

NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 18, 1987.
 See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED JUNE 15, 1987.

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **August 5, 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.

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NEW JERSEY REGISTER

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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.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Exceptions

Proposed Amendment: N.J.A.C. 1:1-18.4

Authorized By: Ronald I. Parker, Acting Director,
Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1987-236.

Submit comments by August 5, 1987 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building No. 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Office of Administrative Law (OAL) recently adopted new Uniform Administrative Procedure Rules which became operative July 1, 1987 (see 19 N.J.R. 715(a)). N.J.A.C. 1:1-18.4 is part of that adoption. An amendment has become necessary, however, because of a recent Appellate Division decision involving exceptions to initial decisions, *In re: Morrison*, 216 N.J. Super. 143 (App. Div. 1987).

Morrison requires an excepting party challenging material and genuine fact findings by an Administrative Law Judge (ALJ) to supply the reviewing agency with relevant portions of the hearing transcript. It also imposes an obligation on the agency in such cases to review the transcript before rendering its final decision. If a transcript was required but not supplied, the agency head may disregard a party's exceptions relating to the omission.

The proposed amendment of N.J.A.C. 1:1-18.4 attempts to incorporate *Morrison* into the existing rule governing exceptions. Consequently, the amendment adds the requirement that parties filing exceptions to factual findings "including whatever portions of the transcript or hearing tapes which are relevant and material to the contentions raised by the exceptions". If the excepting party's adversary believes the submitted transcript portion is misleading or taken out of context, he or she may supply additional portions with the reply permitted by N.J.A.C. 1:1-18.4(d).

Although *Morrison* does not mention the use of hearing tapes, as opposed to written transcripts, the OAL has decided to include that option in the rule. This will help ease the financial burden of complying with *Morrison*, which could discourage some parties from exercising their right to file exceptions. The OAL audiotapes many hearings and copies of the tapes may be obtained by submitting blank cassettes to the OAL Clerk (See N.J.A.C. 1:1-14.11(b)).

Social Impact

The proposed amendment will facilitate compliance with a recently announced court ruling, *In re: Morrison*. The amendment informs parties in OAL cases that they must submit transcripts along with exceptions to factual findings contained in ALJ initial decisions.

Economic Impact

The proposed amendment will require some State agencies and private parties litigating before the OAL to purchase transcripts to challenge an ALJ's fact finding. However, the amendment simply implements *In re: Morrison* and has no independent economic effect. Whether or not the OAL adopts this rule, parties will have to purchase transcripts because of *Morrison*. This practice will increase the cost of administrative proceedings. The OAL is not sure how large of an increase will result. Because of this expectation, the OAL rule permits the use of hearing tapes instead of written transcripts. This may ease some of the financial burden created by the *Morrison* ruling. However, since the OAL does not audiotape all hearings, this alternative to the more costly transcript will not be available in all cases.

Regulatory Flexibility Statement

This proposed amendment does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The proposal primarily implements a court ruling dealing with exceptions to initial decisions. Insofar as small businesses may at times be parties to OAL hearings and be in a position to file exceptions, the proposal affects them no differently than other parties and imposes no requirements other than those already mandated by *In re: Morrison*.

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

1:1-18.4 Exceptions; replies

(a) (No change.)

(b) The exceptions shall:

1.-2. (No change.)

3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary evidence relied upon[.] **and shall include whatever portions of the transcript or hearing tapes which are relevant and material to the contentions raised by the exceptions. If hearing tapes are submitted, the excepting party must designate as specifically as possible the relevant portions by hearing date, tape number and side.** Exceptions to conclusions of law shall set forth the authorities relied upon.

(c)-(e) (No change.)

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Soil and Water Conservation Cost-Sharing

Proposed Amendment: N.J.A.C. 2:76-5.3

Proposed New Rule: N.J.A.C. 2:76-5.8

Authorized By: Arthur R. Brown, Chairman, State Agriculture
Development Committee.

Authority: N.J.S.A. 4:1C-5f, 4:1C-8 and 4:1C-24.

Proposal Number: PRN 1987-240.

Submit comments by August 5, 1987 to:

Donald D. Applegate, Executive Director
The State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

One of the primary provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, is to provide for funding of soil and water conservation projects on agricultural lands enrolled in a farmland preservation program or a municipally approved farmland preservation program. Qualified landowners or authorized farm operators are eligible to apply for cost-share assistance from the State for soil and water conservation projects. Soil and water conservation projects are projects that are designed for the control and prevention of soil erosion and sediment damages; the control of pollution on agricultural lands; the impoundment, storage and management of water for agricultural purposes; or the improved management of land and soils to achieve maximum agricultural productivity.

The current rule, N.J.A.C. 2:76-5.3(b)1, states that the Committee shall dedicate \$4.9 million of the \$50 million from the Farmland Preservation Bond Act of 1981 for the provision of grants to landowners for approved soil and water conservation projects. The proposed amendment would increase the amount dedicated by the Committee to \$6 million. The proposed amendment would not alter the restriction that no more than 25 percent of the total amount dedicated for soil and water conservation projects shall be aggregately obligated for approved projects in any one county. However, because the total amount of funds available for soil and water conservation cost-sharing has been raised by \$1.1 million, the impact will be that additional funds may be available for a county which may have reached that 25 percent limit.

The proposed new rule, N.J.A.C. 2:76-5.8, establishes procedures pertaining to the allocation of soil and water cost-share eligibility after subdivision of lands enrolled in eight-year farmland preservation programs. At present, the allocation of eligible funds is determined according to common deed ownership and on a per acre basis according to a formula outlined in N.J.A.C. 2:76-5.3(b). Upon subdivision of the land, funds which have not been used to install soil and water conservation practices must be allocated among the subdivided tracts.

The proposed new rule will provide guidance to landowners and administrators in the Agriculture Retention and Development Program when landowner wishes to subdivide property on which eligible funds are still allocated. The Committee established these procedures by policy in September, 1986.

Social Impact

The proposed amendment will have a positive social impact throughout the agricultural community by increasing the total amount of funds dedicated to soil and water conservation projects. Soil and water conservation projects encourage farmers to install the proper soil and water conservation measures on their lands. Incorporating these practices into a technically sound farm conservation plan will increase crop production and enhance and protect lands.

The social impact of the proposed new rule will be to distribute equitably the remaining eligible funds allocated to lands enrolled in eight-year farmland preservation programs. Individuals purchasing such land will be assured of the amount of funds allocated among the subdivided tracts.

Economic Impact

The proposed amendment will have a positive economic impact on the Garden State by encouraging farmers to continue to invest in their agricultural operations. The proposed amendment will increase the amount of funds available for the installation of soil and water conservation practices, which not only conserve soil and water resources but improve the overall efficiency, productivity and profitability of farm enterprises. As a result, these operations will be less likely to go out of business due to economic pressures and will remain viable even beyond the eight-year program.

The proposed new rule will equitably distribute eligible soil and water conservation cost-share funds allocated to lands enrolled in eight-year farmland preservation programs which have been subdivided and resold to new owners.

Regulatory Flexibility Statement

The proposed amendment and proposed new rule primarily affects farmers, most of which are small businesses; however, the proposal does not impose any reporting, recordkeeping, or other compliance requirements on farmers. The purpose of the amendment and new rule is to increase the funds available in the grant program, thus benefitting qualified landowners, and to establish procedures for allocating grant money when the property receiving grant funds is subdivided.

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

2:76-5.3 Approved practices and cost-share provisions

(a) (No change.)

(b) The following cost-share provisions shall be applicable for soil and water conservation projects:

1. The State Agriculture Development Committee shall dedicate **\$6.0** [\$4.9] million from the fund for the purpose of providing grants to landowners for approved soil and water conservation projects.

i. No more than 25 percent of the **\$6.0** [\$4.9] million dedicated for soil and water conservation projects shall be aggregately obligated for approved projects in any one county.

2.-3. (No change.)

2:76-5.8 Allocation of soil and water cost-share eligibility after subdivision

(a) A subdivision for change of ownership of any lands under common deed of ownership shall affect eligibility for soil and water conservation project cost-share grants as follows:

1. Subdivision(s) of the land(s) in a program will not alter the total eligibility for soil and water cost-share funding as determined at program enrollment.

2. That portion of the original eligible amount not already obligated and/or expended for specific projects shall be reallocated pro rate on a per acre basis among the parcels.

3. Funds obligated for specific projects at time of sale or subdivision that lapse under the provisions of N.J.A.C. 2:76-5.3(b)3 shall be reallocated as eligible funds according to (a)2 above.

BANKING

(a)

DIVISION OF BANKING

Borrowing Limitation of a Director and/or Executive Officer

Proposed New Rule: N.J.A.C. 3:11-7.10

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

Authority: N.J.S.A. 17:9A-71 and 17:9A-72.

Proposal Number: PRN 1987-241.

Submit comments by August 5, 1987 to:

Roger F. Wagner
Deputy Commissioner
Division of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the provisions of N.J.S.A. 17:9A-71 and 17:9A-72, the legislature has established limitations as to the amount of funds which an institution may lend to its executive officers, directors and corporations or partnerships in which such individuals have an interest. Included in the law is a provision which grants the Commissioner of the Department of Banking the authority to make, amend or repeal rules increasing or decreasing the total amount in which a director or executive officer of a bank may become liable to the bank. In considering changes in the limitations, the rules are to be directed toward creating and maintaining a substantial parity between State chartered banks and national banks.

The law granting the Commissioner authority to modify the lending limitations relative to directors, and also indirect obligations of executive officers, was included in an omnibus banking bill (Senate Bill No. 2350, P.L. 1985, c.528) signed into law on January 21, 1986. At that time, and to the present, the aggregate lending limitation to a director and/or an executive officer combined with any liabilities of any controlled corporations or partnerships was 10 percent of the capital funds of the bank.

Since April of 1983, the Comptroller of the Currency has allowed directors and/or executive officers of national banks to combine direct borrowings with obligations of controlled corporations or partnerships to an aggregate borrowing level of up to a maximum of 15 percent of capital funds (unsecured) and an additional 10 percent of capital funds (secured).

There have been a number of individual institutional request for the Commissioner to institute a parity rule in this area and a request by the New Jersey Bankers Association on behalf of its State member banks to adopt a parity rule.

Prior to the adoption of the aforementioned omnibus bill, the Commissioner had the authority to grant parity to State chartered banks as to direct loans to executive officers, exclusive of borrowings through corporation or partnership interests. In January of 1984, the Commissioner, in line with changes adopted by the Comptroller of the Currency relative to national banks, amended N.J.A.C. 3:6-3, increasing the direct lending limitations to an executive officer of a bank from \$10,000 to \$25,000 or 2.5 percent of the capital funds of the bank, whichever is greater, with an overall cap of \$100,000. Therefore, as to this direct lending area, there exists parity between State and nationally chartered banks.

In line with the direction contained in the law and in response to the industry requests for parity in this area, the Commissioner is proposing this new rule which will institute parity with national banks. The proposed increase in the limitation will merely bring this form of borrowing up to the same level as has been currently allowed to similar individuals in national banks and to all general borrowers at State banks since May of 1983.

Social Impact

The proposed rule should have no negative social impact but should allow State chartered banks to offer executive officers and directors similar borrowing opportunities that are available to their counterparts in national banks. The rule may also allow banks to attract individuals who might otherwise be reluctant to serve on the bank board if they had to reduce banking relationships which as a private customer of the bank would be available.

Economic Impact

There will be no negative impact through the adoption of this rule; however, there could be a positive economic impact. There are instances where a bank must sell-off or participate out good loans which under the present restraints exceed the allowable cap. With the increased cap, such excess loans may be retained by the bank and, therefore, it will benefit from the full earnings generated by the obligation.

Regulatory Flexibility Statement

Although the proposed rule may affect small businesses as defined in the Regulatory Flexibility Act, P.L. 1986, c.169, the rule will not result in any change in reporting, recordkeeping or other compliance requirements on any small businesses. The Department believes that the benefits resulting from the proposed new rule should apply to both small and large businesses alike.

Full text of the proposed new rule follows:

3:11-7.10 Borrowing limitation of a director, executive officer and/or related interests

(a) The 10 percent liability limitation prescribed in N.J.S.A. 17:9A-72B(4) is increased so that a bank may extend credit to a director or to a corporation in which such director or an executive officer has a controlling interest, or in which such director or executive officer together with one or more other directors or executive officers has a controlling interest, or to a partnership in which such director or executive officer is a partner, if the proposed liability will not cause the total of the liabilities of the director or executive officer, and the liabilities of each corporation in which such director has a controlling interest, or in which such director or executive officer together with one or more other directors or executive officers has a controlling interest, and the liabilities of each partnership in which such director or executive officer is a partner, to exceed 25 percent of the amount of capital funds of the bank, as defined in Section 60 of P.L. 1948, c.67 (N.J.S.A. 17:9A-60) and the rules adopted pursuant thereto; provided, however, that all amounts in excess of 15 percent of the capital funds of the bank shall be fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of funds outstanding in excess of said 15 percent.

(b) The maximum liability of an executive officer, exclusive of the corporate and partnership liabilities set out in (a) above are as limited in N.J.A.C. 3:6-3.2.

COMMUNITY AFFAIRS**(a)****NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY****Return on Equity****Proposed New Rule: N.J.A.C. 5:80-3**

Authorized By: New Jersey Housing and Mortgage Finance

Agency, James L. Logue, III, Executive Director/Secretary.

Authority: N.J.S.A. 55:14K-5g and 55:14K-7a(6).

Proposal Number: PRN 1987-248.

Submit comments by August 5, 1987 to:

Shirley Eisenman Allen, Director
Division of Policy Development
New Jersey Housing and Mortgage Finance Agency
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency serves as an advocate for promoting the supply, construction, rehabilitation and improvement of adequate and affordable housing in the State. To fulfill its objective, the Agency acts as a mortgage lender to housing sponsors who wish to construct, rehabilitate or improve housing projects for low and moderate income citizens. Housing sponsors, organized for profit, are required to make equity contributions toward such housing projects. The proposed new rules establish the method for calculating the amount of equity contributed by sponsors and the amount of return sponsors may earn on that equity.

Social Impact

The return on equity rules assist the Agency with its role of ensuring the continued viability of housing projects financed by the Agency. By regulating the amount of return and restricting payment of returns to surplus cash, the Agency can help ensure that rents remain affordable, and that the project remains safe, decent and habitable. This, in turn, benefits the health, welfare and safety of the tenants residing at such housing projects.

Economic Impact

The return on equity rules assist the Agency with its role of ensuring the financial stability of housing projects financed by the Agency. By regulating the amount of return, the Agency can help ensure that operating expenses of the project are met and, at the same time, that sponsors earn a reasonable return on their investment. The rules also impact on the bonds issued by the Agency in financing housing projects. The Agency has issued over \$1.2 billion in loans for housing projects. By restricting payment of returns to surplus cash, the Agency can help ensure that sponsors pay-off their mortgage loans to the Agency. This, in turn, enables the Agency to make its payments on the bonds it has issued.

Regulatory Flexibility Statement

As these proposed rules govern the rate of return housing sponsors can earn on their investment in a housing project financed by the Agency and do not affect small businesses, the Regulatory Flexibility Act, P.L. 1986 c.169, does not apply and a flexibility analysis is not required.

Full text of the proposed new rules follows.

SUBCHAPTER 3. RETURN ON EQUITY**5:80-3.1 Authority**

This subchapter is promulgated pursuant to authority of N.J.S.A. 55:14K-5g and N.J.S.A. 55:14K-7a(6).

5:80-3.2 Housing projects prior to January 17, 1984

For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

5:80-3.3 Housing projects on or after January 17, 1984

(a) For each eligible loan made by the Agency on or after January 17, 1984 for a Housing Project, the Agency shall determine, at the time of initial mortgage closing, the investment made by the Housing Sponsor.

1. Investment shall include:

- i. Actual cash or cash equivalent as determined by the Agency;
- ii. Professional fees pledged toward approved project cost;
- iii. Any grants and/or loans procured by the Sponsor to the extent they are applied to Agency approved project costs and to the extent they are not repayable from project funds;
- iv. Any additional cash contributions made by the Housing Sponsor subsequent to initial closing if such contributions were utilized for project costs approved by the Agency.

2. Increases in project value, as determined by an Agency approved appraisal, may also be recognized as part of this investment.

3. The Housing Sponsor shall be entitled to return on its investment except for funds procured through grants or loans at rates established in accordance with (b) below. It shall earn a return on any cash portion of its investment from the date it is actually contributed and on the non-cash portion of its investment from the date it is utilized towards approved project costs.

(b) For Housing Projects which receive a loan from the Agency on or after January 17, 1984, the Agency shall fix, at the time of the making of the loan, the rate of return which may be earned or received by the Housing Sponsor on its investment on a cumulative but not compounded annual basis from the development, operation, sale, assignment or lease of the Housing Project according to the following schedule:

1. The Base Rate to be used in calculating the return on equity pursuant to 2 through 6 below, shall be equal to the rate being paid on 30-year treasury bonds at the time of the mortgage closing. This Base Rate will be determined by the Agency in its sole discretion using any reasonable source of information;

2. For units occupied by individuals or families who at the time of occupancy have a household income which is less than 50 percent of the median income for the area in which the project is located, the annual rate of return on investment may not exceed the then applicable base rate plus six percent;

3. For units occupied by families or individuals who at the time of occupancy had a total household income of less than 80 percent of the median income for the area, the annual rate of return on investment may not exceed the base rate plus four percent;

4. For all other units financed by the Agency, the annual rate of return on investment may not exceed the base rate plus two percent;

5. For developments which have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit on the rate of return which may be earned by the Housing Sponsor by pro-rating the rate of return based upon the number of units devoted to the various income levels;

6. If the Agency determines that as a result of restrictions on development costs, rents or other factors, that the actual amount of return on equity which can be paid in any year will be significantly below that allowed by the Agency pursuant to 2 through 5 above, the Agency may set a return on equity limit which may be paid or earned on an annual, cumulative but not compounded basis, not to exceed the base rate plus 10 percent.

5:80-3.4 Conditions required for distribution

(a) The following conditions must be met before a return on equity will be authorized by the Agency:

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;

2. The project must be current in all financial obligations including debt service, repair and replacement reserve, tax and insurance escrows;

3. All required reports and statements must be submitted by the Housing Sponsor;

4. Surplus cash must be available at the time of the request;

5. The Housing Sponsor must utilize forms as required by the Agency when requesting a return on equity;

(b) The requirement of a final mortgage closing prior to receiving a return on equity may be waived by the Executive Director of the Agency if it is determined that the closing is being delayed due to circumstances beyond the control of the Housing Sponsor, (for example, construction litigation). In addition to the need for such a determination, in order to have such requirement waived, the Housing Sponsor must complete the following to the satisfaction of the Executive Director of the Agency.

1. Submission of Development Cost Certification.

2. Submission of Bank Statements on the Construction Loan Account.

3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs which are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

5:80-3.5 Waiver

If the Agency grants any waiver pursuant to N.J.A.C. 5:80-19 which by its nature affects a rate of return established by this subchapter, then the Agency in granting such waiver will establish a revised rate of return for any affected project.

EDUCATION

STATE BOARD OF EDUCATION

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

Submit comments by August 5, 1987 to:

Patricia Joseph, Rules Analyst
Department of Education
225 West State Street, CN-500
Trenton, New Jersey 08625

(a)

Bilingual Education

Proposed Amendments: N.J.A.C. 6:31-1.1 through 1.10, 1.12 through 1.16

Authority: N.J.S.A. 18A:1-1, 4-15, 35-15 to 26, 7A-1 et seq.

Proposal Number: PRN 1987-246.

The agency proposal follows:

Summary

Recognizing that the new, more rigorous state graduation testing program would have considerable impact upon the growing number of limited English proficient pupils who enter New Jersey schools later in their school career, a special policy regarding graduation requirements for these pupils has been adopted by the State Board of Education. This policy allows for alternate assessment of communications and computation skills under the special review assessment, while requiring at that same time that pupils demonstrate they have attained a certain level of mastery of the English language.

Thus, under this policy late entering pupils of limited English proficiency are to demonstrate they are fluent in English on the **Maculaitis Assessment Program** (MAC:9-12) in order to be eligible to receive a state-endorsed diploma. This rule change would require districts to administer the state adopted English language fluency test, the Maculaitis test, at the time the pupils enroll in New Jersey schools and annually thereafter until they achieve the passing level of fluency or pass the High School Proficiency Test.

Additionally, the criteria for exit from a bilingual or English as a second language (ESL) program have been changed. Current exit criteria call for multiple indicators including a passing score on an English language proficiency test, as well as demonstration of successful academic work in English. The proposed amendment will allow pupils to exit once they attain a passing score on an English language proficiency test.

A review of the existing rules and proposed amendments follows:

N.J.A.C. 6:31-1.1 Definitions:

In this section, the term "English language fluency has been added. English language fluency is different from English language proficiency; it is the level of language skill that must be attained by limited English proficient pupils who enter New Jersey schools in grade nine or later as part of the special review assessment process in order to be eligible for graduation. The term "parent(s)" has also been added. The term "exit criteria" has been amended limiting these criteria to attainment of a passing score on an English language proficiency test. No other definitions have been amended.

N.J.A.C. 6:31-1.2 Identification of eligible participants:

This section prescribes the procedures to be followed in order to identify pupils of limited English speaking ability. Additionally, pupils who enter New Jersey schools after grade eight who are identified as having limited English speaking ability are to be administered the **Maculaitis Assessment Program** at the time of enrollment to determine their level of English language fluency. Furthermore, they are to be given this test each year thereafter until they pass the High School Proficiency Test (HSPT) or satisfy all other requirements to graduate from high school. This will provide both pupils and teachers with needed information regarding their progress toward attaining the level of English fluency required for graduation from high school.

N.J.A.C. 6:31-1.3 Bilingual education program:

In order to ensure that all educational opportunities are extended and special educational needs are met, districts are required to develop services and programs to address special educational needs of pupils of limited English speaking ability.

N.J.A.C. 6:31-1.4 Programs for English proficiency:

English as a second language programs must be established whenever there are 10 or more pupils of limited English speaking ability. In addition to requiring districts to develop formal curricula for English as a second language, there is also a provision for addressing special needs of limited English speaking pupils in the program.

N.J.A.C. 6:31-1.7 Administration and supervision:

School districts must assure adequate administration and supervision of bilingual and English as a second language program.

N.J.A.C. 6:31-1.10 Bilingual and ESL program participation:

Pupils of limited English speaking ability must be enrolled in the appropriate program until they meet exit criteria. The exit criteria would be limited to demonstration of English language proficiency on an English language proficiency test, rather than the current comprehensive review process.

In addition to the amendments discussed above, the Department has made non-substantive and technical changes throughout the text of the rules.

Social Impact

There are currently more than 6,000 pupils of limited English proficiency enrolled in New Jersey's high schools. Of that number, it is estimated that half will be eligible for the special graduation policy. They must therefore demonstrate English language fluency by meeting the State adopted standard on the Maculaitis test as part of their special review assessment if they do not pass the High School Proficiency Test (HSPT) before the end of grade 11. The administration of the Maculaitis test upon entrance and again annually will provide both the pupils and the school districts serving them with important information regarding their progress in acquiring required English language skills. This information will serve as the basis for instructional planning which will assure that all pupils have an equal opportunity to satisfy graduation standards.

Economic Impact

The **Maculaitis Assessment Program** is commercially published by Alemany Press. The responsibility for purchasing needed test materials will be incumbent upon the local district boards of education. The needed test materials per pupil are listed for \$10.75. In addition, districts will need to purchase an examiner's manual at a cost of \$18.45. Furthermore, it is recommended that the district also purchase a technical manual. Thus, the basic costs would be \$50.95 per district for administrative or examiner materials and \$10.75 per pupil. However, as the number of pupils to be tested increases the cost for pupil test materials decreases somewhat.

It is estimated that the maximum number of pupils required to be assessed with the **Maculaitis Assessment Program** during the 1988-1989 school year would be 3,400. Based on this figure, the total cost for pupil testing materials would be \$36,550. If one set of test administrator materials was purchased for every high school in New Jersey, the cost would be an additional \$18,050. Thus, the total statewide estimated cost for adopting the **Maculaitis Assessment Program** would be \$54,600. This would be borne by the individual boards of education based upon the numbers of students in their districts who enter New Jersey schools after grade eight.

Regulatory Flexibility Statement

The proposed amendment to the rules on bilingual education will have no reporting, recording or compliance requirements for small businesses. All requirements of the proposal impact upon New Jersey public schools and students.

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

6:31-1.1 Definitions

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

...

"Children of limited English speaking ability" means pupils whose native language is other than English and who have sufficient difficulty speaking, reading, writing or understanding the English language **so as to be denied** [deny the pupil] the opportunity to learn successfully in the classrooms where the language of instruction is English. This term means the same as limited English proficiency, the term used in Federal guidelines.

...

"English as a second language (ESL) program" means a developmental second language program which teaches English vocabulary and structures using second language teaching techniques[,] and incorporates the cultural aspects of the pupils' experiences in their ESL instruction.

"English language fluency" means the ability to speak the English language with sufficient structural accuracy, to use vocabulary to participate effectively in most formal and informal conversations on practical, social and school topics, to read material for information and to complete forms and write essays and reports on familiar topics. Language fluency is not the same as language proficiency, which is the full command of language skills.

"Exit criterion [criteria]" means the criterion [those criteria that] which must be considered before a pupil may be terminated or exited from a bilingual program. The criterion [These criteria include, but are not] is [limited to,] the English language proficiency test score. [and documentation of the pupil's academic work in English.]

"Native language" means the language first acquired by the pupil[;], the language most often spoken by the pupil[;], or the language most often spoken in the pupil's home, regardless of the language spoken by the pupil.

"Parent(s)" means the natural parent(s) or the legal guardian(s), foster parent(s), surrogate parent(s) or person acting in the place of a parent with whom the pupil legally resides. Where parents are separated or divorced, parent means the person(s) who has legal custody of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

6:31-1.2 Identification of eligible participants

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

(c) **The district shall administer the Maculaitis Assessment Program (Alemany Press) to all limited English proficient pupils who enter New Jersey schools after grade eight at the time of enrollment to determine their level of English language fluency. These pupils shall be administered the Maculaitis Assessment Program annually thereafter until they achieve the passing level of fluency on the Maculaitis Assessment Program or they pass the High School Proficiency Test, in accordance with guidelines prescribed by the Department of Education.**

6:31-1.3 Bilingual education program

(a) When, at the beginning of any school year, there are within the schools of the district, 20 or more pupils of limited English speaking ability in any one language classification, the district board of education shall establish for each such classification[,] a program in bilingual education for all pupils therein[;], providing also[,] that a district board of education may establish a program in bilingual education for any language classification with less than 20 pupils.

(b) A program bilingual education may make provisions for the voluntary enrollment on a regular basis[,] of pupils whose dominant language is English[,] in order that they may acquire an understanding of the language and the cultural heritage of the pupils of limited English speaking ability for whom the particular program of bilingual education is designed, provided that no bilingual class contains a majority of pupils whose native language is English.

(c) (No change.)

(d) The bilingual program curriculum shall include the full range of required courses and activities offered on the same basis and under the same rules that apply to all pupils within the school district. In subjects and activities in which verbalization is not essential to understanding, including, but not limited to, art, music and physical education, pupils of limited English speaking ability shall participate fully with English speaking pupils in the regular class [of] or activities provided. There shall be a formal bilingual program curriculum which addresses the use of two languages within the curriculum.

(e) At the secondary level, sufficient courses and other relevant opportunities shall be offered to enable the pupil to fulfill all credits and other requirements for graduation. When sufficient numbers of pupils are not available to form a bilingual class [of] in a subject area, plans must be developed in consultation with the Department of Education to meet the needs of the pupils.

(f) Bilingual programs and services designed [the] to meet the special needs of pupils of limited English speaking ability [including,] **shall include**, but not be limited to, compensatory education, special education and vocational education services[, shall] **and** be provided by districts in accordance with N.J.S.A. 18A:7A-4.

6:31-1.4 Programs for English proficiency

(a) (No change.)

(b) Whenever there are 10 or more pupils [identified as being] of limited English speaking ability **enrolled within the schools of the district**, regard-

less of whether they speak the same native language [enrolled in a district,] those pupils shall be taught by a certified ESL teacher in an ESL program.

(c) ESL curriculum and services shall be developed to address the basic instructional needs of pupils of limited English speaking ability. ESL programs and services designed to meet the special needs of pupils of limited English speaking ability[, including] shall include, but not be limited to, compensatory education, special education and vocational training [for these pupils, shall] and be provided in accordance with N.J.S.A. 18A:7A-4.

6:31-1.5 Approval procedures

(a) (No change.)

(b) Plans submitted by districts for approval shall include information on the following:

1. Identification of pupils;
2. Program description;
3. School information;
4. Evaluation design; and
5. Evaluation data.

(c) Districts shall submit annually the Report of the Limited English Proficient Students[,] as part of the Fall Survey.

(d) Districts shall also submit annually their bilingual and ESL program budget[,] as part of the Annual Improvement Budget.

6:31-1.6 Supportive services

(a) (No change.)

(b) School districts should use full or part-time bilingual personnel to provide supportive services, [(such as counseling)], to pupils of limited English speaking ability.

6:31-1.7 Administration and supervision

(a) School districts [should] shall ensure the adequate administration and supervision of bilingual and ESL education programs.

(b) (No change.)

6:31-1.8 Inservice training

(a) Districts shall develop a plan for inservice training in the areas of bilingual and ESL education for bilingual, ESL and other program staff based on their needs.

(b) The Professional Improvement Plan of the Annual Report (N.J.S.A. 18A:7A-11(e)) shall include the needs of bilingual and ESL teachers [to] that will be addressed through inservice training.

6:31-1.9 Certification

(a) All teachers of bilingual classes shall hold a valid New Jersey teacher's certificate for the appropriate grade level and/or content area and an endorsement in bilingual education pursuant to N.J.S.A. 18A:6-[34]38 et seq. and N.J.S.A. 18A:35-15 to 26.

(b) All teachers of ESL classes shall hold a valid New Jersey teacher's certificate in English as a second language pursuant to N.J.S.A. 18A:6-[34]38 et seq. and N.J.S.A. 18A:35-15 to 26.

6:31-1.10 Bilingual and ESL program participation

(a) (No change.)

(b) Pupils enrolled in the bilingual or ESL education program shall be placed in a regular program when they have met the exit criterion [criteria established by the district in accordance with guidelines established by the Department of Education. These criteria shall include a review process that will insure the readiness of the individual pupil to function successfully in the regular program] of a passing score on the English language proficiency test. This shall take effect in the spring of 1988.

6:31-1.12 Notification

(a) No later than 10 working days after the enrollment of any pupil in a bilingual or ESL education program, the district shall notify, by mail, the parent(s) [or legal guardian] that a pupil has been enrolled in a bilingual or ESL education program. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the pupil is enrolled. The notice shall also inform the parent(s) of their right to review and discuss with district administrators the procedures and pertinent data used to identify their child as having limited English speaking ability. The notice shall also advise the parent(s) of the appeal process to be followed pursuant to N.J.S.A. 18A:6-9, if they wish to challenge the identification of their child. During the pendency of any such appeal before the commissioner, the child shall remain enrolled in the program. The notice shall be in English and in the language in which the parent(s) possess a primary speaking ability.

(b) School districts shall send progress reports to parent(s) of pupils enrolled in bilingual or ESL education programs in the same manner and frequency as progress reports are sent to parents of other pupils enrolled in the school district.

(c) Progress reports shall be written in English and in the native language of the parents of pupil(s) enrolled in the bilingual program. The progress reports for pupils enrolled in an ESL program shall be written in English and in the native language of the parent(s) unless it can be demonstrated that this requirement would place an unreasonable burden on the local school district.

6:31-1.13 Joint programs

A school district may join with any other school district(s), [or districts,] according to procedures prescribed by the Commissioner of Education with the approval of the county superintendent, to provide programs in bilingual or ESL education.

6:31-1.14 Parental involvement

(a) Each district shall provide for the maximum practicable involvement of parent(s) of pupils of limited English speaking ability in the development and [the] review of program objectives[;] and dissemination of information to and from the local school districts and communities served by the bilingual or ESL education program.

(b) Each school district implementing a bilingual education program shall establish a parent advisory committee on bilingual education on which the majority will be parent(s) of pupils of limited English speaking ability.

(c) (No change.)

6:31-1.15 [Bureau] Office of Bilingual Education

(a) There shall be established in the State Department of Education [a Bureau] an Office of Bilingual Education.

(b) The [Bureau] Office of Bilingual Education shall be charged with the following:

1.-3. (No change.)

6:31-1.16 State advisory committee on bilingual education

(a) (No change.)

(b) The committee shall advise the Department of Education and the Department of Higher Education in the formulation of policies and procedures relating to the [a]Act.

(c) The committee shall be composed of at least 15, but not more than 25 members, one of whom shall be elected chairperson. The membership shall include the following representation:

1. A minimum of two, but not more than four, parents of pupils of limited English speaking ability;

2. A minimum of three, but not more than four, persons from institutions of higher education experienced in the training of teachers of bilingual and ESL education;

3. A minimum of four, but not more than six, teachers experienced in bilingual and ESL teaching techniques;

4. A minimum of one, but not more than three, persons serving on a district board of education implementing a bilingual or ESL education program;

5. A minimum of two, but not more than four, school administrators of bilingual or ESL education programs;

6. A minimum of two, but not more than four, laymen knowledgeable in the field of bilingual and ESL education.

(a)

**State Library Assistance Programs
State Library Aid**

Proposed Amendment: N.J.A.C. 6:68-1.4

Authority: N.J.S.A. 18A:1-1, 4-15 and 74-3.

Proposal Number: PRN 1987-247.

The agency proposal follows:

Summary

The State Library Aid Law (N.J.S.A. 18A:74-3) provides State aid to municipalities and counties that support library service from municipal or county tax sources. N.J.A.C. 6:68-1 prescribes quantitative criteria for the receipt of per capita State library aid to municipalities with a municipal, association or joint library. The criteria includes governance, certification, number of employees, library materials and hours of service.

Revisions for N.J.A.C. 6:68-1 were first published in the New Jersey Register on August 7, 1975 (7 NJR 356(a)) and approved on October 9, 1975 with an error in 6:68-1.4(a)2iii (Employees).

N.J.A.C. 6:68-1.4(a)2iii states: Libraries serving populations over 50,000 must employ a minimum of one full-time professional librarian or the full-time equivalent for every 10,000 population up to 50,000 and

one additional full-time professional librarian or the full-time equivalent for each 20,000 population over 50,000 as set forth in chart B annexed hereto and made a part thereof.

Chart B

Population	Number of Full-Time Professionals
0- 9,999	0
10,000- 19,999	1
20,000- 29,999	2
30,000- 39,999	3
40,000- 49,999	4
50,000- 69,999	5
70,000- 89,999	6
90,000-109,999	7
110,000-129,999	8
130,000 and over	9 plus one additional full-time professional for each additional 10,000 population.

Chart B incorrectly states the requirement for professionals for municipalities with a population of 130,000 and over as "9 plus one additional full-time professional for each 10,000 population". The intent of the rule is to require one additional full-time professional for each 20,000 population as stated in the narrative for Chart B.

It is necessary to correct the rule in order to give full force and effect to the existing statutes.

Social Impact

Correction of the rule will eliminate any confusion to public libraries in determining eligibility requirements for the receipt of per capita State library aid.

Economic Impact

Correction of the rule will not have any new impact on municipalities with a municipal, association or joint library, since the intent rather than the error of the adoption has been followed in determining receipt of per capita State library aid.

Regulatory Flexibility Statement

The proposed correction will have no reporting, recording or compliance requirements for small businesses. All requirements of the proposal impact upon New Jersey public libraries.

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

6:68-1.4 Employees

(a) All libraries established pursuant to N.J.S.A. 40:54-1 et seq. and N.J.S.A. 40:33-1 et seq. (municipal, joint, association and county) shall meet the following minimal requirements based on the population of the area from which the library receives tax support:

1. (No change.)
2. Professional staff:
 - i.-ii. (No change.)
 - iii. Libraries serving populations over 50,000 must employ a minimum of one full-time professional librarian or the full-time equivalent for every 10,000 population up to 50,000 and one additional full-time professional librarian or the full-time equivalent for each 20,000 population over 50,000 as set forth in Chart B annexed hereto and made a part thereof.

Chart B

Population	Number of Full-Time Professionals
0- 9,999	0
10,000- 19,999	1
20,000- 29,999	2
30,000- 39,999	3
40,000- 49,999	4
50,000- 69,999	5
70,000- 89,999	6
90,000-109,999	7
110,000-129,999	8
130,000 and over	9 plus one additional full-time professional for each additional [10,000] 20,000 population.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Shellfish-Growing Water Classification

Proposed Amendments: N.J.A.C. 7:12-1.1, 1.2, 1.4, 1.5, 1.6, 1.8, and 2

Proposed Repeal: N.J.A.C. 7:12-1.3

Proposed New Rules: N.J.A.C. 7:12-2.3 and 6

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

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

DEP Docket Number: 025-87-06.

Proposal Number: PRN 1987-245.

Submit comments by August 5, 1987 to:

Donald J. Stout
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (the "Department") proposes to amend its rules on the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

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

The proposal to revise the rules falls into four categories: format and restructuring; changes in water quality; enhanced monitoring; and clarification of existing rules.

The restructuring of the rules results from changes to the National Shellfish Sanitation Program, Manual of Operation, Part I, 1986 revision adopted by the Interstate Shellfish Sanitation Conference, effective date of January 1, 1987. To be in compliance with the definitions in the revised manual, the designation of the shellfish growing waters requires adjustment and clarification. This adjustment will redesignate some waters into the Special Restricted category. The changes do not reflect an improvement in water quality.

Changes in water quality are the cause for redefining the classification of the waters in Barnegat Bay above Swan Point (290 acres Seasonal to Restricted), at Barnegat Inlet (200 acres Approved to Restricted), and the Cape Horn area of Great Bay (23 acres, Approved to Restricted).

Increased or enhanced monitoring is the basis for changing approximately 1180 acres in the Shark River from Prohibited to Special Restricted, approximately 10 acres from Prohibited to Seasonal in St. George's Thoroughfare and approximately 245 acres from Prohibited to Seasonal in the Townsend Sound area.

The proposed upgrading of approximately 460 acres of ocean water off Ocean County from Prohibited to Approved is directly related to the regionalization of the area's wastewater treatment facilities. Similarly, the proposed ocean changes off Cape May County are related to the area's regionalization efforts. A new treatment plant and collection system upgrading accounts for approximately 3350 acres being recommended for reclassification to Approved from Prohibited off Cape May Point. The condemnation of approximately 3740 Approved acres off Avalon is being made in anticipation of a new treatment facility that will come on-line in July of 1987 and will discharge treatment effluent into the area proposed to be closed. This new plant, however, will eliminate several smaller and less efficient facilities that presently discharge to the back bays.

These proposed rules will result in the reclassification of approximately 9498 acres with a net gain of approximately 992 acres. The names of the waterways and number of acres reclassified are listed below in general terms.

Chart No.	Area	Action	Acres
3	Shark River	Prohibited to Special Restricted	1180
3	Atlantic Ocean Bay Head Area	Prohibited to Approved	460
3	Barnegat Bay north off Swan Point	Seasonal to Special Restricted	290
5	Barnegat Bay—Barnegat Inlet Area	Approved to Special Restricted	200
6	Great Bay—Cape Horn area	Approved to Special Restricted	23
7	Atlantic City Black Hole Area	Prohibited to Seasonal	10
8-9	Atlantic Ocean—Avalon Area	Approved to Prohibited	3740
9	Townsend Sound and Mill Thorofare	Prohibited to Seasonal	245
9-10	Atlantic Ocean—	Prohibited to Approved	3350

Set forth below are the new totals by category that will result from the revision:

ESTUARIES AND BAYS

	Approved	Seasonal	Special Restricted	Prohibited	No. of Total
1986	280,562	19,410	11,741*	68,139	392,852
1987	280,339	19,375	43,205*	36,933	392,852

*In addition, 13,000 acres are classified Seasonal Special Restricted

OCEAN

	Approved	Prohibited	Total
1986	203,494	77,214	280,708
1987	203,564	77,144	280,708

The restructuring of the rules will cause the special permit subchapter to be recodified. In addition, the Bureau name will be updated throughout the chapter.

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

Economic Impact

The shellfish growing water reclassifications contained in this proposal represent an increase in the availability of harvest water to shellfishermen. The overall economic impact of these regulatory changes are favorable to the shellfish industry while allowing the Department to fulfill its statutory responsibility to protect the public health.

Environmental Impact

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

In addition, the demand for increased recreational, residential and commercial facilities in New Jersey's coastal zone continues to present a dilemma to environmental planners. The level of discord associated with the conflicting interests that depend upon publicly owned and managed natural resources can only be expected to increase. Therefore, the need for an objective method of evaluating the impact of man's activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis of these water quality classifications, are but one suggested method that can be utilized to quantify the impact of development.

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

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, the Department has determined that these rules will not impose reporting, recordkeeping or other compliance requirements on small business. The proposed revision delineates areas for shellfish harvesting and those areas from which shellfish cannot be harvested.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:12-1.3.

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

7:12-1.1 General provisions

(a)-(g) (No change.)

(h) Special shellfish buoys, signs, and markers showing [Condemned] areas **other than Approved** are considered to be under the control of the State as provided by RS 12:4-2 and any person who removes or destroys these buoys, signs and/or markers shall be liable to a penalty of \$60.00; or any person who damages or removes any shellfish sign, buoy, or marker showing a [Condemned] shellfish area **classified other than Approved** may be prosecuted for criminal mischief, N.J.S.A. 2C:17-3. These signs, markers and buoys are provided as a means of public information only.

(i) **Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 80th Edition, December 29, 1984; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 23rd Edition, June 1, 1985; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 22nd Edition, May 4, 1985; and Number 12304 Delaware Bay, 30th Edition, March 16, 1985. The Department of Environmental Protection hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4, 5 and 6.**

(j) **Designated areas utilized in conjunction with one of the Special Permit Programs under N.J.A.C. 7:12-9 which are leased from the State and may contain shellfish harvested from the Seasonal Special Restricted or Special Restricted area, are under the Relay Program, N.J.A.C. 7:12-9.7, and may be harvested only upon notification by the Bureau of Marine Water Classification and Analysis, Division of Water Resources. Non-leased lots within these designated areas are not available to harvest of shellfish at any time.**

7:12-1.2 Definitions

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

"Approved areas" means water meeting the sanitary standards for approved shellfish harvesting as recommended by the [National Shellfish Sanitation Program] **Interstate Shellfish Sanitation Conference**. Waters not classified as [condemned] **Prohibited**, [s]Special [r]Restricted, **Seasonal Special Restricted**, or [s] Seasonal shall be considered [a]Approved for the harvest of shellfish.

"Condemned areas" means waters not meeting the established sanitary standards as recommended by the [National Shellfish Sanitation Program of the Federal Food and Drug Administration] **Interstate Shellfish Sanitation Conference**. **Condemned areas are comprised of the following classifications: Prohibited, Special Restricted, Seasonal Special Restricted and Seasonal.**

"Department maintained markers" means any special shellfish buoy, range, stake or marker maintained by the Department of Environmental Protection, for the purpose of aiding in the delineation of water classified [as Condemned or Seasonally Approved] for shellfish harvesting.

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

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

"Special Restricted [A]reas" means certain [c]Condemned [waters] areas meeting specified sanitary standards as set forth by the [National Shellfish Sanitation Program] Interstate Shellfish Sanitation Conference. Application for removal of shellfish to be used for human consumption from areas classified as [s]Special [r]Restricted will be considered for transplant, transfer, relaying, and depuration/controlled purification.

"Transfer" means the movement of shellfish from leased land located in a [c]Condemned area to leased lands located in an [a]Approved area for the purposes of propagation and/or purification.

7:12-1.3 [Growing water condemnations] (Reserved)
(See repealed text in New Jersey Administrative Code.)

SUBCHAPTER 2. SHELLFISH GROWING WATER CLASSIFICATION—PROHIBITED

7:12-2.1 Shellfish growing water classification—Prohibited.

(a) The following shellfish growing waters are classified Prohibited:

1. General areas as follows:

i. All lagoons dredged for the purpose of access to property and/or the dockage of boats; and

ii. All marinas, anchorages or other places where docking or mooring facilities are provided for boats.

2. Northern New Jersey area: All the waters lying west and north of Raritan Bay, including the Raritan River, Arthur Kill, Kill Van Kull, Newark Bay, Passaic River, Hackensack River, Upper Bay, Hudson River and tributaries thereof.

3. Monmouth County area (Note that a portion is also designated as a Special Restricted area and a portion is also designated as a Seasonal Special Restricted area. See N.J.A.C. 7:12-3 and 5):

i. All those waters of Raritan Bay, Raritan River and Arthur Kill (and tributaries) lying south and west of the New Jersey/New York boundary and lying west of a line beginning on the northernmost point of land on Conaskonk Point, Union Beach, New Jersey and bearing approximately 345 degrees T to the southernmost point of land on Sequine Point, near Princess Day, Staten Island, New York, where this line terminates;

ii. All those waters of Raritan Bay and its tributaries lying south of a line beginning on the northernmost point of land on Conaskonk Point (Union Beach) and bearing approximately 092 degrees T to the northernmost point of land on Point Comfort (Keansburg) where this line terminates;

iii. All waters of Pews Creek and tributaries thereof;

iv. All waters of Compton Creek and tributaries thereof;

v. All those waters of Raritan Bay and Lower Bay enclosed by the New Jersey/New York boundary and a straight line beginning on the southwesternmost point of land on Rockaway Point, Long Island, New York and bearing approximately 222 degrees T to the northernmost point of land on Sandy Hook, New Jersey and then following the shoreline of Sandy Hook west and south to a point on the shoreline where this line intersects a line beginning at the navigation aid at Sandy Hook Point designated as Equal Interval 6 second and Vertical Beam light 38ft 15M Bell (E. Int 6 sec and VB 38ft 15M Bell) and then following this line bearing approximately 278 degrees T to the channel marker designated as GR "TC" Interrupted Quick Red Light (GR "TC" IQ R) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel, and Terminal Channel, and then following the southwesternmost boundary of the Raritan Bay East Reach Channel in a northwesterly direction until it intersects the New Jersey/New York boundary where this line terminates. (Note: This closure adjoins those Prohibited waters defined in (a)20i below); and

vi. All those waters enclosed by a line beginning where the structure (old ferry pier) forming the western extent of the Atlantic Highlands Municipal Harbor (First Avenue, Borough of Atlantic Highlands) and then following the western extent of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or rockpile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to the breakwater's easternmost extent, where it is marked by the navigation marker designated as 'Flashing light 4sec 29ft 8M' (Fl 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland where this line terminates.

4. Sea Girt area: All of Wreck Pond and tributaries thereof.

5. Manasquan River area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3): All of the Point Pleasant Canal.

6. Bay Head and Metedeconk River area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3):

i. All of Twilight Lake and its tributaries including its access channel upstream from where its mouth meets Northern Barnegat Bay or Bay Head Harbor;

ii. All those waters of Beaverdam Creek and its tributaries west of a line beginning on the southwesternmost point of land forming the eastern side of the lagoon located just west of the westernmost extent of Boat Point Drive in Point Pleasant and bearing approximately 097 degrees T to navigation marker Flashing Green light "3" (FL G "3") and then bearing approximately 210 degrees T to the easternmost point of land on Wardells Neck east of the easternmost extent of North Drive in Brick Township; and

iii. All those waters of the Metedeconk River and its tributaries west of a line beginning on the southeasternmost point of land of Wardells Neck east of the easternmost extent of South Drive in Brick Township and then bearing approximately 180 degrees T to navigation marker Flashing Red light "2" (FL R "2") and then bearing approximately 165 degrees T through navigation marker Flashing Green light "I" (FL G "I") to the shoreline in West Mantoloking where this line terminates.

7. Toms River area: All those waters of Toms River and tributaries west from a straight line beginning at Good Luck Point and bearing approximately 342 degrees T to the easternmost point of land in Dover Township where the Thomas A. Mathis Bridge (Route 37) intersects the shoreline.

8. Brigantine area (Note: A portion is also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All of Baremore Quarters inside of a line from the northern end of 10th Street South and bearing approximately 332 degrees T to 470 West Shore Drive and terminating.

9. Atlantic City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All of Clam Creek and contiguous harbors; and

ii. All of Inside Thorofare and West Canal.

10. Great Egg Harbor River (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4).

i. All Great Egg Harbor River and tributaries upstream from a line starting at a Department maintained marker at the mouth of Powell Creek and bearing approximately 248 degrees T across the river to another Department maintained marker.

11. Ocean City Area: All of the body of water known as The Lagoon (location of Coast Guard Station, Ocean City).

12. Strathmere and Sea Isle City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. An area adjacent to the Town of Strathmere inshore from a line along the western side of the Ocean Drive Bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp at the end of Bayview Avenue, Strathmere;

ii. All of the unnamed tributary to the east of Whale Creek;

iii. All of Ludlam Thorofare from a line bearing approximately 229 degrees T through Flashing Red light 120 (FL R 8ft "120") to a line bearing approximately 305 degrees T through Flashing Red light 138 (FL R 8ft "138"); and

iv. All of Sunks Creek, Mill Creek, Ware Thorofare and tributaries thereof.

13. Avalon area:

i. All those waters contained within a line from the Avalon Yacht Club proceeding in a southwest direction across the mouth of Cornell Harbor, then along that shoreline and across the mouth of Pennsylvania Harbor, then continuing along that shoreline and across the mouth of Princeton Harbor, then continuing along the eastern shoreline of Gravens Thorofare to its junction with Long Reach, then along the northeast shoreline of Long Reach in a southeasterly direction across the mouths of several lagoons, then to the end of 51st Street, Avalon, then along Ocean Drive in a northerly direction, then along 7th Street, Avalon, to the point of origin at the Avalon Yacht Club and terminating.

14. Stone Harbor area (Note: Portions are also designated as Special Restricted and Seasonal. See: N.J.A.C. 7:12-3 and 4);

i. All of the Great Channel south and east of a line from a Department maintained marker at the mouth of Muddy Hole and bearing approximately 014 degrees T to another Department maintained marker on the opposite shore.

ii. All the body of water running parallel with Seven Mile Beach, not including tributaries;

iii. All of Oldman Creek;

- iv. All of Oyster Creek;
- v. All of Scotch Bonnett;
- vi. All that creek connecting Oyster Creek and Scotch Bonnett;
- vii. All of Muddy Hole;
- viii. All of Stone Harbor Canal;
- ix. All of Hetty Creek;
- x. All of Crooked Creek;
- xi. All of Mulford Creek and the creek connecting it with Crooked Creek; and
- xii. All of Holmes Creek upstream of a line across the creek beginning at the first drainage ditch on the north bank inside the creeks' mouth.

15. Jenkins Sound:

- i. All of Jenkins Sound and Genesis Bay;
- ii. All of Nichols Channel, Dung Thorofare and Bluefish Creek;
- iii. All of Jenkins Channel and Drum Thorofare; and
- iv. All of Great Flat Thorofare.

16. The Wildwoods area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3).

- i. All of Hereford Inlet. (Note: This condemnation adjoins the closure defined in (a)20viii below);
- ii. All of Grassy Sound Channel and tributaries thereof;
- iii. All those waters lying between North Wildwood Boulevard and Jenkins Channel and Jenkins Sound, including Gravelly Run and Turtle Gut;
- iv. All of Beach Creek and tributaries thereof;
- v. All of Grassy Sound and tributaries thereof;
- vi. All of Old Turtle Thorofare and tributaries thereof;
- vii. All of Tempe Creek and tributaries thereof;
- viii. All of Cresse Creek and tributaries thereof;
- ix. All of Richardson Sound and tributaries thereof;
- x. All of Post Creek and Ottens Harbor and tributaries thereof;
- xi. All of Sunset Lake and tributaries thereof;
- xii. All of Richardson Channel and tributaries thereof;
- xiii. All of Swain Channel;
- xiv. All that unnamed body of water connecting Swain Channel and Jarvis Sound (Intracoastal waterway); and
- xv. All of Reubens Thorofare and tributaries thereof.

17. Cape May (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3):

- i. All of Upper Thorofare and tributaries thereof;
- ii. All of Middle Thorofare and tributaries thereof;
- iii. All of Lower Thorofare and tributaries thereof;
- iv. All of Skunk Sound and tributaries thereof;
- v. All of Cape Island Creek and tributaries thereof;
- vi. All of Cape May Canal and tributaries thereof; and
- vii. That area of Cape May Harbor described in N.J.A.C. 7:12-3(a)32i which lies adjacent to the U.S.C.G. harbor area inshore from a line connecting Flashing Green light number 5 (FL G 2.5 sec. "5") with can buoy number 11 (C "11").

18. Delaware Bay area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

All that portion of Delaware Bay contained within a line beginning at the pumping station at the mouth of Fishing Creek, Cape May County, bearing approximately 296 degrees T and extending into the bay for one nautical mile, then bearing approximately 199 degrees T to Flashing light number 4 (R "4" Fl R 2.5 sec) at Crowshoal, then continuing to Cape May Lighthouse and terminating. The closure includes all tributaries flowing into the above described area, including Fishing Creek, Cox Hall Creek and Pond Creek. This condemnation adjoins the closure defined in (a)20ix below.

- ii. All of Dias Creek;
- iii. All of the Bidwell Creek;
- iv. All that portion of Delaware Bay inshore of a line from the marker (Department maintained) on the point of land on the west shore of West Creek and bearing approximately 142 degrees T to the mainland south of Goshen Creek and terminating:

- (1) All of Goshen Creek and tributaries thereof;
- (2) All of Dennis Creek and tributaries thereof;
- (3) All of East Creek and tributaries thereof; and
- (4) All of West Creek and tributaries thereof;
- v. All of Riggins Ditch and tributaries thereof;
- vi. All of Maurice River and tributaries upstream of a line from the end of Berry Avenue (Shellpile) and bearing approximately 214 degrees T across the river to a Department maintained marker and terminating; and
- vii. All of Cohansey River and tributaries upstream of a line from QK Fl 24ft 5M "1" and bearing approximately 097 degrees T across the mouth, to a Department maintained marker and terminating.

19. All of the New Jersey portion of the Delaware River and tributaries thereof lying northwest of a straight line beginning at the southern dome (Salem Nuclear Power Plant) and bearing approximately 230 degrees T towards the point of land, on the southern shore, at the mouth of Blackbird Creek.

20. Atlantic Ocean:

i. All of the ocean waters east of a line connecting the northernmost point of Sandy Hook and the southwesternmost point of Rockaway Point and south of the New York State line and extending to and following the New Jersey three nautical mile jurisdiction limit in a southerly direction until it intersects a line bearing approximately 269 degrees T connecting a point with coordinates of latitude 40 degrees 20.8 minutes N., longitude 73 degrees 47.7 minutes W. (generally marked by a buoy charted as W Or "BA" Gp Fl(4) 20 sec WHISTLE marking the separation zone of the Ambrose-Barnegat traffic lane) and the radio tower located at the New Jersey Marine Police Station, 128 Ocean Avenue, Borough of Monmouth Beach, with coordinates of latitude 40 degrees 20.5 minutes N., longitude 73 degrees 58.5 minutes W., then along that line to a point 1.5 nautical miles directly offshore, then along the shoreline in a southerly direction 1.5 nautical miles offshore until it intersects a line beginning at the water tank located on 509 Monmouth Avenue, Borough of Spring Lake, with coordinates of latitude 40 degrees 08.8 minutes N., longitude 74 degrees 02.2 minutes W., and bearing approximately 085 degrees T through the dome of the Essex-Sussex Hotel, 700 Ocean Avenue, Borough of Spring Lake, with coordinates of latitude 40 degrees 08.8 minutes N., longitude 74 degrees 01.5 minutes W., then proceeding from that point of intersection in a westerly direction along that line towards the above noted dome until it is 0.5 nautical miles directly offshore, then continuing in a southerly direction 0.5 nautical miles offshore for approximately 4.2 nautical miles to a point with coordinates of latitude 40 degrees 4.7 minutes N., longitude 74 degrees 1.8 minutes W., then bearing approximately 280 degrees T to the water tank located at 1123 Burnt Tavern Road, Borough of Point Pleasant, with coordinates of latitude 40 degrees 05.0 minutes N., longitude 74 degrees, 03.9 minutes W., and terminating. This closure adjoins those Prohibited waters in (a)3v above and those Special Restricted waters defined in N.J.A.C. 7:12-3.2;

ii. All of the ocean waters inshore of a line beginning at the water tank located on Lake Avenue, Borough of Bay Head, with coordinates of latitude 40 degrees 04.1 minutes N., longitude 74 degrees 02.7 minutes W., and bearing approximately 146 degrees T for approximately 2.2 nautical miles until it intersects a line bearing approximately 056 degrees T from the water tank located on Normandy Way in the Normandy Beach section of Dover Township, with coordinates of latitude 39 degrees 59.9 minutes N., longitude 74 degrees 03.8 minutes West. This point of intersecting lines is approximately two nautical miles from the shoreline and has coordinates of latitude 40 degrees 01.6 minutes N., longitude 74 degrees 00.5 minutes West. The line then continues bearing approximately 236 degrees T (reciprocal 056 degrees T) from the point of intersection towards the above noted water tank in Normandy Beach for approximately 1.4 nautical miles until it is one nautical mile directly offshore, then continuing in a southerly direction one nautical mile offshore until it intersects a line bearing approximately 132 degrees T from the water tank located on 127 Decatur Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 56.1 minutes N., longitude 74 degrees 04.7 minutes W., then proceeding in a southeasterly direction along that line for approximately 0.6 nautical miles until it intersects a line bearing approximately 096 degrees T from the water tank located on the corner of Barnegat Avenue and 12th Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 54.9 minutes N., longitude 74 degrees 05.0 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 54.7 minutes N., longitude 74 degrees 02.7 minutes West. The lines continues from this point along the shoreline in a southerly direction 1.5 nautical miles offshore until it intersects a line bearing approximately 096 degrees T from the cupola located on top of Island Beach State Park's Maintenance Center (the old Coast Guard Station number 110), with coordinates of latitude 39 degrees 53.7 minutes N., longitude 74 degrees 04.9 minutes West. This point of intersecting lines has coordinates of latitude 39 degrees 53.6 minutes N., longitude 74 degrees 02.9 minutes West. The line continues from this point bearing approximately 218 degrees T (reciprocal 038 degrees T) to the first ocean bath house and concession building from the entrance of Island Beach State Park (approximately 3.3 statute miles south of the park's entrance) with coordinates of latitude 39 degrees 51.2 minutes N., longitude 74 degrees 05.2 minutes W., and terminating;

iii. All of the ocean waters inshore of a line beginning at the water tank located on 813 Boulevard, Borough of Surf City, with coordinates of latitude 39 degrees 39.6 minutes N., longitude 74 degrees 10.1 minutes W., and

bearing approximately 120 degrees T for approximately two nautical miles from the shoreline to a point with coordinates of latitude 39 degrees 38.6 minutes N., longitude 74 degrees 07.7 minutes W., then from this point which is approximately two nautical miles offshore, the line runs parallel to the shoreline in a southerly direction for approximately 1.2 nautical miles to a point with coordinates of latitude 39 degrees 37.7 minutes N., longitude 74 degrees 08.4 minutes W., then bearing approximately 300 degrees T for approximately 2.2 nautical miles to the water tank located on 112 West 17th Street, Borough of Ship Bottom, with coordinates of latitude 39 degrees 38.7 minutes N., longitude 74 degrees 10.8 minutes W., and terminating;

iv. All of the ocean waters inshore of a line beginning at the water tank at 44th Street and Bayshore Avenue, City of Brigantine, with coordinates of latitude 39 degrees 23.5 minutes N., longitude 74 degrees 23.8 minutes W., and bearing approximately 179 degrees T for approximately 2.5 nautical miles to a point with coordinates of latitude 39 degrees 21.0 minutes N., longitude 74 degrees 23.7 minutes W. (generally marked by a buoy charted "1" Fl G 4s GONG at the entrance to Absecon Inlet), then bearing approximately 299 degrees T (reciprocal 119 degrees T) for approximately 1.1 nautical miles towards the outermost tip of Garden Pier, Atlantic City, until it is 0.25 miles directly offshore, then parallel along the shoreline in a southwesterly direction, 0.25 nautical miles offshore, for approximately 1.2 nautical miles until it intersects a line bearing approximately 153 degrees T from the center of Convention Hall, Atlantic City, then proceeding in a southeasterly direction along that line for approximately 1.75 nautical miles to a point with coordinates of latitude 39 degrees 19.4 minutes N., longitude 74 degrees 25.1 minutes W., then from this point which is approximately 2 nautical miles offshore, the line runs parallel to the shoreline in a southwesterly direction for approximately 2.1 nautical miles to a point with coordinates of latitude 39 degrees 18.4 minutes N., longitude 74 degrees 27.5 minutes W., then bearing approximately 333 degrees T (reciprocal 153 degrees T) for approximately 1.9 nautical miles to the outermost tip of Ventnor City Fishing Pier located at the Boardwalk and South Cambridge Avenue, City of Ventnor, then along that pier to the shore and terminating. This closure adjoins those Special Restricted waters defined in N.J.A.C. 7:12-3.2(a)23i;

v. All of the ocean waters inshore of a line beginning at the base of the jetty located on the beach near the intersection of Seaspray Road and Waverly Boulevard, City of Ocean City (first stone jetty projecting into Great Egg Harbor Inlet on the northeasternmost end of the city), and continuing along that jetty in a southeasterly direction to its outermost tip, then in a general southerly direction, the line continues and connects the tips of the stone jetties projecting into the ocean until reaching the tip of the stone jetty located at the end of the 15th Street (just south of the Ocean City Fishing Club Pier), then bearing approximately 230 degrees T for approximately 2.8 nautical miles to the water tank located at 4600 Haven Avenue (46th Street intersects across from this location), Ocean City, with coordinates of latitude 39 degrees 14.3 minutes N., longitude 74 degrees 37.6 minutes W., and terminating;

vi. All of the ocean waters inshore of a line beginning at the City of Ocean City's Beach Patrol, First Aid and Rest Room Building located on the beach at 34th Street, with coordinates of latitude 39 degrees 15.0 minutes N., longitude 74 degrees 36.6 minutes W., and bearing approximately 126 degrees T for approximately 1.5 nautical miles from the shoreline to a point with coordinates of latitude 39 degrees 14.1 minutes N., longitude 74 degrees 35.0 minutes W., then bearing approximately 216 degrees T along the shoreline in a southwesterly direction 1.5 nautical miles offshore, for approximately 2.3 nautical miles to a point with coordinates of latitude 39 degrees 12.3 minutes N., longitude 74 degrees 36.7 minutes W., then bearing approximately 306 degrees T for approximately 1.4 nautical miles to the outermost tip of Anglers Fishing Club's Pier, 5825 Central Avenue, Ocean City, then along that pier to the shoreline and terminating;

vii. All of the waters east of the Ocean Drive Bridge crossing Townsend Inlet and inshore of a line beginning at the water tank located on the corner of 80th Street and Central Avenue, City of Sea Isle City, with coordinates of latitude 39 degrees 07.8 minutes N., longitude 74 degrees 42.8 minutes W., and bearing approximately 151 degrees T for approximately 2.5 nautical miles from the shoreline until it intersects a line bearing approximately 127 degrees T from the water tank located on the corner of 13th Street and Dune Drive, Borough of Avalon, with coordinates of latitude 39 degrees 06.4 minutes N., longitude 74 degrees 42.8 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 05.3 minutes N., longitude 74 degrees 40.9 minutes West. The line continues from this point along the shoreline in a southerly direction 1.5 nautical miles offshore for approximately 1.1 nautical miles until it intersects a line bearing approximately 127 degrees T from the water tank located on the corner of 38th Street and Dune Drive,

Borough of Avalon, with coordinates of latitude 39 degrees 05.5 minutes N., longitude 74 degrees 43.7 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 04.5 minutes N., longitude 74 degrees 41.9 minutes West. The line continues from this point bearing approximately 247 degrees T (reciprocal 067 degrees T) for approximately three nautical miles to the standpipe located on 95th Street between Second and Third Avenues, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.3 minutes N., longitude 74 degrees 45.6 minutes W., and terminating;

viii. All of the ocean waters inshore of a line beginning at the American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N., longitude of 74 degrees 46.2 minutes W., and bearing approximately 180 degrees T for approximately 3.4 nautical miles to a point with coordinates of latitude 38 degrees 59.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" Fl R 4sec BELL at the entrance of Hereford Inlet), then bearing approximately 246 degrees T for approximately 4.9 nautical miles to the 641 ft Fl R Lt LORAN TOWER located on the United States Coast Guard Electronic Engineering Center, Lower Township, with coordinates of latitude 38 degrees 57.0 minutes N., and longitude of 74 degrees 52.0 minutes W., and terminating. This closure adjoins those Prohibited waters defined in (a)16i above; and

ix. All those waters inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and bearing approximately 151 degrees T for approximately 0.5 nautical miles from the shoreline to a point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 74 degrees 53.0 minutes W., then parallel along the shoreline in a westerly direction, 0.5 nautical miles offshore, for approximately 1.4 nautical miles until it intersects a line bearing 166 degrees T from the water tank located on the corner of Madison Avenue and Columbia Avenue, City of Cape May, with coordinates of latitude 38 degrees 56.2 minutes N., longitude 74 degrees 54.9 minutes West. This point of intersecting lines is approximately 0.5 miles from the shoreline and has coordinates of latitude 38 degrees 55.3 minutes N., longitude 74 degrees 54.6 minutes West. Then proceeding in a southeasterly direction along that line for approximately 1.5 nautical miles to a point with coordinates of 38 degrees 53.9 minutes N., longitude 74 degrees 54.2 minutes W., then proceeding in a westerly direction two nautical miles offshore for approximately 5.7 nautical miles until it intersects a line bearing approximately 033 degrees T connecting a point with coordinates of latitude 38 degrees 54.3 minutes N., longitude 75 degrees 01.7 minutes W. (generally marked by a buoy charted as R "2" Fl R 4s) and a point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W. (generally marked by a buoy charted as R "4" Fl R 2.5sec marking the southwest side of Crow Shoal). This point of intersecting lines has coordinates of latitude 38 degrees 55.5 minutes N., longitude 75 degrees 0.7 minutes West. Then proceeding in a northeasterly direction for approximately 0.5 nautical miles to the point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W., then along the line described in (a)18i above to the Cape May Point Lighthouse (FL 15 sec. 165 ft. 24M) and terminating. This closure adjoins those Prohibited waters described in (a)18i above.

