (FD-62) (see Exhibits V through VI at the end of this section); [or] a specialized agreement; **and/or such other documentation as the program may require,** depending on the nature of the provider. All provider applicants and reapplicants defined as disclosing entities (all Medicaid providers other than an individual practitioner and/or a group of practitioners) are required to complete HCFA form 1513, Ownership and Control Interest Disclosure Statement. Providers prior to 1973 were not required to utilize provider agreement forms; however, they must comply with all applicable State and Federal Medical laws, policies, rules and regulations.

1. through 3. (No change in text.)

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

EXHIBIT V (No change.)

10:49-1.4 Services covered by the New Jersey Medicaid Program

(a) New Jersey Medicaid individuals are eligible for covered services when the services are provided in conjunction with program requirements specifically outlined in the second chapter of each service manual; however, for Medically Needy individuals some Medicaid services are not available or are only available to certain eligible Medically Needy groups (see (b) below). Any limitations imposed will be consistent with the medical necessity of the patient's condition as determined by the attending physician or other practitioners and in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The covered services listed below in alphabetical order are available to the regular Medicaid population:

1. through 6. (No change in text.)

7. HealthStart Maternity and Pediatric Care Services include packages of comprehensive services provided by independent clinics, hospital outpatient departments, physicians, and nurse midwives, either directly or through linkage with other HealthStart care providers. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

Renumber 7. through 12. as **8.** through **13.** (No change in text.)

14. Maternity Care Services under HealthStart means a package of comprehensive maternity care services including two components—Medical Maternity Care and Health Support Services. (See N.J.A.C. 10:49-3 for information abouth HealthStart Services and provider requirements for participation.)

Renumber 13. through 17. accordingly as **15.** through **19.** (No change in text.)

20. Pediatric Care Services under HealthStart means a comprehensive package of pediatric services. (See Subchapter 3 of this chapter for information about HealthStart Services and provider requirements for participation.)

Renumber 18. through 23 as **21.** through **26.** (No change in text.)

10:49-1.5 General exclusions

(a) The items listed in this section are general exclusions from New Jersey Medicaid coverage. There are certain additional specific exclusions and limitations which are detailed in the appropriate provider manual sections. Payment is not made for:

1. (No change in text.)

2. Free Services—Services provided to all persons without charge may not be billed to the Medicaid program. Services and items provided without charge through programs of other public or voluntary agencies (for example, New Jersey State Department of Health, New Jersey Heart Association, First Aid or Rescue Squads, and so forth) must be utilized to the fullest extent possible.

Renumber 2. through 14. as **3.** through **15.** (No change in text.)

10:49-1.6 **(Reserved)** [Free Services]

[Services provided to all persons without charge may not be billed to the Medicaid program. Services and items provided without charge through programs of other public or voluntary agencies (for example, New Jersey State Department of Health, New Jersey Heart Association, first aid or rescue squads, and so forth) must be utilized to the fullest extent possible.]

SUBCHAPTER 3. HEALTHSTART—COMPREHENSIVE MATERNITY CARE SERVICES AND COMPREHENSIVE PEDIATRIC CARE SERVICES

10:49-3.1 Purpose

(a) The purpose of HealthStart is to provide or arrange for comprehensive maternity and child health care services for all pregnant women (including those determined to be presumptively eligible) and for children (through two years of age) in the State of New Jersey who are eligible for Medicaid benefits.

10:49-3.2 Scope of services

(a) HealthStart maternity care services include all medical services recommended by the American College of Obstetricians and Gynecologists, as well as a program of health support services. HealthStart pediatric care services include the nine preventive visits as recommended by the American Academy of Pediatrics and all of the necessary immunizations. This subchapter includes provisions for provider participation, standards for service delivery, procedure codes from the HCFA Common Procedure Coding System (HCPCS), and directions for submitting claims.

(b) HealthStart Comprehensive Maternity Care includes two components, Medical Maternity Care Services and Health Support Services as follows:

1. Medical Maternity Care Services include, but are not limited to:

i. Ambulatory prenatal services;

ii. Admission arrangements for delivery;

iii. Obstetrical delivery services;

iv. Postpartum medical services;

2. Health Support Services include, but are not limited to:

i. Case coordination services;

ii. Health education assessment and counseling service;

iii. Nutrition assessment and counseling services;

iv. Social-psychological assessment and counseling services;

v. Home visitation; and

vi. Outreach, referral and follow-up services.

(c) HealthStart Comprehensive Pediatric Care includes nine preventive child health visits; all the recommended immunizations; sick care; case coordination and continuity of care including, but not limited to, 24 hour telephone access, and referral and follow-up for complex or extensive medical, social, psychological, and nutritional needs.

10:49-3.3 HealthStart Provider Participation Criteria

(a) Providers that are eligible to participate as a HealthStart provider are: independent clinics, hospital outpatient departments, physicians and physician groups, and nurse midwives approved as providers in the New Jersey Medicaid Program.

(b) In addition to New Jersey Medicaid Program rules applicable to provider participation, HealthStart Providers shall:

1. Sign an Addendum to the New Jersey Medicaid Program Provider Agreement; and

2. Have a valid HealthStart Maternity Care Certificate and/or a Pediatric Care Certificate; and

3. Provide maternity care and/or pediatric care services in accordance with the requirements for issuance of a "HealthStart Maternity Care Certificate" and/or a "HealthStart Pediatric Care Certificate" and in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers and HealthStart Pediatric Care Providers.

(c) In addition to (a) and (b) above, a HealthStart Maternity Care Provider with more than one care site or more than one maternity clinic at the same site that uses different staff, shall apply for a separate HealthStart Maternity Care Certificate for each separate clinic. Within an agency, only those sites which hold a certificate will be reimbursed for HealthStart services; and

1. Shall participate in program evaluation and training activities, including, but not limited to, site monitoring, agency and patient record review, and submission of required summary information on each patient; and

2. May determine presumptive eligibility for New Jersey Medicaid if approved by the Division of Medical Assistance and Health Services.

(d) In addition to (a) and (b) above, a HealthStart Pediatric Care Provider, shall:

1. Participate in program evaluation and training activities, including but not limited to, submission of a Pediatric Preventive Child Health form and documentation of outreach and follow-up activities in the patient's record; and

2. Enroll eligible children in Early Periodic Screening, Diagnosis and Treatment (EPSDT). (Hospital outpatient departments are excluded from this requirement.)

(e) A site review may be required to ascertain an applicant's ability to meet the Standards for a HealthStart Certificate in the appropriate area and to provide services in accordance with the New Jersey State Department of Health Guidelines for HealthStart Providers in the appropriate area.

(f) A HealthStart Provider Certificate shall be reviewed at least every 18 months from the date of issuance.

(g) An application for a HealthStart Provider Certificate is available from:

HealthStart
New Jersey State Department of Health
CN 360
Trenton, NJ 08625.

(h) An application for a New Jersey Medicaid HealthStart Provider agreement is available from:

Chief, Provider Enrollment Unit
New Jersey Department of Human Services
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625

10:49-3.4 Termination of HealthStart certificate

(a) The New Jersey State Department of Health will be responsible for enforcement of its requirements for HealthStart provider Certificates and for evaluation and enforcement of its requirements within the Standards and Guidelines for HealthStart providers.

(b) Failure to comply with HealthStart Certificate Standards shall be cause for termination of the HealthStart provider Certificate. Providers who are terminated shall have the right to request a hearing pursuant to the procedures in N.J.A.C. 10:49-1.16.

10:49-3.5 Standards for a HealthStart Maternity Care Provider Certificate

(a) Comprehensive maternity care services must be integrated and coordinated.

(b) HealthStart Maternity Care providers, excluding physicians and nurse midwives who are in private practice, shall provide for comprehensive maternity care services within the following organizational requirements:

1. The provider shall provide directly or through an approved agreement, at one contiguous site, the following services: ambulatory prenatal and postpartum care; case-coordination services; nutrition assessment; guidance and counseling services; health education assessment and instruction; social-psychological assessment, guidance and counseling;

2. The provider shall provide or arrange for the admission of the patient to the appropriate level of care facility for obstetrical care delivery services;

3. The provider shall provide or arrange for all necessary laboratory services;

4. The provider shall provide one or more prenatal home visit for each high risk patient;

5. The provider shall provide at least one postpartum home visit for each high risk patient;

6. Providers who provide only one component of the Comprehensive Maternity Care Service, either the Medical Care Service component or the Health Support Service component, shall demonstrate the ability to obtain the other component through an agreement with another HealthStart provider. This agreement shall delineate which party is to take primary responsibility for provision of all HealthStart services;

7. The provider shall adopt procedures and policies which assure the delivery of coordinated, integrated and comprehensive care;

8. The provider shall arrange for admission of patients to appropriate level of care facilities for obstetrical services; and

9. The provider shall provide referral and follow-up services, which must include but not be limited to: referral for specialized evaluation, counseling and treatment for extensive social, psychological, nutrition and medical needs.

(c) The provider shall be responsible for linking the mother and newborn infant to a pediatric care provider; if feasible, the linkage should be with a HealthStart Pediatric Care provider.

10:49-3.6 Standards for the HealthStart Maternity Care Certificate for Physicians or Nurse Midwives in Private Practice

(a) Physicians and nurse midwives in private practice must meet the same requirements as in N.J.A.C. 10:49-3.5, except two sites may be utilized for the provision of: ambulatory prenatal and postpartum care; case coordination services, nutrition assessment and counseling services, health education assessment and instruction, social-psychological assessment and counseling. Two sites may be utilized only when one site for provision of services is not feasible.

(b) If two sites are utilized, a case conference on each patient, including but not limited to, the medical practitioner and case coordinator, must occur whenever there is a change in the Care Plan, but at least once a trimester.

(c) Additionally, if two sites are utilized, following each visit, a summary report, including pertinent findings, identification of problem(s), follow-up needs and amendments to the Care Plan must be communicated and documented between the case coordinator and obstetrical provider.

10:49-3.7 Access to Service

(a) All HealthStart services shall be accessible to patients.

(b) HealthStart Maternity Care providers shall facilitate patient access to services by scheduling an initial appointment within two weeks of the patient's first request for services.

(c) HealthStart Maternity Care providers shall provide or arrange for 24 hour access to case coordination and medical services for emergency situations.

(d) HealthStart Maternity Care providers shall arrange for language translation and/or interpretation services.

(e) HealthStart Maternity Care providers may implement a presumptive eligibility processing if approved by the Division of Medical Assistance and Health Services to institute this process.

(f) HealthStart Maternity Care providers shall undertake community outreach activities to encourage women to seek early prenatal care and increase awareness of the availability of maternity care services.

10:49-3.8 Plan of Care

(a) A Care Plan shall be developed and maintained by the case coordinator for each patient.

(b) A Care Plan shall be based on the medical, nutritional, social-psychological and health education assessments.

(c) A Care Plan shall include but not be limited to: identification of risk conditions and/or problems, prioritization of needs, outcome objectives, planned interventions, time frames, referrals and follow-up activities, and identification of staff persons responsible for the services.

(d) The Care Plan shall be developed and revised in consultation with the patient and staff providing services to the patient.

(e) The initial Care Plan shall be completed after a case conference and no later than one month after the initial registration visit.

10:49-3.9 Maternity Medical Care Services

(a) The Medical Care services include antepartum, intrapartum and postpartum care provided by the obstetrical care practitioner(s) in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) Prenatal Services are as follows:

1. Frequency of prenatal visits for an uncomplicated pregnancy shall be every four weeks during the first 28 weeks; then every two weeks until 36 weeks; and weekly thereafter. Prenatal visits for complications should be scheduled as needed;

2. Initial prenatal visit content shall include but not be limited to:

i. history;
ii. review of systems;
iii. comprehensive physical examination;
iv. risk assessment;
v. patient counseling;
vi. routine laboratory tests;
vii. development of the Care Plan;
viii. special tests and/or procedures as medically indicated;

3. Subsequent prenatal visit content shall include, but not be limited to the:

i. review and revision of the patient Care Plan;
ii. interim history;
iii. physical examination;
iv. patient counseling and treatment;
v. laboratory tests;
vi. special tests and/or procedures which are medically indicated;
vii. identification of new or developing problems;
viii. management, including transfer, of any new or persistent problems;

4. Transfer of the prenatal records to the hospital of delivery no later than 34 weeks gestation.

(c) Obstetrical delivery services must include, but not be limited to:

1. determination of and arrangements for delivery site;

2. attendance at or provision for obstetrical delivery by a qualified physician or certified nurse midwife;

3. medical treatment during the postpartum stay.

(d) A postpartum visit shall be provided by the 60th day after delivery, and must include but not be limited to the:

1. history;
2. review of the prenatal, labor and delivery record;
3. physical examination;
4. patient counseling and treatment;
5. patient/infant assessment;
6. referral/consultation, as indicated;
7. procedures/tests, as indicated.

(e) All HealthStart Maternity Care providers must have written policies and protocols which are consistent with national standards regarding consultation and/or transfer of medically high risk patients to tertiary level maternity care facilities or specialists and to genetic counseling and testing facilities.

10:49-3.10 Health Support Services

(a) Case coordination services shall facilitate the delivery of continuous, coordinated and comprehensive services for each patient in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers as follows:

1. A permanent case coordinator shall be assigned to each patient no later than two weeks after the HealthStart Enrollment Visit.

2. Prenatal case coordination activities shall include but not be limited to:

i. orienting the patient to all services;

ii. developing, maintaining and coordinating the Care Plan in consultation with the patient;

iii. coordinating and monitoring the delivery of all services and referrals;

iv. monitoring and facilitating the patient entry into and continuation with maternity services;

v. facilitating and providing advocacy for obtaining referral services;

vi. reinforcing health teachings and providing support;

vii. vigorous follow-up for missed appointments and referrals;

viii. arranging home visits;

ix. meeting with the patient and coordinating patient care conferences;

x. reviewing, monitoring and updating the patient's complete record.

3. Postpartum case coordination activities shall include but not be limited to:

i. arranging, coordinating the postpartum visit and any home visit;

ii. arranging with the obstetrical care provider to obtain the labor, delivery and postpartum hospital summary record no later than two (2) weeks after delivery;

iii. linking the patient to appropriate service agencies including: Women, Infants and Children Program (WIC), pediatric care, (preferably with a HealthStart Pediatric Care provider), future family planning, Special Child Health Services County Case Management Unit and other health and social agencies, if needed;

iv. arranging for the transfer of pertinent information or records to the pediatric care and/or future family planning service providers;

v. coordinating referrals and following up on missed appointments and referrals;

vi. reinforcing health instruction for mother and baby.

(b) Nutrition assessment and basic guidance services must be provided to orient and educate all patients to nutritional needs during pregnancy and educate the patient to good dietary practices in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Specialized nutrition assessment and counseling must be provided to those women with additional needs. Services shall be provided as follows:

1. Initial assessment services, which shall include but are not limited to:

i. review of the patient's chart;

ii. identification of dental problems which may interfere with nutrition;

iii. nutrition history;

iv. current nutritional status;

v. determination of participation in WIC or other food supplement programs;

vi. identification of need for specialized nutrition counseling.

2. Subsequent nutrition assessment, which shall include but not be limited to:

i. monitoring of weight gain/loss;

ii. identification of special dietary needs;

iii. identification of need for specialized nutrition counseling services.

3. Prenatal nutrition basic guidance, which shall include but not be limited to:

i. basic instruction on nutritional needs during pregnancy including balanced diet, vitamins and recommended daily allowances;

ii. review and reinforcement of other nutrition and dietary counseling services the patient may be receiving;

iii. instruction on food purchase, storage and preparation;

iv. instruction on food substitutions as indicated;

v. discussion of infant feeding and nutritional needs;

vi. referral to food supplementation programs through the case coordinator.

4. Specialized nutrition assessment and counseling, which shall be provided to those women with additional needs.

5. Referral for extensive specialized nutritional service which shall be initiated by the medical care provider or the nutritionist under the supervision of the medical care provider in coordination with the case coordinator.

6. Postpartum nutrition assessment and basic guidance services which shall include but not be limited to:

i. review and reinforcement of good dietary practices;

ii. review of instruction on dietary requirement changes;

iii. instruction on breast feeding and/or formula preparation and feeding.

(c) Social-psychological assessment and basic guidance services shall be provided to all patients to assist the patient in resolving social-psychological needs, in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Specialized social-psychological assessment and short-term counseling shall be provided to those women with additional needs. Services shall be provided as follows:

1. Initial social-psychological assessment services which shall include but are not limited to:

i. determining financial resources and living conditions;

ii. determining the patient's personal support system;

iii. determining the patient's attitudes and concerns regarding the pregnancy

iv. ascertaining present and prior involvement by the patient with other social programs or agencies and current social service needs;

v. ascertaining educational and/or employment status and needs;

vi. identification of the need for specialized social-psychological and/or mental health evaluation and counseling services;

2. Subsequent social-psychological assessment services, which shall include but not be limited to:

i. determination of patient's reaction to pregnancy;

ii. ascertaining the reaction of family, friend and actual support person to the pregnancy;

iii. identification of the need for social service interventions and advocacy;

iv. identification of the need for specialized social-psychological and/or mental health evaluation and counseling;

3. Basic social-psychological guidance, which shall include but not be limited to:

i. orientation and information on available community resources;

ii. orientation regarding stress and stress reduction during prenancy;

iii. assistance with arrangements for transportation and for child care and financial needs;

4. Specialized, short-term social-psychological counseling which shall be provided to those women who are identified through assessment or basic counseling as having need for more intense service.

5. Referral for extensive specialized social-psychological services, which shall be initiated by the medical care provider or by the social worker under the supervision of the medical care provider and in coordination with the case coordinator.

6. Postpartum social-psychological assessment and guidance which shall include but not be limited to:

i. review of the prenatal, labor, delivery and postpartum course;

ii. assessment of patient's current social-psychological status, including mother and infant bonding and father/family acceptance of the infant, as applicable;

iii. identification of the need for additional social-psychological services;

vi. review of available community resources for mother and infant, as applicable;

v. counseling regarding fetal loss or infant death, if applicable;

vi. counseling regarding school/employment planning.

(d) Health education assessment and instruction shall be provided to all patients at intervals throughout the pregnancy, based on the patient's needs and in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Services shall be provided as follows:

1. Initial assessment of health educational needs, which shall include but not be limited to:

i. identification of general educational background;

ii. patient's health education needs;

iii. previous education and experience concerning pregnancy, birth and infant care.

2. Health education instruction, which shall be provided for all patients based on their identified health education needs but must include at least the following:

i. normal course of pregnancy;

ii. fetal growth and development;

iii. warning signs, such as signs of pre-term labor, and identification of emergency situations;

iv. personal hygiene;
v. exercise and activity;
vi. child birth preparation, including management of labor and delivery;
vii. preparation for hospital admission;
viii. substance/occupational/environmental hazards;
ix. need for continuing medical and dental care;
x. future family planning;
xi. parenting, basic infant care and development;
xii. availability of pediatric and family medical care in the community;
xiii. normal postpartum physical and emotional changes.

3. Health education services, which shall include guidance in decision making and in the implementation of decisions concerning pregnancy, birth and infant care; and

4. Postpartum assessment of health education needs shall be conducted.

(e) One face to face preventive health care contact must be provided or arranged for during the time after hospital discharge and prior to the required medical postpartum visit in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers follows:

1. This contact shall include but not be limited to:
i. review of the mother's health status;
ii. review of the infant's health status;
iii. review of mother/infant interaction;
iv. revision of the Care Plan, and;
v. provision of additional services, as indicated.

2. The provider shall provide or arrange for one or more home visits for each high risk patient in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(f) HealthStart Maternity Care providers shall utilize existing community services to enhance the maternity care services.

(g) HealthStart Maternity Care Providers shall have written procedures which identify specific agencies or practitioners and criteria for referral of patients requiring services which are extensive, complex or expected to extend beyond the pregnancy. These shall include but are not limited to: nutrition and food supplementation services, substance abuse treatment facilities, mental health services, county/local social and welfare agencies, parenting and child care educational programs, future family planning services, fetal alcohol syndrome and AIDS counseling services.

10:49-3.11 Professional staff requirements for HealthStart Maternity Comprehensive Services

(a) All HealthStart Maternity Care services shall be delivered through a team approach by qualified professionals.

(b) Physicians and/or certified nurse midwives shall be Medicaid providers and have obstetrical admitting privileges at a licensed maternity care facility.

(c) Case coordinators shall have as a minimum, a Bachelor's Degree in nursing, social work or a related field or have the appropriate health care experience as defined in the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(d) Health professionals shall have a valid license to practice their professions as required by the State.

(e) All other professionals, for whom no license to practice is required, shall meet generally accepted professional standards for qualification.

(f) Paraprofessionals shall be familiar with the local community, have knowledge and/or skills in maternal and child health services and be supervised by a health professional.

(g) Prenatal, delivery, and postpartum medical services shall be delivered by a physician and/or a certified nurse midwife.

(h) Nutrition, social-psychological and health education assessment and development of the Care Plan shall be provided by the appropriate professional in each of the specialty areas or the case coordinator or medical care professional. If the nutrition or social-psychological assessment portion of the Care Plan are provided by the case coordinator or medical care professional, then they shall be reviewed by the nutritionist or social worker, respectively.

(i) Nutrition and social-psychological basic counseling shall be provided by the appropriate specialist in each of the areas or by a Registered Nurse.

(j) Short term specialized social-psychological and nutrition counseling services shall be provided by a social worker and nutritionist respectively. The social worker and nutritionist shall be available on site during patient visits.

(k) There shall be adequate professional, paraprofessional and clerical staff to provide, in a timely manner, maternity care services as described herein which meet the needs of the patients.

10:49-3.12 Records: documentation, confidentiality and informed consent for HealthStart Comprehensive Maternity Care Providers

(a) HealthStart Maternity Care providers shall have policies which protect patient confidentiality, provide for informed consent and document prenatal, labor, delivery and postpartum services in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) An individual record shall be maintained for each patient throughout the pregnancy.

(c) Each record shall be confidential and shall include at least the following: history and physical examination findings assessment, a Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart services.

10:49-3.13 Standards for HealthStart Pediatric Care Certificate

(a) Pediatric care services shall be comprehensive, integrated and coordinated.

(b) HealthStart Pediatric Care providers shall:

1. Directly provide preventive, well-child care, maintenance of complete patient history, outreach for preventive care, initiation of referrals for appropriate medical, educational, social, psychological and nutrition services, and follow-up of referrals and sick care.

2. Provide arrangements for non-emergency room based, 24 hour physician telephone access to eligible patients.

3. Directly provide or arrange for sick care and emergency care.

4. HealthStart Pediatric Care providers shall be Medicaid providers.

10:49-3.14 Professional Requirements for HealthStart Pediatric Care Providers

All HealthStart Pediatric Care Providers shall be a physician or have a physician on staff who possesses a knowledge of pediatrics. This may be demonstrated by eligibility for board certification by the American Academy of Pediatrics and/or by hospital admitting privileges in pediatrics.

10:49-3.15 Preventive Care Services for HealthStart Pediatric Care Providers

(a) HealthStart Pediatric Care Providers shall provide preventive health visits in accordance with the recommended guidelines of the American Academy of Pediatrics and the New Jersey State Department of Health Guidelines for HealthStart Pediatric Care. The schedule shall include a 2 to 4 week visit, 2 month visit, 4 month visit, 6 month visit, 9 month visit, 12 month visit, 15 month visit, 18 month visit and 23-24 month visit. Visits shall include, at a minimum, medical, family and social history, unclothed physical examination, developmental and nutritional assessment, vision and hearing screening, dental assessment, assessment of behavior and social environment, anticipatory guidance, age appropriate laboratory examinations and immunizations. Referrals shall be made as appropriate. The HealthStart Child Health preventive visit form shall be completed for each HealthStart preventive visit.

(b) Each provider shall provide or arrange for sick care and 24 hour telephone physician access during non-office hours. If not directly provided by the HealthStart provider, a single designated physician or physician group must provide such care via mutual written agreement. Information on care given shall be communicated to the primary HealthStart pediatric care provider. Telephone access provided exclusively via emergency room staff is not permitted. Referral to the emergency room should occur only for emergency medical care or urgent care as recommended by the physician responsible for sick care.

(c) Case coordination outreach and follow-up services shall include letter and/or telephone call reminders to the child's parent or guardian for preventive well-child visits and letters and/or telephone follow-up of missed appointments. Referrals for home visit services for follow-up shall be made when appropriate. For all referrals and follow-up visits, the provider shall document the completion of such referrals and/or visits. If the referrals is not completed, a letter or phone call to this child's parent or guardian and/or to the referred agency shall be sent or made encouraging the follow through of the referral. All of the activity shall be recorded on the patient's charts.

10:49-3.16 Referral Services for Health Start Pediatric Care providers

All HealthStart Pediatric Care providers shall make provision for consultation for specialized health and other pediatric services. Services shall include medical services, as well as social, psychological, educational and nutrition services. This may include, but is not limited to: the Women, Infants and Children Program (WIC), the Division of Youth and Family Services, Special Child Health Services Case Management Units and Child

Evaluation Centers, the early intervention programs, local county welfare agencies, certified home health agencies and community mental health centers and local and county health departments.

10:49-3.17 Records: documentation, confidentiality and informed consent for HealthStart Pediatric Care Providers

(a) HealthStart Pediatric Care providers shall have policies which protect patient confidentiality, provide for informed consent and document comprehensive care services in accordance with New Jersey State Department of Health Guidelines for HealthStart Pediatric Care Providers.

(b) An individual record shall be maintained for each patient.

(c) Each record shall be confidential and shall include at least the following: history and physical examination, results of required assessments, Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart Pediatric services.

10:49-3.18 HealthStart procedure codes; Health Care Financing Administration Common Procedure Coding System (HCPCS)

The HCPCS procedure codes listed in this subchapter are governed by the same policies and rules that appear in the HCPCS subchapter of each non-institutional provider services manual (Independent Clinic, Physician and the Nurse Midwifery Services Manual). HCPCS HealthStart Maternity Codes (Medical Care and Health Support Services) and HCPCS HealthStart Pediatric Codes are listed under N.J.A.C. 10:49-3.19 and 3.20 respectively.

10:49-3.19 HealthStart Maternity Care Code requirements

(a) HealthStart Maternity Care Code requirements are as follows:

1. Separate reimbursement is available for Maternity Medical Care Services and Maternity Health Support Services.

2. Maternity Medical Care Services should be billed as a total obstetrical package, when feasible, but may be billed as separate procedures.

3. The enhanced reimbursement for the delivery and postpartum care may be claimed only for a patient who had received at least one antepartum HealthStart Maternity Medical or Health Support Service.

4. The modifier "WM" in the HCPCS lists of codes refers to those services provided by certified nurse midwives who must include the modifier at the end of each code.

5. Laboratory and other diagnostic procedures and all necessary medical consultations are eligible for separate reimbursement.

(b) HealthStart Maternity Care Services Codes are as follows:

HCPCS Codes Mod	Procedure description	Maximum Fee Allowance S	NS	WM
W9025	Initial antepartum maternity medical care visit	$72.00	69.00	
W9025WM	Initial antepartum maternity medical care visit by certified nurse midwife			67.00

History, including system review
Complete physical examination
Risk assessment
Initial care plan
Patient counseling and treatment
Routine and special laboratory tests on site, or by referral, as appropriate
Referral for other medical consultations, as appropriate (including dental)
Referral to HealthStart Support Services provider, as applicable
Case conference with HealthStart case coordinator

HCPCS Codes Mod	Procedure description	S	NS	WM
W9026	Subsequent antepartum maternity medical care visit	$15.00	14.00	
W9026WM	Subsequent antepartum maternity medical care visit by certified nurse midwife			13.00

Interim history
Physical examination
Risk assessment
Review of plan of care
Patient counseling and treatment
Laboratory services on site or by referral, as appropriate
Referrals for other medical consultations, as appropriate

NOTE: This code may be billed only for the 2nd through 15th antepartum visit.

NOTE: If medical necessity dictates, corroborated by the record, additional visits above the initial and fourteen subsequent visits may be reimbursed under procedure code 90040-90070, routine or follow-up clinic visit; 90050 WM, routine or follow-up visit (midwife). The claim form shold clearly indicate the reason for the medical necessity and date for each additional visit (90040-90070, 90050 WM).

HCPCS Codes Mod	Procedure description	S	NS	WM
W9027	Regular delivery and postpartum	$320.00	304.00	
W9027WM	Regular Delivery and postpartum by certified nurse midwife			272.00

Admission History
Complete physical examination
Obstetrical vaginal delivery with or without episiotomy
Inpatient postpartum care
Referral to postpartum follow-up care provider including:
1. Mother's hospital discharge summary
2. Infant's discharge summary, as appropriate
Outpatient postpartum care by the 60th day after the delivery
Review of prenatal, labor and delivery course
Interim history, including information on feeding and care of the newborn
Physical examination
Referral for laboratory services as appropriate
Referral for ongoing medical care when appropriate
Patient counseling and treatment
Completion of the Maternity Services Summary Data Form

NOTE: Obstetrical delivery applies to a vaginal delivery at full term or premature and includes care in the home, birthing center or in the hospital (inpatient setting). This shall also include one post hospital discharge visit by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form, 1500 N.J.

HCPCS Codes Mod	Procedure description	S	NS	WM
W9028	HealthStart Total Obstetrical Care	$602.00	569.00	
W9028WM	HealthStart Total Obstetrical Care by Certified Nurse Midwife			521.00

Total obstetrical care consists of:

1. Initial antepartum visit and 14 subsequent antepartum visits. Specific dates are to be listed on the Independent Outpatient Health Facility Care Form (MC-14) and on the Health Care Insurance Claim Form 1500 NJ.

NOTE: Reimbursement will be decreased by the fee for the maternity medical care initial antepartum visit if the patient is not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent maternity medical care antepartum visit less than fourteen visits.

2. Obstetrical delivery per vagina with or without episiotomy including care when provided in the home, birthing center or in the hospital (inpatient setting).

This applies to a vaginal delivery at full term or premature. This shall also include one post hospital discharge visit by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J. (The completion of the Maternity Services Summary Data form is also required.)

(c) HealthStart maternity health support service codes are as follows:

W9029 HealthStart Enrollment Process $30.00
—Assistance with the presumptive eligibility determination for Maternity Care recipients, when and if applicable
—Patient registration and scheduling of the initial appointments
—Counseling and referral for WIC, food stamps and other community-based services
—Assignment of HealthStart case coordinator
—Outreach and follow-up on missed appointments

NOTE: This code may be billed only once during pregnancy by the same provider.

W9030 Development of Maternity Plan of care $120.00
—Case coordination services
—Initial assessments
1. nutrition
2. health education
3. social/psychological
—Case conference with Maternity Medical care provider
—Initial plan of care developed by the HealthStart case coordinator
—Basic guidance and health education services
—Referral for other needed services including follow-up with County Welfare Agency
—Outreach, referral and follow-up activities including phone calls and letters.

NOTE: This code may be billed only once during the pregnancy by the same provider.

W9031 Subsequent Maternity Health Services Support Visit $50.00
—Case coordination
—Review and update of care plan
—Coordination with maternity medical care provider
—Health education instruction
—Social/psychological guidance
—Nutrition guidance
—Home visit for high risk clients
—Outreach, referral and follow-up activities including phone calls and letters.

NOTE: This code may be billed only once per trimester and not more than twice per pregnancy.

W9032 Postpartum maternity health support services $100.00
—Case coordination services
—Review of the plan of care
—Review of the summary of hospital stay records and current medical status
—Nutrition assessment and counseling
—Social/psychological assessment and counseling
—Health education assessment and instruction
—Home visit(s) as applicable
—Referral, outreach and follow-up services including phone calls, letters
—Referral for pediatric preventive care and follow-up
—Transfer of pertinent information to pediatric, future family planning and medical care providers
—Completion of the plan of care

10:49-3.20 HealthStart Pediatric Care Codes

(a) HealthStart Pediatric Care Guidelines provides for up to nine preventive child health visits for a child under 2 years of age. The first visit, regardless of age, must be consistent with the requirements for an Early Periodic Screening, Diagnosis and Treatment (EPSDT) examination (Code W9820) and billed as such. EPSDT examination should be performed annually thereafter. All other preventive child health visits must be billed using the HealthStart preventive child health visit codes appropriate to the child's age at the time of visit. Each preventive child health code may be claimed only once per child.

(b) A HealthStart Registration fee (Code W9069) may be claimed only in conjunction with Code W9820. The claim must be submitted on an Independent Outpatient Health Facility Claim Form (MC-14) or a Health Insurance Claim Form (1500 N.J.) and be accompanied by a MC-19 Form (EPSDT Referral Report) and the HealthStart Preventive Child Health Form.

(c) Claims for reimbursement must be submitted on an Independent Outpatient Health Facility Claim Form (MC-14) or a Health Insurance Claim Form (1500 N.J.). Health Care Facilities Claim Form (MC-14) or a Health Insurance Claim Form (1500-NJ) and the HealthStart Preventive Child Health Form.

(d) (HCFA) Health Care Financing Administration Common Procedure Coding System (HCPCS) for HealthStart Pediatric Care Services is as follows:

Pediatric Preventive Care Visit $22.00 $17.00
These codes are for pediatric preventive care visits during the following dates of the infant's age.

W9060	under 6 weeks
W9061	6 weeks-3 months
W9062	3 months-5 months
W9063	5 months-8 months
W9064	8 months-11 months
W9065	11 months-14 months
W9066	14 months-17 months
W9067	17 months-20 months
W9068	20 months-24 months

1. History including behavior and environmental factors
2. Developmental assessment
3. Complete unclothed physical examination by physician or a nurse under the personal supervision of a physician, to include:
i. measurements: height, weight and head circumference
ii. vision and hearing screening
iii. nutritional assessment
4. Assessment of immunizations and administration of immunizations (see appropriate procedure codes for immunizations and reimbursements)
5. Anticipatory Guidance
6. Arrangement for diagnosis and treatment of medical problems uncovered during the visit. This includes self referrals and/or referrals to other providers as medically indicated.
7. Appropriate laboratory procedures performed, or referred, in accordance with HealthStart Pediatric Care guidelines.

i. Sickle cell, PKU screening, as appropriate
ii. Hemoglobin or hematocrit twice: at 6-9 mos and 20-24 mos of age (When done in conjunction with lead screening this test is not reimbursable as a separate procedure)
iii. Urinalysis, twice: at 6-9 mos and 20-24 mos of age
iv. Tuberculin test, twice: at 12-14 mos and 20-24 mos
v. Lead screening (EP) at 12-14 mos and 20-24 mos
8. Case Coordination: referral for nutritional, psychological, social and other community services, as appropriate and outreach and follow-up activities in accordance with the HealthStart Pediatric Care Guidelines.

NOTE: Laboratory procedures performed by a physician in his office are reimbursable to the physician; if such procedures are performed by an outside laboratory, the laboratory must submit a separate claim.

NOTE: Claims for HealthStart Preventive Care visits shall include a completed MC-14 or Health Insurance Claim Form 1500-NJ and a HealthStart Preventive Child Health Form. Reimbursement for claims not accompanied by the appropriate forms will be reduced to that of Medicaid Preventive Health Care Visit (Code 90753 and 90754).

W9069	**HealthStart Pediatric Care Registration**	**$13.00**	**$13.00**
	Case coordination activities including, but not limited to: **—appointment reminders (by phone and/or letter)** **—follow-up on referrals and missed appointments** **—24 hour telephone access**		

NOTE: Procedure code W9069 is to be billed only in conjunction with the Early Periodic Screening, Diagnosis and Treatment (EPSDT) examination (code W9820), performed at the child's first HealthStart visit and at annual intervals. Hospital outpatient departments are prohibited from using this code. A completed HealthStart Pediatric Preventive Child Health form must accompany the Health Insurance Claim Form 1500-NJ and MC-19.

10:52-1.7 Covered outpatient hospital services

(a) Approved hospital outpatient departments may provide the following services to outpatients when medically necessary:

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

5. HealthStart Maternity (Comprehensive) Health Services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

6. HealthStart Pediatric (Comprehensive) Care Services. (See N.J.A.C. 10:49-3, for information about HealthStart Services and provider requirements for participation.)

Renumber 5. through 14. as **7.** through **16.** (No change in text.)

10:53-1.6 Covered outpatient hospital services

(a) Approved special housing outpatient departments may provide the following services to outpatients when medically necessary:

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

5. HealthStart Maternity (Comprehensive) Health Services. (See N.J.A.C. 10:49-3 of this manual, for information about HealthStart Services and provider requirements for participation.)

6. HealthStart Pediatric (Comprehensive) Care Services. (See N.J.A.C. 10:49-3 of this manual, for information about HealthStart Services and provider requirements for participation.)

Renumber 5. through 14. as **7.** through **16.** (No change in text.)

10:54-1.1 Definitions

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

"HealthStart Maternity (Comprehensive) Care Services Provider" means a physician or a group of physicians who provide either directly or indirectly through linkage with other HealthStart care providers, a comprehensive package of maternity care services which includes two components—"Medical Maternity Care" and "Health Support Services". (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation).

"HealthStart Pediatric (Comprehensive) Care Services Provider" means a physician who provides a comprehensive package of pediatric care services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation).

10:54-1.2 Scope of service

(a) Payment will be made for the medically necessary services, subject to the following limitations:

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

3. HealthStart-Maternity (Comprehensive) Health Services. (See N.J.A.C. 10:49-3 for information about Health-Start Services and provider requirements for participation.)

4. HealthStart Pediatric (Comprehensive) Care Services. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

Renumber 3. through 7. as **5.** through **9.** (No change in text.)

10:58-1.2 Definitions

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

"HealthStart Maternity (Comprehensive) Care Services Provider" means a midwife who provides either directly or indirectly through linkage with other health care providers, in independent clinics and hospital outpatient departments; or physicians' offices, a comprehensive package of maternity care services which includes two components, "Medical Maternity Care" and "Health Support Services." (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation).

"Maternity (Comprehensive) Care Services" under HealthStart means a comprehensive package of maternity care services which includes two components, "Medical Maternity Care" and "Health Support Services". (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

10:58-1.3 Scope of Service

(a) through (c) (No change in text.)

(d) For HealthStart Maternity (Comprehensive) Health Services rules see N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.

10:66-1.3 Provisions for participation (New Jersey based)

(a) (No change in text.)

(b) In addition to (a) above, to be approved as a Medicaid Provider an independent clinic [must] **shall:**

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

3. In addition to the requirements of (a) and (b)1 and 2 above, the following types of clinics must obtain approval from the relevant State and Federal agencies, as noted in this paragraph, in order to be reimbursed:

1. through vii. (No change in text.)

viii. Maternity (Comprehensive) Care Services under HealthStart. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

ix. Pediatric (Comprehensive) Care Services under HealthStart. (See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.)

10:66-1.6 Scope of service

(a) Licensed and approved independent clinics may, to the extent of their specialty, **HealthStart Certificate**, license and/or approve New Jersey Medicaid Provider Agreement, provide the following services [(see 1.6(b) through (o))] when medically necessary **(see 1.6(b) through (p))**. Procedure codes and maximum dollar allowance which correspond to allowable services are listed in subchapter 3. **HCFA Common Procedure Coding System (HCPCS)**. (N.J.A.C. 10:66-3).

(b) through (e) (No change in text.)

(f) HealthStart rules for Comprehensive Maternity and Pediatric Care Services are as follows:

1. See N.J.A.C. 10:49-3 for information about HealthStart Services and provider requirements for participation.

Renumber (f) through (o) as **(g)** through **(p)** (No change in text.)

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Manual
Identification of Income Exclusions
Proposed Amendment: N.J.A.C. 10:87-5.9

Authority: N.J.S.A. 30:4B-2, 7 CFR 273.9(c)(1)(iii) and 7 CFR 273.9(c)(11).

Proposal Number: PRN 1987-440.

Submit comments by December 2, 1987 to:
Marion E. Reitz, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:87-5.9(a)2iv is being amended to clarify that utility allowance payments made by the United States Department of Housing and Urban Development (HUD) do not qualify for exclusion as vendor payments, since the payments may be made to the utility company, the landlord, or directly to the individual at the individual's option.

In determining eligibility for Food Stamp Program benefits, income received by the household must be considered unless specifically excluded by Federal regulations. N.J.A.C. 10:87-5.9(a)12viii is being amended to reflect a change in Federal food stamp regulations at 7 CFR 273.9(c)(11) which places restrictions on the exclusion of payments under State or local law made for the purpose of providing energy assistance. Prior to this revision, the only requirement was that the legislative body authorizing the program or the funds designate the payment to be for energy assistance. The proposed amendment requires that the Food and Nutrition Service (FNS) of the United States Department of Agriculture approve the exclusion and provides guidelines for states to use in providing documentation to support a request for exclusion. N.J.A.C. 10:87-5.9(a)12viii is being amended to include the information that such payments must have FNS approval to be disregarded.

Social Impact

Since the proposed amendments deal with income and whether it is countable for purposes of determining Food Stamp Program eligibility and benefit level, the impact is of an economic nature. These restrictions could result in current food stamp recipients receiving lower food stamp benefits or becoming ineligible for benefits.

Economic Impact

The proposed amendment at N.J.A.C. 10:87-5.9(a)12viii has a negative economic impact since it places restrictions on which payments can be excuded as income. Under current regulations, for example, payments made and designated by a local government as energy assistance could be disregarded. Under the proposed amendment, exclusion of such payments would have to receive FNS approval. The result is more countable income, which could result in ineligibility or lower food stamp benefits.

Regulatory Flexibility Statement

This rule has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This action imposes no compliance requirements on small businesses since the rule applies to food stamp recipients.

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

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; and no other income shall be excluded.

1. (No change.)

2. Vendor payments: A payment made in money on behalf of a household shall be considered a vendor payment when a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend who is not a household member pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

i.-iii. (No change.)

iv. Money payments to the household: Payments of money which are not made to a third party, but are made directly to a household, are counted as income and are not excluded as a vendor payment.

(1) Utility allowance payments by HUD which may be made directly to the individual, the utility or the landlord are counted as income and are not excluded as a vendor payment.

(v) (No change.)

3.-11.(No change.)

12. Income excluded by Federal law: Any income that is specifically excluded by any other law from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-vii. (No change.)

viii. [Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the payments or allowances must be clearly identified by the legislative body authorizing the program or the funds. The State programs of Lifeline and Home Energy Assistance qualify for this exclusion.]

Certain energy assistance payments:

(1) Payments or allowances made under any Federal law for the purpose of providing energy assistance. Home Energy Assistance qualifies for this exclusion.

(2) Payments or allowances, including tax credits, made under State or local law which are so designated and made for the purpose of providing energy assistance, provided that FNS approved their exclusion. The Tenants Lifeline Assistance Program, Lifeline Credit Program, and the Food Stamp Energy Disregard portion of AFDC and GA payments qualify for this exclusion.

ix.-xii. (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program Products and Manner of Use

Adopted Amendments: N.J.A.C. 2:71-2.4, 2.5 and 2.6

Proposed: September 8, 1987, at 19 N.J.R. 1593(c).
Adopted: October 9, 1987 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: October 9, 1987 as R.1987 d.442, **without change.**
Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.
Effective Date: November 2, 1987.
Expiration Date: September 1, 1988.

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

Full text of the adoption follows.

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

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

(b) (No change.)

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

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

(m) Raspberries shall be U.S. No. 1 grade. Berries shall be well colored. Individual cups shall be well filled. All containers shall be new.

Redesignate existing (m)-(o) as (n)-(p) (No change in text.)

2:71-2.6 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Vacuum cooled" means using a process which, through a vacuum, reduces air pressure in a large chamber, thus promoting cooling by rapid evaporation of moisture.

"Well colored" means, in the case of raspberries, that the whole surface of the berry shows a color characteristic of a mature berry.

"Well-filled" means, in the case of raspberries, that the berries are one-quarter to one-half inch above the rim of the cup.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Violations and Penalties

Adopted New Rules: N.J.A.C. 4A:10

Adopted Repeals: N.J.A.C. 4:1-19.1 through 4:1-19.6; 4:1-21.1, 4:1-21.3 through 4:1-21.5, 4:3-19.1 and 4:3-19.2

Proposed: August 3, 1987 at 19 N.J.R. 1366(a).
Adopted: October 6, 1987 by the Merit System Board, Eugene J. McCaffrey, Sr., Commissioner, Department of Personnel.
Filed: October 7, 1987 as R.1987 d.435, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 11A:2-6b, 11A:2-6d, 11A:2-6f, 11A:2-11e, 11A:2-23, 11A:4-5, 11A:10-1, 11A:10-2, 11A:10-3, 11A:10-4, 11A:10-5 and 11A:11-2.
Effective Date: November 2, 1987.
Expiration Date: November 2, 1992.

Summary of Public Comments and Agency Responses:

COMMENT: Two representatives of Communications Workers of America (CWA) Local 1037 objected to the repeal of N.J.A.C. 4:1-19.1, 19.2, 19.4 and 19.5 without similar rules in the current proposal.

RESPONSE: N.J.A.C. 4:1-19.1, 19.2 and 19.4(a) addressed matters relating to compensation, rather than violations and penalties. Therefore, these matters will be addressed in the forthcoming Chapter 3, which will be entitled "Classification, Services and Compensation". The subject of appointing authority responsibility for unlawful acts, which was contained in N.J.A.C. 4:1-19.4(b), is now addressed more broadly in N.J.A.C. 4A:10-1.1(a) and (b). Similarly, the subject of employee lawsuits, which was addressed in N.J.A.C. 4:1-19.5, is now encompassed within N.J.A.C. 4A:10-2.3, which pertains to enforcement actions.

COMMENT: A representative of CWA Local 1037 suggested that N.J.A.C. 4A:10-1.2(b) should be amended to require appointing authorities to inform employees that they are subject to the Hatch Act.

RESPONSE: N.J.A.C. 4A:10-1.2(b) is similar in substance to the provisions found in N.J.A.C. 4:1-21.3(c). This rule is really an informational measure since the Hatch Act is a Federal law. Under the prior rule, very few problems were encountered over the years with respect to affected employees abiding by Hatch Act regulations. The relatively few employees who wish to run for partisan political office would inquire about any Hatch Act restrictions based on their particular position and its funding at that time.

COMMENT: A representative of CWA Local 1037 commented that the use of an "investigatory hearing" as set forth in N.J.A.C. 4A:10-2.1(a)1 should include subpoena power.

RESPONSE: The power of the Commissioner or the Merit System Board to issue and enforce subpoenas is set forth in N.J.S.A. 11A:2-7 and need not be repeated in this rule since it is a general power for any type of proceeding or review.

COMMENT: A CWA representative suggested that N.J.A.C. 4A:10-2.1(a) be changed to provide for a determination by the Commissioner or Board of probable cause for violation or noncompliance, and the consideration of further enforcement steps if there is no adherence to an order for compliance after seven calendar days.

RESPONSE: The rule has been changed based on this comment to provide a more accurate, chronological description of the enforcement process. The rule now provides for investigation by the Department of Personnel, Commissioner or Board and, if a violation or noncompliance is found, remedial action of various types. Since salary disapproval actions constitute a distinct and separate procedure, a cross reference has been added as a new subsection (b).

COMMENT: Several commenters found N.J.A.C. 4A:10-2.2 confusing. The rule, as proposed, appeared to require an appointing authority to terminate any provisional employee serving more than 30 days after announcement of an examination for that job title. Further, paragraph (a)1 appeared contradictory to subsection (a).

RESPONSE: The rule has been rewritten based on this comment to clarify its intent. Subsection (a) now states the general rule requiring a permanent appointment to be made from a complete list when the appointing authority initiates the examination process. Paragraph (a)1 provides an exception to this requirement where an appointing authority provides timely and early notification to the Department of Personnel of its intent not to fill the position. The rule, as rewritten, does not require termination of the provisional employee. Rather, when the appointing authority has signified its continuing need for the position by retaining the provisional employee, it must make a permanent appointment as a complete list is produced.

COMMENT: A local manager objected to the mandatory appointment provisions set forth in N.J.A.C. 4A:10-2.2(a) as an infringement upon management discretion.

RESPONSE: These provisions are reflective of the statutory requirement, found in N.J.S.A. 11A:4-5, that appointments be made from complete lists once an appointing authority's actions have generated the examination process. However, the rule as rewritten provides appointing authorities with an opportunity to make a good faith determination, within 30 days after examination announcement, that there is no need to fill the position.

COMMENT: A representative of Civil Service Association (CSA) Council 10 requested that a provision be added to N.J.A.C. 4A:10-2.2 prohibiting an appointing authority from laying off an employee whose appointment had been mandated under this rule.

RESPONSE: Such a blanket prohibition would be inappropriate since these matters are generally based on particular facts. An employee who believed that his or her layoff was not based on legitimate reasons could file an appeal and request a hearing under N.J.S.A. 11A:8-4.

COMMENT: A representative of CWA Local 1037 found N.J.A.C. 4A:10-3.2 deficient in failing to provide for referral of salary disapproval matters to the Attorney General.

RESPONSE: The rule has been changed based on this comment to provide for the initiation of a civil action in the Superior Court as one of the remedial actions that can be taken in salary disapproval matters. The Attorney General, as statutorily required, would represent the Merit System Board or the Commissioner in any civil action.

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

Full text of the rules adopted for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-19.1, 4:1-19.2, 4:1-19.3, 4:1-19.4, 4:1-19.5, 4:1-19.6, 4:1-21.1, 4:1-21.3, 4:1-21.4, 4:1-21.5, 4:3-19.1 and 4:3-19.2

CHAPTER 10
VIOLATIONS AND PENALTIES

OLD CITATION	NEW CITATION	OLD CITATION	NEW CITATION
4:1-19.1	REPEALED	4:1-21.1	4A:10-2.1
4:1-19.2	REPEALED		4A:10-2.3
4:1-19.3	4A:10-3.1	4:1-21.3	4A:10-1.2
	4A:10-3.2	4:1-21.4	4A:10-1.1
4:1-19.4	REPEALED	4:1-21.5	4A:10-2.4
4:1-19.5	REPEALED	4:3-19.1	REPEALED
4:1-19.6	REPEALED	4:3-19.2	REPEALED

SUBCHAPTER 1. VIOLATIONS

4A:10-1.1 General ***provisions***

(a) No person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C.

(b) No person or appointing authority shall fail to comply with an order of the Commissioner or Board.

(c) No person or appointing authority shall obstruct a person's lawful opportunity to participate in the selection and appointment process or a person's lawful pursuit of any remedy or appeal under Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(d) No person shall make any false statement or perform any fraudulent act in connection with any examination, certification, appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(e) No person shall pay, offer, solicit or accept any compensation, service or other consideration to affect any appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and *[title]* ***Title*** 4A, N.J.A.C.

4A:10-1.2 Political activity

(a) No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See N.J.S.A. 11A:2-23.

(b) No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by *[f]****F***ederal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. 1501 *et seq.*):

1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(c) The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

SUBCHAPTER 2. ENFORCEMENT

4A:10-2.1 General ***provisions***

(a) Where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C., the ***Department of Personnel,*** Commissioner or Board *[may]* ***shall***

*[1. C]****c***onduct an investigatory hearing or other review*[;]* ***, as appropriate. If a violation or noncompliance is found, the Commissioner or Board may:***

*[2.]****1.*** Issue an order of compliance;

*[3.]****2.*** Assess costs, charges and fines not to exceed $10,000;

[4. Disapprove salaries (See N.J.A.C. 4A:10-3.1 and 3.2);]

*[5.]****3.*** Order the appointment of an eligible from an outstanding list;

*[6.]****4.*** In State service, consolidate personnel functions;

*[7.]****5.*** Initiate a civil action in the Superior Court;

*[8.]****6.*** Recommend criminal prosecution; or

*[9.]****7.*** Take other appropriate action pursuant to law or rule.

(b) See N.J.A.C. 4A:10-3.1 and 3.2 for salary disapproval procedures.

4A:10-2.2 Failure to appoint from complete certification

[(a) Where the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall notify the Department of Personnel no later than 30 days after the examination announcement or the date of the examination, whichever is earlier, that it has terminated the provisional who has been appointed. If no such timely notice is given, upon receipt of a complete certification, the appointing authority may not vacate the position and must make a permanent appointment from the eligible list.]

(a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

1. When an appointing authority has notified the Department of Personnel within 30 days after the examination announcement or the date of the examination, whichever is earlier, that it has vacated the position and terminated the provisional appointee, the Commissioner may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action.*

*[1. A]****2. Following the period set forth in (a)1 above, a***n appointing authority may, for valid reasons such as fiscal constraints, petition the Commissioner for permission not to make a permanent appointment. *[2.]* The Commissioner may grant such petition, but may order the appointing authority to reimburse the Department for the costs of the selection process. The Commissioner shall notify the appointing authority of the amount of the reimbursement and an opportunity to respond to the assessment within 20 days of such notice.

(b) In addition to the actions which the Commissioner may take in (a) above, the Commissioner or Board may take any action set forth in N.J.A.C. 4A:10-2.1. Prior to any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

4A:10-2.3 Enforcement action

The Commissioner, the Board, or any resident or other party in interest may bring an action in the Superior Court for the enforcement of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or the Board. The Commissioner may join in any pending action.

4A:10-2.4 Criminal violation

It is a crime of the fourth degree for any person to purposefully or knowingly violate or conspire to violate any provision of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an *[O]****o***rder of the Commissioner or Board.

SUBCHAPTER 3. SALARY DISAPPROVAL

4A:10-3.1 General ***provisions***

(a) The Commissioner, the Board or an authorized representative of the Department of Personnel may disapprove and order the payment stopped of the salaries of any person employed in violation of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or Board, the individual with employment authority over such person and the person who authorizes payment of a disapproved salary.

(b) A notice of salary disapproval shall be given to the appointing authority, the affected employee and other persons whose salaries are to be disapproved.

1. The notice shall state the nature of the violation and provide the appointing authority, the affected employee and other affected persons 10 days to respond to the notice of salary disapproval.

2. A review conference may also be held at a time and location specified by the Department of Personnel.

(c) If the issue which required the notice of salary disapproval has not been resolved, a salary disapproval order shall be issued.

1. The order shall state the nature of the violation and require payment stopped to the affected employee.

2. The order may also require payment stopped to the individual with employment authority over such employee and the person who authorized payment of the disapproved salary.

3. The order shall be mailed to the appointing authority, the affected employee, the persons whose salaries have been disapproved and in State service, the Department of the Treasury.

4. The appointing authority, the affected employee and other persons whose salaries have been disapproved may appeal the order to the Merit System Board within 20 days of receipt of the order. See N.J.A.C. 4A:2-1.1 et seq., for appeal procedures.

5. If the violation has not been corrected and no appeal has been timely filed, the matter shall be referred to the Board for review and any appropriate action pursuant to law or rule.

4A:10-3.2 Penalties and remedies

(a) In salary disapproval matters, the Commissioner or the Board may:

1. Disapprove the payment of salary to an employee hired in violation of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.;

2. Disapprove the payment of salary to persons who have approved or contined the payment of a disapproved salary or persons who have employment authority over an employee whose salary has been disapproved;

3. Order the appointment of an eligible from an outstanding certification;

4. Revive an employment list;

5. Assess costs, charges or fines pursuant to N.J.S.A. 11A:10-3; and

6. Initiate a civil action in the Superior Court; and

*[6.]**7.* Take other appropriate actions pursuant to law or rule.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Local Area Vocational School Districts and Private Vocational Schools

Readoption with Amendments: N.J.A.C. 6:46

Proposed: August 3, 1987 at 19 N.J.R. 1368(a).

Adopted: October 2, 1987 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: October 5, 1987 as R.1987, d.434 **with substantive 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:4-10, 18A:4-15, 18A:7A-1 et seq, 18A:54-6, 18A:54-10, 18A:69-1 et seq., 34:1A-38 and Public Law 98-524.

Effective Date: October 5, 1987 for Readoption. November 2, 1987 for Amendments.

Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:

Written Comments were received from 33 individuals.

COMMENT: The 600 minutes per week requirement in N.J.A.C. 6:46-1.1 for "approved secondary school vocational education programs" should be reconsidered and reduced to 400 minutes per week.

RESPONSE: No change to the current rule has been proposed and the readopted rule maintains the 600 minutes per week requirement. The department is currently conducting a comprehensive study of the structure of secondary vocational education in New Jersey. Changes may occur as a result of this study.

COMMENT: The definition in N.J.A.C. 6:46-1.1 is unclear regarding what constitutes the 600 minutes per week of approved secondary school vocational education programs.

RESPONSE: The definition was revised to eliminate the requirement that approved secondary school vocational education programs consist of "actual hands-on vocational skill development". It was revised to read "consisting of skills and related competencies necessary for the preparation of pupils for paid employment". The proposed definition recognizes that vocational education consists of more than just "hands-on" vocational experiences. This will enable local area vocational school districts to provide flexibility in planning vocational education programs which encompass the development of skills and necessary related competencies.

COMMENT: The implementation date for the proposed rules pertaining to approved secondary school vocational education programs should be July 1, 1988 so that school districts may adequately prepare to implement the regulations.

RESPONSE: The 600 minutes requirement is already contained in the existing rules. Since the existing rules expire on December 1, 1987, the implementation date cannot be changed.

COMMENT: Performing arts should be included as a program area.

RESPONSE: The program areas listed in N.J.A.C. 6:46-2.3 are those recognized by the U.S. Department of Education. The code is not so specific as to list individual courses or programs that must be operated in order for a district to qualify for local area vocational school district designation.

COMMENT: Add language to N.J.A.C. 6:46-4.4 that would allow a potential instructor to qualify to be approved as an instructor in a private vocational school through a period of on-the-job training, technical interviews and/or job related skills testing. Requirements to be approved as an instructor in a private vocational school should be left as they are.

RESPONSE: Methods of certification in the proposed code are extremely liberal as they stand. To make them more liberal would remove the assurance of quality instruction.

COMMENT: Remove proposed language in N.J.A.C. 6:46-4.5(e) requiring an "unqualified" opinion from the auditing professional regarding the audit report.

RESPONSE: The department agreed that the comment has merit. The word "unqualified" has been removed from N.J.A.C. 6:46-4.5(e).

COMMENT: Consolidated financial statements for schools that are part of a larger entity should be permitted.

RESPONSE: The requirement for the financial statement in N.J.A.C. 6:46-4.5(e) does not preclude submission of a consolidated financial statement provided revenues and direct expenses of the school are identified.

COMMENT: The current maximum bonding requirement of $25,000 should be maintained in N.J.A.C. 6:46-4.5(f).

RESPONSE: Adequate funds must be available to provide refunds to pupils in the event a school closes prior to the pupils' completion of a course or program paid for in advance.

COMMENT: Maintain current maximum bonding requirement of $25,000 in N.J.A.C. 6:46-4.5(f) or replace with contributory "Student Protection Fund". Alternative solutions should be sought. Establish bonding pool contributed to by school. Schools may not be able to purchase more than $25,000 bond. Study the availability of additional coverage. Other businesses serving the public are not required to bond.

RESPONSE: Unless legislation is enacted to provide a protection fund, the financial protection of pupil tuition must be maintained by the state board. Adequate funds must be available to provide refunds to pupils in the event a school closes prior to the pupils' completion of a course or program paid for in advance.

COMMENT: Amend proposed N.J.A.C. 6:46-4.6 to deem a course approved if notification of disapproval is not received from the department in 60 days. If notification of disapproval is received, deem course approved unless resubmitted course is disapproved within 30 days.

RESPONSE: New staffing and procedures will facilitate the approval of courses in a short time.

COMMENT: Remove sections 6:46-4.7(d) and 6:46-4.8(b) from proposed code. They delay acceptance and enrollment of pupils and provide no further protection to pupils.

RESPONSE: The proposed language is intended to protect the pupil by requiring the school to indicate that the pupil is accepted before the pupil signs the enrollment agreement. Neither party should sign the enrollment agreement until it is determined that the pupil is qualified to enroll in a specific course. This also protects the pupil from over-recruitment and space availability problems.

COMMENT: The proposed requirement in N.J.A.C. 6:46-4.7 that cost changes be submitted to the commissioner 60 calendar days prior to the effective date of the change should be eliminated as being unresponsive to changing cost conditions.

RESPONSE: Schools should be able to project needed increases 60 days in advance.

COMMENT: Maintain current language in N.J.A.C. 6:46-4.7(d) which states that, upon acceptance of the applicant, the school may require the payment of a registration fee (tuition deposit).

RESPONSE: The proposed rules will be maintained, whereby the registration fee would not be paid by the pupil until the pupil is notified in writing that he or she is accepted for enrollment. The pupil should not pay a registration fee before his or her qualification is established.

COMMENT: Change N.J.A.C. 6:46-4.8 to require that the enrollment agreement state that the pupil must notify the school in writing of the date of withdrawal in order to receive a refund.

RESPONSE: Requirements that the student to provide written notification of withdrawal must be stated in the school bulletin pursuant to N.J.A.C. 6:46-4.10(b)9. It is reasonable to assume the pupil will read and be familiar with official school policy on this matter.

COMMENT: Return the refund policy in N.J.A.C. 6:46-4.9 to rules contained in the original proposal.

RESPONSE: During its July meeting, the state board returned the proposed rule regarding refund policy to its existing language.

COMMENT: The commenter disagreed with the proposed requirement in N.J.A.C. 6:46-4.10 that the school bulletin includes a statement that pupils requiring remedial education be provided information on the availability of remedial programs from adult learning centers.

RESPONSE: The proposed rule alerts the pupil to the availability of free remedial education programs.

COMMENT: Include a requirement in N.J.A.C. 6:46-4.10 that the school bulletin be produced in Spanish and any other languages that comprise more than 10 percent of the school's applicants.

RESPONSE: Such a requirement would be of questionable value unless instruction were to be provided in Spanish or other dominant languages.

COMMENT: Include a requirement in N.J.A.C. 6:46-4.10 that the school bulletin include other licensure or certification requirements for occupational fields studied.

RESPONSE: N.J.A.C. 6:46-4.13 provides protection against deceptive practices.

COMMENT: Include a requirement in N.J.A.C. 6:46-4.10 that the school bulletin include information on pupil placement, salaries of individuals placed, pupil withdrawal, graduation rates and GSL loan default rates.

RESPONSE: Schools will maintain pupil placement and salary information but sufficient agency staff is not available to verify data. Publishing unverified data is not in the best interest of potential pupils. Withdrawal and graduation rates will be available from the school and the department on an annual basis. The GSL loan default rate is of interest to the state agency, but it is not clear how this type of information stated in the school bulletin would affect a pupil's decision to enroll in the school.

COMMENT: A commenter expressed concern that a school may be found in noncompliance with the proposed rules if salary data were not available.

RESPONSE: The salary information is necessary to conduct monitoring.

COMMENT: Amend the proposed N.J.A.C. 6:46-4.12 to state that schools are prohibited from enrolling pupils without a high school diploma or equivalent when either is a prerequisite for obtaining a diploma or certificate from the school.

RESPONSE: A school must describe policies and regulations on the awarding of a diploma or certificate in the school bulletin, pursuant to N.J.A.C. 6:46-4.10.

COMMENT: The department should determine prerequisites required by pupils prior to enrollment in all courses or programs in private vocational schools.

RESPONSE: To establish specific prerequisites for the diverse array of courses and programs that are or may be available if not feasible. Such prerequisites, in many cases, would be arbitrary at best.

COMMENT: One commenter questioned whether a pupil who does not meet the "ability to benefit" requirement in N.J.AC. 6:46-4.12(c) could be simultaneously enrolled in the school and a remedial program.

RESPONSE: A pupil not meeting the "ability to benefit" criteria may not be admitted to the school; however, retesting is allowed after the student has met minimum remedial education requirements.

COMMENT: Referral of certain students to remedial programs in N.J.A.C. 6:46-4.12(d) is unclear.

RESPONSE: A pupil who is determined not to have the "ability to benefit" based on testing may not be admitted to the occupational program. When the pupil completes a remedial or developmental education program, he or she may be restested for admittance to the private vocational school.

COMMENT: Reinstate N.J.A.C. 6:46-4.18 pertaining to recognition of accrediting agencies as a requirement.

RESPONSE: Recognition of accreditation, while permissive in the past, did not relieve the private vocational school from abiding by the rules of the state board. Removal of the subsection will neither benefit nor hinder the operation of the private vocational school.

COMMENT: The 30-day period provided in N.J.A.C. 6:46-4.18(f) may not be sufficient time to correct all deficiencies identified during monitoring.

RESPONSE: The 30-day period is reasonable to correct deficiencies. If deficiencies are not corrected, schools are entitled to due process pursuant to N.J.A.C. 6:24-3.1 before approval is suspended.

COMMENT: Amend the monitoring procedure in N.J.A.C. 6:46-4.18 to include an analysis of the default rate on student loans.

RESPONSE: Guarantors will be contacted to provide loan and default rate information. Information will be reviewed during the monitoring process. Guarantors cannot be required to supply information through state board rules.

Loan default information will be collected by the New Jersey Higher Education Assistance Authority (NJHEAA). The agencies will work cooperatively to monitor default rates and their possible causes. Guarantors outside the state will be contacted regularly to provide loan and default rate information. The information will be reviewed during the monitoring process. Excessive default rate information will be shared with the U.S. Department of Education, Region II office. This process will be followed for out-of-state guarantors to the degree they provide the information since these guarantors cannot be required to supply information through state board rules.

COMMENT: A commenter suggested that the department revoke the certificate of approval when the withdrawal rate exceeds 20 percent.

RESPONSE: The department will collect data on withdrawal rates. Withdrawal rate information will be used during monitoring to identify possible causes. To set a withdrawal rate percentage as a criterion to suspend or revoke approval would be arbitrary.

In addition to the specific modifications suggested above, there are a number of minor, non-substantive changes in language and punctuation for clarification purposes.

In N.J.A.C. 6:46-4.13(i), the name of the agency was changed to reflect that the National Commission on Accrediting merged in 1975 with the Federation of Regional Accrediting Commissions of Higher Education to form the Council on Postsecondary Accreditation.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:46.

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

CHAPTER 46
LOCAL AREA VOCATIONAL SCHOOL DISTRICTS AND PRIVATE VOCATIONAL SCHOOLS

SUBCHAPTER 1. DEFINITIONS

6:46-1.1 Words and phrases defined

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

"Advisory committee" means a group of individuals, representing a specific occupational area, that advises on***:***

1. Current labor market needs;
2. The relevance of the course/program being offered;
3. The development of the course/program; and
4. The validation of the competencies offered in the course/program.

"Agriculture/agribusiness education" means a program of instruction that provides pupils with the skills and knowledge for entry-level employment in horticulture, production agriculture, agribusiness, agricultural processing, agricultural mechanics, natural resources and small animal care occupations.

"Apprentice" means an employee of legal working age who meets the qualifications established by the apprentice sponsor and who is employed under a written agreement which provides that related training and on-the-job experience received be in accordance with approved standards of apprenticeship.

"Apprentice sponsor" means an employer who is a party to a written training agreement with an apprentice that includes the components of the training in accordance with approved standards of apprenticeship.

"Apprentice training" means a program of adult vocational education requiring a written training agreement between full-time paid apprentices and their apprentice sponsors. The program must include a component of related instruction which is coordinated by an individual who holds a current vocational-technical coordinator; apprentice programs endorsement.

"Apprenticeship agreement joint approval" means a written training agreement between an apprentice and an apprentice sponsor in accordance with approved standards of apprenticeship. This agreement includes the components of the training and is signed by the apprentice, apprentice sponsor, apprentice coordinator, State Department of Education representative and Federal Bureau of Apprenticeship and Training representative.

"Approved local vocational education" means vocational education for categorical aid purposes pursuant to N.J.S.A. 18A:7A-1 et seq. which is provided at schools which comply with the requirements set forth in N.J.A.C. 6:46-2.3.

"Approved categorical vocational programs" means those vocational programs offered at schools which comply with the requirements set forth in N.J.A.C. 6:46-2.3.

"Approved secondary school vocational education program" means a program of instruction that is conducted for a minimum of 600 minutes per week consisting of skills and related competencies necessary for the preparation of pupils for paid employment.

"Business education" means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in a business career and the basic business skills and knowledge needed by all individuals in order to function effectively in our society.

"Clock hour of instruction" in a private vocational school means 60 consecutive minutes of which a minimum of 50 minutes is dedicated to instruction.

"Combined pre-qualification assessment application" means an application provided by the Department for those school districts which have been previously designated as local area vocational school districts and are reapplying for such designation.

"Commissioner" means the Commissioner of Education.

"Cooperative vocational education program" means a method of instruction by which pupils who, through a written training agreement between the school and employers, receive on-the-job training and related vocational instruction, by the alternation of study in school with regularly scheduled part-time paid employment in an approved occupational field, and in which: the two educational experiences are planned and supervised by a teacher-coordinator who holds the appropriate teaching endorsement; the teacher-coordinator meets each pupil for related instruction a minimum of 200 minutes per week; and an average of 15 hours per week *[are]* **must be** worked during the approved period of the program with approved cooperative ***vocational*** education program credits not exceeding 15 credits per year. Work periods and school attendance may be on alternate half-days, full-days, weeks, or other periods of time in fulfilling the cooperative vocational education program.

"County plan for vocational education" means the document developed under the direction of the county superintendent of schools which provides local and regional deliverers of vocational education programs and services with an assessment of the training needs for that county.

"County planning council" means a county-based council under the direction of the county superintendent of schools whose primary purpose is the development of a county plan for the delivery of vocational education based on identified local and regional needs.

"Course" means an organization of subject matter and related learning experiences designed to meet a vocational objective provided for the instruction of pupils on a systematic basis, usually for a predetermined period of time.

"Department" means the New Jersey Department of Education.

"Director of vocational education" means that individual who is appointed by a district board of education and responsible for the administration and supervision of approved local vocational education.

"Health occupations education" means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in the health care industry, including skill development in direct patient care, health maintenance and supportive service occupations.

"Home economics and consumer education" means a program of instruction that provides pupils with the skills and knowledge needed for the occupation of homemaking and the skills and knowledge needed for entry-level paid employment in home economic-related occupations.

"Job placement coordinator" means an individual who holds a New Jersey instructional certificate and assists pupils in relating their personal qualities, educational experiences and career goals to employment requirements and also assists pupils in obtaining full- or part-time employment.

"Local area vocational school district" means a school district which complies with the requirements set forth in N.J.A.C. 6:46-2.

"Marketing education" means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in management, merchandising and marketing of goods and services.

"On-the-job training" means one of two major components of apprentice training. This part of training is experiential in nature and is usually directly supervised by the apprentice sponsor.

"Pre-qualification assessment" means the initial step in the process which a new applicant district must undertake when seeking designation by the State Board of Education as a local area vocational school district in order to be eligible for categorical aid under the provisions of N.J.S.A. 18A:7A-1 et seq.

"Private vocational school" means a business enterprise operated for either profit or nonprofit which maintains a place of business within the State of New Jersey and which:

1. Solicits pupils from the general public;
2. Charges tuition and/or other fees;
3. Offers instruction to a group or groups of four or more pupils at one time; and
4. Offers preparatory instruction to pupils for entry level employment or for upgrading in a specific occupational field. The occupational fields include those listed in the Classification of Instructional Programs (C.I.P.) requiring less than a baccalaureate degree. This document is available from the United States Department of Education, Office of Educational Research and Improvement, Center for Educational Statistics, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

"Program" means the planned sequence of courses, services or activities designed to meet a vocational objective.

"Related training" means one of two major components of apprentice training. This part of training includes the theoretical and technical subjects related to the apprentice trade and is provided in a classroom or individualized setting at a vocational education institution or at the work site.

"Supervisor of correspondence instruction" means the individual responsible for grading papers sent to the correspondence school by the pupils and guiding the pupils in their study.

"Technical education" means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment and/or entry into post-high school education programs which require relatively complex and detailed information, considerable proficiency in mathematics and the extensive application of science. An approved secondary technical education program includes three years of college preparatory mathematics, two one-year laboratory science courses and a technical laboratory course which is conducted a minimum of 400 minutes per week for a period of not less than two years.

"Trade and industrial education" means a program of instruction that provides pupils with the skills and knowledge needed for entry-level employment in a specific trade or service occupation.

"Termination" means the removal of a pupil from enrollment in a course or program in a private vocational or correspondence school by the director of the school prior to completion of the course or program in which the pupil is enrolled.

"Vocational student organizations" mean those organizations for pupils enrolled in vocational education programs which engage in activities as integral parts of the appropriate instructional programs. Such organizations have state and national units which complement the development of leadership and career-related competencies in vocational education at the local level.

"Withdraw" means the voluntary discontinuation of enrollment by a pupil accepted into a private vocational or correspondence school prior to completion of the course or program in which the pupil is enrolled.

SUBCHAPTER 2. LOCAL AREA VOCATIONAL SCHOOL DISTRICTS

6:46-2.1 Significance of local area vocational school district designation

(a) To qualify for State categorical aid for approved local vocational education under N.J.S.A. 18A:7A-1 et seq., a school district must have State Board of Education designation as a local area vocational school district.

(b) Only districts that have met the conditions outlined in this chapter and are designated as local area vocational school districts may report full-time equivalent pupil enrollments on the Application for State School Aid for vocational categorical aid purposes. Business education pupils may be enrolled in a sequence of courses that total a minimum of 600 minutes per week in one academic year to be counted for vocational categorical aid.

(c) Except as otherwise provided by law, participation in approved local area vocational school district programs shall be limited to pupils residing within the boundaries of the designated district.

6:46-2.2 Application procedure for designation as a local area vocational school district

(a) The process for seeking initial designation by the State Board of Education as a local area vocational school district shall be as follows:

1. A district board of education shall submit to the county superintendent of schools a completed pre-qualification assessment for each school seeking to provide approved local vocational education. The county superintendent of schools will review the pre-qualification assessment in consultation with advisory groups such as the county planning council to assess needs, program cost and effectiveness. The county superintendent will return the pre-qualification assessment together with his or her recommendations to the submitting *[local]* ***district*** board of education.

2. A district board of education shall submit the recommendations of the county superintendent of schools to the commissioner who will issue the official Department application.

3. A district board of education shall submit the completed official application to the Department no later than January of the calendar year in which the district seeks initial designation. Vocational categorical aid is distributed the year after the designated district submits enrollments on the Application for State School Aid.

(b) The process for reapplying for designation by the State Board of Education as a local area vocational school district shall be as follows:

1. A district board of education shall submit to the county superintendent of schools a combined pre-qualification assessment application for each school seeking to provide approved local vocational education. The county superintendent of schools will review the combined pre-qualification assessment application in consultation with advisory groups such as the county planning council to assess needs, program cost and effectiveness. The county superintendent will return the combined pre-qualification assessment application together with his or her recommendations to the submitting board of education.

2. A district board of education shall submit the recommendations of the county superintendent of schools and the combined pre-qualification assessment application to the commissioner no later than six months before the expiration of the current designation period.

(c) A district board of education that is dissatisfied with the final action taken on their application may request an opportunity to be heard pursuant to N.J.A.C. 6:51-3.2.

6:46-2.3 Criteria for eligibility for designation as a local area vocational school district

(a) To qualify for designation as a local area vocational school district, at least one school within the district or more than one school facility, if recommended by the commissioner and approved by the State Board of Education, on the basis of demonstrated need, program cost and effectiveness, shall comply with all of the following requirements:

1. Demonstrate the need for the courses/programs by citing current data sources (within the last two years) such as: employment, labor market or pupil placement statistics, the county plan, community or local program assessment or other applicable research.

2. Operate a minimum of two approved secondary vocational education programs in at least three of the following five broad occupational areas: agriculture/agribusiness education, health occupations education, home economics and consumer education, marketing education and technical education.

3. Operate a minimum of five approved secondary vocational education programs in trade and industrial education.

4. Operate business education.

5. Provide, as part of the programs required in (a)2, 3 and 4 above, *[cooperate]* ***cooperative vocational*** education in every broad occupational area offered in (a)2, 3 and 4 above, except technical education.

6. (No change in text.)

7. (No change in text.)

8. Operate the appropriate vocational student organization for every broad occupational area offered in (a)2, 3 and 4 above.

9. (No change in text.)

10. Operate an advisory committee for every broad occupational area offered in (a) 2, 3 and 4 above.

(b) The commissioner may grant a one-year waiver for reasonable efforts in meeting requirements as set forth in this section upon written request, but only after the district has received designation as a local area vocational school district.

6:46-2.4 Duration of designation as a local area vocational school district

(a) Designation by the State Board of Education of a local area vocational school district shall expire five years from the date of the State Board resolution granting designation.

(b) Violations of these rules at any time during the designation period may be considered just cause for the revocation of the local area vocational school district designation.

(c) A district board of education may reapply for such designation as set forth in N.J.A.C. 6:46-2.2(b).

SUBCHAPTER 3. APPRENTICE TRAINING

6:46-3.1 Apprentice program responsibility

The Department is the recognized State agency responsible for the administration of the related training and instruction portion of apprentice programs. This training and instruction must comply with federal standards of apprenticeship as published in Labor Standards for the Registration of Apprenticeship Programs, 29 C.F.R. Sec. 29.1-.13 (1977).

6:46-3.2 Approval of related training and instruction

Upon receipt of the Apprenticeship Agreement Joint Approval form from the Federal Bureau of Apprenticeship and Training, the Department will evaluate the related training and instruction component of the apprenticeship. Within 30 days of receipt of the form, the Department shall notify the Federal Bureau of Apprenticeship and Training of its approval or disapproval of the related training and instruction.

6:46-2.2 (Reserved)

SUBCHAPTER 3. (RESERVED)

OFFICE OF ADMINISTRATIVE LAW NOTE: Subchapter 3 containing rules on Art Schools is proposed for repeal. Full text of the rules may be found in the New Jersey Administrative Code at N.J.A.C. 6:46-3.

SUBCHAPTER 4. PRIVATE VOCATIONAL SCHOOLS

6:46-4.1 General provisions

(a) Institutions, courses and programs excluded from these rules are the following:

1. (No change.)

2. Institutions whose offerings are avocational, cultural or recreational in nature;

3. Commercial driving schools which are licensed by the New Jersey Division of Motor Vehicles under the provisions of N.J.S.A. 39:12-4;

4. (No change.)

5. Courses or programs for the purpose of preparing pupils for the State Insurance Certificate which are approved by the State of New Jersey Department of Insurance;

6. Courses or programs conducted by an employer for training and upgrading of employees without cost to the employee;

7. Courses or programs conducted under contract with an employer, whether at the place of employment or elsewhere, at no cost to the employee other than the cost of books, supplies, tools or equipment which become the property of the employee; and

8. Courses or programs licensed by the State of New Jersey Casino Control Commission.

(b) Each private vocational school shall be operated under the supervision of a resident director approved by the Department who shall be responsible for the total operation of the school.

(c) Each private vocational school director shall submit an annual pupil enrollment and tuition source report for the period July 1 through June 30 of the preceding school year on forms provided by the commissioner. The report shall include, but not be limited to, pupil retention rates, sources of tuition paid and pupil entry and exit dates for each pupil enrolled during the reporting period. The report shall be submitted to the commissioner no later than 30 calendar days after the close of the reporting period.

6:46-4.2 Name of school

(a) The name of the private vocational school shall not infringe on the name of another school.

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

(d) The name of the school, once approved, shall not be changed without the prior approval of the Department.

6:46-4.3 Private vocational school facilities and equipment

(a) All facilities shall be inspected and approved by the commissioner or his or her designee prior to the enrollment of pupils in approved courses or programs to verify that the facilities and equipment requirements have been met.

(b) Documentation shall be submitted by the school indicating that the local municipality and/or appropriate State agency final fire, health and occupancy certificates or permits have been obtained. Thereafter, when the annual request for the certificate of approval is submitted, documentation that the school continues to comply with appropriate fire and health requirements shall be included.

(c) The equipment, supplies, mock-ups, simulators, training aids and instructional space shall be appropriate to achieve the stated occupational objective(s) of the approved course or program.

(d) The school may be established in conjunction with another business enterprise. The school, however, shall have its own separate identity, staff, designated instructional space and hours of operation as approved by the Department. Use of facilities or periods of internship or externship at on- or off-premise facilities shall bear a direct relationship to the pupil's occupational objective(s) and shall be clearly indicated in the approved course or program and the school bulletin.

6:46-4.4 Private vocational school personnel qualifications

(a) An application for approval of the qualifications of private vocational school personnel described in (b) below shall be completed by the potential employee, certified and submitted to the Department by the director of the private vocational school on the form provided by the Department. The Department shall notify the school director of the approval or disapproval of the stated qualifications of the potential employee.

1. The Department may rescind the approval if the qualifications of staff are not verified by the school as required by N.J.A.C. 6:46-4.11(a)3.i.

(b) Qualifications of school personnel are as follows:

1. A school director shall have completed six years of academic, military and/or job-related experience beyond high school graduation that includes a minimum of two years of practical experience in a supervisory, administrative or teaching position.

2. Qualifications of instructors shall indicate:

i. Competency in the subject(s) to be taught as demonstrated by one of the following:

(1) Possessing an appropriate instructional certificate issued by the State Board of Examiners or a comparable teaching certificate issued by a recognized certifying authority in another state with which the State Board of Examiners has reciprocity;

(2) Possessing a minimum of a baccalaureate degree from a recognized institution with a major or specialization in the subject area to be taught;

(3) Attaining journeyperson's status by possessing a certificate of completion of apprentice training in the subject to be taught;

(4) Obtaining a passing score on the appropriate National Occupational Competency Examination;

(5) Obtaining a passing score on the National Teacher Examination in the appropriate subject area. A passing score shall be the minimum passing score required by the Department for the issuance of instructional certification in the appropriate subject teaching field;

(6) Possessing a certificate of completion from an approved school, a license or rating in the occupational area to be taught; or

(7) Earning the minimum of an associate's degree from an approved institution with a major or specialization in the subject area to be taught.

ii. Instructors demonstrating competency in the subject area in accordance with (b)2i(4) or (5) above must have completed a minimum of two years full-time employment in the occupation prior to taking the examinations.

iii. Instructors demonstrating competency in the subject area in accordance with (b)2i(6) or (7) above must have completed a minimum of two years full-time employment in the occupation following the training time.

iv. A supervising instructor offering direction and guidance to other instructors shall meet the qualifications for instructor and have completed at least one year of full-time teaching in the subject taught by the instructors being supervised.

3. Qualifications of administrative staff, except clerical personnel, employed in a non-teaching capacity, in such title as, but not limited to, Business Manager, Director of Admissions and Director of Placement shall have acquired through education or experience a knowledge of administrative and personnel procedures and practices.

4. Persons employed by the school for the purpose of recruiting students to enroll in the school shall hold the title of admissions, field or sales representative and shall have participated in training by the director or owner to thoroughly familiarize the representative with the school's courses, programs, admission requirements, policies, regulations and completion requirements.

6:46-4.5 School ownership and financial responsibility

(a) The proposed owner(s) of a private vocational school shall be required to satisfy the commissioner that the owner(s) have a reputation for integrity and good business practices and shall be required to demonstrate that the owner(s) are capable of establishing a legitimate school with reasonable prospects for successful operation. Character and financial references and a criminal history review prepared by the New Jersey State Police shall be submitted to the Department with the application for approval. Present owner(s) of the schools shall submit a criminal history review annually with the application for renewal of the certificate of approval. The cost of obtaining the review shall be paid by the proposed or current owner(s).

(b) All acts, statements, advertising and representations of the school and its employees shall be considered as acts, statements, advertising and representations of the owner(s).

(c) When the school is owned by an out-of-state corporation, the owner shall be required to obtain a certificate of authority to conduct business in the State of New Jersey from the Secretary of State prior to approval to operate in accordance with N.J.S.A. 14A:13-3. The certificate of authority shall be submitted to the commissioner with the application for approval.

(d) A franchised school shall be required to submit a copy of the franchise agreement to the commissioner.

(e) The private vocational school shall be required to submit to the Department, prior to initial approval and on an annual basis thereafter, an audit report containing financial statements and an *[unqualified]* opinion expressed by a certified public accountant, licensed public accountant, registered municipal accountant or licensed public school accountant that the school has financial resources sufficient to maintain its program*s* for the period of time represented by the longest course or program to be offered.

(f) Any school approved under this section that collects tuition 30 or more calendar days in advance of instruction shall post a performance bond or irrevocable letter of credit payable to the commissioner in the amount of the projected advance tuition accepted by the school.

(g) The performance bond shall not be required of schools that do not collect tuition, other than a non-refundable registration fee, 30 or more calendar days in advance of instruction.

6:46-4.6 Courses or programs offered

(a) The private vocational school shall offer to the public only those courses and programs which have been reviewed, evaluated and approved by the Department.

(b) Each request for course or program approval submitted by the private vocational school shall contain sufficient information for proper evaluation. The information submitted shall include:

1. Course or program title;

2. Specific vocational objective(s) of the course or program;

3. The course or program content in outline form showing the major elements of instruction, the number of clock hours of instruction for each element, and the total number of clock hours required for completion. If desired, the school may also include credit hours;

4. A description of the methods of instruction to be used;

5. A description of the educational space, equipment, tools and text materials to be used;

6. Competencies needed by pupils prior to enrollment;

7. The tuition, other charges or fees;

8. (No change.)

9. A statement of the impact of the course or program on the overall capacity of the facility.

(c) In all shops or laboratories where there are physical hazards such as moving machinery, possibility of fire, explosion or exposure to high voltage electricity, there shall be compliance with all local, State and Federal safety and health codes.

6:46-4.7 Tuition, fees and other charges

(a) The private vocational school shall establish tuition, fees and/or other charges which shall be filed with the *[C]**c*ommissioner. Cost changes shall be filed with the commissioner not less than 60 calendar days prior to the effective date of the change.

(b) The tuition shall be expressed on the basis of individual courses where applicable. In the case of a program, the tuition may be expressed either on the basis of the individual courses making up the program, the full program of instruction or a time period such as a semester, quarter, term or school year.

(c) The school may establish an application fee to defray the expense of processing the application, obtaining records or transcripts and testing the applicant. The amount of this fee, which may be non-refundable, shall be limited to a maximum of $25.00.

(d) Upon written notification of admission of the pupil to the school, the school may require the payment of a registration fee subject to the following:

1. The fee shall be credited to the pupil's tuition account upon completion of the course of program;

2. The fee shall not exceed 15 per cent of the pupil's total tuition for the course or program or $100.00, whichever is less;

3. The fee need not be refunded if the pupil does not proceed with the course or program or if the pupil discontinues training before completion of the course or program. The registration fee shall be returned if the pupil cancels the enrollment agreement within three business days after acceptance by the school, even if instruction has begun during the three day period.

(e) The application and registration fees are not subject to the provisions of N.J.A.C. 6:46-4.5(f).

(f) The school may establish other charges if necessary. These charges shall be expressed separately from the tuition and shall be clearly stated in the school bulletin, enrollment agreement and application for enrollment. These charges may include, but not be limited to, such items as laboratory fees, deposits against breakage, graduation fees and pupil activities fees.

(g) Required pupil books, equipment and supplies, not included in the tuition, shall be itemized with the approximate cost to the pupil. The school shall not require pupils to purchase the books, equipment and supplies from the school if such items are available on the general market.

(h) Increases in tuition and/or fees shall not apply to pupils already accepted for enrollment or in attendance in a single course. Increases in tuition and/or fees applicable to programs which are divided into time periods such as quarters, terms, semesters or phases shall not apply to:

1. The first such time period for pupils that have been accepted for enrollment and who have not yet started their training; and

2. The current time period for pupils already in attendance.

(i) The school may grant appropriate credit for previous training, education or experience; however, tuition and other costs shall be reduced in proportion to credit granted toward course or program completion.

(j) All refunds due pupils shall be processed and sent to the pupil no later than 40 calendar days after the date of termination of enrollment of the pupil by the school or receipt by the school of notification from the pupil of withdrawal from the school.

6:46-4.8 Enrollment agreement

(a) The private vocational school shall use an enrollment agreement which shall be the contract between the school and the pupil. This agreement shall:

1. Be prepared in duplicate, dated and signed by the pupil and a school owner or a director. In the case of a minor, both the pupil and a parent or legal guardian must sign. The pupil shall be furnished a copy of the agreement;

2. Contain specific information on the name and length of the course or program, the tuition and other costs and the schedule of payment;

3. Contain information regarding the scheduled hours of instruction, the date of the start of the course or program and the approximate completion date;

4. Contain a statement of the registration fee paid and the refund policy in the event a pupil does not start the course, notifies the school of withdrawal or is terminated by the school prior to completion;

5. Contain a statement of the school policy regarding termination of enrollment of pupils or a specific reference to the location in the school bulletin where such policy is explained; and

6. Contain a statement that the pupil shall notify the director, in writing, of the date on which the pupil intends to withdraw from the school if it is prior to completion of the course or program.

(b) The enrollment agreement shall not be signed until the pupil receives written confirmation of acceptance for enrollment by the school.

(c) The enrollment agreement may be executed at the school, the pupil's home or by mail. The agreement shall not become binding until three business days after signing by both parties. The enrollment agreement shall be signed by the school owner or a director.

(d) The enrollment agreement shall conform to the regulations in N.J.S.A. 56:12-1 et seq., The Plain Language Law.

6:46-4.9 Refund policy

(a) In the event of notification by the pupil of withdrawal from the school or termination by the school prior to the completion of the course or program, the following considerations shall determine the maximum obligation of the pupil: ***The school may determine its refund policy to the pupil on a more liberal basis.***

1. (No change.)

2. The school may require that all books, equipment and tools purchased from the school by the pupil be retained by the pupil. However, the school may refund a portion of the monies paid if the books, equipment and tools are in proper condition for resale.

3. In calculating refunds of tuition paid in advance or sums due the school where tuition is paid on a weekly, monthly or semester basis, the following shall apply:

i. (No change.)

ii. For full-time attendance in courses exceeding 300 hours in length but not exceeding 1,200 hours, the school may retain the registration fee plus:

(1)-(3) (No change.)

(4) Seventy percent of the total tuition if withdrawal occurs after 25 per cent but not more than 50 per cent of the course has been completed; or

(5) (No change.)

iii.-iv. (No change.)

6:46-4.10 School bulletin

(a) Prior to obtaining its initial approval, the private vocational school shall prepare a draft copy of an official school bulletin which, after approval by the Department, shall be published and a copy given to each pupil upon payment of the application fee. The bulletin shall be revised and updated, subject to approval of the Department, as conditions warrant.

(b) The school bulletin shall be the official statement of the school's policies, regulations, charges and fees and shall include, but not be limited to, the following items:

1. Identifying data, which includes volume, number, date of publication and effective dates;

2. Name of the school, name of the chief executive officer of the governing body and names of administrators and instructors;

3. A calendar of the school showing legal holidays, beginning and ending date of each quarter, term or semester and other important dates;

4. School policy and regulations on enrollment with respect to dates of enrollment and specific prerequisites or entrance requirements for each course or program;

5. School policy and regulations on leaves of absence, absences, class cuts, make-up work, tardiness and unavoidable interruptions of attendance;

6. School policy and regulations on standards of progress required of the pupil. This policy shall define the grading system of the school, the minimum grades required to remain in school, consequences for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the school and conditions for readmission following a dismissal for unsatisfactory progress, attendance or behavior. A statement shall be made regarding what constitutes the record of academic progress maintained by the school and the record of academic progress shall be available to the pupil upon the pupil's request;

7. School policy and regulations on pupil conduct and identification of specific behavior that will result in dismissal;

8. Detailed cost of fees, tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits and all other charges;

9. Policy and regulations on the refund of the unused portion of tuition, fees and other charges in the event the pupil does not enter the course, withdraws or is terminated by the school;

10. A description of each approved course and program describing course content, type of work or skill to be learned and clock hours of instruction. If desired, the school may also include credit hours;

11. A description of the available educational facilities and equipment;

12. Policy and regulations on granting credit for previous education and training; *[and]*

13. Policy and regulations on the awarding of a diploma, certificate or other evidence of successful completion of a course or program;

14. A description of pupil loans or grants available and an explanation of the difference between a loan and a grant;

15. A description of scholarships available from the school which includes information on qualifying criteria, dollar value, number available and source of scholarship funds; and

16. A statement that pupils requiring remedial education programs shall receive information from the director on the availability of remedial programs from adult learning centers listed in the "Adult Education Program Directory" published by the Division of Adult Education, New Jersey Department of Education.

(c) Certain information that is subject to change, such as the schedule of tuition and fees, approved courses or programs, list of instructional staff and the school calendar may be omitted from the body of the bulletin and prepared as attachments to the bulletin. In such cases, the attachments shall be physically attached to the bulletin and the bulletin shall include a specific reference to the attachments.

(d) Pupil handbooks may be published containing any of ***the*** items listed in (b)1 through 16 above if the pupil handbook is identified as an official supplement to the school bulletin and given to the pupil upon enrollment.

6:46-4.11 School records

(a) Private vocational schools shall maintain records*[,]* which include*,* but are not limited to, the following:

1. General records containing:

i. Official notification from the Department indicating approval of courses and programs;

ii. A copy of each currently approved course or program; and

iii. A copy of all current promotional materials, bulletins, bulletin supplements, advertising materials, enrollment agreements, applications for enrollment and, if applicable, pupil handbooks.

2. Pupil records for every pupil admitted shall be maintained for a period of five years. The records shall include, but not be limited to:

i. Attendance, academic progress, grades, enrollment and completion dates for each course or program, evidence of meeting entrance requirements or qualification under "ability to benefit" described in N.J.A.C. 6:46-4.12(c)*[.]***;*

ii. An evaluation of the pupil's previous training, education and experience if the pupil is granted advanced standing or credit by virtue of previous training, education and experience;

iii. Placement data on pupils who complete the program indicating the employer, date of hire, job title and starting salary attested to by the pupil or verified by the school and accumulated by course or program title or an indication of unemployment;

iv. Completed enrollment agreement and, when applicable, the application for enrollment;

v. Records of academic or other counseling, if appropriate; ***and***

vi. Financial records of all tuition and other fees paid by and due from the pupil and, when applicable, a worksheet showing the method used to calculate any refund of monies due and paid to a pupil who withdrew or whose enrollment was terminated by the school prior to completion of the course or program. The source and amount of any pupil grants, loans and scholarships shall be identified*[;]***.*

3. Personnel records for administrative, instructional and sales staff showing:

i. Evidence of qualification for the position held;

ii. Performance evaluations, if appropriate; and

iii. A copy of the approvals issued by the Department.

4. A permanent record, containing necessary pupil identification information, courses and programs completed, grades, period of attendance and dates of course and program completion or withdrawal shall be maintained. If a school closes, all permanent pupil record cards shall be forwarded to the county superintendent of schools in the county in which the school is located.

6:46-4.12 Conduct of the school

(a) The school may collect fees for pupil services or products subject to the following limitations:

1. The products or services must be a required element of the approved course or program from which the student gains practical experience in order to achieve the identified vocational objectives.

2. Charges for pupil products shall represent only the amount required to recover the actual cost of materials needed to produce the product.

3. Charges for pupil services shall be at a lesser rate than similar services performed by a professional or practitioner.

4. Products made and services offered shall be done under the supervision of the certified instructor and clearly identified as pupil work.

5. Charges for pupil products and services shall not generate a profit for the school and may be used to offset additional costs to the pupil that would be necessary if the fee were not charged for the product or service.

(b) The minimum educational requirement for a pupil to be accepted for enrollment in a course or program in a private vocational school shall be the possession of either a locally issued, state endorsed high school diploma or a state issued high school diploma recognized by the Department.

(c) A pupil not meeting the minimum educational requirement prescribed in (b) above may be admitted by the school on the ability to benefit from the education or training offered by the private vocational school as determined by the school director. Prior to admission, pupils shall be administered a nationally recognized standardized or industry-developed test measuring the applicant's ability to successfully complete the program for which applied. Based on the test results, the director shall determine whether the pupil can benefit from the course or program and be admitted to the school.

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

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

(f) A school shall not permit its represenatives to encourage any pupil to leave another educational institution where the pupil is in attendance, nor shall any school seek to induce a pupil to change plans after the pupil has signed an enrollment form and paid a registration fee to another school.

6:46-4.13 Publicity, advertising and solicitation of students

(a) All advertising shall be based upon fact. Any statement, illustration, representation or omission, which may mislead the public, shall not be permitted.

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

(d) Schools using classified columns of newspapers or other publications to recruit pupils must use only such columns as are headed by "Education", "School" or "Instruction". Classifications such as "Business Opportunities", "*[e]***E*mployment" or "Help Wanted" may only be used to recruit employees or agents for the school.

(e) Statements, direct or implied, assuring or guaranteeing jobs or memberships in unions or other organizations as a result of completing a course or program shall not be used.

(f) Any advertising of the price of tuition must state the exact name of the course or program immediately followed by the number of instructional hours of the course or program. When the cost of tuition is advertised, the cost of tools, supplies and all other charges shall be included in the advertising.

(g) Illustrations in bulletins, circulars or advertisements shall relate solely to the school being advertised. If the school operates two or more separate facilities, all illustrations shall clearly indicate which facility is shown. Illustrations depicting typical work settings are permissible in the aforementioned documents.

(h) A school that is a member of any organization or association of schools shall limit any published statement to "A member of ________ association".

(i) A school that is accredited by an accrediting agency recognized by the United States Secretary of Education and/or the National Commission on Accrediting shall limit any published statement to "Accredited by ________ ". No school may advertise accreditation by an agency not recognized by the United States Secretary of Education or the *[National Commission on Accrediting]* ***Council on Postsecondary Accreditation***.

(j) A guarantee of placement for graduates shall not be promised or implied by any school, owner, partner, officer, employee, agent or sales person thereof. No school, in its advertising or through the activities of its owners, officers or representatives shall guarantee or imply the guarantee of employment or of any certain wage or salary.

(k) The school may refer to the fact that it has been approved by the commissioner only in the following terminology: "Approved by the New Jersey Department of Education".

6:46-4.14 Scholarships and financial assistance

(a) Schools may offer financial assistance and/or scholarships as follows:

1. Loan or deferred payments may be made to worthy students. Interest on loans shall not exceed the prime interest rate in effect 30 days in advance of the loan*[.]**;*

2. Work or service scholarships may be granted for actual performance of duties or services. Payment for the duties or services shall not be in excess of the current local rates for comparable duties or services;

3. Scholarships may be granted on the basis of the value, number and source of scholarships as printed in the school bulletin; and

4. (No change.)

6:46-4.15 Period of approval of school and school personnel

(a) Approval of a private vocational school is granted for a period of one year. The period of approval may be adjusted to a calendar year, fiscal year or the anniversary date of the original approval. The owner of a private vocational school wishing to operate in the State of New Jersey shall register with the commissioner and complete an application for approval prescribed by the commissioner no later than 120 calendar days prior to commencement of instruction. Upon approval by the commissioner the school will be issued a certificate of approval to operate which shall be valid for one year from the date of approval.

(b) Such school shall file an application for renewal of approval no later than 60 calendar days prior to the expiration of the certificate of approval. If the school submits the application for renewal by the submission deadline, the school may continue to operate with the existing certificate of approval until such time as the commissioner determines that the school is not eligible for reapproval or the new certificate of approval is issued.

(c) The approvals issued to the school for instructors, directors, sales representatives and administrative personnel shall be valid as long as the persons are employed by the school.

(d) The school shall display the certificate of approval in a public place in the approved school. The certificates of the director, administrators, instructors and sales representatives may be displayed at the discretion of the school director.

(e) A change shall not occur prior to approval in any item that was an element or condition of the original or subsequent approval. Any change shall be submitted for approval by the Department.

(f) A change in ownership shall invalidate an approval by the commissioner. The new owner(s) shall be required to submit an application for approval and evidence of qualification to operate a school. Upon request, the commissioner may grant a temporary approval, not to exceed 90 calendar days to the new owner provided the conditions of the current approval are not changed.

(g) A change in location without prior approval of the Department shall invalidate an approval. Before a change in location, the school director shall obtain approval from the Department.

6:46-4.16 Violations of rules

(a) Violations of these rules may be just cause for the commissioner to revoke or withhold a certificate of approval or place reasonable conditions upon the continued operation of the school.

(b) Prior to the revocation or withholding of a certificate of approval or the imposition of conditions upon the continued operation of the school, the commissioner shall direct the owner of the school to show cause why such sanctions shall not be imposed in accordance with the procedure established under N.J.A.C. 6:24-3.1.

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

(d) The commissioner shall notify all relevant accrediting agencies, the Department of Higher Education, New Jersey Higher Education Assistance Authority and other student loan guarantors when the approval of an approved private vocatonal school is revoked by the commissioner.

6:46-4.17 Conformity with existing rules

The granting of approval to operate a private vocational school by the commissioner shall not waive any requirements established by legally constituted commissions or other local, state or federal rules.

6:46-4.18 Procedures for monitoring private vocational schools

(a) The commissioner shall monitor each approved private vocational school annually.

(b) Based upon the monitoring, the commissioner shall determine whether to recommend the continuation or suspension of the certificate of approval of the private vocational school.

(c) The monitoring procedure shall be as follows:

1. The assistant commissioner, Division of Vocational Education shall establish a monitoring schedule.

2. Each private vocational school director shall be notified in advance by the assistant commissioner, Division of Vocational Education of the date established for the monitoring visit.

3. Prior to the monitoring visit, each private vocational school director shall receive a copy of the monitoring instrument prescribed by the commissioner containing the requirements of this subchapter and specific indicators needed to demonstrate compliance with the requirements.

(d) The monitor(s) shall record findings required by this subchapter using worksheets prescribed by the commissioner and review the findings with the school director at an exit conference.

(e) The assistant commissioner, Division of Vocational Education, shall send a formal notification of findings to the school director within 20 work days of the completion of the monitoring visit. The notification shall contain:

1. Copies of the completed worksheets;

2. A recommendation that the approval of the school be continued or suspended by the commissioner.

(f) A school director notified that the assistant commissioner, Division of Vocational Education will recommend to the commissioner that the approval of the school be suspended shall be granted 30 calendar days from receipt of the notification to document to the commissioner that the indicator(s) found unacceptable have been corrected.

(g) Any school that does not correct the deficiencies within the 30 calendar day period shall have its certificate of approval suspended by the commissioner, in accordance with the procedure established under N.J.A.C. 6:24-3.1.

SUBCHAPTER 5. CORRESPONDENCE SCHOOLS

6:46-5.1 Basic information concerning certificates of approval for correspondence schools located in New Jersey

(a) No correspondence school located in New Jersey shall solicit students or collect fees until a certificate of approval has been granted by the commissioner.

(b) The issuing of a certificate of approval to a correspondence school shall not be deemed to accredit the courses offered as valid for transfer to any other school or college in New Jersey.

(c) An approved correspondence school located in New Jersey may use the following statement in its advertising: "Approved by the New Jersey Department of Education".

(d) The fee for the initial issue of a certificate of approval shall be $100.00.

(e) A certificate of approval shall be renewed annually upon payment of a fee of $50.00. Fees shall be made payable to the New Jersey Commissioner of Education.

(f) Any certificate of approval may be revoked or denied for good cause after a hearing pursuant to N.J.A.C. 6:24-3.1.

(g) An application for a certificate of approval shall be filed with the commissioner. It shall be in the form of a letter with data to show how the requirements of N.J.A.C. 6:46-5.2 have been attained.

6:46-5.2 Standards for correspondence schools

(a) Name of school requirements:

1. The name of the correspondence school shall not infringe on the name of another school.

2. The words "New Jersey" or "State of New Jersey" shall not be used in the name of the school.

3. No school shall adopt or use any title or name commonly accepted as descriptive or collegiate or university institutions.

4. The name of the school, once approved, shall not be changed without the prior approval of the Department.

(b) Administration of the school requirements:

1. Each correspondence school shall have an administrator. The administrator of the school shall present evidence that he or she has the qualifications and the experience essential for competent and ethical administration of a correspondence school and will devote to the school the time necessary for efficient administration.

2. The administrator of a correspondence school shall have the administrative assistance necessary for adequately operating the school and effectively coordinating the work of the supervisors of correspondence instruction.

3. Each private correspondence school located in New Jersey shall furnish such information and reports to the commissioner as required by these rules. Failure to furnish any such information or report or to conform to standards prescribed for private correspondence schools shall be good and sufficient reason for the refusal of a certificate of approval for such private correspondence school or for the revocation of a certificate of approval previously granted.

(c) Organization and nature of correspondence course requirements:

1. Each course of instruction offered shall consist of:

i. A preliminary lesson or set of instructions on how to study by the home-study method or adequate instruction on how to study each lesson assignment.

ii. Textual or lesson materials which are:

(1) Adequate in that they cover the subject as fully and as thoroughly as advertised;

(2) Accurate in that they are all authenticated;

(3) Current in that they represent reliable and up-to-date information on the subject;

(4) Presented in a clear and logical manner.

iii. Instructional evaluation on each lesson or unit assignment consisting of:

(1) A series of examination questions or problem assignments which thoroughly stress the important phases of the subject presented and require a demonstration of the pupil's ability or skill in applying the information attained;

(2) An individualized written performance evaluation pointing out errors, directing the pupil to sources of correct information and supplying additional explanations and supplementary instructional material when necessary.

(d) Qualifications of instructional staff requirements:

1. (No change.)

2. The individualized written performance evaluation shall be the responsibility of a supervisor of correspondence instruction.

3. Supervisors of correspondence instruction shall indicate competency in the subject(s) which he or she will evaluate as demonstrated by one of the following:

i. An appropriate instructional certificate issued by the State Board of Examiners or a comparable instructional certificate issued by a recognized certifying authority in another state with which the State Board of Examiners has reciprocity;

ii. A minimum of a baccalaureate degree with a major or specialization in the subject area to be evaluated;

iii. Journeyperson's status, by possession of a certificate of completion of apprentice training in the subject to be evaluated;

iv. A passing score on the appropriate National Occupational Competency Examination;

v. A passing score on the National Teacher Examination in the appropriate subject area. A passing score shall be the minimum passing score required by the Department for the issuance of instructional certification in the appropriate subject teaching field;

vi. A certificate of completion from an approved school, license or rating in the occupational area to be evaluated;

vii. The minimum of an associate's degree from an approved institution with a major or specialization in the subject area to be evaluated.

4. Supervisors of correspondence instruction demonstrating competency in the subject area in accordance with (d)3iv or v above must have completed a minimum of two years full-time employment in the occupation prior to taking the examinations.

5. Supervisors of correspondence instruction demonstrating competency in the subject area in accordance with (d)3vi or vii above must have completed a minimum of two years full-time employment in the occupation following the training time.

(e) School ownership and financial responsibility requirements:

1. The proposed owner(s) of a correspondence school shall be required to satisfy the commissioner that the owner(s) have a reputation for integrity and good business practices and shall be required to demonstrate that the owner(s) are capable of establishing a legitimate school with reasonable prospects for successful operation. Character and financial references and a criminal history review prepared by the New Jersey State Police shall be submitted to the Department with the application for approval. Present owner(s) of schools shall submit a criminal history review annually with the application for renewal of the certificate of approval. The cost of obtaining the review shall be paid by the proposed or current owner(s).

2. The owner(s) of a school shall be held responsible and accountable for all activities of the school and its employees. All acts, statements, advertising and representations of the school and its employees shall be considered as acts, statements, advertising and representations of the owner(s).

3. When the school is owned by an out-of-state corporation, the owner(s) shall be required to obtain a certificate of authority to conduct business in the State of New Jersey from the Secretary of State prior to approval to operate in accordance with N.J.S.A. 14A:13-3. The certificate of authority shall be submitted to the commissioner with the application for approval.

4. A franchised school shall be required to submit a copy of the franchise agreement to the commissioner.

5. The correspondence school shall be required to submit to the Department, prior to initial approval and on an annual basis thereafter, an audit report containing financial statements and an *[unqualified]* opinion expressed by a certified public accountant, licensed public accountant, registered municipal accountant or licensed public school accountant that the school has financial resources sufficient to maintain its operation for the period of time represented by the longest course or program of instruction to be offered.

6. Any school approved under this section that collects tuition 30 or more calendar days in advance of instruction shall post a performance bond or irrevocable letter of credit payable to the commissioner in the amount of the projected advance tuition accepted by the school.

7. The performance bond shall not be required of schools that do not collect tuition other than a non-refundable registration fee, 30 or more calendar days in advance of instruction.

(f) The official bulletin or catalog requirements:

1. Each correspondence school located in New Jersey shall issue a printed bulletin which shall clearly indicate that it is an institution offering courses by correspondence. Its statements shall set forth the obligations of both the school and the pupils.

2. The bulletin shall show the following:

i. The name and location of the school;

ii. The name of the administrator of the school;

iii. A description of the lessons and the courses offered;

iv. The fees and tuition charged;

(1) A correspondence school may may meet this standard by publishing separately its list of fees and charges, provided an up-to-date list of such fees and charges is *[kept]* filed with the *[C]***c***ommissioner;

v. Requirements for *[graduation]* ***completion***;

vi. The maximum time allowed for completing each course.

(g) Financial records: Each school shall maintain detailed financial records. These records shall be subject to inspection by the commissioner or his or her designee.

(h) Responsibility for agents and field representatives: Each school shall be accountable for the acts of its licensed agents and field representatives as these acts affect the rights of pupils or prospective pupils.

(i) Preliminary sales training: Each private correspondence school located in New Jersey shall give its field representatives and agents adequate preliminary training and exercise careful supervision to guard against any misrepresentation to prospective pupils and to prevent the enrollment of pupils who lack qualifications for probable success in completing the course concerned.

(j) Nature of the school's contract with pupils requirements:

1. The contract to be approved shall enumerate the following:

i. The total cost to the pupil;

ii The initial payment at the time of registration;

iii. The amounts of subsequent payments and a statement specifying when the payments are due;

iv. A list of books, supplies and equipment to be furnished by the correspondence school;

v. A list of the books, supplies and equipment which the pupil must purchase in addition to those provided by the correspondence school;

vi. All other charges which the school may make, such as fees for a diploma or for *[graduation]* ***completion***;

vii. The terms of settlement for the pupil who decides to discontinue his or her enrollment and withdraw from the school;

viii. The terms of settlement for the pupil who is terminated by the school;

ix. The particulars concerning instruction during completion periods in schools, shops or laboratories, provided such instruction is offered.

(k) Completion periods in shops, schools or laboratories requirements:

1. Completion periods in shops, school or laboratories may be offered by correspondence schools located in New Jersey provided the shop, school or laboratory concerned is approved by the Commissioner as adequate for the courses offered. If a correspondence school located in New Jersey advertises a completion period in a school as part of a course, shop or laboratory, the contract shall specify:

i. The basis for qualifying as a pupil for admission to the shop, laboratory or school for the completion period concerned;

ii. The location of such shop, laboratory or school;

iii. The schedule of periods of instruction in such shop, laboratory or school;

iv. The number of days of instruction to which the qualified pupil is entitled;

v. A description of the facilities in the shop, laboratory or school concerned;

vi. The amount of additional tuition required for attendance at the shop, laboratory or school used for the completion period;

vii. The pupil's responsibility for paying the cost of transportation to and from the shop, laboratory or school where the completion period is scheduled;

viii. The pupil's responsibility for paying the cost of room and board while in attendance during the completion period;

ix. A list of the books, supplies and tools which will be furnished by the school for use by the pupil while in attendance during the completion period and the rental cost for the use of such books, tools and supplies;

x. A list of additional tools, equipment, work clothing, books or other items which must be purchased by the pupil for use during the completion period.

(l) Standards for enrollment:

1. Each correspondence school located in New Jersey shall establish and print standards of educational achievement which pupils shall attain before enrolling for each course offered.

(m) Pupil records: A permanent record, containing necessary pupil identification information, courses and programs completed, grades, dates of course and program completion or withdrawal shall be maintained. If a school closes, all permanent record cards shall be forwarded to the county superintendent of schools in the county in which the school is located.

(n) Avoiding unfair practices: Each correspondence school to which a New Jersey certificate of approval is awarded shall avoid unfair trade practices enumerated in the Federal Trade Commission Guides for Private Vocational and Home Study Schools, 16 C.F.R. Sec. 254.1-.10 (1986).

(o) Revoking a certificate of approval: The certificate of approval of a correspondence school located in New Jersey may be revoked if the commissioner, after a hearing pursuant to N.J.A.C. 6:24-3.1, finds and determines that the school has not maintained the standards for New Jersey correspondence schools approved by the State Board of Education.

6:46-5.3 Licensure of field representatives or agents

(a) No field representative or agent of any private correspondence school located within the State shall solicit pupils or transact business in New Jersey unless he or she has secured a license from the Commissioner.

(b) A license to act in New Jersey as a field representative or agent of an approved correspondence school shall be valid for a period of one year. It shall be renewable annually unless revoked for a good cause after a hearing.

(c) The annual fee for the issue or renewal of a license shall be $10.00.

6:46-5.4 Qualifications of field representatives or agents

(a) A license valid for one year to serve as a field representative or agent of a correspondence school shall be issued to an applicant who presents evidence satisfactory to the Commissioner that:

1. He or she has attained the age of 21 years;

2. He or she is of good moral character and has a reputation for honesty, truthfulness and fair dealings; and

3. He or she has satisfactorily completed a training program for field representatives or agents conducted by the correspondence school which he or she represents.

6:46-5.5 Revocation of the field representative or agent license

(a) The license of a field representative or agent may be revoked if, after a hearing, the commissioner finds and determines that the field representative or agent concerned has violated the Federal Trade Commission Guides for Private Vocational and Home Study Schools, 16 C.F.R. Sec. 254.1-.10 (1986) or that the field representative or agent has not maintained the standards approved for New Jersey correspondence schools by the State Board of Education.

6:46-5.6 (Reserved)

6:46-5.7 (Reserved)

6:46-5.8 (Reserved)

6:46-5.9 (Reserved)

6:46-5.10 (Reserved)

6:46-5.11 (Reserved)

6:46-5.12 (Reserved)

6:46-5.13 (Reserved)

6:46-5.14 (Reserved)

SUBCHAPTER 7. (RESERVED)

OFFICE OF ADMINISTRATIVE LAW NOTE: Subchapter 7 containing rules on Music Schools is proposed for repeal. Full text of the rules may be found in the New Jersey Administrative Code at N.J.A.C. 6:46-7.

SUBCHAPTER 8. (RESERVED)

OFFICE OF ADMINISTRATIVE LAW NOTE: Subchapter 8 containing rules on Nonprofit Private Schools is proposed for repeal. Full text of the rules may be found in the New Jersey Administrative Code at N.J.A.C. 6:46-8.

SUBCHAPTER 6. CONTRACTING FOR EDUCATIONAL SERVICES WITH ELIGIBLE PRIVATE VOCATIONAL SCHOOLS

6:46-6.1 Contracts to provide vocational education courses; qualifications

(a) For the purpose of providing vocational education courses on an individual or group basis, district boards of education may, provided the provisions of N.J.A.C. 6:8-7.1 et seq. are met, enter into contracts with private vocational schools under the following conditions:

1. When such courses cannot be provided by the county or regional vocational schools or other school districts; or

2. A private vocational school can provide substantially equivalent training at a lesser cost as substantiated and certified by the local education agency subject to the review and approval of the commissioner. Said course shall meet the requirements of the Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq.).

6:46-6.2 Eligibility of private vocational schools

(a) A private vocational school shall be deemed eligible to enter contracts with a district board of education if it is approved by the commissioner pursuant to N.J.A.C. 6:46-4.1 et seq.

(b) A license or certificate of approval must have been held by the private vocational school for at least two consecutive years preceding execution of the contract. The two-year period of operation requirement will apply to courses offered by a subsidiary branch or extension of a school.

i. Additional facilities acquired by a school because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the two-year limitations if all of the following conditions are met:

(1) The school has reached the limit of its enrollment capacity in its present facilities;

(2) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(3) The additional facilities are within normal commuting distance of the present facilities.

(c) A private vocational school shall meet all provisions of N.J.A.C. 6:46-4.1 et seq., except that in addition all facilities and instructional equipment to be used in meeting the terms and conditions of the proposed contract shall be approved by the county superintendent of schools of the county in which the school is located. Facility approval criteria, as a minimum, shall be those used for emergency approval for public schools.

(d) Such contracting schools shall be subject to all of the provisions of N.J.A.C. 6:46-4.1 et seq.

6:46-6.3 Records

Pupil progress and attendance records shall be furnished to the contracting board of education in a timely fashion to coincide with existing public school reporting procedures. Final payment to a private vocational school may be withheld until course completion results, on an individual basis, are received by the contracting board of education.

6:46-6.4 Contracts; terms; approval

(a) Each contract entered into shall:

1. Assure that all parties and all contractual criteria referenced therein be in accordance with all applicable Federal and State laws and regulations;

2. Be approved in writing by the Commissioner prior to its execution. Requests for approval shall be presented at least 60 days prior to the proposed execution date; and

3. Be executed in a format developed and approved by the commissioner.

(b) Appended to each contract shall be a copy of the proposed curriculum, applicable pupil schedules, rules of the private vocational school concerning participating pupils, current comparative programmatic and cost analyses demonstrating that training offered is equivalent in nature and is being provided at a lesser per capita cost than could be provided by the contracting board of education, statement of qualifications of teaching personnel and any other appendages deemed appropriate by the contracting parties, county superintendent of schools or the commissioner.

6:46-6.5 Pupil attendance

Pupils failing to attend, without sufficient cause, that portion of the school program provided in the public or nonpublic sending school, shall be prohibited from participation in the contracted portion of the program.

6:46-6.6 Course credit

Course credit shall be assigned in keeping with the provisions of N.J.A.C. 6:8-7.1(d), except that no course at a private vocational school shall receive more than 10 credits.

6:46-6.7 Other requirements

The provisions of this subchapter are subject to the monitoring, supervision and other requirements of the Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq.).

SUBCHAPTER 9. (RESERVED)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Wetlands Management
Wetlands Maps in Monmouth County
Adopted Amendments: N.J.A.C. 7:7-2.2

Proposed: November 3, 1986 at 18 N.J.R. 2162(a).

Adopted: October 6, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: October 9, 1987 as R.1987 d.446, **without change.**

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

Effective Date: November 2, 1987.

Expiration Date: May 7, 1989.

DEP Docket Number: 050-86-10.

Summary of Public Comments and Agency Responses:

The Department held a public hearing concerning the proposed amendments on November 20, 1986 at Pollak Auditorium of Monmouth College, Cedar Avenue, West Long Branch, New Jersey. The comment period for this proposal ended on December 3, 1986. Oral comments were received from approximately 10 people.

The comments and the Department's responses are as follows:

COMMENT: One commenter stated that he was very much in favor of a revision of the wetlands maps, observing that in his five years of residence here, he has watched the State's wetlands disappear at an alarming rate.

RESPONSE: The Department appreciates this supportive comment.

COMMENT: A commenter asked what impact the revised wetlands area will have on property.

RESPONSE: The environmental values and fragility of coastal wetlands have been officially recognized in New Jersey since the passage of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). To protect this valuable resource, any proposed development on wetland areas is subject to review and approval by the Department.

COMMENT: After attending the Department's public hearing on November 20, 1986 at Monmouth College, some commenters inspected the relevant maps and concluded the Department has erroneously designated a portion of their property as wetlands. This property is located in Keyport Township and is shown on Map #581-2124.

RESPONSE: The Department's recent proposed wetland revision on the above mentioned parcel of land includes an area of fill which was placed prior to wetland map promulgation, January 10, 1973. The remaining area which was mapped as State regulated wetlands continues to be mapped as State regulated wetlands with no proposed change. The latest site inspection indicates the present proposed wetland boundary line modification is correct.

COMMENT: Some commenters were disappointed to learn that dredging of only half of Buxton's Creek would be authorized because of the presence of Spartina. This species recently colonized on soil that slumped into the creek as a result of construction activities. The commenters asked for the redesignation of this Spartina colony that has spread into the channel as something other than wetland.

RESPONSE: The Department has reviewed the revised wetland maps for this area, researched file information and utilized information from the U.S. Army Corps of Engineers. In addition, it has inspected this site on numerous occasions. All of this information was used to determine the wetlands which currently exist in the above area.

Under Department of the Army Permit #13257 issued April 27, 1984 and this Department's Wetlands Permit #83-0273-2 issued August 16, 1983, much of the area between the rip-rap retaining wall along the condominium water's edge and the existing wetlands adjacent to Buxton's Creek has been permitted and developed as a wetlands restoration and mitigation site. This newly developed wetlands area, in addition to a small wetlands area yet to be developed, is a requirement of the Coastal Area Facility Review Act (CAFRA) Permit #81-0481-5 which was issued for the total condominium development (Sea Winds) on this waterfront/wetland site. These newly developed wetlands within Buxton's Creek were created as mitigation for wetlands which were destroyed prior to or during condominium construction. These new wetlands are under the jurisdiction of both the Army Corps of Engineers and under New Jersey's Department of Environmental Protection.

COMMENT: A re-examination of Map #588-2142 was requested.

RESPONSE: The Department has reviewed and reverified the accurate delineation of the map and has determined no changes were necessary.

COMMENT: The regulation of wetlands by the State under the Wetlands Act would adversely affect the real estate value of all land identified as wetlands.

RESPONSE: Regulation of development on wetland areas is critical. While it is true that part of the property that contains wetland may suffer a reduction in real estate value, this reduction should be compensated for by a reduction in property taxes. In any event, the Department has a legislative mandate to delineate wetlands regardless of the effect on property values.

COMMENT: A commenter asked whether affected property owners would receive a copy of the revised wetlands map.

RESPONSE: No. However, an interested party can obtain a copy (or copies) of a specific wetlands map(s) by sending a check for $10.00 for each copy requested payable to the Treasurer, State of New Jersey to the Department's Bureau of Planning and Project Review, CN 401, Trenton, New Jersey 08635. Maps are also available for inspection at the offices of the Division of Coastal Resources at 1433 Hooper Avenue, Toms River, New Jersey 08753.

Full text of the adoption follows.

7:7-2.2 Wetlands

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

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. (No change.)

2. (Monmouth County:
(NOTE: The following maps are to be physically altered.)

. . .
476-2172
. . .
483-2172
490-2166
. . .
497-2172
. . .
539-2154
539-2166
539-2172
539-2178
539-2184
539-2190
. . .
546-2160
. . .
546-2184
546-2190
. . .
553-2184
. . .
560-2184
. . .
574-2118
. . .
574-2154
. . .
574-2166
. . .
574-2172
. . .
574-2184
574-2190
. . .
581-2118
581-2124
581-2136
581-2142
. . .
581-2154
581-2160
. . .
588-2124
588-2130
588-2136
588-2142
. . .

(NOTE: The following maps are to be added to the list of wetlands maps for Monmouth County.)

455-2160
. . .
469-2172
469-2178
. . .
497-2166
518-2184
539-2160
. . .

3.-11. (No change.)

DIVISION OF WATER RESOURCES

(a)

Grants for Restoring Publicly-Owned Freshwater Lakes

Adopted Amendment: N.J.A.C. 7:9-15.6

Proposed: June 1, 1987 at 19 N.J.R. 909(a).
Adopted: October 7, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: October 9, 1987 as R.1987 d.447, **without change.**
Authority: N.J.S.A. 58:10A-5(d) and 58:11A-1 et seq.
Effective Date: November 2, 1987.
Expiration Date: January 21, 1991.
DEP Docket Number: 020-87-05.

Summary of Public Comments and Agency Responses:

On June 1, 1987, the New Jersey Department of Environmental Protection ("the Department") proposed an amendment to N.J.A.C. 7:9-15.6 to increase the maximum State share of Phase II (Implementation) Lake Restoration Grants from 50 percent to 75 percent. The comment period closed on July 1, 1987. Comments were received from four municipalities, all praising the Department for its proposal. The Department thanks the commenters for their support.

Full text of the adoption follows.

7:9-15.6 Types of grant assistance

(a) The Department will administer the following types of grants pursuant to this subchapter.

1. (No change.)

2. Subject to the availability of funds, approved Phase II Implementation activities will be funded through the Department pursuant to the following formulas:

i. (No change.)

ii. If no EPA grant is awarded for the project, a maximum of 75 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

3. (No change.)