SUBCHAPTER 3. SHELLFISH GROWING WATER CLASSIFICATION—SPECIAL RESTRICTED

7:12-3.1 Use of shellfish grown in waters classified as Special Restricted for human consumption

Shellfish grown in waters classified as Special Restricted may be utilized for human consumption only pursuant to a special permit issued by Department under N.J.A.C. 7:12-9.

7:12-3.2 Shellfish growing waters that are classified as Special Restricted (a) The following shellfish growing waters are classified as Special Restricted:

1. All of Sandy Hook bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo, New Jersey (Department of the Navy, Naval Weapons Station Earle, NWS-Earle) where it intersects the shoreline and following the shoreline in a generally southeasterly direction until it reaches the structure forming the western extent of the Atlantic Highlands Municipal Harbor, and then following the western edge of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or stonepile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to its easternmost extent, where it is marked by the navigational marker

designated as 'Flashing light 4 second 29ft 8M' (Fl 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland, and then following the shoreline in a generally southeasterly direction of the westernmost extent of the Route 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on Sandy Hook, and then following the shoreline in a generally northerly direction until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) to the northernmost extent of the NWS-Earle pier, and following that line bearing approximately 262 degrees T to the northernmost extent of the NWS-Earle pier and then following the westernmost side of the pier in a southwesterly direction to this line's point of origin where the pier intersects the shoreline. (Note: This designation of Special Restricted waters adjoins those waters defined as Seasonal Special Restricted in N.J.A.C. 7:12-5 and as Special Restricted in N.J.A.C. 7:12-3.2(a)2.

2. All of the Shrewsbury River and tributaries (not including the Navesink River) south from the northernmost edge of the Route 36 Highway Bridge.

3. All of the Navesink River and tributaries.

4. All of Shark River and tributaries. This closure adjoins those Prohibited waters defined in N.J.A.C. 7:12-2.1(a)20i.

5. All of the Manasquan River and tributaries except the Point Pleasant Canal (See N.J.A.C. 7:12-2(a) 5ii). (Note: This closure adjoins those Prohibited waters defined in N.J.A.C. 7:12-2.1(a)20i).

6. Bay Head and Mantoloking area: All those waters of Northern Barnegat Bay and tributaries north of a straight line beginning on the easternmost point of land on Swan Point and bearing approximately 141 degrees T to Flashing Green light "25" (Fl G 8ft "25") off Mantoloking, and then following the east side of the inland waterway channel bearing approximately 227 degrees T to can bouy "27" (C "27") then bearing approximately 210 degrees T to the most westerly point of land on Curtis Point where this line terminates.

7. Island Beach areas: Mantoloking to Berkeley Township (Note: A portion is designated Seasonal. See N.J.A.C. 7:12-4): All those waters of Barnegat Bay and its tributaries east of a line beginning on the western most point of land on Curtis Point (Brick Township) and then bearing approximately 186 degrees T to the most westerly point of land on Dutchman's Point (just south of Mantoloking Shores), then bearing approximately 210 degrees T to Flashing Red light "2" (Fl R "2") off Normandy Beach, then bearing approximately 169 degrees T to the nearest island to the south, then along the shore of that island to its southernmost point, then bearing approximately 177 degrees T to the east tip of the two islands off Ocean Beach, continuing along the east shore of that island to its southernmost point, then bearing approximately 200 degrees T to Flashing Green light "11" (Fl G "11") off West Point Island, then bearing approximately 190 degrees T to the westernmost tip of the next (unnamed) island to the south, then bearing approximately 209 degrees T to the westernmost point of land on Pelican Island, then bearing approximately 129 degrees T to Flashing Green light "3" (Fl G "3") marking the channel to Seaside Heights, then bearing approximately 170 degrees T to the southwest corner of the bulkhead west of the Berkeley Yacht Basin, then bearing 174 degrees T to the western end of the municipal pier off 5th Avenue in Seaside Park then bearing approximately 210 degrees T to the western end of the municipal pier off 14th Avenue in Seaside Park, then bearing approximately 186 degrees T to the next point of land, then bearing approximately 178 degrees T and terminating at the next point of land at Island Beach State Park.

8. Barnegat Bay-Brick Township and Dover Township from Swan Point to Toms River (Note: A portion is also designated Seasonal. See N.J.A.C. 7:12-4):

i. All those waters of the small unnamed creek just north of Havens Cove, west from a straight line across the mouth of said creek beginning at the point of land on the south bank (forming its mouth) and bearing approximately 033 degrees T toward the mouth of a small lagoon along the north bank;

ii. All of Kettle Creek and tributaries north and west from a straight line beginning at Seaweed Point and bearing approximately 241 degrees T to Andrew Point at Green Island;

iii. All those waters of Silver Bay and its tributaries west of a straight line beginning at the southernmost point of land on Andrew Point (Green Island) and bearing approximately 181 degrees T and terminating on the most easterly point on Cattus Island Park (Ocean County);

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

v. All those waters of Shelter Cove west from a straight line connecting the points of land at its mouth, then all those waters west and north of a line from the southernmost point of land at the mouth of Shelter Cove and bearing approximately 154 degrees T to Flashing Red light "40" (Fl R

"40"), then bearing approximately 181 degrees T toward Good Luck Point and terminating at its point of intersection with the Mathis Bridge, connecting the mainland with Pelican Island; the southern boundary of this condemned area shall follow said bridge in a westward direction and terminate at its connection with the mainland shore. The bridge is a common boundary line with (a)9 below.

9. Toms River area: All of those waters forming the mouth of Toms River west from a straight line beginning at Good Luck Point and bearing approximately 353 degrees T toward the most easterly point of land at Windsor park (north of the Mathis Bridge), and terminating at its point of intersection with the Mathis Bridge; the northern boundary of this condemned area shall follow said bridge in a westward direction and terminate at its connection with the mainland shore. (Note: This designation adjoins the Prohibited waters described in N.J.A.C. 7:12-2.1(a)7.)

10. Barnegat Bay-Berkeley Township area, Toms River to Potter Creek: All the waters of Barnegat Bay and its tributaries (including all of Potter Creek) west of a line beginning on the north bank of the entrance to Good Luck Point Marina (at Good Luck Point) along the offshore ends of the piers in a southerly direction to the eastern end of Barnegat Pier, then bearing approximately 215 degrees T to Flashing Red light 4s "60" (Fl R 4s "60") north of Berkeley Shores, then bearing approximately 221 degrees T to and terminating at the most easterly point of land on the south bank of Potter Creek.

11. Barnegat Bay-Berkeley Township, Potter Creek to Sunrise Beach (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. Potter Creek to Cedar Creek area: All those waters west of a line beginning at the easternmost point of land (directly east of the terminus of Island Drive, Berkeley Township) on the south bank of Potter Creek (this point of land coincides with that described in (a)10 above and bearing approximately 182 degrees T to the northernmost point on the pier located on the northernmost point of land at Berkeley Island Park (Ocean County Park System);

ii. Cedar Creek to Laurel Harbor area: All those waters west of a line beginning at the bulkhead (located on the northeasternmost point of land at the mouth of Cedar Creek) located on the southeasternmost extent of Berkeley Island Park (Ocean County Park System) and bearing approximately 161 degrees T to the northernmost point of land on the unnamed island located just east of Laurel Harbor, and then following the eastern shoreline of this island in a southerly direction to the southernmost extent of this island, and then bearing approximately 207 degrees T to the Department maintained marker located on the northernmost point of land on the mainland (located at the northeastern extent of Laurel Boulevard in Lacy Township) and then following the shoreline in a southerly direction, and then westerly to the southernmost extent of land in Laurel Harbor (located at the southwesternmost extent of Laurel Boulevard in Lacy Township and then bearing approximately 229 degrees T to the unnamed point of land that forms the southeastern bank at the mouth of the Laurel Harbor lagoon complex where it terminates. This condemnation includes all waters of Cedar Creek and its tributaries as well as waters comprising the Laurel Harbor lagoon complex; and

iii. All those waters west (upstream) from a line beginning at the northernmost point of land, on the southern bank, that helps form the cove at the mouth of the southern lagoon complex adjacent to the community of Sunrise Beach and bearing approximately 335 degrees T to the northeasternmost telephone/electric pole (3MV, BT 36) on Capstan Drive (Sunrise Beach community), then from this pole, across the mouth of Stouts Creek, bearing approximately 352 degrees T and terminating at the small point of land on the west bank of a small unnamed creek along the opposite (northern) shore of Stouts Creek.

12. Western Barnegat Bay—Forked River to Conklin Island. (Note: A portion is designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All waters of Forked River and its tributaries west of a line beginning on the easternmost point of land immediately north of Forked River (approximate location: latitude 39 degrees 49 minutes 38 seconds N., longitude 74 degrees 9 minutes 38 seconds W.) and bearing approximately 167 degrees T to the easternmost point of land on the southern bank at the mouth of Forked River;

ii. All of Oyster Creek;

iii. All waters south and west of a line beginning on the northern bulkhead at the mouth of an unnamed lagoon (lying between Beacon Drive and Nautilus Road in Ocean Township) and bearing approximately 180 degrees T to Department maintained marker "AA" (located approximately 400 yards east of Flashing Red light "2" (Fl R "2") at the mouth of Waretown Creek) and then bearing approximately 195 degrees T to the Department maintained marker "BB" (located approximately 400 yards east of the mouth of South Harbor) and then bearing approximately 200 degrees T,

through Department maintained marker "CC", to Flashing Red light "2" (Fl R "2") marking the entrance to the Barnegat Beach lagoon system where it terminates; and

iv. All waters west and south (including all waters of Double Creek) beginning at the easternmost extent of the bulkhead (Flashing Red light "2") located along the shoreline of the Barnegat Public Dock and bearing approximately 180 degrees T to the northernmost point of land on the northwest peninsula on Conklin Island.

13. Barnegat Bay-Little Egg Harbor and Long Beach Island area; Barnegat Light to Holgate (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. An area adjacent to the Borough of Barnegat Light inshore from a line connecting jetties and/or pier ends along the shore (not including the main inlet jetties). The line extends from the end of the small jetty immediately adjacent (west) to the Barnegat Lighthouse (Aband Lt HO), and continues along that shoreline in a general southwesterly direction to the entrance of the first man-made boat harbor or lagoon currently named Lighthouse Marina, then all of those waters south and east of a line beginning at the point formed on the northern bank at the entrance to this boat harbor or lagoon and bearing approximately 227 degrees T directly through light "1" (Fl "1") to its terminus on the High Bar Peninsula;

ii. All those waters of Barnegat Bay enclosed by a line beginning on the northernmost point of land forming the northern mouth of the most northerly lagoon located between Butler and Meadow Streets in High Bar Harbor (Long Beach Township) and bearing approximately 270 degrees T to the northeasternmost point of land on the northernmost of the two island just offshore, (Edwin B. Forsythe National Wildlife Refuge-Barnegat Division) then bearing approximately 014 degrees T to the westernmost point of land at the northern extremity of the High Bar spoil area (also known as "The Dike") where this line terminates;

iii. All of Harvey Cove north and east of a straight line drawn across its entrance from the point of land forming its mouth on the southernmost bank and bearing approximately 010 degrees T to a point of land on the northern bank; and

iv. All those waters of the tributaries or creeks of Cedar Bonnet Island north of Route 72 (Manahawkin Causeway) enclosed by a line beginning on the easternmost bank at the mouth of the easternmost creek or tributary and then bearing approximately 270 degrees T to the western bank at the mouth of this tributary, and then following the shoreline easterly to the next tributary, creek, or lagoon's mouth, where it bears approximately 270 degrees T to the western bank of this body of water where it terminates.

14. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All of Cedar Creek, Manahawkin Creek and the waters adjacent to Beach Haven West (Village Harbor) north and west from a line beginning on the northern bank at the entrance to Cedar Creek and bearing approximately 150 degrees T to a small island, then bearing approximately 209 degrees T to the western end of the most westerly island along the Manahawkin Causeway, then bearing approximately 181 degrees T to the easternmost point of land on the northwest bank of Mill Creek Thorofare, then bearing approximately 174 degrees T to the northernmost point of land on Thorofare Island, then following the shoreline of Thorofare Island to its southernmost point of land, then bearing approximately 266 degrees T to its terminus on the easternmost point of land on Popular Point; and

ii. All of those waters in unnamed creek north and west of a line beginning on Oyster Point and bearing approximately 032 degrees T to its terminus on the northeast shore of the unnamed creek. This line of closure is an extension of a line (terminating on Oyster Point) defined in N.J.A.C. 7:12-4.2.

15. All of Cedar Run and tributaries west from a straight line across the creek bearing 210 degrees T from Flashing Red light number "2" (Fl R "2") in Cedar Run. (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-5.)

16. All of Westecunk Creek and tributaries west from a straight line across the creek beginning at Flashing light 4second 10ft "1" (Fl 4sec 10ft "1") at the mouth of Westecunk Creek and bearing approximately 006 degrees T to a point of land on the southern bank at the mouth of Dinner Point Creek.

17. All of Parker Run and its tributaries west (upstream) from a straight line across the creek between the peak of the Ocean County pavilion on the north bank and bearing approximately 140 degrees T to navigational aid Flashing Green light number "1" (FL G "1") on the south bank.

18. Tuckerton area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.): All of Tuckerton Creek and tributaries thereof, north and west of a straight line connecting the west and east banks of the cove

formed by the alignment of the range (Department maintained) located on the west bank of Tuckerton Cove. When the range is aligned, the bearing it creates is approximately 047 degrees T (reciprocal 227 degrees T).

19. Atlantis and Mystic Islands area:

i. All of Big Thorofare and tributaries west and/or south (upstream) of the Great Bay Boulevard bridge which crosses same; and

ii. All of Big Creek and tributaries thereof.

20. Mullica River Great Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. Mullica River and tributaries (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4): All of Mullica River and tributaries thereof, upstream from a straight line beginning at the easternmost point of Moss Point and bearing approximately 093 degrees T to the southwesternmost point of land on the north bank of the northernmost ditch (Bloody Ditch) separating Blood Point from the mainland;

ii. All of Nacote Creek and tributaries thereof;

iii. Ballanger Creek area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.):

(1) All of Ballanger Creek and tributaries upstream from a straight line connecting two Department maintained markers; and

(2) All of Winter Creek and tributaries upstream from a straight line connecting two Department maintained markers;

iv. Roundabout Creek area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.): All of Roundabout Creek and tributaries upstream from a straight line connecting two Department maintained markers;

v. All of Judies Creek and tributaries upstream from a straight line connecting two Department maintained markers (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.)

vi. All of Mott Creek and tributaries thereof;

vii. All of Oyster Creek and tributaries thereof; and

viii. All those waters of Jenny Creek, Little Thorofare and tributaries enclosed by (and south and east of) Great Bay Boulevard (Little Egg Harbor Township) and a line beginning on the shoreline immediately adjacent to navigation marker Flashing Red light "2" (Fl R "2") located on an unnamed point of land immediately east of Cape Horn and bearing approximately 270 degrees T to the easternmost point of land on Cape Horn where this line terminates.

21. Reed Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Doughty Creek and that portion of Somers Cove lying north of a line commencing at the Department maintained marker at the southeast entrance to Somers Cove and bearing approximately 274 degrees T across the cove to the Department maintained marker on the north bank of the unnamed ditch; and

ii. All of Conover Creek and tributaries thereof.

22. Brigantine area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Black Hole and St. George's Thorofare east of a line from the point on the eastern shore at the mouth of Conch Lagoon and bearing approximately 350 degrees T to the opposite shore.

23. Atlantic City-Absecon area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All of Absecon Inlet and Channel contained within a line from marker "73" and bearing approximately 224 degrees T to the point of land on the western shore at the mouth of Point Bar Thorofare, then along the shoreline of Point Bar Thorofare in a southerly direction and across the mouth of Beach Thorofare, then continuing along the shoreline in a southerly direction across the mouth of Clam Thorofare and continuing along that shoreline across Clam Creek to the seaward end of the jetty on the western shore at the mouth of Absecon Inlet, then across to the seaward end of the jetty on the eastern shore of Absecon Inlet and continuing along the shoreline of Absecon Channel to its point of origin at marker "73", including all of Little Panama, Low Water Thorofare and the intersecting unnamed thorofare (Note: This closure adjoins the closure defined in N.J.A.C. 7:12-2.1(a)20);

ii. All of Absecon Creek and adjacent Absecon Bay northwest of a line from the Department maintained marker on the northern shore of Absecon Bay and bearing approximately 216 degrees T to the Department maintained marker on the adjacent shoreline and terminating;

iii. All of Jonathan Thorofare;

iv. All of Newfound Thorofare;

v. All of Duck Thorofare;

vi. All of Clam Thorofare and the canals in Venice Park section of Atlantic City;

vii. All of Beach Thorofare from Absecon Channel to Great Egg Harbor Inlet; and

viii. All of Beach Thorofare from Absecon Channel to the Route 40 Bridge.

24. Pleasantville-Northfield-Linwood-Margate-Ventnor-Longport area (Note: A Portion is also designated as Seasonal. See N.J.A.C. 7:12-4.):

- i. All of Shelter Island waters;
- ii. All of Hospitality Creek;
- iii. All of Great Thorofare and all of Beach Thorofare from the Route 40 Bridge to a line from the tip of the stone jetty at the end of Atlantic Avenue (Longport) and bearing approximately 003 degrees T to the westernmost bulkhead in the Seaview Harbor Community at 69 Sunset Boulevard West;
- iv. All of the unnamed thorofare between Port Island and Lone Cedar Island;
- v. All of Dock Thorofare and tributaries contained within a line from the point of land on the north side of Mulberry Island (at Dock Thorofare) and bearing approximately 077 degrees T to the southeasternmost point of land on Kiah's Island, then along that shoreline in a northerly, then easterly direction to a Department maintained marker, then bearing approximately 340 degrees T to and including the unnamed creek just east of Stillman Creek, then along the shoreline of Dock Thorofare in a westerly direction including Stillman Creek and continuing along the shoreline to the point of origin at the mouth of Mulberry Thorofare and terminating; and

vi. Lakes Bay (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4.): All of Lakes Bay north of a line from the Pleasantville Yacht Club and following the channel markers Fl G "15", Fl G "13", Fl G "11", Fl R "8" to Fl G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island.

25. Ocean City-Somers Point area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

- i. All of Bass Harbor Thorofare from Ship Channel to a line beginning at a Department maintained marker on the southern shore of Steelman Bay and bearing approximately 306 degrees T, touching the shoreline of an unnamed island and continuing to a Department maintained marker on the opposite shore and terminating;
- ii. All of Patcong Creek and tributaries upstream from a line beginning at Channel Marker number 1 (Fl "1") and bearing approximately 110 degrees T to a Department maintained marker and terminating;
- iii. All of Beach Thorofare, Peck Bay and adjacent thorofares contained within a line beginning at the western end of West 16th Street, Ocean City and bearing approximately 342 degrees T to Flashing Red light 16 (Fl R "16"), then along the south side of the unnamed island (on which Flashing Red light 16 (Fl R "16") is located) to its westernmost point, then across the small thorofare to the nearest point of land on Shooting Island and following the southeastern shoreline of Shooting Island, then in a northerly direction to a Department maintained marker, then bearing approximately 240 degrees T across the thorofare to the northernmost point of land on the unnamed island (located southwest of Shooting Island), then along the shoreline in a westerly direction to another Department maintained marker, then bearing approximately 203 degrees T through Flashing Green light 37 (Fl G "37") to a Department maintained marker on the Ocean City shoreline, then along the Ocean City shoreline in a northeasterly direction to its point of origin at West 16th Street and terminating;
- iv. All of Crook Horn Creek and tributaries from the 34th Street Bridge to but not including Edward Creek;
- v. All of Crook Horn Creek from Edward Creek to Middle Thorofare;
- vi. All of Upland Thorofare and tributaries thereof; and
- vii. All of Beach Creek north of the railroad bed.

26. Great Egg Harbor River (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

- i. All of Great Egg Harbor River and tributaries between the following lines:
 - (1) A line beginning at Flashing Red 8 (Fl R "8") and bearing approximately 208 degrees T across the river to a Department maintained marker at the mouth of an unnamed creek; and
 - (2) A line from a Department maintained marker at the mouth of Powell Creek and bearing approximately 248 degrees T across the river to another Department maintained marker;
- ii. All of Lakes Creek.

27. Tuckahoe River: All the waters of Tuckahoe River and tributaries upstream from a straight line beginning on the east bank of the mouth of Job Creek approximately 023 degrees T to the island offshore along the shore of the island and terminating on the opposite bank of Tuckahoe River.

28. Strathmere and Sea Isle City area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

- i. That portion of Ludlam Bay lying west of a line beginning at the Department maintained marker on the southern shore of Ludlam Bay and bearing approximately 330 degrees T to a Department maintained marker

on an unnamed island then bearing approximately 245 degrees T to the Department maintained range marker on the mainland;

- ii. All of Big Elder Creek;
- iii. All of Little Elder Creek; and
- iv. The area of Townsend Channel adjacent to the town of Townsends Inlet contained within a line beginning at the street end of 77th St. and running to a Department maintained marker at the mouth of Middle Thorofare, then to the southernmost pier in Townsend Channel (at the end of 94th Street) then running along that pier to the shore and terminating.

29. Avalon area:

- i. That portion of Ingram Thorofare lying south from a line across Ingram Thorofare beginning at a small ditch on the west side of Ingram Thorofare just north of the 21st Street Bridge and bearing approximately 105 degrees T across the northern tip of a small island to the opposite shore of Ingram Thorofare, then to another line across Ingram Thorofare beginning on the south bank of a small unnamed creek bearing approximately 119 degrees T through Flashing Green light (Fl G 8 ft. "11") and terminating on the opposite shore;
- ii. All of South Channel from a straight line beginning at the easternmost tip of the unnamed island at the confluence of South Channel and North Channel and bearing approximately 115 degrees T to the opposite shore of South Channel to a line that begins at the northernmost point of the unnamed island on the north side of the western entrance to South Channel and bearing approximately 246 degrees T and terminating on the western bank of the entrance to Leonard Thorofare; and
- iii. All of Leonard Thorofare.

30. Stone Harbor area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

- i. All of Cresse Thorofare, Gull Island Thorofare and Great Sound contained within a line from Halfmile Point bearing approximately 110 degrees T to the Department maintained marker on Gull Island and continuing to a Department maintained marker on the easterly bank at the entrance to Sturgeon Hole, then along the shoreline in a southerly direction to a Department maintained marker at the mouth of an unnamed creek, then bearing approximately 194 degrees T to another Department maintained marker at the mouth of Muddy Hole, then along the shoreline of Cresse Thorofare in a northerly direction (excluding tributaries) to the point of origin at Halfmile Point.

31. The Wildwoods area:

- i. All that portion of Taylor Sound west and north of a line beginning on the northwest bank of the entrance to Reubens Thorofare and bearing approximately 029 degrees T to the opposite shore then along the shoreline to a line bearing approximately 031 degrees T through the easternmost point of the second largest island in Taylor Sound, to the south shore of Jones Creek, then along the shoreline in an easterly direction to the point of origin and terminating; and
- ii. All of Jarvis Sound south and west of a line connecting two unnamed tributaries (and passing through buoy 45) at the northern end of Jarvis Sound then along the shoreline in a westerly direction to the junction with Reubens Thorofare and Upper Thorofare, then across Upper Thorofare bearing approximately 311 degrees T then along the southern shoreline of Jarvis Sound across the mouth of Middle Thorofare and Lower Thorofare, then along the shoreline in a northerly direction across the mouth of Shell Thorofare and terminating at the point of origin.

32. Cape May area: All of Cape May Inlet and Cape May Harbor inside a line beginning at Flashing Light 7M (Fl 4 sec. 30 ft. 7M) at the outermost end of east jetty at Cape May Inlet, along the jetty and shoreline until it intersects a line connecting the 641 ft. Loran Tower on the north side of the inlet and range light QK 36 2sec. marking the entrance channel through Cape May Inlet, then along the shoreline in a westerly direction and across Skunk Sound to a line connecting flashing red light (Fl R 4 sec.) marking the entrance to Cape May Canal and the radio tower at the U.S.C.G. Receiving Station, along that line to the shoreline, along the shoreline to a line beginning at the tank on the U.S.C.G. Training Center and bearing approximately 331 degrees T to buoy C "11" then along a line connecting buoy "C" with flashing green light 5 (Fl G 2½ sec. "5") then to the shore bearing approximately 157 degrees T, then along the shoreline to the light (Fl G 4 sec. 37 ft. 7M) at the end of the jetty then across the inlet to the flashing light 7M (Fl 4 sec. 30 ft. 7M) and terminating.

33. Delaware Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

- i. Maurice River and Maurice River Cove: Maurice River and tributaries thereof and that portion of Maurice River Cove between the following two lines:

- (1) A straight line known as the Summer Line beginning at the East Point Lighthouse and bearing approximately 311 degrees T to a marker on the western bank at the mouth of New England Creek; and

(2) A line from the end of Berry Avenue (Shellpile) and bearing approximately 214 degrees T across the River to a Department maintained marker; and

ii. Dividing Creek (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4): All of Dividing Creek and tributaries upstream from a line beginning on the southerly bank at the entrance to Hansey Creek and bearing 217 degrees T to the opposite shore of Dividing Creek;

iii. Oranoaken Creek (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4): All of Oranoaken Creek in the area known as The Glades and north of Weir Creek;

iv. The Glades: All the water known as The Glades north from their confluence with Weir Creek, including that portion of Oranoaken Creek north from Weir Creek;

v. Straight Creek: All of Straight Creek;

vi. Nantuxent Cove area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

(1) All of Nantuxent Creek upstream from a straight line across the creek beginning at the confluence of the next large tributary (unnamed) on the south side of Nantuxent Creek downstream from Hay Cut Creek and bearing approximately 300 degrees T;

(2) All of Cedar Creek upstream from a straight line across the creek beginning at the confluence of the first tributary on the north side of Cedar Creek upstream from the mouth of Cedar Creek and bearing 153 degrees T; and

(3) All of Beach Creek.

vii. Fortescue Creek: All of Fortescue Creek;

viii. All of that portion of Delaware Bay and tributaries thereof inshore of a line from a Department maintained marker at Beadon Point and bearing approximately 309 degrees T towards flashing light (Fl 4 sec. 33 ft. 6M), but terminating at a Department maintained marker on the shoreline at Nantuxent Point; and

ix. Cohansey Cove area: All of Delaware Bay and Cohansey Cove included within a line from within a line from QK Fl 24 ft. 5M "1" and bearing approximately 245 degrees T to buoy "10", then bearing approximately 099 degrees T to a Department maintained marker on the mainland, then along the mainland (including tributaries) in a northwesterly direction to a Department maintained marker at the mouth of Cohansey River, then bearing approximately 277 degrees T to QK Fl 24 ft. 5M "1", the point of origin and terminating.

34. Delaware River area:

i. All of the New Jersey portion of the Delaware River and its tributaries thereof and the New Jersey section of Delaware Bay and its tributaries between the two lines described herein:

(1) A straight line beginning at the tower at Dunks Point and bearing approximately 237 degrees T across the bay passing through Nun Buoy 2 marking Arnold Point Shoal and terminating on the Delaware Shore; and

(2) A straight line beginning at the southern dome (Salem Nuclear Power Plant) and bearing approximately 230 degrees T towards the point of land, on the southern shore, at the mouth of Blackbird Creek.

SUBCHAPTER 4. SEASONALLY APPROVED SHELLFISH GROWING WATERS

7:12-[1.4]4.1 Seasonally approved growing waters (Approved November 1 through April 30 yearly, [Condemned] **Special Restricted** May 1 through October 31, yearly)

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

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be **Special Restricted** for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1. Southern Barnegat Bay area:

i. Potter Creek to Laurel Harbor: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly;

(1) All those waters east of the line described in N.J.A.C. 7:12-3.2(a)11i [1.3(a) 14i] and [14] 11ii and west of a line beginning at the easternmost point of land on the southern bank of Potter Creek and bearing approximately 161 degrees T to Intracoastal Waterway channel marker Red Nun 62 (N "62") and then bearing approximately 181 degrees T to Flashing Red light 15 ft. "64" PA (Fl R 15 ft. "64" PA) and then bearing approximately 252 degrees T to the [d]Department maintained marker located on the northeasternmost point of land on the mainland, (located

just northeast of the northeastern extent of Laurel Boulevard in Lacy Township) where it terminates.[] (This designation of Seasonally Approved waters directly adjoins those defined as [Condemned] **Special Restricted** in N.J.A.C. 7:12-[1.3(a) 14]3.2(a) 11i and 11ii.)

ii. Barnegat Bay-Forked River to Barnegat: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly;

(1) All those waters east of the [Condemned] waters described in N.J.A.C. 7:12-3 [1.3(a)15] and west of a line beginning at the easternmost point of land immediately north of Forked River (Department maintained marker) approximate location: latitude 39 degrees 49 minutes 53 seconds N., longitude 74 degrees 9 minutes 17 seconds W.) and bearing approximately 167 degrees T to Flashing Red light "2" (Fl R "2") located off the mouth of Forked River, and then bearing approximately 212 degrees T to Flashing light "3" (Fl "3") marking the entrance to the channel to Oyster Creek, and then bearing approximately 204 degrees T through Department maintained marker "B" to Department maintained marker "C" located approximately 0.4 nautical miles east of Flashing Red Light "2" (Fl R "2") marking the entrance to Waretown Creek, then bearing approximately 194 degrees T through Department maintained markers "D" and "E" to Department maintained marker "F" located approximately 9.5 nautical miles east of Flashing Green light "I" (Fl G "I") marking the entrance to Lochiel Creek and the Pebble Beach lagoon complex, and then bearing approximately 180 degrees T through Department maintained marker "G" and terminating at the range marker (Department maintained) located on Conklin Island.

2. Barnegat Bay to Little Egg Harbor Bay-Long Beach Island area:

i. Northern Long Beach Island: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All that portion of Barnegat Bay and Manahawkin Bay lying east of a line beginning on the northern point of land forming the mouth of the most northerly lagoon located between Butler and Meadow Streets in High Bar Harbor (Long Beach Township) and bearing approximately 270 degrees T to the northeast point of the northernmost of the two islands just offshore, (Edwin B. Forsythe National wildlife Refuge-Barnegat Division) then along the west shore of that island to its southeast point, then bearing approximately 131 degrees T across the unnamed gut or thorofare to the northeast point of the southernmost island, then along the east shore of that island to its easternmost point, then bearing approximately 144 degrees T to the most easterly point on Vol Sedge, then along the southeastern shore of that island to its southernmost point, and then bearing approximately 170 degrees T to the easternmost extent of the southern island of Vol Sedge, then bearing approximately 213 degrees T to the westernmost tip of Loveladies Harbor (marsh), then bearing approximately 190 degrees T to the westernmost point of land at the end of Bay View Road which forms the (southern bank) entrance to the Loveladies Harbor lagoon complex, then proceeding to where a line bearing approximately 177 degrees T to the standpipe in Harvey Cedars intersects the shoreline just west of Bay Terrace (Harvey Cedars), and then following the bulkhead or shoreline in a southerly direction, until reaching the southwesternmost point of land, located at the westernmost extent of Maiden Lane (Harvey Cedars), and then bearing approximately 220 degrees T to a point of land just north of the northernmost extent of Kent Place (Harvey Cedars), and then following the western shoreline or bulkhead in a southerly direction across the mouths of the two lagoons (The northernmost lagoon located between Buckingham Avenue and Lange Avenue in Long Beach Township shall remain [Condemned] **Prohibited**, and the southernmost lagoon, which is located immediately south of Lange Avenue shall also remain [Condemned] **Prohibited**) to the bulkhead on the point of land on the southern bank forming the entrance to the second of these lagoons, then bearing approximately 205 degrees T to the northernmost corner of the largest of the unnamed islands (just northeast of Fl 8 ft. "85") off the mouth of Harvey Cove (Harvey Cove itself shall remain [Condemned] **Special Restricted**, See: N.J.A.C. 7:12-[1.3]3.2(a)) then along that island's northern shoreline to its easternmost point then bearing approximately 115 degrees T to the westernmost point of land just west of the westernmost extent of West Salem Avenue in Harvey Cedars, then bearing approximately 219 degrees T to the westernmost point of land (marsh) located west of the westernmost extent of James Street in Long Beach Township, then bearing approximately 196 degrees T to the westernmost point of land located on the properties labeled as block 104, lot 10 and block 102, lot 10 (located just southwest of the westernmost extent of a private road known as Little Bridge Road) in Long Beach Township, then bearing approximately 209 degrees T to the end of the pier at the end of Bay Shore Street in Long Beach

Township, then bearing approximately 247 degrees T to Flashing Green light "1" (Fl G "1"), then bearing approximately 224 degrees T to Flashing Red light "2" (Fl R "2"), then bearing approximately 211 degrees T to a [d]Department maintained marker on Cedar Bonnet Island, then following the east shore of that island to where the eastern shoreline of Cedar Bonnet Island intersects with Route 72 (Manahawkin Causeway) and then following the southern edge of that highway in an easterly direction to its terminus where Route 72 intersects with Long Beach Island (in Ship Bottom).

ii. Southern Long Beach Island: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly[.];

(1) All those waters lying east of a line beginning at the point where Route 72 (Manahawkin Causeway) intersects with Long Beach Island (in Ship Bottom) and proceeding in a westerly direction as it follows the southern edge of Route 72 (this line coincides with that described in [N.J.A.C. 7:12-1.3(a)] (1)2i(1) above to where the highway intersects with the westernmost shoreline of Cedar Bonnet Island, and then following that shoreline in a generally southerly direction, but following all changes in direction of the shoreline until reaching the southernmost point of Cedar Bonnet Island, and then bearing approximately 190 degrees T to the unnamed island immediately south (this island is generally considered part of the Cedar Bonnet group) and then following that shoreline in a southerly direction to that island's southernmost point where it intersects a line beginning at the range markers [d]Department maintained located on the above unnamed island and following that line bearing 203 degrees T to Flashing Red light 8 ft. [light] "28" (Fl R 8 ft. "28") marking the intracoastal waterway, then bearing approximately 177 degrees T to the most northerly point of land on High Island and then following this island's eastern shoreline to its southernmost point, then bearing approximately 107 degrees T to channel marker Red Nun "36" (RN "36"), then bearing approximately 188 degrees T to Flashing Red light "38" (Fl R "38"), then following the west side of the intracoastal waterway bearing approximately 097 degrees T to channel marker R "42" (R "42") then bearing approximately 220 degrees T to channel marker Nun "44A" (N "44A"), then bearing approximately 208 degrees T to Flashing Green light 8 ft. "47" (Fl G 8 ft. "47"), then bearing approximately 254 degrees T to Can buoy "49" (C "49"), then bearing approximately 212 degrees T to Flashing Green light "53" (Fl G "53"), then bearing approximately 175 degrees T to the northernmost point of the easternmost Marshelder Island, and then following the eastern shoreline of this island in a southerly direction to this island's southernmost point, and then bearing approximately 200 degrees T to Flashing Red light 8 ft. "64" (Fl R 8 ft. "64"), then bearing approximately 233 degrees T to the northernmost point on Mordecai Island, then following the western shore of that island to its westernmost point, then bearing approximately 245 degrees T to Flashing Green light "75" (Fl G "75"), then bearing approximately 210 degrees T to channel marker Can "77" (C "77"), then bearing approximately 195 degrees T to channel marker Can "81" (C "81"), and then bearing approximately 135 degrees T to the point where the northern boundary of the Edwin B. Forsythe National Wildlife Refuge-Barneget Division, Holgate Unit, intersects the shoreline (Long Beach Township) where this line terminates.

3. Mullica River-Great Bay area:

i. Mullica River: Seasonal—[Condemned] **Special Restricted** May 1 through October 31, Approved November 31 through April 30 yearly:

(1) All those waters of the Mullica River (excluding Nacote Creek and the small cut or thoro fare separating Moss Point from the mainland which shall remain [Condemned] **Special Restricted**) lying between a straight line beginning at the northernmost point of land on Akimbo Point and bearing approximately 070 degrees T to the southernmost point of land on Doctor Point (downstream boundary) and a straight line beginning at the easternmost point of land on Moss Point and bearing approximately 093 degrees T, to the southwesternmost point of land on the north bank of the northernmost ditch (Bloody Ditch) separating Blood Point from the mainland (upstream boundary). The line defining the upstream boundary described here coincides with that described in N.J.A.C. 7:12-1.3(a)23i.3.2(a)20i.

ii. Ballanger Creek area: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Ballanger Creek and tributaries upstream from a straight line beginning at the westernmost point of land on the south bank of Ballanger Creek and bearing approximately 000 degrees T to the opposite shore of the creek to the Department maintained markers located upstream and as defined in N.J.A.C. 7:12-1.3(a)23iii(1):3:

(2) All of Winter Creek from its juncture with Ballanger Creek upstream to the Department maintained marker described in N.J.A.C. 7:12-1.3(a)23iii(2) 3.2(a)20iii(2).

iii. Roundabout Creek area: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Roundabout Creek and tributaries upstream from a straight line beginning at the southernmost point of land on the east bank of Roundabout Creek and bearing approximately 306 degrees T to the opposite shore of the creek to the Department maintained markers described in N.J.A.C. 7:12-1.3(a)23iv3.2(a)20iv.;

iv. Judies Creek: Seasonal—[Condemned] **Special Restricted** May 1 through October 30 yearly, Approved November 1 through April 30 yearly:

(1) All of Judies Creek and tributaries upstream from its confluence with Basses Bay to the Department maintained markers as described in N.J.A.C. 7:12-1.3(a)23v3.2(a)20v.

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

i.ii. (No change.)

5. Brigantine Area: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All the waters of St. George's Thorofare from the point of land on the [western shore, at the mouth of Sea King Lagoon and bearing approximately 348 degrees T] eastern shore, at the mouth of Conch Lagoon, and bearing approximately 358 degrees T to the north side of St. George's Thorofare, then along that shoreline in a westerly direction to a [d]Department maintained marker at Rum Point, then bearing approximately 108 degrees T to the opposite shore of St. George's Thorofare, then along that shoreline in a generally easterly direction, eventually crossing the mouths of Sea King Lagoon and Conch Lagoon to the point of origin.

6. Lakes Bay-Shelter Bay-Risley Channel Area: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly[.], Approved November 1 through April 30 yearly:

i. (No change.)

7. Ocean City-Somers Point Area-Great Egg Harbor Bay: Seasonal—[Condemned] **Special Restricted** May 1 through October 31, yearly[.], Approved November 1[,] through April 30[,] yearly;

i-iii. (No change.)

8. Strathmere Area: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly: All that portion of Main Channel and Whale Creek within the area enclosed by a straight line from the north end of the Ocean Drive Bridge, along the western side of the bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp located at the end of Bayview Avenue, Strathmere, then along that shoreline to the mouth of Whale Creek, then along the eastern bank of Whale Creek (excluding unnamed tributary) to the Department maintained marker at the junction with Ludlam Bay, then bearing approximately 305 degrees T to another Department maintained marker on the opposite bank, then along that shoreline in a northeasterly direction to the mouth of the creek, then along a straight line across Main Channel bearing approximately 026 degrees T to a small ditch on the opposite shore, then along that shoreline to its point of origin at the Ocean Drive Bridge and terminating.

9. Sea Isle City Area: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Mill Thorofare and tributaries thereof, and portions of Townsend Sound north of a line from a Department maintained marker on the prominent point of land along the western shoreline of Townsend Sound and bearing approximately 105 degrees T to another Department maintained marker at the mouth of an unnamed tributary on the opposite shoreline.

[9.] 10. Great Sound area:

i. Holmes Creek and Holmes Creek Cove: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

[10.] 11. Delaware Bay area:

i. Bidwell Creek: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

ii. East Point area: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

iii. Maurice River Cove: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

iv. Dividing Creek: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Dividing Creek and tributaries including Weir Creek lying between the line described in N.J.A.C. 7:12-[1.3(a)37vii]3.2 and a line beginning at the southernmost point of land on the west bank at the mouth of Dividing Creek and bearing 000 degrees T to the opposite shore of Dividing Creek;

v. Oranoaken Creek: Seasonal—[Condemned] **Special Restricted** May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

vi. Nantuxent Cove, Back Creek and portion of Cedar Creek and Nantuxent Creek: Seasonal—[Condemned] **Special Restricted** May 1 through October 31[,] yearly, Approved November 1 through April 30[,] yearly:

(1) All of Nantuxent Cove north of a line beginning at the light (Fl 4 sec 36 feet (6M) located at the western tip of Nantuxent Point and bearing approximately 289 degrees T to the light (Fl 6 sec 21 feet 6M) located at the southern tip of Ben David Point, all of Back Creek and tributaries, including Tweed Creek, all of Nantuxent Creek lying downstream from the line described in N.J.A.C. 7:12-[1.3(a)37]3.2 and all of Cedar Creek lying downstream from the line described in N.J.A.C. 7:12-[1.3(a)37]3.2.

7:12-[1.5]4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, [Condemned] **Special Restricted** May 1 through December 31[,] yearly)

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

(a) The following shellfish growing waters, designated on the charts referred to in N.J.A.C. 7:12-1.1, shall be **Special Restricted** for harvest of shellfish from May 1 through December 31 yearly and Approved January 1 through April 30 yearly:

[1. Bay Head, Mantoloking area, Metedeconk River and Northern Barnegat Bay: Seasonal—Condemned May 1 through December 31 yearly. Approved January 1 through April 30 yearly. All of that area lying between the lines described in N.J.A.C. 7:12-1.3(a)9, 10 and 11 including all of Barnegat Bay north of a straight line extending from Swan Point and bearing approximately 141 degrees T through Fl G 8ft "25" off Mantoloking.]

[2.]1. Island Beach areas: Mantoloking to Island Beach State Park: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly.]:

i. All of those areas lying between the lines described in N.J.A.C. 7:12-[1.3(a) 10, 12, and 13] 3.2(a)7, 9, and 10 and a straight line beginning at the most westerly point of land on Dutchman's Point, just south of Mantoloking Shores, and bearing approximately 227 degrees T to the most northwesterly point of land on NW Point Island, off Chadwick Beach, then following that island's northeasterly shore to its most easterly point of land, then bearing approximately 191 degrees T to the northwestern[-]most tip of the most northern of the two islands off Ocean Beach, then bearing approximately 246 degrees T to Flashing light "1" (Fl "1"), then bearing approximately 186 degrees T to Flashing Red light "2" (Fl R "2") off Ortley Beach, then all those waters lying between the eastern shoreline and the Thomas A. Mathis Bridge and a straight line bearing approximately 230 degrees T to Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in [(a)3ii] (a)2ii below.

ii. All of those areas lying between the lines described in N.J.A.C. 7:12-[1.3(a) 10, 12, and 13]3.2(a)7, 8, 9, and 10 including all those waters north of a straight line extending from the northernmost cupola on Island Beach State Park (Currently the Island Beach State Park Maintenance Center, formerly the old USCG Station number 110.) and bearing approximately 303 degrees T through Flashing Red light 4s "60" (Fl R 4s "60") just north of Berkeley Shores. The northern boundary of this Condemned area shall be the Thomas A. Mathis Bridge.

[3.] 2. Barnegat Bay-Brick Township [area] and Dover Township area [from the Metedeconk River to Toms River]: Seasonal—[Condemned]

Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas of Barnegat Bay lying between the **Special Restricted waters** [Condemned area line] at the mouth of Kettle Creek as described in N.J.A.C. 7:12-[1.3(a)11iii]3.2(a)8 and a straight line beginning at Seaweed Point and bearing approximately 135 degrees T to Flashing Red light 15ft "30" PA (Fl R 15ft "30" PA) off Seaweed Point, and then bearing approximately 251 degrees T to Andrew Point [Pt.] on Green Island.

ii. All of those areas of Barnegat Bay lying between the [lines] **Special Restricted waters** as described in N.J.A.C. 7:12-[1.3(a)11iv]3.2(a)8 and a straight line extending from the point of land forming the northern bank mouth of Shelter Cove and bearing approximately 160 degrees T to Flashing Red light "40" (Fl R "40"), then all those waters lying between the western shoreline (mainland) and the Thomas A. Mathis Bridge and a straight line bearing approximately 152 degrees T to Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in [pragraph 2i](a)1i above.

[4.]3. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Manahawkin and Little Egg Harbor Bays lying between the **Special Restricted waters** [Condemned area lines] described in N.J.A.C. 7:12-[1.3(a)17i and 17ii]3.2(a)14 and a straight line beginning on the westernmost end of the most westerly island along the Manahawkin Causeway (Route 72), then bearing approximately 173 degrees T to the most easterly point of Thorofare Island, then bearing approximately 218 degrees T to [d]Department maintained marker "J", then bearing approximately 275 degrees T to [d]Department maintained marker "K", then bearing approximately 032 degrees T and terminating on the southeasternmost point of Oyster Point.

[5.]4. Cedar Run area: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

(i) (No change.)

[6.]5. Tuckerton area: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Tuckerton Cove lying [between the line described at N.J.A.C. 7:12-1.3(a)2i and a straight line connecting Thorofare Point and Gaunt Point] north and west of a straight line and south and east of the line described in N.J.A.C. 7:12-3.2(a)18 beginning at the southeasternmost point of land on Gaunt Point and bearing approximately 235 degrees T to the easternmost point of land on Thorofare Point where this line terminates.

[7.]6. Mullica River-Great Bay area: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

[8.]7. Brigantine area: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly: An area adjacent to the city of Brigantine inshore from a line beginning at the telephone pole (A4229) at the north end of 13th Street North and bearing approximately 325 degrees T through Steelman Bay to Flashing light 5 (fl "5"), then to the northwest tip of George's Dock (1427 North Shore Drive), then proceeding in a westerly direction to the first pier and west of the Brigantine County Club (1048 North Shore Drive), then to the pier end at 1002 North Shore Drive (next to dead end street), then to the third pier end west of the Lafayette Boulevard Street end (860 North Shore Drive), then from pier end to 800 West Shore Drive, then to pier end at 714 West Shore Drive and bearing approximately 173 degrees T into Shore Drive and bearing approximately 173 degrees T into Wading Thorofare until it intersects a line connecting Flashing lights 6 and 8 (Fl R "6" and Fl R "8") in Wading Thorofare, then along the line connecting Flashing lights 6 and 8 (Fl "6" and Fl "8") to Flashing light 8, then bearing approximately 211 degrees T to a point of land on the west shore of Bonita Tideway, then along the shoreline in a southerly direction to the first unnamed creek past Sand Creek, then bearing approximately 030 degrees T to the point of land on the opposite shore and terminating.

[9.]8. Ocean City-Somers Point area: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

ii. Great Egg Harbor Bay, Great Egg Harbor River and Middle River: Seasonal—[Condemned] **Special Restricted** May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

(1) All that portion of Great Egg Harbor Bay, Great Egg Harbor River and Middle River contained within a line beginning at the southwest tip of Drag Island and bearing approximately 266 degrees T through the south side base of the second electric tower (uncharted) to the northern-point at the mouth of the Tuckahoe River, then along the western shoreline of Great Egg Harbor River in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to Flashing Red 8 (Fl R "8") and bearing approximately 208 degrees T to a [d]Department maintained marker at the mouth of an unnamed creek, then along the eastern shore of Great Egg Harbor River in a downstream direction to the north shore of Patcong Creek, then across the line marking the mouth of Patcong Creek described in N.J.A.C. 7:12-[1.3(a)28ii]3.2(a)25, then along the north shore of Great Egg Harbor Bay and Drag Channel to the Garden State Parkway, then along the eastern side of the Garden State Parkway of Drag Island, then along the shoreline in a westerly direction to its origin at the southwest tip where this line terminates.

SUBCHAPTER 5. SEASONAL SPECIAL RESTRICTED SHELLFISH GROWING WATERS

7:12-[1.6]5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, [Condemned] **Prohibited** Area: October 1 through April 30 yearly)

(a) The Seasonal Special Restricted waters described below shall be [Condemned Areas] **Prohibited** for the harvest of shellfish from October 1 through April 30 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resources recovery programs described in N.J.A.C. 7:12-[2]9 and N.J.A.C. 7:17, during the period May 1 through September 30 yearly. These waters will not be utilized, [i.e.] that is, will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metals are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by this [d]Department from analyses of ongoing studies. This area is designated on the charts referred to in N.J.A.C. 7:12-[1.3]1.1 and is described as:

(1) (No change.)

7:12-1.7 (Reserved) See Miscellaneous Notice in the May 18, 1987 Register at 19 N.J.R. 888.

SUBCHAPTER 6. CLOSURE OF APPROVED AREAS AND SEASONAL APPROVED AREAS FOR SHELLFISH HARVESTING

7:12-6.1 Closure of Approved areas and Seasonal Approved areas for shellfish harvesting

(a) As a result of prevailing weather conditions and the effect therefrom on existing sewage treatment systems, the Department hereby:

1. Suspends N.J.A.C. 7:12-1.4 and 1.5 (Seasonally Approved growing waters) previously approved for direct market harvesting of shellfish. The direct market harvesting of shellfish in these waters is hereby prohibited.

2. Prohibits the direct market harvesting of shellfish in all approved area waters of the State.

(b) Upon a determination that the said waters, set forth in subsection (a) above are safe for the direct market harvesting of shellfish, the Commissioner of the Department of Environmental Protection shall rescind this emergency rule, area by area, to their prior classification upon public notice thereof, which notice shall subsequently be published in the New Jersey Register.

SUBCHAPTER 7. SANCTUARIES

7:12-[1.8]7.1 Sanctuaries

(a) The Department may establish areas known as sanctuaries to be utilized for research purposes such as spawner areas. Sanctuaries shall be delineated by the [d]Department. Shellfish may be relocated to such an area to supply brood stock to re-establish populations elsewhere. When shellfish from waters other than Approved are relocated to areas classified as Approved or Seasonally Approved, the relocation site (sanctuary) will be [Condemned] **Prohibited** to the harvest of all shellfish.

1. Spawner sanctuaries:

i. Hard clam sanctuary site 1: (Note: See Miscellaneous Notice at 18 N.J.R. 1000(a)). The Department condemns and prohibits the taking of all shellfish from those State waters classified as Approved including specifically those waters of Parker Cove in Little Egg Harbor bounded by latitude 39 degrees 26.49 minutes N, longitude 74 degrees 17.11 minutes W; latitude 39 degrees 36.49 minutes N, longitude 74 degrees 17.04 minutes W; latitude 39 degrees 36.42 minutes N, longitude 74 degrees 17.11 minutes W.

ii. Hard clam sanctuary site 2. Barnegat Bay adjacent to the Blind Camp (Note: See Miscellaneous Notice at 19 N.J.R. 569(a)): The Department condemns and prohibits the taking of shellfish from those State waters previously classified as Approved including specifically those waters of Barnegat Bay bounded by latitude 39 degrees 46 minutes 02.92 seconds N., longitude 74 degrees 11 minutes 06.16 seconds W.; latitude 39 degrees 46 minutes 02.92 seconds N., longitude 74 degrees 10 minutes 59.78 seconds W.; latitude 39 degrees 45 minutes 58.31 seconds N.; longitude 74 degrees 10 minutes 5.31 seconds W.; latitude 39 degrees 45 minutes 58.31 seconds N.; longitude 74 degrees 11 minutes 06.16 seconds W., containing 5,006 acres.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER [2.]9. SPECIAL PERMIT

7:12-[2.1]9.1 General provisions

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

(c) Each application shall be accompanied by a fee in the amount of \$25.00 (check or money order made payable to New Jersey Department of Environmental Protection). Forms may be obtained from the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of [Shellfish Control] **Marine Water Classification and Analysis**, Stoney Hill Road, Leeds Point, Absecon, New Jersey 08201, and New Jersey Marine Police stations located throughout the State. Duplicate permits may be issued upon written request to the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** at the aforementioned address and if accompanied by a \$10.00 check or money order payable to the New Jersey Department of Environmental Protection.

(d)-(i) (No change.)

(j) The Department may apply more restrictive delineations to harvest areas that are described in N.J.A.C. 7:12-[1.3]3 and [1.6]5 by specifying the sections available for harvest on the special permit. These limitations will be made at the discretion of the [d]Department when deemed necessary to protect the health, safety, and welfare of the public.

7:12-[2.2]9.2 Applications

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

(c) It is the responsibility of the permittee to keep the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** informed of his current mailing address. A change of address from that submitted on the aforementioned application, as well as subsequent changes therefrom, must be reported by the permittee, in writing, to the Leeds Point office within one week of the change.

7:12-[2.3]9.3 Bait program; Sea clams

(No change in text.)

7:12-[2.4]9.4 Bait program; Soft clams and/or Hard clams

(No change in text.)

7:12-[2.5]9.5 Depletion program

(No change in text.)

7:12-[2.6]9.6 Soft clam depuration harvester program

(No change in text.)

7:12-[2.7]9.7 Relay program

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the shellfisheries regulations which appear at N.J.A.C. 7:25-15.1

1.-2. (No change.)

3. The inclusive dates of the permit shall be specified on the face of the special permit unless revoked or suspended by the [d]Department prior to the dates indicated and for cause. A schedule of harvest dates by section and landing sites will be sent by the [d]Department to the permittee at the address on file with the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** (Leeds Point). A change of address must be reported to the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** (Leeds Point) by the permittee within one week of the change.

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4.-8. (No change.)

9. All hard clams taken from the designated relay waters shall be relayed to the special leased plots on a schedule set by this [d]Department and shall remain upon said leased plots until written permission for harvest has been granted by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30-day purging period will begin on a schedule established by the [d]Department. Additionally, the water temperature of the Approved waters during the minimum 30-day purging period shall be at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of [Shellfish Control] **Marine Water Classification and Analysis**. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10.-16. (No change.)

17. Participants shall not harvest approved clams from their leased plots on the same trip they plant clams from the day's relay. Persons harvesting clams from relay lots after written permission has been received from the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** shall not have any "RELAY" transport bags, as described in N.J.A.C. 7:25-15.1 of the relay rules, in their vehicles or vessels at the time they harvest.

18.-21. (No change.)

7:12-[2.8]9.8 Transfer program

(a) (No change.)

(b) Permit No. 6 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-5. (No change.)

6. Shellfish transferred to leased lots in Approved or Seasonal[ly] Approved waters shall remain upon said transfer lots until written approval for reharvest has been granted by the Department's Division of Water Resources, Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

7. To facilitate compliance with [paragraph] (b)6 above, the permittee shall notify the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** by letter after the final transferring to a particular leased lot. The minimum 30-day purging period will not begin until the latter of both notice of final transferring is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

8. From the time the transfer permit is issued until written notification for reharvest is received by the permittee, the transfer lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transfer lots located in water that may be approved during the purging period shall be marked at the corners with Condemned Area signs (supplied by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**) during the [c]Condemned period.

9.-11. (No change.)

c. (No change.)

7:12-[2.9]9.9 Transplant program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters) is to allow for the harvest and possession of seed oysters from waters classified other than Approved for transplanting to leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**. The purging period will be for a minimum of 30 days at which the water temperature of the approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

(b) Permit No. 7 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-5. (No change.)

6. Seed oysters transplanted to leased lots in Approved waters shall remain upon said lots until written approval for reharvest has been granted by the [d]Department's Division of Water Resources, Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

7. To facilitate compliance with [paragraph] (b)6 above the permittee shall notify the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** by letter after the final transplanting to a particular leased

lot. The minimum 30 day purging period will not begin until the latter of both notice of final transplanting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

8. Lots being planted will be staked, by the lessee, and maintained in that condition during the effective period of the special permit. Transplant lot(s) located in waters that may be approved during the purging period shall be marked at the corners with Condemned Area signs (supplied by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**) during the [c]Condemned period.

9.-10. (No change.)

(c) (No change.)

7:12-[2.10]9.10 Possession and/or plant program; bait store

(No change in text.)

7:12-[2.11]9.11 Possession and/or processing plant program; depuration plant

(a) (No change.)

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

1.-2. (No change.)

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

4. (No change.)

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

6.-18. (No change.)

(c) (No change.)

7:12-[2.12]9.12 Possession and/or processing plant program; seed oysters

(a) The purpose of Permit No. 8c ("Possession Permit for Seed Oysters") is to allow the lessee of shellfish grounds to purchase seed oysters harvested in waters classified other than Approved for planting on his leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

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

1.-2. (No change.)

3. The harvester from which said seed oysters are purchased shall possess a valid [p]Permit No. 7 issued by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

4.-5. (No change.)

6. Seed oysters transplanted to leased lots in Approved waters and/or Seasonal[ly] Approved waters shall remain upon said lots until written approval for reharvest has been granted by the Department's Division of Water Resources, Bureau of [Shellfish Control] **Marine Water Classification and Analysis**.

7. To facilitate compliance with [item] (b)6 above, the permittee shall notify the Bureau of [Shellfish Control] **Marine Water Classification and Analysis** by letter after the final planting on a particular leased lot. The minimum 30-day period will not begin until the latter of both notice of final planting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit).

8. From the time the Possession Permit for Seed Oysters is issued until written notification for reharvest is received by [their] the permittee, the transplant lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transplant lots located in waters that may be approved during the purging period shall be staked and marked at the corners with Condemned area signs (supplied by the Bureau of [Shellfish Control] **Marine Water Classification and Analysis**) during the Condemned period.

9. (No change.)

(c) (No change.)

7:12-[2.13]9.13 Hard clam depuration/harvester (pilot) program; depuration harvester permit

(No change in text.)

- 7:12-[2.14]9.14 Hard clam possession and/or processing plant (pilot program; depuration plant
(No change in text.)
- 7:12-[2.15]9.15 [Scientific and Non-Human Consumption Collection Program] Non-Human Consumption and Scientific Collection Program
(No change in text.)

(a)

**DIVISION OF SOLID WASTE MANAGEMENT
BOARD OF PUBLIC UTILITIES**

**Interdistrict and Intradistrict Solid Waste Flow
Hunterdon, Morris, Ocean and Warren Counties
Joint Proposed Amendment: N.J.A.C. 7:26-6.5**

Authorized by: Richard T. Dewling, Commissioner, Department of Environmental Protection, and the Board of Public Utilities, Barbara A. Curran, President.

Authority: N.J.S.A. 13:1E-6, 13:1E-23, and 48:13A-1 et seq. DEP Docket No. 024-87-06.

Proposal Number: PRN 1987-244

A public hearing concerning this proposal will be held on:
July 21, 1987 at 2:00 P.M.
New Jersey State Museum Auditorium
205 West State Street
Trenton, New Jersey 08625

Submit comments by August 5, 1987 to:
Michael Caro, Regulatory Officer
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The joint agency proposal follows:

Summary

On January 17, 1984, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) amended the waste flow rules, N.J.A.C. 7:26-6.5, to redirect solid waste generated from within Warren County, Hunterdon County and one municipality in Morris County, to the Ocean County Landfill Corporation landfill, Manchester Township, Ocean County (see 16 N.J.R. 134(a)). The adoption was promulgated to provide an in-state disposal option for the aforementioned counties upon closure of the High Point Landfill in 1983, although the adoption also permitted out-of-state disposal if such disposal was in compliance with the laws and regulations of the receiving state. The DEP and the BPU are proposing to repeal that part of the waste flow rule which permits solid waste to be disposed of at the Ocean County Landfill Corporation landfill while continuing to permit disposal at out-of-state facilities. The Statewide Solid Waste Management Plan specifically reflects Department policy against penalizing those districts which have developed plans for in-district solutions to their waste disposal problems for the lack of action on the part of other districts. The Ocean County district has, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., made great strides in its efforts at solid waste disposal self-sufficiency through the next 10 years. This includes two major sanitary landfills and the expected implementation of resource recovery by 1992.

When the DEP and the BPU adopted the redirection rule, the affected counties of Hunterdon, Morris, and Warren were not directed to amend their respective district solid waste management plans to include the redirection. Therefore, while the counties of Hunterdon and Warren did pass subsequent amendments which addressed waste flow, neither explicitly amended their district plans to include the former emergency redirection rule. Specifically, on June 12, 1984 Hunterdon County amended its district solid waste management plan to redirect solid waste generated within the county to the Hunterdon County transfer station prior to out-of-state disposal or disposal at the Ocean County Landfill Corporation landfill. The DEP approved the plan amendment on November 13, 1984. Warren County, in a two-year update plan amendment adopted on November 21, 1984, addressed the issue of landfill disposal by indicating that the district waste was directed to out-of-state facilities or the Ocean County Landfill Corporation landfill for disposal. The DEP approved the amendment on March 29, 1985. Accordingly, the only legal

basis for redirecting waste to the Ocean County Landfill was the waste flow rule proposal and waste flow rule adoption procedure. Contrary to the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., Morris, Hunterdon and Warren counties have never negotiated an interdistrict agreement with Ocean County. The DEP and BPU have therefore concluded that absent the existence of an interdistrict agreement after three and one half years of interdistrict disposal privileges, such disposal is contrary to the Statewide solid waste management plan. Accordingly, this proposed amendment will rescind the High Point redirection of this solid waste stream to the Ocean County Landfill Corporation landfill.

Social Impact

The repealing of the redirection order will have a positive impact upon Ocean County by preserving the integrity of the Ocean County District Solid Waste Management Plan. The county has made the necessary decisions to provide adequate facilities for the disposal of the actual and projected amounts of solid waste generated within Ocean County. The county plan does not provide for any interdistrict agreements with any other solid waste management district for the disposal of out-of-county generated solid waste. This rule revocation will, however, have a potential adverse social impact upon the counties of Hunterdon, Morris and Warren by narrowing the present disposal alternatives available until these districts develop their own long-term disposal facilities. It should be noted that only a limited number of collector/haulers from the affected counties have utilized the disposal option of the Ocean County Landfill Corporation landfill over the past three and one half years.