(b)

Sewer Connection Bans

Adopted Repeal: N.J.A.C. 7:9-13

Adopted Amendments: N.J.A.C. 7:14A-1.9 and 7:14A-12

Adopted New Rules: N.J.A.C. 7:14A-12.20 through 12.26

Proposed: November 3, 1986 at 18 N.J.R. 2163(a).
Adopted: October 8, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: October 9, 1987 as R.1987 d.445, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 58:10A-1 et seq. and 13:1D-1 et seq.
Effective Date: November 2, 1987.
Expiration Date: June 4, 1989.
DEP Docket Number: 049-86-10.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the New Jersey State Library, Trenton, New Jersey on December 2, 1986 to provide interested parties the opportunity to present testimony on the proposal. Only two members of the public attended the hearing but numerous written comments were received. In response to several requests from the public for more time, the comment period was extended from December 3, 1986 until February 17, 1987. (See 19 N.J.R. 263(b))

General Comments

COMMENT: A few commenters would like to have a procedure devised whereby they could receive advance draft proposals so that comments could be prepared more thoroughly by the appropriate professionals and/or committees.

RESPONSE: This comment is best addressed by reference to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30-1 et seq., and is not relevant specifically to the Sewer Ban Rules. The Department did, however, extend the comment period from December 3, 1986 until February 17, 1987 to allow comments to be thoroughly prepared.

COMMENT: At the present time, the City of Vineland is the subject of the promotion of Urban Enterprise Zone activity wherein tax incentives are to become available to encourage the creation of small businesses which in turn would generate economic improvement and employment prospects. State and local officials have exerted great efforts to accomplish these ends. From the present until July 1, 1988, and thereafter, the proposed rules would totally undermine those efforts with the result that during the interim period there would be an absolute prohibition against the creation of most new small businesses' establishments which are the real bases of economic progress.

RESPONSE: The Department can appreciate the efforts put forth by counties and municipalities for various "developmental programs." The fact remains, however, that sewage facilities must be able to accommodate the generated wastewater flow. If a sewer ban has been imposed on a facility there can be no justification for permitting that facility to increase its flow without interim improvements being made.

COMMENT: It is unclear from the summary of the rules whether the Department intends to change the sewer connection ban program to clarify procedures with respect to sewer bans only, or also to affect those needing sewer extension (now called connection) permits as well.

RESPONSE: The revised rules affect all those requiring a treatment works approval, including those affectred by a sewer connection ban. The sewer connection ban rules are now located in the subchapter that applies to treatment works approvals instead of being in a separate subchapter as before.

COMMENT: In terms of the economic impact that the Department has presented, there is a failure to recognize that private developers are being used by the Department as leverage to accomplish certain improvements to wastewater treatment facilities that are affected by a sewer ban. Rather than requiring the municipality or sewage authority to upgrade and/or expand their treatment facility (and provide the necessary financing), developers are prevented from proceeding with any project improvements, even at their own risk, until such time as the Department is satisfied that all necessary plans and improvements are completed to the affected treatment facility. This forces the developer into a situation where he or she must either finance (all or in part) the necessary improvements to the treatment facility for the municipality or face an undetermined amount of time during which nothing can proceed. Such delay and uncertainty creates a significant economic impact in that new home buyers are forced to pay for an upgrade or expansion in the affected treatment facility, the benefits from which are to be enjoyed by the users of the entire facility. This places an unfair burden on new development and disproportionate cost to, in the case of residential development, new home buyers.

RESPONSE: The Department does realize that economic hardships occur when a facility is placed in a ban situation. The hardship is shared by more sectors than just that of the home developer and new home buyer. A municipality in general, for example, is greatly inconvenienced by loss of potential ratables and associated improvements that follow residential/industrial development. When these concerns are weighed against environmental concerns, however, the environmental concerns must prevail.

N.J.A.C. 7:14A-1.9 Definitions

COMMENT: "Actual flow" should be based at a minimum on a four month average and possibly on a three to five year moving average so as not to skew the true average. "Actual flow" should represent the closest resemblance to actual daily flow, not seasonal peaks. Seasonal peak flows should be used in determining the capacity of treatment works but is not representative of "actual flow".

RESPONSE: The Department's experience with the four month average indicates that such a period is too long and has determined that basing actual flow on a three month average is the most effective system. Among the many problems the longer period would present, sewage generating facilities constructed within the three to five year period would not be accurately accounted for and pollution would be widespread before it could be stemmed.

COMMENT: The definition of "actual flow" should specifically allow for the recalculation of estimated flow quantities produced by inoperative sewer extensions whose estimated flow was derived from the old standard of 100 gallons per day. One commenter estimated it could reduce the recorded inoperative sewer extensions by .5 million gallons per day by revising the estimated flow figure in accordance with the new sewage per capita generation parameters.

RESPONSE: The Authority can request revised permits at any time to amend flow figures in accordance with the revised per capita sewage generation parameters.

COMMENT: The term "adequate conveyance capacity" is defined in part as meaning that the peak wet weather flow does not result in overflows or discharges from any manhole. There is probably not a sewerage system in the State which does not have the potential for overflowing as a result of flood conditions and therefore the definition should read "peak wet weather flow in the absence of flooding. . ."

RESPONSE: The Department disagrees. If discharges result during peak wet weather flow then conveyance capacity is inadequate due to inflow that must be removed. Expansion must stop until such inflow is removed or additional conveyance capacity is provided.

COMMENT: "Adequate conveyance capacity" refers to flooding of the bench of the manhole but does not indicate how it is to be checked, by whom, and for what reason. On larger interceptors, "T" manholes are often used and these do not have benches. Where benches are installed in smaller lines, elevations of their tops will vary according to the center line of the pipe; thus, the determination as to whether the line has adequate capacity is somewhat arbitrary. Therefore, the peak dry weather flow should not exceed 80 percent of the depth of the pipe.

RESPONSE: The Department agrees and the rule has been amended to reflect the factor of 80 percent. This factor achieves the same result as using the bench of the manhole as a gauge.

COMMENT: How far downstream is the Department requiring that "adequate conveyance capacity" be verified?

RESPONSE: Adequate conveyance capacity will be checked all the way to the sewage treatment plant, if necessary, to make the proper determinations.

COMMENT: The definition of "connection" should be revised to allow for the installation of individual sewer laterals, internal piping or plumbing changes as pertaining to an existing residence, treatment plant or other facility where occupancy or usage does not increase, such as an additional residential bathroom or a minor plumbing alteration at a treatment plant.

RESPONSE: Provided that flow is not increased, internal plumbing is exempt. Individual sewer laterals connecting to an immediately adjacent sewer line by gravity is also exempt if total flow generated is less than 2000 gallons (400 in ban areas) per day. See N.J.A.C. 7:14A-12.22(b)6.

COMMENT: There is a conflicting comparative use of the terms "treatment works approval" and "connection approval". In the definition section, N.J.A.C. 7:14A-1.9, the term "connection approval" is a subcategory of treatment works, being defined as meaning ". . . a treatment works approval to construct and/or operate a connection. . .". The term "treatment works approval" is defined in the same section to mean an approval issued pursuant to, among other sections, N.J.A.C. 7:14A-12.3. Thus, in the definition section, the universal term is "treatment works approval" which includes, among other approvals, the sub-category of "connection approvals".

Despite this scheme, N.J.A.C. 7:14A-12.3 appears to put both definitions on a par. One is required to obtain either treatment works approval or connection approval before building, installing, modifying or operating. However, the term "treatment works approval" already includes connection approval and therefore there is redundancy.

RESPONSE: The 90 Day Construction Permit Rules, N.J.A.C. 7:1C-1.1 et seq., make these subcategories necessary because only certain types of treatment works are covered by those rules.

COMMENT: The definition of "connection" should pertain only to connections to sewers in the street and to the connection of new residential units or a new or expanded commercial user carrying over 2,000 gallons per day to these sewers in the street.

RESPONSE: There is a need to control all flow, even residential renovations, under certain conditions. In fact, the definition of "connection" has been further modified to include, "any physical or operational change to a collection system or to the piping of any building, project, facility or other structure either proposed or existing for which a building permit or other municipal approval, including site plan or subdivision approval, is required and which connects directly or indirectly to any portion of a domestic treatment works." The words "project", and "including site plan or subdivision approval" have been added to cover all situations that may result in increased flow.

This language has been added to this definition to further clarify it. Whether wastewater is to be transported by the installation of a single pipe or any combination of pipes, a "connection" will be considered to have occurred if it falls within the above described definition.

COMMENT: Clarification should be made as to how the definition of "connection" and "connection approval" affects individual subsurface disposal systems with a flow less than 2000 gallons per day, with respect to N.J.A.C. 7:14A-12.4(a)1.

RESPONSE: Pursuant to N.J.S.A. 58:11-25 et seq. and N.J.A.C. 7:9-2.1 et seq., individual subsurface disposal systems with a flow of less than 2000 gallons per day do not require approval by the Department.

COMMENT: "Additional flow" should be added to the proposed "connection" definition and defined as, "over and above the flow from an existing use on the effective date of the regulations".

RESPONSE: The concept of regulating "additional flow" as opposed to total flow from a project has been rejected by the Department because it would not permit the Department to adequately control sewer connections and would allow for infinite incremental expansions of less than 2000 gallons per day.

N.J.A.C. 7:14A-12.2 General policy and purpose

COMMENT: It is not necessarily true that a treatment facility receiving flow in excess of its design capacity will discharge improperly treated waste. Proper engineering and unit maintenance could easily allow a facility to exceed design flow and still discharge effluent in conformance with permit requirements.

RESPONSE: If the flow is greater than that specified in the applicable NJPDES permit, the treatment facility is in violation of the permit. The flow is controlled by the parameters of the NJPDES permit and not by design capacity. Design capacity is one of many factors considered when determining the permit conditions and a failure to meet any one condition is a violation of the permit.

N.J.A.C. 7:14A-12.4 Activities for which a treatment works approval is not required

COMMENT: Although projects meeting the criteria of N.J.A.C. 7:14A-12.4 are not required to obtain treatment works approvals from the Department, approvals from the respective domestic treatment works are required. Requiring such approvals from the domestic treatment works places a great burden on them because they have limited resources. Since the rules also require a treatment facility to take steps toward treating additional flow when it reaches 80 percent of its design capacity, individual connections of 2000 gallons per day should not affect the plant's ability to meet its effluent requirement.

RESPONSE: The discharger has the primary responsibility of limiting incoming wastewater and therefore must approve each connection. If the resources are not presently available to administer this requirement, such resources must be obtained. The capacity assurance program, which requires that steps be taken toward treating additional flow when a facility reaches 80 percent of its design capacity, has nothing to do with the requirement that all connections be approved by the domestic treatment works.

COMMENT: An apparent loophole in the proposed 2000-gallon threshold would allow developers of single-family homes, duplexes, rowhouses, clusters, etc. to avoid a State permit by requiring aggregation of flows for each building, but not for projects as a whole. Thus a proposed development of 100 detached houses, each with a separate connection (and flow of less than 2000 gallons) would not need a State permit. Encouraged in this way to make multiple connections, this type of development would put more strain on old sewer mains than the single, large connection from a multi-storied building which would need the State permit. Whenever possible, developers should be encouraged to aggregate their flows before connecting to the City's collection system.

RESPONSE: The rule states that a treatment works approval is not required for "building, installing, modifying or operating any sewer connection which links any single building to a (municipal) domestic treatment works and through which an aggregate of less than 2000 gallons per day of waste flows by gravity". When there is no ban in effect, treatment work approvals, as the commenter points out, are not needed for connections of single family homes or other detached residences. When there is a ban, the design flow has to be below 400 gallons per day and the tax lot has to have been in existence prior to the effective date of the ban in order to be exempt from the ban. See N.J.A.C. 7:14A-12.22(b)6.

COMMENT: According to the Municipal Utilities Authority Statute (N.J.S.A. 40:14B-1 et seq.), and service agreements with participating municipalities, it appears that a regional sewage authority is limited to the responsibility of providing adequate conveyance and treatment facilities and not empowered to issue approvals of individual house connections.

RESPONSE: N.J.S.A. 40:14B-1 et seq. authorizes sewage authorities to do much more than provide adequate conveyance and treatment facilities. Such authorities are empowered, among other things, to sue and be sued, to acquire, hold, use and dispose of its service charges and other revenues; to acquire, rent, hold, lease as lessor, use and dispose of personal property; acquire by purchase, gift, condemnation or otherwise, real property; to establish an inspection program on all on-site wastewater systems installed within the district, to enter into contracts, to extend credit and make loans and approve all facilities for the collection, treatment and disposal of sewage within a district. The sewer authority, as discharger and NJPDES permittee, is responsible for controlling all connections and introduction of wastewater into its facilities.

The Water Pollution Control Act at N.J.S.A. 58:10A-6(i) authorizes all owners of municipal treatment works to prescribe terms and conditions, consistent with applicable State and Federal law, upon which pollutants may be introduced into such works, and to exercise the same right of entry, inspection, sampling and copying with respect to users of such works as are vested in the Commissioner by that Act or any other provision of State law. N.J.S.A. 58:10A-6(h) authorizes the permittee to establish an effective regulatory program that can include issuing approvals of individual house connections.

COMMENT: It should not matter whether the flow is by gravity or pump, if it is under 2000 gallons per day it should not need DEP approval. Installation of a pump in an individual home would best be reviewed by the local code enforcement officer or building inspector.

RESPONSE: The use of a pump, as opposed to gravity, enables wastewater to be transmitted to a distant facility. It is therefore deemed to be an extension of the existing service area and as such must be approved by the Department.

COMMENT: By exempting only those septic systems that receive less than 400 gallons per day of domestic waste, the Department must assess the economic impact of such a change on the regulated public, its ability to administer the program effectively and timely and the fact that sewerage authorities simply do not want to become involved with septic systems. Should it be presumed that the existing Chapter 199, 100 gallon per person per day threshold for single family dwellings will be in effect, until such time as the Chapter 199 rules are updated? This being the case, it is conceivable that single family dwellings would have to apply for a sewer connection permit, when constructing an individual septic system, should more than five people reside in this household. In contrast, under the draft proposed Chapter 199 regulatory changes, a single family dwelling with more than three bedrooms would be required to apply for a sewer connection permit. If this is the intent of the Department, it must be more clearly stated in the rules so that the public may comment on such a proposed change. If this is not the intent of the Department, the rules should exempt from the requirements for a sewer connection permit all sub-surface disposal systems (septic systems) serving one or more households, as opposed to using a gallonage threshold.

RESPONSE: For areas not subject to connection bans, the 400 gallon per day limitation has been changed back to 2000 gallon per day. The Department had expected N.J.A.C. 7:9-2.1 et seq., Septic Systems, to have been revised by now and to have required the use of the 400 gallons per day figure. Since N.J.A.C. 7:9-2.1 et seq. has not been revised yet, the Department will leave septic systems at their previously exempted size of 2000 gallons per day. N.J.A.C. 7:14A-12.4(a)3 has been amended to read, "building, installing, modifying or operating a septic system or other subsurface disposal system to serve a single realty improvement receiving less than 2000 gallons per day of domestic wastes, that is subject to and in compliance with P.L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.)."

7:14A-12.7 Ninety day limitation on Department

COMMENT: By what authority does the Department exempt itself from the 90 Day Rules when reviewing projects funded pursuant to Section 201 of the Federal Clean Water Act? The 90 day limitation on the Department for approval of treatment works must be consistent for all projects and the Department should have no discretion to exempt themselves from this requirement for certain types of facilities.

RESPONSE: N.J.A.C. 7:1C-1 et seq., the 90 Day Construction Permit Rules, specify that only certain types of projects can and are to be controlled by the 90 day limit. N.J.A.C. 7:1C-1.2 currently excludes projects for which Federal Grants have been requested pursuant to the Federal Clean Water Act, 33 U.S.C. §1251 et seq.

7:14-12.9 Request for endorsement

COMMENT: It should not be the applicants' responsibility to assure the Department that a treatment facility is meeting its NJPDES permit requirements. The private developer should not be used to enforce a Department program. It is recommended that the proposed rules require a utility authority to report all new "hook-ups" monthly, or at the same interval as it may report flow data to the Department.

RESPONSE: The applicant does not have to assure the Department that a treatment facility is meeting its NJPDES permit requirements. The applicant must obtain a certification from the NJPDES permittee that the treatment works is currently complying with its permit requirements and will continue to do so even with the additional flow from the proposed project.

COMMENT: Since projects with flows of less than 2000 gallons per day do not have to be approved by the State when there is no connection ban in place, one Authority feels that to require the applicant to submit a request for an endorsement to the affected sewage authority and a copy to the Department is unnecessary and would add to everybody's paperwork.

RESPONSE: If a sewer connection ban has not been imposed and the wastewater generated is less than 2000 gallons per day, a copy of the endorsement is not required by the Department.

7:14A-12.12 Applications for construction, installation, or modification of treatment works (Stage 2)

COMMENT: Requiring a letter of appointment from the applicant is unnecessary. As with a municipality or sewerage authority, the engineer will be an employee of the "applicant" and therefore not appointed. The rule could be rewritten to indicate that the signing of the application forms by a responsible official of the applicant constitutes an endorsement and approval of the plans and specifications by the local unit.

RESPONSE: Knowing that the applicant is not always a municipality or sewage authority, a letter of appointment is needed to clarify who is the responsible engineer. It makes no difference in the case where the engineer is an employee of the applicant. Whether an entity appoints an employee or an outside consultant to carry out an assignment, the fact remains that someone was assigned a specific responsibility.

COMMENT: Requiring the design engineer to certify that sufficient capacity exists in downstream sewers is not economically feasible and unreasonable to expect. The responsibility of assuring that flows can be safely transported and treated lies with an engineering study commissioned by the applicant or the sewage facility's engineer.

RESPONSE: The proposed rules have been amended to require only a statement by a licensed professional engineer that sufficient capacity exists in the downstream sewers.

COMMENT: The rules should be rewritten to provide that the endorsement of an application by the local or regional authority is an approval and an acknowledgement that sufficient capacity does exist in downstream sewers and pump stations.

RESPONSE: If the acknowledgement is contained in the certification, the Department's requirements will be considered to have been satisfied.

COMMENT: The term "project" as used in N.J.A.C. 7:14A-12.12(d), should be replaced with the phrase "treatment works for sewer connection"; thus, the last section would then read, "... water quality management planning agencies shall determine that 'treatment works for sewer connections' are consistent with 208 Areawide Plans."

RESPONSE: This section cannot be amended as suggested. The scope of review for conformity to 201 Facilities Plans and 208 Areawide Plans extends beyond the actual physical connection and includes impacts to environmentally sensitive areas and other issues. Hence, the entire project must be consistent with applicable plans.

COMMENT: How can the Department justify lowering the requirement of obtaining a consistency determination to the 400 gallons per day (gpd) figure? What criteria will be used to determine consistency? Has the Department assessed the added burden the additional consistency determinations will have on the Department in terms of processing delays, added costs, staff time, administrative expenses, on municipalities, the 208 planning process and the regulated public? The Department currently has other rules already requiring such a determination.

RESPONSE: The 400 gpd figure only applies to applications for exemptions from a sewer connection ban. N.J.A.C. 7:14A-12.1 et seq. does not address the criteria used for consistency determinations but this requirement was always present for exemptions to sewer connection bans at N.J.A.C. 7:9-13.6(b). Procedure and criteria for such determinations are found in N.J.A.C. 7:15-1.1 et seq. and the relevant Areawide Water Quality Management Plans.

N.J.A.C. 7:14A-12.14 Criteria for approval of building, installing or modifying treatment works (Stage 2)

COMMENT: The proposed changes to N.J.A.C. 7:14A-12.14(a) are not justified and provide the Department with unnecessary discretion to require anything of an applicant that it deems to be necessary. The Department is urged to change the wording of this subsection from "... shall not issue a treatment works approval unless:" to read "the Department shall issue a treatment works approval if:"

RESPONSE: Circumstances vary so much that the Department can more effectively control the criteria for approvals by using the wording as proposed. It would be impossible to identify all approvable methods of treatment of wastewater. Also, all methods are not appropriate under all circumstances.

COMMENT: How is an applicant to determine whether or not its project "has the potential" for preventing, abating, and controlling water pollution? This requirement at N.J.A.C. 7:14A-12.14(a)2 is not realistic and should be deleted. Against what does the Department propose to measure this requirement and is it even relevant?

RESPONSE: This requirement is necessary to promote the use of conservation and pollution control techniques. Treatment works approvals are only issued to facilities that are capable of meeting their NJPDES permit conditions. The Department will measure the water pollution control issues of a facility against its ability to continuously meet the standards and conditions set forth in its NJPDES permit.

COMMENT: N.J.A.C. 7:14A-12.14(a)4 is not needed since the professional engineer for the applicant is already required to certify that these requirements are being met and the sewage authority or municipality must also agree that the proposed treatment works is in fact in compliance with the applicable rules. This paragraph should be deleted.

RESPONSE: The Department must have the authority and the opportunity to review the professional engineer's certification.

COMMENT: How is the applicant to judge whether or not it is in compliance with all other requirements of N.J.A.C. 7:14A-12.1 et seq., as required by N.J.A.C. 7:14A-12.14(a)6? What are all these requirements and what does the Department expect the applicant to comply with? If these cannot be spelled out in specific terms, the Department should not expect the applicant to satisfy the requirements of this entire subchapter.

RESPONSE: The requirements are set out in N.J.A.C. 7:14A-12. It is expected that the individual responsible for the preparation of the application has a working knowledge of these requirements and a copy of this subchapter.

7:14A-12.16 Expiration of treatment works approval (Stage 2)

COMMENT: The Department should add language to provide for the authority to issue an extension (for a treatment works approval) for an additional two years without the necessity for submission of a new application. This would address situations where the applicant is delayed in proceeding with his/her development for reasons beyond their control.

RESPONSE: The Department will consider an extension of time for such delays on a case by case basis.

7:14A-12.17 Approval of operation of treatment works (Stage 3)

COMMENT: This section should be modified to be consistent with the July 1, 1984 changes to the sewer extension permit requirements which provided for a joint construction and operating permit for treatment works approval. As proposed, this section is inconsistent with the procedures now being carried out by the Department under the 1984 changes to the progam.

RESPONSE: N.J.A.C. 7:14A-12.17(d) already provides the Department with the option of issuing either a joint construction and operation permit or issuing separate permits for a treatment works approval. It should be noted that this section is essentially unchanged from the current rules. However, the Department's intent is not to be consistent with the July 1, 1984 rules, but to revise and improve them, thereby rendering them more effective than the July 1, 1984 rules.

COMMENT: The proposed revisions at N.J.A.C. 7:14A-12.17(c) are unjustified and strengthen the Department's powers by replacing "may require" with "shall comply". This provides no predictability for applicants that need to know what the permit requirements are. It is suggested that the Department publish as part of these rules all standard conditions that are normally applicable to the issuance of approvals by the Department. The adoption of these rules should include the adoption of those stated conditions.

RESPONSE: There is no substantial change here from previous rules. The Department cannot predict all specific permit requirements without seeing the individual application and knowing the circumstances involved with a particular sewage treatment plant.

COMMENT: It is suggested that when the Department proposes to issue a permit with special conditions, that the applicant be notified of those conditions prior to the issuance of the permit so that the applicant may comment on those conditions or negotiate an agreement as to the language of the conditions. This would be the equivalent of issuing a draft permit in the NJPDES program. This would be far better than having a permit issued with special conditions to which the applicant may find itself unable to respond, thereby giving a permit that cannot be implemented.

RESPONSE: Due to the 90 day review period, there is not enough time to negotiate permit conditions. The applicant may request a permit modification if there is a disagreement with a permit condition. Early in the modification process, discussion concerning permit conditions could take place.

7:14A-12.20 Capacity assurance program

COMMENT: The capacity assurance program, as established by these rules, appears to provide an effective mechanism for ensuring adequate capacity. It further places primary responsibility for this planning process on the local municipalities for the development of a plan for its growth and on the sewage authority for providing adequate capacity/treatment as needed, consistent with the municipality's plans for development. Why has the NJDEP now determined that this procedure must also be supplemented by imposing the additional requirement at N.J.A.C. 7:14A-12.4(a)(1)(i) of having a sewage authority review and approve all applications for individual connections to the local sewage system?

RESPONSE: As the NJPDES permittee, the treatment works is ultimately responsible for controlling all connections and introduction of wastewater into its facilities.

COMMENT: In certain instances, each of the five components of a capacity assurance program in N.J.A.C. 7:14A-12.20(a) may not apply. Alternately, implementation of one of the measures, such as "construction of improvements", may negate the need for implementing certain of the other measures. Therefore, it is suggested that the language in this section of the rules be revised to note that "As a minimum, this program shall consider or may include any or all of the following mitigating measures:" (followed by the list of measures included in the proposed rule).

RESPONSE: The Department has added the words "where appropriate" to N.J.A.C. 7:14A-12.20(a)(2). Any further qualification is unnecessary.

COMMENT: One Authority's problem is not flow capacity, but effluent quality. The primary problem is biochemical oxygen demand (BOD) and suspended solids (SS) removal in the primary settling tank prior to land application. The rules should allow the local unit the discretion to approve new connections based upon the quality of wastewater to be received to the end that the BOD and SS levels are not significantly adversely affected. Flow as it affects BOD and SS loadings would be monitored by the Authority.

RESPONSE: Flow is regulated in order to ensure that a treatment works does not receive sewage in amounts which may compromise its ability to treat it to meet the effluent standards. If current effluent quality is not meeting standard requirements, the Department finds no justification in permitting additional flow to be received by the treatment facility. Effluent quality is a permit condition and, if violated, must result in the imposition of a ban. There is no point in allowing the discharge of additional wastewater which does not meet effluent standards just because the facility has the hydraulic capacity to do so.

COMMENT: The function of a regional utilities authority is to transport and treat effluent from various participants, including sewerage authorities, municipal utilities authorities, sewerage departments and private investor-owned sewer companies. Even though the regional utilities authority may hold the NJPDES permit, it does not have the local contact necessary to implement water conservation measures. The local agencies shuld be responsible in this area.

RESPONSE: Regional authorities as well as municipalities should both be equally concerned with water conservation measures. However, as the NJPDES permit holder the ultimate responsibility must remain with the regional authority.

7:14A-12.21 Sewer connection bans

COMMENT: The Department should include in this section a statement that "nothing in this subsection shall be construed to prevent a municipality from its obligation to process, and act upon, applications for development under the Municipal Land Use Law". Unless such a statement is added, towns will (as they have in the case of the water supply rules) impose moratoriums on the processing of development applications and on the issuance of building permits.

RESPONSE: This chapter should not be construed by a municipality as a basis to discontinue the processing of applications in accordance with other laws or ordinances. While applications can be processed under the Municipal Land Use Law, such processing must cease at some point under the connection ban rules. If a municipality stops processing the applications entirely, however, it will not be able to determine whether or not a ban exemption can be granted.

COMMENT: The imposition, at N.J.A.C. 7:14A-12.21(a)3, of the stringent penalty of a sewer connection ban because of what may be a minor, technical and, especially important, a non-effluent condition of a NJPDES permit is going too far. If there are conditions in the NJPDES permit which have nothing to do with the effluent and/or pollution of the ground and/or surface waters, there are provisions in the Statute and the rules which provide for penalties and/or fines which should be sufficient. The imposition of a sewer ban for these type of violations would not be consonant with the intent and purpose of the Water Pollution Control Act and the NJPDES program.

RESPONSE: All conditions contained in the NJPDES permit will either directly or indirectly effect effluent quality and/or pollution of the waters of the State and may requires the imposition of a sewer ban to assure that conditions are not worsened in any way.

COMMENT: The Department is urged to delete the phrase "or more stringent than" from N.J.A.C. 7:14A-12.21(b)2. By allowing such discretion, the Department is advocating that inconsistent and conflicting requirements be enforced by municipalities or sewage authorities. The municipality or sewage authority should be required to adopt by ordinance or resolution, exemption criteria identical to that adopted by the Department. Municipalities or sewage authorities should be required to "within 90 days of the institution of the ban, prepare a program to upgrade and or expand their treatment facility, which program shall address their means of securing financing for the project". If the Department requires that such a program be instituted and financed within a certain period of time and the municipality fails to carry out such a program, the affected developers will have recourse to take action against such recalcitrant municipalities.

One commenter believes that all requests for exemptions should be handled solely by the DEP to eliminate any discrepancies between the exemption criteria of a regional sewage authority and its participating municipalities.

RESPONSE: Although municipalities are required to adopt sewer connection ban exemption criteria equivalent to or more stringent than those contained in N.J.A.C. 7:14A-12.22(b)2, N.J.A.C. 7:14A-12.22(b)4 requires the Department's approval of the sewer connection ban ordinance or resolution and the exemption criteria. The Department can not accept criteria less stringent than its own and does not have the authority to deny municipalities the right to adopt more stringent criteria. This latitude is granted to the local government unit to avoid requiring mandatory adoption of the exact criteria utilized by the Department when in some instances a particular municipality may feel it has a unique situation not adequately addressed by the Department's criteria. No exemption can be granted, however, by a local government unit or a sewage authority without the final approval of the Department. It is therefore not necessary for all exemption requests to be handled solely by the Department.

COMMENT Does the adoption of this proposal have any effect on previously existing treatment works approvals issued by the Department or other connection permits issued by an MUA?

RESPONSE: The adoption of these rules will have no effect on previously issued, duly authorized permits.

7:14A-12.21(e)4

COMMENT: The summary states, "If applicable, affected sewage authorities must continue to make improvements to their facilities to meet the July 1, 1988 deadline for compliance with the Federal Clean Water Act", while N.J.A.C. 7:14A-12.21(e)4 states "all dates for compliance in a NPDES or NJPDES permit or a judicially or administratively imposed compliance schedule have been or will be met," in order to obtain a recession or modification of a sewer ban. Does this mean that a ban could be lifted if a demonstration is made that all compliance dates on the way to the July 1, 1988 deadline have been met? Until now, DEP policy has been a categorical "no" until the deadline is actually reached.

RESPONSE: Under certain circumstances when interim effluent limits and compliance dates agreed to by the Department are being met, at least partial relief from a sewer ban may be granted.

7:14A-12.22 Sewer connection ban experience.

COMMENT: Reference to a building permit or final subdivision approval in N.J.A.C. 7:14A-12.22(b) should be changed to recognize "preliminary approval provided that construction of improvements has taken place". The rationale for this change is that certain projects could have much more hard costs invested in improvements even though only a preliminary approval has been obtained, whereas certain projects with final approval may have not invested at all in physical improvements.

RESPONSE: The Department agrees. The words "preliminary or [final subdivision] approval provided that construction of improvements has taken place" have been added in response to this comment.

COMMENT: November 3, 1986, is given as a cutoff date, prior to which, if a building permit or final subdivision approval is granted, the construction covered by such permits or approval may be exempt. This date would not appear to cover all future situations, particularly those where permits for buildings which are a part of the approved "committed flow" are not issued prior to the ban.

RESPONSE: For a builidng to be a part of the approved committed flow, it must be covered by an existing valid treatment works approval and as such is not affected by a sewer connection ban.

COMMENT: It appears that the use of the November 3, 1986 date is premised on the fact that local construction code officials would be aware of all approved units comprising the "committed flow" and their treatment works approval and restrict the issuance of building permits accordingly. This expectation may be somewhat unrealistic. It is recommended that date for this type of exemption be changed to the effective date of the revised rules or ban in lieu of the proposed November 3, 1986 date.

RESPONSE: Publication of the proposed rules in the November 3, 1986 New Jersey Register served as notice to local construction code officials and therefore makes the use of this date realistic. This rule reflects existing rule of the Department of Community Affairs; it is not new. November 3, 1986 is the date upon which notice was served that existing law would be enforced from that date forward.

COMMENT: N.J.A.C. 7:14A-12.22(b)1i should include the costs of financing as an expense that can be considered as part of determining whether or not to issue an exemption from a sewer ban.

RESPONSE: The cost of financing cannot be considered as a parameter for obtaining an exemption any more than the cost of the property. These are not in-ground improvements to the property but ordinary business risks.

COMMENT: The Department has defined "substantial expenditures" in N.J.A.C. 7:14A-12.22(b)1ii by setting arbitrary amounts that are too high. A determination of substantial expenditures could be better made on a case by case basis when considering the particular problems and specifics of each project in question. There should be an opportunity for consideration on a case by case analysis should it be warranted.

RESPONSE: It is necessary to have uniform criteria for determining what constitutes a substantial expenditure.

COMMENT: Public ownership is not a prerequisite for the operation of a hospital or long-term health care facility. Public ownership is not a criteria to receive a Certificate of Need from the New Jersey Department of Health. The services provided by the facility should be the basis for a determination as to whether that facility constitutes a "sufficient public need" to justify the connection of that facility to the applicable treatment works system. In N.J.A.C. 7:14A-12.22(b)3, the form of ownership is an unwarranted criteria for consideration by the Department in its evaluation as to whether a sufficient public need exists for the proposed project. The phrase "which is publicly owned or operated" should be deleted from proposed N.J.A.C. 7:14A-12.22(b)3.

RESPONSE: The Department has included this exemption for publicly owned or operated facilities such as schools, hospitals, fire houses, police stations, senior citizen housing or health care facilities. This is an intentionally narrow category covering buildings or facilities owned or operated, for example, by a municipality that expects a facility or building to be located within its own borders. A privately owned health care facility can be located anywhere; preferably, where there is no sewer connection ban. The operative words in the exemption are "publicly owned or operated" not "sufficient public need." Only after establishing that the first criterion has been met should the question of public need be addressed.

COMMENT: The rule should include an exemption to a residential development being built pursuant to a court order, judgement or settlement with respect to a Mt. Laurel lawsuit or in accordance with provisions set forth in the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

RESPONSE: Regardless of whether the project is targeted for high, moderate or low income housing, the environmental impact must be considered. The Mt. Laurel decision addresses this issue. See *South Burlington County N.A.A.C.P. v. Mt. Laurel Township,* 456 A. 2d 390, 420 (N.J. 1983).

COMMENT: The term "tax lot" in N.J.A.C. 7:14A-12.22(b)6 might better be referenced as a "building lot". Many times when a subdivision is approved, the separate tax lots are not designated nor taxes assessed until a year after the subdivision. If a ban were instituted after the perfection of a major subdivision by the filing of the final map but yet prior to the designations of the "tax lots", the lots would still be under the sewer ban. It is understood that even if the "tax lot" or "building lot" is exempt from the ban, any treatment works being constructed would still need a treatment works approval from the Department.

RESPONSE: The filing of a mpa is the last step taken to consecrate a final subdivision. This exemption is meant, predominately, for an individual house, not for a large subdivision. The "tax lot" requirement represents true individual ownership.

COMMENT: The "less than 400" threshold used in N.J.A.C. 7:14A-12.22(b)6 is inappropriate. A definition should be developed based upon the type of activity or number of dwelling units in terms of residential development.

RESPONSE: The 400 gallons per day threshold represents a determination that flow amounts less than this will not effect a system significantly enough, in most cases, to affect the reasons for a sewer ban.

COMMENT: The intent of N.J.A.C. 7:14A-12.22(b)6i is unclear. Is the Department's intent to allow for no exemptions from the sewer ban, even for individual connections less than 400 gallons per day? The Department, a municipality or sewage authority should not be allowed that discretion. This subparagraph should be deleted.

RESPONSE: Some situations may warrant such drastic action. The intent is to address a public health emergency. The Department has the authority to prevent any additional pollution whatsoever from being discharged into the waters of the State. See N.J.S.A. 58:10A-6 and 33 U.S.C. §1251 et seq.

7:14A-12.23 Application for a sewer connection ban

COMMENT: The responsibility to provide information on water conservation facilities should not be that of a local agency or authority. If a developer is interested in obtaining an exemption from a sewer connection ban, it should be the responsibility of the developer to obtain such information. It is unreasonable to expect a local agency to extend its funds for the benefit of a developer. The informtion available on water conservation plumbing could probably fill a number of bookcases.

RESPONSE: Although the installation of water conservation devices will remain a requirement and is in the best interest of the sewage authority, the requirement that a sewage authority must provide the applicant with information on water conservation plumbing has been deleted from this rule.

COMMENT: Information on water conservation plumbing may require a municipality to revise its plumbing ordinance to implement such measures. One Authority fels it is not its responsibility to get so intimately involved in the workings of municipalities that it may require plumbing code revisions to be made or review plans for water conservation. Getting involved to this degree at the local level usurps the powers of both the municipality and its plumbing department and inspectors. Large authorities do not have the time, manpower, or expertise to get involved in these kinds of matters.

RESPONSE: If a sewer connection ban has been imposed or a treatment facility has reached 80 percent of its capacity, everyone should become concerned with the water conservation questions.

7:14A-12.24 Bans in effect prior to November 2, 1987

COMMENT: Is it correct to assume that these proposed amendments would repeal N.J.A.C. 7:9-13?

RESPONSE: Yes.

7:14A-12.25 Construction only permits

COMMENT: Some commenters voiced their full support for the inclusion of the "construction only permits" section. This provision represents a realistic approach to the issue of dry sewers. If adopted, it would permit local units to require a developer to construct sanitary sewer infrastructure in anticipation of additional or expanded capacity, rather than having the other users of the system shoulder the burden of constructing that infrastructure, after the subdivision is constructed and capacity is available.

RESPONSE: The Department appreciates their support.

COMMENT: One commenter suggests that this proposed section is too limiting and that the existing language be retained to provide a more flexible approval to construct based upon the filing of a dry sewer affidavit acknowledging that the applicant is proceeding at his own risk.

RESPONSE: The past practice of issuing dry sewer permits that did not have alternate disposal means has resulted in significant hardships and litigation.

Miscellaneous Changes

N.J.A.C. 7:14A-12.22(b)3 has been changed so that the reader can understand that a certificate of need from the Health Department is required only for the health care facility and not for the other publicly owned and operated facilities.

N.J.A.C. 7:14A-12.26 has been changed to include a subsection concerning the conduct of adjudacatory hearings that was inadvertently excluded from the proposal.

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

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Actual flow" means the volume of sewage and other wastes which a domestic treatment works receives; actual flow shall be determined by the arithmetic average of the metered daily volumes of waste received at a treatment works for the preceding period of three consecutive calendar months. Where peak flows have been determined by the Department to be seasonal in nature, the seasonal peak flow period shall be used in determining actual flow.

"Adequate conveyance capacity" means

1. That in the downstream sewers, the peak dry weather flow does not *[flood the bench of the manhole]* ***exceed 80 percent of the depth of the pipe*** and the peak wet weather flow does not result in overflows or discharges from any manhole.

2. That in downstream pumping stations, with two pumps, peak dry weather flow shall be handled by one pump and in pumping stations with more than two pumps, peak dry weather flow shall be handled with the largest pump out of service, and the peak wet weather flow does not result in any overflow or discharge.

...

"Affected sewage authority" means any public or private sewage authority, municipal utilities authority, joint meeting, state agency, county, municipality, or other entity which owns or operates any sewage treatment plant or sewage collection system, into which a treatment works will discharge; or which has jurisdiction to treat or convey sewage or other wastewater in the service area in which the proposed treatment works are to be located.

...

"Applicant" means any person, corporation, government body or other legal entity who applies for a NJPDES permit, DAC, or Departmental approval pursuant to this chapter, or makes a request for an exemption from a sewer connection ban as provided for in N.J.A.C. 7:14A-12.25 and has a substantial interest in the property subject to such ban.

...

"Committed flow" or "projected flow" means the sum of the actual flow plus the sum of all flows which are anticipated from connections which have been approved but are not yet in operation. The flow to be anticipated from any such connections shall be that flow referred to in the departmental approval.

...

"Connection" means any physical or operational change to a collection system or to the plumbing or piping of any building, ***project*** facility, or other structure either proposed or existing for which a building permit or other municipal approval ***including site plan or subdivision approval*** is required, and which connects directly or indirectly to any portion of a domestic treatment works.

"Connection approval" means a treatment works approval to construct and/or operate a connection pursuant to N.J.S.A. 58:10A-6, N.J.A.C. 7:14-2.1 et seq. or 7:14A-12.1 et seq. or an approval permit to construct and operate a sewer connection.

...

"Design flow" means the average daily volume of wastewater, which a domestic treatment works was designed to treat or convey, or the maximum permissible volume of flow to a domestic treatment works as established by a NPDES permit, an NJPDES permit, or a treatment works approval, whichever permit or approval is most recently issued.

...

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

...

"Endorse" means that the sewerage authority under a Departmentally imposed ban accepts and approves of the project and that the project is in conformance with all ordinances, rules and regulations of the sewerage authority. This is not a judgement by the sewerage authority that an exemption is justified.

...

"Maximum sewage treatment capacity" means the hydraulic, biological and sludge handling capacity limitations necessary to meet the terms and conditions of the NJPDES or NPDES Permit.

...

"Participating municipality" means a municipality or other body which is a member of an affected sewage authority or which has contracted to obtain sewage treatment services from a sewage authority or other domestic treatment works.

...

"Publicly owned or operated" means owned or operated by the State, a county, a municipality, or other public body.

...

"Sewage authority" means a county sewage authority, municipal utilities authority, municipality, corporation or other legal entity which owns or operates a sewage facility.

...

"Treatment works approval" means an approval issued pursuant to N.J.S.A. 58:10A-6 and 7:14A-12.3, or pursuant to former N.J.S.A. 58:12-3.

"201 Facilities Plans" means plans for wastewater treatment facilities adopted pursuant to Section 201 of the Federal Water Pollution Control Act, 33 U.S.C. 1281.

...

SUBCHAPTER 12. REQUIREMENTS FOR A TREATMENT WORKS APPROVAL

7:14A-12.1 Scope

(a) Pursuant to N.J.S.A. 58:10A-6 and N.J.A.C. 7:14A-2.1 et seq., no person shall build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, including any "connection" as defined in this chapter, except after approval by the Department.

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

(f) In addition to any action expressly authorized by this chapter the Department shall have the authority to pursue other remedial actions under the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., or any other applicable statutes.

7:14A-12.2 General policy and purpose

(a) It is the purpose of this subchapter:

1. To establish requirements for the approval of the design, construction and operation of treatment works so that wastes are properly collected and treated before discharge; and

2. To require that all facilities subject to approval conform to any facility plan, basin plan, or areawide plan, where applicable.

(b) All domestic treatment works have a design capacity for treating sewage. When a domestic treatment works receives sewage in excess of its design capacity, it discharges improperly treated wastes; therefore:

1. The Department shall take steps to avoid pollution problems created by a domestic treatment works which received flow in excess of its design capacity.

2. In determining whether to approve the construction of a connection, the Department will consider, among other things, the committed flow to the domestic treatment works.

(c) It is the responsibility of participating municipalities and sewage authorities to carefully monitor the issuance of municipal approvals and sewage connection permits in order to prevent committed flow from exceeding design capacity, to provide for the future availability of adequate sewage treatment capacity, and to initiate appropriate action when maximum sewage treatment capacity is being approached. Whenever the participating municipalities and sewage authorities fail in this responsibility, the Department may take whatever action necessary to assure compliance, including the imposition of a sewer connection ban as outlined in this subchapter.

7:14A-12.3 Activities for which a treatment works approval is required

(a) Except as provided in N.J.A.C. 7:14A-12.4, no person shall engage in the following activities except in conformance with one of the following written approvals from the Department:

1. Treatment works approval—Before building, installing, modifying, or operating any treatment works, a treatment works approval shall be obtained from the Department. The treatment works approval shall consist of Stages 1, 2, and 3 as prescribed in N.J.A.C. 7:14A-12.10 through 12.19.

2. Connection Approval—A form of treatment works approval for connections to a domestic treatment works as defined in N.J.A.C. 7:14A-1.9 and subject to the provisions of N.J.S.A. 13:1D-29 et seq., Construction Permits. Approvals, permits, service contracts or reservations of capacity issued or agreed to by any participating municipalities or sewage authorities do not constitute a connection approval required by this subchapter.

7:14A-12.4 Activities for which a treatment works approval is not required

(a) The Department, shall not require a treatment works approval from the Department for the following activities:

1. Building, installing, modifying, or operating any sewer connection which links any single building to a domestic treatment works and through which an aggregate of less than 2,000 gallons per day of waste flows by gravity.

i. All projects so excluded shall receive a sewer connection approval from the domestic treatment works into which the proposed project will discharge and such approval shall be in accordance with criteria at least as stringent as those of this subchapter.

ii. Notwithstanding the terms of (a)1 and (a)1i, above, the Department shall have the authority to regulate, at its discretion, any sewer connection or other treatment works when a sewer ban is in effect or when an emergency situation so requires.

2. Building, installing, modifying or operating any part of a separate storm sewer system; or

3. Building, installing, modifying, or operating a septic system or other subsurface disposal system, ***serving a single realty improvement*** receiving less than *[400]* ***2,000*** gallons per day of domestic wastes, that is

to and in compliance with the requirements of P.L. 1954 c.199 (N.J.S.A. 58:11-23 et seq.).

7:14A-12.5 Construction or operation inconsistent with terms of a treatment works approval

(No change in text.)

7:14A-12.6 Modification or revocation of treatment works approvals

(a) The Department may modify, suspend, or revoke a treatment works approval in whole or in part for cause, including but not limited to the following reasons:

1. Violation of any term or condition of the treatment works approval;

2. Obtaining a treatment works approval by misrepresentation or failure to disclose fully all relevant facts;

3. The nonconformance of the facility with any applicable facility, basin, or areawide plans; or

4. If such treatment works approval is inconsistent with any duly promulgated effluent limitation, permit, regulation, statute, or other applicable state or federal law.

(b) The Department may also modify treatment works approvals in accordance with N.J.A.C. 7:14A-2.12.

7:14A-12.7 Ninety day limitation on Department

(a) The Department shall approve, condition, or disapprove an application for a treatment works approval pursuant to this subchapter within 90 days after a completed application has been accepted by the Department.

(b) The Department shall have longer than 90 days, if necessary, to review projects funded pursuant to Section 201 of the Federal Act.

(c) Where the Delaware River Basin Commission has jurisdiction over a project, it shall be the goal of the Department to submit the application for such project to the DRBC within 90 days after the receipt of the completed application. The Department shall make a final determination on such application within 30 days after DRBC approves it.

(d) Projects subject to N.J.S.A. 13:1D-29 (90-day law) shall not be subject to the time period requirements of this section but shall be subject to the provisions of N.J.S.A. 13:1D-29 et seq. and N.J.A.C. 7:1C-1.1 et seq.

7:14A-12.9 Request for endorsement

(a) When discharging into a New Jersey Pollution Discharge Elimination System (NJPDES) permitted facility, the applicant shall submit a certification by the NJPDES permittee, for the facility into which the proposed project will discharge, that the domestic treatment works is currently complying with its NJPDES permit requirements and should continue to do so even with the additional flow from the proposed project.

(b) The applicant shall submit a request for endorsement to the affected sewage authority and submit a copy of this request to the Department in accordance with N.J.A.C. 7:14A-2.1(k).

7:14A-12.11 Preliminary review of applications for treatment works approval (Stage 1)

(a) Persons who propose to build, install, or modify treatment works, which discharge into the waters of the State, shall:

1. Submit to the Department information and documents required in the Department "Project Report Requirements" (July, 1972 or as amended);

2. For DSW new sources, obtain a Discharge Allocation Certificate from the Department (the Department shall determine the waste load allocation where applicable);

3.-4. (No change.)

(b) The Department shall authorize treatment works which discharge into waters of the State to proceed to Stage 2 if the requirements in (a) above are satisfied.

(c) The Department, at its discretion, may waive the requirements of this section at the request of the applicant. If at the request of an applicant such a waiver is given, the applicant bears the responsibility of designing its treatment works to meet all the Department requirements for a Stage 2 application pursuant to N.J.A.C. 7:14A-12.12.

(d) The Department shall not require a preliminary review for any sewer connection, interceptor sewer or pumping station.

7:14A-12.12 Applications for construction, installation, or modification of treatment works (Stage 2)

(a) Persons who propose to build, install, or modify treatment works shall submit to the Department in the manner prescribed by this subchapter:

1. An application for the treatment works approval on forms available from the Department; forms may be obtained from: Assistant Director for Water Quality Management, Division of Water Resources, CN-029, Trenton, New Jersey 08625;

2. An endorsement of the treatment works from the affected sewage authority and/or the municipality in which the proposed treatment works will be located, as required by N.J.A.C. 7:14A-12.9;

3. The documents and information required by N.J.A.C. 7:14A-12.13;

4. A certification by a licensed professional engineer approved by the N.J. Board of Professional Engineers and Land Surveyors to practice in New Jersey, stating that the proposed treatment works are adequate to meet all applicable Federal and State effluent limitations, and meet the requirements for the preparation and submission of plans for Sewer Systems and Wastewater Treatment Plants, N.J.A.C. 7:9-1, where applicable; and

5. Preliminary review or waiver issued by the Department pursuant to N.J.A.C. 7:14A-12.11 (Stage 1).

(b) Applications and other submissions for treatment works approval shall be submitted by a licensed professional engineer approved by the N.J. Board of Professional Engineers and Land Surveyors to practice in New Jersey. All submissions must bear such engineer's seal and must be preceded or accompanied by a letter of appointment from a responsible official of the applicant, certifying that the engineer has been duly authorized to prepare the submissions.

(c) Applications shall be signed by a responsible official of the applicant or by an authorized agent, provided that an application signed by such agent shall be accompanied by a certified copy of the authorization.

(d) In order to ensure that sufficient capacity exists and that new projects will not cause environmental degradation, applications for treatment works approvals for sewer connections shall contain a statement by *[the design]* ***a licensed professional*** engineer that sufficient capacity exists in the downstream sewers or pumping stations. The 201 sewerage agency shall certify that the project is in conformance with the applicable 201 Facilities Plan and the owner of the sewage treatment facility shall certify that with the addition of the project, the approved design capacity will not be exceeded. In addition, water quality management planning agencies shall determine that projects are consistent with 208 Areawide Plans.

(e) Upon receipt of endorsement pursuant to N.J.A.C. 7:14A-12.9, the applicant shall send the application, endorsements, and other documents and information to:

Bureau of Municipal Waste Management
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:14A-12.13 Applications for treatment works approval (Stage 2)

(a) An applicant for a treatment works approval shall submit the following information and documents to the Department:

1. Name, address and telephone number of applicant;

2. Name, address and telephone number of the principal officers and the registered agent of the applicant;

3. Name of receiving water;

4.-5. (No change.)

(b) (No change.)

7:14A-12.14 Criteria for approval of building, installing or modifying treatment works (Stage 2)

(a) The Department shall not issue a treatment works approval unless:

1. A licensed professional engineer has certified the facility in accordance with N.J.A.C. 7:14A-12.12;

2. The Department has determined that the proposed treatment works has the potential for preventing, abating, and controlling water pollution;

3. Where applicable, the request for endorsement of the treatment works has been submitted to the affected sewage authority and the municipality in which the project will be located except as provided otherwise by N.J.A.C. 7:14A-12.9;

4. The proposed treatment works is in compliance with the rules and regulations for preparation and submission of plans for Sewer Systems and Wastewater Treatment Plans, N.J.A.C. 7:9-1, where applicable;

5. The proposed treatment works is in compliance with applicable facilities, basin and areawide plans; and

6. The applicant otherwise satisfies the requirements of this subchapter.

7:14A-12.16 Expiration of a treatment works approval (Stage 2)

A treatment works approval (Stage 2) pursuant to N.J.A.C. 7:14A-12.12 to 12.16 shall expire unless building, installing, or modifying of such treatment works has begun within two years after the date of issuance of the treatment works approval.

7:14A-12.17 Approval of operation of treatment works (Stage 3)

(a) No person shall operate a treatment works except upon final approval of the Department.

(b) The Department may approve operation of treatment works if:

1. The applicant has obtained a treatment works approval (Stage 2) pursuant to N.J.A.C. 7:14A-12.12. through 12.16;

2. A licensed professional engineer certifies that the treatment works is built in conformance with the plans approved pursuant to N.J.A.C. 7:14A-12.12. through 12.16 (Stage 2);

3. Where applicable, an operator licensed in accordance with N.J.A.C. 7:10-13.1 et seq. has been engaged by the applicant to operate the treatment works;

4. The applicant has submitted an operations and maintenance manual for the treatment works, where applicable; and

5. "As-built" plans and specifications have been submitted (if different from the approved plans).

(c) Where necessary for the prevention of pollution or protection of the environment, the applicant shall comply with any special conditions established by the Department for the operation of a treatment works.

(d) The Department, at its discretion, may approve the building, installing, or modifying of a treatment works pursuant to N.J.A.C. 7:14A-12.12 through 12.16 (Stage 2) and the operation of a treatment works pursuant to this section, at the same time.

7:14A-12.19 Validity of permits to Construct and Operate

(a) A Permit to Construct and/or Operate previously issued to the owner or operator of a treatment works pursuant to N.J.S.A. 58:11-10 or N.J.S.A. 58:12-3 shall constitute a treatment works approval for the purpose of this subchapter. The permit and any conditions thereto shall continue in effect until such time as the permit is revoked or amended.

7:14A-12.20 Capacity assurance program

(a) Whenever the committed flow reaches or exceeds 80 percent of the permitted capacity of a treatment works, the participating municipalities and authorities shall submit to the Department a program to be implemented in order to prevent an overloading of their facilities or a violation of their NJPDES Permit. This program shall include the following:

1. Implementation of water conservation measures;

2. Reduction of infiltration and inflow ***where appropriate***;

3. Implementation of a report on measures to maximize treatment plant capacity at a minimum cost (max./min. report);

4. Construction of improvements; and

5. The preparation for the imposition of a self-imposed sewer connection ban, as required by N.J.A.C. 7:14A-12.21, when committed flow reaches 100 percent of design capacity.

(b) If the participating municipalities and authorities do not comply with (a) above, then the Department may issue a warning notice. A warning notice shall require the sewage authority to prepare and submit a program pursuant to N.J.S.A. 58:10A 6(h)(3) and (a) above within 45 days of receipt of the notice.

(c) Upon approval by the Department of a program submitted pursuant to (a) or (b) above, the sewage authority and participating municipalities shall give public notice of the program in a manner designed to inform local residents, developers, the local planning board(s) and other affected persons. Such notice shall include at least the following information:

1. The name, mailing address and telephone number of the treatment works;

2. The design capacity of the treatment works;

3. The committed flow to the treatment works;

4. A statement that the treatment works is approaching design capacity and that a connection ban could be imposed when committed flow reaches 100 percent of design flow.

5. Description of service area including participating municipalities.

(d) Neither this section nor the provisions of N.J.A.C. 7:14A-12.21 shall apply to industrial treatment works.

7:14A-12.21 Sewer connection bans

(a) Whenever any of the following events occur:

1. Committed flow to the treatment works has reached 100 percent of its design capacity; or

2. Adequate conveyance capacity is not available; or

3. The treatment works is operating in violation of a noneffluent condition of its NJPDES Permit, a court imposed order, an administrative order, or an administrative or judicial consent order; or

4. For a three month period the treatment works has discharged effluent which violates any of the following as determined by the arithmetic average of the permit parameters for a period of three consecutive calendar months; N.J.A.C. 7:9-4 et seq.; standards promulgated by the Delaware River Basin Commission, Interstate Sanitation Commission or Hackensack Meadowlands Development Commission; or the effluent limitations set forth in its NPDES permit, NJPDES permit, or approval to operate; then the participating municipalities and affected sewage authority shall do the following:

i. Cease the further approval of sewer connections to the treatment works;

ii. Condition the approval of any building projects (by way of preliminary or final subdivision approval, or other form of approval), which will require or modify a sewer connection, upon the terms and requirements of this subchapter;

iii. Give notice of the sewer connection ban to the Department, to residents of the affected area, landowners therein, local planning boards, and other persons or legal entities affected by the ban within 10 days of the effective date of the ban and at intervals of no more than six months in a manner reasonably expected to be received by such persons; and

iv. Institute a Departmentally approved program in compliance with N.J.A.C. 7:14A-12.20. If such a program has already been instituted, then they shall submit to the Department a program to institute additional measures and shall, upon Department approval, institute those measures. Such a program may include more severe restrictions on sewer connections to the treatment works than those contained in these regulations.

(b) Where a sewer connection ban is required by this section, the affected sewage authority and participating municipalities shall issue sewer connection approvals and endorse sewer connection applications in the affected area only after the following requirements have been met:

1. A sewer connection ban has been implemented;

2. Sewer connection ban exemption criteria equivalent to or more stringent than those contained in N.J.A.C. 7:14A-12.22 have been adopted;

3. The affected sewage authority and the participating municipalities have granted preliminary approval to a sewer connection ban exemption pursuant to 2 above; and

4. The sewer connection ban ordinance, or resolution, and the exemption have been approved by the Department.

(c) Whenever the participating municipalities and/or affected sewage authority have failed to comply with (a) or (b) above, the Department shall cease issuing treatment works approvals and may direct the implemention of a sewer connection ban. The Department may also impose a sewer connection ban, issue administrative orders, assess civil administrative penalties, seek judicial relief, or take any other enforcement action it deems appropriate.

(d) The effective date for any sewer connection ban required to be imposed by this subchapter or imposed by the Department pursuant to this subchapter shall be the date upon which the first of any one of the following conditions first occurs:

1. The date of non-compliance with a NJPDES permit condition other than an effluent limitation, or

2. The due date of the Discharge Monitoring Report which would indicate non compliance as indicated in N.J.A.C. 7:14A-12.21(a), or

3. The date of identification of a lack of adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9.

(e) Any sewage authority or participating municipality may apply for a rescission or modification of a sewer connection ban implemented pursuant to this subchapter, at such time as it can show that:

1. Committed flow to the treatment works does not exceed permitted flow;

2. There is adequate conveyance capacity;

3. The effluent from the domestic treatment works consistently meets all applicable effluent limitations in the facility's NPDES or NJPDES permit and the domestic treatment works approval as determined by the arithmetic average of the permit parameters for the preceding period of four consecutive calendar months; and

4. All dates for compliance in a NPDES or NJPDES permit or a judicially or administratively imposed compliance schedule have been or will be met.

7:14A-12.22 Sewer connection ban exemptions

(a) Each affected sewage authority, upon the institution of a connection ban, shall adopt exemption criteria at least as stringent as those included in this subchapter in order to provide relief to persons who suffer substantial harm due to the timing of a ban or when there is a compelling public need for a proposed facility. The burden of proof is upon the applicant in all exemption requests under this section.

1. The Department and each affected sewage authority shall presume that all applicants have knowledge of the sewer connection ban after the effective date of the sewer connection ban.

2. No exemption shall be granted to any party who subsequently proceeds with a proposed project and thereby increases or creates the hardship which is the basis for the requested exemption.

3. An applicant for an exemption shall submit a plan for water conservation plumbing, and the implementation of such a plan, as approved by the Department, shall be a condition of the exemption.

(b) An applicant for an exemption must prove to the satisfaction of the affected sewage authority and the Department that it meets any of the following criteria:

[1. If the municipality, prior to November 3, 1986 has issued a building permit or final subdivision approval, the construction covered by such permit or approval may be exempt.]

1. If the municipality, prior to November 3, 1986, has issued a building permit, or preliminary or final subdivision approval, provided that construction of improvements has taken place, the remaining construction covered by such permit or approval may be eligible for an exemption.

i. The applicant must show that, in good faith reliance upon the permit or approval, substantial expenditures have been made by the applicant for physical improvements to the property prior to the effective date of the ban.

(1) The payment of taxes, the purchase price, expenditures for *[preparatino]* ***preparation*** of engineering and architectural plans and for legal fees, and other costs not expended for physical improvements to the land shall be ineligible for consideration in determination of "substantial expenditures".

(2) All claims for eligible expenditures shall be accompanied by certified true copies of contracts, receipts or invoices. An unverified list of expenses will fail to establish substantial expenditures.

ii. For the purposes of these regulations "substantial expenditures" shall mean those eligible costs in excess of:

(1) 25 percent of the cost of those projects whose total cost is less than $100,000.

(2) $25,000 plus 10 percent of the costs in excess of $100,000 for these projects whose total cost is less than $10,000,000 but more than $100,001.

(3) $1,015,000 plus 5 percent of the project costs in excess of $10,000,000 for those projects whose total cost exceeds this amount.

(4) In addition, the applicant shall submit an estimate of the total cost with a certification that the estimate is true and accurate.

2. If an existing building or group of buildings constructed prior to the effective date of the sewer connection ban with individual subsurface disposal system(s) is certified by the local health authorities and proven to the satisfaction of the Department to the presently creating a health hazard due to overflow, contamination of the waters of the State, or other malfunction and the system cannot be reasonably rehabilitated, an exemption may be granted.

3. If the application for the exemption is a request to allow the connection of a proposed project, which is publicly owned or operated, including but not limited to: ***a long term health care facility which has received a certification of need from the New Jersey Department of Health,*** a school, hospital, fire or police station, ***or*** senior citizen housing, *[or long term health care facility which has received a certification of need from the New Jersey Department of Health,]* an exemption may be granted by the Department, if in the Department's opinion there exists a sufficient public need for the proposed project and there are no other reasonable alternatives available including alternative sites.

4. If the proposed project will replace a building, structure or unit with an existing sewer connection, the proposed project is exempt only if the building, structure or unit with the existing connection was in use at the time the sewer connection ban was implemented and if the proposed project will create flow equal to or less than the flow of the former building, structure or unit and the proposed project will be at the same location as the existing building, structure or unit.

5. If the proposed connection is for a ground water remedial action what was approved by the Department prior to the effective date of the sewer connection ban.

6. If the proposed project will have a total design flow, using Department criteria in N.J.A.C. 7:9-1 et seq., of less than 400 gallons per day ("GPD") and will be constructed and/or operated on a tax lot that was in existence prior to the effective date of the ban.

i. The Department may decide that no exemptions will be granted in this category and that all connections are banned unless they meet one of the other categories outlined in this section.

7. The Department may grant additional sewage capacity for a specific project when it has been demonstrated that substantial improvement in effluent quality through a reduction in actual flow or other measures has occurred. In addition, the affected sewage authority or municipality must be committed to making improvements sufficient to enable the treatment works to meet the July 1, 1988 deadline for compliance with the Federal Clean Water Act through either the execution of an Administrative Consent Order, acceptance of a NJPDES permit, or a judicial order.

8. The Department may grant an exemption for the construction of publicly assisted housing owned or operated by nonprofit organizations incorporated pursuant to N.J.S.A. 55:14I-1 et seq. for the purpose of providing housing that is designed to be occupied exclusively by low income senior citizens and which provides for occupancy by the handicapped.

i. For the purpose of these regulations "publicly assisted" shall mean that:

(1) The project is to be built with funds provided pursuant to Section 202 of the Federal Housing Act, 12 U.S.C.A. 1701q; and

(2) The monthly rents are to be subsidized by funds provided pursuant to Section 8 of the United State Housing Act of 1937, 42 U.S.C.A. 1437.