Economic Impact

An adverse economic impact upon the collector/haulers servicing Hunterdon, Morris and Warren Counties may result from the denial of landfilling privileges at the Ocean County Landfill Corporation landfill. Tipping fees at Pennsylvania landfills are generally higher than those at the Ocean County Landfill Corporation landfill. However, decreased transportation costs to out-of-state landfills may result if facilities in eastern Pennsylvania become available. An adverse economic impact will occur to Ocean County since, under N.J.S.A. 13:1E-138, a waste importation tax is now imposed by a receiving district upon a sending district. The repealing of the redirection will therefore result in a loss of revenue to Ocean County.

Environmental Impact

The repealing of the redirection order will have no environmental impact upon the sending counties of Morris, Hunterdon and Warren. However, a positive environmental impact will result to Ocean County by reducing truck traffic destined for the Ocean County Landfill Corporation landfill. Also, by decreasing the amount of waste being landfilled at the Ocean County Landfill Corporation landfill, the lifespan of that facility will be extended and the scheduling of cell construction maintained as planned.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986 c.169, the DEP and the BPU have determined that this repeal of the High Point Landfill redirection order will not impose reporting, recordkeeping or other compliance requirements on small businesses. Existing waste flow rules already direct solid waste from the counties in question to specific disposal sites (the Ocean County Landfill or out-of-state facilities) and this rule proposal merely restricts the final disposal sites to out-of-state facilities. Inasmuch as collector/hauler tipping fees are regulated by the BPU to ensure a reasonable rate of return, any potential increase in tipping fees as a result of this proposal may be alleviated by increases in collector/hauler tariffs.

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

7:26-6.5 District waste flow planning requirements and disposal facility designations.

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designated specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, described in this section.

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

(k) Waste flows within, into and out of the Hunterdon County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Alexandria, Bethlehem, Bloomsbury, Califon, Clinton Town, Clinton Township, Delaware, East Amwell, Flemington, Franklin, Glen Gardner, Hampton, High Bridge,

Holland, Kingwood, Lambertville, Lebanon Boro, Lebanon Township, Milford, Raritan, Readington, Tewksbury, Union and West Amwell shall be transported to [disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County, prior to disposal at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

[i. All solid waste directed to the Ocean County Landfill Corporation landfill may be disposed of at out of-state facilities when such disposal does not violate any law or regulation of the receiving state.]

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Stockton and Frenchtown [are given the option of utilizing disposal facilities out-of-state. If this disposal option is not used, then Stockton and Frenchtown shall utilize the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County, prior to disposal at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

[3. All waste types 10, 13, 23, 25 and 27 generated from within Hunterdon County municipalities shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County, prior to disposal at facilities specified above.]

(l)-(n) (No change.)

(o) Waste flows within, into and out of the Morris County District: 1.-10. (No change.)

11. All waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipality of Washington Township shall be disposed of at [the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

[i. All solid waste directed to the Ocean County Landfill Corporation landfill may be disposed of out-of-state when such disposal is in compliance with the laws and regulations of the receiving state.]

12. (No change.)

(p) Waste flows within, into and out of the Ocean County District: 1.-8. (No change.)

[9. All waste types 10, 13, 23, 25, ad 27 generated from within the Warren County municipalities of Allamuchy, Alpha, Blairstown, Frelinghuysen, Hackettstown, Hardwick, Hope, Independence, Knowlton, Liberty, Mansfield, Oxford, Pahaquarry, Phillipsburg, Washington Borough, and Washington Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

10. All waste types 10, 25, and 27 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

11. All waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Alexandria, Bethlehem, Bloomsbury, Califon, Clinton Town, Clinton Township, Delaware, East Amwell, Flemington, Franklin, Glen Gardner, Hampton, High Bridge, Holland, Kingwood, Lambertville, Lebanon Borough, Lebanon Township, Milford, Raritan, Readington, Tewksbury, Union, and West Amwell shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

12. All waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipality of Washington Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

13. All wastes directed to the Ocean County Landfill Corporation landfill from Warren, Hunterdon and Morris County municipalities as set forth in (p) 9, 10, 11 and 12 above may be disposed of at out-of-state facilities when such disposal does not violate any law or regulation of the receiving state.]

(q)-(u) (No change.)

(v) Waste flows within, into and out of the Warren County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Allamuchy, Alpha, Blairstown, Frelinghuysen, Hackettstown, Hardwick, Hope, Independence, Knowlton, Liberty, Mansfield, Oxford, Pahaquarry, Phillipsburg, Washington Boro, and Washington Township shall be disposed of at [Ocean

County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

2. All solid waste types 10, 13, 23, 25 and 27 generated from within the Warren County municipalities of Franklin, Greenwich, Harmony, Lopatcong and Pohatcong [are permitted to utilize disposal facilities out-of-state, so long as these municipalities or any collector/hauler which services these municipalities are able pursuant to law. In the event that any of these municipalities are unable to continue disposal of the solid waste out-of-state landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **shall be disposed of at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

3. All solid waste types 13 and 23 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at Belvidere-White Landfill, facility number 2123A, located in White Township, Warren County, New Jersey.

i. Upon closure of the Belvidere-White Landfill, waste types 13 and 23 shall be disposed of at [the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

4. All solid waste types 10, 25, and 27 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at [the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.] **out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.**

[5. All solid waste types 10, 13, 23, 25, ad 27 generated from within Warren County municipalities as set forth in paragraph (v)1, 3, and 4, above are permitted to be disposed of at out-of-state facilities so long as the municipalities or any collector/hauler which services the municipalities are able pursuant to any law or regulation of the receiving state.]

HEALTH

The following proposals are authorized by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health; with approval of the Health Care Administration Board.

(a)

COMMUNITY HEALTH SERVICES

Shellfish

Proposed Readoption: N.J.A.C. 8:13

Authority: N.J.S.A. 24:2.1.

Proposal Number: PRN 1987-252.

Submit comments by August 5, 1987 to:

Gary J. Wolf, Coordinator
FDA/Shellfish Project Director
Food and Milk Program
CN 364
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:13 expires on August 2, 1987. The Department of Health has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt these rules without change.

Shellfish have been involved in numerous disease outbreaks including Norwalk virus, gastroenteritis, and infectious hepatitis. The potential health hazard to the consumer is greatly increased by the fact that shellfish are eaten raw and their natural processes concentrate deleterious substance such as chemicals, pesticides, and pathogenic organisms in their tissues. There have been cases of widespread illness occurring from a single source of shellfish and the need to continue to regulate the handling, shucking, and distribution of shellfish is necessary.

N.J.A.C. 8:13-1 pertains to certification and sanitation of shellfish handling, shipping, and processing facilities. The subchapter (Sanitation, Handling, Shipping and Shucking of Shellfish) was filed and became effective on July 9, 1974 as R.1974 d.185. The rules have functioned well

in protecting the health of the public by providing the sanitary and recordkeeping standards for the handling, storage, and distribution of shellfish. A summary of each section in subchapter 1 follows:

- 8:13-1.1 Provides definitions of the words and terms used throughout this subchapter.
- 8:13-1.2 Defines those that must comply with the provisions of the code and apply for certification and/or approval by the Department to operate a shellfish establishment within the State.
- 8:13-1.3 States the Department procedures for shellfish certification; defines those that must be certified by this Department.
- 8:13-1.4 Specifies (establishes) the sanitary requirements that must be met for certification and operation.
- 8:13-1.5 Specifies the water supply requirements.
- 8:13-1.6 Requires that toilet wastes be disposed of in a manner required by the State Health Department.
- 8:13-1.7 Refers to the cleaning and bacteriological treatment of equipment and utensils.
- 8:13-1.8 Prohibits any person from working in a shellfish establishment who is ill or infected with communicable disease, or has infected wounds or open lesions on exposed portions of their bodies.
- 8:13-1.9 Specifies the washing of shucked shellfish with waters approved by the Health Department prior to shucking or shipping.
- 8:13-1.10 Requires the washing of shucked shellfish and specifies the type of packing container.
- 8:13-1.11 Indicates the requirements for the packing of shucked shellfish including time and temperature controls, as well as labeling.
- 8:13-1.12 Refers to the satisfactory handling, manufacturing, and storage of ice for use within a shellfish establishment.
- 8:13-1.13 Provides the recordkeeping and tagging requirement for receipt as well as for the sale of shellfish that is necessary in order to trace the product to its source.
- 8:13-1.14 States the requirements for the packing and shipping of shellfish including container and tagging specifications.
- 8:13-1.15 States that any certificate or permit issued pursuant to the rules may be revoked for any violation of Title 24 of the Revised Statutes or of any applicable rule or regulation of the Department.

N.J.A.C. 8:13-2 entitled Depuration of Soft Shell Clams (*Mya Arenaria*) pertains to the purification of this species of soft shell clams using the depuration process. Depuration involves the taking of market size shellfish harvested from "marginally polluted waters" and placing them in an environmentally controlled purification system (man-made tanks with controlled water quality), where the shellfish are able to purge or cleanse themselves through natural biological processes of accumulated pollutants. They remain in the tank system for a minimum of 48 hours and upon meeting the acceptable bacteriological quality, they can be marketed.

All provisions of this subchapter were adopted pursuant to the authority of N.J.S.A. 24:2.1 and were filed on April 17, 1978 as R.1978 d.127 to become effective on May 1, 1978. Definitions and changes to the original subchapter were proposed and became effective on August 2, 1982. Revisions were again proposed and adopted, becoming effective on January 21, 1986. The first amendment was the requirement that the licensed depuration plant must utilize the services of a governmental laboratory for bacteriological analysis of depurated shellfish rather than private laboratories which were acceptable under the original subchapter. Other revisions adopted in January 1986 included specific cleaning schedule requirements, sampling schedule requirements, clarifying the provisions for transporting clams to the depuration plant, as well as several other minor wording changes which relate to recordkeeping. A summary of each section in subchapter 2 follows:

- 8:13-2.1 Provides definitions of the technical terms used throughout the subchapter.
- 8:13-2.2 Defines those that must comply with the provisions of the code and cites the statutory Title for authorizing the rules.
- 8:13-2.3 States the requirements for hours of depuration, species of shellfish and indicates prohibited acts including the sale of the shellfish prior to meeting the bacteriological requirements set forth under this subchapter. Also this section indicates that the depuration plant shall be used for no other purpose other than the depuration of clams.
- 8:13-2.4 States the Department's procedures for shellfish certification and defines when a certification may be suspended.
- 8:13-2.5 Gives specifications for plant location and site requirements.

- 8:13-2.6 States plant design requirements.
- 8:13-2.7 Indicates the clam transportation requirements during harvest and receipt by the depuration plant. Harvesting vessel and transport vessel ("Mother Craft") requirements are specified in this section as well.
- 8:13-2.8 Identifies the source seawater requirements for use in the depuration plant.
- 8:13-2.9 Refers to the plant's equipment requirements used in the depuration process including: seawater pumping system, tank design, clam processing, containers, storage facilities, waste purification systems, temperature recording devices.
- 8:13-2.10 States the requirements for washing and culling of clams.
- 8:13-2.11 Refers to the criteria for cleaning and sanitizing of process equipment.
- 8:13-2.12 States the bacteriological standard required for depurated clams.
- 8:13-2.13 Indicates bacteriological sampling schedules for the clams, the requirement that a governmental laboratory approved by the department conduct sampling collection and analysis, and that acceptable bacteriological quality levels must be met prior to sale.
- 8:13-2.14 Refers to the recordkeeping requirements.
- 8:13-2.15 Refers to the shellfish shipping tag requirements.

Social Impact

Once readopted, the rules will continue to provide reasonable standards to regulate the shellfish industry in New Jersey. Failure to readopt these rules would jeopardize the safety and sanitary conditions of shellfish facilities within the State.

New Jersey is a major shellfish producing state with distribution throughout the metropolitan area and numerous receiver states. On occasion, shellfish processed in New Jersey have been found to exceed the microbiological standards for this potentially hazardous food thereby increasing the risk of illness. There is a definite need to prevent the consumer from suffering the consequences of contracting gastroenteritis or, more serious, infectious hepatitis.

The surveillance and inspection of shellfish depuration plants for compliance with the strict standards of operation established under these rules is an indispensable part of the Department's efforts to ensure that safe shellfish are being offered for sale. Failure on the part of the depuration plant operator to purify the shellfish that are being harvested from polluted shellfish growing areas, could result in serious disease outbreaks. The laboratories servicing such plants must provide accurate and reliable sample results to indicate that the shellfish have purged themselves of contaminants. This is an integral part of the Department's program to ensure the safety of these potentially hazardous food products.

The public benefits which would be derived are the prevention of food borne illness and public confidence in a potentially hazardous product which has been given much adverse publicity in years past. Additionally, the Department can greatly reduce the possibility that unsafe and adulterated shellfish will reach the consumer; identify and prevent shellfish with unsatisfactory quality from reaching New Jersey consumers and consumers from other states, and trace contaminated products before a serious disease outbreak could occur.

Economic Impact

The National Shellfish Safety Program (NSSP) which is a cooperative Federal/State Program, requires industry to meet and maintain strict sanitary requirements and obtain certification from the state of origin for interstate shipment of shellfish. New Jersey's shellfish program activities must comply with the National Program so that the State can maintain Federal endorsement which allows the industry to ship shellfish interstate. Failure to readopt these rules could cause a loss of Federal endorsement and prevent New Jersey's shellfish plants from shipping to other states, thus crippling the industry and creating a loss of many jobs.

With continued vigilance on the part of the shellfish control program and industry cooperation and compliance, the Department will continue to receive the Federal endorsement necessary for New Jersey to remain a leader in the shipment of quality shellfish products throughout the country.

Regulatory Flexibility Statement

Regarding a reduction in the regulatory burden upon businesses employing less than 100 people, in this instance the provider of the small business must meet the same requirements due to the potential public health risk. Both the large and the small firms falling within the purview of these rules have the same responsibility of preventing illness related

to shellfish; therefore, a reduction of the regulatory burden would not apply to this case.

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

(a)

HOSPITAL REIMBURSEMENT

**Procedural and Methodological Regulations
Financial Elements and Reporting**

**Proposed Amendments: N.J.A.C. 8:31B-3.7, 3.17,
3.27, 3.51, 3.55, 3.73 and 4.42**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1987-250.

Submit comments on or before September 4, 1987 to:

Pamela S. Dickson, Director
Hospital Reimbursement
New Jersey Department of Health
Room 601
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The Department proposed changes to the Procedural and Methodological Regulations at N.J.A.C. 8:31B-3.27 and 3.72 and the Financial Elements at N.J.A.C. 8:31B-4.42 at the August 14, 1986 Health Care Administration Board Meeting. Proposed rules were published in the New Jersey Register of September 22, 1986 at 18 N.J.R. 1912(a) and 1917(a), with a 90-day comment period ending on December 21, 1986. Under those proposals, all hospitals would have received a Capital Facilities Allowance (CFA) based on their Capital Cash Requirements (CCR), plus a Capital Facilities Formula Allowance (CFFA). Additionally, hospitals undertaking new capital projects after September 1, 1986 would have received a specific adjustment to their CCR for these new projects. The proposed method sought to: allow the Department to better scrutinize rapidly rising hospital capital costs for reasonableness; link capital reimbursement more closely to actual hospital utilization; and reduce or eliminate incentives for overinvestment in capital facilities.

Comments from interested parties in response to publication and discussions at the Commissioner's Hospital/Payer Task Force have resulted in a revised Departmental view of capital regulation requirements leading to this new proposal for capital reimbursement. These proposed amendments seek for existing capital indebtedness (capital debt incurred on or before August 31, 1986) to: provide for reimbursement; define reasonable interest expense; establish incentives for reducing interest costs when favorable market conditions are present; preserve reimbursement to hospitals for capital debt already incurred; institute a practical and simple method for assuring that capital reimbursement does not exceed the value of the asset during the life of the debt; and maintain the creditworthiness of the hospital industry in New Jersey. For capital indebtedness incurred on or after September 1, 1986 (including the October 15, 1986 Batch) these proposed amendments seek to: establish a method for unit price reimbursement of capital; establish a standard price per unit of service; and install a prospective method for reimbursing capital. This proposal supersedes the proposed rule amendments initially published on September 22, 1986 regarding reimbursement of existing capital indebtedness.

Under present rules, the CFA, which constitutes a hospital's reimbursement for plant and fixed equipment, is calculated as the larger of the following two quantities: CCR (essentially, actual long-term debt service) plus a CFFA (essentially, a replacement allowance for plant and fixed equipment); or depreciation on plant and fixed equipment plus Interest on long-term debt. Approximately two-thirds of the hospitals on the Chapter 83 DRG system are reimbursed under the Depreciation plus Interest option (OPTION 2) and the remaining hospitals under the Debt Service option (OPTION 1). Under existing rules, hospitals are reimbursed either 100 percent of their actual debt service needs plus the CFFA, a replacement allowance, (OPTION 1) or 100 percent of their actual depreciation and interest expenses (OPTION 2). Hospitals may change their election of reimbursement option annually. Because debt service payments are customarily fixed (or level) and the composition of principal and interest in the payment changes, both options provide reimbursement in excess of actual debt service needs. Industry and hospital

specific limits on actual capital reimbursement are not present due to the presence of two reimbursement options, with hospitals permitted to choose an option and change this choice annually during the useful life of a capital project. This approach creates incentives to overinvest the capital. Under existing rules, Statewide reimbursement for CFA (plant and fixed equipment) increased from \$226.5 million in 1984 to \$304.5 million in 1986, an increase of \$78.0 million or about 34 percent. Based on already approved capital projects, the total CFA is expected to increase to approximately \$365.8 million, a further increase of \$61.5 million or about 62 percent over 1984. This does not include the October 15, 1986 Batch which totals approximately \$439.5 million and will result in about \$42.7 million in annual reimbursement. If all of these projects were to be approved, the total CFA would increase to \$408.5 million or about 80 percent over 1984. Additionally, the Department has Letters of Intent for \$479.1 million in additional projects. If approved, these projects would result in approximately an additional \$68 million per year in capital reimbursement. Non-capital costs have increased by about 10 percent per year during the same time.

This proposal provides a method for reimbursing existing capital debt (that incurred on or before August 31, 1986) which: encourages hospitals with existing debt to refinance where market conditions would reduce interest cost to the hospitals and thereby lower the rates of payers on the Chapter 83 system; permits hospitals to choose either OPTION 1 or OPTION 2 reimbursement alternatives but eliminate subsequent, annual, option changes; and defines and requires specific funding in the Plant Fund to assure adequate debt service. For new debt (that incurred on or after September 1, 1986), this proposal: bases reimbursement on units of service; subjects all Chapter 83 hospitals to scrutiny and control by comparison with Statewide standards; and rewards hospitals with increasing volumes and discourages those with decreasing volumes.

Additional rule changes needed to provide consistency with the major proposed changes (in 8:31B-3.27) are also included. **Please note** that the comment period has been extended for 60 days until September 4, 1987.

Social Impact

The proposed amendments are expected to protect existing capital indebtedness and result in a controlled rate of increase in capital expenditures for plant and fixed equipment which will provide an environment for more economical renovation and modernization projects by hospitals for only truly needed capacity. No information suggests the proposed amendments would adversely impact access to or the quality of patient care. By ensuring that scarce financial resources are invested only in needed and well utilized facilities, access to quality health care in effective and efficient facilities would be enhanced. The proposed amendment will assure that hospital reimbursement over the lifetime of the asset is not in excess of the value of the asset.

Economic Impact

The proposed amendments to N.J.A.C. 8:31B-3.27 will affect all hospitals presently receiving reimbursement by under either OPTION 1 (principal plus interest plus CFFA) or OPTION 2 (depreciation plus interest) by: limiting election of reimbursement option to one choice without allowing change during the useful life of the existing project; limiting reimbursable interest expenses to interest rates currently available creating an incentive to refinance or advance refund high interest rate debt; and enhancing the capacity of the Department of Health and Hospital Rate Setting Commission to assure both reimbursement for existing debt and controlled growth of new debt. It is anticipated that the incentive provided to refinance or advance refund existing debt alone could result in savings of approximately \$10 million per year to the Chapter 83 reimbursement system.

Regulatory Flexibility Statement

The Department has determined that the proposed rules as amended affect only the 89 hospitals with rates established by the Hospital Rate Setting Commission. All but one of these hospitals employ more than 100 full-time employees and do not fall into the category of small businesses as defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). The one hospital covered by the regulation will not be affected by the proposed changes.

The proposed amendments do not add reporting, recordkeeping or other compliance requirements. N.J.A.C. 8:31B-3.27 requires annual submission of written documents to the Department which the proposed revision does not modify.

The proposed amendments are necessary to preserve the public health by ensuring only needed expenditures for capital facilities are made and resources are not directed to funding unneeded and underutilized facilities.

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

8:31B-3.7 Incentive standard, Preliminary Cost Base: Proposed Schedule of Rates

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

(c) The Preliminary Cost Base shall include a [capital component for Capital Cash Requirements, and a Capital Facilities Formula Allowance. Capital Cash Requirements and the Capital Facilities Formula Allowance are described in N.J.A.C. 8:31B-3.27] **Capital Facilities Allowance as defined in N.J.A.C. 8:31B-3.27.**

(d)-(e) (No change.)

8:31B-3.17 Financial elements reporting audit adjustments

(a) The aggregate Current Cost Base is developed from financial elements reported to New Jersey State Department of Health and includes:

1.-2. (No change.)

3. Capital Facilities Allowance: Capital cash requirements [plus a formula allowance (See N.J.A.C. 8:31B-4.42)] **(as defined in N.J.A.C. 8:31B-3.27 and 8:31B-4.42).**

4. (No change.)

(b) (No change.)

8:31B-3.27 Capital Facilities

(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including lease, principal, [interest] **reasonable interest (as defined in (a)1i(1) below** on long term debt, and certain other debt service[s] payments, but excluding the expenditure of specific purpose grants for capital projects. Capital Cash Requirements for any year the Schedule of Rates is to be prospectively set shall not include the whole amount of any balloon payments. Rather, balloon payments shall be reported to the Commission in a timely manner in order to examine the possibility of refinancing such payments. Capital Cash Requirements are to be reported per Uniform Cost Reporting Regulation.

(1) **Reasonable Interest Expense for Capital Facilities for any rate year is defined as the lower of the hospital's actual interest expense for that year or the interest expense the hospital would have incurred had it refinanced or advance refunded its long-term debt at the average interest rate available during that year on bonds of comparable credit quality and Federal income tax status issued by the New Jersey Health Care Facilities Financing Authority, provided that such a refinancing or advance refunding would result in significant present value savings to consumers and is feasible considering issuance costs and tax laws. If either of these provisions is not met, Reasonable Interest Expense shall equal the hospital's actual interest expense.**

ii. **Reimbursement for capital facilities indebtedness incurred on or before August 31, 1986 shall be reimbursed in accordance with the following requirements except that where hospitals elect to undertake capital indebtedness on or after September 1, 1986 such hospitals will be reimbursed in accordance with (a)1vii below.**

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

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

[iv.]v. The yearly Capital Facilities Allowance is computed [per] using information provided by the Uniform Cost Reporting Regulation as [the higher of]: the prospective year's depreciation and reasonable interest expense (OPTION 2); or the hospital's current yearly amount of capital indebtedness, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (any funds designated by the hospital's board for the Capital Facilities Formula Allowance against the Fund Target) divided by the adjusted remaining useful life of the hospital (OPTION 1).

[(1) The current yearly amount of capital indebtedness of the hospital, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (any funds designated by the hospital's board for the Capital Facilities Formula Allowance (CFFA) against the Fund Target, divided by the adjusted remaining useful life of the hospital;

(2) The prospective year's depreciation and interest expense.]

(1) **Hospitals must elect the method for reimbursement of Capital Facilities Allowance by December 31, 1987. Should no election be made, the Department will place hospitals on Principal plus Reasonable Interest plus CFFA reimbursement (OPTION 1).**

(2) **After hospitals elect or are included in either OPTION 1 or OPTION 2, they will remain on the pertinent reimbursement option for the life of the outstanding debt. This method will continue to apply if refinancing or advance refunding of this debt occurs.**

[v. For building replacement or major renovations, regardless of which of the above options (a or b) is higher in any given year, the maximum amount reimbursed through the Capital Facilities Allowance shall be the higher of one of the alternatives summed over the applicable number of years.]

vi. **For either option, a hospital must annually fund at least 50 percent of the difference between the CFA and its Capital Cash Requirements, plus earnings on previous year's contributions, in the Plant Fund (as defined in N.J.A.C. 8:31B-4.16(a)2). A penalty of 10 percent of the amount not funded (the difference between required accumulated funding with fund earnings and actual funding) will be assessed against the hospital. Each year a hospital may spend up to 50 percent of the maximum annual difference between CFA and Capital Cash Requirements for permitted purposes (as defined in N.J.A.C. 8:31B-4.42(a)2 or may borrow against the Plant Fund up to the 50 percent annual level for any lawful purpose, provided that such loans made against the Plant Fund are repaid with interest within one year of borrowing, and such borrowings do not reduce the accumulated balance of deposits plus earnings in the Plant Fund. Expenditures above the 50 percent level are permitted only for major plant replacement with an approved Certificate of Need or for needs related to mergers, consolidations, conversions, or closures as defined in N.J.A.C. 8:31B-4.42(a)3.**

(1) Pursuant to N.J.A.C. 8:31B-4.16 and 8:31B-4.21, at the close of each annual accounting period hospitals must submit to the Department of Health certified financial statements including an auditor's (or actuary's) statement attesting that accumulated Plant Fund contributions meet or exceed 50 percent of the difference between the CFA and Capital Cash Requirements plus accumulated contributions and Plant Fund earnings.

[vi. For either option, the maximum expenditure from the Plant Fund for each year shall not exceed 50 percent of the difference between the CFA and the capital cash indebtedness. If the 50 percent level per year is not maintained in the Plant Fund and the hospital has an overcollection at Final Reconciliation, a penalty of 10 percent of the amount not funded will be assessed against the institution but not to exceed the overcollection. A minimum of 50 percent of the yearly amount of the CFFA must be maintained in the Internally Generated Plant Fund to be used only for future plant replacement with approved Certificate of Need.]

vii. **Reimbursement for capital facilities indebtedness requiring Certificate of Need approval and incurred on or after September 1, 1986 shall be in accordance with the following requirements.**

(1) A Statewide Capital Facilities Allowance will be calculated as follows:

(A) Total Capital Facilities Allowance including all indebtedness whether or not requiring Certificate of Need approval (as defined in (a)1v above) and an estimate of the annual Capital Facilities Allowance which will result from capital projects approved but not yet bonded or built, for all Chapter 83 hospitals, will be summed and this sum divided by Total Adjusted Admissions (as defined in N.J.A.C. 8:31B-3.24 Footnote 2) to determine the Capital Facilities Allowance per Adjusted Admission. To initiate these regulations, Capital Facilities Allowance (plus approved projects) for 1986 and Adjusted Admissions for 1985 will be used in the calculations defined in this paragraph. Revised calculations will be performed as needed and in accordance with the Hospital Policy Manual once promulgated and adopted.

(B) Hospitals will be reimbursed their actual Capital Facilities Allowance per Adjusted Admission up to the maximum statewide amount calculated as shown in (a)1vii(1)(A) above. All amounts included in a hospital's Capital Facilities Allowance, whether or not requiring Certificate of Need approval, will be included in calculating the Capital Facilities Allowance per Adjusted Admission.

(C) Hospitals will be reimbursed the Capital Facilities Allowance per Adjusted Admission for each event of inpatient care billed for on the Uniform Bill—Patient Summary (UB-PS).

viii. **Reimbursement for capital facilities which does not require Certificate of Need approval, incurred on or after January 1, 1988 shall be in accordance with the following requirements.**

1. The hospital's Capital Facilities Allowance per Adjusted Admission, including the new capital costs, shall be compared to the statewide Capital Facilities Allowance per Adjusted Admission in accordance with (a)1vii above.

2. Hospitals with costs per Adjusted Admission below the calculated limit will be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)1ii through v above.

3. Hospitals with costs per Adjusted Admission above the calculated limit may appeal an increase to the Hospital Rate Setting Commission to add the additional capital costs to their Capital Facilities Allowance.

(A) Where the Commission approves such amounts, in whole or in part, they will be reimbursed in accordance with (a)1ii through v above;

(B) Absent Commission approval, no additional Capital Facilities Allowance reimbursement will be permitted.

2. (No change.)

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. (No change.)

2. Conditionally accept the Certified Revenue Base: Conditional acceptance is contingent upon approval by the Commission of the Schedule of Rates. Subject to approval, conditional acceptance waives the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.53 [through] and 3.54. Following Commission approval, rates conditionally accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to conditionally accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Rates conditionally accepted shall not include the additional one percent of all direct patient care costs. Hospitals may appeal the following items:

i.-ii. (No change.)

iii. Approved certificates of need which is defined as capital and patient care costs arising from projects for which a certificate of need has been granted. Adjustments in Patient Care Costs in excess of that which would otherwise be deemed reasonable under N.J.A.C. 8:31B-3.20 through 3.36 shall be permitted by the Commissioner acting under this Section only when:

(1) The hospital's historical level of depreciation on major moveable equipment fails to adequately reflect purchases of equipment subject to the State's Standards and General Criteria for Certificate of Need for regionalized tertiary services; or

(2) The hospital has no overall disincentive, and no disincentive in the Patient Care Cost Centers most directly affected by the project.

NOTE: In evaluating appeals, for (b)iiiii above the Commission shall give emphasis to any cost savings projected by the hospital in its application for such a Certificate of Need to any existing debt obligations on existing equipment.]

iv.-v.iiiii.-iv. (No change in text.)

3. (No change.)

8:31B-3.55 Capital facilities

(a) Any changes in debt financing subsequent to the Current Cost Base shall be reported to the Commissioner and reviewed for reasonableness [prior to their inclusion in Capital Cash Requirements] in accordance with N.J.A.C. 8:31B-3.27(a)1.

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

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of [actual] actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient) or N.J.A.C. 8:31A-10.7, whichever is appropriate; determination of actual case-mix as determined the GROUPER used to establish rates, and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation:

1. Variable financial elements:

i.-iii. (No change.)

iv. For capital indebtedness incurred on or after September 1, 1986, (as defined in N.J.A.C. 8:31B-3.27(a)1vii) adjustments at reconciliation will reflect only adjusted admission figures.

2. Fixed financial elements:

i. (No change.)

ii. Capital Costs: Only capital indebtedness incurred before September 1, 1986 (as defined in N.J.A.C. 3:27(a)1) is considered a fixed financial element. With the exception of the Capital Facilities Formula Allowance and Major Moveable Equipment, these costs shall be reconciled to actual certified amounts, provided that any increase from the prospective amount approved by the Commissioner to the actual amount are related to Capital Facilities as defined in N.J.A.C. 8:31B-3.42.

3.-4. (No change.)

8:31B-4.42 Capital facilities'

(a) Buildings and Fixed Equipment:

1. Capital Facilities, other than Major Moveable Equipment, as defined in N.J.A.C. 8:31B-4.13 through 4.25 utilized for Services Related to Patient Care, are included as financial elements for all hospitals through a Capital Facility Allowance (Capital Cash Requirements plus a Capital Facility Formula Allowance), as calculated per N.J.A.C. 8:31B-3.27(a)1]

1. The costs of Capital Facilities used for Services Related to Patient Care as defined in N.J.A.C. 8:31B-4.21, except for Major Moveable Equipment as defined in 8:31B-4.21 and 4.44, are included as financial elements for all hospitals through a Capital Facilities Allowance calculated in accordance with N.J.A.C. 8:31B-3.27(a)1i through vii.

2.-3. (No change.)

'(Footnote) (No change.)

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations

Proposed Amendments: N.J.A.C. 8:31B-3.4, 3.51, 3.71 and 3.73

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1987-251.

Submit written comments by September 4, 1987 to:

Pamela S. Dickson, Director,
Hospital Reimbursement
NJ State Department of Health
CN 360, Room 601
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendments to the Chapter 83 Procedural and Methodological Regulations would change the method by which indirect costs are screened for reasonableness and make the majority of indirect costs 100 percent volume variable. Resident, physician, and education and research would continue to be screened for reasonableness and would not be volume variable. In addition, malpractice, employee health insurance, paid taxes and outside collection costs will be reimbursed without screens and will not be subject to volume variability.

The indirect costs which will be reimbursed on the basis of patient volume are:

- 1. A&G/Fiscal
- 2. Plant
- 3. Patient Care Coordination (PCC Non-phy)
- 4. Other General Services
- 5. Utilities
- 6. PCC (Physician)

The total of the above costs will be used to calculate an indirect cost per adjusted admission by teaching peer group. This peer group cost will be the mean approved cost per adjusted admission.

There will be a one year phase-in of the standard reimbursement method. In 1988, there will be a 50/50 blend of the standard and actual approved costs. If the 1988 blended rate would result in a gain or loss of revenue greater than two percent of a hospital's Preliminary Cost Base, assuming no change in volume, then the rate will be recalculated to a level which would limit the hospital's gain or loss to two percent. After these 1988 rates are determined which limit gains or losses to two percent assuming no volume change, then hospitals will be allowed to appeal for changes in reimbursement which result from volume downturns. The appeals budget will be equal to the revenue removed from the system due to volume decreases. No appeals will be allowed for losses due to the standard price. In 1989, all hospitals will be reimbursed the standard for their peer group with no appeals recognized. The proposed amendment to N.J.A.C. 8:31B-3.51, Notification appeal and review, herein supersedes the amendment to that section proposed on September 22, 1986 at 18 N.J.R. 1908(a).

The standard indirect cost per adjusted admission will be allocated to each Diagnosis Related Group (DRG) as an add-on to the rate. Increases or decreases in volume, not case-mix, will determine if the hospital is to receive more or less indirect cost reimbursement in the rate year compared to the base year.

The intent of this rule change is to promote the financial solvency of appropriately utilized institutions while eliminating the reimbursement of large, fixed sums of indirect costs to institutions with declining volume. Please note that the comment period has been extended for 60 days until September 4, 1987.

Social Impact

The proposed amendments will promote the financial solvency of necessary and efficient hospitals. Excess beds may be eliminated as hospitals with declining volumes will no longer be guaranteed their total indirect costs. Hospitals with increasing volume would have sufficient revenue to accommodate additional patients since they would increase their revenue as volume increases.

Economic Impact

The proposed amendments will help reduce excess beds. The trend would be to redistribute revenue to those institutions which are gaining volume and have comparatively low per unit indirect costs. Institutions losing volume and having high per unit indirect costs will lose reimbursement. This redistribution of revenue based on the distribution of patients and cost efficiency, would result in providing the largest margins to hospitals with the greatest volume and lowest cost per inpatient.

Regulatory Flexibility Statement

The proposed rule amendments will be effective, after adoption, beginning January 1, 1988. It is expected that as of that date, there will be no hospitals subject to Chapter 83 Rate Setting regulations with fewer than 100 full-time employees. Therefore, these rules will have no impact on any institution which would qualify as a small business as defined in Section 2 of The New Jersey Regulatory Flexibility Act (P.L. 1986, c.169).

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

8:31B-3.24 Reasonable indirect patient care costs

(a) Reasonable Indirect Patient Care Costs (exclusive of SNF apportionment) [1] are included in the Preliminary Cost Base at the amount determined in N.J.A.C. 8:31B-3.18 prior to [application of] **multiplication** by the economic factor and include the following costs reported in cost centers as adjusted to reflect purchased employee health insurance and price level depreciation including any patient care general service costs allocated to indirect costs per N.J.A.C. 8:31B-3.18.

- 1. EDR: Education and Research
- 2. RSD: Residents Physician and teaching related
- 3. PHY: Physicians Coverage
- 4. A&G: Administrative and general
- 5. FIS: Fiscal
- 6. PCC: Patient care coordination
- 7. PLT: Plant (less capitalized General service related
interest and depreciation)
- 8. UTC: Utilities cost
- 9. MAL: Malpractice Insurance Institutional related
- 10. OGS: Other general services

(b) **The amount of Indirect Costs apportioned to SNF is determined by multiplying total Indirect Patient Care Costs by the ratio of: Direct SNF costs plus SNF Patient Care General Service costs allocated to Direct SNF costs (using allocation statistics reported to the Department of Health) to Direct Costs plus total Patient Care General Service costs allocated to Direct Costs.**

[(b)](c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. [The General Service Related centers will be screened to determine disincentive amounts.] Disincentive amounts will be [screened] **calculated** in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. [Such screens will be applied to the indirect cost centers defined below by cost center (or combined cost center) with the exception of sales and real estate taxes, outside collection costs and purchased employee health insurance, through comparison with limits relative to the median cost per units of service. The incentive amounts of the General Service Related centers will be one-half the difference between a hospital's actual cost and 90 percent of the median unit cost. The remaining indirect costs centers will be included in the Preliminary Cost Base at the base year level as adjusted by the economic factor. Appeals of these Indirect Cost Centers will be subject to the provisions of N.J.A.C. 8:31B-3.53 through 3.57.] **Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance and malpractice insurance. The above indirect costs are not considered volume variable and are therefore included in the**

Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1. **The following indirect costs A&G/FIS, PLT, PCC (non-physician) and OGS, will be equalized and then totaled by peer group. This total cost will be divided by the peer group adjusted admissions to create the equalized peer group standard unit cost. An adjusted admission is defined as admissions multiplied by total gross revenue divided by inpatient gross revenue.**

2. **The UTC and PCC (Physician) indirect costs are totalled (but not equalized) by peer group, and divided by adjusted admissions to create a peer group (unequalized) standard unit cost.**

3. **The equalized peer group standard unit cost is unequalized using a hospital's unequalization factor, and added to the peer group unequalized standard unit cost to form a hospital's unequalized indirect standard unit cost. This equalized standard unit cost will be multiplied by the hospital specific economic factor and will be added to each DRG rate per case.**

4. **The costs used to calculate these peer group indirect standards will be the 1985 approved indirect costs which shall include Commission approved indirect costs which are approved as continuous adjustments.**

5. **The adjusted admissions used to calculate these peer group standards will be 1985 adjusted admissions.**

6. **In the rate year 1989, the full standard indirect unit cost will be used with no appeal provisions. The 1988 rate year will serve as a phase-in period. For 1988, only a 50/50 blend of the standard costs and the hospital's approved indirect costs will be used. If the 1988 blended rate would result in a gain or loss of revenue greater than two percent of a hospital's Preliminary Cost Base, assuming no change in volume, then the rate will be recalculated to a level which would limit the hospital's gain or loss to two percent. After these 1988 rates are determined which limit gains and losses to two percent assuming no volume change, then hospitals will be allowed to appeal for changes in reimbursement which result from volume downturns. These appeals will be subject to a statewide appeals budget equal to the revenue removed from the system due to the downturns. No appeals will be allowed for losses due to the standard price.**

i. **As part of an entire reimbursement reform package, the Department will recognize an operating margin for hospitals. When full standard reimbursement is in effect (1989), then the phase-in of an operating margin will begin.**

[(c) For purposes of calculating indirect cost screens the indirect salary costs will be equalized and unequalized similar to the procedure described in N.J.A.C. 8:31B-3.22(c), respectively, for the following labor categories:

- 1. General services includes non-physician salaries reported in PLT cost center.
- 2. Administrative and clerical services: Includes non-physician salaries reported in A&G, PCC and FIS cost center.]

(d) **Non-Physician salaries will be equalized based upon the 11 labor market areas for the purpose of grouping the following indirect cost centers in the peer group standard calculations:**

- 1. **A&G/FIS;**
- 2. **PLT;**
- 3. **PCC (Non-phy); and**
- 4. **OGS.**

[(d)](e) Cost centers subject to screening:

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
[(A&G & FIS) Administrative & General & Fiscal	teaching/minor teaching non-teaching	Adjusted Admissions	1.1
(PLT) Plant	Statewide	Total PLT square Feet	1.1
(PCC) Patient Care Coord.	teaching/minor teaching non-teaching]	Adjusted Admissions	1.1
(RSD) Residents Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Physicians Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent PHY	1.1
(RSD) Residents Physician	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1
Education & Research	teaching non-teaching	PHY	

[The amount of Indirect Costs apportioned to SNF is determined by multiplying total Indirect Patient Care Costs by the ratio of: Direct SNF Patient Care General Service costs allocated to Direct SNF costs (using allocation statistics reported to the Department of Health) to Direct Cost plus total Patient Care General Service costs allocated to Direct Costs.

²An adjusted admission as defined by the American Hospital Association, is admissions multiplied by total gross revenue divided by inpatient gross revenue.]

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. Accept the Certified Revenue Base: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospitals plans to eliminate inefficiencies. Subject to approval, acceptance provides the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.55 through 3.58. **and in 1988 only 8:31B-3.24.**

2.-4. (No change.)

8:31B-3.71 Reconciliations and adjustments

(a) Certain automatic reconciliations and adjustments are necessary to insure that hospitals' net revenue collections align with the Commission approved Schedule of Rates, especially with regard to the inclusion of both [indirect (fixed) and] direct (variable) financial elements **and indirect financial elements which are not volume variable as indicated in N.J.A.C. 3:31B-3.24** and that changes are in a consistent ratio with costs by revenue center. Further, the Schedule of Rates [itself] must be periodically adjusted to reflect changes in inflation and the recalculation of certain indirect financial elements.

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

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient) or N.J.A.C. 8:31A-10.7, whichever is appropriate: determination of actual case-mix as determined the same GROUPER used to establish rates, and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation:

1. (No change.)

2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements as initially determined or as approved through appeal shall remain fixed during the rate period except as modified for actual inflation. Any under or over collection of indirect patient care revenue **from revenue centers which are not volume variable as indicated in N.J.A.C. 3:31B-3.24** shall be compensated by a Schedule of Rates Variance as described below.

ii. (No change.)

3.-4. (No change.)

(a)

THE COMMISSIONER

Certificate of Need: Review of Long-Term Care Facilities and Services Policy Manual

Proposed Amendments: N.J.A.C. 8:33H-2.1, 3.1, 3.3 and 3.5

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1987-249.

Submit comments by August 5, 1987 to:

John Calabria, Chief
Health Systems Review Program
New Jersey Department of Health
CN 360, Room 604
Trenton, N.J. 08625

The agency proposal follows:

Summary

The existing rules require periodic updating to address evolving activities and concerns within the expanding long-term care field. The amendments proposed herein reflect the Department of Health's ongoing interest in promoting access to high quality care within long-term care facilities, including residential health care facilities.

In recent months, the Department of Health has been researching the issue of access to long-term care for patients with complex medical conditions or care requirements. A survey of all acute care hospitals in the State was conducted by the Department in order to ascertain the types and numbers of patients who may be hard to place in nursing homes due to the complexity of their care needs. With approximately 96 percent of the hospitals responding to the survey, a total of 454 patients were reported to be "hard to place" due to their medical conditions or care requirements. This number constituted 26 percent of all 1755 patients awaiting nursing home placement. Such patients unnecessarily remain in costly acute care beds due to the unavailability of long-term care facilities which are willing or equipped to address their needs.

An Advisory Committee was convened by the Department to examine these problems, and the Committee recommended that a distinction be made between "specialized" and "heavy" long-term care patients. The former term, specialized care, refers only to care with technologically complex, life supporting equipment, necessitating that staff members have specialized training, education, or certification. At the present time, only long-term medically stable, mechanical ventilator-dependent patients are deemed to require specialized care. By contrast, the Advisory Committee recognized "heavy" long-term care, which requires a greater than usual number of hours to provide, but which can safely and reasonably be offered in any licensed long-term care facility with adequately trained staff. The additions to N.J.A.C. 8:33H proposed herein address the needs of "specialized" care patients.

The proposed amendments also reflect the Department of Health's concern with assuring high quality care in long-term care facilities. The licensure track record is deemed to be an important indicator of Certificate of Need applicants' capacity to provide high quality care. Consequently, the Department places much emphasis on this record when making determinations about whether to approve a long-term care project. However, certain standards/conditions within the licensure rules are clearly more significant than others with respect to the quality of care provided in health care facilities. For this reason, the proposed additions identify those licensure standards/conditions which pertain directly to patient care provision as the basis for concluding whether an applicant has an acceptable track record.

The Department has encouraged the development of residential health care facilities (RCHF) in New Jersey during the last several years. The 1983 State Nursing Home Task Force concluded that there was a need for approximately 5,000 additional RHCf beds. Due to approvals of new residential health care facilities since that time, this need has been reduced to approximately 1,800 beds. Residential health care facilities offer a low cost alternative to nursing home care for persons who require personal care assistance but who do not need the intensity of services which are available in nursing homes. Currently, the Long-Term Care Policy Manual states that RHCf beds "shall not be located in areas where they will overburden the local health, social services, and community support systems" (N.J.A.C. 8:33H-3.3(a)2). The proposed additions expand upon this point. The intent of the amendments regarding free-standing RHCf's

is to encourage the development of such facilities in areas where the residents' needs for social services and meaningful recreational activities will be met.

The following substantive changes are proposed:

1. Addition of a definition at N.J.A.C. 8:33H-2.1 for "specialized care".
2. Addition to the subparagraph at N.J.A.C. 8:33H-3.1(a)lii to specify the minimum size of units for "specialized" care.
3. Addition of a paragraph at N.J.A.C. 8:33H-3.1(b)4 which suggests the maximum recommended size of units for "specialized" care.
4. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(a)lv to indicate the desired occupancy rate for "specialized" care beds/units.
5. Addition of a subparagraph at N.J.A.C. 8:33H-3.3(a)2iv to specify the criteria to be used for evaluating Certificate of Need applications for "specialized" care beds/services.
6. Additions to the subparagraph at N.J.A.C. 8:33H-3.3(a)3ii to clarify the conditions under which Certificate of Need applications will be denied due to licensure violations/difficulties and to preclude inexperienced Certificate of Need applicants from receiving more than two project approvals unit they have established a licensing track record in New Jersey.
7. Addition of subparagraphs at N.J.A.C. 8:33H-3.3(a)3vi and vii to specify requirements which must be fulfilled by free-standing residential health care facilities in order to prevent such facilities from overburdening local social service systems.
8. Addition to the subparagraph at N.J.A.C. 8:33H-3.5(a)lviii to specify the minimum and maximum size of units for specialized long-term care in acute care hospitals.
9. Addition of a paragraph at N.J.A.C. 8:33H-3.5(a)3 to describe the conditions under which beds approved for specialized care may be converted for general long-term care or residential health care use.

Social Impact

The Department of Health's research regarding "specialized" long-term care concluded that approximately 128 adult patients throughout the State need nursing home placements for long-term ventilator care. The Department of Health is concerned about the serious quality of care and cost efficiency problems which could arise if any and every long-term care facility decided to admit these specialized care patients. It is consequently deemed appropriate that long-term ventilator care should be regionalized in New Jersey and that facilities proposing to offer this form of care should be subjected to Certificate of Need requirements. There should be a very positive social impact from this policy, in that the public will gain assurance that this technologically complex care (this is, care requiring the continuous use of life-supporting equipment) will be provided only by those facilities which are able to meet certain quality standards and which are located in areas where there is a documented need. The proposed amendments regarding specialized care were developed in consultation with an Advisory Committee and reflect the results of the Department's research on this issue. Research included a review of the professional literature regarding specialized care, a survey of over 20 facilities throughout the nation which offer long-term ventilator care, and a survey of 34 states' policies pertaining to specialized and heavy long-term care. This research led to the conclusion that home care is usually preferable for ventilator-dependent patients, but institutional long-term care is unavoidable in some instances. The research also yielded the conclusion that specialized care units should be staffed by clinicians with expertise in the treatment of ventilator-dependent patients. Throughout the nation, units with a small number of beds (that is, 30 or fewer) were reported to be preferred because they promote a homelike environment and better quality care. The intent of the amendments for specialized long-term care is to enhance the quality of life for affected, chronically ill patients through placement in the least restrictive, most homelike institutional environment, when long-term institutionalization is appropriate to patients' clinical needs.

One mechanism for promoting high quality care in long-term care facilities is to grant Certificate of Need approvals only to those applicants who demonstrate a track record of excellence in the provision of health services. The sources of information to be used in evaluating the track record of applicants proposing bed additions to existing facilities or the construction of new long-term care or residential health care facilities are currently specified at N.J.A.C. 8:33H-3.3(a)3ii. The amendments proposed at 3.3(a)3ii(1)-(4) provide additional clarification regarding types of licensure difficulties which constitute a basis for nonapproval of Certificate of Need applications. The provision at (a)3ii(1) identifies circumstances in which an applicant has an indisputably poor history of

care, as evidenced by reference to "repeated violations of significant licensure standards." The provision at (a)3ii(2) addresses those instances in which an applicant has licensure deficiencies which are "not necessarily indicative of a poor operator," but which nonetheless suggest that remedial action should be taken before Certificate of Need approval is granted. As (a)3ii(3) indicates, a period of at least one year must elapse before Certificate of Need approval may be granted to an applicant who owns, operates, or manages a facility that has been subject to any of the licensure actions identified at (a)3ii(1) and (2). During that one year period, the applicant must maintain a record of compliance with Department of Health licensure standards. These proposed additions should have a positive social impact, since they will insure that only applicants who have a record high quality patient care will receive Certificate of Need approval.

In its present form, 8:33H-3.3(a)3ii offers guidance only for the licensure evaluation of applicants who have owned or operated health care facilities for a sufficient period of time to have established a track record. This policy may result in the favoring of applicants who are inexperienced in the health care industry. When applicants who lack any track record are compared with those who own/operate a number of facilities which may have been cited for relatively minor licensing deficiencies on brief occasions, the mere existence of a track record could preclude the latter applicant from receiving Certificate of Need approval. Inexperienced, new providers could gain approval without offering the State any assurance that they will be able to provide better care than denied applicants with known track records. Furthermore, the Department is concerned that an applicant without experience may receive numerous Certificate of Need approvals and yet not have the ability or resources to successfully implement projects as outlined in the applications. This can exacerbate the problem of "paper" beds in the State. With approximately 8,000 Certificate of Need-approved but unbuilt long-term care beds in New Jersey, it is particularly important to have the assurance that applicants will be able to implement their projects.

The Department recognizes that new providers have the potential to make important, innovative contributions to the long-term care field. Their participation as facility owner/operators is encouraged. However, the Department does not wish to jeopardize the health and safety of patients who may be admitted into the facility of a new provider who turns out to have serious difficulties in managing/operating that institution. For these reasons, the amendment to the Long-Term Care Policy Manual proposed at N.J.A.C. 8:33H-3.3(a)3ii(4) will have the effect of limiting the number of Certificate of Need approvals an applicant can receive, until such time as the applicant has established a track record for the ownership/operation of health care facilities in this State. This policy also discourages persons with no interest in operating facilities from obtaining large numbers of Certificates for the sole purpose of venture capitalizing and transferring properties at profits that must be borne by patients in the form of increased charges.

A positive social impact is anticipated if the latter proposal is adopted. The amendment should provide an incentive for new, inexperienced applicants to gain the necessary experience to successfully continue in the long-term care field. The long-term care patient population will benefit, because potentially unsatisfactory or incompetent new providers will more quickly be identified through the track record that they establish. These providers may then be constrained from owning/operating additional facilities in New Jersey.

The proposed amendments at 8:33H-3.3(a)3vi-vii are intended to address concerns expressed by some communities in which the number of free-standing residential health care facilities appears to overburden the local social service system. In the case where a residential health care facility is adjoined to a long-term care facility, residents may avail themselves of the supportive services and planned recreational activities that are available within that institution and that are required for licensure for long-term care beds. By contrast, residents of free-standing residential health care facilities may receive inadequate attention to their needs for social and recreational activities, unless the facility staff choose to make provisions for such activities. It is therefore important to receive documentation from applicants for free-standing residential health care facilities to insure that they will be able to meet residents' needs, either through direct provision of necessary services or through use of social service support from the local community. Residential health care facilities would also be required to make arrangements for the ongoing availability of recreational activities for their residents. The amendments regarding supportive and recreational service requirements for residential health care facilities should have a very beneficial impact on residents,

whose needs will be better met by these institutions. Furthermore, the assurance that residents will be adequately cared for should increase local community receptivity to the facilities.

Economic Impact

The cost of maintaining specialized long-term care patients in acute care hospital beds due to the unavailability of appropriate nursing home placements is a serious concern. A 1984 study of this problem in Minnesota revealed that the per diem cost of providing care to a ventilator-dependent patient was \$524.00 higher in an acute care hospital bed than in a long-term care placement; the cost of board and care, ventilator equipment, and respiratory therapy treatments was \$839.00 in the acute care setting, compared to \$315.00 in the long-term care setting. In New Jersey, it is more difficult to identify the precise differential between hospital and long-term care rates for ventilator care. This is so because of the State's all-payer Diagnosis Related Group (DRG) reimbursement system for hospital care. There is no single DRG for ventilator treatment; hence, the cost of ventilator care is folded into the rates for many different DRG's. In any case, the experience in other states such as Minnesota does suggest that savings will be accrued by relocating patients to the least intensive care setting appropriate to their needs.

The savings to be achieved from offering specialized care in long-term care facilities would, however, be offset if the facility could not efficiently offer these services. If only three or four ventilator-dependent patients were to be treated at any particular nursing home, the cost of 24-hour per day respiratory therapy coverage, for example, would have to be borne by those few patients, rather than being spread over a large number of users of the service. At the present time, there are several nursing homes in New Jersey which provide ventilator care for one to five patients; because of the great potential for cost inefficiency, this arrangement should not be encouraged. The rules proposed for "specialized" long-term care should have a beneficial economic impact, in eliminating unnecessary hospital costs and in promoting the cost-efficient provision of this care in regionalized facilities.

Although patients who need "heavy" care can reasonably be treated in any licensed long-term care facility, many nursing homes are unwilling to accept such patients because they require greater than usual amounts of care. Generally, there is no additional reimbursement available from the Department of Human Services, Division of Medical Assistance and Health Services, for Medicaid patients requiring "heavy" care. This reimbursement issue cannot be generically remedied through Certificate of Need rules.

The proposal pertaining to applicants' track record establishment does not impose any new or additional economic burdens on any agency of the State or on any existing provider of care. It is not anticipated that the long-term care industry as a whole will be impeded by the provisions. New applicants should have numerous opportunities to receive Certificate of Need approvals once they have established their track histories. The Department continues to receive a very large volume of Certificate of Need applications for long-term care facilities; there is no dearth of applications from which to select the most excellent.

The proposal regarding freestanding residential health care facility requirements would not impose any additional economic burdens on the State Department of Health or any current providers. Applicants for proposed facilities would have wide latitude in their possibilities for satisfying the requirements. While some facilities might choose the more costly option of direct service provision, others would be able to rely upon contractual or other written arrangements made with willing, existing social service agencies in the community. Communities with already overburdened social service systems would not constitute an appropriate environment for new freestanding residential health care facilities. Consequently, facilities planning to rely on existing services in those communities would have difficulty developing the necessary arrangements with service agencies prior to filing a Certificate of Need application. The latter residential health care facility applicants would then have an incentive to select sites in communities where the necessary social service systems are available and not overburdened. This would lead to a more even geographic distribution of residential health care facilities throughout the State, thereby improving access to care.

Regulatory Flexibility Statement

The Department of Health has determined that compliance with the proposed amendments, as well as with all of N.J.A.C. 8:33H and N.J.A.C. 8:33, is required by all health care facilities which provide health care services as they are defined in N.J.A.C. 8:33-1.6 Definitions. The Department acknowledges that many applicants may propose to develop health care facilities and services which could conceivably have less than 100

full-time employees and therefore be categorized by small businesses defined in Section 2 of the New Jersey Flexibility Act (P.L. 1986, c.169). In order to assure the orderly development of health care services, the Department must develop these amendments to be equitably and uniformly applied regardless of type or size of the applicant organization. This action will assure that long-term care services, of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost, are established to promote the public health.

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

8:33H-2.1 Definitions

"Specialized care" means long-term care for patients over the age of 16 who require ongoing, technically complex treatment with life supporting equipment, necessitating that caregiving staff members have specialized training, knowledge, education, and/or certification in order to safely and effectively meet their extraordinary needs. For the purpose of this definition, specialized care patients are limited to those with the need for long-term skilled nursing care who also require mechanical ventilation. A specialized care bed shall be defined as a bed in a licensed long-term care facility which is designated via issuance of a Certificate of Need for the provision of long-term ventilator care.

8:33H-3.1 Size of facilities

(a) Standards are as follows:

1. Standard I-01, minimum size, long-term care facilities:

i. The minimum size for a long-term care facility licensed for skilled or intermediate care shall be 60 beds. Size of facilities should be based upon even multiples of 60-bed nursing units to maximize cost efficiency.

ii. This standard shall not apply to:

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

(3) Distinct units in efficiently operated general hospitals, where minimum size shall be 30 beds for general long-term care and 10 beds for specialized long-term care, as defined at N.J.A.C. 8:33H-2.1.

(4) (No change.)

(5) Specialized long-term care beds, where the minimum unit size shall be 10 beds. Beds for specialized care shall only be approved in long-term care facilities which will have a total bed complement of 120 or more long-term care beds after project completion.

(b) Guidelines are as follows:

1.-3. (No change.)

4. Guideline I-04, maximum size, specialized long-term care units: The maximum recommended size of any unit proposed specifically for specialized long-term care is 30 beds.

8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

1. Standard III-01, occupancy rates. The desired occupancy rates (based on licensed beds) for inpatient facilities shall be:

i.-iv. (No change.)

v. Specialized long-term care, 85 percent.

2. Standard III-02, need for beds/services:

i.-iii. (No change.)

iv. The need for specialized care beds shall be evaluated with regard to the availability and adequacy of existing resources in the area to be served by the facility. For the purpose of this rule, the inventory of specialized care beds against which need criteria will be applied as specified at (a)2iv(1) below shall be the inventory maintained by the Commissioner of Health or her representative within the Department of Health. Beds approved for use as specialized long-term care beds shall be used exclusively for specialized long-term care as defined at N.J.A.C. 8:33H-2.1, and, hence, shall not be subject to the long-term care bed need methodology at N.J.A.C. 8:33H-3.10(a) nor counted in the inventory of long-term care beds available to the general adult population. In addition to the requirements specified at (a)3 below, the applicant shall provide evidence of compliance with all of the following, to the satisfaction of the Department of Health:

(1) The areawide need for the service, as determined by an annual survey conducted and reported by the Department of Health;

(2) The existence of a signed transfer agreement with at least one acute care hospital with a licensed capacity of at least 200 beds to which specialized care patients could be transferred within 30 minutes total travel time (for the purpose of receiving emergency medical treatment), if the proposed beds will not be located within an acute care hospital. The applicant shall submit documentation of the reasons why a particular hospital was chosen for the transfer agreement, including a description of the hospital's capability to address the needs of patients requiring the applicable type of specialized care;

(3) The existence of a specific plan to provide active, ongoing discharge planning for patients who may be discharged from the proposed specialized care beds to their homes when this is feasible and desirable to the patient/family/significant other; documentation may include signed transfer agreements or referral arrangements with home health agencies which are licensed by the Department of Health to serve the proposed facility's service area, and which maintain the capability to offer follow-up specialized care;

(4) Until such time as pertinent licensing rules are adopted, applicants shall be required as a condition of Certificate of Need approval to provide staffing for the nursing units in which the specialized care beds are to be located that will include the 24 hour-per-day presence on the unit of at least one registered nurse, and the 24 hour-per-day presence in the facility of at least one registered respiratory therapist;

(5) Until such time as pertinent licensing rules are adopted, applicants shall be required as a condition of Certificate of Need approval to provide arrangements for the ongoing availability of appropriate specialized medical, nursing, social work, dietary, and pharmacologic consultation for patients receiving specialized care. In addition, arrangements for the availability of appropriate laboratory support services shall be required within reasonable access time to the proposed facility.

3. Standards III-03, addition of beds: In counties and potentially underserved cities where the Department of Health has determined there is a need for long-term care beds, Certificate of Need applications for new facilities and additions to existing facilities will be evaluated with special consideration to the prioritization criteria outlined in (b)5[.] below. Applicants for long-term care and residential health care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to submit all of the following with the application:

i. (No change.)

ii. Documentation of a prior record of providing a high quality of care. In making determinations of prior track record, the Commissioner shall base [her or his] determinations on the recommendations submitted by the Department of Health's Division of Health Facilities Evaluation [supplemented by reports submitted by the Department of Human Services, Division of Medical Assistance and Health Services]. In evaluating the prior history of applicants who have owned or operated Class B or C boarding homes, reports submitted by the Department of Community Affairs will be used. These reports will be supplemented by the review of official State records of the track records of applicants in other states and other information, including but not limited to, reports from the Department of Human Services, statewide patients advocacy groups, ombudsman, and similar organizations, when available.

(1) Repeated violations of significant licensure standards, as determined by the Department of Health, or other indicia of poor quality, including but not limited to the institution of action to revoke or suspend the license of a facility owned or operated by an applicant for a Certificate of Need or the actual revocation or suspension of a license held by an applicant for a Certificate of Need shall require non-approval of the applicant's Certificate of Need application for the addition of beds.

(2) A record of current deficiencies in meeting minimum requirements in certain major licensure standards is not necessarily indicative of a poor operator but does signal the existence of managerial difficulties which properly should be addressed and remediated before an applicant may be deemed to have the current capacity and capabilities to expand by initiating any new or additional beds or health care services. Accordingly, a Certificate of Need shall not be approved for any applicant (including any principals thereof) who owns (in whole or in part), manages or operates, or has owned (in whole or in part), managed, or operated, any health care facility which has been subject to major licensure difficulties within one year preceding the date the Certificate of Need application is accepted for processing pursuant to N.J.A.C. 8:33. The major licensure difficulties which shall require the non-endorsement of a Certificate of Need application for any new or additional long-term care or residential health care beds are:

(A) Admissions to any such facility have been curtailed by the Department of Health because of licensure deficiencies presenting an immediate peril to the health, safety, and welfare of the patients/residents;

(B) Any such facility is out of compliance with any two conditions of participation or comparable State licensure rules in the areas of nursing, infection control, pharmacy or dietary services or is out of compliance with any one of the preceding conditions of participation on two or more consecutive occasions.

(3) Any person whose application for a Certificate of Need has been denied for reasons related to the history of compliance with regulatory standards shall be ineligible for approval of any Certificate of Need until a period of at least one year has elapsed, during which time the person must

have demonstrated a record of continuous compliance with licensing or regulatory standards. The one year period shall be measured from the time of the last licensure or certification action indicating noncompliance with regulatory standards.

(4) Until such time as an applicant for a Certificate of Need has established a licensing record through at least 10 percent ownership interest or through the actual operation or management or through control of the operation or management of one or more licensed, operational, inpatient health care facilities in the State of New Jersey for a period of at least 12 consecutive months, no more than two Certificate of Need approvals shall be granted to that applicant for the construction of new long-term care or residential health care facilities, or for bed additions to existing facilities or to previously approved but unimplemented projects or components thereof. Applicants who have received more than two Certificate of Need approvals prior to the implementation of this rule shall be ineligible to receive additional approvals, until such time as they have established a licensing record as described herein.

iii.-v. (No change.)

[vi. Documentation demonstrating that the request is in compliance with all other applicable Standards and Guidelines at N.J.A.C. 8:33H.]

vi. Documentation of compliance with conditions of approval pertaining to indigency care requirements for previous Certificate of Need applications, and, in the case of applicants who own or operate long-term care facilities, compliance with N.J.S.A. 10:5-12.2 pertaining to nondiscrimination against Medicaid patients.

vii. In the case of applicants proposing free-standing residential health care facilities, documentation that the facility can provide ongoing social services appropriate to the needs of the residents to be served, including but not limited to case management, coordination of care, and referrals for medical and/or psychiatric treatment. These social services, whether provided directly by social service professionals employed by the facility or through arrangements with local social service agencies, must be made available upon license issuance and maintained thereafter.

viii. In the case of applicants proposing free-standing residential health care facilities, documentation that the facility can provide an ongoing program of meaningful recreational activities which are appropriate to the needs of the residents to be served. These recreational activities, whether provided directly by staff employed by the facility or through arrangements with local community organizations, must be made available upon license issuance and maintained thereafter.

ix. Documentation demonstrating that the request is in compliance with all other applicable Standards and Guidelines at N.J.A.C. 8:33H.

4. (No change.)

5. Standard III-05, utilization of new and/or additional beds by Medicare to Medicaid and Medicaid-eligible recipients. Long-term care facilities receiving Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to comply with the following utilization criteria:

i.-x. (No change.)

xi. The requirement that [35] 36 percent of a long-term care facility's beds be utilized by Medicaid-eligible patients in no way diminishes an applicant's responsibility to conform with Public Law 1985, Chapter 303 (N.J.S.A. 10:5-12.2), regarding non-discrimination against Medicaid-eligible patients.

6.-7. (No change.)

(b) Guidelines are as follows:

1.-4. (No change.)

5. Guideline III-05, Prioritization criteria. In counties where there is a bed need according to the methodology identified at N.J.A.C. 8:33H-3.10(a), criteria for the prioritization of Certificate of Need applications requesting new or additional beds shall include:

i.-viii. (No change.)

ix. Longest [H]history of most significant service provision to the Medicaid-eligible population.

x.-xi. (No change.)

xii. Longest history of compliance with conditions placed on applicants' previous Certificate of Need approvals.

8:33H-3.5 Conversion

(a) Standards are as follows:

1. Standard V-01, Certificate of Need requirements for conversion of hospital facilities to long-term care. Applicants for Certificates of Need to convert licensed acute care beds in distinct parts of hospital facilities to long-term care shall be reviewed according to the long-term care bed need methodology identified at N.J.A.C. 8:33H-3.10. Within each long-term care batch, hospitals converting such beds shall be given priority consideration by the Department of Health, provided that all of the following conditions are met:

- i.-vii. (No change.)
- viii. If the hospital cannot submit the documentation required in (a)lii above, the application to convert acute care beds to long-term care use may be approved if:
 - (1) (No change.)
 - (2) The request is for the conversion of a minimum of 120 acute care beds to long-term care[,], or
 - (3) The hospital proposes the conversion of beds for specialized care use, as defined at N.J.A.C. 8:33H-2.1, in which case the need for beds shall be determined as specified at N.J.A.C. 8:33H-3.3(a)2iv(1) and the number of beds proposed shall be a minimum of 10 and a maximum of 30.
- 2. (No change.)
- 3. **Standard V-03, Certificate of Need requirements for conversion of specialized care beds to general long-term care or residential health care. Applicants for Certificates of Need to convert previously approved specialized care beds to general long-term care or residential health care use shall be given consideration by the Department of Health provided that they meet all applicable criteria at N.J.A.C. 8:33H, including the need criteria at N.J.A.C. 8:33H-3.3(a)2i.**

HIGHER EDUCATION

STUDENT ASSISTANCE BOARD

The following proposals are authorized by the Student Assistance Board, Joseph Streit, Chairman.

Submit comments by August 5, 1987 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
CN 542
Trenton, NJ 08625

(a)

Student Assistance Programs Verification of Enrollment and Academic Performance; Payments

Proposed Amendments: N.J.A.C. 9:7-2.10 and 2.11

Authority: N.J.S.A. 18A:71-47 as amended by P.L. 1986, c.155.
Proposal Number: PRN 1987-239.

The agency proposal follows:

Summary

A recent amendment to the Tuition Aid Grant (TAG) statute, N.J.S.A. 18A:71-47, increases the number of payments eligible students may receive at four-year postsecondary institutions. The proposed amendments incorporate the provisions of this change in statute into existing rules pertaining to academic progress and payments. All eligible students may receive one additional semester of payment including those who are enrolled in a program of study that normally requires five years for completion. Students transferring from a county college and students required to take 18 or more hours of noncredit remedial or developmental courses can receive a second additional semester of payment.

Social Impact

The proposed amendments recognize the fact that many students are taking more than four years to complete an undergraduate education especially those required to enroll in remedial or developmental courses or who transfer from county colleges to four-year institutions. These additional semesters of payment provide for the continuation of Tuition Aid Grant assistance thereby affording many students the opportunity to complete their undergraduate education at four-year colleges and universities.

Economic Impact

The proposed amendments which will become effective for the 1987-88 academic year will provide additional benefits to approximately 540 students totaling \$847,000. The Fiscal Year 1988 Budget Request for the Tuition Aid Grant Program provides sufficient funding for these additional students.

Regulatory Flexibility Statement

The proposed amendments do not require a regulatory flexibility analysis since they do not impose any requirements on small businesses.

The proposed amendments provide for additional Tuition Aid Grant (TAG) benefits to students attending four-year institutions in New Jersey in accordance with recent amendments to the TAG statute.

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

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 [EOF Regulation,] N.J.A.C. 9:12-1.11.

ii.-iii. (No change.)

[3. The maximum number of semester award payments which students may receive are as follows:

	Enrollment Status	Maximum Semesters for Award Payments
COUNTY	Regular 2-Year Program	5
COLLEGES:	Remedial/Developmental or Bilingual (ESL)	6
	Curriculum EOF Program	6/8 ¹
FOUR-YEAR	Regular 4-Year Program	8
COLLEGES:	5-Year Program EOF Program	10/12 ¹

¹With special EOF approval.

i. Students shall not receive more than eight semesters of payment unless they are enrolled in a five-year program or receiving assistance under the EOF Program.

ii. Students enrolled in an undergraduate program regularly requiring five academic years for completion shall be permitted a fifth year of payment eligibility.

iii. Students enrolled in the EOF Program may receive two additional payments based upon the special approval from the Executive Director of the EOF Program.]

(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	Regular 2-Year Program	5
COLLEGES:	Remedial-Developmental or Bilingual (ESL)	6
	Curriculum EOF Program	6/8 ¹
FOUR-YEAR	Regular 4-Year Program	9
COLLEGES:	County College Transfers/Remedial/Developmental Curriculum	10 ²
	5-Year Program	11/12 ³
	EOF Program	12 ¹

¹With special EOF approval.

²Remedial/Developmental Curriculum must contain 18 or more noncredit courses.

³County 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
TWO-YEAR COLLEGES:	Regular 2-Year Program	5
	Remedial/Developmental or Bilingual (ESL)	6
FOUR-YEAR COLLEGES:	Regular 4-Year Program	8
	Regular 5-Year Program	10

(b) Payments will be made by the Department of Treasury to eligible students in equal installments over the regular academic year, the number of installments corresponding to the number of school terms. Deadline dates shall be established annually to comply with the State's fiscal year and to allow for academic term expenditure control. [After the academic term ends at the institution, retroactive payment of student assistance awards shall not be made for that term.] The Student Assistance Board may elect to provide payment directly to institutions on behalf of student[s] recipients. [In such instance, payment to public institutions will be in the form of a debit/credit, while payments due in-State independent institutions and all out-of-State institutions will be by check.] Listings of eligible students to be credited will accompany the payments to institutions.

(a)

Congressional Teacher Scholarship Program Teaching Obligations; Repayment Schedule; Postponement of Repayment; Default

Proposed New Rules: N.J.A.C. 9:7-9.9, 9.11, 9.12 and 9.15

Authority: 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. Proposal Number: PRN 1987-238.

The agency proposal follows:

This subchapter was recently adopted in the April 6, 1987 New Jersey Register (see 19 N.J.R. 516(b)).

Due to certain changes made by the United States Department of Education in regulations for the Congressional Teacher Scholarship Program (nee, Carl D. Perkins Scholarship Program) and pursuant to N.J.A.C. 1:30-4.3, it is necessary to republish several sections of the subchapter for an additional public comment period.

Summary

The proposed new rules will reflect the changes in the federal regulations for the Congressional Teacher Scholarship Program with regard to the teaching obligations and repayment requirements of the scholarship recipient.

Social Impact

The proposed new rules clearly define for the scholarship recipient what his or her teaching obligations are following graduation from a post-secondary institution as well as the repayment requirements should the scholar withdraw from the undergraduate degree program or fail to meet the specified teaching obligations. However, there are also unusual circumstances which are acknowledged within the new rules which will allow the scholar to postpone the repayment schedule for a specified period of time. The scholar is also informed of the requirements which, if not adhered to, would put the scholarship loan in default and become immediately due and payable.

Economic Impact

Funding for the Congressional Teacher Scholarship Program will be provided by the federal government and allotted to the states on the basis of population. New Jersey has been allocated funds totaling \$312,798 for the 1986-87 academic year to support approximately 60 scholarships valued up to \$5,000 annually. Dependent upon continued federal funding, these scholarships are renewable for four years thus providing maximum undergraduate education benefits of \$20,000. Students need not repay any of the monies they have received as long as they complete their undergraduate degree program and fulfill the teaching obligation requirements of the program following graduation.

Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis since they do not impose any requirements on small businesses.

The proposed new rules specify the teaching obligations of the scholarship recipient as well as the repayment requirements should the scholar withdraw from the undergraduate degree program or fail to meet the specified teaching obligations under the Congressional Teacher Scholarship Program.

Full text of the proposed new rules follows:

9:7-9.9 Teaching obligations of the scholarship recipient

(a) The scholar shall teach on a full-time basis in any state for a period of not less than two years for each year for which he or she received a Congressional Teacher Scholarship, in a public or private nonprofit school, elementary or secondary school, or in a public preschool, elementary, or secondary education program.

(b) The requirement set forth in (a) above to teach two years for each year of scholarship assistance is reduced by one-half if the scholar teaches on a full-time basis in a teacher shortage area designated by the U.S. Secretary of Education as provided by section 428(b)(4) of the Higher Education Act of 1965, as amended.

(c) The scholar shall provide the Department of Higher Education, Office of Student Assistance with evidence of compliance with the above requirements pursuant to N.J.A.C. 9:7-9.10(c).

9:7-9.11 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 N.J.A.C. 9:7-9.9, or if the scholar ceases to pursue a postsecondary degree program leading to certification as a teacher at the preschool, elementary or secondary level, the scholar shall:

1. Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not completed, as determined by 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

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual and Other Manuals Timely Claim Submission

Proposed Amendments: N.J.A.C. 10:50-2.1;

10:51-2.1, 2.6, 2.8, 2.9, 5.1, 5.6, 5.9, 5.15, 5.17, 5.18, 5.19, 5.21, 5.26, 5.29, 5.30, 5.31 and 5.32; 10:54-2.3 and 2.5; 10:55-2.1; 10:56-2.3; 10:57-2.1; 10:58-2.1; 10:59-2.1; 10:60-3.1; 10:62-3.1; 10:63-2.6; 10:64-2.1 and 2.6; 10:65-2.1; 10:66-2.1; 10:67-2.1; 10:68-2.1.

Proposed Repeal: N.J.A.C. 10:52-2.11

Proposed New Rules: N.J.A.C. 10:51-5.22 and Exhibit I; 10:56-2.2 and 2.4; 10:60-3.2, Exhibit II and Exhibit IV; 10:62-3.2; 10:64-2.3.

Proposed Repeals and New Rules: N.J.A.C.

10:49-1.12; 10:50-2.2; 10:51-2.2; 10:52-2.1 and 2.2; 10:53-2.1 and 2.2; 10:54-2.1; 10:55-2.2; 10:56-2.1 and Exhibit I; 10:57-2.2; 10:58-2.2; 10:59-2.2; 10:61-2.1 and 2.2; 10:63-2.7; 10:65-2.2; 10:66-2.2; 10:67-2.2; 10:68-2.2.

Authorized By: Drew Altman, Ph.D., Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(1), (2), (3), (4)(a), (5)b(1) through (16); 30:4D-7a, b, and c; 30:4D-12 and 24; 42 CFR 447.45(d).

Proposal Number: PRN 1987-243.

Submit comments by August 5, 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

These proposed amendments and new rules concern timely submission of claims. Federal regulations require that all providers submit claims for Medicaid reimbursement no later than 12 months from the date of service (42 CFR 447.45(d)). A "claim" is defined in the proposed new rule N.J.A.C. 10:49-1.12 as a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim can be submitted hard copy or by means of an approved method of automated data exchange.

For purposes of claim submittal, providers have been divided into two classifications—institutional and non-institutional. Institutional providers are hospitals, special hospitals, home health agencies or long term care facilities (LTCFs). Non-institutional providers are basically fee-for-service providers, such as physicians, pharmacies, independent laboratories, independent clinics, etc.

N.J.A.C. 10:49-1.12 is primarily directed at non-institutional providers to allow them more time to submit Medicaid claims. The current rule requires non-institutional providers to submit claims within 90 days from the last date of service. The proposed new rule will allow non-institutional providers 12 months from the date of service to submit a claim. If the claim carries more than one date of service, the claim must be submitted one year from the earliest date of service.

Pharmacy providers will receive an extension for claim submittal. They will have 180 days, instead of 90 days, in which to submit a claim. The reason for this particular time frame is that Blue Cross and Blue Shield of New Jersey receives approximately 12 million claims per year for both the Medicaid and PAAD (Pharmaceutical Assistance to the Aged and Disabled) Programs. Prompt submittal of pharmacy claims is necessary for the efficient operation of the entire system. The time frame applies to both Medicaid and PAAD.

The proposed amendments and new rules also contain requirements for inquiries and additional information. Inquiries on claims that have been paid or denied must be made within 90 days of the date of adjudication on the payment voucher. Inquiries about the status of a claim which has not been adjudicated must be made within 90 days after the timely submission period. Additional information should be supplied as soon as possible but not later than 90 days after the end of the timely submission period. While the current rules allow 180 days for inquiries, the Division believes the increase in the time for claim submittal should reduce the need for the number of follow-up inquiries. The Division's goal is to require providers to submit claims as soon as possible but not later than the prescribed time periods so that they can be adjudicated, that is, paid or denied. Providers have the right to request a hearing on denied claims. The Division believes that inquiries should be used infrequently and only in those instances where the provider has experienced a problem with claim submittal.

There is also a slight modification to the billing requirements for long term care facilities (LTSFs). The present rule (N.J.A.C. 10:63-2.7) requires that claims for services performed in LTCFs be received by the Division no later than five months from the last day of the billing month in which services were initially provided. The proposed new rule would require that claims for services performed in LTCFs be received no later than six months from the last day of the billing month in which services were initially provided. This change will allow LTCFs an additional month in which to submit claim(s). The services in LTCFs that are governed by the time requirements include skilled and/or intermediate level nursing care, and physical, occupational, and speech-language therapy. The other time requirements remain the same. This means that LTCFs will still have six months in which to follow up on claims that are rejected. In no event can the Division pay a claim that is later than 11 months from the last day of the billing month in which the services were initially provided.

The following is a brief synopsis of the procedural changes that are contained in these proposed amendments and new rules. In general, the Division is consolidating its reference to timely claim submittal in one central location, that is, the Administration Manual (N.J.A.C. 10:49-1.12). The various provider manuals are being amended to refer the reader to this section of the code. In addition, some technical amendments have also been included.

Several manuals were amended by revising sections of the billing subchapter (generally subchapter 2) to define a claim and to refer the reader to the time requirements contained in N.J.A.C. 10:49-1.12. These manuals are the Transportation Manual (N.J.A.C. 10:50), the Hospital and Special Hospital Services Manual (N.J.A.C. 10:52 and 53), the Podiatry Manual (N.J.A.C. 10:57), the Nurse-Midwifery Services Manual (N.J.A.C. 10:58), the Independent Laboratory Services Manual (N.J.A.C. 10:61), the Vision Care Manual (N.J.A.C. 10:62), the Hearing Aid Services Manual (N.J.A.C. 10:64), the Medical Day Care Manual (N.J.A.C. 10:65), the Independent Clinic Services Manual (N.J.A.C. 10:66), the Manual for Psychological Services (N.J.A.C. 10:67), and the Manual for Chiropractic Services (N.J.A.C. 10:68).

The Pharmacy Manual (N.J.A.C. 10:51) is amended at N.J.A.C. 10:51-2.1 by defining a claim and at N.J.A.C. 10:51-2.2 by referring the reader to N.J.A.C. 10:49-1.12 for time requirements. Exhibit I, which is the instructions for completion of the claim form MC-6, were deleted from N.J.A.C. 10:51-2.6 and 5.26 and placed at the end of the chapter. N.J.A.C. 10:51-5.6 concerning eligibility for PAAD was amended to reflect the current statutory limits for eligibility (\$13,250 for a single person and \$16,250 for a married couple). This amendment will make this section consistent with N.J.A.C. 10:69A-6.2, entitled Income Standards, in the Pharmaceutical Assistance to the Aged and Disabled Manual.

The Manual for Physician Services (N.J.A.C. 10:54) proposed amendments define a claim (N.J.A.C. 10:54-2.1), refer the reader to the Administration Manual (N.J.A.C. 10:54-2.2) contain a reminder that prior authorization is no guarantee of eligibility (N.J.A.C. 10:54-2.3) and renumber the claim form (N.J.A.C. 10:54-2.5).

The Prosthetic and Orthotic Manual (N.J.A.C. 10:55) proposed amendments define a claim and indicate that claims for payment of new appliances should be submitted following delivery to and acceptance of the completed appliances by the recipient. In addition, the figure for prior authorization for repair and/or replacement parts is being changed from \$20.00 to \$100.00. This means that a provider of prosthetic and orthotic services will not have to obtain prior authorization when the repair and/or replacement of parts is \$100.00 or less (N.J.A.C. 10:55-2.1). N.J.A.C. 10:55-2.2 contains the centralized reference for timely claim submittal.

The Manual for Dental Services (N.J.A.C. 10:56) proposed amendments define a claim, refer the reader to the Administration Manual, and delete Exhibit I, which is the instructions for claim submittal, from N.J.A.C. 10:56-2.2 (recodified as N.J.A.C. 10:56-2.3 in the proposal) and places it at the end of the chapter.

The Medical Supplier Manual (N.J.A.C. 10:59) proposed amendments contain the definition of a claim and the reference to N.J.A.C. 10:49-1.12. In addition, N.J.A.C. 10:59-2.1(c) contains a requirement that reauthorization is required from the Medicaid District Office (MDO) if continued rental (of an item or equipment) is required beyond the third month.

The Home Care Services Manual proposed amendments define a claim (N.J.A.C. 10:60-3.1(a)) and refer the reader to the Administration Manual (N.J.A.C. 10:60-3.2). Exhibits II and IV, which contain instructions for claim submittal, have been deleted from N.J.A.C. 10:60-3.1 and placed at the end of the chapter.

The Long Term Care Services Manual (N.J.A.C. 10:63-2.7) was amended to refer the reader to N.J.A.C. 10:49-1.12 regarding the time requirements for claim submittal. The current text of N.J.A.C. 10:63-2.7 was recodified to N.J.A.C. 10:63-2.6(c).

Social Impact

These proposed amendments and new rules have virtually no impact on Medicaid patients because they are not responsible for submitting claims.

The proposed amendments and new rules impact on all non-institutional providers, who are already required to submit claims in a prescribed manner to one of the Fiscal Agents (Blue Cross and Blue Shield of New Jersey or The Prudential Insurance Company of America). All non-institutional providers will be allowed more time for claim submittal.

The policy governing follow-up inquiries will be applicable to both non-institutional and institutional providers.

The proposed amendments allow LTCFs an additional month in which to submit claims.

Economic Impact

There should be no economic impact associated with these proposed amendments and new rules. The Division will continue to utilize the same system for processing claims.

There should be no economic impact on providers, who are presently required to submit claims on forms issued by the Division or its Fiscal Agents.

Medicaid patients are not required to contribute toward the cost of care for services covered by this proposal. PAAD beneficiaries are required to make a \$2.00 co-payment toward the cost of prescription drugs.

Regulatory Flexibility Statement

The Division does not believe a regulatory flexibility analysis is required for this proposal. Federal regulations require all providers to submit claims within one year from date of service (42 CFR 447.45(d)). The New Jersey Medicaid statute (N.J.S.A. 30:4D-12) requires providers to maintain records that fully disclose the name of the recipient to whom the service was rendered, the date the service was rendered, the nature and extent of the service, etc. The same statute indicates that providers are not entitled to reimbursement unless they can document the services rendered.

In addition, the proposed amendments and new rules do not impose any new recordkeeping, reporting or compliance requirements on Medicaid providers. The proposed amendments and new rules allow providers more time to submit claims which they are already required to do.

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

[10:49-1.12 Timely submission of claims and claim inquiries

(a) Rules concerning non-institutional provider claims (90-day time limitation) are as follows.

1. This policy applies to all providers except hospitals, special hospitals, home health agencies and long-term care facilities.

2. All claims for payment of non-institutional goods and services must be received by the Fiscal Agent no later than 90 days after the last date the goods or services were rendered and no later than 12 months from the earliest date of service indicated on the claim form.

(b) Rules covering the New Jersey Medicaid Program certified institutional provider claims are as follows.

1. All claims for services rendered to eligible Medicaid recipients must be received by the Fiscal Agent no later than:

i. Twelve months from the day of discharge for inpatient hospital claims; or

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TRANSPORTATION SERVICES MANUAL

ii. Twelve months from the earliest date of service on the claim forms for outpatient hospital or home health claims.

2. All claims for services performed in skilled nursing facilities; intermediate care facilities; ICFs/MR; residential treatment facilities, and State and County Governmental Psychiatric Hospitals must be received by the Division of Medical Assistance and Health Services no later than:

i. Five months from the last day of the billing month in which services were initially provided; or

ii. Six months from the last day of the billing month in which an improperly submitted claim was rejected; but

iii. Never later than 11 months from the last day of the billing month in which services were initially provided.

(c) Rules concerning inquiries to the Fiscal Agent are as follows.

1. Submitted claims-no response: Inquiries must be made no later than 180 days after the last date of service entered on the queried claim.

2. Processed claims: Inquiries must be made no later than 180 days after the adjudication date of the Statement of Claims Payment or Denial Letter.]

10:49-1.12 Timeliness of claim submission and claim inquiry

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

1. It is the responsibility of the provider to submit a claim, make a follow-up inquiry, or supply information to the Fiscal Agent, in conformance with the time frames as indicated in this section.

i. A claim will not be reimbursed if submitted outside the prescribed time frame. This policy also applies to inquiries concerning a claim or claim related information supplied outside the prescribed time frames.

(b) The policy for submitting an institutional claim is as follows:

1. An institutional claim is a claim submitted by a hospital, a special hospital or a home health agency.

2. A claim for payment of an institutional service rendered to a Medicaid-eligible individual must be submitted to the appropriate Fiscal Agent, either Blue Cross and Blue Shield of New Jersey, Inc., or The Prudential Insurance Company of America, within:

i. One year of the date of discharge on an inpatient hospital claim; or

ii. One year of the date of service entered on an outpatient hospital claim or home health claim; or

iii. One year of the earliest date of service entered on an outpatient hospital claim or home health claim, if the claim carries more than one date of service.

3. All claims for services performed in skilled nursing facilities, intermediate care facilities, ICFs/MR and State and county psychiatric hospitals must be received by the Division of Medical Assistance and Health Services no later than:

i. Six months from the last day of the billing month in which services were initially provided; or

ii. Six months from the last day of the billing month in which an improperly submitted claim was rejected; but

iii. Never later than 11 months from the last day of the billing month in which services were initially provided.

(c) The policy for submitting a noninstitutional claim is as follows:

1. A noninstitutional claim is a claim submitted by all providers except a hospital, a special hospital, a home health agency or a long-term care facility.

2. A claim for payment of a noninstitutional service (excluding a pharmaceutical service) provided to a Medicaid-eligible individual must be submitted to the Fiscal Agent, The Prudential Insurance Company of America, within:

i. One year of the date of service; or

ii. One year of the earliest date of service entered on the claim form if the claim carries more than one date of service.

3. A claim for payment of a pharmaceutical service provided to a Medicaid-eligible individual must be submitted to the Fiscal Agent, Blue Cross and Blue Shield of New Jersey, Inc., within 180 days of the dispensing date.

(d) The policy for a claim that requires follow-up information is as follows:

1. A provider may inquire about a claim that has been paid or denied but must make the inquiry within 90 days of the date of adjudication as indicated on the Statement of Payment Voucher.

2. A provider may inquire about the status of a claim for which neither payment nor denial has been received. The inquiry may be made at any time after the claim is submitted, but not more than 90 days after the end of the timely submission period.

3. If additional information is required in order to process a claim, the provider should supply the information as soon as possible, but not more than 90 days after the end of the timely submission period.

10:50-2.1 General [Billing] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information for the submission of a claim. Included is a sample claim form approved for use in submitting bills for covered services, and appropriate instructions for the proper completion of the form.

[10:50-2.2 General policy

Billing should be done on a monthly basis. In all cases, claims must be submitted to the Prudential Insurance Company no later than 90 days after the last date services were rendered. Always furnish the physician's prescription.]

10:50-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

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PHARMACY MANUAL

10:51-2.1 General [policy] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

[(a)](b) This subchapter contains basic information for the submission of pharmacy claims for Medicaid-eligible [patients] individuals. (See N.J.A.C. 10:51-3 for specific information on submitting claims for patients in a long-term care facility.) Included is a sample claim form approved for use in submitting bills for covered items or services [,] and appropriate instructions for the proper completion of the claim form.

[(b) Claims should be submitted as frequently as practical, but at least monthly. In all cases, claims must be submitted no later than 90 days after the dispensing date of the prescription.]

[10:51-2.2 Patient identification

Verify that the patient is a covered person. This is done by checking the patient's validation form. (See N.J.A.C. 10:49-1.2, How to identify a covered person.)]

10:51-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

10:51-2.6 Instructions for completion of [form MC-6] "Prescription Claim Form" (MC-6)

(a) [A properly completed claim form, submitted within 90 days from the dispensing date, as stated in N.J.A.C. 10:51-2.1 will enable Blue Cross of New Jersey to process your claim quickly. It is recommended that claims be submitted for processing no less than once weekly in order to correspond to the payment cycle.] A properly completed "Prescription Claim Form" (MC-6) must be submitted within the time frames specified in N.J.A.C. 10:49-1.12.

(b) The tissue copy of the claim form should be detached after the completion and retained as your record of the claim[s] submitted to [Blue Cross of New Jersey] Blue Cross and Blue Shield of New Jersey, Inc. Please keep [tissues] tissue copies in claim number order for quick referral.

(c) Claims [shall] must be mailed as follows.

1. [New Jersey pharmacies—Claim form MC-6.

i. All pharmacy providers in the State of New Jersey must submit Medicaid pharmacy prescription claim forms (MC-6) for processing within 90 days from the dispensing date to:

Hospital Service Plan of New Jersey

P.O. Box 900

Newark, New Jersey 07101]

All pharmacy providers in the State of New Jersey must submit Medicaid pharmacy prescription claim forms for processing to:

Blue Cross and Blue Shield of New Jersey, Inc.

P.O. Box 900

Newark, New Jersey 07101

2. (No change.)

3. [Out-of-State pharmacy providers:

i. Out-of-State pharmacy providers must submit their claim form (MC-6) for processing within 90 days from the dispensing date to Newark:

New Jersey Health Services Program
(Blue Cross of New Jersey)
P.O. Box 549
Newark, New Jersey 07101]

Out-of-State pharmacy providers must submit Medicaid pharmacy prescription claim forms for processing to:

New Jersey Health Services Program
(Blue Cross and Blue Shield of New Jersey, Inc.)
P.O. Box 549
Newark, New Jersey 07101

(d) [Form MC-6 shall be completed exactly as indicated in EXHIBIT I.] See Exhibit I at the end of this chapter, N.J.A.C. 10:51, for a copy of the "Prescription Claim Form" (MC-6) and the instructions for the proper completion of the form.

1. Case number is the 10-digit number that identifies the person who is assigned the validation form.

2. Patient's first name and person number of the person for whom prescription is being filled, as shown on the validation form. (Nicknames or abbreviations of patient's first name should never be used. Enter only as the name appears on the patient's identification document.) If available, enter patient's date of birth.

3. Case name refers to the last name on the "head of the family". Make sure the name is legible.

4. Obtain signature of patient or representative (See N.J.A.C. 10:49-1.26, Patient certification.)

5. Is a patient in a long-term care facility. Either "yes" or "no" must be checked. Refer to N.J.A.C. 10:51-3 for further information regarding procedures when patient is in a long-term care facility.

6. Signature of pharmacist.

7. Prescriber's name and degree—Print prescriber's first initial, last name and degree (M.D., O.D., D.D.S., podiatrist, etc.). If prescriber is non-participating, enter his name. If prescriber practices solely in a hospital, enter the name of the hospital.

8. Pharmacy number, name and address of pharmacy—The pharmacy provider's identification number, name and address must be legible on the claim.

9. Date dispensed: Enter month, day and year drug was dispensed. Providers utilizing old style imprinters which imprint the dates must correct the year digits if a new "date wheel" was not obtained.

10. Rx number: Enter the prescription number you assign. If the claim represents a refill, use the original prescription number according to your files.

11. National drug code of the drug used may be obtained from the package label (if available). If the NDC is not available, provide complete drug information in item 14 and leave the NDC area blank.

i. When entering NDC's on the claim form, providers should transfer them exactly as they appear on the package label.

(1) Example: Nalfon Pulvules 300 mg. (Dista) 60's. NDC appears on package label as: NDC 777-0877-60. Enter this NDC on the claim form as such: //7/7/7/-/0/8/7/7/-/6/0/.

(2) Example: Naprosyn Tablets 250 mg. (Syntex) 100's. NDC appears on package label as: NDC 18393-272-42. Enter this NDC on the claim form as such: /1/8/3/9/3/-/1/2/7/2/-/4/2/.

ii. For the convenience of providers, the most frequently used products have been assigned an abbreviated three digit code which will lessen the possibility of errors for these products in NDC transcription. When entering the abbreviated code, use the last three positions of the NDC field.

(1) Example: Valium 5 mg. Tablets are labelled with NDC 00140-0005-01 and has been assigned the Abbreviated Drug Code of 962. Enter 962 on the claim form in the last three positions of the NDC field as such: /////-///9/-/6/2/.

(2) The abbreviated Drug Code is not applicable to tape claims.

12. Metric quantity: Enter quantity dispensed according to the following:

i. Metric quantities dispensed of those injectable products normally reconstituted by physician, nurse, etc., subsequent to dispensing, bulk irrigation or I.V. solution and prefilled syringes (ex. Tubex products), should be reported on claim form MC-6 as total number of full ampoules, vials, or bottles dispensed. Enter the NDC from the package label.

Example: Report three vials of Polycillin-N Injection as three in metric quantity field.

Example: Report of six bottles of Normal Saline steril solution for Irrigation, 1000cc each as six in metric quantity field.

ii. Metric quantities dispensed of all other legend drugs should be reported on claim form MC-6 as total number of cc, grams, tablets, capsules, etc. Enter the NDC from the product package label.

iii. When reporting metric quantities, providers should interpret metric quantity equivalents as such. (Use of this reporting procedure will afford proper cost payment for all quantities dispensed, as reimbursement rates have been predicated on this procedure.):

Apothecary Quantities of:	Which Are Equivalent to Labelled Metric Quantities of:	Should be Reported as Metric Quantity of:
½ oz.	14.2 gm or cc	15
4 oz.	118.5 gm or cc	120
1 oz.	28.4 gm or cc	30
16 oz.	473 gm or cc	480
8 oz.	237 gm or cc	240
2 oz.	56.8 gm or cc	60
2 x ½ oz.	2 tubes, 15 gm each	30
2 x 1 oz.	2 tubes, 28.4 gm each	60
1½ oz.	42.6 gm or cc	45

iv. In order to assure the correct reporting of the cancer chemotherapy injectable drugs and obtain proper payment a list of the most commonly dispensed drugs is provided. The list is not all inclusive. There may be other reimbursable chemotherapy injectable drugs that do not appear on this list. Cancer chemotherapy injectable drugs do not require prior authorization. To insure complete and proper payment for all eligible quantities of these drugs dispensed, complete the claim form MC-6. Report only the total number of vials dispensed or the total number of cc's dispensed, in accordance with the following guide:

DESCRIPTION	REPORT QUANTITIES DISPENSED ON AS
Adriamycin Injection 10 mg.	Total number of vials
Adriamycin Injection 50 mg.	Total number of vials
Adrucil Injection 500 mg.	Total number of vials
BICNU Injection	Total number of vials
Blenoxane Injection 15 units	Total number of vials
Cerubidine Injection 20 mg.	Total number of vials
Cosmegen Injection 0.5 mg.	Total number of cc
Cytosar-U Injection 100 mg	Total number of vials
Cytosar-U Injection 500 mg	Total number of vials
Cytosan Injection 100 mg	Total number of vials
Cytosan Injection 200 mg	Total number of vials
Cytosan Injection 500 mg	Total number of vials
Drolban Injection	Total number of cc
DTIC-Dome Injection 100 mg	Total number of vials
DTIC-Dome Injection 200 mg	Total number of vials
Elspar Injection, 10,000 Units	Total number of vials
Fluorouracil Injection 500 mg	Total number of cc
FUDR Injection 500 mg	Total number of vials
Methotrexate Inj. 2.5 mg/2cc	Total number of cc
Methotrexate Inj. 20 mg/vial	Total number of vials
Methotrexate Inj. 25 mg/2cc	Total number of cc
Methotrexate Inj. 50 mg/vial	Total number of vials
Methotrexate Inj. 50 mg/2cc	Total number of cc
Methotrexate Inj. 100 mg/vial	Total number of vials
Methotrexate Inj. 100 mg/4cc	Total number of cc
Methotrexate Inj. 200 mg/8cc	Total number of cc
Mexate Inj. 20 mg/vial	Total number of vials
Mexate Inj. 50 mg/vial	Total number of vials
Mexate Inj. 100 mg/vial	Total number of vials
Mithracin Inj. 2500 mcg/vial	Total number of vials
Mustargen Injection	Total number of vials
Mutamycin Inj. 5 mg/vial	Total number of vials
Oncovin Inj. 1 mg/vial	Total number of vials
Oncovin Inj. 5 mg/vial	Total number of vials
Platinol Inj. 10 mg/vial	Total number of vials
Teslac Injection	Total number of cc
Thiotepa Inj. 15 mg/vial	Total number of vials
Velban Inj. 10 mg/vial	Total number of vials

13. Calculate days supply from the prescriber's directions and the quantity dispensed. Enter N/A (not applicable) when it is not possible to calculate days' supply. (See "Dosage and Directions" in N.J.A.C. 10:51-1.8).

14. If there is no code, give the product name, dosage form and strength. Complete only if NDC number is not available, or if there is any question of NDC validity. Complete all areas of product identification.

15. Check if prior authorized service, medical certification or both and authorization number. Check the box, and enter the authorization number or medical certification as explained under "Services requiring prior authorization" and "certification" in N.J.A.C. 10:51-1.

i. Services requiring prior authorization should not be provided until the authorization is received. If the prescriber has not required prior authorization, it may be obtained from the local Medicaid office. (See 10:49 Appendix A—Directory of Medicaid District Offices). When submitting claims for payment, make certain that the appropriate box on the claim form is checked off and the prior authorization number is inserted. Prior authorization is approval to dispense a specific drug and is no guarantee that an individual is eligible for services.

ii. The area headed by "Check Appropriate Box," box on the MC-6 claim form will be used to indicate prior authorization as well as medical certification as follows:

- (1) If no prior authorization is required, leave the box blank;
- (2) If prior authorization is required and exists, check the prior authorization box and indicate the prior authorization number;
- (3) If medical certification exists, check the "medical certification" box.
- (4) If prior authorization and medical certification exist, check the box entitled "Both" and indicate the authorization number.

16. Prescriber's Individual Medicaid Practitioner's (IMP) Number: Obtain this number from the IMP Number Directory. If the prescriber is not a Medicaid participating physician, print "non-par" in this area. If the prescriber practices solely in a hospital, fill this field with all 9's. For pharmacy providers calling from New Jersey, the toll free telephone number for assistance in obtaining IMP numbers is 800-582-7052. For pharmacy providers calling from out-of-State, the telephone number for assistance in obtaining IMP numbers is 609-293-2324.

17. Check if compound Rx: Check this box only if the prescription was compounded and write the ingredients and their quantities on the reverse side of the claim form. (Fold the tissue and carbon aside before writing on back of claim.) Leave NDC area blank. Do not write "compound" in the NDC area. Do not enter multiple NDC's in that field to describe a compound.

18. Charge: Enter the usual and customary charge.

- i. Example: enter charge of \$11.79 as 01179.
- ii. Example: enter charge of \$110.56 as 11056.
- iii. The program now accepts up to five digits in the "charge field" (billed amount in the top right hand corner of claim). Providers using old style imprinters which imprints digits representing "date billed", number of refills, and a four digit charge, must leave indicator keys representing "date billed" (red key) and number of refills (white key) set at 0. Only when the charge exceeds \$99.99 should the white key be utilized for indicating the charge.

19. Defined cost, dispensing fee, total charge, and nonlegend drug charge.]

10:51-2.8 Claim [return statement] **Return Statement** [(form) **Form** FD-237)

- (a)-(b) (No change.)
- (c) A "Claim Return Statement[s]" should be completed as soon as [practical] possible and submitted to [Blue Cross of New Jersey] **Blue Cross and Blue Shield of New Jersey, Inc.**; however, the time limitation for [normal claims submittal (no later than ninety (90) days from the date of return statement)] **responding to the Fiscal Agent's inquiries** will apply (see N.J.A.C. 10:49-1.12).
- (d) Questions regarding the proper completion of the Claim Return Statement are to be directed to [Blue Cross of New Jersey] **Blue Cross and Blue Shield of New Jersey, Inc.**, P.O. Box 549, Newark, New Jersey 07101, Attention: Claim Return Statements or call toll free (800) 242-0809 between 8:30 A.M. and 4:15 P.M. (Monday through Friday, except holidays).

- (e)-(f) (No change.)
- (g) Claim Return Statements [are to] **must** be mailed to:
New Jersey Health Services Program
[Blue Cross of New Jersey]
Blue Cross and Blue Shield of New Jersey, Inc.
P.O. Box 549
Newark, New Jersey 07101
Attention: Claim Return Statement[s]

10:51-2.9 [Medical Pharmacy] Adjustment Request [(form)] **Form** (FD-238)

- (a) (No change.)
- (b) Time limitation: Adjustment requests for all claims must be [received by Blue Cross of New Jersey not later than 180 days after the

claim in question appeared on a payment voucher] **submitted to Blue Cross and Blue Shield of New Jersey, Inc., within the time frames specified in N.J.A.C. 10:49-1.12.** [It should be noted that the 180-day limit does not apply to adjustment requests submitted due to patient eligibility. In this instance the time limitation is two years when the failure to establish timely eligibility on file was the fault of the certifying agency (county or State).]

- (c)-(f) (No change.)
- (g) Mailing instructions:
 1. The Adjustment Request [form] Form consists of two parts; the copy indicated as the "Action Copy" is to be mailed to:
New Jersey Health Services Program
[Blue Cross of New Jersey]
Blue Cross and Blue Shield of New Jersey, Inc.
P.O. Box 549
Newark, New Jersey 07101
 2. (No change.)

10:51-5.1 Covered pharmaceutical services

- (a) (No change.)
- (b) All services in (a) above must be provided within the scope of the program policies and procedures and billed to the [Hospital Service Plan of New Jersey (Blue Cross of New Jersey)] **New Jersey Health Services Program (Blue Cross and Blue Shield of New Jersey, Inc.)** on the "Prescription Claim Form" (MC-6), or by other approved billing methods.

10:51-5.6 Eligible PAAD beneficiary

- (a) [An eligible patient is a legal resident of the State of New Jersey, 65 years of age or older with an annual income less than \$9,000 for a single person and less than \$12,000 in combined income for a married couple, who possesses a current, valid eligibility identification card (see N.J.A.C. 10:51-5.22).] **An eligible beneficiary is a permanent resident of the State of New Jersey, 65 years of age or older or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits with an annual income less than \$13,250 for a single person and less than \$16,250 in combined income for a married couple, and who possesses a current valid eligibility identification card (see N.J.A.C. 10:51-5.23).**

1. Benefits are not payable in Long-Term Care Facilities (SNF, ICF)[.], Hospitals or Special Hospitals by the PAAD Program during any period patients are covered for drug benefits by Medicaid, Medicare, [Blue Cross] **Blue Cross and Blue Shield of New Jersey, Inc.**, or other insurance benefits or if such benefits are covered in the daily rate of the facility.

- (b) (No change.)
- 10:51-5.9 Prescription drug policies
- (a) The choice of prescription drugs, insulin, insulin syringes, [and/or] needles **and/or certain diabetic testing materials** shall be at the discretion of the prescriber within limits of applicable laws and as listed herein.

1. (No change.)
 - (b)-(d) (No change.)
- 10:51-5.15 Prescription refill
- (a) The pharmacist must initiate, complete and submit a "Prescription Claim Form" (MC-6) to [Blue Cross of New Jersey] **Blue Cross and Blue Shield of New Jersey, Inc.** for payment of an allowable refill.

(b) For noninstitutionalized PAAD beneficiaries the following instructions apply for allowable refills:

- 1.-2. (No change.)
3. Prescription refills shall not be dispensed until a reasonable quantity (approximately 75 percent) of the medication originally dispensed or refilled could have been consumed in accordance with the practitioner's written directions for use.

i. Exception: When medication has been destroyed (for example, broken container) the pharmacist may refill the prescription[;], but[,] a note of explanation for the early refill must be stapled to the "Prescription Claim Form" (MC-6).

4. (No change.)
- (c) For **institutionalized** PAAD beneficiaries, since refill instructions are not normally given on medication order sheets in Long-Term Facilities (SNF, ICF), Hospitals or Special Hospitals and stop order policies exist, an order for continuation of medication shall be deemed a new prescription for the purpose of reimbursement. Refills will not be allowed. A new written prescription and prescription number [is] **are** required. Exception: When medication has been destroyed ([e.g.] **for example**, broken container) the pharmacist may refill the prescription[;], but[,] a note of explanation must be stapled to the "Prescription Claim Form" (MC-6).

10:51-5.16 Pharmaceutical services not eligible for payment

(a) The following classes of prescription drugs will not be honored for payment:

1.-9. (No change.)

10. "Less than effective drugs" subject to a Notice of Opportunity for Hearing (NOOH) by the Federal Drug Administration (FDA).

i.-ii. (No change.)

iii. The initial list of drugs and related drug products classified as "less than effective" by the FDA pending outcome of the NOOH appears at 21 CFR 301.6. Subsequent revisions to this list which are adopted and incorporated by references hereby, will appear in the Federal Register. Payment will be governed by the regulation as cited in [N.J.A.C. 10:51-1.16] (a)10 above.

(b) (No change.)

10:51-5.17 Payment regulations for prescribed drugs

(a) Payment will be made to participating pharmacies for reimbursable drug products dispensed within Program limits to eligible recipients, by [Blue Cross of New Jersey] **Blue Cross and Blue Shield of New Jersey, Inc.** on behalf of the New Jersey [Health Services (Medicaid)] Program, only under the following conditions:

1. Upon receipt of a properly completed [form MC-6 (Prescription Claim Form)] "Prescription Claim Form" (MC-6) or other approved hard copy, as shown in N.J.A.C. 10:51-2. The claim form may be completed manually or by computer, but only one prescription may be billed for on each claim form; or

2. (No change.)

10:51-5.18 Legend drugs

(a) (No change.)

(b) Maximum cost for each eligible prescription claim not covered by (a)1 above shall be subject to fiscal conditions based upon six categories, (b)2 through 7 below, as determined by the Division, based on the previous year's total prescription volume for each participating pharmacy. The categories shall be reviewed annually and adjusted as appropriate.

1.-6. (No change.)

7. Category VI: Pharmacies whose total prescription volume in the preceding calendar year was 50,000 prescriptions or more.

i. Pharmacy providers in this category shall receive reimbursement for Medicaid prescription claims for legend drugs, at average wholesale prices (AWP), as defined in (a)ii above, less six percent, as the maximum.

(1) The appropriate calculated discount will be automatically deducted (by [Blue Cross of New Jersey] **Blue Cross and Blue Shield of New Jersey, Inc.**) from each eligible legend drug claim during the claim processing procedure.

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

10:51-5.19 Compounded prescriptions

(a) Any prescription containing two or more ingredients, one of which must be legend drug, in usually accepted therapeutic dosage and mixed by the pharmacist at the time of dispensing is a compounded prescription.

1. The ingredient "cost" of a compounded prescription is the sum of the cost of **all the ingredients**, as defined in N.J.A.C. 10:51-5.18(b) [of all the ingredients].

i. (No change.)

2.-4. (No change.)

10:51-5.21 General [Billing] billing procedures

(a) A claim is a bill which indicates a request for payment for a PAAD-reimbursable service provided to an eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) N.J.A.C. 10:51-5.22 through 5.25 contain[s] basic information for the proper completion and submission of pharmacy claims for PAAD eligible beneficiaries. Included is a facsimile claim form approved for use in submitting bills for covered items or services and appropriate instructions for proper completion of the claim form.

10:54-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

[10:51-5.22 through 10:51-5.24] 10:51-5.23 through 10:51-5.25 (No change in text.)

[10:51-5.25]10:51-5.26 Instructions for completion of Prescription Claim Form (MC-6)

(a) A properly completed "Prescription Claim Form" (MC-6) must be submitted within [90-days from the dispensing date] the time frames specified in N.J.A.C. 10:49-1.12.

(b) The tissue copy of the claim form should be detached after completion and retained as the record of the claim[s] submitted to [Blue Cross of New Jersey] **Blue Cross and Blue Shield of New Jersey, Inc.** Please keep tissues in claim number order for quick referral.

(c) When completing the claim form for PAAD beneficiaries, enter the following information:

1. Item (1) Case number is the 10-digit identification number for the person who is eligible for PAAD benefits.

2. Item (2) Patient's first name: Enter patient's first name as shown on the plastic Identification Card or Temporary Validation Identification Letter.

3. Item (3) Date of birth: This field will be used to indicate the expiration date of the benefit period for PAAD eligibles only. Enter expiration date as shown on Plastic Identification Card or Temporary Validation Identification Letter. Do not use patient's birthdate.

4. Item (4) Person number: Enter 01 on all PAAD claims.

5. Item (5) Case name: enter patient's last name as indicated on Plastic Identification Card or Temporary Validation Identification Letter.

6. Item (6) Patient certification, see N.J.A.C. 10:49-1.26.

7. Item (7) Is patient in a long-term care facility? When patient is an inpatient in a long-term facility (SNF or ICF), hospital or special hospital, check yes. In all other cases, check no.

8. Item (8) Signature of pharmacist.

9. Item (9) Prescriber's name and degree. Print prescriber's first initial, last name, and degree (M.D., O.D., D.D.S., Podiatrist, and so forth).

10. Items (10) and (11) Pharmacy number, name and address of pharmacy: The pharmacy provider's identification number, name and address must be entered legibly on the claim.

11. Item (12) Date dispensed: Enter month, day and year drug was dispensed.

12. Item (13) Enter a valid Rx number to identify the prescription. If claim is a refill, use the original Rx number according to your files.

13. Item (14) National Drug Code of the drug should be obtained only from the package label. If the NDC is not available, provide complete drug information in Item 16.

i. When entering NDC's on the claim form, providers should transfer them exactly as they appear on the package label.

(1) Example: Nalfon Pulvules 300 mg. (Dista) 60's NDC appears on package label as:

NDC 777-0877-60.

Enter this NDC on the claim form as such:

...7.7.7.-0.8.7.7.-6.0.

(2) Example: Naprosyn Tablets 250 mg. (syntex) 100's NDC 18393-272-42.

.1.8.3.9.3.-.2.7.2.-4.2.

14. Item (15) Metric quantity dispensed in metric system only.

15. Item (16) Calculate days' supply from the prescriber's directions and the quantity dispensed. Enter N/A (not applicable), when it is not possible to calculate days' supply. (See N.J.A.C. 10:51-5.11.)

16. Item (17) If no code, give product name, dosage form and strength: Complete only if NDC number is not available, or if there is any question of NDC validity. Complete all areas of product identification.

17. Item (18) Check if prior authorized service, authorization number: Prior authorization is not required for the PAAD program.

18. Item (19) Prescribers number: Not required for the PAAD program. Enter non-par in the field.

19. Item (20) Check if compound Rx: Check this box only if the prescription was compounded and write the ingredients and their quantities on the reverse side of the claim form. (Fold the tissue and carbon before writing on back of claim.)

20. Item (21) Charge: Enter usual and customary charge as four digits.

i. Example: \$5.25 should be entered as 0525.

Note: The \$2.00 co-payment will automatically be deducted from each prescription claim in the reimbursement processing procedure.

21. Item (22) Leave blank.

22. Item (23) Leave blank.

Note: When the plastic pharmacy card is available and the imprinter is used, fields identified as (1), (2), (3), (4) and (5) will automatically be printed.]

[(d)](c) [Mailing addresses for claims are as follows.] **Claims must be mailed as follows.**

1. [New Jersey pharmacies submitting claim form MC-6.]

All pharmacy providers in the State of New Jersey must submit Medicaid pharmacy prescription claim forms for processing to:

Blue Cross and Blue Shield of New Jersey, Inc.

P.O. Box 900

Newark, New Jersey 07101

[i. All pharmacy providers in the State of New Jersey must submit Medicaid pharmacy claim forms (MC-6) for processing within 90 days from dispensing date to:

HOSPITAL SERVICE PLAN OF NEW JERSEY
2 Cherry Hill Executive Campus
Suite 104

Cherry Hill, New Jersey 08034

[ii.] When reordering mailing envelopes, please specify ["Cherry Hill"] P.O. Box 900, Newark, New Jersey 07101 address.

2. Tape claims.

i. All pharmacy providers submitting PAAD claims by tape, must submit their claims for processing within [90 days from the dispensing date to the original Newark address] the time frames specified in N.J.A.C. 10:49-1.12.

3. (No change.)

(d) See Exhibit I at the end of this chapter, N.J.A.C. 10:51, for a copy of the "Prescription Claim Form" (MC-6) and the instructions for the proper completion of the form.

(e) All claims must be submitted [no later than 90 days from dispensing date in order to be considered for payment] within the time frames specified in N.J.A.C. 10:49-1.12.

1.-2. (No change.)

[10:51-5.26]10:51-5.27 (No change in text.)

[10:51-5.27]10:51-5.28 (No change in text.)

[10:51-5.28]10:51-5.29 Claim Return Statement (Form FD-237)

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

(c) Claim Return Statements should be completed as soon as [practical] possible and submitted to [Blue Cross of New Jersey] Blue Cross and Blue Shield of New Jersey, Inc.; however, the time limitation for [normal claims submittal (no later than 90 days from the date of statement return)] responding to the Fiscal Agent's inquiries will apply[.] (See N.J.A.C. 10:49-1.12).

(d) Questions regarding the proper completion of the Claim Return Statement are to be directed to [Blue Cross of New Jersey] Blue Cross and Blue Shield of New Jersey, Inc., P.O. Box 549, Newark, New Jersey 07101, Attention: Claim Return Statements, or call toll free (800) 242-0809 between 8:15 A.M. and 4:15 P.M. (Monday through Friday, except holidays).

(e) For further instructions for completion of the Claim Return Statement see N.J.A.C. 10:51-2, Billing Procedures ([see] N.J.A.C. 10:51-2.8, Claim Return Statement).

[10:51-5.29]10:51-5.30 Adjustment Request [(]Form (FD-238)

(a) (No change.)

(b) Time limitation: Adjustment requests for all claims must be [received by Blue Cross of New Jersey not later than 180 days after the claim in question appeared on a payment voucher] submitted to Blue Cross and Blue Shield of New Jersey, Inc. within the time frame specified in N.J.A.C. 10:49-1.12. [It should be noted that the 180-day limit does not apply to adjustment requests submitted due to patient eligibility. In this instance the time limitation is two years when the failure to establish timely eligibility on file was the fault of the certifying agency (county of State).]

(c) (No change.)

[10:51-5.30]10:51-5.31 Follow-up claims investigation procedure

(a) The following claims investigation procedure is to be used when:

1.-2. (No change.)

3. For further instructions on the procedure to follow when the conditions exist in either [N.J.A.C. 10:51-5.30(a)1] (a)1 [exists] or [N.J.A.C. 10:51-5.30(a)2] (a)2 above [exists], see N.J.A.C. 10:51-2, Billing Procedures ([see] N.J.A.C. 10:51-2.10, Follow-up claims investigation procedure).

[10:51-5.31]10:51-5.32 Tape-to-tape claims and computer generated hard copy claims

(a) (No change.)

(b) Providers may contact the following office for complete details and explanation of requirements for such methods of claim submission:

Technical Services Operations

[Blue Cross of New Jersey]

Blue Cross and Blue Shield of New Jersey, Inc.

33 Washington Street

Newark, New Jersey 07102

(201) 456-2937

(c) (No change.)

[10:51-5.32 (Reserved)]

10:51-5.33 (Reserved)

SUBCHAPTER 6. (RESERVED)

EXHIBIT I

This Exhibit includes instructions for the completion of the "Prescription Claim Form" (MC-6) used for both the New Jersey Medicaid Program eligible individuals and the Pharmaceutical Assistance to the Aged and Disabled beneficiaries.

Item 1: Case number: Enter the 10-digit number that identifies:

(a) The Medicaid-eligible individual who is assigned a New Jersey Medicaid Program Validation of Eligibility Form, or

(b) The Pharmaceutical Assistance to the Aged and Disabled (PAAD) beneficiary who is assigned a PAAD Plastic Pharmacy Card or a PAAD Temporary Validation Identification Letter.

Item 2: Patient's First Name:

(a) For Medicaid-eligible individuals, enter patient's first name as shown on the Validation of Eligibility Form.

(b) For PAAD beneficiaries, enter patient's first name as shown on the PAAD Plastic Pharmacy Card or PAAD Temporary Validation Identification Letter.

Item 3: Date of Birth:

(a) For Medicaid-eligible individuals, enter the date of birth.

(b) For PAAD beneficiaries, enter the expiration date of the benefit period as shown on the PAAD Plastic Pharmacy Card or Temporary Validation Identification Letter. Do not use birthdate.

Item 4: Person No.:

(a) For Medicaid-eligible individuals, enter the person number for whom the prescription is being filled.

(b) For PAAD beneficiaries, enter 01.

Item 5: Case Name:

(a) For Medicaid-eligible individuals, enter the last name of the "head of family".

(b) For PAAD beneficiaries, enter the patient's last name.

Item 6: Signature of Patient or Representative: See N.J.A.C. 10:49-1.26, Patient certification.

Item 7: Is Patient in a Long-Term Care Facility: Either "yes" or "no" must be checked. Refer to N.J.A.C. 10:51-3, "Pharmaceutical Services for Recipients in Medicaid Approved Long-Term Care Facilities," for further information regarding procedures when patient is in a long-term care facility.

Item 8: Signature of Pharmacist.

Item 9: Prescriber's Name and Degree—Print prescriber's first initial, last name and degree (M.D., O.D., D.D.S., podiatrist, etc.). If prescriber is non-participating, enter his/her name. If prescriber practices solely in a hospital, enter the name of the hospital.

Item 10: Pharmacy Number: Enter pharmacy identification number.

Item 11: Name and Address of Pharmacy: Enter name and address of the pharmacy.

Item 12: Date Dispensed: Enter month, day and year drug was dispensed.

Item 13: Rx Number: Enter a valid prescription number to identify the prescription. If the claim represents a refill, use the original prescription number according to your files.

Item 14: National Drug Code (NDC): Enter the NDC of the drug which may be obtained from the package label (if available). If the NDC is not available, provide complete drug information on Item 17 and leave the NDC area blank.

When entering NDC's on the claim form, providers should transfer them exactly as they appear on the package label.

Example: Nalfon Pulvules 300 mg. (Dista) 60's. NDC appears on package label as: NDC 777-0877-60. Enter this NDC on the claim form as such: ///7/7/7/-/0/8/7/7/-/6/0/.

Example: Naprosyn Tablets 250 mg. (Syntex) 100's. NDC appears on package label as: NDC 18393-272-42. Enter this NDC on the claim form as such: /1/8/3/9/3/-/2/7/2/-/4/2/.

For the convenience of providers, the most frequently used products have been assigned an abbreviated three digit code which will lessen the possibility of errors for these products in NDC transcription. When entering the abbreviated code, use the last three positions of the NDC field.

Example: Valium 5 mg. Tablets are labelled with NDC 00140-0005-01 and has been assigned the Abbreviated Drug Code of 962. Enter 962 on the claim form in the last three positions of the NDC field on such: /////-///9/-/6/2/.

The Abbreviated Drug Code is not applicable to tape claims.

Item 15: Metric Quantity: Enter quantity dispensed according to the following:

Metric quantities dispensed of those injectable products normally reconstituted by physician, nurse, etc., subsequent to dispensing, bulk irrigation or I.V. solution and prefilled syringes (ex. Tubex products), should be

reported on claim form MC-6 as total number of full ampoules, vials, or bottles dispensed. Enter the NDC from the package label.

Example: Report three vials of Polycillin-N Injection as three in metric quantity field.

Example: Report of six bottles of Normal Saline sterile solution for Irrigation, 1000cc each as six in metric quantity field.

Metric quantities dispensed of all other legend drugs should be reported on claim form MC-6 as total number of cc, grams, tablets, capsules, etc. Enter the NDC from the product package label.

When reporting metric quantities, providers should interpret metric quantity equivalents as such. (Use of this reporting procedure will afford proper cost payment of all quantities dispensed, as reimbursement rates have been predicated on this procedure.):

Apothecary Quantities of:	Which Are Equivalent to Labelled Metric Quantities of:	Should be Reported as Metric Quantity of:
½ oz.	14.2 gm or cc	15
4 oz.	118.5 gm or cc	120
1 oz.	28.4 gm or cc	30
16 oz.	473 gm or cc	480
8 oz.	237 gm or cc	240
2 oz.	56.8 gm or cc	60
2 x ½ oz.	2 tubes, 15 gm each	30
2 x 1 oz.	2 tubes, 28.4 gm each	60
1½ oz.	42.6 gm or cc	45

In order to assure the correct reporting of the cancer chemotherapy injectable drugs and obtain proper payment a list of the most commonly dispensed drugs is provided. The list is not all inclusive. There may be other reimbursable chemotherapy injectable drugs that do not appear on this list. Cancer chemotherapy injectable drugs do not require prior authorization. To insure complete and proper payment for all eligible quantities of these drugs dispensed, complete the claim form MC-6. Report only the total number of vials dispensed or the total number of cc's dispensed, in accordance with the following guide:

DESCRIPTION

Adriamycin Injection 10 mg.
 Adriamycin Injection 50 mg.
 Adrucil Injection 500 mg
 BICNU Injection
 Blenoxane Injection 15 units
 Cerubidine Injection 20 mg
 Cosmegen Injection 0.5 mg
 Cytosar-U Injection 100 mg
 Cytosar-U Injection 500 mg
 Cytoxan Injection 100 mg
 Cytoxan Injection 200 mg
 Cytoxan Injection 500 mg
 Drolban Injection
 DTIC-Dome Injection 100 mg
 DTIC-Dome Injection 200 mg
 Elspar Injection 10,000 Units
 Fluorouracil Injection 500 mg
 FUDR Injection 500 mg
 Methotrexate Inj. 2.5 mg/2cc
 Methotrexate Inj. 20 mg/vial
 Methotrexate Inj. 25 mg/2cc
 Methotrexate Inj. 50 mg/vial
 Methotrexate Inj. 50 mg/2cc
 Methotrexate Inj. 100 mg/vial
 Methotrexate Inj. 100 mg/4cc
 Methotrexate Inj. 200 mg/8cc
 Mexate Inj. 20 mg/vial
 Mexate Inj. 50 mg/vial
 Mexate Inj. 100 mg/vial
 Mithracin Inj. 2500 mcg/vial
 Mustargen Injection
 Mutamycin Inj. 5 mg/vial
 Oncovin Inj. 1 mg/vial
 Oncovin Inj. 5 mg/vial
 Platinol Inj. 10 mg/vial
 Teslac Injection
 Thiotepa Inj. 15 mg/vial
 Velban Inj. 10 mg/vial

REPORT QUANTITIES DISPENSED ON AS

Total number of vials
 Total number of vials
 Total number of vials
 Total number of vials
 Total number of vials
 Total number of cc
 Total number of vials
 Total number of vials
 Total number of vials
 Total number of cc
 Total number of cc
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 Total number of vials
 Total number of vials
 Total number of vials
 Total number of cc
 Total number of vials
 Total number of vials
 Total number of vials
 Total number of cc
 Total number of vials
 Total number of vials

Item 16: Days' Supply: Calculate days' supply from the prescriber's directions and the quantity dispensed. Enter N/A (not applicable) when it is not possible to calculate days' supply. (See "Dosage and Directions" in N.J.A.C. 10:51-1.8 or 5.11).

Item 17: If no code, give product name, dosage form and strength: Complete only if NDC number is not available, or if there is any question of NDC validity. Complete all areas of product identification.

Item 18: Check Appropriate Box:

(a) For Medicaid-eligible individuals, check if prior authorized services, medical certification, or both and authorization number as explained in N.J.A.C. 10:51-1.13 "Services requiring prior authorization" and N.J.A.C. 10:51-1.6 "Prescription Drug Policies".

Services requiring prior authorization should not be provided until the authorization is received. If the prescriber has not requested prior authorization, it may be obtained from the Medicaid District Office. (See N.J.A.C. 10:49-1 Appendix A—Directory of Medicaid District Offices). When submitting claims for payment, make certain that the appropriate box on the claim form is checked off and the prior authorization number is inserted. Prior authorization is approval to dispense a specific drug and is no guarantee that an individual is eligible for services.

(b) For PAAD beneficiaries, check medical certification as explained in N.J.A.C. 10:51-5.9 "Prescription Drug Policies". Prior authorization is not required for the PAAD Programs.

Complete this section of the form as follows:

If no prior authorization is required, leave the box blank;

If prior authorization is required and exists, check the prior authorization box and indicate the prior authorization number;

If medical certification exists, check the "medical certification" box;

If prior authorization and medical certification exist, check the box entitled "Both" and indicate the authorization number.

Item 19: Other Insurance: Check appropriate box to indicate whether the patient has other Health Insurance Coverage.

Item 20: Prescriber's Individual Medicaid Practitioner's (IMP) Number: Obtain this number from the IMP Number Directory. If the prescriber is not a Medicaid participating physician, print "non-par" in this area. If the prescriber practices solely in a hospital, fill this field with all 9's. For pharmacy providers calling from New Jersey, the toll free telephone number for assistance in obtaining IMP numbers is 800-582-7052. For pharmacy providers calling from out-of-State, the telephone number for assistance in obtaining IMP numbers is 609-293-2000. Not required for the PAAD Program. Enter non-par in the field.

Item 21: Check if Compound Rx: Check this box only if the prescription was compounded and write the ingredients and their quantities on the reverse side of the claim form. (Fold the tissue and carbon aside before writing on back of claim.) Leave NDC area blank. Do not write "compound" in the NDC area. Do not enter multiple NDC's in that field to describe a compound.

Item 22: Charge: Enter the usual and customary charge.

Example: enter charge of \$11.79 as 01179.

Example: enter charge of \$110.65 as 11065.

NOTE: The program now accepts up to five digits in the "charge field" (billed amount in the top right hand corner of claim). Providers using old style imprinters which imprints digits representing "date billed", number of refills, and a four digit charge, must leave indicator keys representing "date billed" (red key) and number of refills (white key) set at 0. Only when the charge exceeds \$99.99 should the white key be utilized for indicating the charge.

NOTE: For the PAAD Program, the \$2.00 co-payment will automatically be deducted for each prescription claim in the reimbursement processing procedure.

Item 23: Defined Cost; Dispensing Fee; Total Rx Charge; and Nonlegend Drug Charge; Self-explanatory.

**CHAPTER 52
MANUAL FOR HOSPITAL SERVICES**

10:52-2.1 Identification Card and Validation Form

(a) The first step in preparing the notice of submission in inpatient cases is to ask the patient for his Identification Card and Validation Form.

(b) It is very important that the Case and Person Numbers be accurately recorded on the claim form. The case cannot be processed if either of the number is missing or incorrect.]

10:52-2.1 General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim.

[10:51-2.2 Admission notification

(a) The Form MC-1, Inpatient Hospital Claim, is used only to report to the Medicaid District Office the admission of a covered person who is eligible for medical assistance.

1. The Form MC-1 must be submitted to the Medicaid District Office within 48 hours after submission. It is not to be sent to the contractor.]

10:52-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

[10:52-2.11 Timely submission of hospital claims

(a) All claims for hospital services, whether inpatient or outpatient, must be submitted to the appropriate fiscal agent, either the Prudential Insurance Company of New Jersey Blue Cross, within the time periods specified in N.J.A.C. 10:49-1.12, entitled "Timely submission of claims and claim inquiries."