7:14A-12.23 Application for a sewer connection ban exemption

(a) The affected sewage authority shall provide the applicant with the following:

1. Copies of N.J.A.C. 7:14A-12.22 through 12.26;
2. An exemption request form;
3. A request for endorsement form*[; and]* *.*
[4. Information on water conservation plumbing.]

(b) An applicant for a sewer connection ban exemption shall submit an application, including the appropriate documentation, to the affected sewage authority.

(c) An applicant for an exemption shall submit a plan for water conservation plumbing, and the implementation of such a plan, as approved by the Department, shall be a condition of the exemption.

(d) If the affected sewage authority or municipality denies the request for an exemption, that decision shall be final.

(e) If the affected sewage authority finds that the applicant meets the criteria in N.J.A.C. 7:14A-12.22 it shall forward the request and all documentation to the Department for final approval or denial.

(f) After reviewing the application for a sewer connection ban exemption, the Department shall notify the affected sewage authority of the results of its review.

(g) Before making a decision, the Department may request that the applicant supply additional documentation. When additional information is not supplied as requested, the Department may deny the exemption.

(h) An exemption granted for a specific property is not transferrable to any other property and is only transferrable to another person, upon written application to and approval by the Department, for the same property if the original circumstances which justified granting the exemption have not changed.

(i) The granting of an exemption by the Department and the affected sewage authority does not relieve the applicant of the following responsibilities:

1. Compliance with all other State and local requirements, including compliance with 201 Facilities and 208 Water Quality Management Plans; and

2. Obtaining the requisite treatment works approval from this Department or from the municipality or affected sewage authority in the case of a project granted an exemption under N.J.A.C. 7:14A-12.22(b)5.

7:14A-12.24 Bans in effect prior to *[(the effective date of these rules)]* ***November 2, 1987***

Sewer connection and extension bans imposed pursuant to N.J.S.A. 58:10A-1 et seq. or N.J.S.A. 58:12-1 et seq., which were instituted prior to (the effective date of these amendments to these rules), shall remain in full force and effect and are hereby modified to the extent necessary to conform to the requirements of this Subchapter as amended.

7:14A-12.25 Construction only permits

(a) An applicant may apply for a treatment works approval for construction only, not operation, in the following circumstances:

1. Where the sewage authority or the participating municipalities have awarded construction contracts for final facilities:

i. To comply with a valid NJPDES permit; or

ii. To provide adequate conveyance capacity in a manner approved by the Department; or

2. To sewer a geographical area not currently sewered, if:

i. It is identified as a future service area in an approved 208 Areawide Plan; and

ii. The proposed project could be serviced by individual on-site systems meeting the requirements of P.L. 1954, C.199 (N.J.S.A. 58:11-23 et seq.) until sewer service is provided.

(b) An applicant shall apply for a treatment works approval for construction only by submitting to the Department an application for a treatment works approval in accordance with the provisions of N.J.A.C. 7:14A-12.11 through 12.14 above, and (c) below.

(c) An applicant for a treatment works approval for construction only shall include with the application a certification in which the applicant shall certify that the applicant understands and agrees to the following:

1. The affected sewage authority and participating municipalities shall not approve the use of the proposed treatment works;

2. The applicant proceeds at his or her own risk that a treatment works approval for use may not be granted;

3. Construction of the treatment works based on the treatment works approval for construction only does not qualify the applicant for an exemption pursuant to N.J.A.C. 7:14A-22; and

4. The applicant shall not use the treatment works and the sewage authority and participating municipalities shall not approve the operation of the treatment works until the Department has determined that adequate treatment and conveyance capacity exists at the receiving treatment works and has granted approval to operate.

(d) A treatment works approval for construction only of any treatment works shall be filed with the appropriate county clerk as notice to prospective purchasers of the restrictions on the property. The treatment works approval for construction only shall remain in the record until such time as a treatment works approval for operation and use has been issued by the Department.

7:14A-12.26 Requests for adjudicatory hearings

(a) An applicant who is deined a treatment works approval, a construction only approval or a connection ban exemption pursuant to N.J.A.C. 7:14A-12.22 and 12.23 by the Department may request an adjudicatory hearing within 30 days of receipt of the Department's denial of the approval or exemption.

(b) A hearing request shall be in writing and it shall be accompanied by a copy of the denial and the same documents that were submitted with the connection ban exemption application.

(c) A hearing request shall furnish the Department with a specific statement of the matters the applicant contests. The applicant shall:

1. Specify which of the Department's reasons for denial are contested; and

2. Specify the applicant's own version of the facts concerning the application.

(d) Requests for hearing shall be sent to:

Bureau of Municipal Waste Management
Division of Water Resources
CN 029
1474 Prospect Street
Trenton, New Jersey 08625

(e) All hearings pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Adopted Amendments: N.J.A.C. 7:50-2, 4, 5, 6 and 7

Adopted New Rules: N.J.A.C. 7:50-5.5, 5.32, 6.32, 6.43, 6.76, 6.93, 6.94, 6.125 and 6.157

Adopted Repeals: N.J.A.C. 7:50-6.43 and 6.65

Proposed: November 17, 1986 at 18 N.J.R. 2239(a).

Adopted: September 11, 1987 by Terence D. Moore, Executive Director, New Jersey Pinelands Commission.

Filed: October 7, 1987 as R. 1987 d.436 **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

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

Effective Date: November 2, 1987.

Expiration Date: Exempt.

Public Notice

In association with publication of the proposed rules in November 17, 1986 edition of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands Area municipality and county for review and comment. Additionally, the Pinelands Commission sent notices of the two public hearings to all persons and organizations which had participated in the Commission's initial deliberations on the proposed rules; sent hearing notices to all persons and organizations which subscribe to the Commission's public hearing registry; distributed press releases on the proposal and the hearings to approximately 120 newspapers; and placed advertisements on the hearings in the five official newspapers of the Commission.

Comments Received

Public hearings were held on January 20 and 27, 1987. Approximately 100 people attended the hearings, of whom 21 offered oral testimony. Written comments were also received from 42 individuals and organizations.

Record of Public Comments

Transcripts of each hearing, as well as audio recordings, are maintained on file in the office of the Pinelands Commission, Springfield Road, New Lisbon, NJ. Written comments are also on file at the Commission's office. This material is available for public inspection during normal business days from 9:00 A.M. to 5:00 P.M.

Summary of Public Comments and Agency Responses

N.J.A.C. 7:50-2.11

COMMENT: One commenter recommended that the definition of "application for development" be simplified since it is also presented in detail in N.J.A.C. 7:50-4.1(a). Another commenter opposed the recommended definitional change for unstated reasons. Another commenter opposed the proposed amendment to exception number 5 in the definition on the basis that it would weaken the Plan.

RESPONSE: The Commission agrees that it is redundant and may be confusing to reference the exceptions to the application requirements here and in N.J.A.C. 7:50-4.1(a). Therefore, the definition in N.J.A.C. 7:50-2.11 will not list the exceptions but will contain a reference to N.J.A.C. 7:50-4.1(a).

With respect to the proposed change in exception number 5, the Commission believes that clearing less than 1,500 square feet of land does not pose a substantial threat to Pinelands resources and that no Pinelands application should be required.

COMMENT: One commenter opposed the proposed amendment to the "forestry" definition on the basis that the Plan would be weakened and several commenters offered changes to the proposed definition. The suggested changes to the proposed definition included: qualifying the proposed exemption of the removal of trees for the personal use of the property owner to personal "non-commercial" use; setting an upper limit on the clearing of trees for public safety; and broadening the exceptions to include the removal of trees associated with any approved development.

RESPONSE: The six exceptions to the forestry definition included in the amendments were based on advice received from the State Bureau of Forest Management. Since the standards governing forestry operations (Part IV of Subchapter 6) are not appropriate for these excepted activities, it is, therefore, unnecessary to define them within the context of forestry.

With respect to the changes recommended by the commenters, the term "personal" is generally defined as affecting or relating to one individually and as such the addition of "non-commercial" would be redundant. Moreover, the preamble of the forestry definition expressly provides that "the growing and harvesting of trees for "*commercial* purposes" (emphasis added) constitutes a forestry activity.

The Commission is also of the opinion that the removal of trees for public safety purposes should not be qualified by arbitrary limits. Clearing of areas exceeding 1,500 square feet must still receive approval under the Plan (see N.J.A.C. 7:50-6.23) and abuse of this exception, which only applies to the forestry standards themselves, is highly unlikely.

The proposed change which broadens the exception to include other development activities (such as residential construction) is implied in the existing definition but the Commission agrees that it is worthwhile to state this more clearly in the rules. Exception number 3 has, therefore, been reworded accordingly.

COMMENT: One commenter recommended that the definition of "public service infrastructure" be further revised to include sewage sludge composting, resource recovery and recycling facilities.

RESPONSE: As used in the Pinelands Comprehensive Management Plan, public service infrastructure is intended to include linear developments which directly support residential, commercial and industrial developments. Although it is true that many other facilities (for example, schools, hospitals, wastewater treatment plants, etc.) indirectly support these land uses, they are not linear in nature and are not intended to be covered by this definition.

The definition has, however, been changed to include cable television lines. The proposed deletion of television from the definition was intended to exclude non-linear television transmission facilities and not cable television lines which are similar to telephone service lines.

COMMENT: One commenter opposed the proposed addition of golf courses to the definition of "recreational facility, intensive" in N.J.A.C. 7:50-2.11. Supporting documentation from a number of different sources was submitted in support of the commenter's position. Another commenter opposed the proposed change on the basis that it would weaken the Plan.

Two other commenters endorsed the change on the basis that golf courses are inappropriate land uses within wetlands and certain other areas in the Pinelands.

RESPONSE: The addition of golf courses as well as marinas and amusement parks to the definition is meant to clearly identify such facilities as inappropriate land uses within the Preservation Area, Forest Area and Agricultural Production Area Districts. The definition change would also clarify that these facilities, with the exception of certain marina-type development, would be prohibited within wetlands. In the case of marinas, the standards of N.J.A.C. 7:50-6.12 govern the development of water-dependent facilities in wetlands.

Although one commenter opposed to the change maintains that golfing is a non-intensive activity and as such may be appropriate within wetlands, the Commission is basing its decision on the amount of disturbance and alteration of the landscape which occurs as a result of the construction of a golf course. However, it should be noted that nothing in the Plan prohibits wetlands from being incorporated into the design of a golfcourse as long as the wetlands themselves are not altered and the buffering standards of N.J.A.C. 7:50-6.7 are met. Trails which traverse wetlands may also be permitted in accordance with N.J.A.C. 7:50-6.13.

COMMENT: One commenter recommended that telephone lines be included within the definition of "utility distribution lines".

RESPONSE: The Commission agrees that telephone lines as well as cable television lines should be included in the definition and has revised it accordingly.

COMMENT: One commenter opposed any rules in the Comprehensive Management Plan governing the development of affordable housing. The commenter cited the enactment of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) as pre-empting Pinelands Commission jurisdiction to ensure that low and moderate income housing opportunities are provided in the Pinelands.

REPONSE: The proposed amendments to Part XIII of Subchapter 6 and to the housing related definitions in N.J.A.C. 7:50-2.11 are intended to make Pinelands housing requirements consistent with the dictates of the New Jersey Supreme Court's decision in "Mt. Laurel II". The Commission's fundamental obligation to address affordable housing needs is not a discretionary one; rather, it is based upon formal advice received from the office of the State Attorney General.

The Fair Housing Act establishes a voluntary process whereby a municipality may seek certification of its housing program by the Council on Affordable Housing but, absent such certification, there is no assurance that reasonable opportunities for the construction of low and moderate income housing may exist in every municipality. Since the Pinelands Commission has an affordable housing obligation similar to that of municipalties, there must be provisions in the Comprehensive Management Plan to ensure that this obligation is met, absent any affirmative municipal action.

The Pinelands Commission and the Council on Affordable Housing have recently entered into a Memorandum of Agreement to ensure that the Fair Housing Act and Pinelands Protection Act are administered in a consistent and compatible manner. As an outgrowth of this agreement, the Pinelands Commission intends to propose further amendments to the housing standards of the Comprehensive Management Plan. These proposed amendments will be structured to eliminate all regionally (that is, Commission) imposed housing standards in municipalities which have received Council on Affordable Housing certification but will continue to require provisions for low and moderate income housing in association with development projects located in municipalities which have not received Council certification.

N.J.A.C. 7:50-4

COMMENT: One commenter provided extensive comments on the public notice and participation provisions of the Comprehensive Management Plan and expressed concern that the permitting procedures of Subchapter 4 and the municipal certification process of Subchapter 3 effectively discourage meaningful public involvement. The commenter also stated that the municipal certification process has resulted in wholesale changes to the land use designations of the Plan, in violation of the Commission's rules.

RESPONSE: The Pinelands Commission has continually strived to encourage meaningful public involvement in the Commission's permitting and certification processes and has included several amendments to Subchapter 4 to further increase that opportunity.

Subchapter 4 now requires that virtually every Pinelands application, including public development proposals and requests for letters of interpretation and waivers of strict compliance, provide notice to surrounding property owners and in a newspaper of general circulation. The Commission also issues a bi-weekly report on pending applications. This affords the public with an opportunity to comment early in the Commission staff's review process.

When the Commission's staff submits a recommendation on an application to the Commission, public comments are summarized and a copy is also submitted to every individual or organization which has expressed an interest in that application. Those organizations and individuals then have an opportunity to seek an administrative hearing before the Commission acts on the staff recommendation. Those requirements are intended to ensure that the public may offer comments and recommendations on those applications before being considered by the Commission.

With respect to the certification of municipal master plans and ordinances (Subchapter 3), the Commission's Conformance Subcommittee meets regularly with municipal and county officials to discuss local land use issues. These meetings are advertised in the Commission's official newspapers and are open to the public. When the Commission is requested by a municipality or county to formally approve a local master plan or land use ordinance, a public hearing is held on the request and a separate opportunity is afforded to submit comments to the Commission at the meeting during which the certification request is to be considered.

The Commission has amended its procedures several times to enhance public involvement and will continue to investigate ways to further improve and streamline those procedures.

During the certification process municipalities are permitted, pursuant to Subchapter 5, to refine the boundaries of Pinelands management areas as they identify specific municipal zoning district boundaries. Moreover, the Plan at N.J.A.C. 7:50-5.14, 5:15 and 5:16 explicitly authorizes municipalities to designate Special Agricultural Production Areas, Agricultural Production Areas and Villages according to specified criteria and guidelines. These do not represent unauthorized changes to the Comprehensive Management Plan but recognize valid municipal planning prerogatives which are exercised as they prepare local master plans and ordinances to implement a regional plan.

N.J.A.C. 7:50-4.1

COMMENT: Two commenters opposed the application exemption proposed at N.J.A.C. 7:50-4.1(a)7; one on the basis that it would weaken the Comprehensive Management Plan and the other on the basis that it narrows the application exemptions currently included within the Plan.

RESPONSE: There is currently no application exemption governing commercial or industrial development. As such, relatively innocuous proposals to construct a loading platform, etc. are subject to the Plan's application and permit review procedures. N.J.A.C. 7:50-4.1(a)7 is intended to broaden the Plan's exemptions to eliminate the need for Pinelands (not municipal) applications for these types of proposals. Since this exemption is narrowly constructed, the Commission does not believe that it serves to weaken the Plan.

COMMENT: Three commenters recommended that the term "impermeable" as used in N.J.A.C. 7:50-4.1(a)7 be more clearly defined to specify the types of surfaces which would be viewed as impermeable.

RESPONSE: The term impermeable is considered to be sufficiently precise so as to prevent confusion. By definition, impermeable means not allowing the passage of fluids and would include concrete and macadam, as well as rooftops. Further qualifying the term might inadvertently lead to the exclusion of a surface which is truly impermeable.

COMMENT: One commenter asked whether the 1991 expiration date contained in N.J.A.C. 7:50-4.1(b) for approvals issued under the Interim Rules and Regulations (the standards governing development before the Pinelands Comprehensive Management Plan took effect) would apply to a composting facility.

RESPONSE: The expiration date in N.J.A.C. 7:50-4.1(b) will apply equally to all projects approved before the Pinelands Comprehensive Management Plan took effect. The Commission is of the opinion that these approvals represent exemptions from the standards of the Plan and that, if the projects are not ready to proceed within 10 to 12 years following receipt of the exemption, it is reasonable to re-evaluate them under the standards of the Plan.

COMMENT: Two commenters expressed opposition to the expiration dates proposed at N.J.A.C. 7:50-4.1(b) and 7:50-4.66(a)7. One of the commenters expressed opposition since the expiration might affect individual property owners who, because of limited financial resources, may not proceed quickly enough while the other commenter objected because the expiration date would be prejudicial to large developments. With respect to the latter, the commenter noted that the expiration provision requires that all necessary development approvals be obtained before the expiration date and the proposed definition of "approval, final" includes construction permits.

Therefore, the commenter maintained that large development projects (for example, several hundred or more residential units) could not reasonably receive all necessary preliminary and final subdivision or site plan approvals and obtain construction permits for each and every unit to be built within the permitted time frame.

Even if the required approvals do not include construction permits, the commenter would still oppose the expiration date on the basis that builders have little control over the timing and completion of development projects and would suffer undue adverse economic effects.

Another commenter supported the expiration date proposed at N.J.A.C. 7:50-4.1(b).

RESPONSE: Expiration dates are proposed at N.J.A.C. 7:50-4.66(a)7 relative to certain waivers of strict compliance and at N.J.A.C. 7:50-4.1(b) relative to projects which received approvals pursuant to the "Interim Rules and Regulations". (Refer to prior comment and response for an explanation of the "Interim Rules and Regulation".)

In establishing these expiration dates, the Commission recognized that it was not reasonable to attach an expiration date to all waivers of strict compliance. However, waivers granted pursuant to the now expired N.J.A.C. 7:50-4.66(a)1ii were granted specifically because the projects had received municipal approvals prior to February 8, 1979 and expenditures had been made in reliance upon those approvals. These waivers were granted in recognition that certain development projects were well underway when the Pinelands Protection Act took effect. It is the Commission's belief that, if the applicant does not then proceed to complete the project in a timely manner, the hardship upon which the waiver was based is no longer valid.

Approvals granted under the Interim Rules and Regulations were issued between 1979 and 1981. The Commission believes that 10 to 12 years is ample time for these exemptions to be exercised.

It was not, however, the Commission's intention to require that each and every construction permit be obtained before the expiration takes effect but that all subsequently necessary municipal planning board and board of adjustment approvals have been obtained. Therefore, N.J.A.C. 7:50-4.66(a)7 has been revised to reference the need for planning board and board of adjustment approvals and construction permits only if board approvals are not required. This same revision has also been reflected in N.J.A.C. 7:50-4.1(b).

The adopted rule at N.J.A.C. 7:50-4.66(a)7 has also been revised so that the expiration date is consistent with that of N.J.A.C. 7:50-4.1(b). Not only does this simplify administration of these provisions, it also serves to provide additional notice and a more reasonable deadline for large developments to receive the necessary approvals.

N.J.A.C. 7:50-4.2

COMMENTS: Four commenters opposed the provision in N.J.A.C. 7:50-4.2(a)5 that representations made by the Commission's staff during pre-application conferences are not binding upon the Executive Director or the Commission when ruling on an application.

RESPONSE: It is a widely accepted principle that informal and preliminary discussions, while useful, do not supplant the formal decisionmaking process of a governmental agency. Under the terms of the Pinelands Protection Act, only the Pinelands Commission is empowered to render decisions on the denial or approval of development applications. Moreover, pre-application conferences inherently involve preliminary discussions before an application is filed and all relevant information is known to the Commission and its staff. Indeed, if the Commission could invest its staff with such decisionmaking authority, it would have to also limit staff contact and discussions with potential applicants prior to the receipt of full and complete development applications. Such an action would be in direct contradiction to the Commission's policy of assisting the public better understand the Plan and its implications.

The Commission's staff will, however, endeavor to make the purpose and limitations of pre-application conferences clear to prospective applicants so that misunderstandings are minimized.

COMMENT: One commenter objected to the requirement contained in N.J.A.C. 7:50-4.2(b)2 that municipal and county clerks and the municipal environmental commission be notified when an application for a letter of interpretation is submitted to the Commission.

N.J.A.C. 7:50-4.73(b) also provides that notices of an application for a letter of interpretation involving a specific parcel of land be given to surrounding property owners and published in a newspaper. It is assumed that the commenter also opposed these requirements.

Another commenter supported the notice requirements.

RESPONSE: The Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. establishes similar notice requirements for certain development applications submitted for municipal approval. Although a request for a letter of interpretation does not represent a formal development application, many important site specific issues affecting development (wetlands buffer requirements, etc.) may be addressed. These issues are necessarily of interest to surrounding property owners and residents of the community; thus, the need for the notice requirements. Since these interpretations may also affect subsequent permit decisions rendered by municipalities and counties in which the property is located, it is also necessary for the applicant to provide notice to the appropriate governmental agencies.

It should be noted that these requirements do not apply when the item to be interpreted is not unique to a specific property. In this manner, clarification of the Plan's rules for the broad benefit of the public can be provided in a more streamlined manner.

COMMENT: Two commenters recommended that the information concerning soils, slope, existing land uses, water and sewer services, herbicides and pesticides, air and noise pollution, and open space resources not be deleted from the application requirements (N.J.A.C. 7:50-4.2(b)5xii) for development proposals.

RESPONSE: For the most part, these deletions eliminate duplicative application requirements included elsewhere in N.J.A.C. 7:50-4.2. Only application information related to noise pollution, herbicides and pesticides will no longer be requested. Since the Commission does not have any regulatory standards governing noise or pesticides and the Plan generally prohibits the use of herbicides, this information is not relevant to the Commission's review of development applications.

COMMENT: One commenter recommended that forestry management plans describe harvesting and reforestation activities for units of land not exceeding 25 acres rather than the 100 acre units proposed in N.J.A.C. 7:50-4.2(b)6ii(1).

RESPONSE: Although the Commission initially considered a 25 acre requirement, the Department of Environmental Protection's Bureau of Forest Management recommended that physical boundaries (roads, streams, etc.), not acreage limits, be used to define the units. The Bureau suggested that units which don't rely on physical boundaries would be difficult, if not impossible, to evaluate in the field and that descriptions of small units would be unnecessarily duplicative and costly. The Commission has adopted the Bureau's recommendations with the added stipulation that units described by physical features be as close to 100 acres as is practical.

COMMENT: One commenter recommended that the Division of Fish, Game and Wildlife review forestry applications and provide comments to the Commission.

RESPONSE: N.J.A.C. 7:50-4.2(b)6iii requires that forestry applications be reviewed by the Bureau of Forest Management because the Commission does not necessarily employ a forester on staff. This review helps to ensure that technical considerations with respect to harvesting and reforestation techniques are adequate according to professional standards. The Commission does, however, employ environmental scientists and specialists who review all development applications (residential, commercial and industrial development as well as forestry proposals) for their effect on wetlands, wildlife, vegetation and water resources. While the staff periodically consults with the Division of Fish, Game and Wildlife and other Department of Environmental Protection offices on specific applications, a universal review requirement would impose a generally unnecessary responsibility on other State agencies and an additional burden on applicants.

COMMENT: One commenter supported the proposed amendment to specify the amount of the financial surety required for forestry operations (N.J.A.C. 7:50-4.2(b)6v) and the State Bureau of Forest Management opposed the surety requirement on the basis that it would discourage forest management in the Pinelands. Another commenter recommended that the surety be increased to $1,000 or 20 percent of the value of the wood to be harvested, whichever is greater.

RESPONSE: The Pinelands Commission recognizes that the imposition of the surety requirement adds to the cost of a harvesting operation and consequently will have a dampening effect on some woodcutting activities. Nevertheless, the surety requirement serves as an inducement for woodcutters and property owners to adhere to proper forest management practices and provides some opportunity to remedy undesirable site conditions if the standards of the Plan are not met and efforts to secure restoration from the woodcutter or owner fail. Since improper woodcutting and forest management practices have occurred in the past, the surety requirement is deemed to be necessary.

The amount of the surety, however, is not so easily determined. Recognizing the State Bureau of Forest Management's concern that too onerous a requirement may substantially affect forest management and that many harvesting operations may be of marginal value, the Commission has attempted to strike a balance. If experience shows that a greater or lesser surety is warranted, the Commission will endeavor to make the necessary adjustments.

COMMENT: One commenter recommended that the State Bureau of Forest Management be required to mark trees to be cut.

RESPONSE: N.J.A.C. 7:50-4.2(b)6vii requires that applicants mark trees to be harvested but exempts the Bureau of Forest Management from this requirement. The Bureau supervises all cuts on State property and the Commission believes that this is generally adequate to prevent accidental removal of trees not slated for harvesting. Therefore, the marking requirement appears to be of little benefit in these instances.

N.J.A.C. 7:50-4.34

COMMENT: Eight commenters expressed concern over N.J.A.C. 7:50-4.34(b) that: municipal administrative officers may not be qualified to determine that all necessary environmental information is included in an application for development; revocation of Commission certification may be an unnecessarily harsh response if an administrative officer is unable to fulfill this responsibility; and licensing and/or training of the administrative officer should be required. Two commenters supported the proposed amendment with one suggesting the need for training and the other recommending that the provision be expanded to include more than single family residence applications.

RESPONSE: N.J.A.C. 7:50-4.34(b) permits a municipality to establish a streamlined program for the processing of applications for single family dwellings. If a municipality does not have the capability to implement such a system, it will not be required to do so. Moreover, the Commission still retains its authority to review any municipal zoning or construction permit if it appears that the development does not conform to the land use and environmental standards of the Plan.

Should a municipality implement the system but not fulfill its responsibilities, Subchapter 3, Part VI permits the Executive Director to initiate a modification or revocation of the Pinelands Commission's certification of a municipal ordinance. In the event a municipal administrative official merely cannot satisfactorily carry out the streamlined application processing system, the Commission would not have to revoke certification; rather, it could simply modify the certification to reinstate the certificate of filing process set forth in N.J.A.C. 7:50-4.34(a).

With respect to training, the Commission has sponsored a series of training sessions with municipal zoning and construction officials on application and permitting procedures. The Commission intends to continue these seminars but is not inclined to license local officials. As stated previously, this is a voluntary system and can be suspended if a municipality does not satisfactorily fulfill its responsibilities. The Commission also believes that it is premature to expand the program until the results of this trial program are known.

N.J.A.C. 7:50-4.66

COMMENT: One commenter asked whether an applicant who requested a waiver of strict compliance pursuant to N.J.A.C. 7:50-4.66 for the purpose of continuing a resource extraction (mining) operation would qualify even though the operation was not registered pursuant to N.J.A.C. 7:50-6.63(b).

RESPONSE: If an operator of a resource extraction operation in the Preservation Area or Special Agricultural Productions Area Districts failed to register pursuant to N.J.A.C. 7:50-6.63(b), a waiver of strict compliance would be needed in order for the operation to continue. Although each and every waiver request must be evaluated on its own merits and the Commission can not prejudge these matters, the standards contained within N.J.A.C. 7:50-4.66(a) have to be met.

COMMENT: One commenter opposed the amendments to the standards for a waiver of strict compliance at N.J.A.C. 7:50-4.66(a)1 as being overly restrictive and contrary to the Pinelands Protection Act. Two comments were received in favor of the proposed amendments, one of which expressed support on the basis that a waiver of strict compliance should be granted only when these proposed standards, which reflect Federal and State case law on the taking of private property without just compensation, apply.

RESPONSE: The Pinelands Protection Act authorizes the Commission to grant relief from the standards of the Comprehensive Management Plan to "alleviate extraordinary hardship." The amendments to N.J.A.C. 7:50-4.66(a)1 represent reasonable tests to determine whether such an extraordinary hardship exists.

With respect to the availability of contiguous lands which could serve to relieve the hardship, the Commission has repeatedly held that contiguous lands owned by the applicant on or after January 14, 1981 must be considered when evaluating a purported hardship involving a portion of the applicant's land holdings. The Commission has also maintained that other contiguous lands which, although not owned by the applicant, may be reasonably available for purchase can indeed lessen or eliminate the hardship. However, these lands must be reasonably available and would, for example, be unavailable if purchased and dedicated for a public purpose by a public agency.

COMMENT: One commenter asked whether a privately owned, profit oriented resource extraction operation could qualify for a waiver of strict compliance under the compelling public need tests pursuant to N.J.A.C. 7:50-4.66(a)2.

RESPONSE: As stated in a prior response, a definitive answer is not possible; however, the standards of N.J.A.C. 7:50-4.66(a)2 would have to be met.

COMMENT: One commenter recommended that the standards for public need waivers of strict compliance in N.J.A.C. 7:50-4.66(a)2I be revised to explicitly recognize that an applicant need not be a public agency but could be a private party.

RESPONSE: There has never been a prohibition to a private party seeking a waiver of strict compliance on the basis of compelling public need.

The proposed amendment to N.J.A.C. 7:50-4.66(a)2i regarding county, State or Federal applications was not intended to limit applications to public agencies but to recognize that certain proposals could be designed to meet the needs of a geographic area larger than the municipality in which the project is located. In order to eliminate any confusion as to whether a private party is precluded from seeking a waiver on the basis of public needs, N.J.A.C. 7:50-4.66(a)2i has been revised to eliminate the reference to county, State and Federal applications and merely reference applications which are intended to serve more than one Pinelands municipality.

N.J.A.C. 7:50-4.73

COMMENT: One commenter recommended that linear development proposals (for example, highways and utility lines) be exempted from the requirements to notify adjoining property owners. These requirements are contained in N.J.A.C. 7:50-4.62(b)1 and 4.73(b)1 relative to letters of interpretation and waivers of strict compliance, respectively. Another commenter recommended that it be made clear that the notice requirements applicable to requests for waivers of strict compliance do not apply when the Commission waives application requirements pursuant to N.J.A.C. 7:50-4.2(a)3.

RESPONSE: Recognizing that the circumstances surrounding linear developments are unique, the Commission previously clarified the notice requirements applicable to linear development proposals in uncertified areas (N.J.A.C. 7:50-4.14(c)) and for publicly sponsored development (N.J.A.C. 7:50-4.53(d)). The Commission agrees that this same clarification is appropriate for letters of interpretation and waivers of strict compliance and has revised N.J.A.C. 7:50-4.62 and 4.73 accordingly.

With respect to waivers of application requirements, the Commission believes that the rules are sufficiently clear that the notice requirements apply to the various types of applications submitted and do not apply when certain information requirements are waived.

N.J.A.C. 7:50-5

COMMENT: Two commenters opposed the requirements included in Subchapter 5 which limit the siting of public service infrastructure, specifically telephone and electric distribution and transmission facilities, in certain Pinelands management areas. N.J.A.C. 7:50-5.22(b)4 limits such services in the Preservation Area District to those which are necessary to meet the needs of the District. N.J.A.C. 7:50-5.25(b)3 contains a similar restriction for Special Agricultural Production Areas. N.J.A.C. 7:50-5.23(b)12 limits public services located in or traversing Forest Areas to those which are intended to primarily serve the needs of the Pinelands. The two commenters opposed to these limitations maintain that interconnections which provide service to much larger areas may be necessary within these management areas and that the facilities generally do not pose any health, safety or environmental concerns. Two other commenters recommended that further restrictions on the siting of public services within the Forest Areas be imposed so that only those which serve the Forest Area, rather than the entire Pinelands, be permitted.

RESPONSE: The development of public service infrastructure, whether it be in the form of electric and telephone distribution and transmission facilities, roads or water and sewer and gas service, result in direct and indirect environmental and aesthetic impacts. Disturbance during construction and maintenance activities subsequent to construction contribute to the loss of vegetation and wildlife resources, degradation of water resources and fragmentation of the ecosystem. Aesthetic impacts resulting from linear developments and transmission towers are also unavoidable.

Recognizing these inevitable impacts, the Commission has sought to strike a balance so that these facilities will not be located in the Preservation Area or Special Agricultural Production Area Districts unless essential to meet the needs of those Districts. A similar though less restrictive limitation exists for Forest Area Districts, the next most environmentally sensitive areas of the Pinelands, and no such limitations exist for the remainder of the Pinelands.

Should a public utility believe that, in order to meet compelling public needs, it must propose the siting of public service facilities in a manner contrary to these standards, it may seek an exemption from the standards pursuant to the waiver of strict compliance provisions of Subchapter 4, Part V.

N.J.A.C. 7:50-5.1

COMMENT: One commenter recommended that N.J.A.C. 7:50-5.1(c) be rewritten so that it is clear that recreation development and campgrounds can be developed in association with another principal use on agricultural lands. Another commenter supported the amendment as proposed.

RESPONSE: The Commission agrees that rewording will make the provision clearer. Accordingly, N.J.A.C. 7:50-5.1(c) has been reworded. In addition, "campgrounds" are deleted as a permitted use on agricultural lands. This deletion is in accordance with the disallowance of campgrounds on agricultural land pursuant to N.J.A.C. 7:50-5.24(b)6 as adopted, which replaced the permitted campground use.

N.J.A.C. 7:50-5.4

COMMENT: One commenter recommended that the height exemption for electric transmission facilities and supporting structures not be included in N.J.A.C. 7:50-5.4(b). Another commenter recommended that telephone radio transmission relay towers also be exempted from the height limitation.

RESPONSE: Although the Commission would prefer that all electric distribution and transmission lines be placed underground, the burial of transmission lines is technically impractical, cost prohibitive and may be more disruptive to the environment than overhead lines. Since electric transmission facilities and supporting structures are higher than 35 feet (the limit absent an exemption), the exemption is necessary

Radio transmission towers are not akin to electric transmission facilities since the latter represent a physically connected linear development which by their very nature may traverse areas of the Pinelands subject to the height restriction. Radio transmission towers are, for the most part, free standing structures which can more easily be located in areas not subject to the height limitations.

N.J.A.C. 7:50-5.22

COMMENT: One commenter opposed N.J.A.C. 7:50-5.22(b)3 which permits campgrounds in the Preservation Area District on the basis that most campgrounds are intensively developed and not appropriate with the Preservation Area District.

RESPONSE: The Commission believes that camping, and thus the development of campgrounds, is an appropriate activity within the Preservation Area District and has provided for such since the Plan was originally adopted in 1980. However, safeguards were included and still remain which are intended to control the intensity of use and development so that environmental resources are not overtaxed. The provisions require, for example, that no more than one campsite is permitted for every two acres of land. Coupled with the standards set forth in N.J.A.C. 7:50-5.22(a)6, a campground on 100 acres of land could have no more than 50 campsites and cleared areas could not exceed a total of five acres.

COMMENT: Eight commenters opposed the "infill" development provisions proposed at N.J.A.C. 7:50-5.22(b)7. Concerns were expressed that: too much additional development would be permitted in the Preservation Area; demand for permitted housing in Regional Growth Areas would be lessened; the Pinelands Development Credit program would be adversely affected; no time limit has been imposed for the designation of "infill" areas; and the provision essentially serves to authorize nonconforming uses and, as such, should be dealt with on an individual case-by-case basis rather than through generic criteria.

RESPONSE: Subchapter 4, Part V of the Comprehensive Management Plan permits a property owner to seek relief from the land use restrictions of the Plan if the property in question has no beneficial use under the terms of the Plan. One of the more common justifications for a waiver of strict compliance is that an undersized lot (for example, one acre) which is surrounded by existing development can not be reasonably used for agricultural, forestry or recreational purposes, the primary land uses permitted in the Preservation Area District. In these instances, the Commission is almost always compelled to grant a waiver, usually for the development of a single residence on the lot in question.

The "infill development" provisions are largely intended to recognize these situations on an area wide basis rather than dealing with each and every lot through the waiver of strict compliance provisions. Indeed, one of the criteria requires that any infill area so proposed must contain vacant lots which, by virtue of their size and location, would likely qualify for waivers of strict compliance.

That standard, coupled with the other requirements, provide safeguards which, while recognizing existing land use patterns, prevent overdevelopment. In order to further strengthen the provisions, however, language is being added in the adopted rule to further constrict these areas in recognition of existing development patterns.

Currently, there are seven designated infill areas. It is estimated that no more than 120 residences and 20 commercial establishments could be developed within these areas. Based upon a review of aerial photography, it is also unlikely that any more than three additional municipalities could designate infill areas. It is, therefore, the Commission's belief that permitting approximately 200 new principal structures in the 300,000 acre Preservation Area District does not represent overdevelopment nor will the demand for housing elsewhere or the demand for Pinelands Development Credits be lessened.

N.J.A.C. 7:50-5.23

COMMENT: Five commenters opposed the amendment to N.J.A.C. 7:50-5.23(a)2 which replaces the number of dwelling units permitted in the Forest Area by municipality with the overall residential density limitation of one dwelling unit per 15.8 acres of privately owned, undeveloped upland.

RESPONSE: The amendment does not in any way substantively revise the standards of the Comprehensive Mangement Plan. In fact, the unit calculations initially included in the Plan were determined by application of the overall density standard and reflected lands in the Pinelands National Reserve outside of the State Pinelands Area (the limit of the Commission's regulatory jurisdiction).

Those unit totals are not fixed and must be recalculated because municipalities may elect not to revise their zoning ordinances in areas outside of the Commission's regulatory jurisdiction or when a land use adjustment which enlarges or decreases the size of a Forest Area within the State Pinelands Area is requested. Therefore, it is inappropriate to specify an exact number of residential units permitted by municipality when it is known that the number must be recomputed on a periodic basis.

It should be noted that the Executive Director will, however, be maintaining an administrative listing of units permitted by each municipality in the Forest Area. Recognizing that the unit totals are not fixed, the adopted rule has been revised to specify that the Executive Director maintain a "current" record.

COMMENT: Ten commenters opposed the proposed amendment at N.J.A.C. 7:50-5.23(c) which would permit residential development in the Forest Area to be clustered on one acre lots provided that the remainder of the property required to meet municipal density standards is perpetually deed restricted as open space. Eighteen other commenters supported the proposal and four others recommended that clustering only be permitted if coupled with design standards which ensure that: clusters are located proximate to other developed areas, water quality standards are strengthened, development be further buffered from wetlands, stormwater runoff not be increased, aesthetics be protected, and on-site amenities are provided.

Similar comments have been made with respect to N.J.A.C. 7:50-5.24(c) and 5.26(c) which also permit clustering in Agricultural Production and Rural Develoment Areas, respectively.

RESPONSE: Recognizing diverse views on the issue of clustering, the Commission has again evaluated the proposals and determined that residential clusters on one acre lots in the Forest Area should not be permitted as a matter of general policy at this time. Although clustering has many advantages, the Commission is reluctant to actively promote one acre residential clusters throughout the Forest Area until more is known about the locational and environmental impacts over an extended period of time. Clustering on 3.2 acre lots in the Forest Area will continue to be permitted and, if exceptional environmental or land use circumstances exist, a municipality may propose clustering on one acre lots as part of its certification application.

With respect to the less environmentally sensitive management areas (that is, Rural Development and Agricultural Production), the Commission believes that locating development (and limiting the extent of disturbance) in one portion of a property and retaining the balance of the property in an undisturbed state serves to better protect the region's resources. Indeed, to preserve as much contiguous farm land as possible, clustering of non-farm related housing in Agricultural Production Areas will generally be required. In Rural Development Areas, clustering will remain discretionary.

There are certainly advantages to specifying various design standards but it may be more appropriate if this is determined by municipalities through the enactment of detailed zoning ordinances. Such standards could include proximity to existing development, availability of public services and the provision of open space and recreational amenities in the development. Three exceptions are, however, appropriate for Commission consideration from a regional environmental perspective. The first relates to stormwater run-off and the Plan (N.J.A.C. 7:50-6.84(a)5) requires that pre-development stormwater conditions be maintained at all development sites. Second, because the aesthetic qualities of the Pinelands are a valued resource, N.J.A.C. 7:50-6.104 requires that all buildings be set back 200 feet from public roads in Rural Development Areas. Third, the protection of the Pinelands' most important resource, ground and surface water, requires that the Commission exercise due caution when considering proposals which might result in water quality impacts.

The Plan's water quality standards relative to on-site wastewater disposal (N.J.A.C. 7:50-6.84(a)4) consider the overall impact development will have on a property and do not, for example, control pollution levels at particular points within a property. Consequently, development can be concentrated within a section of a larger property and not require any greater level of wastewater treatment than if it was evenly dispersed throughout the property. Although somewhat elevated levels of septic systems pollutants will be found within the developed portions of these properties, the Commission's overall water quality goals for the Pinelands will be attained; thus, no further controls are necessary, even when development is clustered.

N.J.A.C. 7:50-5.24

COMMENT: Seven commenters opposed the amendment at N.J.A.C. 7:50-5.24(a)3 which permits non-farm related residential development in Agricultural Production Areas because non-farm related development is incompatible with farming operations and would impede the goal of maintaining a viable agricultural land base. Another commenter supported the amendment but recommended that the permitted density be increased from one unit per 40 acres to one unit per 20 acres.

RESPONSE: Permitting very low density residential development in agricultural areas has been used extensively throughout the United States as a means to protect agricultural land from significant intrusions. The National Agricultural Lands Study reported that 87 of 94 agricultural zoning ordinances studied do not rely upon exclusive agricultural zoning but permit non-farm housing to be constructed at very low densities. Approximately 75 percent of the jurisdictions relied on large lot or low density zoning with a median of one residential unit permitted for every 40 acres.

The Commission has analyzed income statistics for cash grains, vegetables, fruits and poultry, and typical farm sizes in Pinelands counties and selected Pinelands municipalities. These analyses demonstrate that 40 acre farm units are appropriate to ensure that farming remains a viable economic activity.

Although the decision as to whether the housing should be clustered was initially proposed to be at the discretion of the municipality or landowner, the Commission has since determined that it should in most cases be clustered. N.J.A.C. 7:50-5.24(c) has, therefore, been revised to require that the permitted non-farm housing be clustered unless it interferes with or is incompatible with surrounding farm uses.

N.J.A.C. 7:50-5.32

COMMENT: Two commenters opposed the "cultural" housing provisions at N.J.A.C. 7:50-5.32; one on the basis of unstated reasons and the other because the standards will further limit an already discriminatory provision.

RESPONSE: N.J.A.C. 7:50-5.32, with the exception of one change, represents a consolidation of identical standards previously included at N.J.A.C. 7:50-5.22(a), 5.23(a), 5.24(a) and 5.25(a).

The special provisions for cultural housing were established as a result of extensive public comment as the Comprehensive Management Plan was being developed in 1980 and essentially represent an exception to the minimum lot area requirements otherwise established for various Pinelands management areas.

Several considerations led the Commission to establish this exemption. The Pinelands Protection Act requires that the Commission shall "[R]ecognize existing economic activities within the area and provide for the protection and enhancement of those indigenous industries and commercial and residential developments which are consistent with such purposes and provisions". In line with this mandate, the Pinelands Plan establishes a number of indigenous economic activities, such as forestry, agriculture and proprietary recreation facilities as permitted land uses in the Pinelands Area. Many of these indigenous industries rely upon the services of long time Pinelands residents and, if those industries are to flourish in the future, opportunities must exist for family members to reside close to their places of work. Another consideration is the existence of other crafts and resource based activities which form an integral part of the social and cultural fabric of the Pinelands. In large part, these crafts, skills and activities are maintained through close family ties and are passed down from generation to generation. If these close family ties are not maintained, an essential part of the Pinelands as a living environment may be forever lost.

Lastly, residents of the Pinelands who have close ties to the region's resources do not exist in a vacuum. They have come to rely upon other long time residents who, while not economically tied to the resources, nevertheless help form part of the existing social and cultural make-up of the Pinelands and who may provide essential supporting services (for example, health services and retail sales).

The Commission thus established the cultural housing provision to provide additional opportunities for members of long time Pinelands families to reside in the Pinelands and contribute to the region's existing social and cultural character. In so doing, the Commission recognized that many other individuals who wish to reside in the Pinelands would not qualify and would, therefore, be required to meet the general requirements for residential development applicable to the individual management areas. The Commission also recognizes that the cultural housing exemption would, unfortunately, need to be discontinued if found to be legally flawed.

As stated previously, one change from the original provision was reflected in the Commission's proposal. This change consists of the insertion of the term "immediate" in N.J.A.C. 7:50-5.32(a)3ii. The operation of the cultural housing provision in its entirety relies upon members of a "family" and the Commission's rather broad definition of "immediate family". The absence, however, of the term in (a)3ii has led to misunderstanding and confusion, and the term "extended" has been interpreted by some to include distant relatives which effectively bear no relation to the applicant or a standard view of family. To clarify the original intent, the term "immediate" was added to the proposal, and, to further eliminate confusion, the term "extended" has been deleted from the adopted rule.

N.J.A.C. 7:50-5.43

COMMENT: One commenter recommended that, in light of the additional allocation of Pinelands Development Credits (PDCs) to potential mining sites at N.J.A.C. 7:50-5.43(b), additional PDCs should also be allocated to agricultural lands. Specifically, it has been recommended that reservoirs integrally used for agricultural purposes and wetlands in field agricultural use receive an allocation above the current two-tenths of a credit per 39 acres.

RESPONSE: The increased allocation of Pinelands Development Credits to potential mining sites can not be likened to credit allocations for agricultural lands. The increased allocation to potential mining sites at N.J.A.C. 7:50-5.43(b)1i and 5.43(b)2i apply only in the event that those lands are not mined. If mined, all credit entitlements are eliminated per N.J.A.C. 7:50-5.43(b)1ii and 5.43(b)2ii. The Commission's objective here is to offer an incentive to discourage additional sand and gravel mining while agricultural activities comptabile with the Pinelands environment (that is, berry production in wetlands and tillage agriculture in uplands) already receive an increased credit allocation.

The Commission did consider a further increase in credit allocations for agricultural activities as an outgrowth of a cooperative analysis of the issue by the staffs of the Department of Agriculture and the Pinelands Commission. With one exception, further increases were not considered advisable since: additional PDC allocations to berry agriculture operations would result in an entitlement which is 24 to 52 percent higher than tillage agriculture; and conversion of wetlands to row crop use is not compatible with the Pinelands protection program and should not be rewarded with higher PDC entitlements.

The exception relates to row crop agriculture which pre-existed the adoption of the Pinelands Comprehensive Management Plan. Although the Commission does not wish to encourage conversion of wetlands, those lands which have been actively farmed for many years should receive the increased PDC allocation even though some infringe upon what would otherwise be classified as wetlands. In doing so, the Commission is recognizing a pre-existing condition which nevertheless contributed to the agricultural land base of the Pinelands. The adopted rule has, therefore, been revised to provide the same allocation to all lands in active production as of February 7, 1979. Only upland areas developed for tillage agricultural use after that date will, however, receive the higher entitlement.

It should also be noted that the Office of Administrative Law inadvertently neglected to publish N.J.A.C. 7:50-5.43(b)2i as proposed for technical change and recodification at N.J.A.C. 7:50-5.43(b)2iii. This oversight has been corrected in the adopted rule.

N.J.A.C. 7:50-6.3

COMMENT: One commenter recommended that the definitions of Pinelands wetlands be made consistent with the definition contained in the Assembly Committee Substitute for Bill Numbers 2342 and 2499, the proposed Freshwater Wetlands Protection Act.

RESPONSE: The definition of "freshwater wetland" contained in the now adopted Freshwater Wetlands Protection Act (Chapter 156 of the Laws of 1987) is similar to that found in the Pinelands Comprehensive Management Plan. The Plan defines wetlands as "those lands which are inundated or saturated by water at a magnitude, duration and frequency sufficient to support the growth of hydrophytes." Hydrophytes are defined as "any plant growing in water or in substrate that is at least periodically deficient in oxygen as a result of excessive water content." The Freshwater Wetlands Protection Act states that freshwater wetland "means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation."

The only substantial difference between the Commission's program and the one outlined in the Freshwater Wetlands Protection Act is a provision requiring the use of an April 1, 1987 interim-final draft "Wetland Identification And Delineation Manual" developed by the United States Environmental Protection Agency (EPA). Although the Commission has not had an opportunity to study the draft manual, this approach is being developed for general application at the national level and may not be wholly appropriate for use in the Pinelands.

The Commission's definition has proven to be defensible and workable over the course of the past six years. In vegetated areas, the presence of predominantly wetlands vegetation is used as the primary criteria in delineating wetlands. A two criteria approach (soil and vegetation) is used when non-wetland (upland) species are distributed throughout the area in question. Soils alone are used in areas which have been cleared of vegetation but are still capable of supporting hydrophytes.

Unlike the EPA approach, the Commission's program has been developed specifically for the Pinelands. The Freshwater Wetlands Protection Act provides that the Pinelands Commission may administer separate provisions which are at least as stringent as those contained in the act. The Pinelands are recognized as a resource of national and international importance. Wetlands contribute substantially to the region's uniqueness. Given the unique nature of the Pinelands, use of the approach presently contained in the Plan is warranted.

N.J.A.C. 7:50-6.13

COMMENT: Three commenters oppose the amendments at N.J.A.C. 7:50-6.13 which govern the development of roads, trails and utilities through wetlands; two because the amendments weaken the Plan's current standards and one because the standards are too restrictive. One commenter supports the proposed amendments and another recommends that the standards be stated more clearly.

RESPONSE: The Commission recognizes that linear developments, although appropriate for siting within the Pinelands, cannot normally avoid wetlands crossings since wetlands are interspersed throughout the region. The amendments are intended to recognize this fact but provide safeguards to ensure that there is a clear need for the facility, development in wetlands is avoided where alternative routes are available, and that any impacts to wetlands are satisfactorily mitigated. The Commission does not view these amendments as a strengthening or weakening of the Plan but rather a clearer statement of the policies governing these types of linear development.

COMMENT: One commenter recommended that composting facilities be permitted in wetlands subject to the standards of N.J.A.C. 7:50-6.13 and another opposed the siting of these facilities in wetlands.

RESPONSE: As stated previously, N.J.A.C. 7:50-6.13 recognizes that certain types of linear development cannot avoid wetlands; however, that is not the case with composting facilities or most other development activities which are oriented to specific sites. It is, therefore, inappropriate to expand this provision to permit the siting of facilities in wetlands which can otherwise be situated in upland portions of the Pinelands.

N.J.A.C. 7:50-6.23

COMMENT: One commenter recommended that fish and wildlife management activities not be required to adhere to the standards of N.J.A.C. 7:50-6.23.

RESPONSE: N.J.A.C. 7:50-6.23 essentially provides that clearing (other than for agricultural purposes) exceeding 1,500 square feet be permitted only if it is necessary to carry out an otherwise permitted land use activity in the Pinelands. Fish and wildlife management is such a permitted activity; thus clearing more than 1,500 square feet of land may be permitted. However, as is the case with other development activities in the Pinelands, fish and wildlife management activities which necessitate alterations to the environment must meet standards of the Plan to protect wetlands, water quality and other Pinelands resources. While many fish and wildlife management techniques can be carried out in a manner compatible with the Pinelands environment, some activities which involve, for example, the alteration of wetlands or the introduction of pollutants to surface and ground waters are not appropriate. Therefore, fish and wildlife management activities which involve land disturbance should not be exempted from the standards of the Plan.

N.J.A.C. 7:50-6.24

COMMENT: Seven commenters recommended that the listing of 54 threatened or endangered plant species at N.J.A.C. 7:50-6.24(a) be expanded to reflect the recent reviews of flora undertaken on a Statewide basis by the State's Office of Natural Lands Management. One of the commenters also suggested that a provision be added to prohibit the collection of such species.

RESPONSE: The Pinelands Commission has been working with the Office of Natural Lands Management for two years in an effort to obtain the needed documentation to support the identification of additional plant species as threatened or endangered. Unlike threatened or endangered wildlife which are duly studied and listed by the Division of Fish, Game and Wildlife pursuant to State law, no similar program exists for threatened or endangered plants. It is, therefore, incumbent upon the Commission to determine that sufficient documentation exists to legally support the plant designations. Supporting documentation has just been received from the Office of Natural Lands Management and is now being reviewed. When the review is complete, the Commission will proceed to propose appropriate amendments to the list.

The Commission fully supports the recommended prohibition on the collection of threatened or endangered plant species but believes that, in order to be effective, it must be coupled with adequate enforcement powers and penalties for violations. Unfortunately, the Commission has limited enforcement powers and no authority to levy fines. Consequently, the Commission believes that legislation is the appropriate vehicle to accomplish this additional measure of protection and supports recent initiatives within the State Legislature along these lines.

N.J.A.C. 7:50-6.31

COMMENT: One commenter noted that Part III of Subchapter 6 does not contain the standard requirement found elsewhere in the subchapter that municipal master plans and land use ordinances must incorporate the standards of the fish and wildlife program in order to receive Pinelands Commission certification. The commenter recommended that this provision be added.

RESPONSE: The Introduction to Subchapter 6 makes it clear that local plans and ordinances must implement the programs contained therein. For the sake of further clarification, a similar provision has been reflected in each of the programs—see, for example, N.J.A.C. 7:50-6.2, 6.22, 6.42, 6.52, 6.62, 6.72, 6.82, 6.92, 6.102, 6.122, 6.132, 6.142 and 6.152. The absence of such a provision from Part III does not exempt municipalities from the requirement but, in order to maintain consistency, a provision similar to that included in the other Parts of Subchapter 6 has been added at N.J.A.C. 7:50-6.32 and the subsequent sections have been recodified accordingly. It is important to note, however, that this provision will not permit modification of the program's requirements by municipalities since, unlike others, no flexibility is possible.

N.J.A.C. 7:50-6.32

COMMENT: Seven commenters opposed the adoption, by reference, of the State's list of threatened or endangered animal species. One commenter supported the change as a means to maintain an up-to-date listing without continual amendment to the Comprehensive Management Plan but did recommend that listings be made available to local officials and the public. Opposition to the proposed amendment and, thus, support for Commission adoption of its own list threatened or endangered species is based upon a concern that the listing of species will become more obscure.

RESPONSE: As stated in a previous response (see N.J.A.C. 7:50-6.24), the Department of Environmental Protection officially maintains a listing of threatened or endangered animal species whereas no such official list exists for plants. Therefore, the Commission must maintain its own designated list of threatened or endangered plants but may rely upon the Department's list for animals. Since the Department regularly reviews the status of animal species in New Jersey and updates its list as needed, it is advisable to adopt the Department of Environmental Protection list by reference to ensure that the status of Pinelands species are kept current. The Department's listing will be distributed to local officials and the public so that the impact of proposed development projects can be accurately assessed.

N.J.A.C. 7:50-6.43

COMMENT: One commenter recommended that woodcutting activities undertaken as part of a fish and wildlife management program not be subject to the harvesting and reforestation standards of the Plan.

RESPONSE: The now repealed requirements at N.J.A.C. 7:50-6.43 required that a forestry permit be obtained for fish and wildlife management activities when woodcutting is proposed. The new application requirements at N.J.A.C. 7:50-4.2(b)6 do not, however, require forestry applications and permits unless the wood is being harvested for commercial purposes. Therefore, if woodcutting and clearing is proposed only as a means to enhance wildlife habitat, the cutting and reforestation requirements at N.J.A.C. 7:50-6.44 will not apply. It should be noted, however, that any clearing of land which exceeds 1,500 square feet must be done in accordance with the other standards of the Plan (see N.J.A.C. 7:50-6.23 for further discussion).

N.J.A.C. 7:50-6.44

COMMENT: Four commenters recommended that the existing standards at N.J.A.C. 7:50-6.44(a) which govern the extent of buffers at woodcutting sites be expanded. The recommendations ranged from adding a 25 to 500 foot buffer requirement to roads, residences and property lines to increasing the buffer from streams, lakes and ponds to 50 feet.

RESPONSE: N.J.A.C. 7:50-6.44(a)4iv, vi, vii and viii establish varying buffer requirements designed to safeguard against erosion and other intrusions while the woodcutting operation is underway. However, the Commission believes it is inadvisable to increase those buffers or to establish additional buffering standards in order to further limit the areas which can be harvested. Timber harvesting is necessary to maintain the dynamics of the Pinelands ecosystem and decisions as to which areas should be harvested need to be based upon sound forest management and environmental considerations. Although harvested sites are undeniably a visual intrusion, these intrusions may be necessary in certain instances to achieve ecological objectives.

COMMENT: Three commenters recommended that the Bureau of Forest Management not be exempted from the requirements at N.J.A.C. 7:50-6.44(a)5 to mark cutting boundaries.

RESPONSE: These requirements, and the exemption for the Bureau of Forest Management, go hand in hand with the requirements of N.J.A.C. 7:50-4.2(b)6vii. As stated previously, the Bureau supervises all cuts on State property; consequently, there is little need for the trees to be harvested or the cutting boundaries to be marked. If a problem with State supervision does arise, the Commission has the authority to revoke its agreement with the Bureau which streamlines application requirements and to consider imposing specific marking requirements.

COMMENT: The Bureau of Forest Management opposed the requirements at N.J.A.C. 7:50-6.44(a)8 which govern regeneration of different forest types after harvesting. The Bureau suggests that this decision should be made by the Bureau when it reviews individual forestry management plans. Two other commenters supported the proposed amendment to encourage cedar regeneration in most swamps.

RESPONSE: Cedar swamps are an integral part of the Pinelands environment but have been decreasing at an alarming rate due, in most part, to poor harvesting or site restoration practices. In an effort to promote the generation of the most commercially valuable wood product in the Pinelands and to re-establish cedar forests as a more prominent part of the Pinelands environment, the Commission has made this policy decision to promote cedar growth in those locations where the sites, if prepared and managed properly, are suitable.

N.J.A.C. 7:50-6.53

COMMENT: One commenter recommended that the existing standards at N.J.A.C. 7:50-6.53(a) which require that agricultural activities be carried out in accordance with published "recommended management practices" not be applied to fish and wildlife management activities.

RESPONSE: Certain fish and wildlife management activities involve the growing of crops to enhance habitat or to provide food stuffs for wildlife. Recommended management practices published by Rutgers University and the Soil Conservation Service address soil preparation, planting and pest control practices which are applicable not only to the commercial production of crops but in many cases to the growing of crops for wildlife.

N.J.A.C. 7:50-6.63

COMMENT: One commenter questioned whether the deletion of the word "new" from N.J.A.C. 7:50-6.63(a) means that compliance with the registration requirements is essential no matter how long the mining operation has been in existence.

RESPONSE: All of the amendments to N.J.A.C. 7:50-6.63(a) are intended to reflect the current status of permitted resource extraction operations in the Preservation Area and Special Agricultural Production Area Districts. When initially adopted in 1980, this provision required existing mining operations in those districts to register with and obtain a permit from the Pinelands Commission. Those time limits have expired; thus, the section has been rewritten to reflect the limitations as they now exist. Within this context, the term "new" operation is irrelevant, and, absent prior registration and receipt of a permit, no mining operation is permitted to operate within the Preservation Area or Special Agricultural Production Area Districts.

N.J.A.C. 7:50-6.66

COMMENT: Five commenters supported and nine commenters opposed the amendments at N.J.A.C. 7:50-6.66(a)2 which eliminate one and reduce another buffer standard applicable to mining operations.

RESPONSE: The Commission readily acknowledges the need to buffer sand and gravel operations for environmental, aesthetic, land use and safety reasons.

As is the case with other development projects, municipalities regulate their location and design to protect the general health, safety and welfare. The Commission, on the other hand, imposes regional standards when necessary to protect the Pinelands environment and its aesthetic qualities. Because of this demarcation of responsibilities, the Commission has deleted the buffer standard governing the proximity of mining operations to surrounding land use (for example, residences) because the issues of noise, safety and compatibility of uses is rightfully determined at the municipal level. Nothing in the Plan would otherwise prohibit a municipality from establishing a buffer standard to surrounding land uses as stringent or more so than that previously included in the Plan.

With regard to the property line setback standard retained in the Plan, the Commission believes that off-site environmental impacts (wind and water erosion, water table fluctuations, etc.) can be substantially mitigated by virtue of a buffer between the actively mined (disturbed) area and adjacent property. The proposed rule would have permitted a 200 foot buffer to be reduced in recognition that the character of the buffer (heavily vegetated versus sparsely vegetated) will in large part dictate off-site impacts due to wind and water erosion. However, the size of the buffer and not its character will be the primary determinant of off-site impacts to groundwater levels. Therefore, the Commission has reconsidered the proposal to permit less than 200 foot buffers and has deleted the provision from the adopted rule.

N.J.A.C. 7:50-6.67

COMMENT: Three commenters recommended that the proposed amendment at N.J.A.C. 7:50-6.67(a)9 which provides that the mining restoration bond may be released two years after the restoration requirements are met is excessive. It is argued that restoration is accomplished in phases and it is costly and unnecessary to require retention of the full bond during this entire period; rather, it is recommended that the bond be released in phases.

RESPONSE: It is true that certain steps involved in the restoration process, once completed, would not have to be redone. An example is the removal of heavy equipment and structures. It is also true that grading and topsoiling the site will not, in most cases, have to be redone and that the primary purpose for retaining a guarantee two years after restoration is complete is to ensure that ground and tree coverage are satisfactorily established. However, if revegetation does fail and the site is not suitably stabilized, erosion could result and require further regrading and topsoiling.

While the Commission agrees that the performance guarantee may be released immediately after the restoration requirements have been completed, a maintenance guarantee will be required to ensure that the site work is adequately maintained for a period of two years.

COMMENT: One commenter supported the proposed amendment to N.J.A.C. 78:50-6.67(a)10 which permits intensive recreation facilities to be developed at certain restored mining sites and three others expressed concern. Among the concerns expressed were that additional controls need to be established to prevent environmental degradation at these sites and that no such intensive recreational uses should be permitted since these areas are recovering from massive disturbance.

RESPONSE: The Commission has reconsidered the issue and has decided to drop the proposed amendment from the adopted rule. Although restored mining sites may have potential to be re-used for intensive recreation pursuits, the Commission agrees with the objectors that it is not advisable to permit this type of development on sites which are already recovering from massive disturbance. The restoration standards in the Plan are designed to reestablish native Pinelands vegetation communities on the parcel.

N.J.A.C 7:50-6, Part VII

COMMENT: Three commenters recommended that the Commission institute a more aggressive waste management program and mandate certain steps including source reduction and recycling.

RESPONSE: Management of solid waste is indeed a problem of major proportions in the State. The Department of Environmental Protection, Division of Waste Management administers the state's Solid Waste Management Act and each Pinelands county, as a solid waste management district, is required by law to develop comprehensive solid waste programs.