1. Until such time as the statement of claim payments is revised, decline code "69" on the reverse side will be used to indicate a decline for "service rendered more than 12 months prior to the date received";

(b) All follow-up inquiries to claims that have been submitted to the appropriate fiscal agent must be made within the time period specified in N.J.A.C. 10:49-1.12.

(c) Claims and follow-up inquiries that are not submitted within the prescribed time frames will not be approved for payment.]

10:52-2.11 (Reserved)

CHAPTER 53
MANUALS FOR SPECIAL HOSPITALS

[10:53-2.1 Identification card; validation form

(a) The first step in preparing the notice of admission in inpatient cases is to ask the patient for his identification card and validation form.

(b) It is very important that the case number and person number be accurately recorded on the claim form. The case cannot be processed if either of the numbers is missing or incorrect.]

10:52-2.1 General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim.

[10:53-2.2 Inpatient Hospital Claim form; purpose

(a) The three-part form serves two purposes:

1. To report to the local county medical assistance unit the admission of a covered person who is eligible for medical assistance;
2. To bill the program for the inpatient services rendered.

(b) The contractor's copy is to be used by provider when billing the contractor.

(c) The provider's copy is to be retained by the provider.

(d) The bottom copy of the claim form, county copy, must be submitted to the local county medical assistance unit within 48 hours after admission. It is not to be sent to the contractor. The two top copies are retained by the hospital for billing purposes.]

10:52-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 54
MANUAL FOR PHYSICIAN SERVICES

[10:54-2.1 General policy

(a) Billing should be done on a monthly basis.

(b) Claims for payment of service must be received not later than 90 days following the last date of service as indicated on the claim.

(c) For purposes of this time limitation, a claim is a submission on a Health Insurance Claim Form (HCFA-1500), or by any approved method of automated Data Exchange, which indicates a request for reimbursement in connection with medical services of a specified nature furnished to an eligible recipient.

(d) If a claim, as defined in this section, is received within the time limit specified, the claim is considered to be filed timely, even though additional information is supplied after the time limitations.]

10:54-2.1 General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim.

[10:54-2.2 Patient identification

(a) Verify that the patient is a recovered person on the first visit and each visit thereafter. This is done by viewing the patient's Validation Form which is issued on the first day of each month.

(b) It is especially important to review a patient's Validation Form on each visit when extended plans of treatment have been authorized.

(c) Prior authorization is no guarantee that an individual is covered.

(d) Authorization becomes invalid upon termination of eligibility.]

10:54-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

10:54-2.3 Prior authorization

(a) Items or services requiring prior authorization should not be provided until the authorization is received. When submitting claims for payment make certain all authorizations have been properly signed and are attached.

(b) Prior authorization is no guarantee that an individual is eligible for services.

10:54-2.5 Health Insurance Claim Form

(a) [The Health Insurance Claim Form (HCFA-1500) is used for the purpose of billing for covered services of physicians, podiatrists, optometrists, psychologists and chiropractors. Billing should be done on a monthly basis and submitted for payment as soon after the end of the month as is possible. (See N.J.A.C. 10:49-1.12.)] **The physician must use the "Health Insurance Claim Form" (1500-N.J.) when submitting a claim for services provided.**

(b) Any laboratory services [rendered] provided by the physician or practitioner to his/her own patient in his/her own office should be billed on the Health Insurance Claim Form [(HCFA-1500)] (1500 N.J.). However, [any] every laboratory [services] service provided by an independent laboratory must be billed directly to the [program] Program by the laboratory[,] and not by the physician or practitioner.

CHAPTER 55
PROSTHETIC AND ORTHOTIC SERVICES MANUAL

10:55-2.1 General [policy] billing procedures

[(a) Where new appliances (including shoes) are involved, claims shall be submitted for payment following delivery and acceptance of the completed appliance(s) to the recipient.]

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) Claims should be submitted for payment of new appliances (including shoes) following delivery to and acceptance of the completed appliance(s) by the recipient.

[(b)](c) Where repair and/or replacement of parts are involved, the following criteria apply:

1. Claims [of \$20.00 or less] of **\$100.00 or less** require no prior authorization and should be submitted for payment to the [contractor] Fiscal Agent with the physician's prescription attached.

2. Except in emergencies (see N.J.A.C. 10:55-1.6), claims [over \$20.00] in excess of **\$100.00** require prior authorization and should be submitted for payment following completion of the authorized repairs and/or replacement of parts and delivery to and acceptance of the repaired appliance(s) [to] by the recipient.

[10:55-2.2 Patient identification

It should be verified that the patient is a covered person the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued on the first day of each month. It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.]

10:54-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 56
MANUAL FOR DENTAL SERVICES

[10:56-2.1 Patient eligibility

(a) Patient eligibility should be verified by examining the validation form each time patient is treated.

(b) Since eligibility is usually on a monthly basis and most dental treatment other than diagnostic and/or emergency procedures will usually

extend for a longer period, it is possible that a patient could become ineligible during the course of treatment.

(c) Payment will be made only for dental treatment completed to the date the patient is no longer eligible for services.

1. For exceptions, see subchapter 1 of this chapter.]

10:56-2.1 General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim.

10:54-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

[10:56-2.2]10:56-2.3 Dental [services] Services Claim [(MC-10)] form (MC-10)

(a) "Dental [services] Services Claim" form (MC-10) [shall] must be used for recording proposed treatment and also for billing of treatment rendered[, as specified in Exhibit I]. See Exhibit I at the end of this chapter, N.J.A.C. 10:56, for a copy of the "Dental Services Claim" form (MC-10) and the instructions for the proper completion of the form.

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

(e) Rules for payment are as follows.

1. Routine dental services:

i. After the routine dental services are completed, the patient (or his/her authorized representative) shall sign the dental form MC-10, item 22. The provider shall personally sign and date the dental form MC-10, item 23.

ii. The top copy [(contractor's/fiscal agent's)] (Fiscal Agent) of the [dental form MC-10] "Dental Services Claim" form (MC-10) shall be forwarded to:

The Prudential Insurance Company of America
Medicaid Claims Division II
P.O. Box 1900
Millville, New Jersey 08332

(1) The second copy [(provider's)] (Provider) should be retained by the provider.

iii. Request for payment must be [received within 90 days of the last treatment date.] submitted within the time frames specified in N.J.A.C. 10:49-1.12.

2. Authorized treatment plans:

i. After previously authorized treatment plans are completed, the patient (or his/her authorized representative) shall sign the dental form MC-10, item 22. The provider shall personally sign and date the dental form MC-10, item 23.

ii. The top copy [(contractor's/fiscal agent's)] (Fiscal Agent) of the [dental form MC-10] "Dental Services Claim" form (MC-10) shall be forwarded to:

The Prudential Insurance Company of America
Medicaid Claims Division II
P.O. Box 1900
Millville, New Jersey 08332

(1) The second copy [(provider's)] (Provider) should be retained by the provider.

iii. Request for payment must be [received within 90 days of the last treatment date.] submitted within the time frames specified in N.J.A.C. 10:49-1.12.

(1) (No change.)

3. Orthodontic treatment:

i. Following utilization of the Handicapping Malocclusion Assessment system, when the malocclusion does not meet the minimum number of points, the practitioner should not proceed with the diagnostic work-up[,] but shall bill for the Assessment Examination only by submitting the [contractor/fiscal agent] Fiscal Agent copy of a [Dental Claim Form (MC-10)]

The Prudential Insurance Company of America
Medicaid Claims Division II
P.O. Box 1900
Millville, New Jersey 08332

[identifying by procedure code 0140 the service that has been rendered] using the appropriate code for the assessment examination. A copy of the Assessment Record Form (FD-10) shall accompany this submission (limitation—see N.J.A.C. 10:56-1.14(a)4i).

ii. If the malocclusion meets or exceeds the minimum number of assessment points but the case does not fall within the parameters that

have been established for orthodontic treatment under the Medicaid program, the dental form (MC-10) with authorization of the diagnostic services performed will be returned to the provider for completion of those sections requiring patient and provider signatures and dates. The [contractor's/fiscal agent's] Fiscal Agent copy may then be submitted to Prudential at the above address [above] for reimbursement.

iii.-vi. (No change.)

vii. Request for payment must be [received by] submitted to the [fiscal agent] Fiscal Agent, [the Prudential Insurance Co. no later than (90) days from the last date of service, and (12) months from the earliest date of service indicated on the Dental Claim Form (MC-10).] The Prudential Insurance Company of America, within the time frames specified in N.J.A.C. 10:49-1.12.

10:56-2.4 Patient eligibility

(a) Patient eligibility should be verified by examining the validation form each time patient is treated.

(b) Since eligibility is usually on a monthly basis and most dental treatment other than diagnostic and/or emergency procedures will usually extend for a longer period, it is possible that a patient could become ineligible during the course of treatment.

(c) Payment will be made only for dental treatment completed to the date the patient is no longer eligible for services.

1. For exceptions, see subchapter 1 of this chapter.

EXHIBIT I

Instructions for completing the dental form (MC-10) are:

1. Item 1: Patient's name: Print patient's name, last name first, as it appears on the patient's validation form or medicaid eligibility identification card.

2. Item 2: Patient's address: Print complete address, include zip code. Enter patient's telephone number in appropriate space.

3. Item 3: Health services program case number: Enter patient's health services case number exactly as it appears on the validation form or Medicaid eligibility identification card.

4. Item 4: Patient person number: Enter number as it appears on the validation form or Medicaid eligibility identification card. Patient person numbers 1 through 9 must be shown as 01, 02, 03, and so forth.

5. Item 5: Age: Enter patient's date of birth.

6. Item 6: Sex: Indicate the patient's sex by placing an X in the appropriate box.

7. Item 7: Other dental insurance: Indicate other dental health insurance coverage by entering an X in the appropriate box.

i. No fault auto coverage: Indicated by placing an X in the appropriate box if the treatment was necessary as a result of an auto accident.

ii. If answer is yes to either question, attach a copy of the explanation of payment or the decline notice from the appropriate insurance carrier. If no payment has been received, a complete report of the current status of the claim should be attached.

(1) Claims collectible under the New Jersey no fault law are not reimbursable under the New Jersey Medicaid Program, however, supplemental payments can be made if the provider has received less than he would obtain from the Medicaid program.

8. Item 8: Illness or injury—employment related or injury due to automobile accident: Indicate if patient's illness or injury is employment related or result of auto accident by entering an X in the appropriate box. If yes is indicated in employment related questions, enter the name and address of the employer.

9. Item 9: Place of service: Indicate the place of service by placing an X in the appropriate box.

10. Item 10: EPSDT program referral:

i. This question must be answered for recipients under 21 years of age.

ii. Early periodic screening, diagnosis and treatment (EPSDT), is an aspect of the Medicaid program which ensures that recipients under 21 years of age receive early detection of disease and illness, as well as diagnostic and treatment services. If an EPSDT screening uncovers a health problem or defect, the patient may be referred to another practitioner for further diagnosis and/or treatment.

iii. It is essential that the Medicaid program be able to relate diagnostic and/or treatment services to the original screening. Therefore, when a patient under 21 visits your office, a reasonable effort should be made to determine whether it is as a result of an EPSDT program referral by asking the referring physician or clinic or the patient. If you are unable to obtain the information, check No.

11. Item 11: Provider name, address and number: This area is preprinted for the convenience of the provider who only need to enter his telephone number in the appropriate box.

i. Inform Prudential Insurance Company immediately of any errors in preprinting.

12. Item 12: Existing or previous dentures: Indicate whether or not the patient has existing or previous dentures by placing an X in the appropriate box. If yes, indicate whether partial or complete dentures, date inserted, usable or repairable for both maxillary and mandibular.

i. When prior authorization for dentures is requested, the claim will not be reviewed by the dental consultant if this section is not completed.

13. Item 13: Number of X rays: Indicate the number of pre-treatment and post-treatment X rays on appropriate line.

14. Item 14:

14a. Date of initial impressions: Insert date of initial impressions for maxillary and mandibular denture(s), appliances, space maintainers, etc., on appropriate line, if applicable.

14b. Place the tooth code in the box provided and the date of initial preparation on the line adjacent to that code when the initial preparation is made for the crown.

14c. When initial treatment for authorized endodontic treatment is commenced, place the tooth code in the box and enter the date of initial treatment on the line adjacent to that tooth code.

15. Item 15: Record recommended treatment: Do not make any entries in the shaded area. Use one line for each procedure. Print clearly.

i. Date of service: Date procedure was completed—month, day and year. Numbers 1 through 9 are to be shown as 01, 02, 03, and so forth. Example: May 9, 1978 will be entered as 05 09 78.

ii. Procedure code: Enter the appropriate procedure code for service proposed or performed. Since amount of payment will be determined from the procedure code, accuracy is most important. The procedure codes and corresponding schedule of maximum allowances can be found at N.J.A.C. 10:56-3.

iii. Units of services: Do not use. These spaces for contractor use only.

iv. Fee requested: Providers must indicate their usual and customary charge for each procedure. Each charge should contain six numerals.

(1) Examples:

(A) \$1.00 written as 0001.00;

(B) \$20.00 written as 0020.00;

(C) \$300.000 written as 0300.00.

v. Amount B, code and jam: Do not use. These spaces for contractor use only.

vi. Tooth code: Identify tooth treated by utilizing tooth numbers from dental chart (Item 15G).

vii. Surface: Indicate each surface treated for each procedure. Use abbreviations as shown in Item 19.

viii. Description of service: Briefly describe service rendered. Include materials used in all pertinent information using the abbreviations shown in item 19 as appropriate.

ix. Authorization for services only: Do not use.

x. The dental consultant will indicate by initials, date and possibly by a line connecting initials those services which are authorized and, therefore, reimbursable under the New Jersey Medicaid Program.

xi. Service denied: the dental consultant will indicate by an X in this column those services which are denied. The service itself will not be lined out by the dental consultant.

xii. Complete dental chart accurately and in detail: Indicate missing teeth, extractions, restorations to be placed indicating all areas where treatment is proposed or has been completed as noted above.

16. Item 16: Diagnosis(es): Enter a diagnosis for those procedure codes prefixed with a "d" in subchapter 3 of this chapter. Where possible, select the diagnosis from the international classification of diseases (Adapted for use in the United States), as published by the United States Department of Health, Education and Welfare. (Do not confuse the diagnosis with the patient's complaint or symptoms—pain, swelling, and so forth is not acceptable as a diagnosis.)

17. Item 17: Referral: Indicate in the appropriate box whether this patient was a referral from another practitioner. If yes, the name and individual Medicaid practitioner number (IMP number) of the referring practitioner must be provided.

18. Item 18: Remarks: This space is for provider use, should a remark be necessary. Box should be checked if additional information is attached.

19. Item 19: Abbreviations: To be used when describing the services rendered.

20. Item 20: Charting symbols: To be used when charting services on the dental chart portion of item 15.

21. Item 21: This section is to be completed on each claim form. If one page is the complete claim, place an X in the top block. If there is more than one page to the complete claim, place an X in the second box and fill in blanks to the right.

i. For example: Page 1 of 3, page 2 of 3, and so forth.

22. Patient certification, see N.J.A.C. 10:49-1.26.

23. Item 23: Provider certification: The signature and IMP number of the dentist actually performing or supervising the service(s) described on the claim is required in item 23.

i. Exception: Dental groups: When practitioners in a group practice (whether sole ownership), association, partnership, or corporation) submit claims for Medicaid reimbursement, the signature of any member of the group will be accepted on the claim form for billing purposes.

(1) However, the group will be required to enter the IMP number of the practitioner who personally performed the services represented on the claim. If the claim covers services performed by more than one practitioner, the IMP Number of any one of the performing practitioner will be accepted.

The dental form (MC-10) is available from the Medicaid Claims Division II, Prudential Insurance Company, P.O. Box 1900, Millville, New Jersey 08332.

OAL NOTE: Paragraphs 22 and 23 of Exhibit I above erroneously do not appear in the New Jersey Administrative Code, although they were adopted and published in the September 22, 1986 New Jersey Register at 18 N.J.R. 1958(a). They will be included in the next update published for Title 10 of the N.J.A.C.

EXHIBIT I

Instructions for the completion of the "Dental Services Claim" form (MC-10).

Item 1: Patient's Name: Print patient's name, last name first, as it appears on the patient's Validation Form or Medicaid Eligibility Identification Card.

Item 2: Patient's Address: Print complete address, include zip code. Enter patient's telephone number in appropriate space.

Item 3: Health Service Program Case No.: Enter patient's Health Service Case Number exactly as it appears on the Validation Form or Medicaid Eligibility Identification Card.

Item 4: Patient Person No.: Enter number as it appears on the Validation Form or Medicaid Eligibility Identification Card. Patient person numbers 1 through 9 must be shown as 01, 02, 03, and so forth.

Item 5: Date of Birth: Enter patient's date of birth.

Item 6: Sex: Indicate the patient's sex by placing an X in the appropriate box.

Item 7: Other Dental Insurance or Liability Coverage: Indicate other dental health insurance coverage by entering an X in the appropriate box.

No Fault Auto Coverage: Indicated by placing an X in the appropriate box if the treatment was necessary as a result of an auto accident.

If answer is yes to either question, attach a copy of the explanation of payment or the decline notice from the appropriate insurance carrier. If no payment has been received, a complete report of the current status of the claim should be attached.

Claims collectible under the New Jersey No Fault Law are not reimbursable under the New Jersey Medicaid Program, however, supplemental payments can be made if the provider has received less than he would obtain from the Medicaid Program.

Item 8: Illness or Injury—employment related or injury due to automobile accident. Indicate if patient's illness or injury is employment related or result of auto accident by entering an X in the appropriate box. If yes is indicated in employment related questions, enter the name and address of the employer.

Item 9: Place of Service: Indicate the place of service by placing an X in the appropriate box.

Item 10: EPSDT Program Referral:

This question must be answered for recipients under 21 years of age.

Early and periodic screening, diagnosis and treatment (EPSDT), is an aspect of the Medicaid Program which ensures that recipients under 21 years of age receive early detection of disease and illness, as well as diagnostic and treatment services. If an EPSDT screening uncovers a health problem or defect, the patient may be referred to another practitioner for further diagnosis and/or treatment.

It is essential that the Medical Program be able to relate diagnostic and/or treatment services to the original screening. Therefore, when a patient under 21 years of age visits your office, a reasonable effort should be made to determine whether it is as a result of an EPSDT Program Referral by asking the referring physician or clinic or the patient. If you are unable to obtain the information, check No.

Item 11: Provider Name, Address, Telephone Number and Medicaid Provider Number (Enter only when not preprinted): This area is preprinted for the convenience of the provider who only needs to enter his telephone number in the appropriate box.

Inform Prudential Insurance Company of America immediately of any errors in preprinting.

Item 12: Existing or Previous Dentures: Indicate whether or not the patient has existing or previous dentures by placing an X in the appropriate box. If yes, indicate whether partial or full dentures and date inserted.

When prior authorization for dentures is requested, the claim will not be reviewed by the Dental Consultant if this section is not completed.

Item 13: Number of Radiographs: Indicate the number of pre-treatment and post-treatment radiographs on appropriate line.

Item 14:

14A: Date of Initial Impressions (Dentures, Appliances, Space Maintainers, etc.): Insert date of initial impressions for maxillary and mandibular denture(s), appliances, space maintainers, etc., on appropriate line, if applicable.

14B: Date of Initial Preparation(s) (Crowns): Place the tooth code in the box provided and the date of initial preparation on the line adjacent to that code when the initial preparation is made for the crown.

14C: Date of Initial Treatment(s) (Endodontic): When initial treatment for authorized endodontic treatment is commenced, place the tooth code in the box and enter the date of initial treatment on the line adjacent to that tooth code.

Item 15: Record Recommended Treatment (11 Services Only): Do not make any entries in the shaded area. Use one line for each procedure. Print clearly.

15A: Date of Service: Date procedure was completed—month, day and year. Numbers 1 through 9 are to be shown as 01, 02, 03, and so forth. Example: May 9, 1978 will be entered as 05 09 78.

15B: Procedure and Modifier Codes: Enter the appropriate procedure (5-digit) code and modifier (2-digit, if applicable) code for service proposed or performed. Since amount of payment will be determined from the procedure and modifier code, accuracy is most important. The procedure and modifier codes and corresponding schedule of maximum fee allowances can be found in N.J.A.C. 10:56-3.

15C: Fee Requested: Providers must indicate their usual and customary charge for each procedure. Each charge should contain six numerals.

Examples:

(A) \$1.00 written as 0001.00;

(B) \$20.00 written as 0020.00;

(C) \$300.00 written as 0300.00.

Amount B, Code and Jam: Do not use. These spaces for Fiscal Agent use only.

15D: Tooth Code: Identify tooth treated by utilizing tooth numbers from dental chart (Item 15G).

15E: Surface: Indicate each surface treated for each procedure. Use abbreviations as shown in Item 19.

15F: Description of Service (Including radiographs, prophylaxis, materials used, etc.): Briefly describe service rendered. Include materials used in all pertinent information using the abbreviations shown in Item 19 as appropriate.

Authorization for Services Only: Do not use.

The Dental Consultant will indicate by initials, date, and possibly by a line connecting initials those services which are authorized and, therefore, reimbursable under the New Jersey Medicaid Program. The Dental Consultant will indicate by an "X" those dental services which are denied.

15G: Dental Chart: Complete dental chart accurately and in detail: Indicate missing teeth, extractions, restorations to be placed indicating all areas where treatment is proposed or has been completed as part of the current treatment plan.

Item 16: Diagnosis(es): Enter a diagnosis for those procedure codes prefixed with a "d" in N.J.A.C. 10:56-3. Where possible, select the diagnosis from the International Classification of Diseases (ICD). (Do not confuse the diagnosis with the patient's complaint or symptoms—pain, swelling, and so forth is not acceptable as a diagnosis.)

Item 17: Referral: Indicate in the appropriate box whether this patient was a referral from another practitioner. If yes, the name and Individual Medicaid Practitioner (IMP) Number of the referring practitioner must be provided.

Item 18: Remarks: This space is for provider use, should a remark be necessary. Box should be checked if additional information is attached.

Item 19: Abbreviations: To be used when describing the services rendered.

Item 20: Charting Symbols: To be used when charting services on the dental chart in Item 15G.

Item 21: This section is to be completed on each claim form. If one page is the complete claim, place an X in the top block. If there is more than one page to the complete claim, place an X in the second box and fill in blanks to the right.

For example: Page 1 of 3, page 2 of 3, and so forth.

Item 22: Patient Certification: See N.J.A.C. 10:49-1.26, "Patient certification".

Item 23: Provider Certification: The signature and IMP Number of the dentist actually performing or supervising the service(s) described on the claim is required in Item 23.

Exception: Dental Groups: When practitioners in a group practice (whether sole ownership, association, partnership, or corporation) submit claims for Medicaid reimbursement, the signature of any member of the group will be accepted on the claim form for billing purposes.

However, the group will be required to enter the IMP Number of the practitioner who personally performed the services represented on the claim. If a claim covers services performed by more than one practitioner, the IMP Number of any one of the performing practitioners will be accepted.

The "Dental Services Claim" form (MC-10) is available from the Medicaid Claims Division II, Prudential Insurance Company, P.O. Box 1900, Millville, New Jersey 08332.

CHAPTER 57 PODIATRY SERVICES MANUAL

10:57-2.1 General [Billing] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the submission of a claim. Included is a sample claim form approved for use in submitting [bills] claims for covered items or services, and appropriate instructions for the proper completion of the form.

10:57-2.2 General Policy

Billing should be done on a monthly basis. Claims for payments of services must be received not later than 90 days following the last date of service as indicated on the claim. For purposes of this time limitation, a claim is a submission in writing which indicates a request for reimbursement in connection with medical services of a specified nature furnished to an eligible recipient. If a claim, as defined above, is received within the time limit specified, the claim is considered to be filed timely, even though additional information is supplied after the time limitations.]

10:57-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 58 NURSE-MIDWIFERY SERVICES MANUAL

10:58-2.1 [Billing procedures: Scope] General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim. A sample of the "Health Insurance Claim Form", (1500-N.J.), is included in this subchapter.

10:58-2.2 General policy

(a) Billing should be done on a monthly basis and submitted for payment as soon after the end of the month as possible (see N.J.A.C. 10:49-1.12).

(b) All claims must be received by the fiscal agent, Prudential Insurance Company, no later than 90 days after the last day the services were rendered and no later than 12 months from the earliest date of services on the claim form.

(c) For purposes of this time limitation, a claim is a submission on a Health Insurance Claim, 1500-N.J., or by any approved method of Automated Data Exchange, which indicates a request for reimbursement for C.N.M. services provided to an eligible recipient.

(d) If a claim, as defined in (c) above, is received within the time limit specified, the claim is considered to be filed timely, even though additional information is supplied after the time limitations.]

10:58-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 59
MEDICAL SUPPLIER MANUAL

10:59-2.1 General [Billing] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the submission of a claim. Included is a sample of the claim form to be used in submitting bills for covered items or services, and instructions for the proper completion of the form.

(c) If billing on a monthly basis for an authorized three-month rental, insert in item 15 of the claim form the statement "see previous claim form" for the second and third month. Reauthorization from the Medicaid District Office (MDO) is required for continued rental beyond the third month.

[10:59-2.2 General policy

(a) Billing should be done on a monthly basis. In all cases, claims must be submitted, and follow-up inquiries made, in accordance with the time frames for noninstitutional providers set forth at N.J.A.C. 10:49-1.12.

1. If billing on a monthly basis for an authorized three-month rental, insert in item 15 the statement "see previous claim form" for the second and third month. Reauthorization from the Medicaid District Office (MDO) is required for continued rental beyond the third month.]

10:59-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 60
HOME CARE SERVICES MANUAL

10:60-3.1 Home care services billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

[(a)](b) For all Home Health Care Services provided by a certified licensed home health agency, A "Home Health Claim", form [MC-3C] (MC-3C3), must be submitted [and received by] to the appropriate Fiscal Agent, [(Blue Cross or the Prudential Insurance Company) within 12 months from the earliest date of service on the claim form. (See N.J.A.C. 10:49-1.12)] either Blue Cross and Blue Shield of New Jersey, Inc., or The Prudential Insurance Company of America.

[(b)](c) For all Personal Care Assistant Services provided by a home health and homemaker agency, an "Independent Outpatient Health Facility" form, MC-14, must be submitted [and received by the Prudential Insurance Company no later than 90 days after the last date the services were rendered and no later than 12 months from the earliest date of service on the claim form. (See N.J.A.C. 10:49-1.12)] to The Prudential Insurance Company of America.

[1. Claims not submitted timely will not be approved for payment in those instances where it is demonstrated that the claim could have been submitted and resubmitted within the time limitation as defined.]

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

[(d)](e) [Completing the Home Health Claim Form (MC-3C3), all items must be typed or printed clearly.] See Exhibit II at the end of this chapter, N.J.A.C. 10:60, for a copy of the "Home Health Claim" form (MC-3C3) and the instructions for the proper completion of the form.

1. Item 1: Copy the patient's last name and first name, exactly as they appear on the Validation Form/Medicaid Eligibility Identification Card.

2. Item 2: Copy the Case last name and first name, exactly as they appear on the Validation Form/Medicaid Eligibility Identification Card.

3. Item 3: Indicate patient's sex by entering "X" in the appropriate block.

4. Item 4: Use six (6) digits to enter the patient's birthdate (e.g., May 6, 1977 is written 05/06/77). If only the year is known, enter the year. If birthdate is unavailable, submit claim without birthdate.

5. Item 5: Use six (6) digits to indicate the date when approved home health care was initiated (e.g., 02/01/81).

6. Item 6: Use six (6) digits to indicate the date of the first service for which you are billing on this claim (e.g., 02/20/81).

7. Item 7: Use six (6) digits to indicate the date of the last service for which you are billing on this claim (e.g., 03/25/81).

8. Item 8: Enter the number of visits being billed.

9. Item 9: This information is usually preprinted. If not preprinted, write in provider name and address.

10. Item 10: Enter the patient's Medical Record Number.

11. Items 11 and 12: Copy the patient's HSP (Medicaid) Case Number and Person Number exactly as they appear on the Validation Form/Medicaid Eligibility Identification Card. The complete number consists of a ten digit case number and a two digit individualized person number.

12. Item 13: This information is usually preprinted. If the information is not preprinted enter your agency's six digit provider number.

13. Items 14 and 15: Enter the patient's address and telephone number. Complete as fully as possible.

14. Items 16 and 17: If the patient was referred by a physician from another setting, you must indicate the 9 digit Individual Medicaid Practitioner (IMP) Number and the name of the referring practitioner.

15. Item 18: Patient Certification, see N.J.A.C. 10:49-1.26.

16. Items 19 and 20: Enter the nine digit Individual Medicaid Practitioner (IMP) Number and the name of the attending physician. If the attending physician is a "non-participating" physician (in the Medicaid Program), the Home Health Agency must write "NON PAR" in the space indicated. This item must be completed on all claim forms.

17. Item 20a: Enter the Physician Case Manager's name and nine digit IMP Number if the recipient is enrolled in the Medicaid Personal Physician Plan (MP Plan).

i. If an IMP number of a physician is not known, the Home Health Agency may call the physician and obtain the number or it may call the Fiscal Agent's toll free number for this information (see N.J.A.C. 10:60-3.3)

ii. This item must be completed on all claim forms if the recipient is enrolled in the MP Plan.

18. Item 21: Prior authorization is required for services following the initial visit. A claim for the initial evaluation visit must be submitted to the appropriate Fiscal Agent on the Home Health Claim form, MC-3C3, with the comment in the "Remarks" section "initial visit only". Copy the prior authorization number designated by the Medicaid District Office on the FD-139 form. Attach FD-139 to claim when submitting for payment.

19. Item 22: Type of Service: Enter date of each service opposite the code which appropriately describes the service. Use only two dates per line item if the services were not given on consecutive days; if the services were provided on consecutive days, for example: 10/8; 10/9; 10/10; more than two, but not more than five, dates per line item can be submitted for reimbursement:

i. 02 ... (Skilled Nursing Care) 10/7;10/9

ii. 03 ... (Homemaker-Home Health Aide)

iii. 10 ... (Physical Therapy)

iv. 11 ... (Speech-Language Therapy)

v. 12 ... (Occupational Therapy)

20. Item 23: Complete this item for patients under 21 years of age.

i. Ask the patient and/or referring physician or clinic whether the illness requiring services was detected during an EPSDT screening.

ii. Indicate if the patient is such a referral by checking the appropriate block.

21. Item 24: Check the block, if services indicated on the claim are ascribable to "Family Planning". These should include Home Health visits related to contraception or subsequent to family planning related surgical procedures.

22. Item 25: Indicate the source of Third Party Payment, by entering the appropriate digit in the block. Do not leave blank; if none, enter "0".

23. Item 26: Indicate the patient's status by entering the appropriate digit in the block. If plans for home health care extend beyond this billing period, enter "1", still patient.

24. Item 27: Using six digits, enter the date of the last visit under the plan of treatment, or the date of admission to the hospital, skilled nursing facility or intermediate care facility.

25. Item 28: Using standard medical terminology, enter all the diagnoses which relate to the condition requiring the current services. The primary diagnosis is the illness or condition which was the primary reason for the services. Other diagnoses should be shown under secondary.

i. Enter the primary and secondary diagnosis codes as obtained from the International Classification of Diseases, ICD-9-CM, Adapted (ICDA). Use the basic three, four, or five digit diagnosis code. For example: Acidosis 250.1 is written 2501. Insert the code on the MC-3C3 billing form just as it appears.

26. Item 29: Enter the number of visits and charges for the period covered by the claim in the appropriate column.

i. Use lines 27 and 28 to list additional services.

ii. Enter the total charges on line 98.

27. Item 30: Reserved solely for other insurance coverage.

28. Items 29 and 30: Cannot be completed on the same claim form.
i. If the patient is covered under Medicare, see Section 3.1(c).
ii. If the patient does not have Medicare coverage, enter charges not covered by other insurance on line 32 of item 30.

(l) The amount received from the other insurer must be entered on the bottom line, "Third Party Payment Amount".

29. Item 31: Check as appropriate.
i. If patient's illness or injury is work related, enter name and address of employer.
ii. Indicate whether injury resulted from an automobile accident.
iii. If the injury or illness is related to an auto accident, enter the auto insurance carrier and policy number in item 32 below.

30. Item 32: Check appropriate block to indicate whether the patient has other health insurance, liability coverage, or No Fault Auto Coverage.

i. If yes, you must attach a copy of the denial notice or a copy of the explanation of payment from the carrier.
ii. Enter the name of the carrier and policy number under which other health insurance benefits are available.

31. Item 33: Read the Provider Certification carefully.
i. An authorized representative of the Home Health Agency must sign the MC-3C3 before the claim can be considered for payment.

ii. Indicate the billing date which is the date the claim is mailed. The billing date cannot be earlier than the "Claim Thru Date", item 7.

32. REMARKS: Use this space to enter additional information.

33. Items 34-39: Leave blank; for Fiscal Agent use only.]
[(e)](f) [Completing the Independent Outpatient Health Facility Claim form (MC-14) for Personal Care Assistant Services.] See Exhibit IV at the end of this chapter, N.J.A.C. 10:60, for a copy of the "Independent Outpatient Health Facility" form (MC-14), and the instructions for the proper completion of the form.

[1. Items 1-4. Copy the Patient's Name, HSP (Medicaid) Case Number, Person Number and address exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form;

2. Items 5-6. Indicate the patient's age and identify the patient's sex;
3. Item 7. Check the appropriate block to indicate whether the patient has other health insurance, liability coverage or No Fault Auto Coverage. If you are aware that the other coverage will not cover the services provided, please indicate so on the claim form. If yes, attach a copy of the decline notice or a copy of the explanation of payment from the Carrier;

4. Item 8. Leave blank;
5. Item 9. If not preprinted, write in the provider's name, address, provider number and the telephone number.

6. Item 10. Check as appropriate. If patient's illness or injury is work related, enter the name and address of employer. Indicate whether injury resulted from an automobile accident;

7. Item 11. Leave blank;
8. Item 12. Do not write in this space; for Division use only;
9. Item 13A. Enter date(s) of each visit;

13B. Enter procedure code. The procedure codes are listed in (f) below and also in your approval letter;

13C. Enter diagnosis (written narrative and number description);
13D. Describe procedure or service;

13E. Personal Care Assistant Service providers are to utilize this item to indicate the place where the service was provided. Applicable codes are:

2—Patient's Home;
4—Boarding Home;
9—Other (Rooming House).

13F. Enter your standard charge for the appropriate service;

10. Item 14. Leave blank;
11. Item 15. Enter facility IMP Number;

12. Item 16 and 16a. Leave blank;
13. Item 17. Patient Certification, See N.J.A.C. 10:49-1.26;

14. Item 18. Read the Provider Certification carefully. The provider must sign the MC-14 before the claim can be considered for payment. Indicate the billing date which is the date the claim is mailed.]

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

[(g)](h) For reimbursement, submit the Fiscal [Agency] Agent copy of the "Independent Outpatient Health Facility" [Claim] form, MC-14, to:
The Prudential Insurance Company of America

P.O. Box 1900
Millville, New Jersey 08332
1. (No change.)

10:60-3.2 Timeliness of claim submission and claim inquiry
For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

[10:60-3.2 through 3.5]10:60-3.3 through 3.6 (No change in text.)

EXHIBIT I (RESERVED)

EXHIBIT II

Instructions for the completion of the MC-3C3.

Item 1: Patient's Last Name: Copy the patient's last name and first name, exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 2: Case Last Name: Copy the Case last name and first name, exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 3: Sex: Indicate patient's sex by entering "X" in the appropriate block.

Item 4: Birthdate: Use six digits to enter the patient's birthdate (for example, May 6, 1977 is written 05/06/77). If only the year is known, enter the year. If birthdate is unavailable, submit claim without birthdate.

Item 5: Start Care Date: Use six digits to indicate the date when approved home health care was initiated (for example, 02/01/81).

Item 6: Claim From Date: Use six digits to indicate the date of the first service for which you are billing on this claim (for example, 02/20/81).

Item 7: Claim Thru Date: Use six digits to indicate the date of the last service for which you are billing on this claim (for example, 03/25/81).

Item 8: Visits: Enter the number of visits being billed.

Item 9: Provider Name and Address: This information is usually preprinted. If not preprinted, write in provider name and address.

Item 10: Medical Record No: Enter the patient's Medical Record Number.

Items 11 and 12: HSP (Medicaid) Case No. and Patient Persons No.: Copy the patient's HSP (Medicaid) Case Number and Person Number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form. The complete number consists of a ten digit case number and a two digit individualized person number.

Item 13: Provider No: This information is usually preprinted. If the information is not preprinted enter your agency's six digit provider number.

Item 14: Patient's Address: Enter the patient's address.

Item 15: Telephone No.: Enter patient's telephone number.

Item 16: Referring Physician's Individual Medicaid Practitioner Number: If the patient was referred by a physician from another setting, you must indicate the nine digit Individual Medicaid Practitioner (IMP) Number of the referring practitioner.

Item 17: Referring Physician's Name: If the patient was referred by a physician from another setting, enter referring practitioner's name.

Item 18: Patient Certification: See N.J.A.C. 10:49-1.26.

Item 19: Attending Physician's Individual Medicaid Practitioner Number: Enter the nine digit Individual Medicaid Practitioner (IMP) Number of the attending physician. If the attending physician is a "non-participating" physician (in the Medicaid Program), the Home Health Agency must write "NON PAR" in the space indicated. This item must be completed on all claim forms.

Item 20: Attending Physician's Name: Enter attending physician's name.

Item 20a: Physician Case Manager: Enter the Physician Case Manager's name and nine digit IMP Number if the recipient is enrolled in the Medicaid Personal Physician Plan (MP Plan).

If an IMP Number of a physician is not known, the Home Health Agency may call the physician and obtain the number or it may call the Fiscal Agent's toll free number for this information (see N.J.A.C. 10:60-3.3)

This item must be completed on all claim forms if the recipient is enrolled in the MP Plan.

Item 21: Prior Authorization Number: Prior authorization is required for services following the initial visit. A claim for the initial evaluation visit must be submitted to the appropriate Fiscal Agent on the Home Health Claim form (MC-3C3), with the comment in the "Remarks" section "initial visit only". If a prior authorization number is designated by the Medicaid District Office, indicate it on the FD-139 form. Attach FD-139 to claim when submitting for payment.

Item 22: Type of Service: Enter date of each service opposite the code which appropriately describes the service. Use only two dates per line item if the services were not given on consecutive days; if the services were provided on consecutive days, for example: 10/8; 10/9; 10/10; more than two, but not more than five, dates per line item can be submitted for reimbursement:

- 02 . . . Skilled Nursing Care 10/7;10/9
- 03 . . . Homemaker—Home Health Aide
- 10 . . . Physical Therapy
- 11 . . . Speech-Language Therapy
- 12 . . . Occupational Therapy

Item 23: Was this service performed as a result of an EPSDT Program Referral: Complete this item for patients under 21 years of age.

Ask the patient and/or referring physician or clinic whether the illness requiring services was detected during an EPSDT screening.

Indicate if this patient is such a referral by checking the appropriate block.

Item 24: Check if Family Planning: Check the block, if services indicated on the claim are ascribable to "Family Planning". These should include Home Health visits related to contraception or subsequent to family planning surgical procedures.

Item 25: Third Party Liability Action: Indicate the source of Third Party Payment, by entering the appropriate digit in the block. Do not leave blank; if none, enter "0".

Item 26: Patient Status: Indicate the patient's status by entering the appropriate digit in the block. If plans for home health care extend beyond this billing period, enter "1", still patient.

Item 27: Discharge Date: Using six digits, enter the date of the last visit under the plan of treatment, or the date of admission to the hospital, skilled nursing facility or intermediate care facility.

Item 28: Discharge or Current Diagnosis: Using standard medical terminology, enter all the diagnoses which relate to the condition requiring the current services. The primary diagnosis is the illness or condition which was the primary reason for the services. Other diagnoses should be shown under secondary.

Enter the primary and secondary diagnosis codes as obtained from the International Classification of Diseases, ICD-9-CM. If the code contains less than five digits add trailing zeros to the code. For example: Meningitis code 320 is written 32000.

Item 29: Statement of Charges: Enter the number of visits and charges for the period covered by the claim in the appropriate column.

Use type of service charges lines 27 and 28 to list additional services. Enter the total charges on line 98.

Item 30: Other Coverage—Remaining Charges: Reserved solely for other insurance coverage.

Items 29 and 30: Cannot be completed on the same claim form.

If the patient is covered under Medicare (See N.J.A.C. 10:60-3.1(c)).

If the patient does not have Medicare coverage, enter charges not covered by other insurance on line 32 of item 30.

The amount received from the other insurer must be entered on the bottom line, "Third Party Payment Amount".

Item 31: Claim Related to Employment: Check as appropriate.

If patient's illness or injury is work related, enter name and address of employer.

Indicate whether injury resulted from an automobile accident.

If the injury or illness is related to an auto accident, enter the auto insurance carrier and policy number in item 32 below.

Item 32: Other Insurance or Liability Coverage: Check appropriate block to indicate whether the patient has other health insurance, liability coverage, or No Fault Auto Coverage.

If yes, you must attach a copy of the denial notice or a copy of the explanation of payment from the carrier.

Enter the name of the carrier and policy number under which other health insurance benefits are available.

Item 33: Provider Certification: Read the Provider Certification carefully.

An authorized representative of the Home Health Agency must sign the MC-3C3 before the claim can be considered for payment.

Indicate the billing date which is the date the claim is mailed. The billing date cannot be earlier than the "Claim Thru Date", item 7.

REMARKS: Use this space to enter additional information.

Items 34-38: Leave blank; for Fiscal Agent use only.

EXHIBIT III (RESERVED)

EXHIBIT IV

Instructions for the completion of the MC-14.

Item 1: Patient's Name: Enter patient's name exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 2: Patient's Address and Telephone Number: Enter patient's address and telephone number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 3: HSP (Medicaid) Case No.: Enter HSP (Medicaid) Case Number exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 4: Patient Person No.: Enter the Patient Person Number exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 5: Age: Enter patient's age.

Item 6: Sex: Check appropriate box.

Item 7: Other Health Insurance or Liability Coverage: Check the appropriate block to indicate whether the patient has other health insurance, liability coverage or No Fault Auto Coverage. If you are aware that the other coverage will not cover the services provided, please indicate so on the claim form. If yes, attach a copy of the decline notice or a copy of the explanation of payment from the Carrier.

Item 8: Was this service performed as a result of an EPSDT Program Referral: Leave Blank.

Item 9: Provider Service Information: If not preprinted, write in the provider's name, address, provider number and the telephone number.

Item 10: Was Patient's Illness or Injury connected with employment: Check as appropriate. If patient's illness or injury is work related, enter the name and address of employer. Indicate whether injury resulted from an automobile accident.

Item 11: Prior Authorization Number: Leave Blank.

Item 12: Do not write in this space; for Division use only.

Item 13: Report of Services:

13A: Dates of Service: Enter date(s) of each visit.

13B: Procedure Code: Enter procedure code. The procedure codes are listed in N.J.A.C. 10:60-3.1(g) and also in your approval letter.

13C: Nature of Illness or Injury Requiring Services: Enter diagnosis. If diagnosis code is available from the International Classification of Diseases, ICD-9-CM, enter that code.

13D: Fully describe surgical or medical procedures and other services or supplies furnished for each date listed: Describe procedure or service.

13E: Check if Family Planning: Personal Care Assistant Service providers are to utilize this item to indicate the place where the service was provided. Applicable codes are:

2—Patient's Home;

4—Boarding Home;

9—Other (Rooming House).

13F: Charge: Enter your standard charge for the appropriate service.

Item 14: Referring Practitioner's Name: Leave blank.

Item 15: Attending Practitioner's Name: Enter provider number.

Item 16: Operating Practitioner's Name: Leave Blank.

Item 16a: Physician Case Manager: Leave Blank.

Item 17: Patient Certification: See N.J.A.C. 10:49-1.26.

Item 18: Provider Certification: Read the Provider Certification carefully. The provider must sign the MC-14 before the claim can be considered for payment. Indicate the billing date which is the date the claim is mailed.

CHAPTER 61 INDEPENDENT LABORATORY SERVICES

[10:61-2.1 General policy

Claims and follow-up inquiries must be submitted within the time frames for non-institutional providers set forth at N.J.A.C. 10:49-1.12.]

10:61-2.1 General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) The subchapter contains basic information for the proper completion and submission of a claim.

[10:61-2.2 Patient identification

Verification that the patient is a covered person shall be made on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.]

10:61-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 62
VISION CARE MANUAL

10:62-3.1 General [policy] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

[(a)](b) (No change.)

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

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

10:62-3.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see Chapter 49 of this manual, Administration—10:49-1.12.

[10:62-3.2 through 10:62-3.13]10:62-3.3 through 10:62-3.14 (No change in text)

CHAPTER 63
LONG-TERM CARE SERVICES MANUAL

10:63-2.6 Timing of submission of billing transactions

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

(c) All applicable billing transaction forms must be submitted at least twice during the billing month (as described above) to the address below. In addition, the Form MCNH-30 "Certification Statement" must be submitted once each month to:

Department of Human Services
Division of Medical Assistance
and Health Services
Bureau of Claims and Accounts
CN-712
Trenton, New Jersey 08625

[10:63-2.7 Submission procedures

All applicable billing transaction forms must be submitted at least twice during the billing month (as described above) to the address below. In addition, the Form MCNH-30 "Certification Statement" must be submitted once each month to:

Department of Human Services
Division of Medical Assistance
and Health Services
Bureau of Claims and Accounts
CN-712
Trenton, New Jersey 08625]

10:63-2.7 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 64
HEARING AID SERVICES MANUAL

10:64-2.1 General billing [policy] procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

[(a)](b) (No change.)

10:64-2.3 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

[10:64-2.3 and 2.4]10:64-2.4 and 2.5 (No change in text.)

[10:64-2.5]10:64-2.6 Mailing instructions

(a) Mailing instructions are as follows:

1. Mail the original copy [(contractor's copy)] (Fiscal Agent) to:
The Prudential Insurance Company of America
P.O. Box 1900
Millville, New Jersey 08332

2. Retain the second copy [(provider's copy)] (Provider) for your records.

3. The third copy [(Medicaid district office copy)] (Medicaid District Office) is retained by the [Medicaid district office] Medicaid District Office for all authorized claims. For claims not requiring prior authorization, the provider may destroy the third copy.

CHAPTER 65
MEDICAL DAY CARE MANUAL

10:65-2.1 [Billing Procedures] General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

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

[10:65-2.2 General policy

Billing should be done on a monthly basis. In all cases, claims must be submitted no later than ninety days after the last date services are furnished, and no later than twelve (12) months from the earliest date of service indicated on the claim form.]

10:65-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 66
INDEPENDENT CLINIC SERVICES MANUAL

10:66-2.1 [Billing procedures; scope] General billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim. Included is a sample of the "Independent Outpatient Health Facility" [claim] form (MC-14), "Request for Authorization of [Psychiatric] Mental Health Services" (FD-07) and "Request for Authorization and Reauthorization for Prescribed Rehabilitation Treatment Program" (FD-06).

[10:66-2.2 Policy concerning claim submittal and follow-up inquiries

Providers of independent clinic services must submit all claims and follow-up inquiries within the time periods for non-institutional providers which appears at N.J.A.C. 10:49-1.12.]

10:66-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 67
MANUAL FOR PSYCHOLOGICAL SERVICES

10:67-2.1 General [Billing] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This subchapter contains basic information necessary for the submission of a claim. Included is a sample claim form approved for use in submitting [bills] claims for covered items or services and appropriate instructions for the proper completion of the form.

[10:67-2.2 General Policy

Billing should be done on a monthly basis. Claims for payments of services must be received not later than 90 days following the last date of service as indicated on the claim. For purposes of this time limitation, a claim is a submission in writing, which indicates a request for reimbursement in connection with medical services of a specified nature furnished to an eligible recipient. If a claim, as defined above, is received within the time limit specified, the claim is considered to be filed timely, even though additional information is supplied after the time limitations.]

10:67-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

CHAPTER 68
MANUAL FOR CHIROPRACTIC SERVICES

10:68-2.1 General [Billing] billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) This [S]ubchapter contains basic information necessary for the submission of a claim. Included is a sample claim form approved for use in submitting [bills] **claims** for covered items or services and appropriate instructions for the proper completion of the form.

10:68-2.2 General Policy

(a) Claims for payment of services and follow-up inquiries must be made within the time periods for non-institutional providers as specified in N.J.A.C. 10:49-1.12.

(b) A claim is a submission in writing which indicates a request for reimbursement in connection with medical services of a specified nature furnished to an eligible recipient. If a claim, as defined above, is received within the time limit specified in N.J.A.C. 10:49-1.12, the claim is considered to be filed timely, even though additional information is supplied after the time limitations.]

10:68-2.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

(a)

DIVISION OF PUBLIC WELFARE

**Public Assistance Manual
Child Support Overpayments**

Proposed Amendment: N.J.A.C. 10:81-11.4

Authorized By: Drew Altman, Ph.D., Commissioner,

Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1987-230.

Submit comments by August 5, 1987 to:

(Ms.) Marion E. Reitz, Acting Director

Division of Public Welfare

CN 716

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Child Support Enforcement Amendments of 1984, P.L. 98-378, were developed to make critical improvements in the child support system. The proposed amendment corrects an administrative procedure concerning overpayments resulting from direct support payments. The current rule states that when a full grant has been issued, any support payments received directly by the applicant/recipient shall, upon receipt, be returned to the county welfare agency/Child Support and Paternity (CWA/CSP) Unit. If the support payment is not returned, and an overpayment of assistance occurs, such overpayment must be collected by the CWA/CSP Unit. This is an incorrect function attributed to the Child Support and Paternity Unit for collection of overpayments. The proper procedure under such circumstances is for the county welfare agency's Child Support and Paternity Unit to notify the agency's Income Maintenance Unit whenever it discovers that directly received payments are being or have been retained by the recipient.

Social Impact

The proposed amendment will have a positive impact on agency administrative practices since it removes any uncertainty that exists between the county welfare agency's Child Support and Paternity Unit and Income Maintenance Unit as to their respective functions in the recovery of overpayments. The proposed amendment will result in rules being more precise, easier to comply with and easier to enforce.

Economic Impact

The collection of overpayments has never been a function of the Child Support and Paternity Unit and will have no economic impact on that unit or the Income Maintenance Unit due to mere correction of language at N.J.A.C. 10:81-11.4(d) to reflect the proper procedure that is currently being followed by county welfare agencies.

Regulatory Flexibility Statement

This rule has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. The amendment imposes no compliance requirements on small businesses, as the Aid to Families with Dependent Children program is administered by county welfare agencies.

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

10:81-11.4 Assignment of support rights

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

(d) IM worker's responsibility: The IM worker shall advise the AFDC applicant/recipient that upon signing an application (PA-1J) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC applicant/recipient shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CSP Unit: The IM Worker, at the time of application for AFDC-C, shall complete the appropriate parts of the CSP referral document and route this form to the CWA/CSP Unit within two working days of issuance of an assistance check.

i.-ii. (No change.)

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the applicant/recipient shall, upon receipt, be returned to the [CWA/CSP Unit] **agency's Income Maintenance Unit**. If the support payment is not returned, it must be collected by the [CWA/CSP Unit] **agency's Income Maintenance Unit**, upon termination of the client from AFDC if not sooner.

iv.-vii. (No change.)

(b)

DIVISION OF PUBLIC WELFARE

**Assistance Standards Handbook
Emergency Assistance**

Proposed Amendment: N.J.A.C. 10:82-5.10

Authorized By: Drew Altman, Ph.D., Commissioner,

Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3, and 45 CFR 233.120.

Proposal Number: PRN 1987-242.

Public hearings concerning this proposal will be held on July 23, 1987 at the following locations:

Northern Region

Passaic County Board of Social Services

Board Room, 12:00 noon-8:00 P.M.

80 Hamilton Street

Paterson, New Jersey 07505-2057

Central Region

Rutgers University

Voorhees Hall Auditorium (Room 105), 12:00 noon-8:00 P.M.

Hamilton Street

New Brunswick, New Jersey 08903

Southern Region

Rutgers University

Camden Campus Center

Multi-Purpose Room, 12:00 noon-8:00 P.M.

Penn Street

Camden, New Jersey 08102

Individuals interested in testifying at the hearings must advise the Division of Public Welfare, Mercerville, New Jersey by telephone at (609) 588-2296 no later than July 22, 1987, and provide their name(s), organization represented, telephone number, and location at which the individual will be testifying. Interested speakers will be limited to ten minutes of oral testimony. Interested parties may submit written testimony at the hearings.

Submit comments by August 5, 1987 to:

Marion E. Reitz, Acting Director

Division of Public Welfare

CN 716

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10:82-5.10 expands the provision of Emergency Assistance (EA) in the Aid to Families with Dependent Children (AFDC) program.

On January 13, 1987 the Governor, in his State of the State message, announced his plans to address the unique needs of homeless families in New Jersey by modifying the Emergency Assistance program. The Governor's primary goal was to reduce the hardship of temporary homelessness on children and to prevent the break-up of families that had occurred under current policy and procedures. His message recognized the plight of families with the lowest incomes in New Jersey, many of whom have faced a personal disaster, a job loss, a serious illness or legal problems that had drained so much from their monthly incomes that there was little or no money left to pay the rent. Without the economic means to support a family, and faced with the high cost of available housing, the choice between paying the rent or providing food and clothing for the children became a critical issue. In choosing the latter, the family often found itself homeless as a result of eviction or mortgage foreclosure. Faced with no affordable permanent living arrangements that could accommodate the entire family, the result was very often placement of one or more of the children in foster care by the Division of Youth and Family Services (DYFS). In 1986, 900 children were placed in foster care because of housing related problems that resulted in the family being homeless. To remedy this situation, the Governor asked the Commissioner, Department of Human Services, to develop a program to prevent the involuntary break-up of families due to homelessness.

The resulting program developed by the Department would prevent the separation of families and would provide assistance before the family became homeless, rather than the current program which provides aid mostly after the crisis has occurred and only under limited circumstances. By the end of January, the Department had prepared rules for a proposal that would have responded to the needs of those families.

On February 3, 1987 the Superior Court, Appellate Division issued a decision in *Maticka et al. v. Atlantic City et al.*, Docket No. A-91-856T, concerning the provision of EA. The decision was consistent in many respects with the Department's position. It expanded the definition of "control or opportunity to plan in advance" to encompass not only the applicants' obligation but also their capacity to avert the emergency situation. The decision went further, however, by suspending the time limit on the provision of EA for emergency temporary shelter at N.J.A.C. 10:82-5.10(c)1. The court also ordered the Department of Human Services to conduct a rule-making hearing on these two issues.

On March 19, 1987 the Department conducted a public fact-finding hearing in the north, central and southern regions of the State to determine the magnitude of the problems surrounding EA and to assess which sections of N.J.A.C. 10:82-5.10 should be changed to respond to those problems.

The proposed amendment maintains the Governor's initiative and incorporates findings of those hearings. In addition, it incorporates changes, including those required by the U.S. Department of Health and Human Services, which the Department was moving to propose prior to February 3, 1987. In compliance with the court's directive, rule-making hearings will be conducted by the Department on July 23, 1987 to solicit public comment on these proposed amendments. Those hearings will afford the public further opportunity to comment on this proposal as well as the issues raised in the *Maticka* decision.

Information will also be solicited from the public to determine the magnitude of the problems surrounding EA in the General Assistance program and to assess which sections of N.J.A.C. 10:85-4.6 should be considered for amendment. Testimony concerning EA in the General Assistance program may include, but is not limited to, the following specific issues:

- (1) The time limitation between the occurrence of the emergency and the application for EA at N.J.A.C. 10:85-4.6(a);
- (2) Lack of control or realistic capacity of clients to plan for the emergency as a condition of eligibility at N.J.A.C. 10:85-4.6(a);
- (3) The maximum three month limit on the provision of EA for temporary shelter at N.J.A.C. 10:85-4.6(b)1.

The proposed amendment retains the availability of emergency assistance for homelessness due to fire, flood or similar disaster. It removes the requirement that the disaster be "natural". It also modifies the requirement that the emergency be one over which the client had no control or opportunity to plan in advance, by making EA available to families in certain additional circumstances. Those circumstances include instances in which foster care through the DYFS would be required if emergency assistance were not provided. Also included are situations in which there is an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the family demonstrates a lack of realistic capacity to plan for substitute housing. Lack of realistic capacity to plan

for substitute housing exists when the family can demonstrate either that there was insufficient time to secure substitute housing or that use of all available funds to pay for ordinary and necessary living expenses resulted in homelessness. Modification of the fault provision was cited at the hearings as one of the most urgently needed changes since, regardless of the cause (client action or inaction) that contributed to homelessness, the homeless family still required food and shelter.

With respect to shelter costs, the amendment provides that emergency assistance payments may be authorized for retroactive rental or mortgage charges for two calendar months to avoid eviction or foreclosure, for emergency shelter (up to three calendar months) where there is actual eviction, foreclosure or loss of prior permanent housing, and for temporary shelter (up to three calendar months) where foster care placement would otherwise be necessary. This change responds to testimony that more emphasis should be placed on measures to prevent emergencies, namely, evictions that result in homelessness and separation of families by placement of children in foster care.

The proposed amendment expands EA payments to cover expenses involved in establishing the family in permanent shelter arrangements, including, but not limited to, moving expenses and payment of advance rent.

The Department recognizes the need for support services to assist the family in dealing with the psycho-social problems that both contribute to and are a consequence of the need for EA. That need was underscored by many individuals who testified at the hearings. To respond to that concern, the amendment mandates the provision of support services under EA (with appropriate Federal financial participation), including information, referral, counseling, assistance in securing family shelter (including transportation), assistance in arranging for child care, and referral for legal services.

The CWAs are in the best position and have the most resources to help homeless families make the transition into more permanent living arrangements. However, it is widely acknowledged and consistent with sound public policy that beneficiaries of publicly-funded aid and services should themselves contribute as much as possible toward removing those circumstances and obstacles that cause them to require public aid. With regard to homelessness, the solution to each family's housing problem requires an effort by the family in addition to support by the agency. The amendment takes cognizance of those realities and requires the client to assume a greater responsibility in seeking permanent shelter. This concept of mutual obligation is especially necessary in view of the dearth of affordable housing in New Jersey. The amendment contains language which specifies that the emergency shelter in which the family is placed need not be located in the municipality in which the family currently resides. It also sets forth the family's continuing responsibility during receipt of EA to document efforts to seek alternative permanent shelter. With regard to permanent shelter, refusal by the family to accept suitable permanent housing of sufficient size to accommodate the entire family will result in ineligibility for further EA. A policy of mutual obligation between the CWA and client and joint responsibility in solving homelessness problems on an individual basis was requested by many individuals testifying at the hearing as a viable cost-effective approach to the administration of EA, without causing additional hardship to the family during the emergent situation.

The amendment expands from seven to 10 calendar days the time limitation between the occurrence of the emergency and the application for emergency assistance. The rule establishes that, in accordance with Federal requirements at 45 CFR 233.120, applicants for emergency assistance need not apply for or receive assistance under the AFDC program. It provides that EA applicants must meet all AFDC program requirements except for deprivation, enumeration and evaluation of legally-responsible relatives, but that the need for emergency assistance cannot have arisen because of refusal without good cause to accept employment or training for employment. It further sets forth uniform financial eligibility criteria for EA necessary to ensure continued 50 percent Federal matching of emergency assistance payments for eligible families.

The amendment also relocates the items for which emergency assistance will be paid from N.J.A.C. 10:82-5.10(c)1 through 5 to a separate section at N.J.A.C. 10:82-5.10(d) for ease of reference.

This amendment also permits county welfare agencies to extend EA for up to two additional months without Federal financial participation in situations where all reasonable efforts by both the county welfare agency and the client to secure permanent shelter prove unsuccessful.

The proposed amendments will enable the Department to respond to the needs of many homeless families, to prevent immediate hardships on families, and to minimize the detrimental effects on children. However,

it is unrealistic for New Jersey and this Department to attempt to solve the broader low-income housing and homeless problems through the EA program. Homelessness is a multi-faceted and complex societal problem that is shared by the cities, counties, the State and Federal governments as well as the private sector. It is not confined to the family-type welfare population or to economic factors alone. The homeless population includes many single individuals, individuals suffering from mental illness, drug and alcohol addiction, the elderly, as well as the unemployed. The loss of income that leads to homelessness results from unemployment due to lack of jobs, lack of training for jobs that are available, and structural unemployment. The lack of income that results from unemployment is often due to a failure of the educational system, or a lack of meaningful skills despite the efforts of the educational system. Owing to the depth and breadth of the homelessness problem, certain issues simply could not be addressed through this rulemaking.

The need to substantially increase AFDC grants to enable recipients to more adequately meet their needs for shelter was emphasized in testimony at the hearing. Although this is a legislative issue and therefore not within the statutory or regulatory authority of the Department of Human Services, the Governor has requested the five percent increase in AFDC and General Assistance grants for SFY 1988. It is important to note that as of July 1, 1986 New Jersey ranked 6th highest among the 13 states in the Northeast Corridor in its AFDC payment standard (AFDC grant). Furthermore, while ideal, no state has an AFDC payment standard which is equal to the Federal poverty guideline.

New Jersey's critical problem of the lack of affordable housing, especially housing at the income levels of AFDC recipients, was the problem most cited by testifiers as the reason for needing EA. Further, those testifying often stated that the emergency shelters which serve as a temporary solution to the housing crisis are too few in number, and those that are in operation are greatly overtaxed by the demand. While the Department recognizes this severe problem, the solution to both the lack of affordable housing and the lack of sufficient shelters requires capital construction, which is not within the scope of the regulatory authority of this Department. Furthermore, the federally-funded emergency assistance monies are prohibited by Federal statute from being used to fund construction of permanent housing or emergency shelters. Notwithstanding those statutory limitations, attention must be constantly focused on solutions to the overall problem of homelessness, not merely band-aid approaches. Sufficient affordable housing stock is one solution to the problem of homelessness. Construction of additional emergency shelters should only be used as a last resort. The causes of the problem will remain after the shelters are built. Root causes must be addressed by a comprehensive, coordinated effort at the local, state and national level. For this reason, participation of other agencies dealing with the problems of the homeless is being solicited at the hearings.

The Department had seriously considered the unrestricted extension of the 90 day limit for emergency shelter (that is, maximum of two calendar months following the month in which the state of homelessness becomes known to the CWA). However, monthly and annual fiscal reports submitted by CWAs of emergency assistance cases, recipients and disbursements disclosed that 95 percent of emergency situations lasted less than 90 days. Significantly, more than half of the emergencies (52.1%) were resolved within one week, with two-thirds resolved in three weeks, and nearly three-fourths of all emergencies addressed within a month. At all times during the emergent situation, a family continues to receive its monthly public assistance grant. To expand the EA program further could result in a separate permanent public assistance program for housing and shelter, which would merely compensate for the inadequacies of current programs which are specifically charged by Congress and the legislatures with providing housing assistance for low-income families. Neighboring states' recent experience with unlimited EA for housing resulted in an enormous cost to the public with no permanent solutions to homelessness.

In considering those findings and concerns in the development of EA regulations, sound public policy and fiscal responsibility called for a solution that would balance the needs of the diverse AFDC population, would assist more families in emergent need than the current rule, and would focus on seeking available permanent housing with a view toward eliminating homelessness where possible, at a cost that would not be prohibitive to the public treasury. Using those criteria it became clear that the recipient population as a whole would benefit more by retention of the 90 day limit on EA, enabling the Department to provide assistance to a greater number of homeless or potentially homeless families. That was accomplished by modifying the "no fault" requirement, and by adding provisions which would prevent homelessness and separation of families and focus on permanent living arrangements.

However, for the small percentage of emergency situations which may last for more than 90 days, the proposed amendment provides for two calendar month extensions where the CWA determines that, in spite of the best efforts of both the recipient and agency, permanent living arrangements were unobtainable. In such instances, the CWA may provide for two extensions of one month each for a maximum of two calendar months subsequent to the expiration of the initially authorized 90 day period. Assistance granted for those situations is not subject to Federal financial participation.

Testimony at the hearings stressed the need to increase Federal and State funding to counties and the need to develop a partnership between government and the private sector for solutions to the problem of homelessness. The Department is in total agreement. Rulemaking is not needed to address those issues, in many of which the Department is already involved. The Governor's Task Force on the Homeless elicited participation from public and private sectors, identified problems and recommended solutions to the homelessness problem. Federal and State financial support is currently provided for EA through an 87.5 percent match of eligible county emergency assistance expenditures. Federal funds from the Federal Emergency Management Agency (FEMA) are available for counties and municipalities experiencing natural disaster situations. FEMA funds are managed through non-profit agencies, in partnership with counties and directed toward county-based needs. The dollar amount of FEMA funding changes every year; approximately \$2 million was allocated to New Jersey by FEMA in SFY 1987. In addition, \$4.35 million in State funding is directed through Comprehensive Emergency Assistance Systems (CEAS), which is a network involving both the public and private sectors coordinating the provision of emergency assistance services at the county level. The utilization of those funds, in conjunction with all available Federal matching funds, is based on plans developed by each county to respond to the needs of its residents. In addition to those current efforts, the Department is willing to address the problem of homelessness at any additional Federal, State or county forum, public or private, and is committed to working with all groups toward practical, effective solutions to one of New Jersey's most serious problems.

Social Impact

The proposed amendment will address the critical situation of homelessness among low income families in New Jersey. It is designed primarily to prevent the separation of families that now occurs when children are placed in foster care due to homelessness that could have been avoided by payment of overdue rent or mortgages. It will assist families in retaining their current housing in court-ordered or actual eviction or foreclosure for nonpayment of rent or mortgage.

The broadened eligibility criteria will have positive social impact. By not requiring the family to apply for or receive AFDC, but only to demonstrate financial need under the AFDC eligibility criteria, it will assist those families in temporary emergent need who choose to remain otherwise self-supporting. It will permit families with unemployed parents who are financially ineligible to receive AFDC under the lower standards of the "N-segment" to be aided during temporary emergencies. The expanded time frame between occurrence of homelessness and application for EA will take into account Saturdays, Sundays and legal holidays and ensure that they are not denied assistance merely because their emergency falls on a weekend.

Clarification of the services available under emergency assistance funding and reorganization of that section of the N.J.A.C. will result in equitable treatment of low income families and improve program administration by ensuring that rules are being uniformly applied statewide. The provision of those support services in addition to the expanded coverage of EA will redirect EA toward permanent rather than short-term solutions to recipients' problems.

The approach of mutual obligation toward the provision and receipt of emergency assistance will reduce the negative attitudes of blame to which recipients are subjected and will support recipients assuming more responsibility and self-direction. The proposed amendment will result in more effective services being provided to a greater number of families in need. The expanded services together with the responsible actions of the recipient on his or her own behalf will work toward permanent solutions to critical, complex problems.

Economic Impact

The proposed amendment will result in increased expenditures for assistance. However, the increase will be partially offset by Federal matching funds unavailable without the rule.

Preliminary surveys of EA expenditures during the full month (February 3 through early March 1987) following the *Maticka* decision and expansion of the "no fault" provisions disclose estimated EA expen-

ditures of \$701,200 for 963 families. Of that total, approximately \$340,000 for 490 families was issued pursuant to the expanded criteria in *Maticka*; the remaining \$361,200 in EA for 470 families was issued to those eligible under the regulation prior to *Maticka*. The latter figure is roughly comparable to the \$422,400 issued on behalf of 653 AFDC families for February 1986. Although the 1987 figures are preliminary estimates, they indicate that a substantial increase in EA commitments and expenditures can be expected as a result of the expanded eligibility criteria of *Maticka*. While EA expenditures under the court order are expected to increase, it is difficult to determine the annual amount when coupled with the proposed amendment.

The cost of the amendments providing for payment of rent or mortgages to avoid eviction and placement of children in protective services are estimated as follows. Currently 5,000 families are being served under the AFDC-EA program. An additional 10,000 families are projected to be served under the proposed rule. The annual gross assistance cost of this proposed amendment is estimated at \$8.7 million. This represents redirection of \$1.3 million State funds currently expended by the Department's Division of Youth and Family Services for emergency shelter and protective service placements related to homelessness, plus \$2 million in new State appropriations, \$1.1 million in county matching funds and \$4.3 million in Federal financial participation.

Regulatory Flexibility Statement

This proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This rulemaking imposes no compliance requirements on small businesses, as the AFDC program is administered by County Welfare Agencies.

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

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" is hereby established as any extra or additional payment(s), authorized in accordance with [(b) and (c)] (b), (c) and (d) below during the period of 30 consecutive days immediately following the occurrence of an emergency as defined in (c) below, issued to or for an eligible unit otherwise receiving continuing assistance [under AFDC or AFWP].

1. These regulations apply to an emergency (as described in (c) below) which occurred within the [seven] 10 calendar days immediately prior to application [under established procedures and standards.] for **Emergency Assistance, if the applicant meets all requirements for the AFDC Program except for the deprivation, enumeration and evaluation of legally-responsible relatives requirements.**

i. **Emergency assistance is not available if the need for such assistance arose because the applicant or the specified relative with whom the applicant is living refused without good cause as defined in N.J.A.C. 10:81-3.18 to accept employment or training for employment.**

2. **Financial eligibility for all applicants for emergency assistance shall be determined using Schedule I of N.J.A.C. 10:82-1.2(c) and the maximum income levels for AFDC-C and AFDC-F segments of Schedule III of N.J.A.C. 10:82-1.2(d).**

3. **Applicants for emergency assistance shall be issued Form PA-70, Emergency Assistance Notice, at time of application for EA. That notice shall specify that the EA payments are granted for a specific period and the EA allowance will automatically terminate two months subsequent to the month for which the EA payment is first authorized. In addition the applicant shall be requested to sign the written notice (Form PA-70) signifying that he or she has been made aware of the requirements set forth in (d)1.v. and vi.**

(b) (No change.)

(c) Emergency assistance is available in the following circumstances:

[(c)]1. When there has been substantial loss of shelter, food, clothing, or household furnishings by fire, flood or other similar [natural] disaster [, or when, because of an emergent situation over which they had no control or opportunity to plan in advance,] and the eligible unit is in a state of homelessness and the county welfare agency determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in [the following sections:] (d) below.

2. **When there is an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible family demonstrates a lack of realistic capacity to plan for substitute housing as defined in iii below, emergency assistance shall be authorized in accordance with i and ii below.**

i. **Payment may be authorized for two calendar months of retroactive rental or mortgage payments if it will prevent actual eviction or foreclosure.**

ii. **In situations of homelessness due to actual eviction or foreclosure or when prior permanent shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (d)1 below.**

iii. **Lack of realistic capacity to plan for substitute housing exists in the following circumstances:**

(1) **When the eligible family can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter; or**

(2) **When the eligible family can demonstrate that available funds and resources, including liquid resources at N.J.A.C. 10:82-3.1(d), were exhausted in payment of ordinary and necessary household and living expenses, such as food, clothing and shelter, and that payment of such expenses resulted in homelessness.**

3. **In instances where Division of Youth and Family Services, in consultation with the CWA, certifies that placement of the children in foster care is imminent due to the family being subjected to a serious health or life threatening situation because of the lack of adequate shelter, emergency assistance shall be provided in accordance with (d) below.**

(d) **Needs of the eligible family may be recognized in accordance with the regulations and limitations in the following paragraphs:**

1. **Emergency shelter:** [When an actual state of homelessness exists or is manifestly imminent, the] The county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period (see N.J.A.C. 10:81-7.1(k)6vii concerning notice requirements) not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency. **Such emergency shelter need not be located in the municipality in which the eligible family currently resides. In situations where the county welfare agency determines that despite efforts of both the client and the agency (see 6 below), permanent living arrangements are unavailable, an extension of emergency assistance may be authorized in accordance with the provisions of vii below.**

i.-ii. (No change.)

iii. **Allowances for permanent living arrangement:** When required to establish the family in a more permanent living arrangement, allowances may be authorized for expenses related to that arrangement including, but not limited to, security deposits for rent and utilities and advance rent.

iv. **Moving expenses:** Payment may be authorized for moving expenses incident to the emergency and when required to establish the family in a more permanent living arrangement.

v. **Client responsibility:** While receiving emergency assistance for temporary shelter, the eligible family has a continuing responsibility to seek alternative permanent shelter. The eligible family is also responsible for documenting its efforts in locating alternate permanent housing, beginning with the eleventh calendar day from the date the state of homelessness first becomes known to the county welfare agency. Such documentation shall reflect a minimum average of 10 contacts per week, unless the CWA determines that a fewer number of contacts is deemed appropriate or the client demonstrates good cause, for example, illness or incapacity for failing to fulfill the minimum average housing search requirement. Contacts may be made by telephone, personal visit, or a combination of both. Documentation must also include items (1) through (4) below:

- (1) Date of contact;
- (2) Telephone number (if applicable);
- (3) Address (location) of housing site; and
- (4) Name of person contacted (landlord or agent).

vi. **If the county welfare agency locates suitable permanent housing of sufficient size to accommodate the entire household, although not necessarily in the community of prior permanent residence, the eligible family must accept the permanent housing arrangement. Refusal to relocate without good cause will result in ineligibility for further emergency assistance. A county welfare agency determination of good cause may include, but is not limited to, the need for a member of the eligible family to travel more than one hour each way to and from his or her place of employment by reasonably available public or private transportation.**

vii. **Extension of emergency assistance benefits:** If at the end of the third month for which EA has been provided permanent shelter has not been secured, EA may be extended by the CWA for a fourth and, if necessary, a fifth calendar month provided the applicant signs a new Form PA-70 for each such month. Assistance granted under this provision is not subject to Federal financial participation and may be provided by the CWA under conditions including, but not limited to, the following:

CORRECTIONS

(a)

THE COMMISSIONER

Security and Control Search of Inmate and Facilities

Proposed New Rule: N.J.A.C. 10A:3-5.8

Proposed Amendment: N.J.A.C. 10A:3-5.11

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10.

Proposal Number: PRN 1987-223.

Submit comments by August 5, 1987 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule and amendment modifies N.J.A.C. 10A:3-5, Search of Inmates and Facilities to permit the use of canine teams to randomly search correctional facilities in an effort to discover narcotics.

Social Impact

The proposed new rule and amendment will enable the Department of Corrections to use an additional method of search in an effort to discover the presence of illegal narcotics within correctional facilities.

Economic Impact

The proposed new rule and amendment will have no significant economic impact because sufficient staff and financial resources are available to implement and maintain the use of canine teams.

Regulatory Flexibility Statement

The proposed new rule and amendment impacts upon inmates and the Department of Corrections. Since small businesses are not affected by this proposed new rule and amendment, a regulatory flexibility analysis is not required.

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

10A:3-5.8 Canine searches

(a) All correctional facilities and properties under the jurisdiction of the Department of Corrections are subject to random searches by canine teams, trained to discover narcotics.

(b) Before any canine search is conducted, inmates and/or visitors shall be removed from the immediate area to be searched.

(c) There shall be no canine searches of persons.

[10A:3-5.8]**10A:3-5.9** (No change in text.)

[10A:3-5.9]**10A:3-5.10** (No change in text.)

[10A:3-5.10]**10A:3-5.11** Orientation and training

(a) Each Superintendent shall be responsible for ensuring that the requirements and guidelines set forth in this [S]subchapter are followed.

(b) Post orders developed in accordance with this [S]subchapter shall be made available to all correction officers and support staff. All personnel shall receive training in [their] the interpretation and applicability of post orders, so as to insure effective and safe search techniques.

(1) Illness or incapacity of the client or another member of the household which requires the client's presence in the home on a substantially continuous basis, and no other member of the household is available to seek permanent shelter;

(2) Permanent housing has been secured but will not be available until after expiration of the third month of EA benefits.

(3) Availability of documentation that the minimum average number of housing contacts per week required by the county welfare agency were made. 2.-5. (No change.)

6. Services: The following services shall be performed by CWA personnel and must, where appropriate, be provided to all cases granted EA benefits and are chargeable as Title IV-A funds.

i. Information;

ii. Referral;

iii. Counseling;

iv. Assistance in security family shelter, including transportation;

v. Assistance in arranging for child care; and

vi. Referral for legal services.

[(d)](e) Rules concerning victims of domestic violence are:

1. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence because of domestic violence, payment of emergency assistance may be authorized under the following conditions:

i. (No change.)

ii. For new applicants, this state of homelessness occurred within the [7] **10** calendar days immediately prior to the request for emergency assistance. Temporary arrangements during that period do not negate the existence of a state of homelessness.

2. (No change.)

3. Allowances:

i. Temporary shelter: Cost of temporary shelter arrangements may be authorized in an amount not to exceed the most reasonable cost of similar arrangements in a motel or hotel and shall be for a period not to exceed two calendar months, **unless the provision of (d)1vii above apply**, following the month in which the state of homelessness first becomes known to the county welfare agency, **subject to the provisions of (d)1iii above**.

ii. Food: An allowance for food may be provided in accordance with [paragraph (c)2 of this section] **(d)2 above**.

iii. Clothing: When necessary, an allowance for clothing may be provided in accordance with [paragraph (c)3 of this section] **(d)3 above**.

iv. Additional needs: When required to establish the family in a new permanent living arrangement, allowances may be authorized for security deposits for rent and utilities, and for home furnishings (see [paragraph (c)4 of this section] **(d)1 and 4 above**).

4. (No change.)

[(e)](f) Return of child from foster care placement:

1.-2. (No change.)

3. Allowances:

i. (No change.)

ii. Food: An allowance for food may be provided in accordance with [(c)2] **(d)2 above**.

iii. Clothing: An allowance for clothing for the child to be returned from foster care placement may be provided in accordance with [(c)3] **(d)3 above**.

iv. Home furnishings: An allowance for the child for house furnishings necessary to facilitate the return of the child from foster care placement may be made in accordance with [(c)4] **(d)4 above**.

4.-6. (No change.)

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

Certification of Women-Owned and Minority-Owned Businesses

Proposed New Rules: N.J.A.C. 12A:11-1

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce and Economic Development.

Authority: P.L. 1986, Ch. 195; N.J.S.A. 52:27H-6f.

Proposal Number: PRN 1987-254.

Submit comments by August 5, 1987 to:

Anthony Vergara
Department of Commerce and Economic Development
Certification and Approvals Unit
One West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules implements the Uniform Certification Act, P.L. 1986, Ch. 195. These rules are promulgated by the Department of Commerce and Economic Development, which is given responsibility for implementing the Act. The purpose of the Act and of these rules is to provide a centralized state certification program for vendors who wish to participate in various state programs which require the authentication of ownership and control of minority and women businesses. Pursuant to the Act, vendors are required to submit a single application form, the New Jersey Uniform Certification Application, which requires the attachment of various documents to substantiate answers to questions on the application. This program also requires the reimbursement of travel and related expense to the state for businesses which are over 150 miles from the city of Trenton.

Some key provisions of the proposed rules include:

1. A 51 percent ownership standard for minority and women businesses (see N.J.A.C. 12A:11-1.3);
2. The appeal proceedings for a business which is denied certification (see N.J.A.C. 12A:11-1.7);
3. The challenge proceedings to a business which has already been certified (see N.J.A.C. 12A:11-1.8);
4. Administrative penalties for businesses which are granted certification through fraudulent means (see N.J.A.C. 12A:11-1.9);
5. Travel fees and expenses a business will be responsible for if a site visit is required outside a 150-mile radius from the city of Trenton (see N.J.A.C. 12A:11-1.11).

Social Impact

According to section 1 of the Certification Act the role of government is to encourage and develop "business owned by minorities and women", and a unified procedure for the certification of these businesses will eliminate duplication of effort and improve efficiency of these businesses.

The proposed new rules attempt to facilitate these objectives under the Act by centralizing minority and women business certification in the Department of Commerce and Economic Development. These proposed rules also take great care to ensure the integrity of the program by guarding against the potential for fraud through various means.

Economic Impact

The Unified Certification Act and the proposed new rules are expected to impact generally on the New Jersey economy by assisting in the development of minority and women businesses. The actual economic impact will be ascertained through reports and surveys required under the Act.

Specifically, the Act and these rules should impact on the state by requiring expenditures by the state in support of the program.

Businesses effected under the Act may realize some cost in conforming to the demands for specific information needed for the state to certify the business. However, these businesses will also realize savings in that they will be certified by one agency, and as such will not be duplicating efforts and associated costs of being certified by numerous state agencies.

Regulatory Flexibility Statement

The types of businesses affected by the proposed rules are those owned and controlled by minorities and women, and include small businesses.

Some businesses affected may realize some cost in conforming with the demands of specific information needed for the State certification. They will be required to submit a substantial amount of information to document the nature of the ownership and control of the business wishing to become certified. These businesses will also be required to submit yearly verification statements attesting that no substantial changes have taken place in the ownership and control on which the original certification determination was based. However, these businesses will also realize savings in their associated cost, in that they will be certified by one agency of the State for various State programs.

These rules will not adversely affect the businesses under the Act. These businesses will realize a reduction in overall State certification costs and should realize an increase in their marketing ability to various State agencies as well as in private industry.

Full text of the proposed new rules follows.

CHAPTER 11

WOMEN-OWNED AND MINORITY-OWNED BUSINESSES

SUBCHAPTER 1. CERTIFICATION

12A:11-1.1 Application and scope

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement the Unified Certification Act, P.L. 1986, ch. 195. The Act establishes a unified procedure for the certification of women-owned and minority-owned firms, which firms are seeking to qualify for certain government programs.

(b) The Act requires the Department of Commerce and Economic Development to establish and implement standards and procedures for certifying women-owned and minority-owned businesses for certain government programs.

(c) Applications and questions regarding certification of women-owned and minority-owned businesses should be addressed to:

N.J. Department of Commerce and Economic Development
Certification and Approvals Unit
CN 835
One West State Street
Trenton, New Jersey 08625

(d) The Act applies to every women-owned and minority-owned firm that wishes to do business with any department or agency of the State of New Jersey which department or agency has specific programs which require the certification of authenticity of ownership for women-owned and minority-owned businesses.

12A:11-1.2 Definitions

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

"Administrator" means the administrator for the Certification and Approvals Unit.

"Broker" means a person who for all or part of his time is in the business of buying and/or selling of tangible and/or non-tangible property in the capacity of but not limited to a manufacturers representative, distributor, or agent (non-employees of the business) and who does not exercise dominion or possess title over the items or things for sale.

"Certification" means that a minority-owned or women-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in state programs requiring certification, as judged and determined by the Certification and Approvals unit of the Department of Commerce and Economic Development.

"Certification and Approvals Unit" (CAU) means the unit in the Department of Commerce and Economic Development which is given sole authority over certification of minority and women businesses for state programs or which may provide certification for federally mandated programs.

"Control" means authority over the affairs of a business, including but not limited to capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions and the rights of other shareholders or joint partners; except that control shall not include absentee ownership, nor shall it be deemed to exist where an owner or employee who is not a minority, in the case of a minority business, or a male owner or employee, in the case of women's business, is disproportionately responsible for the operation of the business or for policy and contractual decision. Control will also not be deemed to exist if in the judgement of the Administrator of the Certification and Approvals Unit and by normal industry standards, minority or women are not reasonably judged to be in control of that business.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development.

"Days" means the normal operating business days of the state.

"Director" means the Director of the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development.

"Division" means the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or
2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or
3. Asian American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority Business" means a business which is:

1. A sole proprietorship, partnership or joint venture owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operation are controlled by one or more of the minorities who own it; or
2. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

"Principal" means any officer, director, or individual who directly or indirectly holds any beneficial interest in or ownership of the securities of the business and/or any employee of the business who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services, or supplies whatsoever involving an expenditure of \$1,000.00 or greater.

"Public agency" means the State or any department, division, agency, authority, board, commission or committee thereof.

"Woman or women" means a female or females, regardless of race.

"Women's business" means a business which is:

1. A sole proprietorship owned and controlled by a woman; or
2. A partnership or joint venture owned and controlled by women in which at least 51 percent of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

12A:11-1.3 Standards of certification for minority businesses and women businesses

(a) A business may be eligible to be certified as a minority business, a women business, or both.

(b) In order to be eligible to be certified under the Act a minority or women business must be independently owned, operated, and controlled.

1. For purposes of these rules a business shall be deemed to be independently owned, operated, and controlled, if its management is responsible for both its daily and long term operation, and that management owns at least 51 percent interest in the business.

(c) In order to be eligible as a minority business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated and controlled by persons who are Black, Hispanic, Asian American, American Indian or Alaskan native.

(d) In order to be eligible as a female business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated, and controlled by persons who are women, without regard to race.

12A:11-1.4 Certification procedures for minority businesses and female businesses

(a) Any business which seeks to be certified under the Act as a minority business and/or female business must apply to the Certifications and Approvals Unit of the Department of Commerce and Economic Develop-

ment. For this purpose, the Department shall prepare a New Jersey Uniform Certification Application. This form shall be available from the Department, and other agencies and departments of the state which maintain programs which require certification of minority and women businesses.

(b) As part of its application to the Department a business shall provide all information and documents requested by the Uniform Certification Application and any additional information requested by the Certification and Approvals Unit. The information to be submitted for review shall include:

1. Place of business;
2. Names and addresses of the owners, partners, or shareholders as applicable, and their representative shares of ownership;
3. Names and addresses of members of the board of directors in the case of corporations;
4. Names and addresses of the officers of the business;
5. Names and addresses of capital investors and the amount of capital contributed;
6. Numbers of shares of all classes of stock issued, and stock outstanding in the case of a corporation;
7. The bonding capacity and history of the business;
8. The affiliation of the business or any of its owners, officers or directors with any other business entity;
9. A representative list of current and prior clients for the past two years where applicable;
10. A complete list of major real and personal property holdings of the business;
11. A complete disclosure of financial statements and balance sheets;
12. A complete listing of banking institutions with which the business is affiliated; and
13. A complete listing of previously attained certifications and a listing of all legal entities which denied certification.

(c) An applicant must fully and accurately complete, where directed in writing, all relevant parts of the Uniform Certification Application.

(d) The application may be delayed or rejected if an applicant fails to fully complete, as directed, the Uniform Certification Application, fully document specifically requested information, or comply with additional request for information or documentation.

(e) If the applicant knowingly supplies incomplete or inaccurate information the applicant shall be disqualified under these rules, barred from reapplying for certification for a period of up to 18 months from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12A:11-1.8.

(f) In order to be certified under the Act, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency in whose program the business wishes to participate.

12A:11-1.5 Acceptance as a certified minority business or female business.

(a) When a business is determined by the Certification and Approvals Unit to be minority and/or women business, the business will be added by the Department of Commerce to the Certified Business Register. The businesses on this register shall be eligible for all appropriate state programs which require certification as a criteria for participation in a specific program. There shall be no limit to the number of businesses on the register. Each business shall be placed on the register denoting its status as minority and/or women-owned.

(b) When a business is placed on the Certified Business Register that business shall be eligible for all appropriate state programs which require certification as a criteria for participation. Once a business is placed on the Register it cannot be denied an opportunity to participate in the various state programs until it is removed from the register.

(c) When a business is placed on the Certified Business Register it shall be informed by CAU by mail of its certification status. The CAU shall also issue an individual certification number exclusive to the business as a part of the certification procedure.

12A:11-1.6 Time for application to be certified as a minority business and/or women business

(a) A business may apply to be certified by the Department of Commerce, Certification and Approvals Unit, at any time, whenever state programs require certification of the control and ownership of a business under the Act as a minority business and/or women business.

(b) A business wishing to participate in a specific state program which requires certification must apply at least 30 days prior to its intended entry into the program. The 30 day period may be reasonably extended by the administrator when:

1. The business fails to provide all information requested by the Uniform Certification Application; or
2. Additional information is requested from the business to authenticate its status; or
3. The business, through no fault of its own, is delayed or prevented from forwarding any requested information or documentation.

12A:11-1.7 Denial of certification as a minority or women business

(a) When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application or its annual Certification Verification Statement the business may appeal the decision of the CAU.

(b) A business that is being denied certification shall have 10 days from the date of notification to request a hearing with the CAU Administrator for his first level appeal.

(c) The procedure for appeal of a denial of certification shall be executed in the same manner as hearings for a challenge to a certified business as provided by N.J.A.C. 12A:11-1.8. The CAU shall be considered as the challenger pursuant to N.J.A.C. 12A:11-1.8.

12A:11-1.8 Procedure for challenging a business certified as a minority business and or women business

(a) The qualifications under these rules of a business on the Certified Business Register may be challenged by any other business on the state bidder's list or the state set-aside bidders list, businesses approved as an Inter-Agency Procurement Committee vendors (Ex. Order 46), and any state department or agency. The Commissioner shall have the discretion to dismiss a challenge for insufficient evidence.

1. A certification challenge shall be made in writing to the Department of Commerce, with copies to the challenged business and to the appropriate contracting agency where a specific contract is at issue.

2. A certification challenge to the Department of Commerce must be concerned with the authenticity of a business under these rules as a minority business or women business. Challenges of any other kind must be directed to the state department or agency which requires those other qualifications.

3. The written challenge shall be accompanied by supporting documentation of the charges.

(b) In the case of a challenge to a certified minority or women business, the state agency or department making a contract award under a specific program shall be notified within three days of receipt of the challenge and shall immediately suspend any further awards under the contract for a period not to exceed 20 days so the Department may conduct a hearing if warranted.

1. In the event that a currently certified minority and/or women business is unsuccessfully challenged under these rules by the Department, the State agency or department shall proceed to award the contract as otherwise authorized by state statute.

2. In the event that a currently certified minority and or women business is not disqualified by the Department within 20 days, any contract awards suspended at the time due to the challenge shall be allowed to be awarded without prejudice.

3. The right to challenge a currently certified minority and or women business is in addition to and is independent of any protest hearing rights which are afforded by any state agency or department.

(c) When the Department of Commerce receives a challenge, upon the request of the business whose certification is at issue, the Department shall conduct a hearing on the matter as follows. The business must request the hearing within five days of the suspension of a contract award or in the case when no contract award is involved, within five days from receipt of notice that the business is subject to a challenge proceeding.

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the department may use its own resources to ascertain the viability of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the commissioner. This designee shall issue a written report to the Commissioner of the Department of Commerce within five days of the close of the hearing.

4. A participant at the hearing who is a party to the challenge procedures will be permitted to file written exceptions to the hearing officer's report no later than three days from the issuance of the report.

5. Thereafter, the commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. The entire hearing challenge procedure shall take no more than 20 days to complete; time shall not be considered to run until a contract award is suspended. In the case where no contract award is in question,

time will run from the date of the notification to the business by certified mail that it is the subject of a challenge proceeding.

12A:11-1.9 Obligations to provide information and penalties for failure to provide complete and accurate information

(a) Applicants for certification under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been certified as a minority and/or women business on the basis of false information knowingly supplied, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:1-1.1 et seq., may:

1. Assess the business a penalty in the amount of not more than 10 percent of the total dollar amount of all contracts and/or purchase awarded by the state to that business in reliance of its business representation of ownership and/or control, for the duration of the period of the misrepresentation.

2. Order the business ineligible to transact any business with the state, for a period of not less than 12 months and not more than 60 months.

(c) Any business certified by the Department of Commerce as a minority and/or women business shall immediately apprise the Department of any circumstances which in any way affect the ownership composition of the business, or the control over the business.

(d) The failure of a business to report any such changed circumstances, or the intentional falsification shall disqualify the business for inclusion on any Certified Business Register under these rules and may subject the business to other sanctions provided for by other state agencies or departments, as they so relate.

12:11-1.10 Period and terms of certification

(a) A business once duly certified by CAU shall not be required to submit a Uniform Certification Application for a period of five years after the effective date of the certification, providing that the firm:

1. Submits on an annual basis not more than 20 days before or 10 days after the date of initial certification notice a Verification Statement, which shall attest that the ownership and control of that business on which certification was granted has not changed; and

2. Submits within 20 days notice of any material change in the business, whether it affects the status of the business under the act or not.

12A:11-1.11 Fees for certification

(a) The applicant will be responsible for reimbursing the State for costs associated with providing a site visit when necessary. The applicant business will not be issued certification until it has satisfied this obligation. Associated costs shall include but will not be limited to:

1. Cost of travel to the location of the site visit which is outside a 150 miles radius from the city of Trenton; and

2. Out of pocket per diem expenses of the state employee performing site visit when required.

12A:11-1.12 Certification reciprocity

(a) The Commissioner may form reciprocal agreements with other public or private certifying entities as he deems appropriate to facilitate minority and women business development and growth.

(b) All reciprocal agreements must provide that:

1. The quality of the program of the other certifying agency is the relative equal of the department; and

2. The Department shall have the right to review all relevant information possessed by the other public or private entity pertaining to the certification of any business seeking to be certified by the Department of Commerce.

12A:11-1.13 Information confidentiality

(a) All information and documents submitted to the Department as part of the certification application shall be confidential and used only for purposes of determining certification, except that information provided for the Certified Business Register.

(b) All submitted information and documents shall be handled on a strict need to know basis.

(c) Information and documents provided to CAU may be shared with other entities who need the information respective of reciprocal agreements authorized by the Commissioner pursuant to N.J.A.C. 12A:11-1.12.

(d) Information and documents provided to CAU may be made available in a public manner where required during a challenge or appeal proceedings under this subchapter.

LAW AND PUBLIC SAFETY**(a)****BOARD OF MEDICAL EXAMINERS****Bioanalytic Laboratory Director License, Plenary or Specialty, Granted to Physician****Proposed Amendment: N.J.A.C. 13:35-3.6**

Authorized By: Board of Medical Examiners,

Edward W. Luka, M.D., President.

Authority: N.J.S.A. 45:9-2 and 9-42.2.

Proposal Number: PRN 1987-237.

Submit comments by August 5, 1987 to:

Charles A. Janousek, Executive Secretary

Board of Medical Examiners

28 West State Street

Trenton, New Jersey 08608

The agency proposal follows:

Summary

This proposal amends the Board's rule regarding the licensing of bioanalytical laboratory directors by more clearly delineating those individuals who are eligible for a bioanalytical laboratory director's license and those who are eligible for a specialty laboratory director license by providing that in order to obtain a specialty license, an individual must be Board-certified in the particular specialty, among other requirements. The amendment also further clarifies the class of individuals eligible for a general bioanalytical license without examination to include individuals possessing anatomical pathology certification who shall appear before the Board and demonstrate at least three years of acceptable general bioanalytical laboratory experience and appropriate training.

Social Impact

The anticipated social impact of the amendment will be minimal since it should not affect the ability of properly prepared and credentialed candidates to become licensed but rather merely clarifies existing statutory requirements.

Economic Impact

The anticipated economic impact of the proposed amendment will be minimal if any. Candidates for general license with anatomical pathology certification will henceforth not have to bear the cost of examination if they can demonstrate appropriate training and experience. The change regarding specialty license is not anticipated to have any significant economic impact as it merely clarifies the type of Board certification required for licensure.

Regulatory Flexibility Statement

The Board finds that the clarifications regarding eligibility for a bioanalytical laboratory license do not impose recordkeeping, reporting or compliance requirements on applicants for licensure and such applicants are not "small businesses" as defined by the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169. Even if applicants for licensure were defined as small businesses, this regulation merely expands the class of individuals who may obtain a license without an examination and therefore poses no adverse or other operating impact. If anything, the amendment minimizes the impact the existing rule has on such businesses.

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

13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physicians

(a) The Board shall grant to any person licensed in this State to practice medicine and surgery a plenary license to direct and supervise a registered bioanalytical laboratory, without examination, provided that:

1. Such person is certified in clinical pathology by a specialty board approved by the A.M.A. or the A.O.A.; or

2. Such person, **is certified in anatomical pathology or is Board-eligible, and can demonstrate[s]** to the satisfaction of the Board, [and] following a personal appearance, **appropriate training, and** not less than three full years of post graduate general bioanalytical laboratory experience in a laboratory or laboratories acceptable to the Board.

(b) The Board shall grant to any person licensed in this State to practice medicine and surgery, a specialty license in one or more of the **following** fields: [of] toxicological chemistry, microbiology, cytogenetics, **biochemical genetics,** and clinical chemistry, without examination,

provided that such person is certified [in that specialty by a specialty board approved by the A.M.A. or the A.O.A.] by a national accrediting board in one of the above specialties, which board requires a doctorate degree plus experience, such as the American Board of Pathology, the American Osteopathic Board of Pathology, the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis or the American Society of Cytopathology and the American Society of Cytogenetics, or any other national accrediting board recognized by the Board of Medical Examiners. The specialty license shall authorize the licensee to perform and supervise only those tests which are within the scope of the specific specialty license issued by the Board.

(c) Nothing herein shall be construed to waive registration and fees required by the Bioanalytical Laboratory Director Licensing Act, as amended.

(b)**STATE ATHLETIC CONTROL BOARD****Compensation of Physicians Assigned to Boxing and Wrestling Shows****Proposed New Rule: N.J.A.C. 13:46-12.12**

Authorized By: State Athletic Control Board, Larry Hazard, Commissioner.

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1987-234.

Submit comments by August 5, 1987 to:

Larry Hazard, Commissioner

State Athletic Control Board

CN 180, Justice Complex

Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed rule will establish new compensation schedules for physicians assigned to boxing and wrestling shows by the State Athletic Commissioner. The proposal will also require that the required compensation for the physicians be paid by the promoters of these shows.

Pursuant to N.J.A.C. 13:46-12.4(d), the State Athletic Commissioner is required to assign a minimum of two physicians to each boxing program conducted in this State. In practice, however, three physicians are usually assigned to each boxing program. At least one physician is assigned to each wrestling program. These physicians perform a myriad of duties at such programs, all designed to protect the health and safety of the participants. The physicians conduct both pre-fight and post-fight physical examinations and, in a boxing match, have the authority to stop any bout in order to protect the boxer from sustaining an injury.

Currently, these physicians are paid by the State Athletic Control Board using State funds. However, all other officials (referees, judges, timekeepers and announcers) are paid by the promoter of the show. Prior to 1976, the physicians were also paid by the promoters. This practice was changed in 1976 when the Board's predecessor, the Office of the State Athletic Commissioner, began making these payments from State funds. The reasons for this policy change are not known.

The Board believes that, as in other states, the promoters, who receive the financial benefits of conducting boxing and wrestling shows in New Jersey, should bear the full responsibility for compensating all of the ringside officials, including physicians. The proposed new rule will therefore codify this requirement and establish a compensation schedule for physicians. N.J.A.C. 13:46-9.6 currently requires that the promoter submit a check, in an amount determined by the chief inspector, to cover the payment of "... referees, judges, timekeepers, announcers, or physicians." (emphasis added). Therefore, the new policy established by the proposed rule is already provided for in an existing regulation.

Currently, the Board pays a physician, assigned to a boxing show as a non-contract vendor, a fee of \$100.00 for conducting physical examinations at the weigh-in and a fee of \$100.00 for ringside duties during the boxing show. Physicians assigned to wrestling shows are paid, as non-contract vendors, a fee of \$100.00. The proposed new rule would maintain the \$100.00 for physicians assigned to cover the weigh-in at a boxing program. However, the current \$100.00 fee for providing ringside duties at a boxing or wrestling show would be increased to \$150.00. This increase is comparable to the fees paid to physicians performing similar duties in other states and is justified in view of the increased duties imposed upon the ringside physicians by the Board's stringent health and safety rules.

The proposal would further provide that compensation fees for physicians assigned sanctioned championship boxing bouts would be set by the Commissioner rather than pursuant to the compensation schedule set forth in N.J.A.C. 13:46-12.12. In making this determination, the Commissioner could consider the determinations, standards or recommendations made by a nationally recognized boxing association. However, the proposal makes clear that the Commissioner retains full authority to set the compensation for physicians assigned to cover such bouts.

Social Impact

The proposed new rule would have a positive social impact. The proposal would bring the compensation schedules for physicians into line with that paid in other jurisdictions and would ensure the health and safety of the participants by continuing to attract qualified physicians to officiate at these shows.

Economic Impact

Because the compensation for physicians will now be paid by the promoter of a boxing or wrestling show, the Board will no longer be required to pay these officials from State Funds. Based upon Fiscal Year 1986 expenditures for physicians paid by the Board of \$50,000, there would be a projected reduction in Board expenses of approximately \$70,000 in Fiscal Year 1987, assuming the same level of boxing and wrestling activity in the State. Eliminating this cost to the State will reduce the Board's requirements from appropriation and revenue funding in a similar amount for each subsequent fiscal year.

The costs to the promoter of conducting a boxing or wrestling show would be increased because the promoter will now be responsible for paying the physician's compensation. The promoter already bears this burden for shows conducted in other states. Therefore, it is not anticipated that ticket prices to boxing or wrestling shows will rise as the result of the proposal. The compensation to physicians, as set forth in the proposal, is similar in range to that paid to physicians in other jurisdictions. This will help to ensure that New Jersey continues to attract qualified physicians to perform duties at boxing and wrestling shows.

Regulatory Flexibility Statement

This proposal would apply to all promoters, some of which are small businesses, conducting boxing and wrestling shows in New Jersey. If adopted, the proposal would require promoters to pay the compensation required for physicians assigned by the State Athletic Control Board to boxing and wrestling shows. The annual cost of complying with the rule will depend solely upon the number of boxing and wrestling shows conducted by the promoter. While the new rule, if adopted, would increase the cost of promoting a boxing or wrestling show, the compensation schedule for physicians has been set at a very reasonable rate.

Small businesses cannot be excluded from the rule because the continued viability of the sport of boxing in New Jersey depends upon ensuring the health and safety of its participants. The proposal will further this goal by ensuring that New Jersey continues to attract qualified physicians to officiate at these shows.

Full text of the proposed new rule follows.

13:46-12.12 Compensation for physicians

(a) The compensation to physicians shall be paid by the promoter conducting the show and shall be on the following basis:

1. Each physician assigned by the Commissioner to perform duties at the pre-fight weigh-in at a boxing show shall receive a fee of \$100.00.
2. Each physician assigned by the Commissioner to perform ringside duties at a boxing or wrestling show shall receive a fee of \$150.00.

(b) The compensation schedule set forth in (a) above shall not apply in a sanctioned championship boxing bout. The Commissioner shall set the compensation to be paid to physicians assigned to perform pre-fight or ringside duties at sanctioned championship boxing bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for physicians in championship boxing bouts irrespective of a determination or a recommendation by such an association.

TRANSPORTATION

(a)

Restricted Parking and Stopping Route U.S. 46 in Morris County

Proposed Amendment: N.J.A.C. 16:28A-1.32

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.

Proposal Number: PRN 1987-231.

Submit comments by August 5, 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 amendment will establish "no parking bus stop" zones along Route U.S. 46 in Denville Township, Morris County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.32 based upon the request from the local officials and the results of the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zones along Route U.S. 46 in Denville Township, Morris County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The proposed amendment will primarily affect the motoring public in precluding parking at established bus stops.

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

16:28A-1.32 Route U.S. 46

(a) (No change.)

(b) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-12. (No change.)

13. Along the eastbound (southerly) side in Denville Township, Morris County:

i. Far side bus stop:

(1) Franklin Road—Beginning at the easterly curb line of Franklin Road and extending 220 feet easterly therefrom.

14. Along the westbound (northerly) side in Denville Township, Morris County:

i. Near side bus stop:

(1) Franklin Road—Beginning at the easterly curb line of Franklin Road and extending 150 feet easterly therefrom.

TREASURY-TAXATION

DIVISION OF TAXATION

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

Submit comments by August 5, 1987 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

(a)

Alcoholic Beverage Tax Tax Rates

Proposed Amendment: N.J.A.C. 18:3-2.1

Authority: N.J.S.A. 56:6-6.

Proposal Number: PRN 1987-233.

The agency proposal follows:

Summary

The proposed amendment will reflect the higher tax rate now imposed under the Alcoholic Beverage Tax Act, N.J.S.A. 54:41-1 et seq., for wines, vermouth and sparkling wines produced from New Jersey grapes from \$0.10 (ten cents) to \$0.30 (thirty cents) a gallon.

Social Impact

The amendment is intended to benefit the administration and enforcement of the alcoholic beverage tax by reflecting the increase in the tax rate mandated by P.L. 1985, c.233. Adoption of this amendment should end problems encountered by taxpayers who are unsure of which tax rate applies. This will result in the elimination of needless communication between taxpayers and state tax personnel.

Economic Impact

The bill increasing the rate was estimated to bring in an additional \$23,000 per year. The proposed amendment will facilitate collection of that amount from the affected class of taxpayers.

Regulatory Flexibility Statement

The proposed amendment will not result in any change in existing reporting, recordkeeping or other compliance requirements for any small business; therefore a regulatory flexibility analysis is not required.

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

18:3-2.1 Tax rates on alcoholic beverages; certification

(a) The Alcoholic Beverage Tax Law levies and imposes upon any sale of alcoholic beverages made within this State, or upon any delivery of alcoholic beverages made within or into this State, the following excise taxes:

1. Beer—at the rate of \$0.03-1/3 a gallon or fraction thereof;
2. Liquors—at the rate of \$2.80 a gallon (effective July 1, 1972);
3. Wines, vermouth and sparkling wines—at the rate of \$0.30 a gallon [except that] **including** wines, vermouth and sparkling wines manufactured by holders of a farm winery license, or wines, vermouth and sparkling wines manufactured from grapes or fruit grown in New Jersey by holders of a plenary winery license issued pursuant to the provisions of N.J.S.A. 33:1-10. [shall be taxed at the rate of \$0.10 a gallon. The farm plenary licensee and plenary winery licensees must certify to the Director, Division of Taxation the number of gallons of wine produced in New Jersey at the \$0.10 a gallon rate. This amended rule is effective as of September 10, 1981.]

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

(b)

Sales and Use Tax

Sales of Motor Vehicles Exempted

Proposed Amendment: N.J.A.C. 18:24-7.8

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1987-232.

The agency proposal follows:

Summary

This proposal will amend N.J.A.C. 18:24-7.8(b) to define non-domiciliary servicemen and women as residents of New Jersey for the purposes of N.J.S.A. 54:32B-10(a) of the Sales and Use Tax Act where they reside within the territorial limits of New Jersey on other than a transient basis. Generally, persons who either reside or maintain a residence in New Jersey for less than 90 days are considered to be transient under the Sales and Use Tax Act.

The case of *Sullivan v. United States*, 395 U.S. 169 (1969), settled any issue under the Soldiers and Sailors' Civil Relief Act with respect to an automatic exemption from the sales and use taxes of the host state upon the purchase or use of a motor vehicle therein by non-domiciliary servicemen and women. Whether or not a motor vehicle sale to a nonresident serviceperson will enjoy a sales and use tax exemption depends upon state law. See N.J.S.A. 54:32B-10(a).

Social Impact

At the present time the rule excludes from the definition of a resident for the purposes of N.J.S.A. 54:32B-10(a) any person serving in the Armed Forces of the United States who resides on a military reservation in this State. Thus, any such person can purchase a motor vehicle in New Jersey without the payment of tax at the present time. Other non-domiciliary persons serving in the Armed Forces and who reside off a military reservation in this State but within the territorial limits of New Jersey do not qualify for this sales and use tax exemption. Domiciliary New Jersey servicepersons who may purchase a motor vehicle in this State also do not qualify for the section 10 exemption. The proposed amendment will therefore result in the uniform sales and use tax treatment of sales of motor vehicles to all servicemen and women stationed in New Jersey, without regard to whether they are domiciled in this State or reside on or off a military reservation in New Jersey.

Economic Impact

Adoption of the proposed amendment to N.J.A.C. 18:24-7.8(b) will result in an unsubstantial increase in State revenue derived from sales of motor vehicles in New Jersey. The proposed amendment will affect servicemen and women residing on a military reservation in New Jersey who purchase a motor vehicle; they will no longer be exempt from paying the sales and use tax on the vehicle.

Regulatory Flexibility Statement

The proposed amendment will not result in any change in existing reporting, recordkeeping or other compliance requirements for any small business; therefore, a regulatory flexibility analysis is not required.

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

18:24-7.8 Sales of motor vehicles specifically exempted

- (a) (No change.)
- (b) Any sale of a motor vehicle to a nonresident of this State is not subject to tax provided such nonresident, at the time of delivery, has no permanent place of abode in this State, is not engaged in carrying on in this State any employment, trade, business or profession in which the motor vehicle will be used in this State, and furnishes to the seller, prior to delivery, proof supporting his claim from exemption. For the purposes of this subsection:
 1. Any person who maintains a place of abode in New Jersey is a resident individual. A place of abode is a dwelling place maintained by a person, or by another for him, whether or not owned by such person, other than a temporary or transient basis. The dwelling may be a house, apartment or flat[;], a room, including a room in a hotel, motel, boarding house or club, or at a residence hall operated by an educational or charitable institution, **barracks, billets or other housing provided by the Armed Forces of the United States**, or a trailer, mobile home, house boat or any other premises.
 2. Any corporation incorporated under the laws of New Jersey, and any corporation, association, partnership or other entity doing business in New Jersey or maintaining a place of business in the State, or operating

a hotel, motel, place of amusement or social or athletic club in the State is a resident.

3. Any person, corporation or other entity engaged in carrying on in New Jersey any employment, trade, business or profession is deemed a resident of New Jersey with respect to the use of a motor vehicle in such employment, trade, business or profession in the State.

4. [Any person serving in the Armed Forces of the United States whose home of record is a state other than the State of New Jersey is a nonresident of this State where his place of abode is located on a military reservation.] (Reserved)

5. Any person serving in the Armed Forces of the United States whose home of record is a state other than the State of New Jersey is a resident of this State [where] whether or not his place of abode is located on or off a military reservation and otherwise within the territorial limits of New Jersey.

6. Any person serving in the Armed Forces of the United States whose home of record is the State of New Jersey is a resident of this State whether his place of abode is located on or off a military reservation situated in New Jersey or another state of the United States or a foreign nation.

(c)-(e) (No change.)

(a)

Gross Income Tax Sale of Principal Residence

Proposed Amendment: N.J.A.C. 18:35-1.13

Authority: N.J.S.A. 54A:9-17(a).

Proposal Number: PRN 1987-229.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 18:35-1.13 relates to N.J.S.A. 54A:6-9 and changes the rule to agree with the amendment to N.J.S.A. 54A:6-9 enacted February 10, 1986 by Chapter 66, P.L. 1986. The law increases for gross income tax purposes the exclusion from gross income of the gain from the sale of a principal residence from \$100,000 to \$125,000 (\$62,500 in the case of a separate return by a married individual). The law further extends the deferred period for gains from sales or exchanges of principal residences from 18 months to two years after the acquisition of a new principal residence.

Social Impact

The proposed amendment clarifies the rules with regard to sales of principal residences and the gross income tax consequences thereof. It benefits senior citizens and other persons who either elect to exclude part or all of their gain from gross income or to defer tax on a gain by buying a replacement principal residence of the same or greater value than the one sold.

Economic Impact

The proposed amendment clarifies application of the law under Chapter 66, P.L. 1986. The loss of revenue from the statute has been estimated at \$1.9 million for the fiscal year 1987.

Regulatory Flexibility Statement

The proposed amendment will not result in any change in existing reporting, recordkeeping or other compliance requirements for small businesses; therefore, a regulatory flexibility impact statement is not required.

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

18:35-1.13 One-time election to exclude up to [\$100,00] **\$125,000** of gain on sale of principal residence; rollovers

[Foreword] NOTE

Chapter [218, P.L. 1979] **66, P.L. 1986** was signed into law [October 11, 1979] **February 10, 1986**. It affords taxpayers with exclusions similar to the exclusions permitted for Federal tax purposes when selling a principal residence.

(a) The rules concerning one-time election to exclude up to [\$100,000] **\$125,000** of gain on sale of principal residence are as follows:

1. General rule: Capital gains one-time exclusion: Where taxpayers 55 years or older sell a principal residence on or after January 1, 1979 which they have owned and used as principal residence for at least three years

during the five year period ending on the date of the sale, they may make a one-time election to exclude up to [\$100,000] **\$125,000** of gain realized on the sale.

2. Prior election: The fact that a taxpayer age 65 or older made the prior election to exclude gain on a pre-January 1, 1979 sale of residence will not prevent him or her from electing the new [\$100,000] **\$125,000** exclusion.

3. Joint return: In the case of jointly owned property where a joint return is filed, if one spouse meets the age, holding and use requirements for the exclusion, both spouses are treated as meeting such requirements.

4. Deceased spouse: Taxpayer over 55 years of age whose spouse is deceased will be treated as satisfying the holding and use requirements if the taxpayer was at least 55 years of age prior to the date of sale and has not remarried, and the deceased spouse must have satisfied the holding and use requirements and must not have made a prior election to take the exclusion on another residence.

5. Coupling one-time exemption with residence rollover exclusion: This one-time election may be coupled with the residence rollover exclusion described below, for deferring all or part of the gain not excluded under the [\$100,000] **\$125,000** exclusion rule.

6. Residence rollover exclusion: Gains derived from the sale or exchange of principal residence where a new residence is purchased within [18 months (24 months in the case of a newly constructed residence)] **two years after the sale of the prior residence** are not includible in gross income if the purchase price of the new principal residence is equal to or greater than the adjusted sales price of the principal residence sold.

7. Multiple rollover provision—applicable only to residence rollover exclusion: If a taxpayer had excluded gain from the sale of a residence within [18] **24** months prior to the sale of a subsequent principal residence, the tax free rollover of the second sale will be permitted only where the sale of the residence is in connection with relocation and employment at a new principal place of work, and the taxpayer satisfies both the geographic and length of employment requirements for the deductibility of moving expense for federal purposes.

i. Example: On January 1, 1979, a taxpayer sold his personal residence in Englewood at a gain and purchased a more expensive residence in the same city on February 15, 1979. The gain derived from the sale of the first residence qualified for deferral under the law and the taxpayer was not required to report that gain for tax purposes. In August 1979, the taxpayer's employer permanently transferred him to a new principal place of work in Cherry Hill which transfer qualified the taxpayer to deduct his moving expenses for federal income tax purposes. On September 1, 1979, the taxpayer sold his Englewood residence at a gain and purchased a more expensive residence at the new job location in Cherry Hill. Ordinarily, a taxpayer cannot defer the gain derived from two personal residences if he had already elected to defer a gain during [an 18 month period] **a two year period**. However, in this situation, the taxpayer qualified again to defer the gain derived from the sale of the second home which he purchased in Englewood by reason of the fact that his purchase of a new personal residence in Cherry Hill was necessitated in connection with relocation in employment at a new principal place of work and because geographic and federal moving expense requirements were met.

ii. Where the multiple rollover applies, the basis of each new residence must be reduced by the amount of gain deferred on the preceding sale.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Affirmative Action Employment Goals For Handicapped or Disabled Persons Rule Pre-Proposal: N.J.A.C. 19:53-1.5

Authorized By: Casino Control Commission, Walter N. Read,
Chairman.

Authority: N.J.S.A. 5:12-69 and 135.

Pre-Proposal Number: PPR 1987-1.

Take notice that the New Jersey Casino Control Commission is assessing the feasibility and incremental benefits of rules which would establish numerical employment goals for handicapped or disabled persons comparable to those provisions of N.J.A.C. 19:53-1.5 which currently establish numerical goals for minority and female workers. This notice of pre-proposal is being published in order to obtain the response of interested persons prior to the drafting of regulatory provisions.

Interested persons may submit, in writing, data, views or comments, or proposed regulatory language by August 5, 1987, to:

Robert J. Genatt, General Counsel
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN-208
Trenton, N.J. 08625

A public hearing may be held for the receipt of oral comment at a time and place to be announced after the receipt and review of written submissions.

The purpose and scope of possible rules are explained in the statement which follows.

Section 134 of the Casino Control Act, N.J.S.A. 5:12-134, directs that "[n]o license shall be issued by the commission to any applicant . . . who has not agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative action program approved by the commission and consonant with the provisions of the 'Law Against Discrimination' (citation omitted)." N.J.S.A. 5:12-134b. The Law Against Discrimination (L.A.D.), N.J.S.A. 10:5-1 et seq., prohibits "any unlawful discrimination against any person because such person is or has been at any time handicapped or any unlawful employment practice against such person, unless the nature and extent of the handicap reasonably precludes the performance of the particular employment." N.J.S.A. 10:5-4.1. The term "handicapped" is broadly defined in the L.A.D. as:

[S]uffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or physiologically, by accepted clinical or laboratory diagnostic techniques. [N.J.S.A. 10:5-5q.]

Unlawful employment practices and discriminations are specified in N.J.S.A. 10:5-12 and preclude, among other things, the consideration of a person's handicapped status when making hiring, compensation and discharge determinations (subject to the particular job requirement exception in N.J.S.A. 10:5-4.1 noted above).

In sum, the Casino Control Act (the Act), the Commission's rules and the L.A.D. prohibit any form of employment discrimination against "handicapped" persons. Additionally, the Act and the Commission's

rules require casinos and casino service industries (that is, companies providing goods and services to casinos on a regular basis) to adopt an affirmative action program which includes, among other things, notification of job openings to likely referral sources of handicapped persons and other efforts to recruit and promote such persons. See N.J.A.C. 19:53-1.5. Commission records indicate that only 11 employment related complaints have been filed by handicapped persons against casino licensees since 1981. Thus, it is unclear at the present time whether handicapped persons have found it difficult to obtain employment or advancement within the casino industry or whether a significant number of handicapped persons would be interested in obtaining employment within the casino industry should numerical employment goals be established.

The instant notice of pre-proposal is being published as a result of a request from the Governor's Committee on the Disabled that the Casino Control Commission consider the promulgation of numerical employment goals for handicapped and disabled persons. The pre-proposal is intended to elicit the experience and expertise of interested parties so that the Commission can better determine whether there is a need for numerical goals and whether appropriate rules can be drafted for adoption. Specifically, the Commission is seeking the comment of interested persons with regard to the following issues:

1. If the Commission decided to adopt numerical employment goals, how should the class of "handicapped" or "disabled" persons be defined? Should the definition contained in the L.A.D. be used, or is a narrower definition more appropriate? Would a narrower definition be incompatible with the Casino Control Act and the L.A.D.? See N.J.A.S. 5:12-134(b) and (c); N.J.S.A. 5:12-135; N.J.S.A. 10:5-5q.

2. Is it reasonable to treat handicapped or disabled persons as a homogeneous class in the same manner as minorities or females?

3. Should the definition be limited so as to identify handicapped or disabled persons who are capable of working in the casino industry? Is it possible to define such limitations due to the wide variety of jobs available within the casino industry? Should separate goals be established for each job category identified by the Commission?

4. Assuming that an appropriate definition of the class could be developed, is data available which would enable the identification and establishment of a reasonable numerical employment goal for that class and for the relevant recruiting region? If general census figures are used, is it reasonable to assume that 100 percent of persons classified as handicapped or disabled are employable?

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Insect Control

Dangerously Injurious Insects

Adopted New Rules: N.J.A.C. 2:22

Proposed: April 6, 1987 at 19 N.J.R. 479(a).

Adopted: June 8, 1987, Arthur R. Brown, Jr., Secretary,
Department of Agriculture.

Filed: June 10, 1987 as R.1987 d.274, **without change.**

Authority: N.J.S.A. 4:1-21.5, 4:6-20 and 4:7-1.

Effective Date: July 6, 1987.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted new rules follows.

CHAPTER 22 INSECT CONTROL

SUBCHAPTER 1. CERIFERUS (OR JAPANESE) WAX SCALE (CEROPLASTES CERIFERUS F.)

2:22-1.1 Ceriferus (or Japanese) Wax Scale (Ceroplastes ceriferus F.)

It has been determined by the New Jersey State Department of Agriculture that the Ceriferus (or Japanese) Wax Scale (Ceroplastes ceriferus F.) is a dangerously injurious insect and constitutes a menace to the trees and shrubs of the State of New Jersey. The Ceriferus (or Japanese) Wax Scale is not native to the State of New Jersey. The harboring or importation of the Ceriferus (or Japanese) Wax Scale is prohibited. Any building, product or means of conveyance of any character whatsoever, which, in the determination of the Department of Agriculture, presents a risk of the spread of the Ceriferus (or Japanese) Wax Scale, shall be subject to the measures of control allowed by the Statutes of New Jersey.

SUBCHAPTER 2. MEDITERRANEAN FRUIT FLY (CERATITUS CAPITATA)

2:22-2.1 Mediterranean Fruit Fly (Ceratitus capitata)

It has been determined by the New Jersey State Department of Agriculture that the Mediterranean Fruit Fly (Ceratitus capitata) is a dangerously injurious insect and constitutes a menace to the fruits and vegetables of the State of New Jersey. The Mediterranean Fruit Fly is not native to the State of New Jersey. The harboring or importation of the Mediterranean Fruit Fly is prohibited. Any building, product or means of conveyance of any character whatsoever, which, in the determination of the Department of Agriculture, presents a risk of the spread of the Mediterranean Fruit Fly, shall be subject to the measures of control allowed by the Statutes of New Jersey.

SUBCHAPTER 3. AFRICANIZED HONEYBEE (APIS MELLIFERA SCUTELLATA)

2:22-3.1 Africanized Honeybee (Apis mellifera scutellata); prohibitions

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

SUBCHAPTER 4. KHAPRA BEETLE (TORGODERMA GRANARIUM EVERTS)

2:22-4.1 Khapra Beetle (Torgoderma Granarium Everts)

It has been determined by the New Jersey State Board of Agriculture that the Khapra Beetle (Torgoderma Granarium Everts) is a dangerously injurious insect and constitutes a menace to the food and grain stocks of the State of New Jersey. The Khapra Beetle is not native to the State of New Jersey. The harboring or importation of the Khapra Beetle is prohibited. Any building, product or means of conveyance of any character whatsoever, which, in the determination of the Department of Agriculture, presents a risk of the spread of the Khapra Beetle, shall be subject to the measures of control allowed by the Statutes of New Jersey.

DIVISION OF REGULATORY SERVICES

(b)

Commercial Fertilizer and Soil Conditioner Commercial Values

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

Proposed: April 6, 1987 at 19 N.J.R. 484(a).

Adopted: June 8, 1987 by Arthur R. Brown, Jr., Secretary,
Department of Agriculture.

Filed: June 10, 1987 as R.1987 d.275, **without change.**

Authority: N.J.S.A. 4:9-15.26, 4:9-15.33.

Effective Date: July 6, 1987.

Expiration Date: October 3, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, determines the commercial value of primary plant nutrients to be:

1. Nitrogen:	\$3.50 per unit.
2. Water insoluble nitrogen:	\$7.50 per unit.
3. Available phosphoric acid:	\$3.00 per unit.
4. Soluble potash:	\$2.00 per unit.

(b) These values shall be effective from July 1, 1987 through June 30, 1988.

BANKING

(c)

DIVISION OF BANKING

Qualified Bank Acquisition of Underwritten Securities

Adopted New Rules: N.J.A.C. 3:6-16

Proposed: May 4, 1987 at 19 N.J.R. 677(b).

Adopted: June 9, 1987 by Mary Little Parell, Commissioner,
Department of Banking.

Filed: June 10, 1987, as R.1987 d.271, **with substantive changes**
not requiring additional public notice and comment (See
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:9A-28.2.

Effective Date: July 6, 1987.

Expiration Date: March 3, 1991.

Summary of Public Comments and Agency Responses:

The Department of Banking received two public comments. Each supported the general concept and basic provisions of the proposed rule; however, both suggested a modification to the notification requirement in the rule.

COMMENT: Both commentators indicated that the notification requirement in the rule which requires that a notification of acquisition of securities be given to "all beneficially interested parties" is too broad. They noted that such a sweeping requirement is so all encompassing as to create doubt in the minds of the administrators of the account as to whether they could identify all such interested parties. If not, they could expose themselves to potential liability for failure to issue proper notice. They both suggest such a situation might make the administration of the rule impractical and thereby foreclose institutions' use of the provisions of the law and this rule.

Each suggested deleting the reference to "all beneficially interested parties" and substituting a notice requirement similar to the notice requirement contained in N.J.S.A. 17:9A-35D(2). That portion of the banking statutes requires a qualified bank to give notice to the person or persons who receive periodic account statements issued by a qualified bank relative to bank charges for services or any change in charges.

RESPONSE: The Department recognizes the merit of the aforementioned comments and has changed the notification requirements of the rule so that they will be similar to those required in N.J.S.A. 17:9A-35D(2), mentioned above. The primary concern of the Department is that appropriate notification be given. Providing the required notice to persons designated to receive the periodic account statements issued by the qualified bank will accomplish this goal.

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

SUBCHAPTER 16. QUALIFIED BANK ACQUISITION OF UNDERWRITTEN SECURITIES

3:6-16.1 Definitions

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

"Trust account" means any account, relationship or arrangement administered by a qualified bank acting in any capacity as defined by N.J.S.A. 17:9A-28.

"Affiliate bank" means a bank at least 90 percent of whose issued and outstanding stock is owned by the same corporation.

"Issuer" means a qualified bank which acts either by itself or with others as an underwriter of securities.

"Qualified bank" means a qualified bank as defined in subsection (12), Section 1 of The Banking Act of 1948.

"Securities" means:

1. Bonds, notes or other obligations of or guaranteed by, this State or any agency, authority or instrumentality of this State; and
2. Bonds, notes or other obligations of any county, municipality, or other governmental unit or subdivision of this State, or any agency, authority, instrumentality of any county, municipality or other governmental unit or subdivision of this State.

3:6-16.2 Conditions placed on a qualified bank acquiring certain underwritten securities

(a) A qualified bank may acquire securities, for one or more of its trust accounts, from itself, another member of the underwriting syndicate of the security, or from an affiliate bank, when the qualified bank or affiliate holds the security or securities as a result of its being the underwriter or a member of the underwriting syndicate of the security, provided the following conditions are met with respect to each acquisition:

1. The acquisition is a prudent and appropriate investment for each of the trust accounts for which it is acquired;
2. The price paid is fair as established by market quotation of the security or of securities of similar quality, yield and maturity or as established by independent appraisal; and
3. A notification of such acquisition shall be given by the qualified bank to *[all beneficially interested parties]* *the person or persons who receive the periodic account statements issued by the qualified bank* with respect to the trust account for which the acquisition is made. The notification shall be in writing and may be sent as an individual notice by regular mail or it may be included as part of the next periodic statement. In the case of a common trust fund, notification shall be disclosed in the annual financial report of such fund.

3:6-16.3 Limitations

A qualified bank shall not retain or purchase for its trust accounts or retain or sell to any of its affiliate banks for their trust accounts, securities which in the aggregate will exceed a total of more than 50 percent of an issue of securities regarding which it or any affiliate bank is an issuer.

3:6-16.4 Required records

(a) To support compliance with the provisions of N.J.A.C. 3:6-16.2, a qualified bank shall retain its records relative to the transaction for two years from the date of the acquisition, which records shall include at a minimum:

1. The quality rating of the issue of the security;
2. The price, yield and term of the security;
3. Any and all fees and/or commissions paid;
4. The portion of the total issue of the security acquired by the qualified bank for its trust accounts and the trust accounts of any affiliated bank; and
5. The date or dates of purchase.

3:6-16.5 Exemption provision

Nothing contained within the provisions of this subchapter shall be deemed to prohibit a qualified bank from acquiring any securities as permitted by other applicable law or regulation.

(a)

DIVISION OF BANKING

Consumer Credit Bureau License Fees

Adopted New Rules: N.J.A.C. 3:23

Proposed: April 6, 1987 at 19 N.J.R. 485(a).
Adopted: May 26, 1987 by Mary Little Parell, Commissioner, Department of Banking.
Filed: May 29, 1987 as R.1987 d.254, without change.

Authority: N.J.S.A. 17:1-8.1; 17:10-3.9 and 23; 17:11A-38 and 54; 17:15-1; 17:15A-4 and 6; 17:15B-7 and 17; 17:16C-7, 8, 82(a), (b) and (c); 17:16D-4 and 8; and 45:22-4 and 11.