Because this governmental structure and the legal authorities have been established independently of the Commission, it is not advisable (and perhaps beyond the Commission's legal authorities) to superimpose its own comprehensive waste management program on the State-sanctioned solid waste management districts. However, the Commission has taken a bold step to require that all Pinelands landfills terminate operation by 1990. This is a clear signal to all governmental solid waste managers that continued reliance upon landfills in the Pinelands is not possible and that creative and forceful steps must be taken to manage solid waste.

N.J.A.C. 7:50-6.74

COMMENT: One commenter questioned why the termination date for Pinelands landfills in N.J.A.C. 7:50-6.74(a)3 is being changed from 1980 to 1990.

RESPONSE: When codified in the New Jersey Administrative Code, the Office of Administrative law inadvertently made a typopgraphical error in the date. The 1990 date is included in the published version of the Comprehensive Management Plan and is also cited elsewhere in the Code (see, for example, N.J.A.C. 7:50-6.75(a)5).

N.J.A.C. 7:50-6.75

COMMENT: Two commenters recommended that N.J.A.C. 7:50-6.75 be revised to prohibit the siting of new landfills in Forest Area and Agricultural Production Area Districts in addition to the Preservation Area.

RESPONSE: The standards of N.J.A.C. 7:50-6.75(a) do essentially prohibit the siting of new landfills in the Pinelands unless no other recourse is available. If, on the other hand, the Commission was to prohibit the siting of landfills in Forest and Agricultural areas, an applicant could still seek a waiver of strict compliance pursuant to Subchapter 4 in an effort to permit a landfill's siting in either location. Although the standards contained in N.J.A.C. 7:50-6.75 require proofs more specific to a landfill than are the generic waiver tests included in Subchapter 4, an applicant who meets the N.J.A.C. 7:50-6.75 tests could potentially qualify for a waiver of strict compliance.

N.J.A.C. 7:50-6.77

COMMENT: Two commenters opposed the amendments to N.J.A.C. 7:50-6.77(a), one on the basis that the Plan would be weakened and the other on the basis that septage should not be prohibited from being land applied.

RESPONSE: The amendments actually strengthen the environmenta[l] provisions of the Plan by more clearly stating the nature of the prohibi[-]tions and by prohibiting the land application of septage. Septage contain[s] extremely high levels of nitrogen (which is a key pollutant regulated unde[r] Part VIII of Subchapter 6) and may also contain heavy metals and volatil[e] organics. Because sewer treatment facilities are now available to trea[t] septage, the Commission does not believe that land application is neces[-]sary for septage disposal.

N.J.A.C. 7:50-6.84

COMMENT: One commenter opposed the existing stormwater man[-]agement standard at N.J.A.C. 7:50-6.84(a)5i and the proposed amend[-]ment at N.J.A.C. 7:50-6.84(a)5iii. These standards essentially require tha[t] the rate and volume of stormwater runoff be maintained at pre-develop[-]ment conditions but the commenter states that no adverse environmenta[l] impacts will occur if the volume of stormwater runoff happens to increas[e] as a result of development.

RESPONSE: The Commission's stormwater management standard[s] are intended to retain natural conditions insofar as possible. Therefore neither the rate nor the volume of stormwater runoff is permitted t[o] increase as a result of development of a parcel of land. This not onl[y] ensures that the natural rate of runoff is maintained to protect natura[l] stream flow conditions, it also ensures that the amount of stormwate[r] which is naturally recharged into the ground is maintained. This help[s] to retain the existing groundwater regime which is crucial to the ecologica[l] well being of the Pinelands. The proposed amendment at N.J.A.C 7:50-6.84(a)5iii reflects the wetlands protection standards of Part I o[f] Subchapter 6 and makes it clear that existing surface water condition[s] must also be maintained.

N.J.A.C. 7:50-6.94

COMMENT: One commenter recommended that all developments not just larger residential, commercial and industrial projects, be require[d] to adhere to the carbon monoxide standards of N.J.A.C. 7:50-6.94.

RESPONSE: The Department of Environmental Protectio[n] promulgates and administers air quality standards for New Jersey an[d] N.J.A.C. 7:50-6.93 reinforces those standards. N.J.A.C. 7:50-6.94 merel[y] requires that certain types of developments demonstrate to the Com[-]mission how carbon monoxide standards will be met. It does not exemp[t] other development projects from adhering to the relevant standards estab[-]lished by the Department of Environmental Protection.

N.J.A.C. 7:50-6.124

COMMENT: Two commenters opposed the deletion of the fire safet[y] construction standards at N.J.A.C. 7:50-6.124(a)6 since many portion[s] of the Pinelands represent extreme forest fire hazard areas.

RESPONSE: The Commission agrees that development in th[e] Pinelands must be undertaken in a manner which minimizes the risk from forest fires to life and property. The standards contained in N.J.A.C. 7:50-6.124(a)1-5 are intended to help in this regard and can be im[-]plemented by the Commission by virtue of its authorities governing th[e] design and development of land.

However, N.J.A.C. 7:50-6.124(a)6 relates to construction materials and standards which are beyond the scope of the Commission's capabilitie[s] to enforce. They are not dissimilar to other construction standards en[-]forced by municipalities through the Uniform Construction Code. Although it is not appropriate for the Commission to impose construction standards on a regional basis, it is recognized that individual munici[-]palities should be encouraged to adopt and administer them locally. Therefore, their standards are being retained in the Comprehensive Man[-]agement Plan as new rule N.J.A.C. 7:50-6.125 as guidelines which munici[-]palities may elect to adopt.

N.J.A.C. 7:50-6.144

COMMENT: Two commenters recommended that the Commission revise its recreation and open space standards at N.J.A.C. 7:50-6.144(a)3i so that wetlands and/or wetlands buffers are not counted as part of the required open space and recreation land.

RESPONSE: N.J.A.C. 7:50-6.144(a)3i requires that residential developments of 25 units or more set aside a certain amount of open space and that a portion of that land be improved to permit active recreation activities. Wetlands and wetlands buffers are open spaces and should be recognized as such in the Commission's requirements. These areas would, however, not be normally available for development of active recreation areas because of the Commission's wetlands protection program (Part I of Subchapter 6). Therefore, a residential project which might otherwise meet the open space standards by dedication of wetlands and wetlands buffers may have to set aside additional areas for the development of active recreation sites.

N.J.A.C. 7:50-6.153

COMMENT: One commenter recommended that N.J.A.C. 7:50-6.153 should permit municipalities to delegate powers and duties to historic preservation commissions pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

RESPONSE: Although N.J.A.C. 7:50-6.153(a) initially vests historic preservation responsibilities with municipal planning boards, N.J.A.C. 7:50-6.153(c) does permit municipalities to establish separate historic preservation commissions. This approach guarantees that a municipal body will be responsible for implementing the Comprehensive Management Plan's historic preservation program even if the municipality elects not to create an historic preservation commission.

COMMENT: One commenter recommended that N.J.A.C. 7:50-6.153(a)1 and 2 be revised so that it is clear that both the Pinelands Commission and municipalities may designate historic resources and districts of local, State or national significance.

RESPONSE: The standards of N.J.A.C. 7:50-6.153(a)1 and 2, as well as those of N.J.A.C. 7:50-6.154(b)2, are not intended to limit a municipality's ability to designate historic resources and districts of State or national significance. It has been the Commission's view that any resource of import from a State or national perspective would also be significant on a local level. However, since the current phrasing has proven to be confusing to at least one commenter, N.J.A.C. 7:50-6.153(a)1 and 2 and 6.154(b)2 have been revised in the adopted rule to clarify that resources may be designated on the basis of local, State or national significance.

N.J.A.C. 7:50-6.154

COMMENT: One commenter recommended that the Commission not adopt by reference the State and National Registers of Historic Places for purposes of estabishing regulatory protection for those historic properties so listed. Such an automatic designation, rather than independent review and designation by the Commission, and the regulatory protection that goes along with that designation are perceived by the commenter as a lack of due process and will result in negative public perceptions about State and National Register designation. Another commenter opposed N.J.A.C. 7:50-6.154(a) for unstated reasons.

RESPONSE: At the urging of both the National Park Service and the Office of New Jersey Heritage (N.J. Department of Environmental Protection), the Commission is making revisions (N.J.A.C. 7:50-6.154(b)1) to the Pinelands Designation program which will make the criteria for eligibility essentially identical to those used for the State and National Registers. These revisions to the existing criteria will ensure that properties listed on the State and/or National Register will be eligible, virtually by definition, for Pinelands Designation. For the Commission to undertake an independent evaluation of historic sites would be redundant, considering, for example, he extensive review which is required before a site may be entered on the State Register. These rules (N.J.A.C. 7:4-1.1 et seq.) require that a resource under consideration be thoroughly documented, that this documentation be reviewed by the Department of Environmental Protection, that the owner be notified of the implications of registration and be given an opportunity to respond, that the nomination be recommended by a body of professional preservationists with acknowledged expertise (the State Review Committee for Historic Sites), and that the Commissioner of the Department approve the nomination. In the case of an historic district nomination, an open public meeting must also be held.

In addition to being a duplication of effort, a separate Commission review of sites already listed on the State and National Register would, in practice, be misleading. Property owners could proceed with Register listing assuming that it will involve no regulatory encumbrance over actions that may affect the resource. However, since it is unlikely that the Commission could reasonably disagree with the State Register listing, the regulatory controls pursuant to Designation would in fact be a likely result of entry on the State Register.

With respect to the specific concern that property owners would not have an opportunity to object to the designations, the Commission believes that a proper vehicle for owner notification and comment already exists in the rules concerning State Registration procedures (N.J.A.C. 7:4-2.2(c)5ii). These require that, prior to State Review Committee consideration, a letter be sent to a property owner advising of the "benefits and responsibilities of registration". Since N.J.A.C. 7:50-6.154(a) proposes automatic Designation of registered sites, the State notification of the owner should necessarily reference the simultaneous Pinelands Designation of the site. Moreover, the Commission's own rules at N.J.A.C. 7:50-6.154(a) are intended to provide a supplementary advance notice. An aggrieved owner will also be allowed to seek removal of his property from Designation status via the Comprehensive Management Plan rule at N.J.A.C. 7:50-6.154(g).

Concerns over inhibiting the National Register program because of the strict Designation controls can be eased through existing Federal review procedures. After reviewing a nomination, the keeper of the National Register may at his option issue a "DOE" (determination of eligibility) for a significant historic site. This provides the site with protection against Federally sponsored undertakings without its actually being entered on the Register. Since the site is not registered, it would not be automatically designated and would not be subject to the controls of N.J.A.C. 7:50-6.156. Unfortunately, there is, however, no similar provision for the State Register.

These procedures, in their entirety, represent an effective and efficient means of identifying and protecting significant historic resources in a straightforward and clear manner which does not mislead the public at various stages in the process. Automatic Designation of State and National Register sites is an integral part of these procedures.

COMMENT: One commenter recommended that the standards for designation of additional resources at N.J.A.C. 7:50-6.154(b)1iii be revised to more closely follow the comparable National Register criterion.

RESPONSE: National Register of Historic Places criterion (c) addresses distinctive architectural characteristics, works of a master or high artistic values. A resource meeting of a master or high artistic values. A resource meeting any of these three tests is eligible for National Register listing. Although the Pinelands Plan criterion at N.J.A.C. 7:50-6.154(b)1iii does not explicitly reference works of a master or high artistic values, a resource meeting either of these tests would qualify for designation on the basis of its architectural, cultural or social significance. Nevertheless, the current phrasing has proven to be confusing to at least one commenter and the Commission has, therefore, revised N.J.A.C. 7:50-6.154(b)1iii to more closely follow the National Register criterion.

N.J.A.C. 7:50-6.155

COMMENT: One commenter recommended that N.J.A.C. 7:50-6.155(b)1ii be reworded to ensure that the "waiver" of the application requirement is not construed to require a waiver of strict compliance pursuant to Part V of Subchapter 4.

RESPONSE: N.J.A.C. 7:50-6.155(b)1ii specifically states that the cultural resource survey requirement may be waived for individual applications for development. The Commission believes it is clear that this waiver relates to application information and may be determined by the Executive Director pursuant to N.J.A.C. 7:50-4.2(b)3 without the need for a waiver of strict compliance.

N.J.A.C. 7:50-6.156

COMMENT: One commenter recommended that, in lieu of the reference to the Secretary of Interior's Standards for Rehabilitation, N.J.A.C. 7:50-6.156(c)3i(1)(i) include the full text of the standards themselves.

RESPONSE: Although copies of the Secretary's Standards will be provided to municipalities which may elect to repeat them in their entirety in local ordinances, the Commission does not believe it is necessary to include the full text in its rules.

N.J.A.C. 7:50-6.157

COMMENT: One commenter recommended that N.J.A.C. 7:50-6.157(b)4 be clarified to reference that the required inventory form is published by the New Jersey Department of Environmental Protection.

RESPONSE: N.J.A.C. 7:50-6.154(d)1 references that the inventory form is published by the Department of Environmental Protection and a similar reference has been added to N.J.A.C. 7:50-6.157(b)4 for further clarification.

N.J.A.C. 7:50-7.11

COMMENT: Two commenters recommended that the period for reviewing the Comprehensive Management Plan should be changed from the five year interval proposed at N.J.A.C. 7:50-7.11. One of the commenters recommended that the review period be kept at three years and the other recommended 10 years.

RESPONSE: Based upon is experience during the first review of the Comprehensive Management Plan, the Commission beieves that five year intervals are appropriate for reviews of the Plan to occur. A shorter period will not allow sufficient time for a thorough review and a longer period between reviews may result in a program which is static.

Other Changes From The Proposal

Several typographical errors in the proposal have been corrected.

Standards at N.J.A.C. 7:50-5.24(a)2ii and 7:50-5.25(b)1iii governing farm housing in Agricultural and Special Agricultural Production Areas, respectively, have also been revised. The changes are intended to more clearly present the original intent of the Commission. A change has also been made to N.J.A.C. 7:50-5.24(a)2v so that 10 acre farm subdivisions are not totally precluded. This change recognizes that some forms of agriculture, such as nurseries, can function on 10 acre parcels. Since these types of agriculture are not, however, predominant in the Pinelands, a restriction on the frequency of subdivision is included to prevent needless fragmentation of the land base.

Another change from the proposal is the addition of working to N.J.A.C. 7:50-6.44(a)2 requiring that persons conducting woodcutting operations have the approved forestry permit in their possession when transporting wood from the harvesting site. This clarification is intended to ensure that proper authorization is readily available during the entire woodcutting cycle.

N.J.A.C. 7:50-6.124(a)2 has been reworded so that the intent to provide an efficient means of access for fire fighting equipment is clearer.

Yet another change clarifies the procedures governing the issuance of certificates of appropriatenes for historic resources (N.J.A.C. 7:50-6.156(a)). Although N.J.A.C. 7:50-4.1(a) makes reference to the fact that certain types of development are not subject to Pinelands Commission notice and review procedures but that these exemptions do not apply when an historic resource has been designated by the Pinelands Commission, the language in the proposal at N.J.A.C. 7:50-6.156(a)3 is somewhat ambiguous. Therefore, language has been added to N.J.A.C. 7:50-6.156(a)3 to clarify that certificates of appropriateness for historic resources which are designated solely by a municipality must be issued by the municipality but are not generally subject to Pinelands Commission notice and review procedures.

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

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

PART I—INTERPRETATION

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

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

PART II—DEFINITIONS

7:50-2.11 Definitions

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

. . .

"Agricultural employee housing" means residential dwellings, for the seasonal use of employees of an agricultural or horticultural use, which because of their character or location are not to be used for permanent housekeeping units and which are otherwise acessory to a principal use of the lot for agriculture.

. . .

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

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

. . .

"Application for development" means any application, filed with any permitting agency, for any approval, authorization or permit which is a prerequisite to initiating development in the Pinelands Area, *[except for an application for approval, authorization or permit for:]* ***except as provided in N.J.A.C. 7:50-4.1(a).***

*[1. The improvement, expansion or reconstruction of any single family dwelling unit or appurtenance thereto;

2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;

3. The improvement, expansion, construction or reconstruction of a structure used exclusively for agricultural or horticultural purposes;

4. The repair of existing utilities and the installation of utilities to serve existing or approved development; and

5. The clearing of less than 1500 square feet of land.]*

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

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

. . .

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

"Certificate of compliance". See N.J.A.C. 7:50-4.11 through 4.27. This document shall be entitled Certificate of Non-Compliance when the proposed development is not consistent with the requirements of this Plan.

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

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

. . .

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

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

. . .

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

1. A change in type of use of a structure or land;

2. A reconstruction, alteration of the size, or material change in the external appearance of a structure or land;

3. A material increase in the intensity of use of land, such as an increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;

4. Commencement of resource extraction or drilling or excavation on a parcel of land;

5. Demolition of a structure or removal of trees;

6. Commencement of forestry activities;

7. Deposit of refuse, solid or liquid waste or fill on a parcel of land;

8. In connection with the use of land, the making of any material change in noise levels, thermal conditions, or emissions of waste material; and

9. Alteration, either physically or chemically, of a shore, bank, or flood plain, seacoast, river, stream, lake, pond, wetlands or artificial body of water;

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

. . .

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

. . .

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

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

. . .

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

. . .

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

1. Removal of trees located on a parcel of land one acre or less on which a dwelling has been constructed;

2. Removal of trees directly associated with the use of the property for a nursery, garden center, Christmas tree plantation, or orchard;

3. Removal of trees directly associated with the *[use of the property for an authorized landfill]* ***development of the property as otherwise authorized by this Plan***;

4. Removal of trees necessary for the maintenance of utility or public rights-of-way;

5. Removal of trees for the personal use of the property owner; and

6. Removal of trees for public safety.

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

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

...

"Historic Preservation Commission" See N.J.A.C. 7:50-6.153.

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

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

...

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

...

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

...

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

...

"Low income household" means a household earning less than 50 percent of median income.

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

"Moderate income household" means a household earning no less than 50 percent and no more than 80 percent of median income.

...

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

...

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

...

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

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

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

...

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

"Plants, threatened or endangered" means a Pinelands plant species whose survival worldwide, nationwide, or in the state is in jeopardy.

...

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

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

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

...

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

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

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

...

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

...

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

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

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

...

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

...

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

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

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

...

"Uncertified municipality or county" means a municipality or county whose master plan and land use ordinance have not been certified by the Commission under N.J.A.C. 7:50-3.

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

...

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

"Wetlands, coastal" See N.J.A.C. 7:50-6.4.

"Wetland soils" means those soils designated as very poorly drained or poorly drained by the Soil Conservation Service of the United States Department of Agriculture, including but not limited to Atsion, Bayboro, Berryland, Colemantown, Elkton, Keansbury, Leon, Muck, Othello, Pocomoke, St. Johns and Freshwater Marsh and Tidal Marsh soil types.

...

SUBCHAPTER 4. DEVELOPMENT REVIEW

INTRODUCTION

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

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

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

Part VI sets forth a procedure whereby any person may secure a clarification or interpretation of the meaning or applicability of any provision of this Plan. Part VII provides for coordinated permitting with other state agencies.

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

PART I—UNIFORM PROCEDURES

7:50-4.1 Applicability

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

1. The improvement, expansion, or reconstruction within five years of destruction or demolition, of any single family dwelling unit or appurtenance thereto;

2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;

3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;

4. The construction, repair or removal of any sign, except for the construction or replacement of any off-site commercial advertising sign;

5. The repair of existing utility distribution lines and the installation of utility distribution lines to serve existing development or development which has received all necessary approvals and permits;

6. The clearing of less than 1500 square feet of land;

7. The construction of any addition or accessory structure for any nonresidential use provided said addition or structure will be located on an existing impermeable surface and the existing use is served by public sewers and said addition or structure will cover an area of no more than 1,000 square feet; or

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

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

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

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

(a) Pre-application conference.

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

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

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

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

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

(b) Applicants requirements.

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

2. Notice: The applicant shall provide notice of all applications for development in uncertified municipalities, applications for waivers and applications for letters of interpretation filed with the Commission to the municipal and county clerk, and the environmental commission, if any, of the municipality.

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

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

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

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

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

iv. A description of all existing uses of the subject property;

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

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

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

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

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

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

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

x. A map showing existing vegetation, identifying predominant vegetation types in the area and showing proposed landscaping of the subject property including the location of the tree line before and after development and all areas to be disturbed as a result of the proposed development.

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

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

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

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

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

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

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

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

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

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

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

vii. A slope map, at the same size and scale as the project site base map, indicating contour elevations at two foot intervals;

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

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

x. A map, at the same size and scale as the project site base map, showing storm water drainage patterns and calculations and the applicant's proposed storm water run-off management plan, which shall contain results of all percolation tests and soil borings performed in each recharge area including the estimated seasonal high water table;

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

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

xiii. All public service infrastructure agreements, or other documentation, evidencing the availability of electric, gas, water, sewer and other necessary public service infrastructure;

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

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

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

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

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

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

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

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

(4) Description of timber to be harvested;

(5) Description of regeneration plans; and

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

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

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

v. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.44 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the greater of \$500.00 or 10 percent of the value of the wood to be harvested during the two year duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality if applicable as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified;

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

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

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

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

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

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

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

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

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

vii. A soils map;

viii. A reclamation plan which includes:

(1) Method of stockpiling topsoil and overburden;

(2) Proposed grading and final elevations;

(3) Topsoil material application and preparation;

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

(5) Fertilizer application including method and rates;

(6) Planting method and schedules; and

(7) Maintenance requirements schedule;

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

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

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

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

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

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

iv. A statement of the extraordinary hardship imposed on the applicant based on the criteria set forth in N.J.A.C. 7:50-4.66(a)1 or an explanation of any compelling public need for the proposed development based on the criteria set forth in N.J.A.C. 7:50-4.6(a)2; and

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

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

10. Imposition of additional application requirements: At any time during the review of any application filed pursuant to this Plan, the Executive Director may require an applicant to submit any additional information which he determines is reasonably necessary to facilitate adequate review of the application. If the applicant does not submit the additional material within 30 days, or request an extension of time to do so, the application shall be deemed to be withdrawn.

(c) Determination of whether application is complete.

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

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

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

7:50-4.3 Commission hearing procedures

(a) Applicability: The procedures set out in this section shall be applicable, except to the extent that they are specifically modified by other provisions of this Plan with respect to particular subject matters, to all public hearings held pursuant to this Plan.

(b) Notice of public hearing.

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

i. The time and place of hearing;

ii. The authority pursuant to which the hearing is held;

iii. The name and address of the applicant;

iv. A brief description of the subject matter to be considered at the hearing;

v. A statement that the application and supporting materials are available for public inspection and copying at the principal offices of the Commission; and

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

2. Persons entitled to notice:

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

(1) By sending a copy of the notice to the applicant by certified mail;

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

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

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

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

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

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

(A) The secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction over the property on which development has been proposed or which would be directly affected by a map amendment proposed pursuant to N.J.A.C. 7:50-7 which is the subject of the hearing;

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

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

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

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

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

(c) Duty of Commission staff:

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

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

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

(d) Conduct of the hearing:

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

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

3. Record of hearing:

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

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

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

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

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

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

i. The applicant;

ii. Any person, organization or agency which has previously filed with the Commission a written request, together with an annual fee in an amount to be determined from time to time by the Commission to cover the actual cost of said notice;

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

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

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

7:50-4.4 Waiver of time limits

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

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

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

PART II—DEVELOPMENT IN AREAS WITHOUT CERTIFIED LOCAL PLANS

7:50-4.11 Purpose

(No change.)

7:50-4.12 Applicability

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

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

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

7:50-4.14 Application for development approval in uncertified municipalities

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

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

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

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

(c) In addition to the requirements of *[(a) and (b) above]* ***N.J.A.C. 7:50-4.2(b)***, an application for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan, which will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for development as follows:

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

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

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

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

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

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

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

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

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

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

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

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

7:50-4.15 Action by Executive Director on application

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

7:50-4.16 Standards for uncertified areas

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

1. Satisfies all of the criteria and standards established in N.J.A.C. 7:50-5 and 6 of this Plan, provided, however, that the optional land uses contained in N.J.A.C. 7:50-5 shall be permitted and that in N.J.A.C. 7:50-6 only the optional elements of N.J.A.C. 7:50-6.144 shall be mandatory for any jurisdiction which is uncertified; and

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

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

(No change.)

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

(a) General requirement: Every local permitting agency shall give notice to the Pinelands Commission, as hereinafter specified, of the filing of, and of any changes to, and of any hearings and meetings concerning, and of the disposition of every application for development filed with it. Failure to provide said notices shall void any local decision for which such notices were not provided.

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

1. The name and address of the applicant;

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

3. A brief description of the proposed development, including uses and intensity of uses proposed;

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

5. The date on which the application, or change thereto, was filed and any docket or other identifying number assigned to such application by the local permitting agency;

6. The local permitting agency with which the application or change thereto was filed;

7. The content of any change made to any such application since it was filed with the Commission; and

8. The nature of the local approval or approvals being sought.

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

1. The name and address of the applicant;

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

3. The date, time and location of the meeting, hearing, or other formal proceeding;

4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing, or other formal proceeding;

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

6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

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

1. The name and address of the applicant;

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

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

4. The date on which the preliminary approval was granted;

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

6. A copy of the resolution or other documentation of the preliminary approval which was granted and a copy of the plans which were approved; and

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

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

1. The name and address of the applicant;

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

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

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

7:50-4.19 Commission review following preliminary approval

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

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

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

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

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

7:50-4.20 Decision on review

(a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Executive Director shall, within 60 days after the time to request reconsideration has expired, review the application, all other information in the file, the Certificate of Compliance and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

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

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

(d) Effect of the determination:

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

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

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

(No change.)

7:50-4.22 Commission review following final local approval

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

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

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

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

7:50-4.23 Public hearing

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

7:50-4.24 Decision on review

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

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

(c) Effect of the Commission's decision.

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

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

7:50-4.25 Commission review following local denial

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

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

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

7:50-4.26 Decision on review

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

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

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

(d) Effect of the determination:

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

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

7:50-4.27 Effect of Pinelands Development Approval

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

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

PART III—REVIEW OF LOCAL PERMITS IN CERTIFIED MUNICIPALITIES

7:50-4.31 Purpose

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

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

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

7:50-4.32 Applicability

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

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

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

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

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

(b) A certified municipality may provide in its certified land use ordinances that a completed application for development of an individual single family dwelling may be filed initially with the designated administrative officer of the municipality. The administrative officer shall be responsible for determining whether said application contains all the information required by the municipality's certified ordinances. Upon determining the application to be complete, the administrative officer shall submit a duplicate copy of the application to the Executive Director along with a statement that the application has been determined to be complete. Within 15 days of receiving a duplicate copy of the application, the Executive Director shall issue a Notice of Filing stating that the Commission has received the duplicate application. The Executive Director may state in the Notice of Filing any potential deficiencies in the completeness of the application. The administrative officer shall also be responsible for determining whether the application for development complies with the applicable provisions of N.J.A.C. 7:50-5 and 6 as incorporated in the certified municipal master plan and ordinances. A copy of said determination shall be submitted to the applicant and the Executive Director. If the Executive Director determines that the designated municipal administrative officer may be willfully or negligently failing to implement the responsibilities specified above or if no administrative officer has been designated by the municipality, then the procedures specified in Part VI of subchapter 3 shall be implemented by the Executive Director.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Submitting written evidence with respect to the satisfaction, by the proposed development, of any applicable standards for development contained in this Plan.

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

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

7:50-4.37 Commission review following preliminary approval

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

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

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

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

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

7:50-4.38 Decision on review

(a) Determination by Executive Director: If no hearing is requested by the applicant or the local permitting agency pursuant to N.J.A.C. 7:50-4.37(b), the Executive Director shall, within 60 days after the time to request reconsideration has expired, review the application, all other information in the file including any staff reports and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan and the provisions of the relevant certified local ordinance. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, interested persons, including all persons who have individually submitted information concerning the application, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.37(b), the Commission shall, upon receipt of the findings of fact and recommendations of the Administrative Law Judge, review such findings and recommendation, the application, the file and the record of the hearing only, and approve, approve with conditions or disapprove the preliminary approval. If no hearing is requested pursuant to N.J.A.C. 7:50-4.37(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file including any staff reports and the local approval only and approve, approve with conditions or disapprove the preliminary approval.

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

(d) Effect of determination.

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

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

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

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

1. The name and address of applicant;

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

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

4. Copies of any amended application, site plans, plats or other documents reflecting such changes; and

5. A brief description of the nature of such changes.

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

7:50-4.40 Commission review following final local approval

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

(b) Notice of decision and hearing: Within 15 days following receipt of a notice of final determination containing all the information specified in N.J.A.C. 7:50-4.35(e), the Executive Director shall give notice of his determination by certified mail to the applicant and the clerk of the local permitting authority which granted such approval, and by regular mail to interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If applicable, such notice shall set a date, time and place for public hearing, as required by N.J.A.C. 7:50-4.41. Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.

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

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

7:50-4.41 Public hearing

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

7:50-4.42 Decision on review

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

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

(c) Effect of the Commission's decision:

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

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

7:50-4.43 through 7:50-4.50 (Reserved)

PART IV—PUBLIC DEVELOPMENT

7:50-4.51 (No change.)

7:50-4.52 General requirements

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

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

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

(d) Exceptions for national defense are as follows:

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

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

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

(e) State agency plans:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7:50-4.54 Review of submission by Executive Director

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

7:50-4.55 Reconsideration rights

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

7:50-4.56 Action by Commission

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

7:50-4.57 Standards for public development

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

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

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

7:50-4.58 (No change.)

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

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

7:50-4.61 (No change.)

7:50-4.62 Application

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

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

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

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

(c) In addition to the requirements in (a) and (b) above, an applicant requesting a Waiver of Strict Compliance which will not be located on a specific parcel, shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the proposed Waiver of Strict Compliance shall apply; and

2. Notice shall be given by publication in the official newspaper, if any, of all municipalities in which the proposed Waiver of Strict Compliance shall apply or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

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

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

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

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

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

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

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

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

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

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

7:50-4.63 Action by Executive Director on application
(No change in text.)

7:50-4.64 (No change.)

7:50-4.65 Action by Commission

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

7:50-4.66 Standards

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

1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to meet the minimum lot size requirements or management standards of this Plan shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no contiguous land which is reasonably available. Any contiguous lands in common ownership at any time on or after January 14, 1981, shall be considered to be reasonably available. An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, that the subject property, along with any contiguous lands in common ownership of which are reasonably available, does not have any beneficial use if used for its present use or developed as authorized by the provisions of this Plan, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity;

ii. Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

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

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

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

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

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

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

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

6. Any waiver previously approved under the final subdivision standard contained in the now repealed (a)1iii above shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period; and

7. Any waiver previously approved under the prior municipal development approval standard contained in the now repealed (a)1ii above shall expire, without exception, *[within five years of the effective date of said waiver or within one year of the effective date of these amendments to the Plan, whichever is later, unless by the expiration of the applicable time period]* ***as of January 14, 1991 unless*** all necessary approvals for the proposed development have been obtained ***from the municipal planning board and board of adjustment or, where no such approval is required, construction permits have been issued prior to that date*** and no such approval is subsequently allowed to expire or lapse.

7:50-4.67 Effect of grant of waiver

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

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

PART VI—LETTERS OF INTERPRETATION

7:50-4.71 (No change.)

7:50-4.72 Authority

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

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

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

7:50-4.73 Request for interpretation

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

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

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

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

(c) An applicant for a letter of clarification or interpretation involving specific property consisting of more than one parcel in a linear layout shall provide notice of the application as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the property that is the subject of the proposed interpretation or clarification is located; and

2. Notice shall be given by publication in the official newspaper, if any, of all municipality in which the property subject to the proposed interpretation or clarification is located or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

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

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

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

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

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

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

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

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

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

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

7:50-4.74 Interpretation by Executive Director

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

7:50-4.75 (No change.)

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

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

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

7:50-4.77 (No change.)

7:50-4.78 Monthly report

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

7:50-4.79 Reconsideration

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

7:50-4.80 (Reserved)

PART VII—COORDINATED PERMITTING WITH STATE AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

1. The name and address of the applicant;

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

3. A brief description of the proposed development, including uses and intensity of uses proposed;

4. The Pinelands Commission docket number for the application;

5. The date on which the application was filed and any docket or other identifying number assigned to such application by the state agency;

6. The state agency with which the application was filed; and

7. The nature of the approval or approvals being sought.

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

1. The name and address of the applicant;

2. The Pinelands Commission docket number for the application;

3. The date, time and location of the meeting or hearing;

4. The name of the state agency which will conduct the meeting or hearing;

5. Any written reports or comments received by the state agency on the application which have not previously been submitted to the Commission; and

6. The purpose for which the meeting or hearing is to be held.

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

1. The name and address of the applicant;

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

3. The Pinelands Commission docket number for the application;

4. A copy of the permit, approval or authorization which was issued; and

5. A copy of any approved plans.

7:50-4.84 (No change.)

7:50-4.85 (No change.)

PART VIII—RECONSIDERATION AND JUDICIAL REVIEW

7:50-4.91 Reconsideration

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

1. The name and address of the person requesting the reconsideration;

2. The docket number of the application which is the subject of the reconsideration request;

3. The date on which the determination is to be reconsidered was made;

4. A statement detailing the basis for the reconsideration request;

5. A certificate of service indicating that service of the notice has been made, by certified mail, on the clerk of the county or municipal planning board and environmental commission, if any, with jurisdiction over the property which was the subject of the decision or order.

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

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

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

7:50-4.92 Judicial review

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

SUBCHAPTER 5. MINIMUM STANDARDS FOR LAND USES AND INTENSITIES

INTRODUCTION

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

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

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

PART I—STANDARDS OF GENERAL APPLICABILITY

7:50-5.1 Development in accordance with this plan

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

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

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

7:50-5.2 Expansion of existing uses

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

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

2. The area of expansion does not exceed 50 percent of the floor area, the area of the use or the capacity of the use, whichever is applicable, on January 14, 1981.

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

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

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

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

7:50-5.3 Map status

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

1.-20. (No change.)

21. Major Public Land Holdings, Plate 21;

22.-24. (No change.)

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

26. Special Areas Map, Figure 7.1.

7:50-5.4 Height limitations

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

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

7:50-5.5 Setback standards

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

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

7:50-5.6 through 5.10 (Reserved)

PART II—PINELANDS MANAGEMENT AREAS

7:50-5.11 (No change.)

7:50-5.12 (No change.)

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

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

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

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

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

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

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

1. Pinelands Area Villages are:
i. Bamber Lake;
ii. Belcoville;
iii. Belleplain;
iv. Blue Anchor;
v. Brookville;
vi. Cassville;
vii. Chatsworth;
viii. Cologne-Germania;
ix. Cumberland-Hesstown;
x. Delmont;
xi. Dennisville;
xii. Dorchester-Leesburg;
xiii. Dorothy;
xiv. Eldora;
xv. Elm;
xvi. Elwood;
xvii. Estell Manor;
xviii. Folsom;
xix. Green Bank;
xx. Indian Mills;
xxi. Jenkins;
xxii. Lake Pine;
xxiii. Landisville;
xxiv. Laureldale;
xxv. Legler;
xxvi. Lower Bank;
xxvii. Milmay;
xxviii. Mizpah;
xxix. Nesco***-Westcoatville***;
xxx. New Gretna;
xxxi. New Lisbon;
xxxii. Newtonville;
xxxiii. North Dennis;
xxxiv. Petersburg;
xxxv. Pomona;
xxxvi. Port Elizabeth-Bricksboro;
xxxvii. Port Republic;
xxxviii. Richland;
xxxix. Sweetwater;
xl. Tabernacle;
xli. Tansboro;
xlii. Taunton Lake;
xliii. Tuckahoe;
xliv. Vanhiseville;
xlv. Warren Grove;
xlvi. Waterford Works;
xlvii. Weekstown; ***and***
[xlviii. Westcoatville;]
*[xlix.]****xlviii*** Winslow.

2. Villages located within the Pinelands National Reserve but outside of the Pinelands Area are:
i. Clermont;
ii. Corbin City;
iii. Goshen;
iv. Heislerville;
v. Oceanville;
vi. Smithville;
vii. South Dennis;
viii. Swainton; and
ix. West Creek.

3. Pinelands Area Towns are:
i. Buena;
ii. Egg Harbor City;
iii. Hammonton;
iv. Lakehurst;
v. Whiting; and
vi. Woodbine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7:50-5.16 (No change.)

7:50-5.17 (No change.)

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

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

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

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

PART III—MINIMUM STANDARDS FOR LAND USE DISTRIBUTION AND INTENSITIES

7:50-5.21 (No change.)

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

(a) The following uses shall be permitted in the *[P]****p***reservation *[A]****a***rea *[D]****d***istrict:

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

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

3. Forestry.

4. Beekeeping.

5. Fish and wildlife management.

6. Low intensity recreational uses, provided that:

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

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

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

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

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

7. Pinelands Development Credits.

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

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

2. Expansion of intensive recreational uses, provided

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

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

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

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

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

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

6. Signs.

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

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

ii. The area must exhibit a compact pattern of existing development, generally exhibited by more than 20 principal structures ***and the boundary shall generally conform to that of the existing developed area so that extensive amounts of adjoining vacant land are not included***;

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

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

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

8. Accessory uses.

9. Home occupations

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

*[a.]****(a)*** The following uses shall be permitted in a Forest Area:

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

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

3. Agriculture;

4. Forestry;

5. Low intensity recreational uses, provided that:

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

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

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

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

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

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

1. Institutional uses, provided that:

i. The use does not require or will not generate subsidiary or satellite development in the Forest Area;

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

iii. The use is primarily designed to serve the needs of the Forest Area in which the use is to be located.

2. Pinelands resource-related industrial or manufacturing uses, provided that:

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

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

iii. The use does not require or will not generate subsidiary or satellite development in a Forest Area.

3. Light industrial uses within an area designated by a municipality in accord with the following criteria:

i. The area adjoins an existing airport which is publicly owned or serves a Pinelands Town;

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

iii. The area is limited in size to that which received approval to develop pursuant to the Pinelands Protection Act prior to January 14, 1981.

4. Campgrounds, not to exceed six campsites per gross acre, provided that the campsites may be clustered at a net density not to exceed 10 campsites per acre.

5. Agricultural commercial establishments, excluding supermarkets, restaurants and convenience stores provided that:

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

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

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

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

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

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

7. Resource extraction operations.

8. Landfills.

9. Fish and wildlife management.

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

11. Expansion of intensive recreational uses, provided that:

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

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

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

12. Public service infrastructure intended to primarily serve the needs of the Pinelands. Sewer treatment and collection facilities shall be permitted to service the Forest Area District only in accordance with N.J.A.C. 7:50-6.84(a)2.

13. Home occupations.

14. Signs.

15. Accessory Uses.

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

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in agricultural production areas

(a) The following uses shall be permitted in an Agricultural Production Area:

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

2. Residential dwelling units not to exceed a gross density of one unit per 10 acres*[, on an existing lot of record]* provided that:

i. The dwelling is accessory to an active agricultural operation;

ii. The dwelling is for an operator ***or employee*** of the farm who is actively engaged in ***and essential to*** the agricultural operation;

iii. The dwelling is located on a lot which is under or qualified for agricultural assessment;

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

v. *[No subdivision of the property shall be permitted.]* ***A residential lot has not been subdivided from the property within the previous five years.***

3. Residential dwelling units at a gross density of one unit per 40 acres, provided that the units *[may]* ***shall*** be clustered in accordance with (c) below.

4. Agriculture.

5. Forestry.

6. Low intensity recreational uses, provided that:

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

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

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

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

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

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

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

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

8. Agricultural products processing facilities.

9. Pinelands Development Credits.

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

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

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

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

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

2. Pinelands resource-related industries, provided that:

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

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

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

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

4. Light industrial uses within an area designated by a municipality in accord with the following criteria:

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

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

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

5. Fish and wildlife management.

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

7. Expansion of intensive recreational uses, provided that:

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

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

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

8. Landfills.

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

10. Home occupations.

11. Signs.

12. Accessory Uses.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres; provided, however, that a municipality *[may permit]* ***shall require*** the residential density assigned pursuant to N.J.A.C. 7:50-5.24(a)3 to be clustered on one acre lots *[if the]* ***unless the municipality determines that the residential development is not compatible or interferes with the use of the remaining property and adjoining lands for agricultural use. The*** remainder of the parcel not assigned to individual residential lots *[is]* ***shall be*** permanently dedicated for agricultural uses through recordation of a restriction on the deed to the property.

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

(a) The following uses shall be permitted in a Special Agricultural Production Area:

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

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

3. Beekeeping;

4. Forestry;

5. Fish and wildlife management.

6. Pinelands Development Credits.

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

1. Residential dwelling units provided that the dwelling is:

i. Accessory to an active agricultural operation;

ii. For an operator ***or employee*** of the farm who is actively engaged in ***and essential to*** the agricultural operation;

iii. *[L]****To be l***ocated on a parcel of land of at least 40 acres in size which is under or qualified for agricultural assessment; and

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

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

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

4. Home occupations;

5. Accessory uses;

6. Signs.

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

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

(a) Residential dwelling units at municipally designated densities shall be permitted provided that the total number of dwelling units authorized by a municipality does not exceed one dwelling unit for every 3.2 acres of privately owned undeveloped land which is not defined in this Plan as wetland.

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

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

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

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

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

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

(b) No residential dwelling unit shall be located on a parcel of less than one acre unless served by a centralized wastewater treatment plant.

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

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

1. Except as provided in (a)2, 3, 4, 5 and 6 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a Regional Growth Area shall be equal to and not exceed the following density per acre of developable land:

i. through v. (No change.)
vi. In Chesilhurst Borough: 1.5 dwelling units per acre.
vii. through xxx. (No change.)

2. For purposes of this section, developable lands are those privately held, non-wetland lands with a depth to seasonal high water table of greater than five feet. Where sewer systems are available, lands with a depth to seasonal high water table exceeding 1.5 feet shall also be considered developable. Developable land may exclude lands which are zoned exclusively for commercial or industrial use, predominantly developed as such, and which otherwise form a part of a reasonable balance between industrial or commercial zoned property and residential zoned lands.

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

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

(1) Less than .5 to .5 dwelling units per acre;
(2) One-half to one dwelling units per acre;
(3) One to two dwelling units per acre;
(4) Two to three dwelling units per acre;
(5) Three to four dwelling units per acre;
(6) Four to six dwelling units per acre;
(7) Six to nine dwelling units per acre;
(8) Nine to 12 dwelling units per acre; and
(9) Twelve and greater dwelling units per acre.

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

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

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

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

(b) No residential dwelling unit shall be located on a parcel of less than one acre unless served by a centralized wastewater treatment plant.

7:50-5.29 Minimum standards governing the distribution and intensity of development and land use in Military and Federal Installation Areas

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

1. The use shall not require any development, including public service infrastructure, in the Preservation Area District or in a Forest Area;
2. All development undertaken by the federal government substantially meets the standards of N.J.A.C. 7:50-6 of this Plan or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV; and
3. All development undertaken by another level of government meets the standards of N.J.A.C. 7:50-6 or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

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

(a) Each municipality with land in the Protection Area shall establish within said area a mechanism to transfer or cluster development rights granted pursuant to N.J.A.C. 7:50-4.65 provided, however, that Forest Areas and Agricultural Production Areas shall not be designated to receive rights transferred from other mangement areas. No municipality shall be required to plan for or accept such rights emanating from beyond its jurisdiction. If a municipality elects to institute a clustering program, the areas in which clustering is to occur must contain at least 500 acres of contiguous land which is accessible to areas of existing growth and development and which does not exhibit any of the following characteristics:

1. Wetlands as defined in N.J.A.C. 7:50-6, Part I;
2. Somewhat excessively and excessively drained soils as delineated on Plate 9;
3. Lands which recharge to ground water aquifers as identified by a depth of the unsaturated zone of 20-30 and 30-40 feet on Plate 4, except as underlain by clay aquiclude;
4. Extreme fire hazard as depicted on Plate 11;
5. Active agricultural use with a preferential tax assessment under the provisions of the Farmland Assessment Act of 1964;
6. Depth to seasonal high water table of less than five feet as delineated on Plate 7;
7. Drainage basins of first order streams as identified on USGS 7½ foot maps;
8. Basins of streams entering public lands which are managed for resource protection or recreation;

9. Active cranberry bogs and areas which drain to active cranberry bogs;

10. Unique plant communities or the minimum forest corridor area as delineated on the Special Areas Map (Figure 7.1); and

11. Flood-prone areas designated under the federal flood insurance programs.

7:50-5.31 Minimum standards for substandard lots

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

1. The municipality has identified each lot that will be exempt under the municipal exemption plan or has established a program of registration for the owners of such lots;

2. The dwelling unit will be the primary residence of the applicant;

3. The parcel was owned by the applicant or a member of his immediate family on February 7, 1979;

4. No lot that was in common ownership with any contiguous land on February 7, 1979 is exempt from the density provisions of this Part;

5. No lot of less than one acre will be exempt from the density provisions of this Part; and

6. The development of the lots exempted from the density limitations of this Part will comply with all other minimum standards of this Plan.

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

7:50-5.32 Special provisions for cultural housing

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

1. The dwelling unit will be the applicant's principal place of residence;

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

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

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

ii. The applicant is a member of a two-generation *[extended]* immediate family that has resided in the Pinelands for at least 20 years; or

iii. The primary source of the applicant's household income is employment or participation in a Pinelands resource-related activity.

7:50-5.33 through 7:50-5.40 (Reserved)

PART IV—PINELANDS DEVELOPMENT CREDIT PROGRAM

7:50-5.41 (No change.)

7:50-5.42 Pinelands Development Credit Program required

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

7:50-5.43 Pinelands Development Credits established

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

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

1. In the Preservation Area:

i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands: one Pinelands Development Credit per 39 acres; and

iv. Wetlands: two-tenths Pinelands Development Credits per 39 acres.

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

i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands and areas of active berry agricultural bogs and fields: two Pinelands Development Credits per 39 acres;

iv. Wetlands in active field agricultural use as of February 7, 1979: two Pinelands Development Credits per 39 acres; and

*[iv. W]****v. Other w***etlands*[, other than berry agricultural bogs and fields]*: two tenths Pinelands Development Credits per 39 acres.

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

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

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

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

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

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

(a) No Pinelands Development Credit may be conveyed, sold, or transferred unless the owner of the land from which the credit has been obtained has deed restricted the use of the land in perpetuity to those uses set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction which is in favor of a public agency or not for profit incorporated conservation organization and specifically and expressly enforceable by the Commission.

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

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

7:50-5.45 (No change.)

7:50-4.56 (No change.)

7:50-5.47 Recordation of deed restriction

(a) No conveyance, sale or transfer of Pinelands Development Credits shall occur until the municipality with jurisdiction over the parcel of land from which the Pinelands Development Credits were obtained, the agency or organization to which the restriction is in favor, and the Commission have been provided with evidence of recordation of a restriction on the deed to the land from which the development credits were obtained.

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

1. In the Preservation Area District:

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

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

2. In Special Agricultural Production Areas:

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

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

3. In Agricultural Production Areas:

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

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are used exclusively for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; and agricultural employee housing as an accessory use.

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

PART V—MINIMUM STANDARDS FOR MUNICIPAL RESERVE AREAS

7:50-5.51 (No change.)

7:50-5.52 Designation of Municipal Reserve Areas

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

1. Does not contain significant amounts of:

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

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

iii. Active agricultural lands;

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

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

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

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

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

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

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

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

7:50-5.53 (No change.)

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

INTRODUCTION

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

PART I—WETLANDS

7:50-6.1 (No change.)

7:50-6.2 (No change.)

7:50-6.3 (No change.)

7:50-6.4 (No change.)

7:50-6.5 Inland wetlands

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

1. Atlantic white cedar swamps which are areas dominated by Atlantic white cedars (Chamaecyparis thyoides) and supporting one or more of the following hydrophytic plants:

i. through xiv. (No change.)

2. Hardwood swamps which are areas dominated by red maple (Acer rubrum), blackgum (Nyssa sylvatica) and/or sweetbay (Magnolia virginiana) and supporting one or more of the following hydrophytic plants:

i. through xi. (No change.)

xii. Chain fern (Woodwardia spp.); and

xiii. Rushes (Juncus spp.);

xiv. Or other lowland forests dominated by one or more of the following plants:

(1) Sweetgum (Liquidambar styraciflua);

(2) Pin oak (Quercus palustris); and

(3) Willow oak (Quercus phellos).

3. Pitch pine lowlands which are areas dominated by pitch pine (Pinus rigida) and supporting one or more of the following hydrophytic plants:

i. through ix. (No change.)

4. Bogs which are areas dominated by hydrophytic, shrubby vegetation including:

i. through vi. (No change.)

vii. Dangleberry (Gaylussacia frondosa);

viii. Staggerbush (Lyonia mariana); or

ix. Sphagnum moss (Sphagnum spp.), pitcher plant (Sarracenia purpurea), sundew (Drosera spp.), and sedges (Carex spp.) are among the herbaceous plants which are found in bogs. Active cranberry bogs and shrub thickets dominated by leatherleaf (Chamaedaphne calyculata) are included in this category.

5. Inland marshes which are areas dominated by hydrophytic grasses (Graminaea) and sedges (Carex spp.) and which include one or more of the following plants: pickerelweed (Pontederia cordata), arrow arum (Peltandra virginica), cattail (Typhus spp.), and rushes (Juncus spp.).

6. Lakes and ponds which are seasonal or permanent standing bodies of water.

7. Rivers and streams which are bodies of water which periodically or continuously contain moving water or which form a link between two bodies of standing water.

7:50-6.6 (No change.)

7:50-6.7 Significant adverse impact

(a) A significant adverse impact shall be deemed to exist where it is determined that one or more of the following modifications of a wetland will have an irreversible effect on the ecological integrity of the wetland and its biotic components:

1. An increase in surface water runoff discharging into a wetland;

2. A change in the normal seasonal flow patterns in the wetland;

3. An alteration of the water table in the wetland;

4. An increase in erosion resulting in increased sedimentation in the wetland;

5. A change in the natural chemistry of the ground or surface water in the wetland;

6. A loss of wetland habitat;

7. A reduction in wetland habitat diversity;

8. A change in wetlands species composition; or

9. A significant disturbance of areas used by indigenous and migratory wildlife for breeding, nesting, or feeding.

(b) Determinations under (a) above shall consider the cumulative modifications of the wetland due to the development being proposed and any other existing or potential development which may effect the wetland.

7:50-6.8 (No change.)

7:50-6.9 (No change.)

7:50-6.10 (No change.)

7:50-6.11 Low intensity uses

Hunting, fishing, trapping, hiking, boating, and swimming shall be permitted in all wetlands provided that such uses do not involve any structure other than those authorized in N.J.A.C. 7:50-6.12. Other similar low intensity recreational uses shall be permitted provided that any associated development does not have a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, on the wetland in which the use is carried out.

7:50-6.12 (No change.)

7:50-6.13 Public improvements

(a) Bridges, roads, trails and utility transmission and distribution facilities shall be permitted in wetlands provided that:

1. There is no feasible alternative route or site for the facility that does not involve development in a wetland or, if none, that another feasible route or site which results in less significant adverse impacts on wetlands does not exist;

2. The public need cannot be met by existing facilities or modification thereof;

3. The use represents a need which overrides the importance of protecting the wetland;

4. Development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and

5. The resources of the Pinelands will not be substantially impaired as a result of the facility and its development.

7:50-6.14 Wetland transition areas

No development, except for those uses which are specifically authorized in this subchapter, shall be carried out within 300 feet of any wetland, unless the applicant has demonstrated that the proposed development will not result in a significant adverse impact on the wetland, as set forth in N.J.A.C. 7:50-6.7.

7:50-6.15 through 7:50-6.20 (Reserved)

PART II—VEGETATION

7:50-6.21 (No change.)

7:50-6.22 (No change.)

7:50-6.23 Vegetation removal standards

(a) The clearing of more than 1,500 square feet of vegetation from any parcel of land, other than clearing for agricultural activities, shall be authorized only if the applicant can demonstrate:

1. That the removal is necessary to accommodate the development or maintenance of a permitted structure or to carry out a permitted use of the property; or

2. That removal is necessary in order to implement the fire management objectives in this Plan; or

3. That removal is necessary to eliminate a pedestrian or vehicular safety hazard; or

4. That removal is necessary to eliminate a hazard to a building; and

5. That specimen trees will not be cleared or removed; and

6. That the area to be cleared will be landscaped in accordance with the following requirements:

i. All landscaping as shown on the site plan shall be completed within six months of completion of construction;

ii. All landscaping shall ensure the stabilization of soils;

iii. Native Pinelands trees and shrubs are utilized for landscaping; provided, however, that non-native tree and shrub species may be used for foundation plantings provided that species not of the Heath family (Ericaceae) comprise no more than 20 percent of the plantings. Native plants include:

(1) through (14) (No change.)

(15) Lowbush blueberry;

(16) through (45) (No change.)

iv. Other than in association with areas dedicated for public recreational purposes, native Pinelands grasses (such as little bluestem, deertongue, red top and switch grass), species adapted to droughty, nutrient poor soils (such as tall fescue, sheep fescue, chewings fescue, red fescue and smooth bromegrass) and species used for temporary cover (such as ryegrass and oats) shall be utilized unless mulch is used to stabilize soil; provided, however, an area not to exceed 2,000 square feet per building may be planted with other grasses.

(b) A municipality may, as part of its certified land use ordinance, exempt certain areas from the requirements of (a)6iii above provided that these areas contain a predominance of non-Pinelands plant species and are clearly delineated in the land use ordinance.

7:50-6.24 Development prohibited in the vicinity of threatened or endangered plants

(a) No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of the following plants, which are hereby found and declared to be threatened or endangered plants of the Pinelands:

1. Sensitive-joint vetch (Aeschynomene virginica).
2. Red milkweed (Asclepias rubra).
3. Silvery aster (Aster concolor).
4. Pickering's morning glory (Breweria pickeringii).
5. Pine Barrens reedgrass (Calamovilfa brevipilis).
6. Barratt's sedge (Carex barrattii).
7. Sickle-leaved golden aster (Chrysopsis falcata).
8. Spreading pogonia (Cleistes divaricata).
9. Broom crowberry (Corema conradii).
10. Rose-colored tickseed (Coreopsis rosea).
11. Rushfoil (Crotonopsis elliptica).
12. Stiff tick trefoil (Desmodium strictum).
13. Knotted spike rush (Eleocharis equisetoides).
14. Resinous boneset (Eupatorium resinosum).
15. Pine Barrens gentian (Gentiana autumnalis).
16. Yellow-fringed orchid (Habenaria ciliaris).
17. Crested yellow orchid (Habenaria cristata).
18. Southern yellow orchid (Habenaria integra).
19. Swamp pink (Helonias bullata).
20. New Jersey rush (Juncus caesariensis).
21. Lily-leaved twayblade (Liparis loeselii).
22. Loesel's twayblade (Liparis loeselii).
23. Southern twayblade (Listera australis).
24. Boykin's lobelia (Lobelia boykinii).
25. Canby's lobelia (Lobelia canbyi).
26. Hairy ludwigia (Ludwigia hirtella).
27. Linear-leaved ludwigia (Ludwigia linearis).
28. Climbing fern (Lygodium palmatum).
29. Torrey's muhly (Muhlenbergia torreyana).
30. Yellow asphodel (Narthecium americanum).
31. Floating heart (Nymphoides cordata).
32. Narrow panic grass (Panicum hemitomon).
33. Hirst's panic grass (Panicum hirstii).
34. American mistletoe (Phoradendron flavescens).
35. Maryland milkwort (Polygala mariana).
36. Slender rattlesnake root (Prenanthes autumnalis).
37. Awned meadow beauty (Rhexia aristosa).
38. Capitate beakrush (Rhynchospora cephalantha).
39. Slender beaked rush (Rhynchospora inundata).
40. Knieskern's beaked rush (Rhynchospora knieskernii).
41. Curly grass fern (Schizaea pusilla).
42. Chaffseed (Schwalbea americana).
43. Long's bulrush (Scirpus longii).
44. Slender nut rush (Scleria minor).
45. Reticulated nut rush (Scleria reticularis).
46. Sclerolepis (Sclerolepis uniflora).
47. Wand-like goldenrod (Solidago stricta).
48. Little ladies tresses (Spiranthes tuberosa).
49. False asphodel (Tofieldia racemosa).
50. Humped bladderwort (Utricularia gibba).
51. White-flowered bladderwort (Utricularia olivacea).
52. Purple bladderwort (Utricularia purpurea).
53. Reclined bladderwort (Utricularia resupinata).
54. Yellow-eyed grass (Xyris flexuosa).

7:50-6.25 through 7:50-6.30 (Reserved)

PART III—FISH AND WILDLIFE

7:50-6.31 Purpose

The Pinelands environment supports a rich diversity of fish and wildlife species. Many threatened and endangered species are found in the Pinelands and they, together with the other fauna of the area, constitute an important part of the essential ecological character of the Pinelands that requires careful management and protection.

7:50-6.32 Fish and wildlife management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must include the standard for the protection of Pinelands fish and wildlife contained in this Part.

7:50-6.3*[2]**3* Protection of threatened or endangered wildlife required

(a) No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.S.A. 23:2A-1 et seq.

7:50-6.3*[3]**4* (No change.)

7:50-6.3*[4]**5* through 7:50-6.40 (Reserved)

PART IV—FORESTRY

7:50-6.41 (No change.)

7:50-6.42 (No change.)

7:50-6.43 Time limit on forestry permits

No permit authorizing a forestry operation shall be issued for a period exceeding two years. Nothing in this section shall be construed to prohibit any person from securing additional permits provided that the requirements of this Plan are met.

7:50-6.44 Forestry standards

(a) Forestry shall be authorized throughout the Pinelands provided:

1. That the owners of all property adjoining the property proposed to be harvested are notified at least five days but no earlier than 90 days prior to the harvest and are advised as to where the forestry management plan for the property may be reviewed;

2. That all persons conducting or supervising the forestry operation ***or transporting harvested wood from the site*** have in their possession at all times during the operation the approved forestry permit and evidence that they are authorized by the applicant or his agent to conduct the operation; and

3. That access to land proposed for harvesting:

i. Is direct;

ii. Follows previously established roads and trails to the maximum extent practical;

iii. Avoids wetland areas except as are absolutely necessary to harvest wetland species or to gain access to the harvesting site; and

iv. Avoids crossing streams with high and unstable banks and those with approaching slopes exceeding 10 percent where alternative crossings exist.

4. That all activities during and after harvesting are carried out in a manner to avoid damage to stream banks and bottoms, erosion, and degradation of water quality, including the following:

i. Stream banks at crossings shall be stabilized during and after harvesting;

ii. Culverts and bridges shall be temporary in nature;

iii. Trees which serve to stabilize stream banks shall be retained; other trees shall be felled to avoid stream banks where practical and winched off such banks where felling occurs;

iv. A 25-foot vegetated buffer along streams, ponds, lakes and marshes shall be maintained;

v. The use of active and intermittent stream channels for skidding of logs shall be prohibited;

vi. Skidding shall not occur within 25 feet of streams, ponds, lakes and marshes except for necessary crossings:

vii. Accessways for forestry activities shall be located at least 100 feet from streams, ponds, lakes and marshes where practical;

viii. Landings shall be located in well drained areas where practical, at least 200 feet from public roads where practical, and at least 200 feet from ponds, lakes and marshes;

ix. Filter strips shall be located between: harvested areas, landings and skid trails; and streams, ponds, lakes and marshes;

x. Water diversion devices shall be installed as necessary to control erosion.

5. That, except for operations of the State Bureau of Forest Management on state owned property, the boundaries of any area proposed to be clear cut be marked at regular intervals not to exceed 100 feet in length or, in the case where selected trees are to be cut, that either the trees to be cut or left standing are clearly marked at the base of each tree.

6. That only those trees which have been selected for harvesting are cut; that all trees are cut to the base; and all practical steps are taken to minimize damage to undesignated trees.

7. That at the conclusion of any harvesting operation:

i. All areas disturbed for access, processing, moving or loading trees shall be regraded to approximate natural slopes and that water diversion devices are installed as necessary in order to avoid erosion;

ii. All accessways shall be closed and devices installed, such as poles, pilings or berms that will preclude use of the accessway;

iii. Bare ground areas shall be stabilized with vegetation where necessary;

iv. All debris shall be removed from streams;

v. All non-vegetative refuse shall be collected: and

vi. All hanging trees shall be removed.

8. That harvesting and reforestation activities shall ensure the regeneration of Atlantic White Cedar in harvested cedar and mixed hardwood/cedar swamps or any other native forest type in other harvested areas; and

9. That harvesting and reforestation in Atlantic White Cedar and hardwood swamps is conducted in the following manner:

i. Atlantic White Cedar will be clear-cut and slash will be managed to create site conditions favorable to regeneration of Atlantic White Cedar;

ii. Reforestation to ensure Atlantic White Cedar regeneration will involve control of competitive hardwood species;

iii. Existing streams shall be cutting boundaries where practical;

iv. Harvesting methods employed shall be those which minimize environmental damage including the use of winches, corduroy roads and helicopters; and

v. Harvesting will occur to the greatest extent practical during dry periods or when the ground is frozen.

10. That the proposed activity does not involve the draining or filling of wetlands.

7:50-6.45 through 7:50-6.50 (Reserved)

PART V—AGRICULTURE

7:50-6.51 (No change.)

7:50-6.53 (No change.)

7:50-6.54 (No change.)

7:50-6.55 through 7:50-6.60 (Reserved)

PART VI—RESOURCE EXTRACTION

7:50-6.61 Purpose

Sand, gravel, clay, and ilmenite are important Pinelands resources that have been commercially utilized in the past. Such activity can provide a substantial economic benefit to landowners; however, it is critical that such activities do not conflict with other values of the Pinelands. This Part is intended to ensure that extraction activities do not adversely affect long-term ecological values in the Pinelands, and that abandoned extraction sites will be restored so that they will be a functional part of the Pinelands ecosystem.

7:50-6.62 Resource extraction management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan and land use ordinance must contain a program to manage resource extraction operations. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve equivalent protection of the Pinelands as would be achieved under the provisions of this Part.

7:50-6.63 Limitation on resource extraction

(a) Except as expressly authorized in this Plan, the extraction or mining of mineral resources other than sand, gravel, clay and ilmenite is prohibited.