Effective Date: July 6, 1987.
Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the expired rules adopted as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 3:23.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Overtime Rules

Adopted New Rule: N.J.A.C. 4:1-27.1

Adopted Amendments: N.J.A.C. 4:6

Adopted Recodification: N.J.A.C. 4:6 to 4:2-27

Proposed: February 17, 1987, at 19 N.J.R. 327(b).
Adopted: May 19, 1987 by the Merit System Board, Eugene J. McCaffrey, Sr., Commissioner, Department of Personnel.
Filed: June 2, 1987 as R.1987, d.259, 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:6-24.
Effective Date: July 6, 1987.
Expiration Dates: N.J.A.C. 4:1 and 4:2—January 28, 1990, N.J.A.C. 4:6—May 5, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: Ms. Christine Danilo, Department of Personnel, indicated that the proposed amendment to N.J.A.C. 4:2-27.4(a) is to reflect the Federal Fair Labor Standards Act (FSLA) which indicates that notice shall be provided to non-exempt employees upon hire that compensatory time off may be offered in lieu of cash overtime compensation. Employees covered by a collective negotiations agreement may be granted compensatory time off in lieu of cash overtime compensation if permitted by such an agreement. For employees not covered by a collective negotiations agreement, compensatory time off may be granted pursuant to

an agreement or understanding made between the appointing authority and the employee before the performance of overtime work. In addition, for such employees who were hired prior to April 15, 1986, the regular practice in effect on that date regarding compensatory time off in lieu of cash overtime compensation shall constitute an agreement or understanding.

Proposed N.J.A.C. 4:2-27.5(e) codifies existing policy with regard to special projects. It covers situations where an employee works on a part-time or occasional basis in a different capacity from which usually employed or an NL or N4 employee is compensated for extraordinary work activities.

COMMENT: Mr. Donald Philippi, Business Manager for Local 195, International Federation of Professional and Technical Engineers, AFL-CIO, objected to various departments interpretations of negotiated contractual agreements regarding the amount of compensatory time which must be banked in order to trigger mandatory cash overtime payment. He also claimed that casual employees should receive overtime if they work more than 40 hours in a week (N.J.A.C. 4:2-27.3); negotiated agreements preventing an employee from working more than 10 days should supercede FLSA requirements which use a base of 14 days to compute overtime compensation for hospital or residential care employees; employees on call ought to be paid overtime from when called and not from when reporting (N.J.A.C. 4:2-27.5); NL employees should be paid holiday overtime compensation (N.J.A.C. 4:2-27.6(b)); and employees ought not have to submit a DPF-44 form whenever they appeal a position designation (N.J.A.C. 4:2-27.8). Finally, he stated that many of the regulations conflicted with contractual items, which should supercede the regulations.

COMMENT: Mr. Robert Pursell of the Communications Workers of America voiced his concern over the Department of Personnel's rule-making regarding items more rightly collectively negotiated. He objected to N.J.A.C. 4:2-27.3(b)2 which exempts special services employees from the benefits of overtime payments when such employees work between 35 and 40 hours per week. He cited N.J.A.C. 4:2-27.6(e) as another example in which special services employees are treated unfairly.

He objected to N.J.A.C. 4:2-27.3(b)2iii which provides that the work must be covered by the job specification for the employee's title. He indicated that N.J.A.C. 4:2-27.3(b)2, which allows flexible work patterns, may result in an unfair labor practices charge because he felt such work patterns are clearly negotiable. In addition, he noted that N.J.A.C. 4:2-27.3(b)3 provides for overtime compensation in 30 minute units while his Union's negotiated agreement provides for 15 minute units.

Mr. Pursell urged inclusion of 3E and 4E positions for entitlement for on call pay situations in N.J.A.C. 4:2-27.5(a)1. He also urged their inclusion for overtime compensation for training and travel time.

He stated that the Merit System Board has no right to unilaterally adopt project rates which he claimed are subject to negotiations. Similarly, he felt that personal preference days in N.J.A.C. 4:2-27.6(d) are a mandatory item for collective negotiation and objected to the Merit System Board's proposal to establish such days without negotiation.

Mr. Pursell indicated that records required to be maintained in N.J.A.C. 4:2-27.7(c), (d), (e) and (f) were assumed to be public records available under N.J.A.C. 4:1-25.1. He proposed that N.J.A.C. 4:2-27.8 be amended to provide an employee a right of appeal to the United States Department of Labor, Wage and Hour Division. He also proposed that all employees be notified of their rights and protections under the Fair Labor Standards Act.

Finally, he objected to N.J.A.C. 4:2-27.7(a)1 which requires written authorization in order to obtain pay for overtime worked. He felt that once overtime work was completed, the employee is entitled to overtime pay whether such overtime was authorized or not.

COMMENT: Mr. Bruce Fralinger of Local 1040, Communications Workers of America, indicated that there should be additional definitions in N.J.A.C. 4:2-27.2 for special rates, special services employees and extraordinary work activities. In N.J.A.C. 4:2-27.4(a)3, he requested that accrued compensatory time off shall be paid to an employee's estate upon his/her demise. In addition, he requested delineation of how a special rate is determined.

RESPONSE: The comments for the most part were directed toward existing provisions which were not the subject of the current proposal. Nevertheless, with regard to several of these issues, it is noted that the apparent disputes over the interpretation of contractual provisions are not matters within the control of the Department of Personnel. Moreover, the overtime regulations set forth minimums and maximums standards mandated by the Fair Labor Standards Act. There is no preclusion against negotiation of standards above such minimums or below such maximums.

There were no objections to N.J.A.C. 4:2-27.4(a) and 4:2-27.5(e). Accordingly, the Merit System Board ordered that such amendments be adopted as published. In addition, there was no comment on the recodification of 4:6 to 4:2-27. Accordingly, the Board ordered that such recodification be adopted as published.

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

CROSS REFERENCE TABLE

Old Citation	New Citation
Chapter 6, repealed	Subchapter 27
Subchapter 1	4:1-27.1
4:6-1.1	Subchapter 27
4:6-1.2, repealed	4:2-27.1
Subchapter 2, repealed	4:2-27.2
4:6-2.1	4:2-27.3
Subchapter 3	4:2-27.3(a)
4:6-3.1	4:2-27.4
Subchapter 4	4:2-27.4(a)
4:6-4.1	4:2-27.4(b)
4:6-4.2	4:2-27.4(c)
4:6-4.3	4:2-27.5
Subchapter 5	4:2-27.5(a)
4:6-5.1	4:2-27.5(b)
4:6-5.2	4:2-27.5(c)
4:6-5.3	4:2-27.5(d)
4:6-5.4	4:2-27.6
Subchapter 6	4:2-27.6(a)
4:6-6.1	4:2-27.6(b)
4:6-6.2	4:2-27.6(c)
4:6-6.3	4:2-27.6(d)
4:6-6.4	4:2-27.6(e)
4:6-6.5	4:2-27.7
Subchapter 7	4:2-27.7(a)
4:6-7.1	4:2-27.7(c)
4:6-7.2	4:2-27.7(d)
4:6-7.3	4:2-27.7(f)
4:6-7.4	4:2-27.8
Subchapter 8	4:2-27.8(a)
4:6-8.1	4:2-27.8(b)
4:6-8.2	

SUBCHAPTER 27. OVERTIME RULES

4:1-27.1 Overtime rules

(a) In State service, overtime compensation shall be paid pursuant to N.J.A.C. 4:2-27.1 *et seq.*

(b) In local service, overtime compensation shall be paid pursuant to standards prepared and administered by the appointing authority in accordance with the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

SUBCHAPTER 27. OVERTIME RULES

4:2-27.1 Authority

The Merit System Board ("Board") shall adopt rules regulating overtime compensation for State employees. See N.J.S.A. 11A:6-24; see also Federal Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*

4:2-27.2 Words and phrases defined

...

"Casual employee" means an employee appointed pursuant to a personnel action request for special projects, peak workloads or other operational necessities where the work period is irregular or of short duration.

...

"Workweek" means the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Commissioner of Personnel ("Commissioner") or his or her representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations.

4:2-27.3 State overtime regulations applicable to 40 hours or less in a workweek

(a) Eligibility requirements for overtime compensation under this section are as follows:

1. Employees in the following groups may qualify for overtime compensation under this subchapter for work performed beyond their regular work hours, but not more than 40 hours, as specified.

i. Employees in 35 hour fixed workweek titles (35, 3E) shall be eligible for overtime compensation for time worked in excess of the regular workweek as provided in N.J.A.C. 4:2-27.3(b)1.

ii. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated as provided in N.J.A.C. 4:2-27.3(b)2.

iii. The Commissioner or his or her representative may, upon the request of the Office of Employee Relations, authorize overtime payments for State Police law enforcement officers.

iv. Part-time employees shall be eligible for overtime compensation only when they work beyond the regular workweek established for full-time employees in their titles.

v. Casual employees shall not be eligible for such overtime compensation.

2. An employee shall be eligible for overtime compensation under this section only when:

i. She or he is in pay status for the full number of hours in his or her regular workweek; and

ii. She or he works at least one hour beyond the regular workweek; and

iii. The work is covered by the job specification for the employee's title except as provided in N.J.A.C. 4:2-27.5(d).

(b) Overtime compensation under this section shall be paid as follows:

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of the regular workweek but not more than 40 hours.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time. They shall have no claim or entitlement to cash overtime compensation.

3. Once an employee is eligible for overtime compensation in a workweek, work credited toward overtime compensation must be in one-half hour units of continuous work beyond each regular work day.

4:2-27.4 Federal fair labor standards applicable to more than 40 hours in a workweek

(a) Eligibility requirements for overtime compensation under this section shall be as follows:

1. Eligibility for non-exempt positions shall be as follows:

i. Employees in non-exempt fixed workweek titles (35, 40) and non-exempt non-limited titles (NE), whose positions do not meet the criteria for exemption in N.J.A.C. 4:2-27.4(c), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week. See N.J.A.C. 4:2-27.4(b)1.

ii. Non-exempt employees may be granted compensatory time off in lieu of cash overtime compensation if permitted by one of the following agreements:

(1) Applicable provisions of a collective negotiations agreement, memorandum of understanding, or any other agreement between the State and representatives of such employees;

(2) In the case of employees who do not have a collective negotiations representative, an agreement or understanding made between the appointing authority and the employee before the performance of the overtime work. For such employees who were hired prior to April 15, 1986, the regular practice in effect on April 15, 1986 regarding compensatory time off in lieu of cash overtime compensation shall constitute an agreement or understanding.

2. Eligibility for exempt positions shall be as follows:

i. Employees in exempt fixed workweek titles (3E, 4E), whose positions meet the criteria for exemption in N.J.A.C. 4:2-27.4(c), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week. See N.J.A.C. 4:2-27.4(b)2.

ii. Employees in exempt non-limited titles (NL, N4), whose positions meet the criteria for exemption in N.J.A.C. 4:2-27.4(c), shall not be eligible for cash overtime compensation except as provided in N.J.A.C. 4:2-27.5(d). See N.J.A.C. 4:2-27.4(b)3.

3. The Commissioner or his or her representative may approve an alternate work period and corresponding maximum hour designation for non-exempt law enforcement and fire protection employees as set forth below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours.

NOTE: No change in Table which may be found in the New Jersey Administrative Code.

4. A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the Commissioner or his or her representative, use a work period of 14 consecutive days for computing overtime compensation for non-exempt employees.

5. Casual employees shall be entitled to overtime compensation where their work duties do not meet the criteria for exempt status. See N.J.A.C. *8]* 4:2-27.4(c).

(b) Overtime compensation under this section shall be paid as follows:

1. Non-exempt employees (35, 40, NE) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week. However, if an alternate work period is adopted pursuant to N.J.A.C. 4:2-27.4(a)3, overtime compensation shall be paid in accordance with that schedule.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the regular rate. An overtime rate conversion table shall be published with the State Compensation Plan.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

iii. Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of compensatory time off. Employees engaged in any other work may accrue not more than 240 hours of compensatory time off.

iv. Cash compensation for accrued compensatory time off shall be paid at the regular rate earned by the employee at the time such employee received such payment. However, an employee who has accrued compensatory time off shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than the average regular rate received by such employee during the last three years of the employee's employment, or the final regular rate received by such employee, whichever is higher.

2. Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of the regular workweek.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

3. Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time. See N.J.A.C. 4:2-27.5(e)2 as to special project rates.

4. Overtime compensation for work in excess of 40 hours for non-exempt employees who work at different pay rates during the same workweek shall be paid as follows:

i. Cash overtime compensation shall be at the rate of one and one-half times the weighted average of the different rates paid during that workweek.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

5. If a 14 day work period is elected for hospital employees under N.J.A.C. 4:2-27.4(a)4, non-exempt employees shall receive overtime compensation for work in excess of *8]* *eight* hours in a workday or 80 hours in a work period at a rate representing one and one-half times the regular rate of pay. The extra compensation at the premium rate paid for hours worked in excess of 8 in a workday may be credited toward any overtime compensation payable for hours worked in excess of 80 in the 14 day work period.

(c) Criteria for exemption shall be as follows:

1. Elected officials shall be exempt as follows:

i. An individual is exempt who is not subject to Department of Personnel laws and;

- (1) Holds a public office of the State;
- (2) Is a member of the personal staff of an elected office holder;
- (3) Is appointed by such an office holder to serve on a policy making level; or
- (4) Is an immediate adviser to such an office holder with respect to the constitutional or legal powers of the office.

2. Executive employees shall be exempt as follows:

i. An executive paid at least \$250.00 a week on a salary basis exclusive of board, lodging and other facilities is exempt if the employee regularly directs the work of at least two or more other employees and the employee's primary duty is management of the enterprise or a recognized department or subdivision thereof.

ii. An employee who is paid on a salary basis between \$155.00 and \$250.00 a week and meets all of the following tests will be exempt. The employee must:

- (1) Have as his or her primary duty the management of the enterprise, or of a customarily recognized department or subdivision; and
- (2) Customarily and regularly direct the work of at least two or more other employees; and
- (3) Have the authority to hire and fire, or recommend hiring or firing; or his or her recommendation on these and other actions affecting employees is given particular weight; and
- (4) Customarily and regularly exercise discretionary powers; and
- (5) Devote no more than 20 percent of his or her time to activities not directly and closely related to managerial duties.

3. Administrative employees shall be exempt as follows:

i. An administrative employee, who is paid on a salary or fee basis of at least \$250.00 a week exclusive of board, lodging or other facilities, will be exempt if his or her primary duty is responsible office or non-manual work directly related to management policies or general business operations or responsible work in the administration of an educational institution and his or her work requires the exercise of discretion and independent judgment.

ii. An employee who is paid on a salary basis between \$155.00 and \$250.00 a week and meets all of the following tests is exempt. The employee must:

- (1) Have as his or her primary duty responsible office or non-manual work directly related to the management policies or general business operations of his or her employer or employer's customers, or responsible work that is directly related to academic instruction or training carried on in the administration of a school system or education establishment; and
- (2) Customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures, and have the authority to make important decisions; and
- (3) Regularly assist a bona fide executive or administrative employee, or perform work under only general supervision along specialized or technical lines requiring special training, experience, or knowledge, or execute under only general supervision special assignments; and
- (4) Spend no more than 20 percent of his or her time in the workweek on non-exempt work that is not directly and closely related to the employee's administrative duties.

4. Professional employees shall be exempt as follows:

i. A professional employee, who is paid at least \$250.00 per week, is exempt if his or her primary duty requires advanced knowledge in a field of science or learning or involves work as a teacher, and requires the consistent exercise of discretion of judgment. Similarly, the employee is exempt as a professional if he or she is paid at least \$250.00 per week and his or her primary duty involves artistic work in a recognized field of artistic endeavor.

ii. An employee who meets all of the following tests will be exempt. The employee must:

- (1) Have as his or her primary duty work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study, or work that is original and creative in character in a recognized field of artistic endeavor, the result of which depends primarily on the employee's invention, imagination or talent; and
- (2) Consistently exercise discretion and judgment; and
- (3) Do work that is predominantly intellectual and varied, as distinguished from routine and mechanical duties; and
- (4) Spend no more than 20 percent of his or her time in the workweek on activities not essentially a part of, and necessarily incident to, his or her professional duties; and

(5) Be paid on a salary or fee basis at the rate of not less than \$170.00 a week exclusive of board, lodging or other facilities. However, no salary level is applied to doctors, lawyers and teachers.

5. Other exemptions shall be as follows:

i. Employees engaged in law enforcement or fire protection activities, including security personnel in correctional institutions, who are employed by a public agency that employs less than five law enforcement or five fire protection workers in a workweek, are exempt.

4:2-27.5 Special circumstances

(a) Eligibility for overtime compensation for on call employees shall be as follows:

1. Employees in non-exempt positions (35, 40, NE) who are required to remain on call and cannot use their own time effectively, shall be considered to be working and shall have such on call time included in the total hours worked. In those situations where employees are merely required to remain at home or leave word with appropriate officials where they may be reached, they are not considered to be working while on call unless their freedom to engage in personal activities during that period is severely restricted.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. Employees in exempt positions (3E, 4E, NL, N4) shall have no claim or entitlement to compensation for such time.

(b) Eligibility for overtime compensation for training shall be as follows:

1. Employees in non-exempt positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no claim or entitlement to compensation for such time.

(c) Eligibility for overtime compensation for travel shall be as follows:

1. Employees in non-exempt positions (35, 40, NE) who are required to travel contiguous to the normal workday in excess of normal commutation time shall have such hours included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no claim or entitlement to compensation for such time.

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares that he or she is faced with an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:

i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 35 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

ii. Exceptions to N.J.A.C. 4:2-27.3(a)2iii.

2. An agency head shall file with the Commissioner two reports concerning an exceptional emergency as follows:

i. A fully detailed justification for the declaration within seven calendar days of the declaration of the exceptional emergency. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.

ii. Within 30 calendar days of the conclusion of the exceptional emergency, a list of the names, titles and hours of work designations of em-

ployees who performed emergency related work on an overtime basis. The report shall include the number of hours of emergency related overtime work performed by each employee.

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the State. The Commissioner shall establish special project rates for these circumstances.

(e) Eligibility for Special Project rate compensation shall be as follows:

1. If an employee works on a part time, occasional or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at Special Project rates as approved by the Commissioner of Personnel.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid Special Project rates as approved by the Commissioner of Personnel.

3. A fully detailed justification for a Special Project for which *(e)*1 or 2 above would be applicable must be filed with the Commissioner or his or her representative for review and approval.

4:2-27.6 Holiday pay

(a) Full-time and part-time employees in fixed workweek titles shall be entitled to overtime compensation in addition to their regular rate of compensation for all worked performed on a holiday except as provided in N.J.A.C. 4:2-27.6(d), even if they are not in pay status for a full workweek.

(b) Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided in *N.J.A.C.* 4:2-27.4(a). However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation.

(c) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular workday of an employee and she or he works, the employee is entitled to overtime compensation for all work performed on the holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as a result of an emergency, the employee is required to work on the additional day, she or he shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, she or he shall not be eligible for overtime compensation or an alternate day off.

(d) A part-time or full-time employee in a fixed workweek title in conjunction with his or her appointing authority, may agree that the employee shall work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

(e) Eligibility for overtime compensation for casual employees shall be as follows:

1. Unless permitted by a negotiated labor contract, casual employees shall not be entitled to overtime compensation for work performed on a holiday, except as provided in *N.J.A.C.* 4:2-27.4(a).

2. Unless permitted by a negotiated labor contract, casual employees shall not be entitled to any form of compensation for a holiday not worked.

4:2-27.7 Appointing authority responsibilities

(a) The appointing authority shall develop procedures for administering overtime that are consistent with this subchapter and at a minimum provide for:

1. Written authorization and approval by the appointing authority or his or her designee in advance of overtime to be worked. Whenever circumstances are such that prior authorization is not possible, the overtime must be authorized in writing immediately thereafter;

2. Records of approved overtime requests and work accomplished;

3. Systems for continuous and periodic review of overtime requirements with a view toward devising methods to accomplish the work during regular work time; and

4. Written procedures for departmental directors, bureau chiefs and supervisors to follow in the authorization of either compensatory time or cash payment for overtime.

(b) A copy of each department's procedures and written interpretations and any subsequent changes are to be filed with the Commissioner or his or her representative and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State Agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the Commissioner or his or her representative.

(d) The following records shall be kept:

1. Name of employee in full;

2. Home address, including zip code;

3. Date of birth, if under 19;

4. Sex and occupation;

5. Time of day and day of week on which the employee's workweek begins;

6. Regular hourly rate of pay in any workweek in which overtime premium is due: base of wage payment (such as ***\$5.00 hr., " \$40.00 day," "\$200.00 wk.");

7. Daily and weekly hours of work;

8. Total daily or weekly straight time earnings;

9. Total overtime compensation for the workweek;

10. Total additions to or deductions from wages paid;

11. Total wages paid each pay period;

12. Date of payment and the pay period covered by payment; and

13. Approved overtime requests and work accomplished.

(e) Upon demand, the appointing authority shall make available to the Commissioner or his or her representative all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Procedures for payments of compensable overtime will be published as part of the payroll manual.

4:2-27.8 Appeal procedures

(a) Appeals of position designations shall be processed as follows:

1. An appeal by an employee of the status of a particular position for exemption or non-exemption under the Fair Labor Standards Act shall be submitted, in writing, to the appointing authority through the personnel office. The appeal must identify the specific duties at issue and must be accompanied by a Classification Questionnaire, DPF-44, signed by the employee and the supervisor. If the appellant proposes a different status for the position, exempt or non-exempt, she or he must explain how the requested status more accurately reflects the duties of the position under the Fair Labor Standards Act. See N.J.A.C. 4:2-27.4(c).

2. The appointing authority shall review the appeal and notify the appellant of its decision within 20 days of receipt of the appeal. This decision letter must include the duties of the position, findings of fact, conclusions and the determination that:

i. The position is properly classified as exempt or non-exempt; or

ii. The position is improperly designated in which case the appointing authority shall provide appropriate duties or designate*[d]* the appropriate status.

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, she or he may file an appeal, in writing, within 10 days from the final day for the appointing authority's decision. All appeals shall be sent to the:

Department of Personnel

Director, Division of Classification and Compensation

CN 313

Trenton, New Jersey 08625

i. An employee submitting a second level appeal must include a copy of the initial appeal letter to the appointing authority, a copy of the completed Classification Questionnaire, DPF-44, and the appointing

authority's decision letter, if issued. The appeal must state what specific portions of that decision are contested and the reasons.

4. The Director, Division of Classification and Compensation, shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the Commissioner.

5. All appeals to the Commissioner must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter to the:

Department of Personnel
Division of Appellate Practices and Labor Relations
CN 312
Trenton, New Jersey 08625

i. The Commissioner may render a decision based on the written record or such other procedure as he or she deems appropriate.

ii. The decision of the Commissioner shall be the final administrative decision.

(b) Appeals of title designations shall be processed as follows:

1. An appeal of the status of a title for exemption or non-exemption under the Fair Labor Standards Act may be filed either by the appointing authority or an affected employee and shall be in writing. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See: N.J.A.C. 4:2-27.4(c). Such appeals shall be filed with the:

Department of Personnel
Division of Classification and Compensation
CN 313
Trenton, New Jersey 08625

2. The Director of Classification and Compensation shall review the appeal under N.J.A.C. 4:2-27.8(a)4.

3. An appeal of the decision of the Director of Classification and Compensation may be filed under N.J.A.C. 4:2-27.8(a)5.

(c) Other issues relating to overtime payments may be reviewed through the grievance process. See N.J.A.C. 4:2-23.1 et seq.

APPENDIX: OVERTIME ELIGIBILITY AND COMPENSATION
CHART

(No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Fire Safety Code

Notice of Correction: N.J.A.C. 5:18-4

Take notice that errors appear in the June 15, 1987 issue of the New Jersey Register at 19 N.J.R. 1078(a) concerning the Fire Safety Code. The errors appear at N.J.A.C. 5:18-4.1(c), 5:18-4.7(b) and 5:18-4.12(a)1i and should read as follows:

5:18-4.1 Code adopted*[/Scope]* *; scope*

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

(c) The following buildings shall be in compliance with all applicable requirements of this subchapter *except N.J.A.C. 5:18-4.13* by *(the first anniversary of the subchapter's effective date)* *June 16, 1988*.

1.-15. (No change in text.)

5:18-4.7 Fire suppression systems

(a) (No change in text.)

(b) All buildings of Use Group I-1 *or portions thereof when separated in accordance with (k) below* greater than two stories in height above grade *[and]* *or* having an occupant load greater than 20 excluding staff and in which residents have access to rooms above the second story shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(d)-(k) (No change in text.)

5:18-4.12 Interior finish

(a) The interior finish of walls and ceilings shall have a flame spread rating not greater than the class prescribed by Table 5:18-4.12(a).

1. The following are exceptions to (a) above:

i. The use of vinyl or paper wall coverings not exceeding one-twenty-eighth of an inch in thickness which is applied directly to a noncombustible or fire retardant treated wood substrate shall not be *[regularly]* *regulated* by this section.

ii.-iv. (No change in text.)

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

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Water Supply Bond Loan Program

Readoption: N.J.A.C. 7:1A

Proposed: March 16, 1987 at 19 N.J.R. 437(b).

Adopted: June 4, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection.

Filed: June 5, 1987, as R.1987 d.264, **without change.**

Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261,
Section 5, and Section 4, as amended by P.L. 1983, c.499.

Effective Date: June 5, 1987.

Expiration Date: June 5, 1992.

DEP Docket Number: 005-87-02.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1A.

DIVISION OF WATER RESOURCES

(c)

Flood Hazard Area Delineation

Redelineation of Wolf Creek in the Hackensack Basin

Adopted Amendment: N.J.A.C. 7:13-7.1(d) (Plate No. WC-1)

Proposed: December 1, 1986 at 18 N.J.R. 2355(a).

Adopted: June 12, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection.

Filed: June 12, 1987 as R.1987 d.279, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

DEP Docket Number: 055-86-10.

Effective Date: July 6, 1987.

Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on December 1, 1986 in the New Jersey Register at 18 N.J.R. 2355(a). The notice advised that a public hearing would be held on December 17, 1986, at 1:00 P.M. at the Carroll Building, 428 East State Street, Room 402, Trenton, New Jersey, to afford the public the opportunity to be heard on the proposed action by the Department. In addition, a notice of public hearing was published in the legal advertisements section of an area newspaper. Both notices invited written comments on the proposed action to be submitted on or before December 31, 1986. Three persons attended the hearing; no written comments were received.

COMMENT: Flooding is a serious problem in this area. Physical improvements are needed to mitigate flood damage.

RESPONSE: Revision of the flood hazard area delineation is a precondition to physical improvements to mitigate flood damage.

Full text of the adoption follows.

No change in the text of N.J.A.C. 7:13-7.1(d) is required. The revised maps have been filed with the clerks of the affected municipalities, the Bergen County Engineering Department and the State Office of Administrative Law, and are also available for inspection at the State Bureau of Flood Plain Management.

DIVISION OF WATER RESOURCES

(a)

New Jersey Pollutant Discharge Elimination System Fee Schedule**Adopted Repeal and New Rule: N.J.A.C. 7:14A-1.8**

Proposed: May 4, 1987 at 19 N.J.R. 706(a).

Adopted: June 12, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: June 12, 1987 as R.1987 d.281, with technical 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., specifically 58:10A-9.

Effective Date: July 6, 1987.

Expiration Date: June 4, 1989.

DEP Docket Number: 012-87-04.

Summary of Public Comments and Agency Responses:

A public hearing on the rule proposal was held on May 21, 1987 at which 10 people testified. One hundred written comments were received by the Department by the close of the comment period on June 3, 1987.

COMMENT: Several comments stated that the growth of the Department and the NJPDES program must be controlled.

RESPONSE: In accordance with N.J.S.A. 58:10A-9, the Department is provided with the authority to assess reasonable permit fees based upon the estimated cost of the NJPDES program. The Fiscal Year 1988 (FY88) increase in fee assessments is necessary to provide funds for an NJPDES program that is expanding to meet the need for effective regulatory administration. The State Legislature has oversight responsibility. They appropriate to the Department the anticipated funds collected as permit fees.

COMMENT: The New Jersey Chamber of Commerce and several commentators requested that an independent auditor evaluate the NJPDES program.

RESPONSE: The Office of Legislative Services performed an audit of the Department of Environmental Protection, which included the NJPDES program, between July 1, 1984 and December 31, 1985. The findings of this audit have been made available to the public. In addition, the State's internal control system limits expenditures to the specific program needs. The Department of Environmental Protection, the Department of Personnel and the Department of Treasury review all hiring requests and purchases.

COMMENT: One commentator recommended that the NJPDES enforcement penalties be directed to the NJPDES program rather than the general treasury.

RESPONSE: The Department agrees that penalties collected pursuant to NJPDES permit violations should be used to offset the cost of the NJPDES program. A request to have these penalties deposited in the NJPDES account starting July 1, 1987 has been submitted to the State Legislature. If approved, a credit may be appropriate to reflect the amount of penalties received in FY88. Credits would be issued toward the FY89 NJPDES permit fees. This would limit the need for budget increases.

COMMENT: It is not clear why the Department has proposed such a significant increase in the NJPDES Landfill program budget. As a result, several landfill permittees will be expected to pay fees in excess of \$100,000.

RESPONSE: In accordance with N.J.S.A. 58:10A-9, the Department is provided with the authority to assess annual permit fees based upon the estimated cost of the NJPDES program. Landfills are assessed a fee that reflects the costs of regulating them under the NJPDES program. Such costs are based on a schedule which graduates fees in proportion to the deleterious impact of the permittee's discharge. The Department plans to use 49 new staff members to inspect every landfill and conduct periodic compliance and ground water sampling. In addition, the Department will perform water supply planning activities at landfill sites which impact or potentially affect potable water supplies. To provide this significant level of environmental protection, the landfill portion of the budget has been increased from \$1.2 million in Fiscal Year 1987 (FY87) to \$4.8 million for FY88.

COMMENT: Increasing the NJPDES staff from 200 to 300 is unnecessary.

RESPONSE: The increase reflects the Department's intention to hire 49 new people for FY88 assignment in landfill enforcement activities. In addition, several support programs have had their funding sources converted to the NJPDES program as Federal grants and other State funds have been eliminated. These activities include publicly owned treatment works (POTW) pretreatment program oversight, compliance sampling, bioassay compliance sampling, and some planning and review activities. In addition, 30 of the positions would have been included at last year's budget, but they were requested and approved after the FY87 NJPDES program budget was prepared.

COMMENT: One landfill permittee stated that as a public authority it relies solely on disposal fees for operating revenue. The increased fees would require a rate increase.

RESPONSE: In our initial analysis, the proposed landfill budget increase for FY88 was the equivalent of approximately \$0.25 per cubic yard. Where necessary and appropriate, the Department will support landfills in their requests to the Board of Public Utilities for a rate increase.

COMMENT: One person testified that past permit fees were based upon net pollutant loadings. His new permit eliminated the need for influent monitoring and net limitations which resulted in the assessment of a higher permit fee.

RESPONSE: The Department's fee methodology allows for the use of net pollutant loadings as required in the NJPDES permit. The Department will resume use of net limitations where appropriate.

COMMENT: Several commentators felt the Department did not provide adequate public notice of the proposed amendments to the fee regulations, the public hearing and the 1987-88 Annual Fee Report.

RESPONSE: Notice of the Public Hearing concerning the 1987-88 Annual Fee Report and the proposed Fee Schedule regulations were published on May 4, 1987 at 19 N.J.R. 706(a) and 19 N.J.R. 777(b), respectively. Notice of the public hearing and the proposed amendments was published in the Courier-Post, Star Ledger, Record, Asbury Park Press, and Home News on or before May 4, 1987. The Department also mailed each permittee a copy of the Annual Fee Report. Having taken these steps, the Department satisfied the public participation requirements of the Administrative Procedure Act.

COMMENT: One commentator asked why the Department assessed fees to facilities which are scheduled to be taken offline. The facility to which they will be discharging also has to pay a NJPDES permit fee.

RESPONSE: In accordance with N.J.A.C. 7:14A-1.8(a)8, the Department will prorate the fee based upon the number of days in operation during the billing year. The Department will issue a refund to the terminated facility or a credit to the new facility.

COMMENT: N.J.A.C. 7:14A-1.8(a)10. Several commentators agreed with the Department's proposal to phase out the use of the cube root factor. Several other commentators requested that the Department continue to use the cube root factor.

RESPONSE: The Department has reviewed the issue and decided to adopt its proposal to phase out the cube root factor. The Department's proposed fee methodology is based upon a concept that assesses the greater fee to those facilities which pose the greater risk to the environment or which cause the conditions which give rise to the need for regulation. This methodology is consistent with the New Jersey Superior Court's opinion that the Department propose a fee schedule which graduates fees in proportion to the deleterious impact of the permittee's discharge. *Public Service Electric & Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985); *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986). Use of the cube root factor had the effect of disproportionately distributing fees to small and/or efficient facilities. The Department will calculate environmental impact for each discharge using the cube root of the total pollutant load for the period July 1, 1987 through June 30, 1989. The Department will use a square root factor for the period July 1, 1989 through June 30, 1990. Starting July 1, 1990, the Department will use the total pollutant load with no root. To maintain the relative ranking between the risk factors, the Department will use the cube root of the risk factors listed in Table I starting July 1, 1989.

COMMENT: N.J.A.C. 7:14A-1.8(a)10. One commentator requested the scientific basis for taking the cube root of the total weighted pollutant load versus the cube root of the individual pollutant loads.

RESPONSE: The proposed methodology reflects the Department's intent to consider the overall impact of the discharge and not the relative impact of an individual pollutant.

COMMENT: N.J.A.C. 7:14A-1.8(b)2. The Department proposed to reduce the public notice period from 30 to 14 days. The comments felt that 14 days is an inadequate amount of time to review the documents.

RESPONSE: The Department has reconsidered this action and will maintain the 30 day notice period.

COMMENT: N.J.A.C. 7:14A-1.8(c). The fee methodology does not take into consideration the size of the receiving stream.

RESPONSE: The permit limitations take into consideration the impact of the discharge on the receiving stream. This proposal does not consider the relative size of the receiving stream.

COMMENT: N.J.A.C. 7:14A-1.8(c). Permittees who are required to test parameters which measure the same type of pollution (for example BOD and COD which both measure oxidizable material and the Nitrogen series which measures different forms of the same pollutant) should only be charged for one pollutant.

RESPONSE: The Department uses all limited pollutants in calculating the environmental impact for a surface water discharge. The nature of the discharge determines the parameters to be monitored and limited in the NJPDES permit and subsequently considered in the fee calculation. The Department uses the reported total nitrogen or calculates total nitrogen using the other parameters reported by the permittee on its Discharge Monitoring Reports. The Department will select BOD or COD, whichever is higher, to calculate environmental impact.

COMMENT: N.J.A.C. 7:14A-1.8(c)liii. The use of the bioassay factor to calculate environmental impact for municipal discharges should be suspended for two years or until such time as all permits incorporate the requirement.

RESPONSE: The Department is using bioassay monitoring to evaluate the overall toxicity of a discharge. This is the best procedure available to measure the synergistic and antagonistic effects on aquatic life. The U.S. Environmental Protection Agency has found, through laboratory and field research, that biological testing is a scientifically valid approach to control toxics in wastewater discharges. Application of biological testing in the Federal National Pollutant Discharge Elimination System (NPDDES) program has shown that assessment and control of the effects of toxic discharges on aquatic communities is often incomplete without the use of living organisms as indicators of toxic effects. The New Jersey Superior Court found that the Department did not have to require all permittees to conduct bioassay testing to use this factor in the fee assessment methodology. *Public Service Electric & Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986). In cases where testing is not required, a factor of one is assigned. The Department uses a maximum bioassay factor of 10 for facilities with a 96 hour LC₅₀ less than five percent. Delaying the implementation of the bioassay factor would benefit a few facilities but would increase the permit fees for most facilities. Therefore, the Department will not postpone use of the bioassay factor in monitoring municipal dischargers.

COMMENT: The Department should use a lower bioassay factor for facilities which are not required to conduct bioassay testing by their NJPDES permit or where bioassay testing indicates no toxicity.

RESPONSE: The Department uses the bioassay factor to distribute the cost of the NJPDES program based upon the relative toxicity of the discharge. All discharges contribute pollutants to the receiving water. The NJPDES permit specifies the testing requirements for each facility. Facilities permitted to conduct one test for the term of the permit will have a bioassay factor based on the one result. The bioassay factor of one has no effect on the environmental impact. Therefore, the use of a bioassay factor of 1 for pipes without bioassay data and a minimum bioassay factor of 0.5 will continue.

COMMENT: One commentator stated that it was unfair to use a bioassay factor in the fee structure because of the varied sensitivity between fresh and saline waters.

RESPONSE: The Laboratory Certification Regulations (N.J.A.C. 7:18-6) specify the aquatic organisms approved for bioassay testing. The Department selects the species which will best protect the aquatic life in the receiving water. Species selection is based upon the salinity of the receiving water. The Department is moving toward water quality based effluent limits for acute toxicity. In general, the inland dischargers will be assigned more stringent requirements due to the lack of instream dilution.

COMMENT: Several commentators requested information on how the Department developed the denominators used in the Stream Factor.

RESPONSE: The Stream Factor is comprised of a Water Quality Index, a Water Use Index and a Designated Use Factor with a theoretical range of 0 to 4. The denominators for the Water Quality Index and the Water Use Index were selected to maintain a relatively equal relationship between the three components of the Stream Factor. Using this system,

the values for the three components of the Stream Factor range from 0 to 1. Generally, watersheds with good water quality and low use that meet all designated uses are assigned the lowest multiplier. Those streams with poor water quality and high use that do not meet designated uses receive the highest multiplier.

COMMENT: N.J.A.C. 7:14A-1.8(c)liv. One commentator asked what the scientific basis was for the Stream Factor and if the ratings assumed that the State does not expect all streams to meet fishable/swimmable goals.

RESPONSE: The components of the Stream Factor were developed by the Bureau of Water Resources Management Planning in the Department's Division of Water Resources and presented in the *New Jersey 1986 State Water Quality Inventory Report*. Water Quality Indexes were calculated for approximately 150 sampling stations throughout the State. Values ranged from a high of zero for excellent water quality to 100 for streams with gross pollution problems. The Water Use Index incorporates information on the amount of water diverted for potable water supplies, the number of cold and warm water fish stocked, the percentage of open, special, restricted and seasonally classified shellfish harvesting areas, and the number of bathing beaches. The watershed with the highest use received the maximum score. The Designated Use Factor evaluates whether the watershed meets the uses defined by the surface water classification. The primary intent of this factor was to evaluate the attainment of the fishable and swimmable goals of the Federal Clean Water Act. In accordance with the Surface Water Quality Standards (N.J.A.C. 7:9-4), some streams are not expected to provide for primary contact recreation or for the propagation of fish. The Designated Use Factor is designed to consider only the uses that are expected to be met in accordance with the Surface Water Quality Standards.

COMMENT: One commentator pointed out that the use of a Stream Factor caused an increase in his permit fee while his discharge had a positive effect on the receiving stream.

RESPONSE: The use of a Stream Factor is designed to take the location of the discharge, existing water quality and water use into consideration in the fee methodology. All discharges increase the pollutant loading to the stream.

COMMENT: N.J.A.C. 7:14A-1.8(d). One commentator wrote that the formula for ground water discharges allowed a facility to have an environmental impact of zero if there was no discharge in that year. He suggested that the Department use the Total Weighted Pollutant Load even if a discharge has ceased.

RESPONSE: Under the proposed formula, only facilities that are closed and clean will qualify for a zero discharge. For active discharges, the Department will use flow. For inactive discharges, the Department will use the capacity of the ground water unit. The Department will use the Total Weighted Pollutant Load for those facilities in corrective action under N.J.A.C. 7:14A-6.15.

COMMENT: N.J.A.C. 7:14A-1.8(d)liii. The Department's decision to use a ground water status factor of 10 for facilities in corrective action will discourage the use of active ground water recharge in the ground water remediation process.

RESPONSE: A ground water status factor of 10 is assigned to all facilities which are in corrective action under N.J.A.C. 7:14A-6.15. Those facilities which choose ground water recharge in the ground water cleanup process will be assigned a pollutant type rating factor of 1 for treated ground water. Facilities which choose to discharge the waste via another means shall be assigned a pollutant type rating factor based upon the waste being cleaned up.

COMMENT: N.J.A.C. 7:14A-1.8(d)liiii. The use of a ground water monitoring status factor of 2 for detection monitoring programs will increase the permit fees and discourage the implementation of detection monitoring programs.

RESPONSE: The Department determines the level of ground water monitoring required in the NJPDES permit based upon the nature of the discharge. The failure to implement a monitoring system, as required in a permit, does not preclude the assignment of the appropriate status factor in the fee assessment. Failure to implement a detection monitoring program, or any condition of a permit, will result in enforcement action.

COMMENT: N.J.A.C. 7:14A-1.8(d)lv. Several commentators suggested that the Department has assigned too great a weight to the permeability factor in the environmental impact calculation.

RESPONSE: The Department has reviewed the permeability rating values, agrees with this comment, and has modified the rating values upon adoption. The revised rating values shall range from 0.1 to 12 rather than 10 to 120. The reduced permeability ratings will, however, maintain the relative ranking between the most permeable and least permeable formations.

COMMENT: N.J.A.C. 7:14A-1.8(e). The NJPDES permit fees assessed for the land application of sludge are excessive in light of the fact that this activity provides the State with a valuable service.

RESPONSE: In Fiscal Year 1986 (FY86), the Department spent \$640,000 to review sludge quality reports and well monitoring data from sludge farming facilities. Since the fees to be assessed by the rules for FY88 are expected to be \$103,889, the fees are not excessive.

COMMENT: N.J.A.C. 7:14A-1.8(f)liii. One commentator felt that the Closure Status Factor should assign the lowest rating to a properly closed landfill and a slightly higher rating to an operating landfill.

RESPONSE: The Department's proposed closure status factor is based upon the potential environmental impact of the discharge. Clearly, facilities which continue to receive waste pose the greatest risk to the environment. Landfills which have been properly closed in accordance with the Department's requirements pose a lower risk to the environment and are assigned a factor of 1. Landfills which closed before the closure requirements, pose a greater risk since they are not properly closed and are assigned a factor of 2. Terminated landfills are assigned a closure status factor of 5 and operating landfills are assigned a factor of 10 based upon the degree of risk to the environment.

COMMENT: N.J.A.C. 7:14A-1.8(f)liii. Several commentators asked what effect landfill closure would have on their NJPDES permit fees and how long they would be required to pay a NJPDES permit fee.

RESPONSE: As landfills close, the operating status factor assigned in the fee schedule will be reduced from 10 to 5. Once closure activities have been approved by the Department, the operating status factor will be further reduced to 1 (as the site will then pose a lower risk to the environment). These factors will reduce the potential environmental impact of the discharge and reduce future NJPDES fees. Significantly, as any new facility begins accepting waste, it will be assessed a greater share of the NJPDES program cost. Note that a NJPDES permit will be required throughout the closure period (approximately 30 years).

COMMENT: N.J.A.C. 7:14A-1.8(g). Comments were received from Significant Indirect Users (SIU) and Publicly Owned Treatment Works (POTW) on the need to assess permit fees to SIU's in delegated service areas.

RESPONSE: The Department assesses permit fees to all SIU permittees based upon environmental impact and the estimated cost of processing, monitoring and administering the NJPDES/SIU permits. The Department is responsible for regulating all indirect discharges greater than 25,000 gallons per day. The Department has delegated portions of this responsibility to qualified POTWs. In delegated service areas, which account for 95 percent of the industrial part of the State, the Department will continue to administer those NJPDES/SIU permits issued prior to delegation. While the NJPDES/SIU permit is active, a permit fee is required. In accordance with N.J.A.C. 7:14A-10.5(g), the Department may allow these permits to expire after their initial term provided that a timely application for renewal is received and the discharge does not impact the treatment plant, the sludge or the receiving stream.

COMMENT: N.J.A.C. 7:14A-1.8(h). One commentator felt that the assessment of a minimum fee of \$10,000 for Industrial Waste Management Facilities (IWMF) and Hazardous Waste Facilities (HWF) was discriminatory and did not ensure that those who do the most to introduce pollutants into the environment bear the greater share of the administrative cost.

RESPONSE: Industrial Waste Management Facilities (IWMF) and Hazardous Waste Facilities (HWF) have traditionally been subject to a minimum fee of \$10,000. This is based upon the complexity and hazardous nature of their operation. A facility will be classified as an IWMF/HWF until the completion of the facility's closure and a review of post-closure monitoring results provides the Department with evidence that there is no on-site ground water contamination or contamination emanating from the site. A minimum fee of \$500 shall then be assessed. The Department's fee methodology for ground water discharges has been amended to provide for a more equitable distribution of the NJPDES program costs. Under the repealed formula, facilities that were no longer permitted to discharge because of the hazardous nature of their wastewater were assessed minimum fees. The repealed fee methodology did not reflect the actual or potential discharge to ground water from the existing disposal units at these facilities. Permitted operating ground water discharge facilities were assessed fees based upon their actual or potential discharge to ground water. Therefore, these non-hazardous facilities financed most of the NJPDES program costs. The proposed formula considers the type of waste, the size or flow to the ground water unit, the aquifer, permeability, and the status of ground water monitoring required. Additionally, the proposed formula includes a pollutant load

factor for facilities conducting corrective action. This factor will be based on the areal extent of ground water contamination, the concentration of pollutants and the risk associated with these contaminants. The new methodology is established to increase the fees assessed to facilities which pose the greatest risk to the environment.

The Department has changed the Pollutant Type ratings in N.J.A.C. 7:14A-1.8(d)li for sanitary wastewater, etc. and for non-hazardous industrial process waste from 5 to 2 and 10 to 5, respectively, to more accurately reflect the risk attached to the pollutant types. The definitions of Volume Discharged for other (that is, not active) dischargers in N.J.A.C. 7:14A-1.8(d)lii(2) has been changed to delete the division of the maximum capacity of the facility by 365. This proposed language was redundant, as the maximum capacity for other than active discharges is, by definition, a daily measurement figure. Technical changes were made to the formula in N.J.A.C. 7:14A-1.8(a)9ii and to the rating table in N.J.A.C. 7:14A-1.8(d)lv to provide greater mathematical clarity.

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]*).

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. The Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or submit a NJPDES permit application.

2. The Department shall not assess an annual fee to public schools or religious or charitable institutions.

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge.

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Bureau of Collections and Licensing
CN 402
Trenton, New Jersey 08625

5. If the permittee/applicant fails to submit payment to the Department within 30 days of assessment of the fee, the Department may, in its discretion, take one or more of the following actions:

- i. Return the NJPDES permit application to the applicant;
- ii. Deny issuance of a final permit;
- iii. Terminate a final permit; and/or
- iv. Assess penalties pursuant to N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer.

8. The Department, upon the termination of a NJPDES permit, shall pro-rate the fee for the number of days that the facility was in operation during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9. The annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact x Rate) + Minimum Fee, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

$$* [N] * * n * \\ \sum [A + (B \times E_i)] = \text{Budget for each category of discharge} \\ i=1$$

[N] *n*

Σ = Sum of the fees for all facilities
 i=i

A = Minimum fee

B = Rate

E_i = Environmental Impact for facility;

iii. Minimum Fee is a base cost as set forth in (h) below

10. The Department shall calculate environmental impact by taking the cube root of the total pollutant load for the period July 1, 1987 to June 30, 1989. The Department shall take the square root of the pollutant load to calculate environmental impact for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load in all subsequent fee years.

(b) The Department shall prepare an Annual NJPDES Fee Schedule Report and provide for a public hearing on the Report.

1. The Annual NJPDES Fee Schedule Report shall include the following:

i. A detailed financial statement of the actual administrative cost of the NJPDES program by account title;

ii. A detailed financial statement of the actual revenue collected, including any surplus which can be credited or any deficit to be assessed in determining the fee schedule.

iii. A detailed financial statement of the anticipated cost of the NJPDES program, including:

(1) A breakdown of the program by account title;

(2) An estimate of the amount of fees that will be collected; and

(3) The current year's fee schedule.

iv. A report of the NJPDES program activities, including:

(1) A list of permits issued;

(2) A list of facilities inspected;

(3) A list of administrative orders and administrative consent orders issued by the Department (by type of order and discharge involved); and

(4) A summary of variance request activities under section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

2. The Department shall provide for a hearing on the Annual NJPDES Fee Schedule Report. The Department shall provide public notice of the hearing at least *[14]* *30* days prior to the date of the hearing:

i. In the New Jersey Register and one newspaper of general circulation; and

ii. By mailing a copy of the Report to each NJPDES applicant/permittee.

(c) The annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) x (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

ii. Heat Load is the average mBTU's (million British Thermal Units) per hour of the effluent discharged. Where heat load is not reported in mBTU's per hour, the Department shall estimate the heat load using the calculated difference between the influent and effluent temperature multiplied by the amount (in million gallons per day) of effluent discharged. The Department shall use an average influent temperature of 5.57 degrees centigrade during the period November to April and 18.87 degrees centigrade during the period May to October.

iii. Bioassay Factor is the effluent limit in the permit divided by the percent effluent resulting in the 96 Hour LC₅₀. Where the effluent limit set forth in the permit is less stringent than the Wastewater Discharge Requirements (N.J.A.C. 7:9-5.1 et seq.), an effluent limit of 50 shall apply. Where the effluent limit set forth in the permit requires No Measurable Acute Toxicity (N.M.A.T.), an effluent limit of 100 shall apply, except:

(1) Where Bioassay testing is not required by the permit, a Bioassay Factor of 1 will be used; or

(2) Where the permit specifies a limit of N.M.A.T. and the mortality is less than or equal to the control mortality, the Department will use a Bioassay Factor of 0.5.

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey 1986 Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey 1986 Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey 1986 Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4.

2. The Department shall assess an additional fee to NJPDES permittees who request a variance under Section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). The annual fee shall be assessed on the basis of the administrative cost that is incurred by the Department and the cost of the technical review performed by a consultant hired by the Department.

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water is derived by applying the formula: Environmental Impact = *[Waste]* *Pollutant* Type x Volume Discharged x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (Total *[w]**W*eighted Pollutant Load is applicable during corrective action under N.J.A.C. 7:14A-6.15), where:

i. *[Waste]* *Pollutant* Type is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows.

Rating	*[Waste]* *Pollutant* Type
1	Non-contact cooling water, treated groundwater.
*[5]**2*	Sanitary wastewater, food processing waste, stormwater runoff from non-hazardous waste storage areas, sanitary sludge.
*[10]**5*	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, stormwater runoff from hazardous substance storage areas, landfill leachate, wastewater or sludge containing hazardous constituents.

ii. Volume Discharged is:

(1) For active dischargers, the average daily volume of effluent discharged by the permittee; and

(2) For all other dischargers, the maximum capacity of the facility (in million gallons) *[divided by 365]*. Where capacity is not provided to the Department by the permittee, the Department will, on the basis of site specific parameters, make a reasonable estimate of the volume;

iii. Ground Water Status Factor is the rating number, based on the level of monitoring required at the facility, as set forth in the NJPDES permit in accordance with N.J.A.C. 7:14A-6.15, as follows:

Rating	Status
1	Permittee is not required to conduct groundwater monitoring under the NJPDES permit.
1	Permittee is conducting post-closure monitoring at a closed and clean site.
2	Permittee is conducting detection monitoring.
5	Permittee is conducting compliance monitoring. Groundwater pollution has been identified in the detection phase and further monitoring is required to identify the source.
10	Permittee is conducting corrective action as a direct result of known groundwater contamination.

iv. Aquifer Factor is the rating number, based on groundwater yield potential, assigned to each aquifer formation listed in Table II.

v. Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation or facility liner material. Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10⁻². The rating numbers are assigned as follows:

Rating	Permeability
*[1]**.1**≤*	10 ⁻⁷
*[10]** 1*	10 ⁻⁶
*[20]** 2*	10 ⁻⁵
*[40]** 4*	10 ⁻⁴

*[80]** 8* 10⁻³
*[100]**10* 10⁻²
*[120]**12**≥* 10⁻²

vi. Total Weighted Pollutant Load (applicable during corrective action) is the sum of all the pollutants in the groundwater (in kilograms per day) multiplied by their associated risk factors as listed in Table I. Where the permittee has not provided pollutant concentrations and the areal extent of ground water contamination to the Department, the Department shall make reasonable estimates of the Total Weighted Pollutant Load.

(e) The annual fee for residuals is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of residuals is derived by applying the formula: Environmental Impact = Pathogen Reduction x (Nitrogen + Total Metals Load), where:

i. Pathogen Reduction is 1 where the residual satisfies the requirements for "Processes to Significantly Reduce Pathogens" set forth at 40 CFR 257 or 0.8 where the residual satisfies the requirements for "Processes to Further Reduce Pathogens" set forth at 40 CFR 257.

ii. Nitrogen is the annual amount of nitrogen (in pounds) generated or land applied to the site.

iii. Total Metals Load is the total metal equivalent in pounds generated or land applied, derived from the average concentration of cadmium, copper, nickel, lead and zinc multiplied by the relative toxicity value of that metal (Cadmium 10.0, Copper 0.4, Nickel 1.0, Lead 1.0, and Zinc 0.2).

(f) The annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula: Environmental Impact = (W1 + W2) x Closure Status Factor x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (applicable during corrective action), where:

i. W1 is the total number of acres filled as of January 1, 1985 multiplied by the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each waste type (as set forth in N.J.A.C. 7:26-2.13) permitted for disposal before January 1, 1985. The rating numbers are assigned as follows:

Rating	Waste Type
1	Types 13, 23
2	Types 10, 12, 27, 72, 73, 74
4	Types 18, 25
8	Types 26, 70 and wrecked or discarded equipment
16	Types 17, 28, 76, 77.

ii. W2 is the total amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating number assigned to each waste type as set forth in (f)li above.

iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

Rating	Closure Status
10	Operating landfill and sites containing wrecked or discarded equipment.
*[8]** 5*	Landfill terminated after January 1, 1982 without approved closure plan.
2	Landfill terminated prior to January 1, 1982.
1	Landfill terminated with an approved closure plan.

iv. Ground Water Status Factor is the number derived under (d)liii above.

v. Aquifer Factor is the number derived under (d)liv above.

vi. Permeability Factor is the number derived under (d)lv above.

vii. Total Weighted Pollutant Load is the number derived under (d)lvi above.

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a Significant Indirect User (SIU) to a Domestic Treatment Works (DTW) is derived by applying the formula: Environmental Impact = Toxicity Factor x (COD Load) where:

i. Toxicity Factor is the rating number, based on the degree of hazard, assigned by the Department to each industrial Category. The rating numbers are assigned as follows:

Rating	Industrial Category
1	Food Products
2	Brewery/Yeast
3	Coffee, Soap and Detergent, Foundry, Pulp, Paper and Paperbound, Glue, Coil Coating
4	Explosives, Machine and Mechanical (Roller Bearing)
5	Electroplating, Leather Tanning, Tank storage, Inorganic Chemicals
6	Organic Chemicals, Pharmaceuticals
10	Ground water decontamination, Hazardous Waste Facilities that recover and recycle hazardous waste
15	Landfill leachate
20	Hazardous Waste Facilities that treat and discharge hazardous waste, Industrial Waste Management Facilities

ii. COD Load is the quantity of Chemical Oxygen Demand discharged by the DTW (in kilograms per day) and is derived by multiplying the COD load discharged by the SIU (in kilograms per day) by the DTW's discharge rate (DTW effluent ÷ DTW influent).

(h) Minimum fees are as follows:

1. The minimum fee for Discharge to Surface Water permits shall be \$500.00, except that the minimum fee for hazardous waste facilities regulated by N.J.A.C. 7:26 and for Industrial Waste Management Facilities regulated by N.J.A.C. 7:14A-4 shall be \$10,000.

2. The minimum fee for Discharge to Ground Water (DWG) permits shall be assessed as follows:

i. Facilities assigned a Ground Water Status Factor of 1 or 2 under (d)liii above shall be assessed a minimum fee of \$500.00;

ii. Facilities assigned a Ground Water Status Factor of 5 under (d)liii above shall be assessed a minimum fee of \$2,000.00;

iii. Facilities assigned a Ground Water Status Factor of 10 under (d)liii above and conducting corrective action for a non-hazardous constituent shall be assessed a minimum fee of \$3,000.00;

iv. Facilities assigned a Ground Water Status Factor of 10 under (d)liii above and conducting corrective action for a hazardous constituent as defined in N.J.A.C. 7:26-8.16 shall be assessed a minimum fee of \$5,000.00; and

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26 and Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4 or facilities that have been issued a NJPDES DGW/IWMF permit or a DGW/IWMF permit-by-rule shall be assessed a minimum fee of \$10,000.00.

3. The minimum fee for a Residuals permit shall be assessed as follows:

i. The minimum fee for domestic sludge shall be \$500.00;

ii. The minimum fee for non-hazardous industrial sludge shall be \$1,000.00; and

iii. The minimum fee for hazardous industrial sludge shall be \$5,000.00.

4. The minimum fee for sanitary landfills shall be assessed as follows:

i. Landfills that are operating or terminated after January 1, 1982 without an approved closure plan shall be assessed a minimum fee of \$2,500.00;

ii. Terminated Landfills properly closed with a Department approved closure plan, or closed prior to January 1, 1982 shall be assessed a minimum fee of \$500.00.

5. The minimum fee for a transfer station shall be \$500.00 and the annual fee for a transfer station shall be \$500.00.

6. The minimum fee for a permit to discharge to a Domestic Treatment Works shall be \$500.00, except that the minimum fee for a permit issued pursuant to N.J.A.C. 7:14A-4 shall be \$10,000.

7. The minimum fee for all emergency permits issued pursuant to N.J.A.C. 7:14A-2.2 shall be \$1,000.00, except that the fee for temporary storage of sludge shall be calculated as follows:

Average Flow	Fee
.999 MGD	\$ 500.00
1 MGD— 4.999 MGD	\$ 800.00
5 MGD—19.999 MGD	\$1,600.00
20 MGD	\$3,200.00

DEPARTMENT NOTE: Tables I and II currently part of the existing rule and found in the New Jersey Administrative Code are not being repealed or amended. The Department will use the cube root of the risk factors listed in Table I to calculate environmental impact for the period of July 1, 1989 to June 30, 1990 and all subsequent fee years. This will maintain the relative ranking between the risk factors that existed when the cube root was used in the fee formula.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Rules: Waste Oil

Notice of Correction: N.J.A.C. 7:26-8.2

Take notice that errors appear in the June 15, 1987 issue of the New Jersey Register at 18 N.J.R. 878(a) and 19 N.J.R. 1091(a) concerning N.J.A.C. 7:26-8.2, Exclusions. The text of the N.J.A.C. 7:26-8.2 should have appeared as follows:

7:26-8.2 Exclusions

(a) The following materials are not hazardous wastes, for the purpose of this subchapter:

1.-12. (No change.)

*13. Oil/water mixtures from the cleanout of ballast and/or bilge tanks on boats, barges, ships or other marine vessels, when cleanout and treatment occurs at oil refineries which are also the port facilities at which the off-loading of the above materials occurred, and provided that:

i. Those wastes are processed on-site, in waste water treatment facilities which have an appropriate permit from the Department; and

ii. The oily fraction of those wastes is recovered and utilized on-site as a raw material feedstock in the refinery's production process and the finished product is indistinguishable, in terms of composition and performance characteristics, from the product produced solely from the refinery's normal non-waste feedstocks; and

iii. Such processing is performed in compliance with all applicable Departmental permits.

14. Waste oil generated during the course of normal production and handling procedures at an oil refinery, including waste oil recovered from wastewater treatment systems regulated by the Department, so long as:

i. The waste oil is recycled on-site, at the facility at which it is generated, without having left the premises of that facility; and

ii. The waste oil is utilized as a raw material feedstock in the refinery's production process, and the finished product is indistinguishable, in terms of composition and performance characteristics, from the product produced solely from the refinery's normal non-waste feedstocks; and

iii. Such recycling is performed in compliance with all applicable Departmental permits.*

(b) (No change.)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

(b)

Hazardous Waste Listing: Ethylene Dibromide Wastes

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

Proposed: March 16, 1987 at 19 N.J.R. 443(a).

Adopted: June 12, 1987, by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: June 12, 1987 as R.1987 d.280, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq.

DEP Docket Number: 006-87-02.

Effective Date: July 6, 1987.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Upon Departmental review of the proposal a typographical error was found. The hazardous waste with United States Environmental Protection Hazardous Waste Number K118 was described as "Spent absorbent

solids. . .". This has been corrected upon adoption to read "Spent adsorbent solids. . .". This correction is made for clarification, and does not require additional public notice or comment.

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

7:26-8.14 Hazardous waste from specific sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Organic Chemicals	K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
	K118	Spent *[absorbent]* *adsorbent* solids from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
	K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)

(c)

COMMISSION ON RADIATION PROTECTION

Therapeutic Installations

Adopted Repeal: N.J.A.C. 7:28-14;

Adopted New Rules: N.J.A.C. 7:28-14

Proposed: June 2, 1986 at 18 N.J.R. 1157(a).

Adopted: May 28, 1987 by Commission on Radiation Protection, Max Weiss, Ph.D., Chairman.

Filed: June 1, 1987 as R.1987 d.258, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted.

Authority: N.J.S.A. 13:1D-1 et seq. and 26:2D-1 et seq., specifically 26:2D-7.

Effective Date: July 6, 1987.

Expiration Date: October 7, 1990.

DEP Docket Number: 024-86-05.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the Environmental Laboratory Building, Trenton, New Jersey on June 19, 1986 for the purpose of providing interested parties the opportunity to present testimony on the proposal. The comment period closed on July 2, 1986. The Commission on Radiation Protection (Commission) received written testimony from six people.

COMMENT: The Economic Impact of the proposal states: "For those therapy installations currently regulated and installed prior to the effective date of the new rule, there is no substantial new requirement that would require increased cost for personnel or equipment." This statement is questionable because several items listed in the new regulations require increased physicist oversight and increased instrumentation. One example, the requirement to review spot check measurements every 15 days might increase physicist expenses; the requirement, is supported but it will cost money.

RESPONSE: The rules do not require procedures or equipment that are not currently followed or available at most radiotherapy centers in New Jersey. The Commission strongly believes that all the regulatory requirements are minimally necessary for quality patient care, and among the examples given, the physicist oversight requirement is similar to the current Nuclear Regulatory Commission requirement for teletherapy units.

COMMENT: The following statement in the Economic Impact was questioned: "For equipment not yet installed, the proposed rule does not require anything not currently available from all leading manufacturers."

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N.J.A.C. 7:28-14.3(a)8i requires timers to have an elapsed time indicator. Most currently available orthovoltage units have timers which count down to zero and therefore do not indicate "elapsed time".

RESPONSE: While an elapsed time indicator may not be available in the standard package provided by the manufacturers, it can be supplied at nominal cost by any leading manufacturer.

COMMENT: There is no reference to the qualifications of the user or registrant. The definition of "qualified expert" is clearly worded. Since users of radioactive materials must demonstrate certain credentials, this should also be required for users of therapeutic radiation devices. As the Nuclear Regulatory Commission has a licensing procedure for users of Cobalt-60 teletherapy units, a similar procedure should be adapted and included in these rules.

RESPONSE: The Commission establishes performance standards for radiation therapy devices and licenses the technologists who operate the devices. The Commission does not have the authority to license the medical practitioners who use the devices because they are regulated by the Board of Medical Examiners.

COMMENT: In N.J.A.C. 7:28-4.4(t)2, the term "beam interceptor" is used. This term should be defined.

RESPONSE: The Commission agrees and the term has been defined in N.J.A.C. 7:28-14.2 as follows: "Beam interceptor" means a device located on the central axis of the primary beam whose purpose is to substantially attenuate the beam so that the room shielding requirements may be reduced.

COMMENT: The definition of "contact therapy system" is such that it would include essentially all superficial and orthovoltage machines which are routinely used with various cones in contact with the patient. Surely the Commission has a better definition of contact therapy system than the one in N.J.A.C. 7:28-14.2.

RESPONSE: The Commission agrees with the comment and is changing the definition to read as follows: "Contact therapy system" means an x-ray system used for therapy which is not capable of operating above 60 kVp and with a source distance less than or equal to five centimeters." The reason for the change is that the definition as proposed was too broad in that it included devices that are not contact therapy systems. The Commission never intended that the rules apply to devices other than those covered by the new definition.

COMMENT: In N.J.A.C. 7:28-14.2, "field size" is defined in the dosimetric or physical sense. This definition will not work consistently for megavoltage and electron modalities. The geometrical field size should be used. See the International Committee for Radiological Units publication #24, "... the projection, on a plane perpendicular to the beam axis, of the distal end of the collimator as seen from the front center of the source".