(b) No resource extraction operations shall be permitted in the Preservation Area District or Special Agricultural Production Areas other than those operations which were registered with the Pinelands Commission on or before January 21, 1981 and received all necessary development permits for resource extraction on or before December 31, 1985. In such cases, the area of extraction is limited to the value given under the category "acreage to be mined" on the mine registration application submitted to the Department of Labor and Industry as of February 7, 1979, or that area approved by a valid municipal permit as of February 7, 1979 in the case of an operation exempted from registration with the Department of Labor and Industry.

7:50-6.64 Time limit on resource extraction permits

No permit authorizing resource extraction shall be issued for any period exceeding two years. Nothing in this Section shall be construed to prohibit any person from securing additional permits provided that the requirements of N.J.A.C. 7:50-6.66 are met.

7:50-6.65 (Reserved)

7:50-6.66 Resource extraction standards

(a) Resource extraction operations shall be approved only if the applicant can demonstrate that the proposed resource extraction operation:

1. Will not result in a substantial adverse impact upon those significant resources depicted on the Special Areas Map, Figure 7.1;

2. Is designed so that no area of excavation, sedimentation pond, storage area, equipment *,* or machinery or other structure or facility is closer than 200 feet to any property line *[unless it can be demonstrated that a distance between 100 and 200 feet will not result in greater off-site environmental impacts]*;

3. Is to be located on a parcel of land of at least 20 acres;

4. Provides that all topsoil that is necessary for restoration will be stored on the site but not within 200 feet of any property line unless the area proposed for storage is unforested and will be restored; and that the topsoil will be protected from wind and water erosion;

5. Is fenced or blocked so as to prevent unauthorized entry into the resource extraction operation through access roads;

6. Provides ingress and egress to the resource extraction operation from public roads by way of gravel or porous paved roadways;

7. Is designed so that surface runoff will be maintained on the parcel in a manner that will provide for on-site recharge to ground water;

8. Will not involve excavation exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated that a depth greater than 65 feet will result in no significant adverse impact relative to the proposed final use or on off-site areas;

9. Will be carried out in accordance with an extraction schedule which depicts the anticipated sequence, as well as anticipated length of time that each 20 acre unit of the parcel proposed for extraction will be worked;

10. Will involve restoration of disturbed areas at the completion of the resource extraction operation in accordance with the requirements of N.J.A.C. 7:50-6.67, and the implementation of the restoration plan is secured by a letter of credit, surety bond or other guarantee of performance; and

11. Will not involve clearing adjacent to ponds in excess of 20 acres or an area necessary to complete scheduled operations; or will not involve unreclaimed clearing exceeding 100 acres or 50 percent of the area to be mined, whichever is less, for surface excavation at any time.

7:50-6.67 Restoration standards

(a) All parcels of land which are used for resource extraction operations shall be restored as follows:

1. Restoration shall be a continuous process, and each portion of the parcel shall be restored such that ground cover be established within two years and tree cover established within three years after resource extraction is completed for each portion of the site mined;

2. Restoration shall proceed in the same sequence and time frame set out in the extraction schedule required in N.J.A.C. 7:50-6.66(a)9;

3. All restored areas shall be graded so as to conform to the natural contours of the parcel to the maximum extent practical; the slope of surface of restored surfaces shall not exceed one foot vertical to three feet horizontal except as provided in (a)6 below;

4. Topsoil shall be restored in approximately the same quality and quantity as existed at the time the resource extraction operation was initiated;

5. Drainage flows, including direction and volume, shall be restored to the maximum extent practical to those flows existing at the time the resource extraction operation was intiated;

6. Any body of water created by the resource extraction operation shall have a graded shoreline with a slope not to exceed one foot vertical to five feet horizontal;

7. All equipment, machinery and structures, except for structures that are useable for recreational purposes or any other use authorized in the area, shall be removed within six months after the resource extraction operation is terminated and restoration is completed;

8. Reclamation shall to the maximum extent practical result in the reestablishment of the vegetation association which existed prior to the extraction activity and shall include:

i. The planting of a minimum of 1,000 one-year-old pitch pine seedlings or other native Pinelands tree species per acre;

ii. Stabilization of exposed areas by establishing ground cover vegetation;

iii. Cluster planting, in lieu of (a)8i above, of characteristic Pinelands oak species, such as blackjack oak, bear oak, chestnut oak and black oak, and shrubs such as black huckleberry, sheep laurel and mountain laurel, at a spacing sufficient to ensure establishment of these species; and

9. The letter of credit, surety bond, or other guarantee of performance which secures restoration for each section shall be released *[two years]* after the requirements of (a)1 through 8 above are *[met]* ***determined by a certified municipality or the Commission, as appropriate, as being met and is replaced with a maintenance guarantee for a period of two years thereafter.***

[10. Notwithstanding the use restrictions of subchapter 5, restored sites which are not located in the Preservation Area District, Special Agricultural Production Areas, or Forest Areas may be reclaimed for use as intensive recreation facilities, other than amusement parks.]

7:50-6.68 through 7:50-6.70 (Reserved)

PART VII—WASTE MANAGEMENT

7:50-6.71 (No change.)

7:50-6.72 (No change.)

7:50-6.73 (No change.)

7:50-6.74 Existing landfills

(a) Landfill operations that were in lawful use on August 8, 1980 may be continued provided that:

1. No landfill shall be operated within the Preservation Area;

2. Landfills in Regional Growth Areas, Pinelands Towns and Villages, or Rural Development Areas are terminated on August 8, 1990;

3. Landfills in Agricultural Production Areas or Forest Areas are terminated on August 8, 1990, or when the disposal capacity authorized as of January 14, 1981 is exceeded by 25 percent, whichever occurs first.

4. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands;

5. The operation of the landfill will meet the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and all adopted and certified district waste management plans;

6. All areas filled to final design elevations shall be capped with an impervious material within one year. Prior to the establishment and filling of new areas, all existing areas shall be filled to final elevation and capped with an impervious material. The type and nature of capping shall be in accordance with the standards of the New Jersey Solid Waste Administration; and

7. Expansion of any existing landfill operation shall only occur if:

i. There are no practical alternative disposal sites outside of the Pinelands;

ii. No feasible alternative disposal techniques are available;

iii. The expansion does not involve the disposal of waste within 2,500 feet of an existing residential use;

iv. The expansion area is lined and includes a leachate collection and treatment system and a methane collection and removal system; and either

v. The expansion will occur only on lands containing adequate clay aquicludes as determined by the Commission in consultation with the New Jersey Solid Waste Administration; or

vi. When there are no lands containing adequate clay aquicludes, all measures necessary to prevent the degradation of ground water shall be reviewed and analyzed. Those measures determined to be most effective to prevent the degradation of ground water shall be implemented.

7:50-6.75 New landfills

(a) Landfills not existing on August 8, 1980 shall be permitted in the Protection Area only if a solid waste management district demonstrates to the Commissoin that:

1. A new landfill is significantly preferable from an environmental perspective to continuation of an existing landfill;

2. There are no practical alternative disposal techniques available, as demonstrated in a certified solid waste management plan;

3. There are no feasible alternative land sites available outside of the Pinelands;

4. All waste to be accepted is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and

5. The new landfill shall be operated in accordance with N.J.A.C. 7:50-6.74(a)5-7. Use of the landfill shall be terminated on August 8, 1990.

(b) Notwithstanding (a) above, landfills designed and operated exclusively to accept vegetative wastes may be permitted in Rural Development Areas, Regional Growth Areas, Agricultural Production Areas, and Pinelands Towns and Villages.

7:50-6.76 Solid waste transfer stations

(a) Solid waste transfer stations may be permitted provided that:

1. The facility meets all standards and requirements of the Department of Environmental Protection;

2. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and

3. The facility is located in a Regional Growth Area, Pinelands Town, or Rural Development Area.

(b) Notwithstanding the requirements of (a)2 and 3 above, a facility may be permitted in a Pinelands Village provided that all waste accepted is from the municipality in which the facility is located; or in any other Pinelands management area if the facility is located on the site of an existing landfill which is no longer active when the transfer station is built, and all waste accepted is from the municipality in which the facility is to be located.

7:50-6.77 Categories of wastes prohibited

(a) No hazardous, toxic, chemical, petroleum (including oil spill pollutants), septic or nuclear waste shall be stored, discharged or disposed of on any land within the Pinelands. Liquid or dewatered sludge may only be applied as part of a land application program for agricultural purposes when also approved by the New Jersey Department of Environmental Protection.

(b) Notwithstanding (a) above:

1. Petroleum wastes collected and temporarily stored for delivery to another facility for processing may be permitted in the Pinelands provided that the storage facility is designed and operated in accord with state and federal regulations.

2. Other wastes and byproducts may be temporarily stored at the facility where generated provided that the storage facility is designed and operated in accord with state and federal regulations.

7:50-6.78 Compliance with county, state and federal requirements

No provision of this Plan shall be construed as authorizing any landfill operation in violation of any local, state or federal regulation or plan governing the disposal of waste material, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., and associated implementing rules and regulations.

7:50-6.79 and 7:50-6.80 (Reserved)

PART VIII—WATER QUALITY

7:50-6.81 Purpose

An essential element of the overall ecological value of the Pinelands environment is its extensive surface and ground water resources of exceptional quality. The Pinelands Protection Act provides that the Plan protect and maintain the quality of surface and ground water through the control of development and land use, and close cooperation and coordination with local, state and federal agencies of government. This management program is intended to protect and preserve surface and ground waters of the Pinelands and to ensure that random and uncontrolled growth and development will not degrade the Pinelands environment. Nothing in this Part applies to agricultural activities except as otherwise provided by state or federal regulation.

7:50-6.82 (No change.)

7:50-6.83 Minimum standards necessary to protect and preserve water quality

(a) All development permitted under this Plan, or under a certified county or municipal master plan or land use ordinance, shall be designed and carried out so that the quality of surface and ground water will be protected and maintained. For the purpose of this Part, agricultural use shall not be considered development.

(b) Except as specifically authorized in this Part, no development which degrades surface or ground water quality or which establishes new point sources of pollution shall be permitted.

(c) No development shall be permitted which does not meet the minimum water quality and potable water standards of the State of New Jersey or the United States.

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1. Development of new or expansion of existing commercial, industrial, and waste water treatment facilities, provided that:

i. There will be no direct discharge into any surface water body;

ii. All discharges from the facility are of a quality and quantity such that ground water exiting from the parcel of land or entering a surface body of water will not exceed two parts per million nitrate/nitrogen;

iii. All public waste water treatment facilities are designed to accept and treat septage; and

iv. All storage facilities, including ponds or lagoons, are lined to prevent leakage into ground water.

2. Development of new waste water treatment facilities which are designed to improve the level of nitrate/nitrogen attenuation of more than one existing on-site waste water treatment system may be exempted from the standards of (a)1ii above provided that:

i. There will be no direct discharge into any surface water body;

ii. The facility is designed only to accommodate waste water from existing residential, commercial, and industrial development;

iii. Adherence to (a)1ii above cannot be achieved due to limiting site conditions or that the costs to comply with the standard will result in excessive user fees as judged against relevant federal Environmental Protection Agency guidelines; and

iv. The design level of nitrate/nitrogen attenuation is the maximum possible within the cost limitations imposed by such user fee guidelines but in no case shall ground water exiting from the parcel or entering a surface body of water exceed 10 parts per million nitrate/nitrogen.

3. Improvements to existing commercial, industrial, and waste water treatment facilities which discharge directly into surface waters provided that:

i. There is no practical alternative available that would adhere to the standards of N.J.A.C. 7:50-6.84(a)1.

ii. There is no increase in the existing approved capacity of the facility; and

iii. All discharges from the facility into surface waters are such that the nitrate/nitrogen levels of the surface waters at the discharge point do not exceed two parts per million. In the event that nitrate/nitrogen levels in the surface waters immediately upstream of the discharge point exceed two parts per million, the discharge shall not exceed two parts per million nitrate/nitrogen.

4. Individual on-site septic waste water treatment systems, provided that:

i. The proposed development to be served by the system is otherwise permitted pursuant to subchapters 4 and 5;

ii. Non-residential development within the Preservation Area District except in areas designated pursuant to N.J.A.C. 7:50-5.22(b)7, Forest Area District, Agricultural Production Area District, and Special Agricultural Production Area District is served by a standard subsurface sewage disposal system;

iii. The design of the system and its discharge point, and the size of the parcel on which the system is located, will ensure that ground water exiting from the parcel or entering a surface body of water will not exceed two parts per million nitrage/nitrogen;

iv. The depth to seasonal high water table is at least five feet;

v. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet; and

vi. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85.

vii. The technology has been approved for use by the New Jersey Department of Environmental Protection;

viii. Any effluent from other than standard subsurface sewage disposal systems will be monitored by the owner in accordance with requirements periodically established by the Pinelands Commission.

5. Surface water run-off, provided that:

i. The volume and rate of runoff generated from the parcel by a 50 year storm of a 24-hour duration as calculated in accordance with the United States Soil Conservation Service Technical Release No. 55 or the S.C.S. National Engineering Handbook section 4 will not increase as a result of any development of the parcel;

ii. Surface water runoff from impervious surfaces will be retained to facilitate infiltration into the ground water;

iii. Surface water runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel;

iv. Runoff shall not be recharged where depth to water table is more than 20 feet below the surface, wherever practical; and

v. Excessively and somewhat excessively drained soils, as defined by the Soil Conservation Service, should be avoided for recharge of runoff wherever practical.

7:50-6.85 Individual wastewater treatment facility and petroleum tank maintenance

(a) The owner of every on-site septic wastewater treatment facility in the Pinelands shall, as soon as suitable septage disposal facility capacity is available, in accordance with the provisions of Chapter 326 of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and Section 201 of the Clean Water Act:

1. Have the facility inspected by a technician at least once every three years;

2. Have the facility cleaned at least once every three years; and

3. Once every three years submit to the board of health serving the municipality in which the facility is located a sworn statement that the facility has been inspected, cleaned and is functional, setting forth the name of the person who performed the inspection and cleaning and the date of such inspection.

(b) The owners of commercial petroleum storage tanks shall comply with the requirements of Chapter 102 of the Laws of 1986.

7:50-6.86 Water management

(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water-saving toilets, showers and sink faucets shall be installed in all new development.

(b) Water shall not be exported from the Pinelands except as otherwise provided in N.J.S.A. 58:1A-7.1.

7:50-6.87 Prohibited chemicals and materials

(a) Use of the following substances is prohibited in the Pinelands to the extent that such use will result in direct or indirect introduction of such substances to any surface or ground water or any land:

1. Septic tank cleaners; and

2. Waste oil.

(b) All storage facilities for deicing chemicals shall be lined to prevent leaking into the soil, and shall be covered with an impermeable surface which shields the facility from precipitation.

(c) No person shall apply any herbicide to any road or public utility right-of-way within the Pinelands unless necessary to protect an adjacent agricultural activity.

7:50-6.88 through 7:50-6.90 (Reserved)

PART IX—AIR QUALITY

7:50-6.91 (No change.)

7:50-6.92 Air quality program

In order to obtain certification under the provisions of N.J.A.C. 7:50-3, the municipal master plan and land use ordinances must contain a program for air quality. It is not necessary that the program incorporate the literal terms of the program set out in this Part; rather, it may adopt alternative or additional management techniques which will achieve the protection of the Pinelands equivalent to that which would be achieved under the provisions of this Part.

7:50-6.93 General standard

All development shall adhere to the relevant air quality standards of N.J.A.C. 7:27 et seq.

7:50-6.94 Standards for specified development

(a) Applications for the following developments shall ensure that all state ambient air quality standards in N.J.A.C. 7:27 et seq. for carbon monoxide shall not be exceeded at places of maximum concentration and at sensitive receptors:

1. Residential development of 50 or more units and any other development involving more than 100 parking spaces located in a Regional Growth Area or Pinelands Town; and

2. Residential development of 100 or more units and any other development involving more than 300 parking spaces located in any other Pinelands management area.

7:50-6.95 through 7:50-6.100 (Reserved)

PART X—SCENIC

7:50-6.101 (No change.)

7:50-6.102 (No change.)

7:50-6.103 Scenic corridors

(a) Except for those roads which provide for internal circulation within residentially developed areas, all public, paved roads in the Preservation Area District, the Rural Development and Forest Areas shall be considered scenic corridors.

(b) Those rivers designated in N.J.A.C. 7:50-6.105 shall be considered as special scenic corridors in any part of the Pinelands.

7:50-6.104 Requirements for scenic corridors

(a) Except as provided in this section, no permit shall be issued for development other than for agricultural product sales establishments unless the applicant demonstrates that all buildings are set back at least 200 feet from the center line of the scenic corridor.

(b) If compliance with the 200-foot setback is constrained by environmental or other physical considerations, such as wetland, or active agricultural operation, the building shall be set back as close to 200 feet as practical and the site shall be landscaped in accordance with the provisions of Part II of this subchapter so as to provide screening from the corridor.

(c) If an applicant for development approval demonstrates that existing development patterns of the corridor are such that buildings are set back less than 200 feet within 1,000 feet of the site proposed for development, then a setback shall be set for the proposed development which is consistent with the established development pattern, provided that the site is landscaped in accordance with the provisions of Part II of this subchapter so as to provide screening between the building and the corridor.

7:50-6.105 Requirements for special scenic corridors

(a) The following rivers are hereby designated to be wild and scenic rivers and scenic corridors of special significance to the Pinelands. All structures within 1,000 feet of the center line of these rivers shall be designed to avoid visual impacts as viewed from the river:

1. Great Egg Harbor River—Great Egg Bay (Garden State Parkway) to Route 536.

2. Tuckahoe River—Great Egg Bay to the Route 552 crossing in Milmay.

3. Middle River—Great Egg Bay to Schoolhouse Lane crossing north of Corbin City.

4. Mullica River—Garden State Parkway to Medford Road crossing at the Medford, Waterford, and Shamong Township boundaries.

5. Wading River—Confluence with the Mullica River to Route 563 crossing at Speedwell.

6. Oswego River—Confluence with the Wading River to Sim Place reservoir dam.

7. Batsto River—Confluence with Mullica River to Carranza Memorial Road crossing at Shamong and Tabernacle Township boundaries.

8. Bass River—Confluence with the Mullica River to Stage Road crossing in Bass River State Forest.

9. Nescochague Creek—Confluence with the Mullica River to confluence with Great Swamp Branch and Albertson Branch.

10. Great Swamp Branch—Confluence with Nescochague Creek to Route 206 bridge in Hammonton.

11. Rancocas Creek—Route 530 crossing in Browns Mills to the Pinelands boundary.

12. Cedar Creek—Route 9 crossing to the dam at Bamber Lake.

13. West Creek—Confluence with Delaware Bay to Pickle Factory Pond above Route 550.

14. Dennis Creek—Confluence with Delaware Bay to the headwaters of the mainstem in the Great Cedar Swamp west on Route 9.

15. North Branch of the Forked River—Garden State Parkway to the confluence with Cave Cabin Branch east of Howardsville.

16. Toms River—From the Central Railroad of New Jersey bridge to the Route 528 crossing east of Cassville.

17. Maurice River—Delaware Bay to Manumuskin River.

18. Manumuskin River—Confluence with the Maurice River to the Route 49 crossing near Cumberland Road.

19. Mount Misery Branch—Route 70 crossing to the Greenwood Branch continuing to the North Branch of the Rancocas Creek.

7:50-6.106 Signs

Each municipality shall adopt provisions governing signs in its municipal master plan and ordinances. N.J.A.C. 7:50-6.107 contains provisions which must be included in all municipalities; N.J.A.C. 7:50-6.108 contains mandatory provisions for municipalities in the Preservation Area District and Special Agricultural Production Areas; and N.J.A.C. 7:50-6.109 contains suggested guidelines for additional sign provisions for other areas of the Pinelands.

7:50-6.107 Mandatory sign provisions

(a) No sign, other than warning or safety signs, which is designed or intended to attract attention by sudden, intermittent or rhythmic movement, or physical or lighting change, shall be permitted in any area.

(b) No sign, other than warning or safety signs, which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation shall be permitted in any state.

(c) No outdoor off-site commercial advertising sign, other than signs advertising agricultural roadside stands, shall be permitted in the Pinelands.

(d) No existing sign which does not conform to (a), (b) and (c) above shall be permitted to continue beyond 10 years after the effective date of this Plan.

(e) To the maximum extent practical, the character and composition of construction materials for all signs shall be harmonious with the scenic values of the Pinelands.

7:50-6.108 Mandatory sign provisions in the Preservation Area District and Special Agricultural Production Areas

(a) No sign shall be constructed, repaired or maintained except in accordance with the provisions of N.J.A.C. 7:50-6.107 and this section.

(b) The following signs are permitted in the Preservation Area District and the Special Agricultural Production Areas:

1. Official public safety and information signs displaying road names, numbers and safety directions;

2. On-site signs advertising the sale or rental of the premises, provided that:

i. The area on one side of any such sign shall not exceed 12 square feet;

ii. No more than one sign is located on any parcel of land held in common ownership.

3. On-site identification signs for schools, churches, hospitals, or similar public service institutions, provided that:

i. The size of any such sign shall not exceed 12 square feet;

ii. No more than one sign is placed on any single property.

4. Trespassing signs or signs indicating the private nature of a road, driveway or premises, and signs prohibiting or otherwise controlling fishing or hunting, provided that the size of such signs does not exceed 12 square feet;

5. On-site professional, home occupation, or name signs indicating the profession and/or activity and/or name of the occupant of the dwelling, provided that:

i. The size of any such sign shall not exceed 12 square feet;

ii. No more than one sign is permitted for any individual parcel of land.

6. On-site business or advertising signs, provided that:

i. No more than two signs are located on any one premise or on the premises leased or utilized by any one business establishment;

ii. The total area of such signs shall not exceed 20 square feet per side, with the maximum height to the top of the sign not to exceed 15 feet from ground level.

7. Temporary signs advertising political parties or candidates for election, provided that the size of any such sign does not exceed four square feet.

8. Temporary on- and off-site signs advertising civil, social or political gatherings and activities, provided that the size of such signs does not exceed four square feet.

7:50-6.109 Guidelines for sign provisions outside the Preservation Area District and Special Agricultural Production Areas

(No change in text.)

7:50-6.110 Motor vehicle screening and storage

In order to obtain certification, municipalities shall adopt local ordinances which provide that no more than 10 automobiles, trucks or other motor vehicles, whether or not they are in operating condition, shall be stored on any lot unless such motor vehicles are adequately screened from adjacent residential uses and scenic corridors. All vehicles not in operating condition shall be stored only if the gasoline tanks of such vehicles are drained. This section shall not apply to vehicles which are in operating condition and which are maintained for agricultural purposes.

7:50-6.111 Location of utilities

(a) New utility distribution lines and telephone lines to locations not presently served by utilities shall be placed underground, except for those lines which are located on or adjacent to active agricultural operations.

(b) All electric utility transmission lines shall be located on existing towers or underground to the maximum extent practical.

(c) Above-ground generating facilities, switching complexes, pumping stations, and substations shall be screened with vegetation from adjacent uses in accordance with N.J.A.C. 7:50-6, Part II.

PART XI—RESERVED

PART XII—FIRE MANAGEMENT

7:50-6.121 (No change in text.)

7:50-6.122 (No change in text.)

7:50-6.123 Fire hazard classification

The following vegetation classifications shall be used in determining the fire hazard of a parcel of land:

Fire Hazard Classification

Hazard	Vegetation Type
Low	Atlantic white cedar. Hardwood swamps.
Moderate	Pine-oak or oak-pine greater than 20 feet tall and less than 20 foot spacing. Non-Pine Barrens forest. Prescribed burned areas.
High	Pine-oak or oak-pine less than 20 feet tall and greater than 20 foot spacing.
Extreme	Immature pine-oak or oak-pine, including those less than 20 feet tall and less than 20 foot spacing. Pitch pine lowlands (all size classes).

7:50-6.124 Fire hazard mitigation standards

(a) No application for development approval shall be granted in moderate, high and extreme fire hazard areas unless the applicant demonstrates that:

1. All proposed developments, or units or sections thereof, of 25 dwelling units or more will have two accessways of a width and surface composition sufficient to accommodate and support fire fighting equipment;

2. All dead-end roads will terminate *[in an area adequate to provide ingress and egress]* ***in a manner which provides safe and effective entry and exit*** for fire fighting equipment;

3. The rights-of-way of all roads will be maintained so that they provide an effective fire break;

4. Except as provided in (a)5 below, a fire hazard fuel break is provided around structures proposed for human use by the selective removal or thinning of trees, bushes, shrubs and ground cover as follows:

i. In moderate fire hazard areas a fuel break of 30 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned on an annual basis; and

(2) All dead plant material is removed.

ii. In high fire hazard areas a fuel break of 75 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned and maintained on an annual basis;

(2) All dead plant material is removed.

iii. In extreme high hazard areas a fuel break of 100 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned and maintained on an annual basis;

(2) No pine tree (Pinus spp.) is closer than 25 feet to another pine tree; and

(3) All dead plant material is removed.

5. All residential development of 100 dwelling units or more in high or extreme high hazard areas will have a 200-foot perimeter fuel break between all structures and the forest in which:

i. Shrubs, understory trees and bushes and ground cover are selectively removed, mowed or pruned and maintained on an annual basis;

ii. All dead plant material is removed;

iii. Roads, rights-of-way, wetlands and waste disposal sites shall be used as fire breaks to the maximum extent practical; and

iv. There is a specific program for maintenance.

***7:50-6.125 Guidelines for construction**

(a) Municipalities may use the following construction guidelines in formulating municipal ordinance standards:

1. Roofs and exteriors will be constructed of fire resistant materials such as asphalt rag felt roofing, tile, slate, asbestos cement shingles, sheet iron, aluminum or brick. Fire retardant-treated wood shingles or shake type roofs are prohibited in high or extreme fire hazard areas.

2. All projections such as balconies, decks and roof gables shall be constructed of fire resistant material or materials treated with fire retardant chemicals.

3. Any openings in the roof, attic and the floor shall be screened.

4. Chimneys and stovepipes which are designed to burn solid or liquid fuels shall be equipped with screens over the outlets.

5. Flat roofs are prohibited in areas where vegetation is higher than the roof.*

7:50-6.12*[5]***6*** through 7:50-6.130 (Reserved)

PART XIII—HOUSING

7:50-6.131 Purpose

In order to ensure that low and moderate income households will have adequate and reasonable housing opportunities under the Comprehensive Management Plan, it is necessary that master plans and land use ordinances of municipalities with land in the Regional Growth Areas include a housing program that implements the minimum standards of this Part. There are a variety of methods by which a municipal housing program can implement the minimum standards of this Part. The primary consideration of the Commission will be whether the program is economically feasible and likely to result in the availability of housing opportunities for low and moderate income households. It is not necessary that a municipality incorporate the literal terms of this Part, provided that the municipal master plan and land use ordinances ensure the equivalent provision of housing opportunities as would be achieved under the provisions of this Part.

7:50-6.132 Minimum standards

(a) In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must include a housing program that:

1. Ensures that at least 10 percent of all available housing units in the portion of the municipality which is located in a Regional Growth Area will be affordable to low income households;

2. Ensures that in addition to the housing units which are affordable to low income households, at least 10 percent of all available housing units in that portion of the municipality which is located in a Regional Growth Area will be affordable to moderate income households;

3. Ensures that minimum floor area requirements are not applicable to dwelling units which meet the minimum standards of (a)1 and 2 above;

4. Ensures that dwelling units that meet the minimum standards of (a)1 and 2 above are compatible with surrounding land uses;

5. Ensures that the dwelling units required by (a)1 and 2 above are available at approximately the same rate as is non-required housing;

6. Includes provisions that will ensure that the dwellings, required in (a)1 and 2 above will continue to be available to low and moderate income households.

7:50-6.133 Minimum housing standards in uncertified municipalities

(a) In municipalities that have not received certification of their master plans and land use ordinances, all development shall meet the following minimum standards:

1. In developments involving 25 to 99 dwelling units, at least 20 percent of the dwelling units proposed for development shall be affordable to low and moderate income households.

2. In developments of 100 or more dwelling units, 20 percent of the dwelling units shall be affordable to low and moderate income households with at least 10 percent of the total dwelling units affordable to low income households.

3. All required low and moderate income housing units shall be compatible with the non-required housing units and uses in the vicinity of the proposed development.

4. Required low and moderate income housing units shall be constructed at the same rate as non-required housing.

5. Deed restrictions or other legally enforceable provisions ensuring the availability of required housing for low and moderate income households shall be provided for a period of at least 30 years from the date of initial occupancy.

6. If an applicant can demonstrate that dwelling units required under this section cannot be provided, the applicant may satisfy the housing requirements of this section by dedication of land suitable for development of an equivalent number of required housing units, by payment in lieu thereof to a qualified public housing agency or by other alternative actions which meet the intent of this section.

7:50-6.134 through 7:50-6.140 (Reserved)

PART XIV—RECREATION

7:50-6.141 (No change in text.)

7:50-6.142 (No change in text.)

7:50-6.143 General requirements

(a) All recreational facilities in the Pinelands shall comply with the following requirements:

1. No power vessel in excess of 10 horsepower shall operate on state waters within the Pinelands Area except on:

i. That portion of the Mullica River downstream from Burlington County Route 542; and

ii. That portion of the Wading River downstream from its confluence with the Oswego River.

2. No motor vehicle other than fire, police or emergency vehicles or those vehicles used for the administration or maintenance of any public land shall be operated upon publicly owned land within the Pinelands. Other motor vehicles may operate on public lands for recreational purposes on public highways and areas on land designated prior to August 8, 1980 for such use by state and local governmental entities until designated as inappropriate for such use under (a)3 below.

3. The Commission shall from time to time designate areas which are inappropriate for use of motor vehicles. Such designation shall be based upon the following considerations and upon consultation with the New Jersey Department of Environmental Protection and other interested persons:

i. A need to protect a scientific study area;

ii. A need to protect the location of threatened or endangered plant or animal species;

iii. A need to provide a wilderness recreational area;

iv. A need to prevent conflicts with adjoining intensively used recreational areas;

v. A need to protect historic or archaeological sites;

vi. A need to protect critical wildlife habitats;

vii. A need to address a situation of public health and safety;

viii. A need to protect extensively disturbed areas from further impact; and

ix. The extent to which such road closure would substantially impair recreation access to and uses of surrounding resources.

4. Route maps for organized off-road vehicle events shall be filed with and approved by the Executive Director.

5. All recreation areas and facilities shall be designed in accordance with the New Jersey Department of Environmental Protection publication "Administration Guidelines: Barrier-Free Design Standards for Parks and Recreational Facilities."

6. Improved bicycling facilities are provided only in conjunction with paved roads within the Preservation Area District and Forest Area.

7:50-6.144 Guidelines for recreational land and facilities

(a) In preparing the recreational program element of its master plan and ordinances, each municipality may consider the following requirements. In municipalities that have not received certification of their master plans and land use ordinances, all development shall meet the standards of (a)3i below.

1. Lawn areas shall be permitted in association with commercial and industrial development provided that such lawns are designed and used for public recreational purposes, meet an identified public recreational need, and are dedicated to public recreation use.

2. Lawn areas developed in association with recreational development shall be limited to those which support recreation activities and shall, to the extent practical, be of a variety of grass which requires minimal fertilization.

3. Each municipality shall have ordinances which provide for open space and recreational facilities in association with residential developments. The following guidelines may be utilized to develop these ordinances:

i. All residential development of 25 units or more shall provide:

(1) Eight acres of land to be used for recreational purposes for every 1,000 projected residents of the development; provided, however, that such acreage shall not be required to exceed 10 percent of the total acreage of the proposed development;

(2) Land provided in accordance with (a)3i(1) above shall be provided in a single area or in individual parcels at least one acre in size;

(3) All residential units for which the recreational land is provided in accordance with (a)3i(1) above shall be located within 1/4 mile of such recreational land; and

(4) At least 50 percent of the recreational land provided in accordance with (a)3i(1) above shall be turfed or landscaped with otherwise suitable materials to permit informal recreational activities.

ii. All residential development of 50 units or more should provide recreational land in accordance with (a)3i above. Recreational facilities in accordance with the following schedule shall also be provided to the extent recreational needs are generated by the proposed development. An analysis of the recreational needs of a proposed development within a specified service area around the development shall be conducted by comparing the following schedule of facility standards with existing recreational facilities within the service area and the projected population of the service area:

Recreational Facility Guidelines

	Population	Minimum Facility Space Standards	Recreational Service Area Radius
Basketball courts	1 per 1,000	Court dimensions range 60 feet x 80 feet x 70 feet x 104 feet	1/2 mile
Tennis courts	1 per 2,000	Court dimensions range from 60 feet x 120 feet—single court 45 feet x 120 feet additional adjoining courts	1 mile
Multi-purpose	1 per 2,000	.50 acre (including basketball and tennis courts)	1/2 mile
Passive area (sitting)	1 per 2,000	.50 acre whichever	1/2 mile
Senior citizen (bocce, shuffleboard, horseshoe)	1 per 1,000 over 55	.50 acre is greater	1/4 mile
Pre-school playground	1 per 2,000	.25 acre	1/4 mile
Advanced playground	1 per 2,000	.25 acre	1/2 mile
Multi-purpose turf area	1 per 2,000	.50 acre	1 mile
Football/soccer fields	1 per 10,000	Field dimensions 140 feet x 280 feet—youth 190 feet x 420 feet—adult	1 mile
Baseball—regulation 90-foot diamond	1 per 6,000	2.8 acres 325-foot outfield	1 mile
Baseball-youth	1 per 6,000	1.0 acre 200-foot outfield	1 mile
Softball 60-foot diamond			
Picnic area	1 per 6,000	8-foot tables	1 mile

7:50-6.145 through 7:50-6.150 (Reserved)

PART XV—HISTORIC RESOURCES PRESERVATION

7:50-6.151 Purpose

(a) Historically distinctive resources, including buildings, structures, sites and districts of historic, archaeological, architectural, or cultural importance help to define the Pinelands environment and must be properly managed in furtherance of the following public purposes:

1. To effect and accomplish the protection, enhancement, perpetuation and use of improvements and areas of special historic and archaeological interest or value which represent or reflect significant elements of the Pinelands' cultural, social, economic, political and architectural history and prehistory;

2. To safeguard the Pinelands' prehistoric, historic and cultural heritage as embodied and reflected in such improvements and areas;

3. To stabilize and improve property values in such areas;

4. To prevent neglect and vandalism of historic, archaeological and cultural sites;

5. To foster pride in the beauty and noble accomplishments of the past; and

6. To preserve opportunities for traditional life styles related to and compatible with the ecological values of the Pinelands.

7:50-6.152 Historic resource management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must provide a program for the protection of historic resources. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve the equivalent protection provided under the provisions of this Part.

7:50-6.153 Authorities of municipal officials and agencies

(a) The Planning Board of each municipality shall have the following powers and duties:

1. To initiate, hear, review and make recommendations to the Pinelands Commission regarding designation of historic resources and districts of ***local*** Pinelands, national or state significance in accordance with the provisions of N.J.A.C. 7:50-6.154;

2. To initiate, hear, review and identify historic resources and districts of local ***Pinelands, national or state*** significance and recommend same to the governing body for designation in the zoning ordinance, in accordance with the provisions of N.J.A.C. 7:50-6.154 and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.;

3. To review and issue certificates of appropriateness in accordance with the provisions of N.J.A.C. 7:50-6.155 and 6.156 for any application for development which it is otherwise empowered to review;

4. To review and report on any matter related to this Part referred to it by the Pinelands Commission;

5. To make its general knowledge and expertise available upon reasonable written request to the Pinelands Commission or any agency of the municipality, county, state or federal government;

6. To consult with any county, state or national agency with special expertise in the area of historic resources;

7. To prepare and adopt plans implementing measures to preserve the cultural heritage of traditional Pinelands Villages;

8. To develop and maintain a manual of recommended rehabilitation techniques and the relationship of new construction to natural areas for the guidance of the public; and

9. To adopt rules of procedure which are not in conflict with the provisions of this Part and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

(b) The Board of Adjustment shall review and issue certificates of appropriateness, in accordance with the provisions of N.J.A.C. 7:50-6.155 and 6.156 for any application for development which it is otherwise empowered to review.

(c) The governing body may by ordinance provide for an Historic Preservation Commission in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The Historic Preservation Commission shall have those duties and responsibilities set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and shall:

1. Advise the Planning Board and Board of Adjustment on the issuance of certificates of appropriateness for all applications for development which otherwise require approval of the Boards; and

2. Unless the governing body expressly authorizes the Planning Board to do so, issue certificates of appropriateness, pursuant to N.J.A.C. 7:50-6.155 and 6.156, for all zoning, construction or other permits which are not issued pursuant to a valid site plan, conditional use, or variance approval granted by the Planning Board or Board of Adjustment.

(d) Where the governing body has not provided for an Historic Preservation Commission, the local permitting agency responsible for ruling on the application for development shall exercise the duties set forth in (c)2 above.

7:50-6.154 Designation of historic resources and districts

(a) Those historic resources within the Pinelands which are from time to time listed in the State and National Registers of Historic Places, pursuant to N.J.S.A. 13:1B-15.128 et seq. and P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470, respectively, are hereby designated as historic resources of significance to the Pinelands.

(b) Standards for designation of additional resources ***are as follows***:

1. The Pinelands Commission may designate additional historic resources and districts if it determines that the resource or district possesses integrity of location, design, setting, materials, workmanship, feeling, and association which reflects its significance in American history, architecture, archaeology or culture under one or more of the following criteria:

i. The presence of structures, sites or areas associated with events of significance to the cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

ii. The presence of structures, sites or areas associated with the lives of persons or institutions of significance to the cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

iii. The presence of structures *[which]* ***that*** represent ***the work of a master, or that possess high artistic values, or that embody the*** distinctive characteristics of a type, period or method of construction ***, or that represent a distinguishable entity*** of significance to the architectural, cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

iv. The presence of a site or area which has yielded or is likely to yield significant information regarding the history or archaeological history of the Pinelands; and

2. The Planning Board shall utilize these standards in identifying areas, sites, structures or districts as resources of *[local]* significance in accordance with the provisions of the Municipal Land Use Law, ***N.J.S.A.*** 40:55D-1 et seq.***,*** and recommending that the governing body designate same in the zoning ordinance.

(c) Initiation of Designation: The designation of historic resources or districts of Pinelands significance may be initiated by the Pinelands Commission, the Executive Director, an Historic Preservation *[Committee]* ***Commission***, a Planning Board, or any other person.

(d) Designation Application:

1. If designation by the Pinelands Commission is proposed by an Historic Preservation Commission, a Planning Board or other person, the application shall be submitted on a National Register of Historic Places Inventory-Nomination Form with the accompanying information listed in the State and National Register Manual as published by the New Jersey Department of Environmental Protection. The application shall contain the following information:

i. A statement setting forth the basis for designation with specific reference to the standards set forth in (b) above;

ii. Comments from the local Planning Board if the designation is proposed by a person who is not a member of the Planning Board;

iii. Such additional information as may be required from time to time by the Pinelands Commission to facilitate adequate review of the application.

2. If local designation is proposed, the application shall include the information required in (d)1 above and any other information as may be required by the Planning Board.

(e) Pinelands Commission Review: All proposed designations by the Pinelands Commission shall be reviewed and a public hearing held in the manner provided in N.J.A.C. 7:50-4.

(f) Effect of Designation: All resources and districts designated pursuant to this section will be governed by the standards of N.J.A.C. 7:50-6.156.

(g) Removing Designation: Any resource designated by the Pinelands Commission or by a municipality may be removed from designation if the designating agency determines that the resource no longer meets the standards of (b) above. In the event the Pinelands Commission considers removal of any designation, a public hearing shall be held in the manner provided in N.J.A.C. 7:50-4. All resources and districts designated pursuant to this section will be governed by the standards of N.J.A.C. 7:50-6.156.

7:50-6.155 Evaluation of development proposals

(a) Identification of Resources:

1. A cultural resource survey shall accompany all applications for development in a Pinelands Village or Town and applications for major development in other Pinelands Management Areas in order to determine whether any significant historic resources exist on the property. Guidelines for this survey will be available at the principal offices of the Pinelands Commission. In general, the survey shall include: a statement as to the presence of any properties listed on the National and State Registers of Historic Places on the site or within the area of the project's potential environmental impacts; a thorough search of state, local and any other pertinent inventories to identify sites of potential significance; a review of the literature and consultation with professional and avocational archaeologists knowledgeable about the area; a thorough pedestrian survey and archaeological testing as necessary to provide reasonable evidence of the presence or absence of historic resources of significance, and a list of personnel involved and qualifications of the person(s) performing the survey.

(b) Survey Exemptions:

1. Notwithstanding (a) above, the need for a cultural resource survey may be:

i. Eliminated by a municipality, as part of its certified land use ordinance, in portions of a Pinelands Village or Town if there is insufficient evidence of significant cultural activity within the area or, in the case of archaeological resources, within the vicinity; and

ii. Waived by the Pinelands Commission or by an approval agency for individual applications for development if it is determined that:

(1) There is insufficient evidence of cultural activity on the project site or, in the case of archaeological resources, within the vicinity;

(2) The evidence of cultural activity on the site lacks the potential for importance because further recording of the available data will not contribute to a more comprehensive understanding of Pinelands culture; or

(3) The evidence of cultural activity lacks any potential for significance pursuant to the standards of N.J.A.C. 7:50-6.154(b).

(c) Evaluation of Resources:

1. The Pinelands Commission may from time to time organize cultural resources into broad groupings according to type, function or historical period to aid in their evaluation and treatment.

2. Except for those resources designated pursuant to N.J.A.C. 7:50-6.154, each historic resource identified through the survey shall be evaluated to determine its significance according to the individual criteria set forth in N.J.A.C. 7:50-6.154(b). The Pinelands Commission may from time to time establish evaluative questions to assist in this determination of significance.

3. Should a resource be determined not to be significant, the evaluation must determine whether the resource constitutes a site with sufficient remains pursuant to N.J.A.C. 7:50-6.157(a).

7:50-6.156 Treatment of resources

(a) *A* Certificate of Appropriateness ***is required and issued as follows***:

1. No construction, or encroachment upon nor alteration, remodeling, removal, disturbance, or demolition of any resource, structure or area designated pursuant to N.J.A.C. 7:50-6.154 nor any action which shall render such a site inaccessible, shall be permitted without first obtaining a certificate of appropriateness.

2. No application for development which involves a resource, structure or area found significant pursuant to N.J.A.C. 7:50-6.155 shall be approved without first obtaining a certificate of appropriateness.

3. The issuance of *[all]* certificates of appropriateness by a certified municipality shall be subject to the Pinelands Commission notice and review procedures of N.J.A.C. 7:50-4 ***unless the proposed developments are exempted pursuant to N.J.A.C. 7:50-4.1(a). The exemptions of N.J.A.C. 7:50-4.1(a) shall not apply to activities set forth in (a)1 above which affect a resource listed in the State or National Registers of Historic Places or which is specifically designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154***. In uncertified municipalities, certificates of appropriateness shall be issued by the Pinelands Commission ***except as provided above***.

4. Notwithstanding (a)1, 2 and 3 above, development proposed by a county, *[state or federal]* ***State or Federal*** agency shall require that a certificate of appropriateness be issued by the Pinelands Commission only if the site is listed in *[this]* ***the*** State or National Registers of Historic Places, has been ***specifically*** designated by the Commission, or determined by the Commission to be significant pursuant to N.J.A.C. 7:50-6.155.

(b) *[A]****The a***pplication ***requirements*** for ***a*** Certificate of Appropriateness ***are as follows***:

1. An application for a certificate of appropriateness shall contain the following information:

i. Detailed plans depicting the exact work to be performed, including detailed renderings of the exterior of any proposed new structure or any exterior alterations to existing structures. A delineation of the relationship of the renderings of the proposal in relation to adjacent structures or surrounding lands may be requested.

ii. A statement of the relationship of the proposed work to the standards for designation in N.J.A.C. 7:50-6.154(b) and the standards for approval of certificates of appropriateness set forth in (c) below.

iii. Such other information as may be required from time to time by the Executive Director or the appropriate municipal reviewing agency or official.

(c) *[S]****The s***tandards for Certificates of Appropriateness ***are as follows***:

1. Certificates of appropriateness shall be issued which require one of the following treatments:

i. Preservation of the resource in place if possible;

ii. Preservation of the resource at another location if in place preservation is not possible; or

iii. Recordation of the resource if neither preservation of the resource in place or at another location is possible.

2. The Pinelands Commission may from time to time establish guidelines to assist in determining the type of treatment required pursuant to (c)1 above. These guidelines shall include, but not be limited to, consideration of the following:

i. Preservation in place;

(1) Whether the resource represents the last or best remaining example of its kind in the Pinelands that possesses research potential or public educational values;

(2) Whether the resource can be preserved by protecting its location from disturbance;

(3) Whether affirmative measures, such as stabilization, rehabilitation, or reuse can result in preservation;

(4) Whether redesign of the development proposal to avoid impacts can result in preservation;

(5) Whether the steps necessary to preserve the resource are feasible and practical; and

(6) Whether protective measures will result in long term preservation of the resource.

ii. Preservation at another location;

(1) Whether the resource can be moved and still retain its historic significance;

(2) Whether the resource is sufficiently well preserved to permit relocation;

(3) Whether alternative locations which are compatible with the resource are available;

(4) Whether it is feasible and practical to relocate the resource; and

(5) Whether the relocation will result in long term preservation of the resource.

iii. Recordation

(1) Whether the resource possesses significance other than its association with an important person;

(2) Whether recording the qualities that make the resource significant can increase information beyond that already known; and

(3) Whether the recorded information will help to address important research questions concerning this type of resource.

3. The following requirements shall apply to the treatments specified in (c)1 above:

i. Preservation in Place*[;]**:*

(1) Buildings, architectural features, and engineering features:

*[(i)]**(A)* Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any rehabilitation of the building or feature must be performed in accordance with the Secretary of the Interior's Standards for Rehabilitation (36 C.F.R. 67); and the structure or feature must be protected sufficiently to preserve those qualities that make it significant.

*[(ii)]**(B)* Before beginning rehabilitation, the original condition of the building or other architectural or engineering feature must be documented photographically in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation.

(2) Archaeological sites:

*[i.]**(A)* A deed covenant, easement, or other appropriate mechanism must be developed to provide for protection, through restricted access if necessary, to preserve those qualities that make the resource important. Any on-site activities must have no detrimental effect on the preservation of the resource. The covenant or other appropriate mechanism must further direct that any stabilization of the resource will be carried out in conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

*[ii.]**(B)* The archaeological resource shall be incorporated into open space whenever project designs or land use activities permit.

*[iii.]**(C)* Land allocated for resource preservation may need to be set aside for that single use if the preservation of the resource is not compatible with other activities.

ii. Preservation at Another Location

(1) Deed convenants, easements, or other appropriate mechanisms must be developed to provide that: any rehabilitation of a building or feature must be performed in accordance with the Secretary of Interior's Standards for Rehabilitation (36 C.F.R. 67); and the structure or feature must be protected and maintained sufficiently to preserve those qualities that make it significant.

(2) The relocation of the resource must be designed to minimize the damage to the resource and to preserve those qualities that make it significant. The relocation shall be undertaken in accordance with the Secretary of the Interior's publication "Moving Historic Buildings".

(3) The resource shall be recorded to the requirements of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation prior to removal from its original location. Minimally this will include the preparation of a site plan, appropriate photographs and/or drawings, and a narrative description of any historical functions or processes carried out at the site.

iii. Recordation: The Pinelands Commission shall from time to time establish guidelines for recording resources in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

(d) Effect of Issuance of Certificate of Appropriateness.

1. The issuance of a certificate of appropriateness authorizes the applicant to apply for any additional approvals which may be required by the municipality or any other jurisdiction prior to the commencement of work. All subsequent development approvals shall be issued or denied in a manner consistent with the certificate of appropriateness except as provided in (d)2 below.

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for one year. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within one year, the standards of this Part shall thereafter not apply to the property in question.

7:50-6.157 Documentation required for sites with sufficient remains

(a) Sites with sufficient remains are those sites which present graphic evidence of a cultural activity (that is, human alteration of the natural landscape for purposes of occupation or extended use) but which are not found to be significant.

(b) If additional documentation of sites determined to have sufficient remains will provide information beyond that provided in the application for development or the cultural resource survey, these sites shall be documented to include:

1. A narrative description of the resource and its cultural environment;

2. Photographic documentation to record the exterior appearance of buildings, structures, and engineering resources;

3. A site plan depicting in correct scale the location of all buildings, structures, and engineering resources; and

4. A New Jersey *[s]**S*tate inventory form ***as published by the New Jersey Department of Environmental Protection*** for buildings and a narrative description of any process or technology if necessary to elaborate upon the photographic record.

7:50-6.158 Emergency provisions

(a) Notwithstanding any other provisions of this Part, in any case where the Executive Director determines that alteration, remodeling or demolition of a designated structure is necessary to remedy a condition that is dangerous to life, health or safety, a certificate of appropriateness which is required under the provisions of this Part may be issued under the signature of the Executive Director. The Executive Director shall inform the Commission of any action taken pursuant to this provision at its next regularly scheduled meeting.

(b) If at any time after construction has been commenced, archaeological data is discovered on a site, the developer shall immediately cease construction, notify the Commission and the local permitting agency; and take all reasonable steps to protect the archaeological data in accordance with the Guidelines for Recovery of Scientific, Prehistoric, Historic, and Archaeological Data: Procedures for Notification, Reporting, and Data Recovery (36 C.F.R. Part 66).

SUBCHAPTER 7. AMENDMENTS TO THE COMPREHENSIVE MANAGEMENT PLAN

7:50-7.1 Purpose

This subchapter establishes a means for making changes in the text of this Plan and in the Land Capability Map. It is not intended to relieve particular hardships nor to confer special privileges or rights but is intended as a tool to adjust the provisions of this Plan and the Land Capability Map in light of changing, newly discovered or newly important conditions, situations or knowledge. The procedures established by this subchapter are designed to maximize public participation in the amendment process.

7:50-7.2 (No change.)

7:50-7.3 Petitions for amendment

(a) Any member of the Commission or the Executive Director may, at any time, submit to the Commission on his own initiative any proposed amendment for consideration. Any such submission shall include all information which the member of the Commission or Executive Director determines is necessary or appropriate for full and proper consideration of the proposed amendment.

(b) Any other person desiring to petition the Commission for an amendment to this Plan, in municipalities or counties with uncertified plans, shall file a petition with the Executive Director in such form and number as the Executive Director shall from time to time establish and containing at least the following information:

1. The petitioner's name and address;

2. The precise wording of any proposed amendment of the text of this Plan and a map or plat delineating any proposed change to the Pinelands Land Capability Map;

3. A statement of the need and justification for the proposed amendment;

4. A statement as to the conformity of any proposed amendment to this Plan or the reason for any deviation from the Plan;

5. In the event that the proposed amendment would change the classification of any property as shown on the Land Capability Map:

i. The street address and legal description of the property proposed to be reclassified;

ii. The petitioner's interest in the subject property;

iii. The owner's name and address, if different from the petitioner's, and the owner's signed consent to the filing of the petition;

iv. The names and addresses of all owners of property required to be notified pursuant to N.J.A.C. 7:50-4.14(b).

v. The present classification and existing uses of the property proposed to be reclassified; and

vi. The area of the property proposed to be reclassified stated in square feet or acres, or fraction thereof.

7:50-7.4 (No change.)

7:50-7.5 Action by Commission

(a) Decision to review: Upon submission of any proposed amendment to the Commission by any member of the Commission or the Executive Director, the Commission shall determine whether a hearing should be held for the purpose of considering the proposed amendment. If the Commission determines that a hearing should be held, it shall conduct a hearing pursuant to the provisions of N.J.A.C. 7:50-4 and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., at which the proposed amendment shall be considered. If it determines that no hearing need be held, it shall so order.

(b) Final Decision by Commission: Within 30 days of the conclusion of any hearing held pursuant to (a) above, the Commission shall enter a final order either granting or denying the proposed amendment.

7:50-7.6 (No change.)

7:50-7.7 (No change.)

7:50-7.8 (No change.)

7:50-7.9 (No change.)

7:50-7.10 Effective date of amendments

Amendments to this Plan shall be effective as provided in the Pinelands Protection Act, the Federal Act, and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:50-7.11 Comprehensive review of plan by Commission

At least every five years after the adoption of this Plan, the Executive Director shall comprehensively review this Plan and all actions taken by the Commission or the Executive Director pursuant to N.J.A.C. 7:50-4 and shall submit a report to the Commission detailing any recommended amendments to the Plan. Such report shall be submitted by January 15 of every fifth year after adoption of this Plan and shall include an explanation of the reasons for any recommended amendment.

HIGHER EDUCATION

BOARD OF HIGHER EDUCATION

(a)

Fraudulent Academic Degrees

Adopted New Rules: N.J.A.C. 9:1-7

Proposed: July 20, 1987 at 19 N.J.R. 1284(a).

Adopted: September 28, 1987 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: September 30, 1987 as R.1987 d.430, **without change.**

Authority: N.J.S.A. 18A:3-15.6.

Effective Date: November 2, 1987.

Expiration Date: January 17, 1989.

Summary of Public Comments and Agency Responses:

The New Jersey Dietetic Assocation, Inc. strongly supported the Board of Higher Education's proposed rules regarding fraudulent academic degrees. The Association believes the rule will assist citizens of New Jersey of being confident about the educational credentials of their health care providers.

Full text of the adoption follows.

SUBCHAPTER 7. FRAUDULENT ACADEMIC DEGREES

9:1-7.1 Definitions

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

"Academic degree" means any certificate, diploma, associate degree, baccalaureate degree, masters degree, or doctoral degree regardless of the specific discipline in which it was awarded. For the purposes of this definition, a certificate or diploma shall constitute evidence of successful completion of a course of study at an institution of higher education which by virtue of educational content or duration does not satisfy requirements for a full degree program but which is specifically designed to offer content and skill acquisition and other experience appropriate to the objectives of such programs.

"Letters" means the designated abbreviations used to refer to an academic degree.

"Other legal entity" includes but is not limited to a firm, association, institution, corporation or partnership.

"Out-of-State institution" means an institution located within the United States or its possessions but not within the State of New Jersey.

"Person", as stated in N.J.S.A. 18A:3-15.5, includes any individual or other legal entity.

"Seeking accreditation" means that the institution has achieved candidacy status or the equivalent standing as evidenced by meeting criteria as defined by the Commission on Higher Education of the Middle States Association of Colleges and Schools or the equivalent criteria as established by an appropriate accrediting body recognized by the Council on Postsecondary Accreditation or the United States Department of Education.

9:1-7.2 Protected degree designations

(a) A person shall not utilize or append to his or her name any academic degree designation, letters, derivatives thereof, or other designations as evidence of receipt of an academic degree unless the person has received the academic degree from a duly authorized institution of higher education, as defined in N.J.S.A. 18A:3-15.3.

(b) A person may utilize or append to his or her name an academic degree designation or letters as evidence of the receipt of or the fulfillment of the requirements for an academic degree from an institution of higher education located outside of the United States or its possessions provided the degree was earned at an institution which is recognized by the appropriate body in the particular country.

(c) The institution's requirements for awarding an academic degree shall be generally equivalent to those accepted in the United States by an accrediting body recognized by the Council on Postsecondary Accreditation or the U.S. Department of Education.

9:1-7.3 Honorary degrees

Any person who has received an honorary degree must follow the academic degree or the letters used to abbreviate such a degree with the word "Honorary" or "Hon." in parenthesis when representing themselves as having received such a degree or credential.

9:1-7.4 Out-of-State duly authorized institutions of higher education

In those states which do not have a licensing requirement for institutions of higher education, a duly authorized institution of higher education shall mean an institution which is regionally accredited or accredited by the appropriate accrediting body recognized by the Council on Postsecondary Accreditation or the United States Department of Education, or is seeking accreditation by the appropriate accrediting body recognized by the Council on Postsecondary Accreditation or the United States Department of Education.

(b)

Procedures Regarding Petitions for Rulemaking

Adopted New Rules: N.J.A.C. 9:2-8

Proposed: June 1, 1987 at 19 N.J.R. 913(a).

Adopted: September 28, 1987 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: September 30, 1987 as R.1987 d.429, **without change.**

Authority: N.J.S.A. 18A:3-15 and N.J.S.A. 52:14B-4(f).

Effective Date: November 2, 1987.

Expiration Date: June 17, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 8. PROCEDURE TO PETITION FOR A RULE

9:2-8.1 Public petitions regarding Board of Higher Education rulemaking

(a) Any interested person may petition for the promulgation, amendment or repeal of any rule of the Board of Higher Education.

(b) The petition shall be in writing and shall contain the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;
5. The statutory authority, if known, under which the Board of Higher Education may take the requested action;
6. The existing Federal or State laws and regulations which the petitioner believes may be pertinent to the request; and
7. The petitioner's signature.

(c) Petitions for the promulgation, amendment or repeal of a rule of the Board of Higher Education shall be addressed to:

Office of Governmental Affairs
Department of Higher Education
225 West State Street
CN 542
Trenton, New Jersey 08625

(d) Any materials submitted to the Department, on behalf of the Board of Higher Education, not in substantial compliance with these rules shall not be deemed to be a valid petition for rulemaking requiring further agency action pursuant to this subchapter and N.J.S.A. 52:14B-4(f).

9:2-8.2 Departmental action upon receipt of petition

(a) The Office of Governmental Affairs upon receipt of a petition for rulemaking shall:

1. Date and log the petition as received;
2. File a notice of the petition with the Office of Administrative Law within 15 days of receipt of the petition. The notice of the petition shall include:
i. The name of the petitioner;
ii. The substance or nature of the requested rulemaking action;
iii. The problem or purpose which is the subject of the request;
iv. The date the petition was received; and
v. A request that the Office of Administrative Law publish the notice in the next available New Jersey Register.
3. Within 30 days following the receipt of the petition for rulemaking, mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition. The notice of action shall include:
i. The name of the petitioner;
ii. The New Jersey Register citation for the notice of petition, if a notice appeared in a previous Register;
iii. Certification of the Department's action upon the petition;
iv. The nature or substance of the Department's action upon the petition; and
v. A brief statement of reasons for the Department's action.

(b) The Department, on behalf of the Board of Higher Education, may act on a petition in the following manner:

1. The petition may be denied;
2. The Chancellor may recommend to the Board of Higher Education for their consideration that a notice of a proposed rule or a notice of pre-proposal for a rule may be filed with the Office of Administrative Law for publication in the New Jersey Register; or
3. The matter may be referred for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of the deliberations shall be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

STUDENT ASSISTANCE BOARD

(a)

Student Assistance Programs
Verification of Enrollment and Academic Performance; Payments
Adopted Amendments: N.J.A.C. 9:7-2.10 and 2.11

Proposed: July 6, 1987 at 19 N.J.R. 1153(a).
Adopted: October 9, 1987 by Student Assistance Board, Joseph Streit, Chairman.
Filed: October 8, 1987 as R.1987 d.440, **without change.**
Authority: N.J.S.A. 18A:71-47 as amended by P.L. 1986, c.155.
Effective Date: November 2, 1987.
Expiration Date: April 13, 1988.

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

Full text of the adoption follows.

9:7-2.10 Verification of enrollment and academic performance

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

(e) Students receiving State financial assistance under the student aid programs administered by the Student Assistance Board shall meet the following statewide minimum standards of academic progress:

1. (No change.)
2. The number of award payments students may receive in order to earn their first 12 college-level credits depends on their level of preparation for college work and the admission policy of their institution.
i. Students in the Educational Opportunity Fund (EOF) Program, at any institution, may receive up to three semesters of payments to earn the first 12 college credits or up to four payments to earn the first 24 credits. The definition of college credits is subject to the provisions of N.J.A.C. 9:12-1.11.
ii.-iii. (No change.)

(f)-(j) (No change.)

9:7-2.11 Payments

(a) The maximum number of semester award payments which students may receive are as follows:

1. Tuition Aid Grant Program:

	Enrollment Status	Maximum Semesters for Award Payments
TWO-YEAR COLLEGES:	Regular 2-Year Program	5
	Remedial-Developmental or Bilingual (ESL) Curriculum	6
	EOF Program	6/8[1]
FOUR-YEAR COLLEGES:	Regular 4-Year Program	9
	County College Transfers/Remedial/ Developmental Curriculum	10[2]
	5-Year Program	11/12[3]
	EOF Program	12[1]

[1]With special EOF approval.
[2]Remedial/Developmental Curriculum must contain 18 or more noncredit courses
[3]County College Transfer or Remedial/Developmental curriculum.

i. Students shall not receive more than nine semesters of payment unless they are enrolled in a five-year program, receiving assistance under the EOF Program, transferred from a county college to a four-year college or were required to take 18 or more credit hours of noncredit remedial or developmental courses.

ii. Students enrolled in an undergraduate program regularly requiring five academic years for completion shall be permitted five and one-half years of payment eligibility.

iii. Students enrolled in the EOF Program may receive additional payments based upon the special approval from the Executive Director of the EOF Program.

2. All Other Programs:

	Enrollment Status	Maximum Semesters for Award Payments
WO-YEAR	Regular 2-Year Program	5
OLLEGES:	Remedial/Developmental or Bilingual (ESL)	6
OUR-YEAR	Regular 4-Year Program	8
OLLEGES:	Regular 5-Year Program	10

(b) Payments will be made by the Department of Treasury to eligible udents in equal installments over the regular academic year, the number f installments corresponding to the number of school terms. Deadline ates shall be established annually to comply with the State's fiscal year ıd to allow for academic term expenditure control. The Student Asstance Board may elect to provide payment directly to institutions on ehalf of student recipients. Listings of eligible students to be credited ill accompany the payments to institutions.

(a)

ongressional Teacher Scholarship Program eaching Obligations; Repayment Schedule; Postponement of Repayment; Default

dopted New Rules: N.J.A.C. 9:7-9.9, 9.11, 9.12 and 9.15

roposed: July 6, 1987 at 19 N.J.R. 1154(a).
dopted: October 9, 1987 by Student Assistance Board, Joseph Streit, Chairman.
iled: October 8, 1987 as R.1987 d.441, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
uthority: N.J.S.A. 18A:71-15.3, Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d-1119d-8.
ffective Date: November 2, 1987.
xpiration Date: April 13, 1988.

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

The Board, however, has made one technical change upon adoption. ue to a printing error in N.J.A.C. 9:7-9.9(a), the three schools of public private nonprofit teaching should be listed as preschool, elementary secondary school, etc. The change to preschool upon adoption reflects e correct wording as adopted and filed by the Board.

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

7-9.9 Teaching obligations of the scholarship recipient

(a) The scholar shall teach on a full-time basis in any state for a period not less than two years for each year for which he or she received Congressional Teacher Scholarship, in a public or private nonprofit **ıre***school, elementary or secondary school, or in a public preschool, ementary, or secondary education program.

(b) The requirement set forth in (a) above to teach two years for each ear of scholarship assistance is reduced by one-half if the scholar teaches ı a full-time basis in a teacher shortage area designated by the U.S. ecretary of Education as provided by section 428(b)(4) of the Higher ducation Act of 1965, as amended.

(c) The scholar shall provide the Department of Higher Education, ffice of Student Assistance with evidence of compliance with the above quirements pursuant to N.J.A.C. 9:7-9.10(c).

7-9.11 Repayment schedule for failure to meet teaching obligations or withdrawal from undergraduate degree program leading to teacher certification

(a) If the scholar fails to meet the teaching obligations described in .J.A.C. 9:7-9.9, or if the scholar ceases to pursue a postsecondary degree ogram leading to certification as a teacher at the preschool, elementary secondary level, the scholar shall:

1. Repay the amount of the scholarships received, prorated according ı the fraction of the teaching obligation not completed, as determined y the Department of Higher Education, Office of Student Assistance, provided, however, that teaching service of less than one-quarter of a school year shall not be eligible for reduction of scholarship balances; and

2. Pay a simple per annum interest charge on the outstanding principal as set forth in (c) below and

3. Pay all reasonable collection costs as determined by the Department of Higher Education, Office of Student Assistance.

(b) The interest charge accrues from the date of the initial scholarship payment if the scholar has ceased to pursue the postsecondary education degree program for which the scholarship was awarded, or the day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c) The interest charge shall be adjusted annually, from the time interest begins to accrue to the time the repayment period begins as described in (d) below, and shall be set at a rate which is the greater of 14 percent annually or five percent above the average of the bond equivalent rates of 91-day Treasury bills auctioned during the most recent quarter ending March 31. The interest charge applicable during the repayment period shall be the greater of these rates as determined when the repayment schedule is established.

(d) The scholar shall enter repayment status on the first day of the first calendar month after:

1. The scholar has ceased to pursue the postsecondary education degree program leading to teacher certification, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a program; or

2. The date the scholar informs the Department of Higher Education, Office of Student Assistance he or she does not plan to fulfill the teaching obligation; or

3. The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within 10 years after completing the postsecondary education for which the scholarship was awarded, as determined by the Department of Higher Education, Office of Student Assistance.

(e) A scholar who has entered repayment status pursuant to (d)3 above may apply for a deferment of further payments upon obtaining a full-time teaching position eligible for redemption.

(f) The scholar shall make payments to the Department of Higher Education, Office of Student Assistance which cover principal, interest, and collection costs according to a schedule established by the Department of Higher Education, Office of Student Assistance which calls for complete repayment within 10 years after the scholar enters repayment status and which amount annually is no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the satisfaction of the Department of Higher Education, Office of Student Assistance.

(g) The Student Assistance Board shall extend the ten-year scholarship repayment period by a period equal to the length of time a scholar meets any of the conditions set forth in N.J.A.C. 9:7-9.12.

(h) The Student Assistance Board shall not require scholarship repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period.

(i) The scholar will notify the Department of Higher Education, Office of Student Assistance, by certified mail within a 15-day period of withdrawal from the program. The Department of Higher Education, Office of Student Assistance, will then authorize the New Jersey Higher Education Assistance Authority (NJHEAA) to issue a statement of total loan indebtedness.

(j) The particular terms and conditions of loan indebtedness will then follow in a separate document known as the repayment schedule that will be provided to the scholar prior to the repayment period by the NJHEAA. The repayment schedule will consolidate all loan amounts borrowed through the program and will include all accrued interest capitalized to the principal balance at the time of repayment. The scholar will be required to repay the entire capitalized principal balance, plus accruing interest at the assigned rate determined by the Department of Higher Education, Office of Student Assistance, in equal monthly installments over a repayment period that generally lasts no more than 10 years.

9:7-9.12 Postponement of repayment schedule

(a) A scholar is not considered in violation of the repayment schedule and need not make scholarship repayments nor will interest accrue during the time he or she is:

1. Engaging in a full-time course of study at an institution of higher education as defined in 34 CFR 668.2 as verified by the submission of official certification of full-time enrollment by the institution; or

2. Serving, not in excess of three years, on active duty as a member of the armed services of the United States as verified by the submission of appropriate documentation; or

3. Temporarily totally disabled, for a period not to exceed three years, as established by a sworn affidavit of a qualified physician; or

4. Unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled as evidenced by a qualified physician's sworn affidavit; or

5. Seeking and unable to find full-time employment for a single period not to exceed 12 months; or

6. Unable to satisfy the terms of the repayment schedule established by the NJHEAA, and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary or secondary school, or in a public preschool, elementary or secondary education program as evidenced by notarized copies of letters of application for teaching positions and any other documents as required by the Department of Higher Education, Office of Student Assistance.

9:7-9.15 Default

(a) The loan will be considered in default and become immediately due and payable if the scholar fails to:

1. Notify the Department of Higher Education, Office of Student Assistance, of withdrawal from the program within the 15-day time period; or

2. Execute and deliver an installment note prior to entering repayment status pursuant to N.J.A.C. 9:7-9.11; or

3. Make any installment payment that is past due for a period of 120 days.

(b) The Department of Higher Education, Office of Student Assistance, will then authorize the NJHEAA to take the necessary steps to ensure the return of monies as permitted by federal law and regulations. Default on this loan may be reported to credit bureau organizations.

(c) The scholar will also be required to pay all charges and other costs, including attorney's fees, for the collection of the defaulted amounts. If this loan is referred for collection to an agency that is subject to the Fair Debt Collection Practices Act (15 U.S.C. sec. 1692), the scholar will pay all reasonable collection costs.

HUMAN SERVICES

DIVISION OF PUBLIC WELFARE

(a)

Public Assistance Manual
Reporting Criminal Offenses
Adopted Amendment: N.J.A.C. 10:81-7.46

Proposed: August 3, 1987 at 19 N.J.R. 1389(a).
Adopted: October 9, 1987 by Drew Altman, Commissioner, Department of Human Services.
Filed: October 9, 1987 as R.1987 d.449, **without change.**
Authority: N.J.S.A. 44:7-6 and 44:10-3; 2C:43-1(b).
Effective Date: November 2, 1987.
Expiration Date: October 15, 1989.

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

Full text of the adoption follows.

10:81-7.46 Reporting criminal offenses to law enforcement authorities

(a) Investigation of new applications or investigations for redetermination of eligibility may indicate to the county welfare agency that a crime may have been committed. Allegations of the suspected commission of a crime may also be made known to the county welfare agency through various other sources, for example, phone calls, written communications, verbal communications from individuals, and so forth. In matters of reporting of criminal offenses, the county welfare agency must, at all times, maintain full compliance with the provisions of N.J.A.C. 10:81-7.31, dealing with basic principles for safeguarding of information.

(b) Nature of offenses which must be reported are:

1. To local authorities:

i. Arson, manslaughter, murder or any crimes which constitute crimes of the third, second and first degrees, such as atrocious assault and battery, carnal abuse, incest or rape. (Refer to legal counsel for additional information identifying crimes of the third, second and first degrees.);

ii. (No change.)

2. (No change.)

(c) Procedures: When the county welfare agency becomes aware o facts that would indicate that one of the above mentioned crimes ha been or may have been committed or receives a direct allegation in an form, written, verbal or anonymous, that such a crime has been com mitted, it shall proceed as follows:

1.-2. (No change.)

3. When a decision has been made to report the alleged or suspecte commission of the crime, such report shall be made in written form t the appropriate law enforcement agency.

4. The county welfare agency shall cooperate fully with any subsequer investigation initiated by the law enforcement agency, within the limit of the policy and regulations of the Division of Public Welfare. A count welfare agency staff member may sign a written complaint only upon written request from the law enforcement agency, provided his or he information of the facts to be stated in such complaint is based upo his or her own personal knowledge and belief.

(b)

General Assistance Manual
Reporting Criminal Offenses
Adopted Amendment: N.J.A.C. 10:85-2.7

Proposed: August 3, 1987 at 19 N.J.R. 1393(a).
Adopted: October 9, 1987 by Drew Altman, Commissioner, Department of Human Services.
Filed: October 9, 1987 as R.1987 d.448, **without change.**
Authority: N.J.S.A. 44:8-111(d); 2C:43-1(b).
Effective Date: November 2, 1987.
Expiration Date: January 30, 1990.

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

Full text of the adoption follows.

10:85-2.7 Reporting criminal offenses to law enforcement authoritie

(a) Investigation of new applications or investigations for redetermina tion of eligibility may indicate to the municipal welfare department tha a crime may have been committed. Allegations of the suspected com mission of a crime may also be made known through various othe sources, for example, phone calls, written communications, verbal com munications from individuals, etc. In matters of reporting of crimina offenses, the municipal welfare agency must, at all times, maintain fu compliance with the provisions of N.J.A.C. 10:85-1.5, dealing with basi principles for safeguarding of information.

1. Nature of offenses which must be reported are:

i. To local authorities: Arson, manslaughter, murder or any crime which constitute crimes of the third, second and first degrees, such a atrocious assault and battery, carnal abuse, incest or rape. (Refer to lega counsel for additional information identifying crimes of the third, secon and first degrees.)

ii.-iii. (No change.)

2. Procedures: When the MWD becomes aware of facts that woul indicate that one of the above mentioned crimes has been or may hav been committed or receives a direct allegation in any form, written, verba or anonymous, that such a crime has been committed, it shall procee as follows:

i.-ii. (No change.)

iii. When a decision has been made to report the alleged or suspecte commission of the crime, such report shall be made in written form t the appropriate law enforcement agency.

iv. The MWD shall cooperate fully with any subsequent investigatio initiated by the law enforcement agency within the limits of the polic and regulations of the Division of Public Welfare. An MWD staff mem ber may sign a written complaint only upon a written request from th law enforcement agency, provided his/her information of the facts to b stated in such complaint is based upon his/her own personal knowledg and belief.

CORRECTIONS

THE COMMISSIONER

(a)

Inmate Access To Courts

Adopted New Rules: N.J.A.C. 10A:6

Proposed: June 1, 1987 at 19 N.J.R. 914(a).

Adopted: October 9, 1987 by William H. Fauver, Commissioner, Department of Corrections.

Filed: October 9, 1987 as R.1987 d.444, **with technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

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

Effective Date: November 2, 1987.

Expiration Date: November 2, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment which addressed various sections of proposed N.J.A.C. 10A:6, Inmate Access To Courts. The comments are summarized and addressed below:

COMMENT: The commenter suggested that N.J.A.C. 10A:6-2.1 be modified to read:

(a) "Inmates who are illiterate or otherwise unable to perform effectively their own legal research have a constitutional right to legal assistance from other inmates, in the absence of adequate assistance from lawyers, even where the prison makes available an adequate law library;"

"(b) When inmates have no access to a law library, they must be provided with assistance from trained, skilled and independent legal personnel. Provision of legal access through persons trained in the law shall include access to persons with formal training in the law and to persons who are qualified to provide legal advice and assistance with the drafting of legal documents."

RESPONSE: The requested language would be unnecessarily redundant, since provision is already made in these rules for both law libraries and trained paralegals to provide assistance on request at N.J.A.C. 10A:6-2.3, N.J.A.C. 10A:6-2.4 and N.J.A.C. 10A:6-2.11.

COMMENT: The commenter suggested that N.J.A.C. 10A:6-2.3(b) be modified to read:

"Officials must provide sufficient space and staff to ensure that all inmates have meaningful opportunities to conduct legal research and present their claims to a court. Based on the security needs of the facility, the Superintendent may limit the direct personal access to the law library of inmates who present particular security concerns."

RESPONSE: The Department of Corrections rejects the language proposed by the commenter. The Department is currently providing inmates with meaningful opportunities to conduct legal research and present their claims to court despite constraints imposed by overcrowding and security considerations in addition to limitations in the availability of space, staff and financial resources. Under these circumstances, the Superintendent must retain the discretion to determine which inmates can best be permitted direct access to the inmate law library and which ones will receive services by means of trained inmate paralegals.

COMMENT: The commenter suggested that N.J.A.C. 10A:6-2.4(a) and 10A:6-2.4(a)1 be modified to read:

(a) Each correctional facility shall be responsible for establishing and maintaining an inmate law library, and for developing regulations concerning the Library's use and supervision "with the goal of ensuring that all inmates have adequate opportunities to complete research and to fairly present their claims to a court". The regulations shall specify:

1. Law library hours "sufficient to provide time for meaningful legal research".

RESPONSE: The proposed modification of N.J.A.C. 10A:6-2.4(a)1 is unnecessary because the inmate law library services are not only available during daytime hours (Monday through Friday), but are also available on some evenings and weekend days to allow inmates access to law libraries to perform legal research.

COMMENT: The commenter suggested that a detailed definition should be provided in N.J.A.C. 10A:6-2.4(d) as to the legal reference materials that are required by law.

RESPONSE: The Department of Corrections must reject this request. There may be differences in scope and content of inmate law libraries in the various institutions because of the size of the institution, background and sentence of inmates, and nature of inmate population. In addition, the Department's Legal Service Coordinator has the responsibility to keep abreast of recent court decisions in this area to ensure that legal requirements are met.

COMMENT: The commenter requested that the following be added to N.J.A.C. 10A:6-2.5(e):

"3. Under other circumstances when the available law library hours are insufficient to allow inmates reasonable opportunities to complete meaningful legal research."

RESPONSE: The Department of Corrections disagrees with this proposed language because it would generate abuse among those in the inmate population who would prefer to copy material rather than to concentrate on completing their work during law library hours. Because of the present flexibility of inmate law library hours, sufficient time is permitted for legal research.

COMMENT: The commenter suggested that N.J.A.C. 10A:6-2.6(a) should include the following:

"8. American Civil Liberties Union;

9. University prisoner assistance programs and clinics; and

10. Licensed attorneys in the State of New Jersey."

RESPONSE: The Department rejects this proposal. N.J.A.C. 10A:6-2.6(a) is designed to enable inmates to deal promptly with matters related to pro se criminal appeals or other matters which cannot be handled expeditiously by mail. The Department considers the seven permitted contacts listed in the rule to be more than an adequate resource for this purpose.

COMMENT: The commenter suggested that N.J.A.C. 10A:6-2.11 be modified to read:

(a) The Legal Services Coordinator, Office of the Deputy Commissioner shall be responsible for adequately trained inmate paralegals. "The Legal Services Coordinator shall ensure that inmate paralegals have regular attorney access and supervision as well as periodic follow-up training."

. . .

(f) Inmate paralegals shall at all times be subject to all search and security regulations. "However, the Superintendent shall ensure that personnel do not employ unnecessary search procedures which impose unreasonable barriers to legal access." All materials which the paralegal carries into Close Custody Units shall be subject to search for contraband. Legal materials shall not be read nor seized unless contraband is found.

"(g) Department of Corrections staff shall allow Legal Services Program participants to operate with the same independence as privately retained attorneys. The Superintendent shall ensure that all inmates in need of paralegal services have opportunities to meet and engage in confidential legal discussions with inmate paralegals."

RESPONSE: (a) The Department of Corrections rejects this suggestion. Paralegal training is provided pursuant to specifications set forth in N.J.A.C. 10A:6-2.11(b). "Regular attorney access" cannot be arranged and is not required by law. Paralegals are free, however, to correspond with public or private attorneys as they may desire. As budgetary considerations permit, periodic follow-up training for inmate paralegals is provided.

(f) This suggestion is rejected as being vague and unenforceable. It is imperative that inmate paralegals be subject to all search and security procedures at all times.

(g) This suggestion is rejected. All licensed attorneys, whether public or private, are accorded the same opportunities to meet with their clients. Inmate paralegals are permitted to engage in confidential discussions with their clients so long as security concerns are satisfied.

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

CHAPTER 6
INMATE ACCESS TO COURTS

SUBCHAPTER 1. INTRODUCTION

10A:6-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies under which inmates shall be provided with access to both State and Federal courts through the use of inmate law libraries and trained inmate paralegals; and

2. Establish procedures whereby the records of correctional facilities can be altered to reflect an inmate's new legal name.

10A:6-1.2 Scope

(a) Subchapter 2 shall be applicable to the Division of Adult Institutions.

(b) Subchapter 3 shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

10A:6-1.3 Definitions

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

"Inmate law library" means a room within a correctional facility where legal reference materials are kept.

"Inmate paralegal" means an inmate who has been approved by the Institutional Classification Committee (I.C.C.) to render legal assistance to other inmates.

"Legal material" means papers or documents that are required to be filed with the court and served upon opposing parties. These materials include:

1. Every order required by its term to be served;
2. Every pleading subsequent to the original complaint;
3. Every paper relating to discovery which is required to be served;
4. Every written notice;
5. Every written motion;
6. A demand;
7. An offer of judgment;
8. Designation of record on appeal;
9. Briefs;
10. Petitions;
11. Summons; and
12. Complaints.

"Legal Service Coordinator" means a Department of Corrections Central Office staff person who coordinates the provision of inmate legal services by maintaining adequate legal materials in inmate law libraries and training inmate paralegals.

"Notary service" means service provided by a notary public authorized by law to certify or attest documents, take affidavits, administer oaths, etc.

SUBCHAPTER 2. INMATE LEGAL SERVICES

10A:6-2.1 Inmate access to courts

Inmates have a constitutional right of access to the courts. Prison authorities shall assist inmates in the preparation and filing of meaningful legal papers by providing inmates with adequate law libraries or adequate assistance from persons trained in the law.

10A:6-2.2 Inmate legal services

(a) Inmate legal services which permit inmates access to the courts shall include the following:

1. Establishment of an inmate law library and use of legal reference materials;
2. Use of a copying machine;
3. Opportunity to make legal telephone calls;
4. Provision of supplies, such as pens, paper and typewriters, when needed;
5. Notary service;
6. Assistance of inmate paralegals; and
7. Payment of postage for indigent inmates.

10A:6-2.3 Availability of legal services

(a) Inmate legal services are available to all inmates in the Division of Adult Institutions.

(b) Based on the availability of space and supervisory staff and the security needs of the correctional facility, the Superintendent shall determine which inmate may have direct personal access to legal reference materials and related services.

(c) Inmates who, in the Superintendent's discretion, may not have direct personal access to legal reference materials and related services shall receive legal reference materials and related services from assigned inmate paralegals.

10A:6-2.4 Inmate law library

(a) Each correctional facility shall be responsible for establishing and maintaining an inmate law library, and for developing regulations concerning the library's use and supervision. The regulations shall specify:

1. Law library hours;
2. Number of inmates who may use the library at one time;
3. Persons responsible for the supervision of inmates;
4. Limitation(s) on removal of legal reference materials;
5. Typewriter use; and
6. Any additional rules deemed necessary by the Superintendent, Assistant Superintendent or Supervisor of Education.

(b) Consideration shall be given to the following factors in use of the inmate law library:

1. Space and staff limitations;
2. Availability of supplies;
3. Security and orderly operation of the correctional facility; and
4. The need of certain inmates to meet time requirements for filing legal documents.

(c) The Legal Services Coordinator*[:]**,* Office of the Deputy Commissioner, Department of Corrections is responsible for initial purchases of legal reference materials.

(d) The initial purchase of legal reference material shall be consistent with law and correctional facility needs.

(e) The maintenance and updating of the inmate law library is not optional and is the responsibility of the correctional facility.

(f) Maintenance of the inmate law library includes:

1. Annual update costs; and
2. Replacement of lost or damaged volumes.

(g) As part of the annual budget request, the Superintendent shall include a specific request (line item) for budgeted funds to maintain the inmate law library. In the event the specific budget request is reduced or eliminated, the correctional facility shall assume the cost.

(h) Information concerning costs and sources of legal materials may be obtained from the Legal Services Coordinator. All purchases of reference materials shall be cleared through the Legal Services Coordinator's office.

10A:6-2.5 Legal copying services

(a) There shall be no charge to the inmate for the legal copying services provided by the correctional facility.

(b) Each correctional facility shall establish written procedures by which inmates are permitted to have legal materials copied.

(c) At a minimum, inmates may submit material to be copied to a staff member designated by the Supervisor of Education, or an inmate paralegal under the supervision of a designated staff member, during prescribed hours. The original and copies of the material shall be returned to the inmate within four days of submission unless return of the material is prevented by exceptional circumstances. When the fourth day falls on a Saturday, Sunday or holiday, the material shall be returned on the weekday following the weekend or holiday.

(d) Only material related to legal actions or research may be copied. The material may be reviewed by the Supervisor of Education or his or her designee but only to ensure that it is legal in nature. Copies will be limited to the number required by the court plus one copy for the inmate. Extensive copying not related to litigation, such as transcripts, shall be done at the inmate's expense.

(e) Cases from court reporters found in the inmate law library should only be copied in the following instances:

1. If the inmate is confined to a Close Custody Unit, a hospital, a farm or camp unit and does not have access to the inmate law library; or
2. If the inmate's work schedule precludes him or her from engaging in adequate legal research in the law library.

(f) In the instances cited in (e)1 and (e)2 above, the copied case will be signed out on a temporary basis and returned to the inmate law library for future use.

(g) All legal material which can be duplicated by typing will be done in that manner by the inmate.

(h) Exceptional circumstances may dictate that materials other than those defined as "legal material" (see N.J.A.C. 10A:18-1.3) would need to be copied. The copying of such materials is left to the discretion of the Supervisor of Education or the staff person designated by him or her to supervise copying procedures.

10A:6-2.6 Legal telephone calls

(a) The Superintendent shall establish written rules and regulations by which inmate paralegals and/or professional staff members may place telephone calls to the following individuals or agencies requesting assistance in legal research or preparation of legal documents*[.]**:*

1. Office of the Public Advocate;
2. Office of the Public Defender;
3. Regional Legal Services;
4. Court Clerks;
5. Attorneys of Record;
6. Ombudsman; and
7. The Legal Services Coordinator, Office of the Deputy Commissioner, Department of Corrections.

(b) Legal telephone calls shall not be monitored, except to determine the identity of the party called.

10A:6-2.7 Legal services

(a) Legal supplies such as paper, carbon paper, envelopes and pens shall be provided as needed to all inmates who request them for legal purposes. An inmate may be required to justify the need for unusually large amounts of legal supplies.

(b) Frequently used legal forms and applications shall be made available through the inmate law library.

(c) Typewriters to the extent that they are available and operable shall be provided for inmate use in the inmate law library area and in Close Custody Units.

10A:6-2.8 Notary public service

(a) Each Superintendent is responsible for ensuring that inmates have reasonable access to notary public services.

(b) Inmates shall not be permitted to be made notary publics.

10A:6-2.9 Inmate legal material

(a) Each inmate shall be permitted to retain personal legal material in his or her cell. This legal material shall be subject to contraband search only.

(b) The Superintendent may establish regulations which limit the accumulation of personal legal materials in an inmate's cell. Any limitation on the accumulation of personal legal materials should be based on the amount in relation to:

1. Security;
2. Sanitation;
3. Fire hazard considerations; and
4. Cell space available.

10A:6-2.10 Inmate paralegals

(a) The Superintendent or his or her designee shall be responsible for establishing:

1. Criteria for considering inmates to be assigned as paralegals;
2. Duties and responsibilities of inmate paralegals; and
3. Hours which inmate paralegals will be on duty in the inmate law library and available in Close Custody Units.

(b) Inmates with the following job titles are considered paralegals:

1. Law library clerk;
2. Legal assistant; and
3. Legal paraprofessional.

(c) The Supervisor of Education shall interview and evaluate each candidate for a paralegal position. The Supervisor of Education shall submit his or her written assessment and recommendation to the Institutional Classification Committee (I.C.C.) for approval.

(d) Upon approval by the I.C.C., inmates with any of the titles in (b) above may render legal assistance to other inmates.

(e) No inmate paralegal shall solicit or accept any form of remuneration or gift from any inmate for rendering legal assistance. Acceptance of remuneration in any form will result in disciplinary action and/or referral to the I.C.C. for reconsideration of program assignment.

10A:6-2.11 Inmate paralegal training

(a) The Legal Services Coordinator, Office of the Deputy Commissioner, shall be responsible for training inmate paralegals.

(b) Inmate paralegals shall successfully complete an Introduction to Paralegal Functions course which includes training in:

1. Basic Legal Research including Locator Skills and Shepardizing;
2. How to Complete Legal Forms;
3. Basic Familiarity with Habeas Corpus Petitions;
4. Motions for New Trials;
5. Direct Appeals;
6. Civil Rights Actions;
7. Motions for Post-Conviction Relief;
8. Descriptions of the State and Federal Court Systems; and
9. Other actions pertaining to inmates' welfare.

(c) The course selections may be modified at the discretion of the Legal Service Coordinator.

(d) The Supervisor of Education and the Legal Services Coordinator may, at their discretion, determine that an inmate's experience, training and/or education in paralegal functions will serve as a substitute to the Introduction to Paralegal Functions course.

(e) An inmate may participate in the Legal Services Program on an internship basis with the provision that he or she completes the Introduction to Paralegal Functions course at its next offering date.

(f) Inmate paralegals, shall at all times, be subject to all search and security regulations. All material which the paralegal carries into Close Custody Units shall be subject to search for contraband. Legal material shall not be read nor seized unless contraband is found.

10A:6-2.12 General provisions

(a) Nothing contained in this subchapter shall preclude an inmate from obtaining legal assistance from any other inmate, except that only inmates designated as paralegals will be granted access to Close Custody Units.

(b) Nothing contained in this subchapter precludes any inmate from obtaining legal assistance from an outside attorney.

10A:6-2.13 Written policy and procedures

(a) Written institutional policies and procedures pursuant to this subchapter shall be established. These written policies and procedures shall be known as the Institutional Legal Access Plan and shall be incorporated in the Inmate Handbook. A copy of the written policies and procedures shall also be posted in the inmate law library.

(b) New and revised policies and procedures to the Institutional Legal Access Plan shall be posted in each housing area and in the Inmate Law Library. These revisions shall be incorporated into the next publication of the Inmate Handbook.

10A:6-2.14 Departmental Review

Written institutional policies and procedures regarding Inmate Legal Services and any new policies and procedures related to this subject shall be submitted to the Office of the Deputy Commissioner for legal review prior to implementation.

SUBCHAPTER 3. RECORDING LEGAL CHANGE OF INMATE'S NAME

10A:6-3.1 Inmate responsibilities

(a) In order to have Department of Corrections' records altered to reflect a new legal name, the inmate must:

1. Legally change his or her name in accordance with N.J.S.A. 2A:52-1 et seq. and Rules of Court 4:72-1 et seq.;
2. Submit an authentic copy of the court order to the Superintendent's office of the correctional facility to which he or she is assigned;
3. Submit verification, to the Superintendent's office of the correctional facility, which documents that a copy of the judgment was published in a newspaper of general circulation in the inmate's county of residence within 20 days of the court judgment. The inmate's county of residence shall be considered the county of his or her last known residence as is reflected in the Department of Corrections' records, unless otherwise specified by a judge's order; and
4. Submit verification*,* to the Superintendent's office of the correctional facility, which documents that a certified copy of the judgment was filed with the Secretary of State within 45 days of the court judgment.

10A:6-3.2 Amendment of institutional records

(a) The Superintendent shall order that the correctional facility records be amended to reflect the inmate's new legal name after the requirements of N.J.A.C. 10A:6-3.1(a) have been satisfactorily fulfilled.

(b) Each department, within the correctional facility, which maintains a record of the inmate shall be notified in writing of the inmate's new legal name. The departments shall be instructed to show the original legal name as an alias.

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

1. The Commissioner;
2. The Central Office Senior Classification Officer;
3. The Bureau of Correctional Information and Classification Services; and
4. In the case of male inmates, the Reception Unit at the Youth Reception and Correction Center, Yardville.

10A:6-3.3 "Common law" change of name

No correctional facility records shall be altered if an inmate decides to change his or her name through the "common law" practice, that is, on the inmate's own authority and without any legal court proceedings.

10A:6-3.4 Inmate handbook

The procedure whereby an inmate can legally change his or her name shall be incorporated into the Inmate Handbook.

(a)

Medical and Health Services
Medical Examinations; Pregnancy Tests
Adopted Amendment: N.J.A.C. 10A:16-2.11

Proposed: August 3, 1987 at 19 N.J.R. 1396(a).
Adopted: October 9, 1987 by William H. Fauver, Commissioner, Department of Corrections.
Filed: October 9, 1987 as R.1987 d.443, **without change.**
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: November 2, 1987.
Expiration Date: April 6, 1992.

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

Full text of the adoption follows.

10A:16-2.11 Medical examinations
(a) A preliminary history and physical examination shall be made on each new admission within 24 hours which shall include, but is not limited to:
1. (No change.)
2. A physical examination;
3. A pregnancy test for female inmates; and
4. (No change in text.)
(b)-(e) (No change.)

LABOR

(b)

DIVISION OF WORKPLACE STANDARDS
Safety and Health Standards for Public Employees Hazardous Waste Operations and Emergency Response
Adopted Amendments: N.J.A.C. 12:100-2.1, 4.2, 5.2, and 6.2

Proposed: August 17, 1987 at 19 N.J.R. 1533(a).
Adopted: September 2, 1987 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 8, 1987 as R.1987 d.439, **without change.**
Authority: N.J.S.A. 34:6A-25 et seq., specifically N.J.S.A. 34:6A-30.
Effective Date: November 2, 1987.
Expiration Date: November 5, 1989.

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

Full text of the adoption follows.

12:100-2.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
...
"CFR" means Code of Federal Regulations.
...

12:100-4.2 Adoption by reference
(a) The standards contained in 29 CFR Part 1910, General Industry Standards in effect on December 19, 1986 are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:
1.-18. (No change.)
(b)-(c) (No change.)

12:100-5.2 Adoption by reference
(a) The standards contained in 29 CFR Part 1296, Construction Industry Standards in effect on July 21, 1986 are adopted as occupational safety and health standards for the protection of public employees engaged in construction operations and shall include:
1.-22. (No change.)
(b)-(c) (No change.)

12:100-6.2 Adoption by reference
(a) The standards contained in 29 CFR Part 1928, Agriculture in effect on July 21, 1986 are adopted as occupational safety and health standards for the protection of public employees engaged in agricultural operations and shall include:
1.-4. (No change.)
(b)-(c) (No change.)

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

(c)

PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS
Compensation and Reimbursement of Expenses of Professional and Occupational Licensing Board Members
Adopted New Rules: N.J.A.C. 13:44B-1.1 through 1.3

Proposed: March 16, 1987 at 19 N.J.R. 444(a).
Adopted: October 2, 1987 by W. Cary Edwards, Attorney General.
Filed: October 8, 1987 as R.1987 d.438, **without change.**
Authority: N.J.S.A. 45:1-2.5(a).
Effective Date: November 2, 1987.
Expiration Date: November 2, 1992.

Summary of Public Comments and Agency Responses:
COMMENT: Five comments were received from professional and occupational board members and staff which indicated a belief that each Board member and officer of a board commission will not be properly compensated by the proposed per diem payment, in that consideration has not been made for preparation time, travel time, time lost from regular employment and additional time spent on follow-up work.
RESPONSE: The Attorney General responded that the fee schedule of payment is found to be fair and adequate given the public nature of the appointment.

Full text of the expired rules, adopted as new, may be found in the New Jersey Administrative Code at N.J.A.C. 13:44B-1.

(d)

Representations Concerning and Requirements for the Sale of Kosher Products
Adopted Repeal and New Rules: N.J.A.C. 13:45A-21 and 22

Proposed: June 15, 1987 at 19 N.J.R. 1060(a).
Adopted: October 5, 1987 by James J. Barry, Jr., Director, Division of Consumer Affairs.
Filed: October 9, 1987 as R.1987 d.450, **with substantive changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 56:8-4.
Effective Date: November 2, 1987.
Expiration Date: December 16, 1990.

Summary of Public Comments and Agency Responses:
The Division of Consumer Affairs (Division) received two written comments to the proposed rules.
COMMENT: The New Jersey Food Council (N.J.F.C.) indicated that it fully supports the proposed changes to the Kosher food rules and suggested an amendment to N.J.A.C. 13:45A-21.1 that would exclude product labels from the definition of "advertisement." The N.J.F.C. subsequently withdrew its comment.
COMMENT: Mr. Michael L. Ticktin suggested that N.J.A.C. 13:45A-21.7 be amended to make it clear that a seller will not be protected by that exculpatory section if the Division has previously given notice to the seller that a product is not Kosher.

RESPONSE: The Division considers this amendment unnecessary because only "good faith" reliance by the seller is protected by the section.

COMMENT: Mr. Ticktin suggested that the terms "non-dairy" and "pareve" be given separate definitions since they have separate meanings.

RESPONSE: The Division has deleted the term "non-dairy", from the rules as unnecessary to the rules' true intent to enhance the protection afforded consumers of Kosher meat and poultry.

COMMENT: Mr. Ticktin suggested that references in the rules to "English letters" and "English words" "Kosher" or "pareve" are erroneous since the letters are, in fact, "Roman" letters.

RESPONSE: The Division considers an amendment in response to this comment confusing and unnecessary.

COMMENT: Mr. Ticktin suggested that the rules should apply to non-food products such as soaps and detergents, which are used with dishes and utensils, in Kosher establishments.

RESPONSE: The Division considers this amendment unnecessary at the present time.

COMMENT: With reference N.J.A.C. 13:45A-21.2(a)5, Mr. Ticktin suggested that the term "traditional" is not automatically restricted in its use to a Jewish context, and that a disclaimer should be required unless there is "some reasonable basis for someone to assume that it is Jewish tradition that is being referred to."

RESPONSE: The Division has amended the rule by placing the word "Jewish" in parenthesis next to the term traditional.

COMMENT: Mr. Ticktin suggested that N.J.A.C. 13:45-21.2(a)6 would be clearer if it referred to "the recognized symbol" of an organization providing rabbinical supervision" rather than to "a Kosher food symbol."

RESPONSE: The Division feels that the term "a Kosher food symbol" is self-explanatory and requires no further clarification.

COMMENT: Mr. Ticktin suggested that the requirement in the existing rules that Kosher and non-Kosher foods be separated in storage displays be retained by the proposed new rules.

RESPONSE: The Division considers this requirement to be an undue burden on supermarkets while providing little or no consumer protection. The rules still require that products contained in a "Kosher food section" of a supermarket be exclusively Kosher.

The above enumerated changes in the proposed rules, along with typographical changes, are minor substantive changes which do not significantly curtail or expand the content or scope of the rules and do not burden, curtail or expand who or what would be affected by the rules or change what is being prescribed or being mandated by the rules.

Full text of the adoption follows (Additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 21. REPRESENTATIONS CONCERNING AND REQUIREMENTS FOR THE SALE OF KOSHER PRODUCTS

13:45A-21.1 Definitions

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

"Advertises, represents or holds itself out" means engaging in promotional activities including but not limited to newspaper, radio and television advertising and distribution of fliers.

"Kosher" means a Kosher food or food product which is prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion.

"Kosher brand" means a brand of a type approved by the United States Department of Agriculture.

"Kosher for Passover" means a Kosher food or food product which is prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion relating to the Jewish holiday of Passover.

"Kosher-style," "Kosher-type," "Jewish," "Hebrew" or other similar words mean a Non-Kosher food or food product which has not been prepared or maintained in strict compliance with the laws and customs which are generally recognized as being among the Orthodox Jewish religious requirements, but rather has either been prepared in such a way as to simulate the taste, appearance and/or consistency of a kosher food or food product or has originally been prepared in accordance with the above religious requirements but has not been maintained in the proper manner.

["Non-dairy" or] "Pareve" means a Kosher food or food product which is prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion relating to non-dairy*[, pareve,]* foods.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or, any other legal or commercial entity. When used in N.J.A.C. 13:45A-21.2, "person" shall include, in addition to all retail establishments, all dealers in Kosher food or food products, New Jersey-based manufacturers, wholesalers, processors, slaughterhouses and all others along the chain from the time the product is manufactured or, in the case of meat or poultry, from the slaughter to the time of its sale, and hold themselves out as Kosher or dealing with Kosher food or food products.

"Plumba" means the tin seal commonly used in the Kosher industry with the word "Kosher" indicated thereon either in English or Hebrew letters, and with certain letters, figures or emblems indicated thereon that will positively identify such plumba with the particular slaughterhouse where the animal was slaughtered or processed.

"Properly sealed packages" means those packages placed on the Kosher meat or Kosher food or food product by the manufacturer.

"Tag" means a tag of whatever form bearing the name and address of the slaughterhouse where the animal was slaughtered, the name of the person who sanctioned the Kosher slaughtering of meat at the slaughterhouse named and the date of the slaughter.

13:45A-21.2 Unlawful practices

(a) It shall be an unlawful consumer practice for any person to sell, offer for sale, expose for sale, serve or have in his possession with intent to sell, by any of the following means, in any restaurant, hotel, store or catering facility or other place, any food or food product which is falsely represented to be Kosher, Kosher for Passover, under Rabbinical Supervision, *[non-dairy or]* pareve or as having been prepared under and/or with a product sanctioned by Orthodox Jewish religious requirements:

1. By direct statements, orally or in writing; or

2. By display of the word "Kosher" in English or Hebrew letters, or by display of any sign, emblem, insignia, six-pointed star, symbol or mark in simulation of the word Kosher; or

3. By inscription on any food or food product or its package, container or contents, the word "Kosher," "Pareve," "Glatt," or "Rabbinical Supervision" in English or Hebrew letters, or by display or inscription of any sign, emblem, insignia, six-pointed star, symbol or mark in simulation of the word Kosher. For the purposes of this paragraph, the marking of any food or food product or its package, container or contents with the English words "Kosher" or "Pareve," or with the letters "K," "KP," "KD," or "KOS," shall be deemed to be an unlawful practice if the product is not under rabbinical supervision; or

4. By display on any interior or exterior sign or menu or otherwise, the words "Kosher-Style," "Kosher-Type," "Jewish," "Hebrew," "Holiday (Jewish) Foods," "Traditional ***(Jewish)***," "Bar Mitzvah," "Bat Mitzvah," or other similar words, either alone or in conjunction with the word "Type," "Style" or other similar expression, unless there is clearly and conspicuously stated a disclaimer in the same size type or letters in some prominent place or location that these terms refer to a Non-Kosher food or food product or food handling facility that does not observe Orthodox Jewish dietary laws; or

5. By advertisement, either oral or in writing, using the words "Kosher-Style," "Kosher-Type," "Jewish, " "Hebrew," "Holiday (Jewish) Food," "Traditional ***(Jewish)***," "Bar Mitzvah," "Bat Mitzvah," or other similar words, either alone or in conjunction with the word "Type," "Style" or other similar expression unless there is clearly and conspicuously stated a disclaimer in type no smaller than the smallest type in the advertisement, and in no event less than 10-point type, that the product or products offered for sale are not Kosher.

i. The disclaimer shall appear in a box within the advertisement and shall be preceded with the word "NOTICE," or other similar word, in not smaller than bold 14-point type.

ii. An advertisement that utilizes any Kosher symbol that also promotes the sale of non-kosher food or food products is in violation of this section unless there is clearly and conspicuously stated in the advertisement a disclaimer in accorance with the requirement of this paragraph, that some of the food or food products offered for sale are Non-Kosher; or

6. By unauthorized use of a Kosher food symbol including, but not limited to OU, OK, VH, NK, SK, CRC, KAJ, KOF-K.

13:45A-21.3 Display and handling requirements

(a) A Kosher food or food product sold by a restaurant, hotel, store, catering facility or other place which advertises, represents or holds itself out as selling, serving or offering for sale both Kosher and Non-Kosher food or food products may be falsely represented to be Kosher within the meaning of N.J.A.C. 13:45A-21.2 unless the following display and handling requirements are observed.

1. Interior display and handling requirements are as follows:

i. Kosher meats, food or food products which are not prepared, cut, sliced, carved, broken down or divided into smaller portions on the premises of the place in which they are offered for sale, and which are contained in properly sealed packages, may be commingled with Non-Kosher meats, food or food products, provided, however, that if an establishment indicates by sign or label that kosher products are contained in a separate display cabinent or section, only Kosher products may be contained therein;

ii. Kosher meats, food or food products which are prepared, cut, sliced, carved, broken down or divided into smaller portions on the premises of the place in which they are offered for sale shall not be commingled with Non-Kosher meats, food or food products, Kosher meats, food or food products shall be kept in a separate display cabinet which shall not contain any Non-Kosher meat, Non-Kosher food or food products, or any dairy products and shall be separated from any Non-Kosher meats, Non-Kosher food or food products or any dairy products by a clearly visible divider.

iii. There shall be a clearly visible sign in block letters affixed to the separate display cabinet or Kosher section of said cabinet indicating that only KOSHER FOOD is contained therein and indicating which section contains only DAIRY products and which section contains only MEAT.

iv. Kosher dairy foods shall be prepared in utensils that are separate and distinct from those used to prepare Kosher or Non-Kosher meats and all servicing and eating utensils shall be kept separate and apart as either meat or dairy. Such Kosher meat and food or food products shall be sliced with a separate knife, and on a separate cutting board, or on a separate slicing machine, used solely for Kosher meat and food or food products and labelled "Kosher" in clearly visible block letters affixed to the knife or, in the case of a slicer, either affixed to the slicer or displayed in a prominent place on the premises where the slicer is maintained.

v. No articles of food or food products, including meats, shall be sold as Kosher or Kosher for Passover unless a Kosher or Kosher for Passover identification is securely affixed thereto by the manufacturer or packer at his premises. No person other than such manufacturer or packer shall possess or affix such marks of identification.

vi. No raw meat or poultry may be sold or offered for sale as Kosher unless the words "soaked and salted," "not soaked and salted" or "soaked and salted upon request only," as the appropriate case may be, is prominently displayed on a sign in conjunction with the product. If the raw meat or poultry is packaged, the words "soaked and salted" or "not soaked and salted" may be marked on the package label in lieu of, or in addition to, the above requirement, but in no event shall packaged raw meat be sold or offered for sale as Kosher without the date of packaging clearly marked on the label. No person may sell or offer for sale, as Kosher, any raw meat or poultry that is identified as "soaked and salted" unless the product has been soaked and salted in a manner which makes it Kosher.

2. Washing and deveining requirements are as follows:

i. Kosher meats must be maintained Kosher and must be properly deveined and, with the exception of liver, washed within 72 hours after slaughter, and within each subsequent 72 hour period in accordance with the laws and customs of the Orthodox Jewish religion. The date and time of the day (A.M. or P.M.) of each washing and the name of the person performing such duty shall be legibly indicated on all tags attached to the said meat.

ii. Meats to be washed enroute shall be packed in such a manner as to allow washing to be done as prescribed above. The date and time of day of the washing shall be indicated on all tags or by means of a written statement securely attached inside the car or other vehicle and signed by the person supervising the washing. Upon receipt of the meat so washed enroute, the information contained in the written statement shall be legibly transferred to tags attached to the meat by the person receiving the meat.

iii. When tongues, offal and other parts of meat that are packed in containers and are not deveined, soaked, salted and rinsed in accordance with the Jewish laws of Koshering meat prior to shipping, they must be packed in containers that are sufficiently perforated to permit the free flow of water to reach all sides of said tongues, offal and other parts of meat packed therein and to enable the water to freely flow out again.

iv. When calves are shipped unflayed and part of the skin is detached from the meat, the water shall also reach every portion of the meat under the detached skin.

v. All marks of Kosher identification shall be removed by the owner or consignee from meat which has not been properly washed immediately after the time of washing has expired provided, however, that liver shall be excepted from the requirements of this paragraph. All marks of Kosher identification shall be removed by the owner or consignee from meat on which the date and time of day (A.M. or P.M.) of each washing have not been properly indicated on all tags attached thereto. Stamps, inscriptions and incision of Kosher marks of identification impressed on the meat shall be removed by the owner of consignee by blotting out and/or obliterating such marks of identification.

3. Exterior sign requirements are as follows:

i. Any restaurant, hotel, store, catering facility or other place as is described in (a) above shall display in a prominent place in its front window the following sign which shall be printed in block letters at least four inches in height:

"KOSHER AND NON-KOSHER FOOD PRODUCTS SOLD HERE."

13:45A-21.4 Identification requirements

(a) All meats sold as Kosher, regardless of the size of the portion, must have affixed thereto at the slaughterhouse a tag and/or plumba. The tags shall be affixed as follows:

1. For all forequarters of steers, cows, bulls, heifers, and yearling calves, the following Kosher identifications shall be affixed to each of the following parts:

i. Breast, rib, plate (outside), plate pieces (inside), chuck, shoulder, heart, lung, oxtail, tripe, milt (spleen), tenderloin (hanger): plumba and tag;

ii. Liver: two Kosher brands and two plumbas, one of each to opposite ends of liver, so that if the liver is cut in half through the vein each half will bear one plumba and one Kosher brand;

iii. Feet: plumba and tag to each foot;

iv. Breads: plumba and tag to each pair;

v. Brains: plumba to each brain, when sold separately from the head;

vi. Tongue: plumba and tag at the tip, and a Kosher brand at the tip on smooth surface;

vii. Breastbone: incisions in the form of Hebrew characters, showing date of slaughter.

2. For all foresaddles of veal, the following Kosher identification shall be affixed to each of the following parts:

i. Breast: incision on each in the form of Hebrew characters, showing date of slaughter;

ii. Rack: two incisions on the inside, one of them on each side of the spine, in the form of Hebrew characters, showing the date of slaugher;

iii. Shoulder: plumba and tag;

iv. Liver: plumba affixed to center of liver at the vein, and a Kosher brand on the upper surface of liver;

v. Haslett: plumba and tag through the heart and milt;

vi. Lung: plumba and tag;

vii. Feet: plumba and tag to each foot;

viii. Breads: one tag, and one plumba drawn through three pairs;

ix. Brains: plumba to each brain, when sold separately from the head;

x. Tongue: plumba and tag at the tip, and a Kosher brand at the tip of the smooth surface.

3. For all foresaddles of lamb and mutton, the following Kosher identifications shall be affixed of the following parts:

i. Breast: incision on each in the form of Hebrew characters, showing date of slaughter;

ii. Rack: two plumbas and two tags, one of each to either side of spine;

iii. Shoulder: plumba and tag;

iv. Haslett: plumba and tag through the liver and milt;

v. Tongue: one tag, and one plumba drawn through each group of six;

vi. Brains: plumba to each brain, when sold separately from the head;

vii. Liver: plumba and tag at center of liver, when sold separately from the haslett.

(b) The slaughterer and/or wholesaler of Kosher poultry is responsible to ensure that plumbas are affixed and remain on each and every portion. A New Jersey based slaughterer and/or wholesaler may not refuse to accept returned poultry that is missing the necessary plumbas and must provide a refund for same.

13:45A-21.5 Filing requirements

(a) Any restaurant, hotel, store, catering facility, or other place which advertises, represents or holds itself out as selling, serving or offering for sale exclusively Kosher food or food products, shall either file with the Director of the Division of Consumer Affairs a document in writing from a supervising rabbi or rabbinical organization that said establishment meets Othodox Jewish dietary laws or, if said establishment is not under rabbinical supervision, so advise the Director. The Director of the Division of Consumer Affairs shall be informed in writing, within 10 business days, of any change in the Kosher or rabbinical supervision status referred to above. Failure to advise the Director of the Division of Consumer Affairs of a change in the Kosher or rabbinical supervision status as provided herein, shall constitute an unlawful practice as defined by N.J.A.C. 13:45A-21.2.

(b) Any person or organization giving Kosher supervision to any restaurant, hotel, store, catering facility, slaughter, or other place shall file with the Director of the Division of Consumer Affairs a document in writing listing the name, address and type of establishment that is certified. The Director of Division of Consumer Affairs shall be informed in writing, within 10 business days, if said supervision or supervising agency removes such supervision. Failure to advise the Director of Division of Consumer Affairs of said removal shall constitute an unlawful practice as defined by N.J.A.C. 13:45A-21.2.

13:45A-21.6 Presumptions

Possession of any Non-Kosher food or food product in any restaurant, hotel, store, catering facility or other place where food or food products are sold and/or served which advertises, represents or holds itself out as only selling Kosher food or food products, is presumptive evidence that the person is in possession of such food or food products with the intent to sell the same.

13:45A-21.7 Exculpatory section

A restaurant, hotel, store, catering facility or other place where food or food products are sold and/or served shall not be deemed to have committed an unlawful practice under N.J.A.C. 13:45-21.2 if it can be shown by a preponderance of the evidence that it relied in good faith upon the representations of a slaughterhouse, manufacturer, processor, packer or distributor of any food or food product represented to be Kosher, Kosher for Passover or as having been prepared under or sanctioned by Orthodox Jewish religious requirements.

SUBCHAPTER 22. INSPECTIONS OF KOSHER MEAT DEALERS, KOSHER POULTRY DEALERS, AND DEALERS OF KOSHER FOOD AND FOOD PRODUCTS; RECORDS REQUIRED TO BE MAINTAINED BY KOSHER MEAT DEALERS AND KOSHER POULTRY DEALERS.

13:45A-22.1 Definitions

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

"Dealer in Kosher food or food products" means any store, restaurant, hotel, catering facility or other place where foods or food products are sold or offered for sale or served as Kosher or as having been prepared under and/or with a product sanctioned by Orthodox Jewish religious requirements.

"Kosher meat dealer" means any person engaged in the slaughtering or wholesaling of properly identified Kosher meat or who purchases, obtains or receives properly identified Kosher meat from slaughterhouses, wholesalers or other sources and who cuts, slices, carves, breaks down or divides such kosher meat into smaller quantities or portions intended for sale to a customer as Kosher meat. Places of business carrying on the aforesaid actions include, but are not limited to: caterers, hotels, summer camps, butcher shops, delicatessens, supermarkets, grocery stores, freezer dealers and food plan companies. Such places of business may also purchase, sell, handle, package and process Non-Kosher meat and other Kosher and Non-Kosher food products.

"Kosher poultry dealer" means any person engaged in the slaughtering or wholesaling of properly identified Kosher poultry who purchases, obtains or receives properly identified kosher poultry from slaughterhouses, wholesalers or other sources and who cuts, slices, carves, breaks down or divides such kosher poultry into smaller quantities or portions intended for sale to a customer as Kosher poultry. Places of business carrying on the aforesaid actions include, but are not limited to: caterers, hotels, summer camps, butcher shops, delicatessens, supermarkets, grocery stores, freezer dealers and food plan companies. Such places of business may also purchase, sell, handle, package and process Non-Kosher poultry and other Kosher and Non-Kosher food products.

"Non-Kosher meat" means meat which is not obtained from animals which are approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which does not have affixed thereto the Kosher plumba or Kosher tag placed on such Kosher meat at the slaughterhouse where the animal was slaughtered. Non-Kosher meat also means meat which is obtained from animals which are approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion but which does not have affixed thereto the Kosher plumba or Kosher tag placed on such meat at the slaughterhouse where the animal was slaughtered.

"Non-Kosher poultry" means poultry which is not approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which does not have affixed thereto the Kosher plumba or Kosher tag placed on such poultry at the slaughterhouse where the poultry was slaughtered. Non-Kosher poultry also means poultry which is approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion but which does not have affixed thereto the Kosher plumba or Kosher tag placed on such poultry at the slaughterhouse where the poultry was slaughtered.

"Properly identified Kosher meat" means Kosher meat which is obtained from animals which are approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumba or Kosher tag placed on such Kosher poultry at the slaughterhouse where the poultry was slaughtered.

13:45A-22.2 Records required to be maintained by Kosher meat dealers and Kosher poultry dealers

(a) Complete and accurate records of all purchases of properly identified Kosher meat and properly identified Kosher poultry from slaughterhouses, wholesalers or any other source shall be kept by every Kosher meat dealer and by every Kosher poultry dealer, including the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases, and copies of all invoices and bills of sale relating to all such purchases. Kosher meat dealers and Kosher poultry dealers shall retain all such records for a two year period following the purchase of properly identified Kosher meat and properly identified Kosher poultry.

(b) Kosher meat dealers and Kosher poultry dealers shall not remove the attached plumbas or tags or any duly affixed identifications affixed thereto by the slaughterhouse or Kosher meats, Kosher poultry, or any other Kosher products received therefrom until the time immediately preceding the point in time when said Kosher meat, Kosher poultry, or product whenever appropriate is ready to be cut, sliced, carved, broken down, or divided into smaller quantities or portions.

(c) Complete and accurate records of all purchases of Non-Kosher meat and Non-Kosher poultry from slaughterhouses, wholesalers or other sources shall be kept by any Kosher meat dealer and by any Kosher poultry dealer, who also purchases, sells, handles, packages or processes Non-Kosher meat, poultry or food products, including the name and address of the slaughterhouse wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases, and copies of all invoices and bills of sale relating to all such purchases. Such records shall be kept separate and apart from all records required to be kept for Kosher meat and for Kosher poultry. Kosher meat dealers and Kosher poultry dealers shall retain all such records for a two year period following the purchase of Non-Kosher meat and Non-Kosher poultry.

(d) A failure to keep complete and accurate records in accordance with (a) and (c) above shall be punishable as an unlawful act under this subchapter.

13:45A-22.3 Inspections of Kosher meat dealers, Kosher poultry dealers and dealers in Kosher food or food products.

(a) The inspection provided for by this section shall only be conducted by authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety.

(b) In conducting an inspection as provided for by this subsection, the authorized inspectors shall utilize the inspection report form, approved by the Director of the Division of Consumer Affairs of the Department of Law and Public Safety, to report the date of the inspection, the nature and scope of the inspection and the findings of the inspection.

(c) For the purpose of making any inspection under this section, the authorized inspectors of the Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall have a right of entry to, upon and through the business premises of all Kosher meat dealers, Kosher poultry dealers, and dealers in Kosher food or food products.

(d) Authorized inspectors of the Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall make inspections of Kosher meat dealers, Kosher poultry dealers and dealers in Kosher food or food products for the purpose of:

1. Determining by examination of the meat, poultry, food products, tags, plumbas, or any other proper identification and by inspection of the records whether the establishment under inspection is in compliance with these rules.

(e) The scope and manner of inspection shall be as follows:

1. At the commencement of all inspections provided for by this section, the authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety shall present appropriate identification to the Kosher meat dealer, kosher poultry dealer and/or Kosher food or food products dealer, owner, manager or any sales person and shall advise the kosher meat dealer, kosher poultry dealer and/or Kosher food or food products dealer, owner, manager or any sales person of the purposes of the inspection to be conducted under the provisions of this section.

2. All inspections provided for by this section shall be limited to:

i. The meat and poultry and other food products located on the business premises of the Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer. The business premises shall include all places of storage of meats, of poultry and/or of food or food products, all places where meat, poultry and/or food or food products are cut, sliced, carved, broken down, or divided into small quantities or portions and all places where meat, poultry and/or food or food products are sold to customers; and

ii. The records required to be kept by Kosher meat dealers and Kosher poultry dealers under the provisions of this subchapter.

3. The inspections provided for by this section shall be made during the regular business hours of the Kosher meat, Kosher poultry and/or Kosher food or food products dealer, and at any time including non-business hours when deliveries of meat, poultry and/or food or food products are made to the dealer or when the dealer is engaged in the cutting, slicing, carving, breaking down, preparing, packaging, processing, or dividing of meat, poultry and/or food or food products into smaller quantities or portions.

4. In carrying out the requirements of this section, no advance notice of an inspection shall be provided to any person.

5. All inspections of the meat, poultry and/or food or food products located on the business premises of Kosher meat dealers, Kosher poultry dealers and/or Kosher food or food products dealers and all inspections of the records required to be kept by them under the provisions of this subchapter shall be conducted in such a manner as to not unduly interfere with the regular business operations of the Kosher meat dealers, Kosher poultry dealers and/or Kosher food or food products dealers.

(f) A failure to allow an authorized inspector a right of entry upon the business premises of a Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer in accordance with the requirements of this section shall be punishable as an unlawful act under this subchapter.

(g) At the completion of all inspections provided for by this section, the authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety shall make an inspection report, which shall show the date of the inspection, the nature and scope of the inspection and the findings of the inspection. A copy of the inspection report shall be filed with the records of the Director of the Division of Consumer Affairs.

(h) Inspectors authorized by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety may, under the following circumstances, tag meat, poultry and/or food or food products as evidence of a possible violation of this subchapter:

1. Upon reasonable suspicion that certain meat, poultry and/or food or food products in the possession of a Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer is not Kosher;

2. Upon discovery that certain meat and/or poultry in the possession of the Kosher meat dealer and/or Kosher poultry dealer is not identified in accordance with N.J.A.C. 13:45A-21.4;

3. Upon discovery that certain meat and/or poultry in the possession of the Kosher meat dealer and/or Kosher poultry dealer has not been maintained in accordance with N.J.A.C. 13:45A-21.3(a)2.

(i) A Kosher meat dealer, Kosher poultry dealer and/or Kosher food or food products dealer whose meat is tagged as evidence in accordance with (h) above may not remove the tag or dispose of the meat, poultry and/or food or food product for a period of 72 hours unless notified otherwise by an authorized representative of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety. If an administrative complaint is issued within the above 72 hour period by the Division of Consumer Affairs, the tagged meat, poultry and/or food or food product may be impounded by an authorized inspector. Removal of the aforesaid tag or disposal of tagged meat, poultry and/or food or food product in violation of this paragraph shall constitute an unlawful practice as defined in this section.

OTHER AGENCIES

DELAWARE RIVER BASIN COMMISSION

(a)

Administrative Manual
Rules of Practice and Procedure: Penalties and Settlements in Lieu of Penalties

Adopted: September 22, 1987

Filed: October 2, 1987 as R.1987 d.432.

Effective Date: September 22, 1987.

Full text of the adoption follows.

No. 87-25

A RESOLUTION to amend the Administrative Manual—Rules of Practice and Procedure in relation to penalties and settlements in lieu of penalties.

WHEREAS, Section 14.17 of the Commission's Compact provides for the imposition of penalties for violations of the Compact or any rule, regulation or order of the Commission; and

WHEREAS, the Commission has proposed administrative procedures in connection with the imposition of penalties for such violations or settlements thereof in lieu of penalties; and

WHEREAS, the Commission held a public hearing on August 5, 1987 regarding this proposed amendment and has received and considered testimony from interested parties: now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Administrative Manual—Rules of Practice and Procedure is hereby amended by the redesignation of existing Article 7—**Public Access to Records and Information** and Article 8—**General Provisions** as Article 8 and Article 9, respectively.

2. New Article 7—**Penalties and Settlements in Lieu of Penalties** is hereby added to the Rules of Practice and Procedure to read as follows:

Article 7—**Penalties and Settlements in Lieu of Penalties**

Section 2-7.1 **Scope of Article.** This Article shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this Article person shall include person, partnership, corporation, business association, governmental agency or authority.

2-7.2 **Notice to possible violators.** Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these Rules and Section 14.17 of the Compact. The notice to the possible violator shall: (a) set forth the date on which the possible violator shall respond; and (b) set forth any information to be submitted or produced by the possible violator.

2-7.3 **The record for decision making.**

(a) **Written submission.** In addition to the information required by the Commission, any possible violator shall be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other person as to whether a violation has occurred and the adverse consequences resulting from a violation of the Commission's Compact or its rules, regulations and orders.

(b) **Presentation to the Commission.** At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

2-7.4 **Adjudicatory hearings.**

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to Section 2-7.3, at which testimony may be presented and documents received shall not be scheduled unless: (1) the Executive Director determines that a hearing is required to have an adequate record for the Commission; or (2) the Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in Section 14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this Article, adjudicatory hearings shall be conducted in accordance with the provisions of Article 2-6.3 through 2-6.7 (including 2-6.5.1 *et seq.*).

2-7.5 **Assessment of a penalty.** The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to Section 14.17 of the Compact. If it is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.

2-7.6 **Factors to be applied in fixing penalty amount.**

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty: (1) Previous vioItaion, if any, of the Commission's Compact and regulations; (2) Whether the violation was unintentional or willful and deliberate; (3) Whether the violation caused adverse environmental consequences and the extent of any harm; (4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations; (5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and (6) Whether the failure to comply with the Commission's Compact and regulation was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in sub-paragraph (a) hereof, extenuating circumstances justify such action.

2-7.7 **Enforcement of penalties.**

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this Article. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to Section 14.17 of the Compact.

2-7.8 **Settlement by agreement in lieu of penalty.** A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided.

If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this Article.

2-7.9 **Suspension or modification of penalty.** The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

3. These amendments shall be effective immediately.

OFFICE OF ADMINISTRATIVE LAW NOTE: These rules are not subject to codification and will not appear in the New Jersey Administrative Code.

CASINO CONTROL COMMISSION

(a)

Accounting and Internal Controls
Procedure for Counting and Recording Contents of Drop Boxes

Adopted Amendment: N.J.A.C. 19:45-1.33

Proposed: June 1, 1987 at 19 N.J.R. 923(a).
Adopted: September 23, 1987 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: September 28, 1987 as R.1987 d.428, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(l).

Effective Date: November 2, 1987.
Expiration Date: April 7, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: The Vice President, Legal, of Resorts International suggests that if the proposed amendment's reference to "currency counting machine" excludes the use of the old "spindle type" counter, the terminology should be revised to read "currency sorter/counting" machine and concurrently "manually count" be clarified as either being done by hand or by the "spindle type" counter.

RESPONSE: The Commission has rejected this suggestion because the intent of this proposed rule amendment is to include the testing of all types of currency counting machines including the "spindle type" counter.

COMMENT: The Division of Gaming Enforcement fully supports the proposed amendment to N.J.A.C. 19:45-1.33.

RESPONSE: The Commission acknowledges acceptance of this comment.

COMMENT: The Associate General Counsel of Harrah's Marina states there would be an inconsistency in the proposal since N.J.A.C. 19:45-1.33(c) requires only three employees in the count room and that the proposed amendment describes four separate personnel/functions as commencing at paragraph (h)5i.

RESPONSE: The Commission has accepted this suggestion and has made a non-substantive change eliminating the third count team member as referenced in (h)5v.

COMMENT: The Associate Counsel of Trump Plaza Hotel and Casino asserts that the proposed amendment makes "no stipulations regarding the contents of the first drop box." Specifically, he states that the first drop box may be empty or it could contain thousands of bills. In addition, Trump Plaza feels that a manual count could be time consuming, depending upon the volume for that particular shift. Therefore, Trump Plaza suggests a method whereby the Commission Inspector selects a random number of bills from the first drop box which will then be counted both manually and by the currency counting machines.

RESPONSE: The Commission has rejected this suggestion. The manual and currency counting machine counts would not be time consuming due to the efficiency of count personnel and the currency counting machines. In addition, the responsibility of the Commission Inspector is to observe and not to participate in the testing process. It is assumed that if the "first" drop box is empty, the count personnel would proceed to the next drop box in order to perform the test. However, in order to clarify this procedure, a non-substantive change has been made to (h)5iii which indicates that the count team member "shall randomly select a drop box".

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

19:45-1.33 Procedure for counting and recording contents of drop boxes

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

(h) Procedures and requirements for conducting the count shall be the following:

1.-4. (No change.)

5. Each denomination of coin and currency shall be counted separately by one count team member who shall place individual bills and coins of the same denomination on the count table in full view of a closed circuit television camera after which the coin and currency shall be counted by a second count team member who is unaware of the result of the original

count and who, after completing this count, shall confirm the accuracy of his total, either orally or in writing, with that reached by the first count team member, except that the Commission may permit a casino licensee to perform an aggregate count by denomination of all currency collected in substitution of the second count by drop box if the Commission is satisfied that the original count is being performed automatically by a machine that counts and automatically records the amount of currency and that the accuracy of the machine has been suitably tested and proven. The Commission will permit the utilization of currency counting machines if prior to the start of the count, in the presence of a Commission Inspector, the count room supervisor shall:

i. Verify that all currency counting machines have a zero balance on each terminal unit display panel and have a receipt printed which denotes "-0- cash on hand" and "-0- notes in machine" or some other means to indicate that the machine has been cleared.

ii. Visually check the currency counting machines to be sure there are no bills remaining in the various compartments of the machines.

iii. Supervise a count team member who shall ***randomly select a drop box and*** place the entire currency contents of the *[first]* drop box into the first currency counting machine, which shall sort the currency by denomination and produce a print out of the total amount of currency by denomination. Any soiled or off-sorted bills shall be re-fed into the machine and manual adjustments made to the total. Coins or tokens shall also cause manual adjustments to be made to the total. The total as recorded on the currency counting machine and any adjustments thereto shall not be shown to anyone until completion of the final verification process.

iv. Supervise a second count team member, independent of the team member performing the initial count by machine, who shall manually count and summarize the currency of the drop box counted in (h)5iii above. The total shall be posted and maintained separately from the total posted in (h)5iii above. This total shall not be shown to anyone until completion of the final verification process.

v. Supervise the second count team member passing the currency to a *[third]* count team member, who is unaware of the results of the *[first two]* ***manual*** count*[s]*. The *[third]* count team member shall count the contents of the drop box counted in (h)5iii above using the second currency counting machine. Such machine shall produce a print out of the total amount of currency as contained in the drop box. Any soiled or off-sorted bills shall be re-fed into the machine and manual adjustments made to the total. Coins or tokens shall also cause manual adjustments to be made to the total. The total as recorded on the currency counting machine and any adjustments thereto shall not be shown to anyone until completion of the final verification process.

vi. Following the completion of the test procedures, compare the totals from the test receipts of both currency counting machines, as computed in (h)5iii and (h)5v, to the manual total computed in (h)5iv. If the three totals compared above are in agreement, the count room supervisor will sign and date the test receipts and forward them to the Accounting Department at the end of the count process.

vii. If the three totals do not agree, appropriate repairs shall be made to the currency count machine(s) and the procedures in (h)5i through (h)5vi shall be repeated until all totals are in agreement. Not until these totals are in agreement, shall the Commission permit the utilization of the currency counting machines.

6.-10. (No change.)

(i) (No change.)

(j) The originals and copies of the Master Game Report, Counter Checks, Requests for Fills, Fills, Requests for Credits, Credits, Table Inventory Slips and the test receipts from the currency counting equipment shall, on a daily basis, in the accounting department be:

1.-6. (No change.)

CASINO CONTROL COMMISSION

(a)

Rules of the Games
Minimum and Maximum Wagers
Adopted Amendment: N.J.A.C. 19:47-8.2 (Alternative II)

Proposed: May 18, 1987 at 19 N.J.R. 858(b).
Adopted: October 2, 1987 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: October 5, 1987 as R.1987 d.433, **without change** (Alternatives I, III, IV and V not adopted).
Authority: N.J.S.A. 5:12-63(c) and 5:12-70(f).
Effective Date: November 2, 1987.
Expiration Date: May 4, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: The Assistant Counsel for Resorts International Inc., commented by indicating support for the adoption of Alternative I as set forth in the proposal.

RESPONSE: Although the commenter supported adoption of Alternative I, no substantial information has been provided in support of this alternative; therefore the comment was rejected.

COMMENT: The Vice President/General Counsel for Caesars Atlantic City favored the adoption of Alternative I or II, of which they have no preference. Caesars cited administrative difficulties and confusion with Alternatives III and IV, and did not favor Alternative V because they believe that this alternative is not necessary in the real world.

RESPONSE: The Commission accepted this commenter's suggestion.

COMMENT: The Division of Gaming Enforcement suggested adoption of Alternative I for repeals of the betting minimums, and, to a lesser degree, supported Alternative II to raise the betting minimum to an amount not to exceed $5.00. The Division does not support Alternatives III, IV and V since betting minimums have no impact on the integrity and fairness of the games involved and the trend in this area is to relax regulatory requirements on table minimums.

RESPONSE: The Commission accepted the Division's suggestion.

COMMENT: The Vice President of Legal Affairs and General Counsel for the Atlantic City Casino Association responded in favor of Alternatives I and II, which he believes will maximize management concerns and will meet the needs of the regulators. Furthermore, he suggested that the remaining Alternatives do not accomplish their intended goal of increasing participation and will restrict business concerns and adversely affect revenues.

RESPONSE: The Commission accepted this commenter's suggestion.

Full text of the adoption follows.

Alternative II

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-3. (No change.)

4. Big Six Wheel: The minimum wager shall be $5.00 or less and the maximum wagers shall be at least:

i.-vi. (No change.)

5.-6. (No change.)

(c) (No change.)

EMERGENCY ADOPTION

HEALTH

(a)

DIVISION OF ALCOHOL, NARCOTIC, AND DRUG ABUSE CONTROL

Eligibility and Reimbursement for Retrovir for Individuals with AIDS

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 8:61-2

Emergency New Rule Adopted: September 9, 1987.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 5, 1987.

Emergency New Rule Filed: October 7, 1987 as R.1987 d.437.

Authority: N.J.S.A. 26:1A-15.

Effective Date: October 7, 1987.

Expiration Date: December 6, 1987.

Address comments and inquiries to:
Peter Stratton, Executive Assistant
Alcohol, Narcotic, and Drug Abuse Control
129 E. Hanover Street
Trenton, NJ 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule are being proposed for adoption in compliance with the normal rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The adopted new rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1987-460.

The agency emergency adoption and concurrent proposal follows:

Summary

Over 2,000 New Jerseyans have been diagnosed with Acquired Immunodeficiency Syndrome (AIDS), and perhaps 150,000 others in the State are carrying the Human Immunodeficiency Virus (HIV) that causes the syndrome. Public health experts now estimate that 30 percent to 50 percent of those carrying the virus will eventually develop AIDS or ARC (AIDS Related Complex). In New Jersey, this translates to a minimum of 45,000 more cases (and perhaps 75,000) among those already infected.

Although there is no cure or vaccine for AIDS, the FDA recently approved the drug called Retrovir, formerly known as Azidothymidine (AZT), which has been determined to prolong the life of an individual with AIDS. Recognizing the high cost of this drug, approximately $10,000 per year, a federal supplemental appropriation ($30,000,000, Pub. L. 100-71) was passed to cover the cost of Retrovir. These funds were awarded to states by a formula based on the number of living AIDS patients residing in each state as reported to the Center on Disease Control on July 6, 1987. New Jersey's award was $1,532,748.

Currently, low income individuals meeting certain income criteria can be reimbursed for the cost of Retrovir by the State Medicaid Program, or by the State's Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program. New Jersey is one of a few states that provides pharmaceutical assistance to disabled persons, which includes individuals who have been diagnosed with AIDS or advanced stages of ARC. The income eligibility for this PAAD Program is approximately $13,650 for a single person and $16,750 limit for married couples. For New Jerseyans to benefit from the emergency federal appropriation, higher income limits must be established.

Given the availability of PAAD support, coupled with the high cost of this drug, the Department is proposing income limits not to exceed $25,000 for single individuals and $30,000 for married couples. If these higher limits were not established, then only those individuals who are eligible for Medicaid, PAAD, or third party reimbursement would get this drug, and other individuals who could be supported through establishing higher limits would not get this drug until they exhausted their income. Working with the Department of Human Services Medicaid Program, it is estimated that in late September, the Department can begin to process applications for Retrovir. This is a one time only drug reimbursement program to cover drug expenses for eligible individuals through September 30, 1988.

Thus, this emergency rule and concurrent proposal establishes an income eligibility level for participation in this program, as well as other criteria for enrollment in the program.

Social Impact

This new rule will have a positive social impact. Although the State Medicaid Program and PAAD will reimburse certain classes of individual for the cost of purchasing Retrovir, the high cost of the drug precludes a large number of AIDS patients, whose income exceeds that permitted under the Medicaid and PAAD programs, from purchasing Retrovir.

Establishment of a new income eligibility criteria will thus permit a larger number of AIDS patients from procuring the drug, which, although neither a cure nor vaccine, has been determined to prolong the lives of individuals with AIDS.

Economic Impact

This rule will have a beneficial economic impact on those individuals with AIDS, who are individuals ineligible for PAAD or Medicaid benefits, and who meet the income criteria set herein, since this rule will defray the exorbitant costs associated with the purchase of Retrovir (estimated at approximately $10,000 per year, per individual.)

Further, since the funds for this program were appropriated to the State from the federal government, there is no expected adverse economic impact on the State.

Regulatory Flexibility Impact

This new rule will apply only to individuals suffering from AIDS as documented by a physician, and will have no effect on small businesses. Therefore, the provisions of P.L. 1986, ch. 169, are inapplicable to this rule.

Full text of the emergency new rule and concurrent proposal follows:

SUBCHAPTER 2. ELIGIBILITY CRITERIA TO PARTICIPATE IN RETROVIR DRUG PROGRAM

8:61-2.1 Purpose

The purpose of this subchapter is to describe the clinical and financial criteria which individuals must meet in order to become enrolled in the Retrovir Drug Program.

8:61-2.2 Definitions

"AIDS Drug Program" means the program by which eligible individuals will be reimbursed for the cost of purchasing Retrovir (Azidothymidine—AZT), or any other drug approved by the Federal Food and Drug Administration which has been recognized as prolonging the life of individuals with AIDS, from funds appropriated to the State from the Federal government.

8:61-2.3 Clinical eligibility

To be considered clinically eligible to participate in the AIDS Drug Program (Program), an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a physician.

8:61-2.4 Income eligibility

(a) Any single permanent resident of New Jersey must have an annual income of less than $25,000 to be eligible for enrollment in the Program.

(b) Any married permanent resident of New Jersey must have a combined (applicant and spouse) annual income of less than $30,000 to be eligible for PAAD.

1. An applicant and spouse shall be considered separated when each maintains a separate residence and the applicant does not have access to or receives support from the spouse's income.

2. An applicant and spouse shall be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.

(c) Income shall be determined in accordance with the standards delineated at N.J.A.C. 10:69A-6.2.

8:61-2.5 Residence

Residence shall be determined in accordance with the standards delineated at N.J.A.C. 10:69A-6.4.

8:61-2.6 Application process

(a) Applications to enroll in the program can be obtained by calling the Department of Health AIDS HOTLINE, at 1-800-624-2377.

(b) Once the application is received by an interested individual, the form should be completed and returned to the address indicated on the application.

(c) If approved for participation in the Program, the Department will notify the individual, his or her physician, and the pharmacy from which the prescription for Retrovir will be filled.

MISCELLANEOUS NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Availability of Grant Funds

Public Notice

Take notice that pursuant to Chapter 7, Public Laws of 1987, which supplement Title 52 of the Revised Statutes, the Department of Education has available for the general public the 1987 edition of *Directory of Federal and State Programs* which gives information regarding the availability of Federal and State grant funds. A copy of this directory has been distributed to each local education agency and county office of education.

Interested persons may obtain copies by writing to:

New Jersey Department of Education
Bureau of Grants and Contracts
CN 500
Trenton, New Jersey 08725

(b)

THE COMMISSIONER

State Plan for the Education of All Handicapped Children

Preschool Grants

Notices of Approval

Take notice that the amendments to the New Jersey State Plan for the Education of All Handicapped Children have been approved by the United States Department of Education.

These amendments relate to statutory changes enacted in the federal Education for the Handicapped Amendments (EHA-B) of 1986 (P.L. 99-457).

The approval was based on a review of the following documents which collectively constitute the amendments to the State Plan:

1. State Plan Amendments, April 21, 1987.
2. Letter from J. Osowski to G. Thomas Bellamy, June 22, 1987.
3. Letter from J. Osowski to William Tyrell, July 7, 1987.

Approval of this Plan entitles New Jersey to receive the EHA-B grant award of $52.4 million fiscal 1988.

The preschool grant under S619 of Part B of the Education of the Handicapped Act for fiscal year 1988 has been approved by the United States Department of Education. The amount of the award is $3.8 million.

Grant applications, and the approved State Plan as amended, are available to parents and members of the general public on request to:

Dr. Mari Molenaar
Division of Special Education
Box CN 500
Trenton, New Jersey 08625

HUMAN SERVICES

(c)

Availability of Funds

Children's Trust Fund: Prevention of Child Abuse Community-Based Programs.

Take notice that, in compliance with P.L. 1987, c.7, which supplements Title 52 of the Revised Statutes, the Child Life Protection Commission, the governing authority of the Children's Trust Fund, announces the following availability of funds:

A. Name of the grant program: Children's Trust Fund.

B. Purpose for which the grant program funds shall be used: To fund child abuse and neglect prevention programs at the community level.

C. Amount of money in the grant program: Upto approximately $500,000 dependent upon receipt of a Federal Challenge Grant award.

D. Groups or entities which may apply for the grant program: Public agencies or private agencies with 501(c)3 status for the purpose of child abuse and neglect prevention programs.

E. Qualifications needed by an applicant to be considered for the grant program: An applicant must submit a federal income tax number in support of the 501(c)3 status, and if a corporation, a list of trustees.

F. Procedure for eligible entities to apply for grant funds: Directives and an application will be mailed by the Children's Trust Fund upon receipt of a letter of inquiry sent to the address listed below. The completed application is to be returned to the Trust Fund for consideration.

G. Address of division, office or official receiving application: Barbara Kelly, Children's Trust Fund, CN 711, Trenton, NJ 08625.

H. Deadline by which applications must be submitted to that division, office or official: November 15, 1987.

I. Date by which applicants shall be notified whether they will receive funds under the grant program: January 15, 1988.

LAW AND PUBLIC SAFETY

(d)

DIVISION OF MOTOR VEHICLES

Notice of Applications for Common Carrier's Certificate of Public Convenience and Contract Carrier Permit

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the names and addresses of the applicants who have filed an application for a common carrier's Certificate of Public Convenience and Contract Carrier permits.

COMMON CARRIER (NON-GRANDFATHER)

Prospect Transportation, Inc.
20 Birch Street
Ridgefield Park, New Jersey 07660

CONTRACT CARRIER (NON-GRANDFATHER)

Prospect Transportation, Inc.
20 Birch Street
Ridgefield Park, New Jersey 07660

C.E. Gutschmidt Transportation, Inc.
P.O. Box 304
Ringoes, New Jersey 08551

P.E.Q., Inc.
44 Merline Avenue
Lawrenceville, New Jersey 08648

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (November 23, 1987) following the publication of an application.

TREASURY-GENERAL

(e)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—September 1987

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 September 1, 1987.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M600-01	Testing/Inspection Services Phase II Amended Veterans Nursing Facility Paramus, NJ	U.S. Testing Co., Inc.	$7,500 Services
M752	Auto-Synchronization of Generators Woodbridge Development Center Woodbridge, NJ	Technical Associates, Inc.	$105,000
S178	Testing/Inspection Services Communications Tower N.J. State Police Facility Cumberland County, NJ	Certified Testing Laboratories, Inc.	$1,500 Services
A535	Testing/Inspection Services Emergency Exit & Stair State Office Building 135 W. Hanover Street Trenton, NJ	Certified Testing Laboratories, Inc.	$500 Services
M738	Cottage Door Corrections & Hospital Window Replacement Woodbine Developmental Center Woodbine, NJ	Kitchen & Associates, PA	$180,000
S178	Testing/Inspection Services Communications Tower N.J. State Police Facility Cumberland County, NJ	Certified Testing Lab., Inc.	$1,500 Services
C279-01	Testing/Inspection Services Close Custody Units Youth Reception & Correction Center—Yardville Youth Correctional Institution—Bordentown	Testwell Craig Testing Laboratories, Inc.	$15,700 Services
I020	Asbestos Removal Mechanical Room—Library Building William Paterson College Wayne, NJ	Gaudet Associates	$17,000 Services
C350	Re-Roofing State Use Industry Warehouse Trenton, NJ	ARMM Design	$350,000
R016	Facility Consultant FY-88 Dept. of Human Services	Chyun Associates	$10,000 Services
R017	Facility Consultant FY-88 Dept. of Human Services	Matthew L. Rue, AIA	$20,000 Services
W018	Facility Consultant FY-88 Dept. of Environmental Protection	Maitra Associates, Inc.	$40,000 Services
X019	Facility Consultant FY-88 Division of Motor Vehicles	Frank R. Holtaway & Son, Inc.	$50,000 Services
X020	Facility Consultant FY-88 Division of Motor Vehicles	Pennoni Associates, Inc.	$50,000 Services
X021	Facility Consultant FY-88 Division of Motor Vehicles	Tarquini Organization	$50,000 Services
X022	Facility Consultant FY-88 Division of Motor Vehicles	Kolbe & Poponi, PA	$50,000 Services
X023	Facility Consultant FY-88 Division of Motor Vehicles	James C. Anderson Associates, Inc.	$50,000 Services
X024	Facility Consultant FY-88 Division of Motor Vehicles	Leslie M. Dennis & Son	$50,000 Services
X025	Facility Consultant FY-88 Division of Motor Vehicles	Turek Associates	$50,000 Services
X026	Facility Consultant FY-88 Division of State Police	Eugene F. O'Connor, AIA	$45,000 Services
C349	Renovations to Willow Hall—Phase 2 Ancora Psychiatric Hospital Hammonton, NJ	James C. Anderson Associates, Inc.	$500,000
	COMPETITIVE PROPOSALS		
	James C. Anderson Associates, Inc.	5.90%	
	Stone & Webster, Inc.	7.40%	
	Walter W. Spencer & Associates, Inc.	9.90%	
E137-02	Lower Dam Improvements Katzenbach School for the Deaf West Trenton, NJ	Sidney M. Johnson & Associates	$81,000
	COMPETITIVE PROPOSALS		
	Sidney M. Johnson & Associates	$12,000 Lump Sum	
	Frederic R. Harris, Inc.	$40,000 Lump Sum	
	Thomas Otto & Associates, Inc.	Proposal Not Received in Time	
P551	Hudson Waterfront Walkway Liberty State Park Jersey City, NJ	Hardesty & Hanover/ Vollmer Associates	$115,000 Services
	COMPETITIVE PROPOSALS		
	Hardesty & Hanover/Vollmer Associates	$115,000 Lump Sum	
	STV/Seeyle Stevenson Value & Knecht	$125,000 Lump Sum	
	Frederic R. Harris, Inc.	$170,000 Lump Sum	
C336	Expansion of Metal Shop Bordentown Y.C.I. Bordentown, NJ	EI Associates, PA	$685,000
	COMPETITIVE PROPOSALS		
	E.I. Associates	7.8%	
	Fariday Thorne Madish	9.8%	
	Tarquini Organization	10.29%	
	Haines Lundberg & Waehler	12.40875%	
P540	Multi-Purpose Paths Along D & R Canal	Arnold Associates	$765,000
	COMPETITIVE PROPOSALS		
	Arnold Associates	9.5%	
	Clarke & Caton	9.829%	
	Vollmer Associates	12.5%	

OTHER AGENCIES

CASINO CONTROL COMMISSION

(a)

Petition for Rulemaking
Prohibition of Inducements to Gamble
N.J.A.C. 19:47-1.6
Petitioner: Michael J. Kirkpatrick

Authority: N.J.S.A. 5:12-69(c) and 52:14B(4); N.J.A.C. 1:30-3.6.

Take notice that on September 9, 1987, Michael J. Kirkpatrick filed a rulemaking petition with the Casino Control Commission requesting, inter alia, an amendment to N.J.A.C. 19:47-1.6.

Specifically the petitioner contends that multiple odds bets, a permissible supplemental craps wager under N.J.A.C. 19:47-1.6, should be eliminated because such wagers encourage additional patron participation which in the long run results in greater losses and offers no significant advantage to the bettor. In addition, the petitioner would prohibit all casino personnel from making any statements to the press concerning gaming odds without approval of the Commission.

The petitioner also proposes to prohibit the following: alcoholic drinks on the casino floor; bells or other noises sounding from slot machines for wins under 100 coins; the solicitation of bets by craps personnel, although such actions are already prohibited under N.J.S.A. 5:12-100(1); and the presence of any credit card borrowing facilities in the casino. In addition, the petitioner proposes the adoption of rules which would require that: the signs for coin redemption be the same size as the largest sign for change; the front of each slot machine contain information on the average payoff percentage of that slot machine; and signs be posted on all gaming tables advising the public that dealers must provide information on the true house percentage advantage for all bets upon request by a patron.

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).

(b)

Petition for Rulemaking
Verification Procedures for Travelers Checks
N.J.A.C. 19:45-1.25
Petitioner: Claridge Hotel and Casino.

Authority: N.J.S.A. 5:12-69(c) and 5:12-70(g); N.J.S.A. 52:14B-4(f); N.J.A.C. 1:30-3.6.

Take notice that on September 21, 1987, Claridge Hotel and Casino filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.25.

The petitioner disagrees with the Division of Gaming Enforcement's interpretation of N.J.A.C. 19:45-1.25(e) pursuant to which the Division maintains that a casino licensee is required to make direct telephone contact with the issuer of a travelers check prior to cashing the travelers check. Instead, the petitioner maintains that N.J.A.C. 19:45-1.25(e) requires only direct telephone contact with the issuing bank when the issuer of the travelers check specifically requires such a procedure.

Accordingly, in order to clarify what Claridge contends is an ambiguous rule and to express in detail the verification procedures it believes should be imposed upon casino licensees prior to cashing travelers checks, the petitioner proposes amendments to N.J.A.C. 19:45-1.25(e). The proposed amendments would establish a two-step verification procedure for travelers checks. The first step would require the travelers check to be countersigned by the patron in the presence of the general cashier, who would then examine and compare this countersignature with the original signature on the travelers check. The second step would require compliance with whatever additional procedures are mandated by the issuer of the travelers check.

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).

(a)

Petition for Rulemaking
Applications, Hearings, Internal Controls, Gaming Equipment, and Exclusion of Persons
N.J.A.C. 19:41-2.2 and 8.6; 19:42-4.5, 4.6 and 4.7; 19:45-1.36, 1.39 and 1.40; 19:46-1.19 and 1.34 (New Rule); and 19:48-1.5
Petitioner: Division of Gaming Enforcement.

Authority: N.J.S.A. 5:12-69(c), 5:12-76(a) and 52:14B-4(f); N.J.A.C. 1:30-3.6.

Take notice that on September 22, 1987, the Division of Gaming Enforcement ("Division") filed a rulemaking petition with the Casino Control Commission requested amendments to N.J.A.C. 19:41-2.2 and 8.6; 19:42-4.5, 4.6 and 4.7; 19:45-1.36, 1.39 and 1.40; 19:46-1.19 and 1.34 (New Rule); 19:48-1.5 and a proposed rule relating to foreign gaming.

Specifically, the petitioner proposes the following changes:

The amendment to N.J.A.C. 19:41-2.2 would require each casino hotel facility to include an armored car bay and would establish security procedures governing transactions occurring therein.

Proposed modifications to N.J.A.C. 19:41-8.6 would adopt a standard for the withdrawal of applications for licensure involving contested cases which is more flexible than the current standard and would increase the Commission's ability to impose a variety of conditions upon applicants who seek to withdraw their applications.

The amendments to N.J.A.C. 19:42-4.5, 4.6 and 4.7, and 19:48-1.5 proposed by the petitioner would permit the Division to seek a full plenary hearing as to the exclusion of a person from casino hotel facilities even if the Division's petition to exclude was denied by the Commission at a preliminary hearing.

N.J.A.C. 19:45-1.36 amendments would require the "Machine Entry Authorization Log" to be sequentially numbered for each slot machine. In addition, a "Progressive Entry Authorization Log" would be created to monitor and control entry into progressive controllers.

A proposed modification to N.J.A.C. 19:45-1.39 would delete the requirement that once an amount appears on a progressive slot machine, the rate of progression or incrementation cannot be modified until there has been a winner of that specific jackpot.

N.J.A.C. 19:45-1.40 would be amended to institutionalize an informal procedure in place for over two years whereby the Division verifies certain slot machine jackpots as being valid before the winning patron receives casino funds.

An amendment to N.J.A.C. 19:46-1.19 would change the characteristics of the dealing shoes used in casinos to prevent patrons from seeing or reading playing cards being dealt from the dealing shoe in advance of the dealing of said cards.

A proposed new rule, N.J.A.C. 19:46-1.34, would be identical to the present provisions of N.J.A.C. 19:45-1.45. The Petitioner contends that this new rule would establish uniform signature requirements for all casino employees required to sign documents under N.J.A.C. 19:46-1 et seq.

Finally, a new rule is being proposed which would impose an obligation upon casino licensees to report to the Commission any contact with government officials outside of New Jersey where the purpose of the contact is related to the conduct of new foreign gaming operations.

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).

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	6/6/88
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:19	3/17/91
3:21	2/2/92
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	10/5/92
3:41	10/16/90

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:4	10/5/92
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	8/18/88
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	8/31/88
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	5/1/88
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:79	2/1/88

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	12/6/87
7:8	2/7/88
7:9	1/21/91
(Except for 7:9-1 which expired 4/25/85)	
7:10	9/4/89
7:11	6/6/88
7:12	6/6/88
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
(Except for 7:25-1 which expired 9/17/85)	
7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	4/5/87
7:30	12/6/87
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	4/4/88
8:25	5/20/88
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/88
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	8/1/88
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	1/17/88
8:43F	3/18/90
8:43G	9/8/91
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91

N.J.A.C.	Expiration Date
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/87
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	1/5/92
10:140	12/31/86
10:141	2/21/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90

N.J.A.C.	Expiration Date
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:100-1	9/8/91

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44B	11/2/92
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92

N.J.A.C.	Expiration Date
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	1/27/92
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	9/8/91
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90

N.J.A.C.	Expiration Date
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	9/19/88
16:53D	5/7/89
16:54	4/7/91
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	9/25/91
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 8, 1987 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.1987 d.1 means the first rule adopted in 1987.

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: AUGUST 17, 1987.

NEXT UPDATE WILL BE DATED SEPTEMBER 21, 1987.

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
18 N.J.R. 2149 and 2234	November 3, 1986	19 N.J.R. 795 and 898	May 18, 1987
18 N.J.R. 2235 and 2344	November 17, 1986	19 N.J.R. 899 and 1006	June 1, 1987
18 N.J.R. 2345 and 2408	December 1, 1986	19 N.J.R. 1007 and 1120	June 15, 1987
18 N.J.R. 2409 and 2472	December 15, 1986	19 N.J.R. 1121 and 1258	July 6, 1987
19 N.J.R. 1 and 164	January 5, 1987	19 N.J.R. 1259 and 1352	July 20, 1987
19 N.J.R. 165 and 260	January 20, 1987	19 N.J.R. 1353 and 1474	August 3, 1987
19 N.J.R. 261 and 324	February 2, 1987	19 N.J.R. 1475 and 1588	August 17, 1987
19 N.J.R. 325 and 392	February 17, 1987	19 N.J.R. 1589 and 1676	September 8, 1987
19 N.J.R. 393 and 430	March 2, 1987	19 N.J.R. 1677 and 1758	September 21, 1987
19 N.J.R. 431 and 476	March 16, 1987	19 N.J.R. 1759 and 1858	October 5, 1987
19 N.J.R. 477 and 586	April 6, 1987	19 N.J.R. 1859 and 1926	October 19, 1987
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	De novo review by OAL and previous hearing record	19 N.J.R. 1761(a)		
1:1-9.1	Scheduling of prehearing conferences	19 N.J.R. 1591(a)		
1:1-14.4	Failure to appear at proceeding	19 N.J.R. 1591(b)		
1:1-14.5	Ex parte communications and agency heads	19 N.J.R. 1761(b)		
1:1-14.10	Decision to grant requests for interlocutory review where agency head is board or commission	19 N.J.R. 1591(c)		
1:1-14.10, 18.1, 18.4	Interlocutory review of certain issues	19 N.J.R. 1592(a)		
1:1-19.1	Settlement terms and consent of agency head	19 N.J.R. 1593(a)		
1:1-21.6	Exceptions in uncontested cases	19 N.J.R. 1593(b)		
1:5-1.1	Council on Affordable Housing hearings: correction	———	———	19 N.J.R. 1917(a)
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)		
	(TRANSMITTAL 1987-3, dated August 17, 1987)			
AGRICULTURE—TITLE 2				
2:71-2.4, 2.5, 2.6	"Jersey Fresh" raspberry standards	19 N.J.R. 1593(c)	R.1987 d.442	19 N.J.R. 1987(a)
2:71-2.28	Fees for grading of fruits and vegetables	19 N.J.R. 901(a)	R.1987 d.354	19 N.J.R. 1641(a)
2:76-5.3, 5.8	Cost-share funding of soil and water conservation projects	19 N.J.R. 1123(a)	R.1987 d.427	19 N.J.R. 1892(a)
2:76-7	Review of nonagricultural development projects in agricultural areas	19 N.J.R. 1009(a)		
	(TRANSMITTAL 1987-5, dated July 20, 1987)			
BANKING—TITLE 3				
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)		
3:6-4	Banks and savings banks: action upon detection or discovery of crime	19 N.J.R. 1595(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)		
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)		
3:11-7.10	Borrowing limitation of director or executive officer	19 N.J.R. 1124(a)	R.1987 d.369	19 N.J.R. 1641(b)
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)		
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)		
3:38	Mortgage bankers and brokers	19 N.J.R. 1261(a)	R.1987 d.396	19 N.J.R. 1791(a)
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)		
	(TRANSMITTAL 1987-4, dated August 17, 1987)			
PERSONNEL (CIVIL SERVICE)—TITLE 4				
4:1-1, 2, 3, 4	Repeal (see 4A:1)	19 N.J.R. 1011(a)	R.1987 d.406	19 N.J.R. 1827(a)
4:1-5, 13.6, 13.7, 16.7–16.12, 16.14, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4:1-10.3	Repeal (see 4A:5)	19 N.J.R. 1018(a)	R.1987 d.404	19 N.J.R. 1827(a)
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:1-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)		
4:1-19, 21.1, 21.3–21.5	Repeal (see 4A:10)	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)
4:1-21.2, 21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:2-16.4, 16.5, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4:2-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)		
4:2-21.1–21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:3-16.3, 16.4	Repeal (see 4A:2)	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4:3-17, 20	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)		
4:3-19	Repeal (see 4A:10)	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)
4:3-21.1, 21.2	Repeal (see 4A:7)	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4:4	Repeal (see 4A:6-6)	19 N.J.R. 1774(a)		
4A:1	General rules and department organization	19 N.J.R. 1011(a)	R.1987 d.406	19 N.J.R. 1827(a)
4A:2	Appeals, discipline and separations	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4A:5	Veterans and disabled veterans preference	19 N.J.R. 1018(a)	R.1987 d.404	19 N.J.R. 1827(a)
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, employee development	19 N.J.R. 1764(a)		
4A:6-6	Awards Program	19 N.J.R. 1774(a)		
4A:7	Equal employment opportunity and affirmative action	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4A:8	Layoffs	19 N.J.R. 1363(a)		
4A:9-1	Political subdivisions	19 N.J.R. 1022(a)	R.1987 d.405	19 N.J.R. 1827(a)
4A:10	Violations and penalties	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)

(TRANSMITTAL 1987-2, dated July 20, 1987)

COMMUNITY AFFAIRS—TITLE 5

5:4-2	Debarment and suspension from contracting	19 N.J.R. 1261(b)	R.1987 d.389	19 N.J.R. 1791(b)
5:11-1.2, 2.1	Relocation assistance: lawful occupancy; eligibility	19 N.J.R. 1596(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	19 N.J.R. 1861(a)		
5:14-1.1–1.4, 2.1–2.3, 3.1–3.23, 4.1–4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.4, 2.5, 2.6, 2.8	Uniform Fire Code: life hazard uses; annual registration fees	19 N.J.R. 1680(a)		
5:18-4.1	Fire Safety Code: exemption of one and two family residences	19 N.J.R. 1263(a)	R.1987 d.388	19 N.J.R. 1792(a)
5:18-4.7, 4.9	Fire safety in boarding homes, day nurseries, hotels and motels	19 N.J.R. 1023(a)	R.1987 d.373	19 N.J.R. 1720(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-1.1, 3.10, 4.40, 5.2, 5.4, 5.18, 5.20, 5.21–5.26	UCC: local agency classification; appeal boards; licensing	19 N.J.R. 1264(a)		
5:23-2.38, 3.11, 7.2, 7.3, 7.100–7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.2, 3.4, 3.8A, 3.14, 3.15, 3.16, 3.17, 3.20, 3.21, 4.16	Uniform Construction Code: subcodes	19 N.J.R. 1024(a)	R.1987 d.374	19 N.J.R. 1720(b)
5:23-3.18	Energy Subcode: checkmetering in multifamily buildings; lighting efficiency in existing buildings	19 N.J.R. 1862(b)		
5:23-3.18, 6.1–6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)	R.1987 d.387	19 N.J.R. 1793(a)
5:23-4.5	UCC enforcement: conflict of interest—withdrawal of proposal	19 N.J.R. 1033(a)		
5:23-4.20, 8.17	Uniform Construction Code: inspection fees	19 N.J.R. 1684(a)		
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)		
5:26-2.3, 2.4	Planned real estate development: plan review fees	19 N.J.R. 1684(a)		
5:80-3	Housing and Mortgage Finance: return on equity for housing sponsors	19 N.J.R. 1125(a)	R.1987 d.384	19 N.J.R. 1724(a)
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:80-22	Affirmative Fair Housing Marketing Plan	19 N.J.R. 798(a)	R.1987 d.385	19 N.J.R. 1725(a)
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-1.3, 6.1	Council on Affordable Housing: rehabilitation component and credits	19 N.J.R. 1863(a)		
5:92-5.14, 12.11	Council on Affordable Housing: low and moderate income split; rental surcharge	19 N.J.R. 1597(a)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)		

(TRANSMITTAL 1987-6, dated August 17, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
DEFENSE—TITLE 5A				
		(TRANSMITTAL 1, dated May 20, 1985)		
EDUCATION—TITLE 6				
6:8-7.1	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)	R.1987 d.358	19 N.J.R. 1641(c)
6:20-3.1	Sending and receiving districts: determining tuition rates	19 N.J.R. 1598(a)		
6:28-3.6, 4.4	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)	R.1987 d.358	19 N.J.R. 1641(c)
6:31-1	Bilingual education	19 N.J.R. 1126(a)		
6:39-1.5	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)	R.1987 d.358	19 N.J.R. 1641(c)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46	Local area vocational school districts and private vocational schools	19 N.J.R. 1368(a)	R.1987 d.434	19 N.J.R. 1989(a)
6:68-1.4	State library aid to municipalities	19 N.J.R. 1128(a)	R.1987 d.398	19 N.J.R. 1796(a)
6:79-1	Child nutrition programs	19 N.J.R. 1599(a)		
		(TRANSMITTAL 1987-7, dated August 17, 1987)		
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1A	Water Supply Bond Loan Program: extension of comment period	19 N.J.R. 806(b)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)	R.1987 d.446	19 N.J.R. 1999(a)
7:7E-7.4, 8.11	Coastal resources and development: high rise structures; public access to Hudson River waterfront	19 N.J.R. 1034(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
7:9-15.6	Phase II lake restoration projects: State funding level	19 N.J.R. 909(a)	R.1987 d.447	19 N.J.R. 2000(a)
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	19 N.J.R. 1381(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)		
7:12	Classification of shellfish growing waters	19 N.J.R. 1129(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: reproposed	19 N.J.R. 167(b)		
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(d)	Flood hazard redelineation of Raritan River	19 N.J.R. 1277(a)	R.1987 d.400	19 N.J.R. 1797(a)
7:13-7.1(d)	Redelineations along Green Brook, Union County	19 N.J.R. 1384(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)	R.1987 d.445	19 N.J.R. 2000(b)
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:14A-8	NJPDES permit program: public notice and comment	19 N.J.R. 1864(a)		
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)		
7:14B	Underground storage tanks	19 N.J.R. 1477(a)		
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-6	1988-99 Fish Code	19 N.J.R. 1385(a)		
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1, 12.3	Solid waste defined; hazardous waste recycling	19 N.J.R. 1035(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-1.9, 12.2, 17	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)		
7:26-1.10	Master performance permits for transfer station facilities	19 N.J.R. 1242(a)	R.1987 d.372	19 N.J.R. 1730(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-3.2, 3.4	Compliance with designated truck routes by solid waste registrants and operators	19 N.J.R. 1610(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.13, 8.15, 8.16	Hazardous waste criteria	19 N.J.R. 1278(a)		
7:26-8.19, 10.6	Hazardous waste management: approval of alternate test methods; surface impoundments	19 N.J.R. 1482(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:28-3	Registration of ionizing radiation-producing machines and radioactive materials	19 N.J.R. 836(a)		
7:28-4	Naturally-occurring and accelerator-produced radioactive materials: handling and use	19 N.J.R. 1041(a)		
7:28-5	Designation of controlled areas for use of radiation and radioactive materials	19 N.J.R. 839(a)		
7:28-14.3	Therapeutic x-ray systems: correction	————	————	19 N.J.R. 1917(c)
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)	R.1987 d.436	19 N.J.R. 2010(a)
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

(TRANSMITTAL 1987-8, dated August 17, 1987)

HEALTH—TITLE 8

8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:2-1	Birth certificates: extension of comment period	19 N.J.R. 264(a)		
8:2-1	Birth certificates: proposal withdrawn	19 N.J.R. 1483(b)		
8:13	Processing and handling of shellfish; depuration of soft shell clams	19 N.J.R. 1143(a)	R.1987 d.362	19 N.J.R. 1642(a)
8:20-1.2	Reportable birth defects	19 N.J.R. 909(b)	R.1987 d.361	19 N.J.R. 1642(b)
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)	R.1987 d.402	19 N.J.R. 1797(b)
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)		
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 264(b)		
8:33-1.5, 2.7, 2.8, 4.15	Certificate of Need review process: batching	19 N.J.R. 1280(a)	R.1987 d.415	19 N.J.R. 1892(b)
8:33E-1.1, 1.2, 1.3	Certificate of Need: cardiac diagnostic facilities	19 N.J.R. 1282(a)		
8:33E-2.2, 2.3, 2.4	Certificate of Need: cardiac surgery centers	19 N.J.R. 1283(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:33H-2.1, 3.1, 3.3, 3.5	"Specialized" long-term care; licensure track records; location of residential health care facilities	19 N.J.R. 1149(a)		
8:33L	Home Health Agency Policy Manual: Certificate of Need review	19 N.J.R. 1483(c)		
8:43E-1	Certificate of Need policy manual for health care facilities and services	19 N.J.R. 1872(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43E-2	Psychiatric inpatient beds: adult open acute	19 N.J.R. 1873(a)		
8:43E-3	Psychiatric inpatient screening beds	19 N.J.R. 1875(a)		
8:43E-4	Children's acute psychiatric beds	19 N.J.R. 1876(a)		
8:43E-5	Intermediate adult and special psychiatric beds	19 N.J.R. 1877(a)		
8:61-2	Retrovir (AZT) reimbursement program	Emergency (expires 12-6-87)	R.1987 d.437	19 N.J.R. 2067(a)
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a), 640(b), 881(a), 1315(a))	18 N.J.R. 1775(a)	R.1987 d.366	19 N.J.R. 1644(c)
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a), 1314(a))	19 N.J.R. 13(a)	R.1987 d.365	19 N.J.R. 1644(b)
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b))	19 N.J.R. 615(a)	R.1987 d.364	19 N.J.R. 1644(a)
8:71	Interchangeable drug products: public hearing	19 N.J.R. 1488(a)		
8:71	Interchangeable drug products: public hearing	19 N.J.R. 1878(a)		
	(TRANSMITTAL 1987-7, dated August 17, 1987)			
HIGHER EDUCATION—TITLE 9				
9:1-7	Fraudulent academic degrees	19 N.J.R. 1284(a)	R.1987 d.430	19 N.J.R. 2053(a)
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)	R.1987 d.429	19 N.J.R. 2053(b)
9:6A	State college personnel system	19 N.J.R. 1613(a)		
9:7-2.10, 2.11	Tuition Aid Grant benefits	19 N.J.R. 1153(a)	R.1987 d.440	19 N.J.R. 2054(a)
9:7-9.9, 9.11, 9.12, 9.15	Congressional Teacher Scholarship Program	19 N.J.R. 1154(a)	R.1987 d.441	19 N.J.R. 2055(a)
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:9-7.3	Eligible limitations: correction	————	————	19 N.J.R. 1917(d)
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 399(a)	R.1987 d.418	19 N.J.R. 1893(a)
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)		
	(TRANSMITTAL 1987-7, dated August 17, 1987)			
HUMAN SERVICES—TITLE 10				
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.1 and 1.2	Administration Manual: Optional Categorically Needy program	19 N.J.R. 1324(a)	R.1987 d.380	19 N.J.R. 1731(a)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-1.12	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)	R.1987 d.408	19 N.J.R. 1800(a)
10:50-2 through 10:68-2	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)	R.1987 d.408	19 N.J.R. 1800(a)
10:51-1.17	Medicaid and PAAD: legend drug dispensing fee	19 N.J.R. 1711(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:60-2.2	Personal care assistance services	19 N.J.R. 1489(a)		
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)		
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)		
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)	R.1987 d.363	19 N.J.R. 1645(a)
10:66-3.2	Personal care assistance services	19 N.J.R. 1489(a)		
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:72	Optional Categorically Needy Eligibility Manual (JerseyCare Manual)	19 N.J.R. 1324(a)	R.1987 d.380	19 N.J.R. 1731(a)
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)	R.1987 d.379	19 N.J.R. 1738(a)
10:81-7.46	PAM: reporting criminal offenses	19 N.J.R. 1389(a)	R.1987 d.449	19 N.J.R. 2056(a)
10:81-8.23	Medicaid Special: pregnancy examinations	19 N.J.R. 1490(a)		
10:81-11.4	PAM: recovery of child support overpayments	19 N.J.R. 1171(a)		
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:81-12	PAM: Newark/Camden Teen PROGRESS Demonstration	19 N.J.R. 1390(a)	R.1987 d.410	19 N.J.R. 1810(a)
10:81-14	REACH (Realizing Economic Achievement) Program	19 N.J.R. 1491(a)	R.1987 d.423	19 N.J.R. 1894(a)
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-2.6	Initial eligibility in AFDC	19 N.J.R. 1781(a)		
10:82-4.15	Lump sum income and AFDC eligibility	19 N.J.R. 1782(a)		
10:82-5.10	Emergency Assistance in AFDC program	19 N.J.R. 1171(b)		
10:85-2.7	GAM: reporting criminal offenses	19 N.J.R. 1393(a)	R.1987 d.448	19 N.J.R. 2056(b)
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)	R.1987 d.409	19 N.J.R. 1812(a)
10:85-4.6	Emergency Assistance in GA program	19 N.J.R. 1715(a)		
10:85-4.8	GAM: funeral and burial expenses	19 N.J.R. 1619(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	Emergency (expires 11-30-87)	R.1987 d.431	19 N.J.R. 1916(a)
10:87-12.3, 12.4 and 12.7	Food Stamp Program: maximum income eligibility limits	19 N.J.R. 1331(a)	R. 1987 d.375	19 N.J.R. 1738(b)
10:90	Monthly Reporting Policy Handbook	19 N.J.R. 1517(a)		
10:121A	Adoption Agencies: Manual of Standards	19 N.J.R. 1519(a)		
10:124	Children's shelter facilities and homes	19 N.J.R. 1394(a)		
10:131	Adoption Assistance and Child Welfare Act of 1980	19 N.J.R. 1285(a)		

(TRANSMITTAL 1987-7, dated August 17, 1987)

CORRECTIONS—TITLE 10A

10A:3-4.1	Off-duty carrying of firearms	19 N.J.R. 1717(a)		
10A:3-5.8, 5.11	Random searches of correctional facilities by canine teams	19 N.J.R. 1175(a)	R.1987 d.397	19 N.J.R. 1813(a)
10A:4-1.2	Girl's Unit at Skillman: disciplinary process	19 N.J.R. 1531(a)		
10A:4-4.1	Inmate prohibited acts: correction to text	————	————	19 N.J.R. 1658(c)
10A:4-9.12	Representation of inmate in disciplinary case	19 N.J.R. 913(b)	R.1987 d.383	19 N.J.R. 1738(c)
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)		
10A:6	Inmate access to courts	19 N.J.R. 914(a)	R.1987 d.444	19 N.J.R. 2057(a)
10A:8	Inmate orientation and handbook	19 N.J.R. 1531(b)		
10A:9-2.1	Inmate reception classification process	19 N.J.R. 1395(a)		
10A:9-4.5	Inmate classification: increasing custody status	19 N.J.R. 1782(b)		
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)		
10A:16-2.11	Pregnancy testing of new inmates	19 N.J.R. 1396(a)	R.1987 d.443	19 N.J.R. 2060(a)
10A:71-3.2, 3.4, 3.18–3.23, 3.25–3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

(TRANSMITTAL 1987-4, dated August 17, 1987)

INSURANCE—TITLE 11

11:1-25	Official department mailing list: address information	19 N.J.R. 1050(b)		
11:3-23	Dangerous drivers or drivers with excessive claims	19 N.J.R. 1880(a)		
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-22.2, 22.4, App.	1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables	19 N.J.R. 1399(a)	R.1987 d.394	19 N.J.R. 1814(a)
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.16	Real estate contracts and leases subject to attorney review	19 N.J.R. 503(b)	R.1987 d.359	19 N.J.R. 1646(a)
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:7-1.2, 1.3	Municipal bond insurance	19 N.J.R. 1409(a)	R.1987 d.426	19 N.J.R. 1908(a)
11:13	Commercial lines insurance	19 N.J.R. 1783(a)		

(TRANSMITTAL 1987-6, dated July 20, 1987)

LABOR—TITLE 12

12:15-1.3	Unemployment compensation and temporary disability: 1988 maximum weekly benefits	19 N.J.R. 1622(a)		
12:15-1.4	Unemployment compensation: 1988 taxable wage base	19 N.J.R. 1623(a)		
12:15-1.5	Unemployment compensation: 1988 contribution rate for governmental entities	19 N.J.R. 1624(b)		
12:15-1.6	Base week earnings for claim eligibility	19 N.J.R. 1623(b)		
12:15-1.7	Alternate earnings test	19 N.J.R. 1623(c)		
12:17-2.1	Claims and registration for work: correction	————	————	19 N.J.R. 1841(a)
12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-2.1, 4.2, 5.2, 6.2	Public employees and hazardous waste operations	19 N.J.R. 1533(a)	R.1987 d.439	19 N.J.R. 2060(b)
12:100-4.2	Adoption by reference	19 N.J.R. 267(a)	R.1987 d.425	19 N.J.R. 1909(a)
12:100-5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
12:190	Explosives	19 N.J.R. 1883(a)		
12:235-1.6	Workers' compensation: 1988 maximum weekly benefit	19 N.J.R. 1624(a)		

(TRANSMITTAL 1987-2, dated June 15, 1987)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:11-1	Certification of women and minority-owned businesses	19 N.J.R. 1176(a)	R.1987 d.376	19 N.J.R. 1739(a)
12A:12-1	Grants to local government for development of small, minority and women-owned businesses	19 N.J.R. 1286(b)	R.1987 d.382	19 N.J.R. 1743(a)

(TRANSMITTAL 1987-1, dated March 16, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
LAW AND PUBLIC SAFETY—TITLE 13				
13:2-40.1, 40.5, 40.6, 40.7	Uniform ABC identification cards	19 N.J.R. 1410(a)	R.1987 d.399	19 N.J.R. 1823(a)
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice; definitions	19 N.J.R. 1783(b)		
13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)		
13:30-2.1, 2.2, 2.7, 2.8, 2.9, 2.13, 2.14, 6.2, 6.5, 6.6, 6.9, 8.2	Licensure of dental hygienists; duties of dental assistants; approval of schools of oral hygiene	19 N.J.R. 849(a)	R.1987 d.419	19 N.J.R. 1909(b)
13:30-8.6	Professional advertising by dentists	19 N.J.R. 1053(a)	R.1987 d.417	19 N.J.R. 1910(a)
13:30-8.17	Designation of dentist of record for patient in multi-dentist facility	19 N.J.R. 1629(a)		
13:32-1	Rules of Board of Examiners of Master Plumbers	19 N.J.R. 1630(a)		
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-3.6	Licensure of physicians as bioanalytical laboratory directors	19 N.J.R. 1179(a)	R.1987 d.368	19 N.J.R. 1647(a)
13:35-3.11	Post-graduate training of graduates of foreign medical schools	19 N.J.R. 1534(a)		
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:35-6.13	Board of Medical Examiners: fee schedule; acupuncturist registration	19 N.J.R. 1054(a)	R.1987 d.371	19 N.J.R. 1648(a)
13:35-8.25	Biennial registration fee for hearing aid dispensers	19 N.J.R. 1055(a)	R.1987 d.370	19 N.J.R. 1649(a)
13:37-12.1	Board of Nursing fee schedule	19 N.J.R. 1886(a)		
13:40-2, 3.1, 6.1	Professional engineers and land surveyors: requirements for licensure; client relationships; applicant fees	19 N.J.R. 851(a)	R.1987 d.355	19 N.J.R. 1649(b)
13:40-5.1	Corner markers and ultimate user of land survey	19 N.J.R. 1631(a)		
13:42-1.2	Board of Psychological Examiners: application, examination and licensure fees	19 N.J.R. 1632(a)		
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)	R.1987 d.438	19 N.J.R. 2060(c)
13:44C	Practice of audiology and speech-language pathology	19 N.J.R. 1412(a)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)	Expired	
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-21, 22	Sale of Kosher food and food products	19 N.J.R. 1060(a)	R.1987 d.450	19 N.J.R. 2060(d)
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:46-8.3, 8.12, 8.13	Boxing rules	19 N.J.R. 1787(a)		
13:46-12.12	Compensation for physicians at boxing and wrestling shows	19 N.J.R. 1179(b)	R.1987 d.386	19 N.J.R. 1745(a)
13:46-12.13	Boxing show hygiene	19 N.J.R. 1886(b)		
13:47A-1-8, 11	Bureau of Securities rules	19 N.J.R. 1417(a)	R.1987 d.390	19 N.J.R. 1824(a)
13:47C:2.1	Meat, poultry, fish and shellfish sold by net weight	19 N.J.R. 1787(b)		
13:70-1.30	Thoroughbred racing: horsemen associations	19 N.J.R. 1418(a)		
13:70-12.1, 12.37	Thoroughbred racing: open claiming	19 N.J.R. 1419(a)	R.1987 d.420	19 N.J.R. 1911(a)
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 1788(a)		
13:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)		
13:71-14.1, 14.36	Harness racing: open claiming	19 N.J.R. 1419(b)	R.1987 d.421	19 N.J.R. 1911(b)
13:71-20.23	Harness racing: registration of nerved horses	19 N.J.R. 919(a)		
13:76-1.3, 3.1, 3.2, 5.1	Arson investigation training	19 N.J.R. 1788(b)		
13:77	Equitable distribution of forfeited property to law enforcement agencies	19 N.J.R. 1534(a)		

(TRANSMITTAL 1987-8, dated August 17, 1987)

PUBLIC UTILITIES—TITLE 14				
14:1-11	Board of Public Utilities: settlement conferences	19 N.J.R. 919(b)	R.1987 d.360	19 N.J.R. 1650(a)
14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
14:10-1.16	Uniform system of accounts for telephone companies	19 N.J.R. 1789(a)		
14:18-14.5, 14.6	Cable TV: notices of rate and channel line-up changes	19 N.J.R. 505(a)	R.1987 d.367	19 N.J.R. 1651(a)

(TRANSMITTAL 1987-5, dated August 17, 1987)

ENERGY—TITLE 14A				
14A:3-4.1–4.6	Energy subcode	19 N.J.R. 433(b)	R.1987 d.387	19 N.J.R. 1793(a)
14A:3-7, 9	Repeal (see 5:23-3.18)	19 N.J.R. 1862(b)		
14A:4-1.1-3.1	Solar energy property tax exemptions	19 N.J.R. 433(b)	R.1987 d.387	19 N.J.R. 1793(a)

(TRANSMITTAL 1987-2, dated April 20, 1987)

STATE—TITLE 15

(TRANSMITTAL 1987-1, dated February 17, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PUBLIC ADVOCATE—TITLE 15A				
	(TRANSMITTAL 1987-1, dated April 20, 1987)			
TRANSPORTATION—TITLE 16				
16:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
16:28-1.25, 1.79, 1.80	Speed limits along Routes 23 and 94 in Hamburg, Route 172 in New Brunswick	19 N.J.R. 1887(a)		
16:28-1.76	Speed rate on Route 15 in Morris and Sussex counties	Emergency (expires 11-14-87)	R.1987 d.411	19 N.J.R. 1839(a)
16:28-1.79	School zone on Route 94 in Frelinghuysen Township	19 N.J.R. 1288(a)	R.1987 d.378	19 N.J.R. 1745(b)
16:28A-1.5, 1.36, 1.38, 1.45	Parking restrictions along Routes 5, 57, 71, and 94	19 N.J.R. 1632(b)		
16:28A-1.7, 1.15, 1.18, 1.22, 1.32	Parking restrictions along U.S. 9, Routes 23, 27, 31, and U.S. 46	19 N.J.R. 1633(a)		
16:28A-1.9	No parking zones along Route 17 in Rutherford and Lyndhurst	19 N.J.R. 1420(a)	R.1987 d.414	19 N.J.R. 1912(a)
16:28A-1.10	Bus stop zones along Route 20 in East Rutherford	19 N.J.R. 1074(a)	R.1987 d.356	19 N.J.R. 1652(a)
16:28A-1.11, 1.33, 1.61	No parking zones along Routes 21 in Newark, 47 in Franklin, and U.S. 9W in Alpine	19 N.J.R. 1888(a)		
16:28A-1.15, 1.19	No parking zones along Route 23 in Pequannock and Route 28 in Garwood	19 N.J.R. 1889(a)		
16:28A-1.21, 1.31, 1.68	Bus stop zones along U.S. 30 in Waterford, N.J. 45 in Mannington, and N.J. 93 in Palisades Park	19 N.J.R. 1537(a)	R.1987 d.416	19 N.J.R. 1912(b)
16:28A-1.32	Bus stop zones along U.S. 46 in Denville	19 N.J.R. 1180(a)	R.1987 d.357	19 N.J.R. 1653(a)
16:29-1.67	No passing zones along U.S. 130 in Salem and Gloucester counties	19 N.J.R. 1420(b)	R.1987 d.413	19 N.J.R. 1913(a)
16:30	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
16:30-3.1	Lane usage on Route 35 in Ocean County	19 N.J.R. 1332(a)	R.1987 d.377	19 N.J.R. 1745(c)
16:30-10.5	Midblock crosswalk on Route 29 in Stockton	19 N.J.R. 1421(a)	R.1987 d.412	19 N.J.R. 1913(b)
16:41	Permits for use of or work upon highway rights-of-way	19 N.J.R. 1074(b)	R.1987 d.347	19 N.J.R. 1653(b)
16:44-1.1	Contract administration: composition of Pre-qualification Committee	19 N.J.R. 1634(a)		
16:56-4.1	Airport safety improvement loans: correction to text	———	———	19 N.J.R. 1749(a)
16:56-4.1, 11.2	Airport safety improvement aid	19 N.J.R. 1634(b)		
16:73-1.1, 2.1–2.4, 3.2	NJ TRANSIT: Reduced fare program for the elderly and handicapped	19 N.J.R. 1289(a)	R.1987 d.381	19 N.J.R. 1746(a)
	(TRANSMITTAL 1987-7, dated August 17, 1987)			
TREASURY-GENERAL—TITLE 17				
17:2-3.3	PERS: contributory insurance rate	19 N.J.R. 1636(a)		
17:2-4.4	Public Employees' Retirement System: accrual of loan interest	19 N.J.R. 194(a)		
17:9-6.1	State Health Benefits Program: coverage after retirement	19 N.J.R. 1636(b)		
17:20-7	Payment of State Lottery prizes	19 N.J.R. 1889(b)		
17:30	Urban Enterprise Zone Authority: comment period reopened	19 N.J.R. 354(a)		
17:32	Municipal and county cross-acceptance of State Development and Redevelopment Plan	19 N.J.R. 509(a)	Withdrawn	
	(TRANSMITTAL 1987-8, dated August 17, 1987)			
TREASURY-TAXATION—TITLE 18				
18:3-2.1	Tax rate on wine produced from New Jersey grapes	19 N.J.R. 1181(a)		
18:5-3.6	Purchase of cigarette revenue stamps	18 N.J.R. 2378(b)		
18:12-7.4	Homestead rebate and residents of continuing care retirement communities	19 N.J.R. 1637(a)		
18:15-1.1	Woodland management plan: correction to proposal	19 N.J.R. 1640(a)		
18:15-1.1, 2.7–2.14	Farmland assessment: woodland in agricultural use	19 N.J.R. 1538(a)		
18:15-1.1, 2.7–2.14	Woodland in agricultural use: operative date	19 N.J.R. 1640(b)		
18:24-7.8	Sales of motor vehicles to military personnel stationed in State	19 N.J.R. 1181(b)		
18:35-1.13	Sale of principal residence	19 N.J.R. 1182(a)		
18:38	Litter control tax	19 N.J.R. 400(b)		
18:39-1	Tax amnesty	19 N.J.R. 1075(a)	R.1987 d.353	19 N.J.R. 1654(a)
	(TRANSMITTAL 1987-4, dated August 17, 1987)			
TITLE 19—OTHER AGENCIES				
19:3-1.1, 1.2, 1.4, 1.6	Hackensack Meadowlands development: Application review fees	19 N.J.R. 1540(a)	R.1987 d.422	19 N.J.R. 1913(c)
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:8-7.1	Public records of Highway Authority: copy fees	19 N.J.R. 1428(a)	R.1987 d.391	19 N.J.R. 1825(a)
19:8-7.3	State Police accident reports: copy fee	19 N.J.R. 1429(a)	R.1987 d.393	19 N.J.R. 1825(b)
19:8-8.4	Fee for oversize vehicle permit	19 N.J.R. 1429(b)	R.1987 d.392	19 N.J.R. 1826(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:9-1.6	Sleeping in parked vehicles	19 N.J.R. 1637(b)		
19:17-2.1, 3.1-4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		
19:25-19.3	Personal financial disclosure: reporting of earned income	19 N.J.R. 1541(a)		

(TRANSMITTAL 1987-5, dated August 17, 1987)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-1.2	Affiliation and slot machine mix	19 N.J.R. 1890(a)		
19:44-8.3	Minibaccarat training	18 N.J.R. 2322(a)	R.1987 d.424	19 N.J.R. 1914(a)
19:45-1.1	Affiliation and slot machine mix	19 N.J.R. 1890(a)		
19:45-1.12	Minibaccarat	19 N.J.R. 54(b)	R.1987 d.395	19 N.J.R. 1826(b)
19:45-1.17	Storage of emergency drop boxes	19 N.J.R. 1290(a)		
19:45-1.32, 1.43	Hard count room procedures: deferral of operative date	18 N.J.R. 1929(a)	R.1987 d.277	19 N.J.R. 1656(a)
19:45-1.33	Accuracy procedures for currency counting machines	19 N.J.R. 923(a)	R.1987 d.428	19 N.J.R. 2065(a)
19:46-1.12	Minibaccarat	19 N.J.R. 54(b)	R.1987 d.395	19 N.J.R. 1826(b)
19:46-1.12	Minibaccarat: correction	19 N.J.R. 54(b)	R.1987 d.395	19 N.J.R. 1914(b)
19:46-1.32	Affiliation and slot machine mix	19 N.J.R. 1890(a)		
19:47-1.11	Rules of the games: craps	19 N.J.R. 1542(a)		
19:47-5.3	Roulette and "no more bets" procedure	19 N.J.R. 1638(a)		
19:47-7.7	Minibaccarat	19 N.J.R. 54(b)	R.1987 d.395	19 N.J.R. 1826(b)
19:47-8.2	Big Six minimum wagers	19 N.J.R. 858(b)	R.1987 d.433	19 N.J.R. 2066(a)
19:50-1.6	Security of alcoholic beverages	18 N.J.R. 2323(a)		
19:53-1.3, 1.13	Casino licensee's EEO/AA office	19 N.J.R. 1638(b)		
19:53-1.5	Pre-proposal: Affirmative action employment goals for handicapped or disabled persons	19 N.J.R. 1182(a)		
19:54-2.2	Affiliation and slot machine mix	19 N.J.R. 1890(a)		

(TRANSMITTAL 1987-5, dated August 17, 1987)