RESPONSE: The Commission is incorporating the commenter's change into the definition of "field size" because the definition as proposed cannot be applied consistently to megavoltage and electron modalities. The definition now reads: "Field size means the projection, on a plane perpendicular to the beam axis, of the distal end of the collimator as seen from the front center of the source." There will be very little impact resulting from this change, even though the language is totally changed.

COMMENT: Due to the present tax structure, many private practitioners or medical institutions may choose to lease a medical linear accelerator and simulator rather than purchase the units. In this case, the entity responsible for safe use of these machines is not the owner but rather the user. The definition of "registrant" in N.J.A.C. 7:28-14.2 should be modified to place the responsibility of registration with the owner-user or lessee-user.

RESPONSE: N.J.A.C. 7:28-3, "Registration of Ionizing Radiation-Producing Machines and Radioactive Materials", sets forth who has to register with the Department of Environmental Protection. The Commission intended that the persons required to register pursuant to N.J.A.C. 7:28-3 be the "registrants" in N.J.A.C. 7:28-14. Therefore, the definition of "registrant" in N.J.A.C. 7:28-14.2 has been modified to make this clear. "Registrant" is now defined as, "the person required to register with the Department pursuant to N.J.A.C. 7:28-3."

The Commission proposed a new N.J.A.C. 7:28-3 in the May 18, 1987, New Jersey Register at 19 N.J.R. 836(a). In this proposal, the Commission requires the possessor of radioactive material to register with the Department of Environmental Protection. This change of concept from owner to possessor should satisfy the commenter's concerns.

COMMENT: N.J.A.C. 7:28-14.3(a)7 states "Beam monitoring systems of greater than 150 kVp installed on or after January 1, 1987 shall be provided with a beam monitor system ..." "Beam monitoring systems ..." should be "Radiotherapy systems..."

RESPONSE: The Commission agrees and the rule has been changed accordingly.

COMMENT: The spot check requirements at N.J.A.C. 7:28-14.3(d) will place a burden on the dermatological community who operates so called Grenz Ray machines (x-ray machines running at 18 kVp and below). The spot checks on a monthly basis would be very difficult to do on such units because of their very low energy, typically, 8, 10, 12 and 15 kVp. Most standard radiation detection instruments will not respond to these x-ray energies. Therefore, to do spot checks on a monthly basis, dermatologists will have to provide themselves with rather expensive equipment (\$1,000). Experience over the last 7 years in calibrating about 10 such units a year is that they are remarkably stable in their output and that monthly spot checks are not necessary.

RESPONSE: The Commission agrees with the comment and has modified N.J.A.C. 7:28-14.3(d) to exempt x-ray systems with energies of 0.18 or less. The reasons for this change are that it would be difficult and expensive to bring low energy machines into compliance with the standard and the benefit to radiation safety of requiring these low energy devices to comply with the standard does not warrant the additional expense that would have to be expended.

COMMENT: When referring to the energy of medical linear accelerators, the meaning of "MeV" should be specified to avoid any misunderstanding.

RESPONSE: The Commission agrees "MeV" should be defined where there is a possibility of confusion or misunderstanding. Since this is not the case with these rules, the Commission is not going to define the term.

COMMENT: N.J.A.C. 7:28-14.3(a)1 requires leakage radiation to be measured at least once every five years. This requirement is unnecessary unless there has been perturbation of the tube housing.

RESPONSE: The Commission is requiring leakage radiation to be measured at least once every five years for the purpose of ensuring that there has been no perturbation of the tube housing. Therefore, the requirement is necessary and it will remain in the rules.

COMMENT: N.J.A.C. 7:28-14.3(a)7vi requires that the beam monitoring system for radiotherapy systems of greater than 150 kVp installed on or after January 1, 1987 (now October 1, 1987) have a display on the control panel, reading in roentgens, from which the dose at a reference point in the treatment volume can be calculated. The "reading in roentgens" requirement should be deleted because it suggests an accurately calibrated scale which is impractical and also uses "old" units, that is, roentgens rather than coulombs per kilograms (C/kg).

RESPONSE: The Commission is not deleting "reading in roentgens" because the reading is a measure of the exposure received by the ionization chamber which should be calibrated in easily recognizable units that are of the same size as the dose units. However the Commission has modified the rule to allow the measurement to be in C/kg because it is a modern and accepted measurement of exposure.

The commenter further states that the proposed rule requires an accurately calibrated scale which is impractical. N.J.A.C. 7:28-14.3(a)7iv requires the beam monitor system to independently terminate irradiation when the pre-selected value of exposure or dose monitor has been reached. This would be impossible without an accurately calibrated scale. Therefore, because the requirement is necessary, it is practical.

COMMENT: N.J.A.C. 7:28-14.3(a)8iii should be rewritten as follows: "The timer shall permit pre-setting, and determination of exposure time shall be accurate to one second or less."

RESPONSE: The commenter's wording and the commission's wording say the same thing. The Commission prefers its wording; therefore, the rule has not been changed.

COMMENT: N.J.A.C. 7:28-14.3(a)10 which reads "There shall be a means of determining the source-to-patient distance to within 10 percent or one centimeter, whichever is smaller;" should be changed to read; "There shall be a means of determining source-to-patient distance to within two percent." Since the objective is to deliver a dose within five percent of that specified, a two percent error would be the maximum permissible.

RESPONSE: Because the suggested, more strict limits would not be practical for units operating at very short distances, the recommended change has not been made.

COMMENT: N.J.A.C. 7:28-14.3(d)5 is the same as N.J.A.C. 7:28-14.3(d)3. Therefore it should be deleted.

RESPONSE: The commenter is correct. The Commission is deleting N.J.A.C. 7:28-14.3(d)3 rather than (d)5 because the rule will flow better if the correction is made in that manner.

COMMENT: The term "leakage radiation" in N.J.A.C. 7:28-14.4(a)2 should be changed to "photon radiation".

RESPONSE: The Commission is not making the recommended change because the subsection is meant to cover all types of radiation leakage, not just photon leakage.

COMMENT: N.J.A.C. 7:28-14.4 should be relevant to mega voltage units currently in use in radiation therapy; however, safety related components should be regulated by the manufacturer rather than the user. Accelerators manufactured currently do not comply with all of the proposed rules. Many of the proposed rules are complex and can only be ascertained after installation. What can the user do in the event that their megavoltage unit does not comply with the State's rules following installation? If a particular safety device has not been designed into the manufacture of an accelerator, it may be difficult or impossible to retrofit after the installation. If the State of New Jersey has rules that are different than other states', will the manufacturers sell to New Jersey or make additional changes? Whereas these rules are needed, they should be instituted at the Federal level for manufacturers as is done with all other ionizing radiation emitting devices.

RESPONSE: The Commission's purpose in promulgating these rules is to establish performance standards to ensure the safe operation of radio therapy devices. The Commission agrees that the Food and Drug Administration (FDA) should promulgate standards for the manufacture of radio therapy devices and encourages the commenter to urge the FDA to promulgate such standards. However, in the absence of such standards, the Commission is obligated to promulgate standards to ensure the safe operation of radio therapy devices.

In order to minimize conflicts with other regulating jurisdictions and to help manufacturers design their radio therapy devices, the Commission, to the extent possible, has incorporated the standards included in the "Suggested State Regulations for Control of Radiation, Volume One, Ionizing Radiation," prepared by the Conference of Radiation Control Program Directors, Inc. into the rules. The Commission has concluded that the rules are reasonable and that all manufacturers should design equipment able to meet the safety standards required by these rules. Further, the Commission's research indicates that most manufacturers' equipment does or reasonably easily can be altered to meet the regulatory standards.

COMMENT: In N.J.A.C. 7:28-14.4(a)2 and N.J.A.C. 7:28-14.4(b)3, the area for measuring leakage radiation contributed by neutrons should be changed from 200 square centimeters to 400 square centimeters, because one of the commonly used rem meters has a minimum cross-section of 380 square centimeters.

RESPONSE: The Commission agrees with the commenter and has made the recommended change because the increase of the area from 200 square centimeters to 400 square centimeters will not have a significant impact on patient safety.

COMMENT: In N.J.A.C. 7:28-14.4(a)1 and 3, for equipment greater than one MeV, the proposed rule states that leakage must be measured and those measurements shall include x-rays, electrons, and neutrons. This is unnecessarily complex. For machines under 10 MeV, no neutrons are produced, and for machines under 15 MeV, the amounts of neutrons produced are negligible. Therefore, the expense of obtaining and calibrating neutron detection equipment and the extra time and personnel necessary for these measurements is not justifiable. In addition, the registrant must determine, or obtain from the manufacturer, the actual leakage radiation existing at the positions specified for specified operating conditions. Is the user required to make the useless measurements on the four MeV accelerator or is the manufacturer required to make them? This section should be totally rewritten to remove neutron references below 15 MeV accelerators.

RESPONSE: The Commission agrees with the commenter that neutron production does not occur at energies below 10 MeV and the adopted rule now incorporates an exclusion for accelerators operating at 10 MeV or less. The Commission maintains, however, that for accelerators operating at energies greater than 10 MeV, it is appropriate to measure neutrons for increased radiation safety of the equipment and environs.

COMMENT: The phrase "at any point" in N.J.A.C. 7:28-14.4(b)1 should be changed to "at any locations, averaged over 100 square centimeters," to make it consistent with the other leakage specifications in the rule.

RESPONSE: The Commission agrees and the change has been made.

COMMENT: In N.J.A.C. 7:28-14.4(c)1, the maximum allowable transmission for beam limiting devices should be one percent of the useful beam at the normal treatment distance for the portion of the useful beam which is to be attenuated by the beam limiting device rather than the proposed 0.6 percent.

RESPONSE: The Commission agrees with the comment and the change has been incorporated into the adopted rule. The reason for the change is that the 0.6 percent requirement would unduly restrict the equipment choices available to practitioners without significantly increasing protection for the patient or the practitioner.

COMMENT: The measurement of absorbed dose required by N.J.A.C. 7:28-14.4(e)3 should be made after removal of all beam modifying devices which can be removed without the use of tools including beam scattering or beam flattening filters. N.J.A.C. 7:28-14.4(e)4iii should be changed appropriately.

RESPONSE: The Commission is not making the requested change because beam scattering or beam flattening filters must remain in position during the measurement of the absorbed dose.

COMMENT: The surface dose measurement requirements of N.J.A.C. 7:28-14.4(e)4 will require expensive equipment which most departments do not have. Most departments have only the minimum necessary dosimetry equipment including a high quality electrometer and calibrated cylindrical ionization chamber. The proper equipment for surface dose measurement is a parallel plate extrapolation chamber costing several thousand dollars. A less expensive substitute is a thin window parallel plate chamber which costs on the order of \$1,000.00. Neither cost is negligible. This requirement should be retained, however, because surface dose is an important parameter to measure for each machine and blocking configuration. The statement in the economic impact to the effect that the rule would require no substantial expenditure is contradicted by this requirement because the purchase of this equipment will be a substantial expense.

RESPONSE: The Commission agrees the requirement should be retained because it is an important parameter to measure for each machine and blocking configuration. The Commission also stands by its statement that, "For those therapy installations currently regulated and installed prior to the effective date of the new rule, there is no substantial new requirement that would require increased cost for personnel or equipment." However, the statement was further clarified by the last paragraph of the Economic Impact which reads: "Accordingly it is concluded that significant economic impact will only be felt by radiotherapy installations whose equipment or standard of practice suffers serious deficiency. In such instances, the additional cost would be more than offset by the overriding concern for patient and personnel care and safety."

COMMENT: In N.J.A.C. 7:28-14.4(e)4iv, the largest field size allowed to be used for measurement should be 10 centimeters by 10 centimeters rather than the proposed 15 centimeters by 15 centimeters because 10 centimeters by 10 centimeters is the current standard practice for the profession.

RESPONSE: After further review, the Commission has modified N.J.A.C. 7:28-14.4(e)4iv to read as follows: "Measurements shall be made over the range of field sizes clinically used." This change represents the current standard of practice for the profession. It is necessary to measure the absorbed dose over the range of field sizes clinically used to determine the absorbed dose accurately in clinical practice. Neither the proposed 15 centimeter by 15 nor the recommended 10 centimeter by 10 centimeter measurement is adequate over the entire range of possible electron energies.

COMMENT: N.J.A.C. 7:28-14(f)3ii which presently states, "Each detector shall be capable of independently monitoring and controlling the useful beam;" should be modified to state, "Each detector shall be capable of independently monitoring the intensity of the useful radiation beam;" because the detector is not capable of controlling the useful beam.

RESPONSE: While technically the detector itself may not control the useful beam, the monitoring system of which it is a part is capable of terminating irradiation in accordance with N.J.A.C. 7:28-14(i). Therefore, the Commission is not making the requested change.

COMMENT: A commenter recommended that examples such as "x-ray flatness filters" and "electron beam scattering foils" be added to N.J.A.C. 7:28-14.4(f)3iv to make the provision clearer.

RESPONSE: The Commission is not adding the recommended examples because the subparagraph as written is sufficiently clear and general to include the commenter's examples.

COMMENT: N.J.A.C. 7:28-14.4(f)3vi(3) should read as follows: "In equipment installed on or after January 1, 1987 (now October 1, 1987) have only one scale and no scale multiplying factors when employed for routine therapy. A scale multiplying factor may be applied to the regularly used accumulated dose indicator when used in conjunction with special treatment modes which use higher than normal dose rates and require specially safeguarded operating procedures to initiate."

RESPONSE: The Commission accepts the proposed language in that the uses are specialized for scale multiplying factors and as such they have additional safeguards built in. These safeguards must be electromechanical as well as procedural. This change will cause no undue burden on owner/operators while retaining the necessary safety features for patients.

COMMENT: A commenter recommended that the last sentence in N.J.A.C. 7:28-14.4(g)1 be deleted and that irradiation be automatically terminated if the difference in dose rates between any two of the different parts exceeds five percent.

RESPONSE: The Commission has accepted this recommendation and the change has been made to the rules. The change is being made because this degree of uniformity is readily achievable with new equipment, the requirement is consistent with optimal patient care and the requirement only applies to equipment installed after October 1, 1987.

COMMENT: N.J.A.C. 7:28-14.4(h)3 should read, "After termination of irradiation on delivery of the present dose, it shall be necessary to manually change at least one digit on the dose monitor unit selector before treatment can be initiated." This change should be made because the design of some linear accelerators cannot meet the requirement of N.J.A.C. 7:28-14.4(h)3, and because to force such a change in design would be costly and would not provide any significant increase in patient safety.

RESPONSE: The Commission agrees that N.J.A.C. 7:28-14.4(h)3 as presently written cannot be met by the majority of radiotherapy accelerators produced today and that the recommended change does not seriously compromise patient safety. Therefore, N.J.A.C. 7:28-14.4(h)3 has been modified to incorporate the recommended change and reads as follows, "After termination of irradiation, it shall be necessary to manually cycle the pre-selected dose monitor units through zero or manually change at least one digit on the dose monitor selector before treatment can be initiated."

COMMENT: In N.J.A.C. 7:28-14.4(i)3, "25 monitor units" should be changed to "30 monitor units," because some linear accelerators are designed to terminate irradiation when 30 monitor units above the pre-selected number of dose units has been detected by the system. To require a change to this design would be costly and there would be virtually no benefit gained in patient safety.

RESPONSE: The Commission agrees with the comment and has modified the rule accordingly.

COMMENT: N.J.A.C. 7:28-14.4(1)5 should be changed to, "After termination of irradiation on delivery of the present dose, it shall be necessary to manually change at least one digit on the pre-set time control before treatment can be re-initiated." The reason this change should be made is that certain linear accelerators are designed in this manner. To force them to change this design would be expensive and virtually no benefit would be gained in patient safety.

RESPONSE: The Commission is making the suggested change because many presently available accelerators employ this design and because this design historically has not been a common source of treatment error.

COMMENT: N.J.A.C. 7:28-14.4(n)4 should require that an interlock system be provided to terminate irradiation if the energy of the electrons striking the x-ray target or electron window deviates by more than plus or minus five percent or plus or minus 2 MeV, rather than plus or minus 20 percent or plus or minus 3 MeV as proposed in the rule.

RESPONSE: The Commission agrees with the comment and has made the change because the paragraph only applies to equipment installed after the promulgation of the rule, the degree of consistency required for electron beam energy is available on all currently manufactured accelerators and the requirement as promulgated is consistent with optimal patient care.

COMMENT: The last sentence in N.J.A.C. 7:28-14.4(p) should be deleted and replaced with, "The information from which the absorbed dose rate at a reference point can be calculated shall be displayed on the control panel."

RESPONSE: The Commission is not making this change because the information the rule requires gives an indication of machine stability during treatment. This information also makes it possible to calculate the dose rate at a reference point in the treatment volume. Therefore, there is no reason to make the change.

COMMENT: N.J.A.C. 7:28-14.4(w)1 states: "Therapeutic systems shall not be left unattended unless the system is secured against unauthorized use." This is a good requirement if a simple key switch is acceptable. A requirement for a padlock would be unnecessarily inconvenient.

RESPONSE: A simple key switch is acceptable.

The following comments were received on N.J.A.C. 7:28-14.5, "Teletherapy apparatus utilizing radioactive material":

COMMENT: This section should be consistent with the Nuclear Regulatory Commission's regulations on the same subject found at 10 CFR 35.

COMMENT: N.J.A.C. 7:28-14.5, the section on Cobalt 60 teletherapy, is totally redundant in that the Nuclear Regulatory Commission has jurisdiction over this apparatus and has extensive and detailed recommendations (which go far beyond what is said here). They are continually updated by the Nuclear Regulatory Commission and there is no reason why this entire section cannot be replaced with a simple clause that says that these machines must be maintained within current Nuclear Regulatory Commission regulations. It will not be possible to keep these up-to-date.

RESPONSE: The Commission is not adopting N.J.A.C. 7:28-14.5. It is studying the best method to make this section more consistent with the Nuclear Regulatory Commission's regulations. When this study is completed, the Commission will propose appropriate new rules.

The following are comments which were received on N.J.A.C. 7:28-14.6, "Therapy simulator installations".

COMMENT: Concerning N.J.A.C. 7:28-14.6, Therapy Simulator installations, these rules appear similar to those for a conventional radiographic/fluoroscopic installation. Consideration should be given to the differences in design and use of a simulator. Specifically:

N.J.A.C. 7:28-14.6(b)3 describes a cone. This is rarely present on simulators, since the tube and image receptor must rotate about the patient;

N.J.A.C. 7:28-14.6(b)4 describes non-image-intensified fluoroscopic units. There are none (simulators) presently manufactured;

N.J.A.C. 7:28-14.6(b)5 is not relevant for simulators, since the tube mounting and screen are not linked together;

N.J.A.C. 7:28-14.6(b)8 discusses exposure rate to the operator. Most simulators are remote-controlled, therefore, personnel do not remain in the room during fluoroscopy;

N.J.A.C. 7:28-14.6(b)11 and 12 specifies a maximum dose rate. This is not relevant for a patient undergoing radiation therapy; and

N.J.A.C. 7:28-14.6(b)13 describes a bucky slot cover and shielding which are not present due to the previously discussed rotational capability.

COMMENT: In 7:28-14.6, the definition of a radiotherapy simulator should be more precise than stated in the code. Radiotherapy simulators evolved when it became evident that obtaining accurate, quantitative, reproducible, spatial information from radiographs using conventional diagnostic x-ray equipment was difficult. This quantitative information is not readily and accurately transferable from conventional diagnostic equipment to the x-ray treatment unit, nor is it verifiable. Since the main function of a simulator is to display the treatment fields so that the target volume may be accurately encompassed without delivering excessive irradiation to surrounding normal tissues, the following two definitions of a simulator are proposed:

1. A radiation therapy simulator is a device which consists of a diagnostic x-ray source mounted in such a way that it can provide a radiation field to simulate the field used in a radiotherapy external beam treatment.

2. A treatment simulator is an apparatus which uses a diagnostic x-ray tube but duplicates a radiation treatment unit in terms of its geometrical, mechanical, and optical properties.

If this type of definition is adopted, N.J.A.C. 7:28-14.6(b)2, 3, 4, 5, and 8 can be eliminated since no therapy simulator utilizes fluoroscopic screens as an image receptor.

COMMENT: N.J.A.C. 7:28-14.6(b)13 and 14ii should be eliminated since bucky's are not used in radiotherapy simulators and simulators are remote control units by design.

COMMENT: N.J.A.C. 7:28-14.6(b)3, 4 and 5 should be deleted and replaced with, "Therapy simulators incorporating fluoroscopy shall have image intensifiers." This change should be made because therapy simulators are of rotational design with image intensifiers that generally are capable of motion in the x, y, and z directions. The primary beam frequently exceeds the dimension of the input phosphor.

RESPONSE: After reviewing the comments, the Commission decided N.J.A.C. 7:28-14.6 needed a major rewrite which would be too substantial a change to be adopted with this proposal. Therefore, the Commission is not adopting this section and will propose a new rule on therapy simulator installations at a later date.

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

SUBCHAPTER 14. THERAPEUTIC INSTALLATIONS

7:28-14.1 Scope

(a) This subchapter covers therapeutic installations used in the healing arts. These therapeutic installations include x-ray, accelerator and teletherapy installations. No registrant shall operate or permit the operation of therapeutic equipment used in the healing arts unless the equipment and installation meet the applicable requirements of this subchapter.

7:28-14.2 Definitions

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

"Applicator" means a structure which determines the extent of the treatment field at a given distance from the virtual source and which may or may not incorporate the beam limiting device.

"Beam interceptor" means a device located on the central axis of the primary beam whose purpose is to substantially attenuate the beam so that the room shielding requirements may be reduced.*

"Beam limiting device" means a device which provides a means to restrict the dimensions of the radiation field and which is an integral part of the equipment.

"Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

"Beam scattering filter" means a filter used to scatter a beam of electrons.

"Central axis of the beam" means a line passing through the virtual source and the center of the plane figure formed by the edge of the final beam limiting device.

"Contact therapy system" means an x-ray system used for therapy ***[with the x-ray tube port placed in contact with or within five centimeters of the surface being treated]* *not capable of operating above 60 kVp and with a source distance less than or equal to five centimeters*.**

"Department" means the New Jersey Department of Environmental Protection.

"Dose monitoring system" means a system of devices for the detection, measurement, and display of dose information for the useful beam.

"Dose monitor unit" means a unit response from the dose monitoring system from which the absorbed dose can be calculated.

"Field flattening filter" means a filter used to provide dose uniformity over the area of a useful beam of x-rays at a specified depth.

"Field size" means ***[the dimensions along the major axes of an area in a plane perpendicular to the specified direction of the beam of incident radiation at the normal treatment distance and defined by the intersection of the major axes and the 50 percent isodose line]* *the projection on a plane perpendicular to the beam axis, of the distal end of the collimator as seen from the front center of the source*.**

"Full beam detector" means a radiation detector of such size that the total cross section of the maximum-size useful beam is intercepted.

"Gantry" means that part of the system supporting and allowing possible movements of the radiation head.

"Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

"Interruption of irradiation" means the stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

"Isocenter" means a fixed point in space located at the center of the smallest sphere through which the central axes of the beam pass.

"Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for the useful beam.

"Moving beam therapy" means radiation therapy with relative movement of the useful beam and the patient during irradiation.

"Normal treatment distance" means:

1. For electron irradiation, the nominal source to surface distance along the central axis of the useful beam, specified by the manufacturer for the applicator;

2. For x-ray irradiation, the nominal source to isocenter distance along the central axis of the useful beam; and

3. For non-isocentric equipment, this distance shall be specified by the manufacturer.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"Primary dose monitoring system" means a system which will monitor the quantity of radiation produced during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been delivered.

"Qualified radiological physicist" means a person who holds at least a bachelor's degree in one of the physical sciences and who is certified

by the American Board of Radiology either in radiological physics, x-and gamma ray physics or therapeutic radiological physics, is eligible for such certification, or has equivalent training and experience.

1. "Equivalent training and experience" means a person has:

i. A bachelor's degree in physical sciences and three years full time experience working under the direction of a physicist certified by the American Board of Radiology;

ii. A doctorate or master's degree in physical science and two years such experience; or

iii. A doctorate or master's degree in radiological or medical physics and two years of full-time, post-doctoral training with clinical experience.

"Registrant" means the person ***[owning machinery or materials registered]* *required to register*** with the Department pursuant to N.J.A.C. 7:28-3.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary system.

"Spot check" means an abbreviated calibration procedure which is performed to assure that a previous calibration continues to be valid.

"Stationary beam therapy" means radiation therapy without relative movement of the useful beam and the patient during irradiation.

"Target" means that part of a radiation-producing device used to intercept a beam of accelerated particles and cause emission of other radiation.

"Termination of irradiation" means the stopping ***[or]* *of*** irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Transmission detector" means a radiation detector through which the useful beam or part of the useful beam passes.

"Traceable to national standards" means a dosimetry system calibrated by the National Bureau of Standards (NBS) or calibrated in a beam which has been standardized by a transfer-grade ionization chamber having a NBS calibration.

"Treatment field" means the area of the patient's skin which is to be irradiated.

"Virtual source" means a point from which radiation appears to originate.

"Wedge filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

7:28-14.3 Therapeutic x-ray systems with energies less than one
[meV.] *MeV*

(a) Equipment requirements for therapeutic x-ray systems with energies less than one ***[meV.]* *MeV*** are as follows:

1. Leakage radiation shall be measured under conditions which provide maximum leakage radiation, the leakage radiation shall not exceed the value specified at the distance specified for the classification of that x-ray system. Compliance shall be determined by measurements averaged over an area of 100 square centimeters. Measurement shall be performed at installation and whenever the tube is changed. Measurement shall be performed at least once every five years;

i. For Contact Therapy Systems, leakage radiation shall not exceed 100 milliroentgens in one hour at five centimeters from the surface of the tube housing assembly;

ii. For 0-150 kVp Systems which are installed prior to January 1, 1987, leakage radiation shall not exceed one roentgen in one hour at one meter from the target;

iii. For 0-150 kVp Systems which are installed on or after ***[January]* *October* 1, 1987**, leakage radiation shall not exceed 100 milliroentgens in one hour at one meter from the target;

iv. For 151 to 500 kVp Systems the leakage radiation shall not exceed one roentgen in one hour at one meter from the target;

v. For 501 to 999 kVp Systems the leakage radiation at a distance of one meter from the target shall not exceed 0.1 percent of the useful beam exposure rate at one meter from the target; and

vi. Records of leakage radiation shall be maintained at the facility for at least five years and shall be made available for inspection by the Department.

2. Beam limiting devices for equipment installed on or after ***[January]* *October* 1, 1987** shall transmit no more than one percent of the useful beam, for the portion of the beam which is to be attenuated by the beam limiting device, when the equipment is operating at maximum kVp and with maximum filtration. Measurements shall be made at a distance of one meter from the beam limiting device and in a plane perpendicular to the central axis of the beam. For equipment installed before ***[January]* *October* 1, 1987**, transmissions shall not exceed five percent of the useful beam;

3. The filter system shall be so designed that:
 - i. It will minimize the possibility of error in filter selection;
 - ii. Filters cannot be accidentally displaced from the useful beam at any possible tube orientation;
 - iii. Each filter is marked as to its material of construction and its thickness or wedge angle for wedge filters;
 - iv. It shall be possible for the operator to determine the presence or absence of any filter in the useful beam when the operator is at the control panel, either by display at the control panel or by direct observation;
 - v. For equipment installed prior to ***[January]* *October* 1, 1987**, the radiation at five centimeters from the filter insertion slot opening does not exceed 30 roentgens per hour under any operating conditions; and
 - vi. For equipment listed on or after ***[January]* *October* 1, 1987**, the radiation from the filter slot shall not exceed the leakage radiation specified in ***(a)*1** above.
4. A means shall be provided to immobilize the tube housing assembly during stationary treatments;
5. The tube housing assembly shall be so marked that it is possible to determine the location of the focal spot to within five millimeters, and such marking shall be readily accessible for use during calibration procedures;
6. Equipment employing Beryllium or other low-filtration windows shall have a removable shield of at least 0.5 millimeter lead equivalency at 100 kVp that can be positioned over the entire useful beam exit port during periods when the beam is not in use;
7. ***[Beam monitoring]* *Radiotherapy*** systems of greater than 150 kVp installed on or after ***[January]* *October* 1, 1987** shall be provided with a beam monitor system which shall:
 - i. Include a radiation detector which is placed on the patient side of any fixed added filters other than a wedge filter;
 - ii. Have the radiation detector interlocked to prevent its incorrect positioning in the useful beam;
 - iii. Not allow irradiation until a pre-selected value of exposure or pre-selected number of dose monitor units has been made at the treatment control panel;
 - iv. Independently terminate irradiation when the pre-selected value of exposure or dose monitor units has been reached;
 - v. Be so designed that, in the event of a system malfunction or electrical power failure, the dose administered to a patient prior to the system malfunction or power failure can be accurately determined;
 - vi. Have a display at the control panel, reading in roentgens, ***or coulombs per kilogram*** from which the dose at a reference point in the treatment volume can be calculated;
 - (1) The reading shall be maintained in the display at the control panel until intentionally reset to zero; and
 - vii. Have a control panel display which does not have scale multiplying factors and utilizes a design such that an increasing dose is displayed by increasing numbers.
8. The following are the equipment requirements for timer systems:
 - i. A timer system shall be provided which has a display at the treatment control panel. It shall be graduated in minutes and seconds and/or fractions of minutes. It shall have a pre-set time selector. For equipment installed on or after ***[January]* *October* 1, 1987**, it shall also have an elapsed time indicator;
 - ii. The timer shall terminate irradiation when a pre-selected time has elapsed;
 - iii. The timer shall permit pre-setting and determination of exposure times to an accuracy of one second or less;
 - iv. The timer shall not permit an exposure if set at zero;
 - v. When patient irradiation is controlled by a shutter mechanism the timer shall not begin to run until the shutter is opened;
 - vi. Equipment installed on or after ***[January]* *October* 1, 1987** shall have an elapsed-time indicator which is activated when radiation is emitted and retains its reading after irradiation is interrupted or terminated; and
 - vii. After irradiation is terminated and before irradiation can be re-initiated, it shall be necessary to cycle the pre-set time selector through zero time.
9. In addition to the control panel displays required in other provisions of this subsection, the control panel shall have:
 - i. An indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;
 - ii. An indication of whether x-rays are being produced;
 - iii. Means for indicating kVp and x-ray tube current; and
 - iv. The means for terminating an exposure at any time.

10. There shall be a means of determining the source-to-patient distance to within 10 percent or one centimeter, whichever is smaller; and

11. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five seconds, the entire useful beam shall be attenuated automatically by a shutter having a lead equivalency not less than that of the tube housing assembly. In addition:

- i. After the unit is at operating parameters, the shutter shall be controlled electrically from the control panel by the operator; and
 - ii. An indication of shutter position shall appear at the control panel.
- (b) In addition to shielding adequate to meet the requirements of N.J.A.C. 7:28-5 and 6, the treatment room design and shielding requirements for systems capable of operating above 50 kVp, shall be the following:

1. There shall be warning lights in treatment rooms to which access is possible through more than one entrance. The warning lights shall be placed in readily observable positions near the outside of all access doors and shall indicate when the useful beam is "on";

2. There shall be means for two-way aural communication between the patient and the operator at the control panel at all times when the system is in operation;

3. A window, mirror, closed-circuit television, or an equivalent system shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator can observe the patient from the control panel. When the primary viewing system is by electronic means (for example, television), a secondary viewing system shall be available for use in the event of failure of the primary viewing system;

4. Treatment rooms which contain an x-ray system capable of operating above 150 kVp shall meet the following additional requirements:

- i. All required shielding, except for any beam interceptor, shall be provided by fixed barriers;
- ii. The control panel shall be outside the treatment room;
- iii. All entrance doors of the treatment room shall be electrically connected to the control panel in such a way that x-ray production cannot occur unless all doors are closed;
- iv. When any entrance door of the treatment room is opened while the x-ray tube is activated, x-ray production shall terminate within one second; and
- v. After the radiation output of the x-ray tube has been terminated by the opening of any door of the treatment room, it shall be possible to restore the x-ray system to full operation only upon closing the door, and subsequently, reinitiating the exposure at the control panel.

(c) The following are the calibration requirements for therapeutic x-ray systems with energies less than one ***[meV]* *MeV***:

1. System calibrations shall be performed before the system is first used for irradiation of a patient and thereafter at time intervals which do not exceed 12 months and after any change which might significantly alter the calibration or other characteristic of the therapy beam;

2. The calibration of the radiation output of the x-ray system shall be performed by a qualified radiological physicist;

3. Calibration of the radiation output of an x-ray system shall be performed with an instrument whose calibration shall be directly traceable to a national standard and which shall have been calibrated within the preceding three years;

4. The calibration shall be such that the dose at a reference point in soft tissue can be calculated to within ± 5 percent;

5. The calibration of the x-ray system shall include, but not be limited to, the following determinations;

- i. Verification that the x-ray system is operating in compliance with the radiological design specifications;
- ii. The exposure rates for each combination of field size, technique factors, filter, and treatment distance used;
- iii. The congruence between the radiation field and the field indicated by the localizing device if such device is present; and
- iv. The uniformity of the radiation field symmetry for representative field sizes used.

6. Records of calibration performed pursuant to 1 above shall be maintained by the registrant and made available for inspection by the Department for five years after completion of the calibration.

(d) Spot checks shall be performed on therapeutic x-ray systems with energies ***greater than 0.018 MeV and* less than one [meV]* *MeV*** and shall meet the following requirements:

1. The qualified radiological physicist will determine those parameters to be spot-checked and the procedure to be used when performing those spot checks. The spot check procedure shall be in writing and specify the frequency at which tests or measurements are to be performed, not

to exceed one month, and the acceptable tolerance for each parameter measured in the spot-check. A qualified radiological physicist need not actually perform the spot-check measurement. If a qualified radiological physicist does not perform the spot-check measurement, the results of the spot-check measurement shall be reviewed by a qualified radiological physicist within 15 days;

2. The measurements taken during spot checks shall demonstrate the degree of consistency of the operating characteristics which can affect the radiation output of the system or the radiation delivered to a patient during a therapy procedure;

[3. The cause for a parameter exceeding tolerances set by the qualified radiological physicist shall be promptly investigated and corrected before the system is used for patient irradiation;]

*[4.]*3.* Whenever a spot check indicates a significant change in the operating characteristics of a system, as specified in the spot check procedures, the system shall be recalibrated;

*[5.]*4.* The cause for a parameter exceeding tolerances set by the qualified radiological physicist shall be promptly investigated and corrected before the system is used for patient irradiation; and

*[6.]*5.* Records of spot-check measurements shall be maintained by the registrant and made available for inspection by the Department for a period of five years following such measurement.

(e) The following procedures shall be followed when operating therapeutic x-ray systems with energies less than one [meV] MeV:

1. A therapeutic x-ray system shall not be left unattended unless the system is secured against unauthorized use;

2. No individual other than the patient shall be in the treatment room unless such individual is protected by a barrier meeting the requirements of N.J.A.C. 7:28-6. No individual other than the patient shall be in the treatment room during exposure when the kVp exceeds 50;

3. When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used; and

4. Except for contact therapy devices, the tube housing assembly shall not be held by an individual during exposure.

(f) The x-ray system shall not be used in the administration of radiation therapy unless the requirements of this section have been met.

7:28-14.4 Therapeutic x-ray and therapeutic accelerator installations with energies of one [meV] MeV and above

(a) The following are the equipment requirements related to leakage radiation to the patient area:

1. Leakage radiation shall be measured under conditions producing maximum leakage radiation and shall be reported as absorbed dose in rads or grays in water. For equipment installed on or after [January] *October* 1, 1987, measurements shall include x-rays, electrons and neutrons. ***For equipment incapable of operating at energies greater than 10 MeV, measurements shall exclude neutrons.*** For equipment installed before [January] *October* 1, 1987, measurements shall exclude neutrons. The leakage radiation shall be measured in a plane perpendicular to the central axis of the beam located at the normal treatment distance or passing through the isocenter. The leakage radiation at any point on this plane outside the useful beam but within two meters of the central axis of the beam shall not exceed 0.1 percent of the maximum radiation of the useful beam, measured at the point of intersection of the central axis and the plane;

2. Measurements for leakage radiation shall be averaged over an area up to, but not exceeding, 100 square centimeters at the positions specified. For equipment installed on or after [January] *October* 1, 1987, measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area up to, but not exceeding, [200] *400* square centimeters. ***For equipment incapable of operating at energies greater than 10 MeV, measurements shall exclude neutrons.*** For equipment installed before [January] *October* 1, 1987, measurements shall exclude neutrons;

3. For each system the registrant shall determine, or obtain from the manufacturer, the amount of leakage radiation at the positions specified in 1 above. Records of leakage radiation shall be maintained at the facility for inspection by the Department.

(b) The following are the equipment requirements for leakage radiation outside the patient area:

1. Except in the area specified in (a) above as the patient area, the x-ray leakage measured as absorbed dose in rads or grays in water, at any [point] *location averaged over 100 square centimeters* one meter from the path of the charged particles before they strike the target or the window, shall not exceed 0.1 percent of the maximum absorbed dose in the circular plane specified in (a) above;

2. Except in the area specified in (a) above as the patient area, neutron leakage measured as absorbed dose in rads or grays in water, at any point one meter from the path of the charged particles before they strike the target or the window, shall not exceed 0.5 percent of the maximum absorbed dose in the circular plane specified in (a) above;

3. The registrant shall determine, or obtain from the manufacturer, the actual leakage radiation existing at the positions specified in 1 and 2 above for specified operating conditions. Radiation measurements excluding neutrons shall be averaged over an area up to, but not exceeding, 100 square centimeters at the positions specified. For equipment installed on or after [January] *October* 1, 1987, neutron measurement shall be averaged over an area up to, but not exceeding, [200] *400* square centimeters. ***For equipment incapable of operating at energies greater than 10 MeV, measurements shall include neutrons.*** For equipment installed prior to [January] *October* 1, 1987, measurement of neutrons shall be excluded.

(c) The following are the equipment requirements for beam limiting devices:

1. For equipment installed on or after [January] *October* 1, 1987, adjustable or interchangeable beam limiting devices shall be provided and such devices shall transmit no more than [0.6] *one* percent of the useful beam at the normal treatment distance for the portion of the useful beam which is to be attenuated by the beam limiting device. The neutron component of the useful beam shall not be included in this requirement; and

2. For equipment installed prior to [January] *October* 1, 1987, the beam limiting device shall meet the requirements of (a) above except that such device shall transmit no more than two percent of the useful beam.

(d) The following are the equipment requirements for filters:

1. If the absorbed dose rate information required by (p) below relates exclusively to operation with a field flattening or beam scattering filter in place, such filter shall be removable only by the use of tools;

2. In systems installed on or after [January] *October* 1, 1987, which utilize a system of wedge filters, interchangeable field flattening filters or interchangeable beam scattering filters:

i. Irradiation shall not be possible until a selection of a filter has been made at the treatment control panel;

ii. An interlock system shall be provided to prevent irradiation if the filter selected is not in the correct position;

iii. A display shall be provided at the treatment control panel showing the filter in use;

iv. Each filter which is removable from the system without the use of tools shall be clearly marked with an identification number and accompanying documents shall contain a corresponding drawing or other description of the filter, showing dimensions and materials. The identification number shall appear on the wedge filter as well as on its tray. The identification number shall be referable to wedge angle and wedge factor; and

v. An interlock shall be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection operation carried out at the treatment control panel.

3. The only filter requirement for equipment installed prior to [January] *October* 1, 1987 shall be that required by (d)2iv above.

(e) Beam quality data sufficient to assure that the following beam quality requirements are met shall be determined or obtained from the manufacturer by the registrant:

1. For radiotherapy systems capable of electron beam therapy the absorbed dose in water resulting from x-rays in a useful electron beam shall be determined at a point on the central axis of the beam 10 centimeters greater than the practical range of the electrons. This shall not exceed the values stated in the following table. Linear interpolation shall be used for values not stated;

Maximum Energy of Electron Beam in MeV	X-Ray absorbed Dose as a Fraction of Maximum Absorbed Dose
1	0.03
15	0.05
35	0.10
50	0.20

2. Compliance with 1 above shall be determined using:
 i. A measurement within a phantom with the incident surface of the phantom at the normal treatment distance and normal to the central axis of the beam;

ii. The largest field size available which does not exceed 15 centimeters by 15 centimeters; and

iii. A phantom whose cross-sectional dimensions exceed the measurement radiation field by at least five centimeters and whose depth is sufficient to perform the required measurement.

3. The absorbed dose at a surface located at the normal treatment distance, at the point of intersection of that surface with the central axis of the useful beam during x-ray irradiation, shall be measured at intervals not to exceed 12 months and the results of such measurements shall be maintained with the records of calibration;

4. The measurements required by (e)3 above shall conform to the following requirements:

i. Measurements shall be made within a phantom using an instrument which will allow extrapolation to the surface absorbed dose;

ii. Measurements shall be made using a phantom whose size and placement meet the requirements of 2iii above;

iii. Measurements shall be made after removal of all beam modifying devices which can be removed without the use of tools, except for beam scattering or beam flattening filters; and

iv. Measurements shall be made **[for the largest field size available which does not exceed 15 centimeters by 15 centimeters]* **over the range of field sizes clinically used****.

5. The registrant shall determine, or obtain from the manufacturer, the maximum percentage absorbed dose due to stray neutrons in the useful beam for specified operating conditions.

(f) All therapy systems shall be provided with radiation detectors in the radiation head.

1. Equipment installed on or after **[January]* **October** 1, 1987* shall be provided with at least two radiation detectors. The detectors shall be incorporated into two monitoring systems arranged either as a primary/primary combination or as a primary/secondary combination;

2. Equipment installed prior to **[January]* **October** 1, 1987* shall be provided with at least one radiation detector. This detector shall be incorporated into a primary system. Failure of this detector shall automatically cause the beam to be terminated; and

3. Each detector and system into which the detector is incorporated shall meet the following requirements:

i. Each detector shall be removable only with tools and shall be interlocked to prevent incorrect positioning;

ii. Each detector shall be capable of independently monitoring and controlling the useful beam;

iii. Each detector shall form part of a dose monitoring system from whose readings in dose monitor units the absorbed dose at a reference point in the treatment volume can be calculated;

iv. For equipment installed on or after **[January]* **October** 1, 1987*, the primary dose monitoring system shall have a full beam transmission detector which is placed on the patient side of any fixed added filters other than a wedge filter;

v. For equipment installed on or after **[January]* **October** 1, 1987*, the design of the dose monitoring system of (f)3iii above shall assure that:

(1) The malfunctioning of one system shall not affect the correct functioning of the second system; and

(2) The failure of any element which may be common to both systems shall terminate the useful beam.

vi. Each dose monitoring system shall have a legible display at the treatment control panel. Each display shall:

(1) Maintain a reading until intentionally reset to zero;

(2) Utilize a design such that increasing dose is displayed by increasing numbers and shall be so designed that, in the event of an overdosage of radiation, the absorbed dose may be accurately determined under all normal conditions of use or foreseeable failures; and

(3) In equipment installed on or after **[January]* **October** 1, 1987* have only one scale and no scale multiplying factors ***when employed for routine therapy. A scale multiplying factor may be applied to the regularly used accumulated dose indicator when used in conjunction with special treatment modes which use higher than normal dose rates and require specially safeguarded operating procedures to initiate***.

vii. In the event of power failure, the dose monitoring information required in 3vi above displayed at the control panel at the time of failure shall be retrievable in at least one system.

(g) Beam symmetry requirements are the following:

1. For equipment installed on or after **[January]* **October** 1, 1987* and which is inherently capable of producing useful beams with asymmetry exceeding five percent, at least four different parts of the radiation beam shall be monitored before the beam passes through the beam limiting device. If the difference in dose rates between any two of these

different parts exceeds five percent an indication of this condition is to be made at the control panel*. If the difference in dose rates between any two of these different parts exceeds 20 percent, the irradiation is to automatically terminate;] ***and the irradiation shall automatically terminate;*** and

2. The beam symmetry requirements of 1 above shall be met if the user can demonstrate to the satisfaction of the Department that adequate fail-safe protection against the beam asymmetry is incorporated into the inherent design of the accelerator.

(h) Equipment requirements for the selection and display of dose monitor units are the following:

1. Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the treatment control panel;

2. The pre-selected number of dose monitor units shall be displayed at the treatment control panel until reset manually for the next irradiation; and

3. After termination of irradiation, it shall be necessary to manually cycle the pre-selected dose monitor units through zero ***or manually change at least one digit on the dose monitor units selector*** before treatment can be initiated.

(i) Equipment requirements for termination of irradiation by the dose monitoring system are the following:

1. Each of the required monitoring systems shall be capable of terminating irradiation independently;

2. Each primary dose monitoring system shall terminate irradiation when the pre-selected number of dose monitor units has been detected by the system;

3. Each secondary dose monitoring system shall terminate irradiation when 10 percent or **[25]* **30**** monitor units above the pre-selected number of dose monitor units has been detected by the system;

4. For equipment installed on or after **[January]* **October** 1, 1987*, the indicator on the control panel shall show which monitoring system has terminated the beam.

(j) Interruption switches shall be provided which make it possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment control panel. Following an interruption, it shall be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a pre-selected value during an interruption the equipment shall go to termination condition.

(k) Termination switches shall be provided at the operator's position at the treatment control panel, which make it possible to terminate irradiation and equipment movements, or to go from an interruption condition to termination condition.

(l) The following are the equipment requirements for timer systems:

1. A timer system shall be provided which has a display at the treatment control panel. It shall be graduated in minutes and seconds and/or fractions of minutes. It shall have a pre-set time selector and an elapsed time indicator;

2. The timer shall terminate irradiation when a pre-selected time has elapsed if the dose monitoring systems fail to do so;

3. The timer shall not permit an exposure if set at zero;

4. There shall be an elapsed-time indicator which is activated when radiation is emitted and which retains its reading after irradiation is interrupted or terminated; and

5. **[After irradiation is terminated and before irradiation can be re-initiated, it shall be necessary to cycle the pre-set time selector through zero time, to reset the pre-set time selector, and to reset the elapsed-time indicator to zero.] ***After termination of irradiation on delivery of the present dose, it shall be necessary to manually change at least one digit on the pre-set time control before treatment can be re-initiated.****

(m) Equipment capable of both x-ray therapy and electron therapy shall have the following equipment requirements for selection of radiation type:

1. Irradiation shall not be possible until a selection of radiation type has been made at the treatment control panel;

2. An interlock system shall be provided to insure that the equipment can emit only the radiation type which has been selected, except as noted in 4 below;

3. An interlock system shall be provided to prevent irradiation if any operations selected in the treatment room do not agree with the operations selected at the treatment control panel;

4. An interlock system shall be provided to prevent irradiation with x-rays when electron applicators are fitted except to obtain a port film and to prevent irradiation with electrons when accessories specific for x-ray therapy are fitted; and

5. The radiation type selected shall be displayed at the treatment control panel before and during irradiation.

(n) The following are the equipment requirements for the selection of energy for equipment capable of generating radiation beams of different energies:

1. Irradiation shall not be possible until a selection of energy has been made at the treatment control panel;

2. An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel;

3. The nominal energy selected shall be displayed at the treatment control panel before and during irradiation; and

4. For equipment installed on or after ***[January]* *October* 1, 1987**, an interlock system shall be provided to terminate irradiation if the energy of the electrons striking the x-ray target or electron window deviates by more than plus or minus ***[20]* *five* percent** or plus or minus ***[3 meV]* *2 MeV***, whichever is smaller, from the selected nominal energy.

(o) The following are the equipment requirements for selection of mode of therapy for equipment capable of both stationary beam therapy and moving beam therapy:

1. Irradiation shall not be possible until a selection of stationary beam therapy or moving beam therapy has been made at the treatment control panel;

2. An interlock system shall be provided to insure that the equipment can operate only in the mode which has been selected;

3. An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel;

4. An interlock system shall be provided to interrupt irradiation if the movement stops during moving beam therapy;

5. Moving beam therapy shall be so controlled that the required relationship between the number of dose monitor units and movement is obtained; and

6. The mode of operation shall be displayed at the treatment control panel.

(p) Equipment installed on or after ***[January]* *October* 1, 1987**, shall be provided with a system from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in (f) above may form part of this system. In addition, the quotient of the number of dose monitor units by time shall be displayed at the treatment control panel.

(q) The registrant shall determine, or obtain from the manufacturer, the location of the following with reference to an accessible point on the radiation head and under all possible orientations of the useful beam:

1. The x-ray target or the virtual source of x-rays; and

2. The electron window, the scattering foil, or the virtual source of electrons.

(r) When pre-selection of any of the operating conditions requires action in the treatment room and at the treatment control panel, selection at one location shall not give a display at the other location until the requisite selected operations in both locations have been completed.

(s) Shadow trays shall be designed to minimize patient entrance skin dose consistent with achieving their primary purpose of safely supporting beam-modifying accessories while transmitting the light field.

(t) The following are the facility and shielding requirements for therapeutic x-ray and therapeutic accelerator installations with energies of one ***[meV]* *MeV*** and above:

1. The systems shall have shielding adequate to meet the requirements of N.J.A.C. 7:28-5 and 6;

2. Except for entrance doors or beam interceptors, all the required barriers shall be fixed barriers;

3. The treatment control panel shall be located outside the treatment room;

4. Windows, mirrors, closed-circuit television, or other equivalent viewing systems shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may observe the patient from the treatment control panel. When the primary viewing system is by electronic means (for example, television), a secondary viewing system shall be provided for use in the event of failure of the primary system;

5. Provision shall be made for two-way aural communication between the patient and the operator at the treatment control panel;

6. Treatment room entrances shall be provided with warning lights in readily observable positions near the outside of all access doors which will indicate when the useful beam is "on";

7. Interlocks shall be provided such that all entrance doors shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it shall only be possible to restore the machine to operation by closing the door and reinitiating exposure by manual action at the control panel; and

8. At least one "Panic" emergency shut-off button shall be located in the treatment room and one by the control panel. The "Panic" button shall be clearly visible, easily accessible and be capable of immediately terminating machine operation.

(u) The following are the calibration requirements for therapeutic x-ray and therapeutic accelerator installations with energies of one ***[meV]* *MeV*** and above:

1. The calibration of systems shall be performed before the system is first used for irradiation of a patient, and thereafter at time intervals which do not exceed 12 months and after any change which might, in the opinion of the qualified radiological physicist, significantly alter the calibration, spatial distribution, or other characteristics of the therapy beam;

2. The calibration shall be performed with an established calibration protocol which meets or exceeds the requirements set by the American Association of Physicists in Medicine;

3. The calibration shall be performed by a qualified radiological physicist;

4. The calibration shall be performed with a dosimetry system whose calibration shall be directly traceable to a national standard and which shall have been calibrated within the preceding three years;

5. The calibration shall be such that the dose at a reference point in soft tissue may be calculated within plus or minus 5 percent;

6. The full calibration of the therapy beam shall include, but not be limited to, the following determinations:

i. Verification that the equipment is operating in compliance with the design specifications for accuracy of the light localizer, the side light and backpointer alignment with the isocenter;

ii. Verification that the equipment is operating in compliance with the design specifications for acceptable variation in the axis of rotation for the table, gantry and jaw system, and beam flatness and symmetry at specified depths;

iii. The absorbed dose rate at representative depths in a phantom for the range of field sizes used for each effective energy, and for representative distances used for radiation therapy;

iv. The congruence between the radiation field and the field indicated by the localizing device;

v. The uniformity of the radiation field and its dependency upon the direction of the useful beam;

vi. Verification of depth-dose data and isodose curves applicable to the specific machine; and

vii. Verification of the applicability and transmission factors of all accessories such as wedges, shadow trays, compensators, etc.

7. Records of the calibration performed pursuant to 1 above shall be maintained by the registrant and made available for inspection by the Department for five years after completion of the calibration; and

8. A copy of the latest full calibration shall be available for calculating patient treatment parameters.

(v) Spot checks meeting the following requirements shall be performed on all therapeutic x-ray and therapeutic accelerator installations with energies of one ***[meV]* *MeV*** and above:

1. The qualified radiological physicist will determine those parameters to be spot-checked and the procedure to be used when performing those spot checks. The spot-check procedure shall be in writing and shall specify the frequency at which tests or measurements are to be performed, not to exceed one month, and the acceptable tolerance for each parameter measured in the spot-check. A qualified radiological physicist need not actually perform the spot-check measurement. If a qualified radiological physicist does not perform the spot-check measurement, the results of the spot-check measurement shall be reviewed by a qualified radiological physicist within 15 days;

2. The measurements taken during spot-checks shall demonstrate the degree of consistency of the operating characteristics which can affect the radiation output of the system or the radiation delivered to a patient during a therapy procedure;

3. The cause for a parameter exceeding tolerances set by the qualified radiological physicist shall be promptly investigated and corrected before the system is used for patient irradiation;

4. Whenever a spot-check indicates a significant change in the operating characteristics of a system, as specified in the spot-check procedures, the system shall be recalibrated as required in (u) above; and

5. Records of spot-check measurements performed shall be maintained by the registrant for a period of five years and made available for inspection by the Department.

(w) Operating procedures for therapeutic x-ray and therapeutic accelerator installations with energies of one *[meV]* *MeV* and above are as follows:

1. Therapeutic systems shall not be left unattended unless the system is secured against unauthorized use;

2. No individual other than the patient shall be in the treatment room during treatment of a patient;

3. If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used; and

4. The system shall not be used in the administration of radiation therapy unless the requirements of (u) and (v) above have been met.

7:28-14.5 *[Teletherapy apparatus utilizing radioactive material]*

[Reserved]

*[(a) The following are the equipment requirements for teletherapy apparatus utilizing radioactive material:

1. The source housing and collimating device shall be so constructed that, at one meter from the source when the beam control mechanism is in the "off" position, the maximum exposure rate shall not exceed 10 milliroentgens per hour and the average shall not exceed two milliroentgens per hour;

2. The leakage radiation measured at one meter from the source when the beam control mechanism is in the "on" position shall not exceed 0.1 percent of the useful beam exposure rate at one meter;

3. Adjustable or removable beam-limiting diaphragms shall allow transmission of not more than five percent of the useful beam;

4. In the "on" position, the moving part shall always come to rest with the source and the beam collimating device accurately aligned. If a liquid "on-off" device is used, repeated operation of the device shall not cause a variation of more than five percent in exposure rate in the "on" position;

5. The control mechanism shall be of a positive design, capable of acting in any position of the housing;

6. The "on-off" shutter mechanism shall be so designed as to return automatically to the "off" position in the event of any breakdown or interruption of the activating force and shall stay in the "off" position until activated from the control panel;

7. The equipment, in addition to the automatic closing device, shall be so designed that it can be manually turned off with a minimum risk of exposure. The moving parts shall be so designed that it is highly improbable for projections, breakages, loose screws, dirt or failure of any part to impede the closing of the source;

8. There shall be a warning device at the source housing and on the control panel that plainly indicates whether the apparatus is "on" or "off". This device shall be activated by the moving part that changes the apparatus from the "off" to the "on" position;

9. The following are the equipment requirements for timer systems:

i. A timer system shall be provided which has a display at the treatment control panel. It shall be graduated in minutes and seconds and/or fractions of minutes. It shall have a pre-set time selector;

ii. The timer shall terminate irradiation when a pre-selected time has elapsed;

iii. The timer shall permit pre-setting and determination of exposure times to an accuracy of one second or less;

iv. The timer shall not permit an exposure if set at zero; and

v. An elapsed-time indicator shall be provided which is activated when radiation is emitted and retains its readings after irradiation is interrupted or terminated.

10. The equipment shall be provided with a locking device to prevent unauthorized use.

(b) The following are the structural design requirements for teletherapy equipment:

1. Shielding of the therapy room shall be a permanent part of the building;

2. All wall, floor, and ceiling areas that can be struck by the useful beam, plus a border of one foot, shall be provided with primary protective barriers. All wall, floor, and ceiling areas that because of mechanical or electrical restrictions cannot be struck by the useful beam shall be provided with secondary protective barriers. The radiation levels outside these barriers shall satisfy the requirements of N.J.A.C. 7:28-6, "Permissible Dose Rates, Radiation Levels and Concentrations;"

3. Interlocks shall be provided so that when any door to the teletherapy room is opened the teletherapy apparatus shall shut off automatically. After such a shut-off, it shall be possible to restore the apparatus to full operation only from the control panel;

4. Windows, mirror systems, or closed-circuit television viewing screens used for observing the patient shall be so located that the operator can see the patient and the control panel from the same position;

5. Provisions shall be made for two-way aural communications between the patient and the operator at the treatment control panel;

6. Each teletherapy room shall be equipped with a radiation monitoring device which continuously monitors the teletherapy beam condition by measurement of radiation and which is equipped with a back-up battery power supply for emergency operation. This device shall energize a visible signal to make the operator continuously aware of teletherapy beam condition; and

7. At least one "Panic" emergency shut-off button shall be located in the treatment room and one by the control panel. The "Panic" button shall be clearly visible, easily accessible and be capable of immediately terminating machine operation and returning the source to the "off" position.

(c) The requirements for performing full calibration measurements of teletherapy units are as follows:

1. Full calibration measurements shall be performed on each teletherapy unit:

i. Prior to the first use of the unit for treating a patient; and

ii. Prior to treating a patient:

(1) Whenever spot-check measurements indicate that the output value differs by more than five percent from the value obtained at the last full calibration corrected mathematically for physical decay;

(2) Following replacement of the radiation source or following reinstallation of the teletherapy unit in a new location;

(3) Following any repair of the teletherapy unit that include removal of the source or major repair of the components associated with the source exposure assembly; and

iii. At intervals not exceeding one year.

2. Full calibration measurements required by 1 above shall include determination of:

i. The exposure rate or dose rate to an accuracy within plus or minus three percent for the range of field sizes and for the distance, range of distances or the axis distance used in radiation therapy;

ii. The congruence between the radiation field and the field indicated by the light beam localizing device;

iii. The uniformity of the radiation field and its dependence upon the orientation of the useful beam;

iv. Timer accuracy; and

v. The accuracy of all distance measuring devices used for treating humans.

3. Full calibration measurements shall be made in accordance with the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine (Physics in Medicine and Biology, Vol. 16, No. 3, 1971, pp. 379-396), except as this requirement may be amended by the Nuclear Regulatory Commission, 10 CFR 35;

4. The exposure rate or dose rate values determined in 2i above shall be corrected mathematically for physical decay for intervals not exceeding one month; and

5. Full calibration measurements required by 1 above and physical decay corrections required by 4 above shall be performed by an expert qualified by training and experience in accordance with (f) below.

(d) The requirements to perform periodic spot-check measurements of teletherapy units are as follows:

1. Spot-check measurement shall be performed on each teletherapy unit at intervals not exceeding one month;

2. Spot-check measurements required by 1 above shall include determination of:

i. Timer accuracy;

ii. The congruence between the radiation field and the field indicated by the light beam localizing device;

iii. The accuracy of all distance measuring devices used for treating humans;

iv. The exposure rate, dose rate, or a quantity related in a known manner to these rates for one typical set of operating conditions; and

v. The difference between the measurement made in iv above and the anticipated output, expressed as a percentage of the anticipated output (that is, the value obtained at last full calibration corrected mathematically for physical decay).

3. Spot-check measurements required by 1 above shall be performed in accordance with procedures established by an expert qualified by training and experience in accordance with (f) below. A qualified expert need not actually perform the spot-check measurements. If a qualified

expert does not perform the spot-check measurements, the results of the spot-check measurements shall be reviewed by a qualified expert within 15 days.

(e) The following are the requirements for calibrating instruments used for full calibration and spot-check measurements:

1. Full calibration measurements required by (c) above shall be performed using a dosimetry system that has been calibrated by the National Bureau of Standards or by a Regional Calibration Laboratory accredited by the American Association of Physicists in Medicine. The dosimetry system shall have been calibrated within the previous two years and after any servicing that may have affected system calibration; and

2. Spot-check measurements required by (d) above shall be performed using a dosimetry system that has been calibrated in accordance with 1 above. Alternatively, a dosimetry system used solely for spot-check measurements may be calibrated by direct intercomparison with a system that has been calibrated in accordance with 1 above. This alternative calibration method shall have been performed within the previous one year and after each servicing that may have affected system calibration. Dosimetry systems calibrated by this alternative method shall not be used for full calibration measurements.

(f) The requirements for a person to be considered an expert qualified by training and experience to calibrate a teletherapy unit and establish procedures for, and review the results of, spot-check measurements are that the qualified expert:

1. Is certified by the American Board of Radiology in Therapeutic Radiological Physics, Radiological Physics, Roentgen-Ray and Gamma-Ray Physics, or X-ray and Radium Physics; or

2. Has the following minimum training and experience:
i. A Master's or Doctor's degree in physics, biophysics, radiological physics or health physics;
ii. One year of full-time training in therapeutic radiological physics; and

iii. One year of full-time experience in a radiotherapy facility including personal calibration and spot-check of at least one teletherapy unit.

(g) The requirements for installation of a permanent radiation monitor in teletherapy rooms and the requirements to use portable survey instruments or audible alarm dosimeters when the permanent radiation monitoring system fails shall be as follows:

1. In each teletherapy room there shall be a permanent radiation monitor for continuous monitoring of beam status;

2. Each radiation monitor shall be capable of providing visible notice of a teletherapy unit malfunction that may result in an exposed or partially exposed source. The visible indicator of high radiation levels shall be located so as to be observable by a person entering the treatment room;

3. Each radiation monitor shall be equipped with an emergency power supply separate from the power supply to the teletherapy unit. This emergency power supply may be a battery system;

4. Each radiation monitor shall be tested for proper operation each day before the teletherapy unit is used for treatment of patients; and

5. If a radiation monitor is inoperable for any reason, any person entering the teletherapy room shall use a properly operating portable survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may have resulted in an exposed or partially exposed source. Survey instruments or dosimeters shall be tested daily before use.

(h) The following are the requirements for inspection and servicing of the source exposure mechanism:

1. Each teletherapy unit used to treat humans shall be fully inspected and serviced during source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism; and

2. Inspection and servicing of the teletherapy unit shall be performed by persons specifically licensed to do so by the Nuclear Regulatory Commission or a Nuclear Regulatory Commission Agreement State.

(i) Records of the measurements, tests, corrective actions, inspection and servicing of the teletherapy unit, and instrument calibrations made pursuant to (e) above and records of the qualified expert's training and experience made pursuant to (f) above shall be maintained for inspection by the Department.

1. The following records shall be preserved for five years after completion of the full calibration or after inspection and servicing:

i. Full calibration measurements reports made pursuant to (c) above;
ii. Records of calibration of the instruments used to make the measurements required by (i) above;

iii. Records of inspection and servicing of the teletherapy unit made pursuant to (h) above; and

iv. Records of the qualified expert's training and experience made pursuant to (f) above.

2. Records of spot-check measurements and corrective actions made pursuant to (d) above and records of calibration of instruments used to make spot-check measurements pursuant to (e) above, shall be preserved for two years after completion of the spot-check measurements and corrective actions.]*

7:28-14.6 *[Therapy simulator installations]* *(Reserved)*

*[(a) Medical radiographic units used solely for the purpose of identifying the area to be treated with therapeutic doses of radiation shall meet the following requirements:

1. The tube housing shall be of a diagnostic type;
2. Diaphragms shall be provided for collimating the useful beam and shall provide the same degree of protection as required of the housing;

3. The total filtration permanently in the useful beam shall be not less than 2.5 millimeter aluminum equivalent, or the half-value layer shall be not less than 2.5 millimeters aluminum equivalent;

4. An automatic device shall be provided to terminate the exposure after preset time or exposure;

5. The exposure switch shall be a dead-man type and shall be arranged so that it can be operated when the operator is within a shielded area. The timer switch button when depressed shall not energize the x-ray tube when the timer is in the "off" or zero position. Exposure switches for "spot-film" devices used in conjunction with fluoroscopic tables shall be exempted from this shielding requirement, provided the requirements of (b)5 below are satisfied; and

6. Operating procedures for therapy simulator installations using radiographic units are as follows:

i. Only individuals required for the therapy simulating radiographic procedure shall be in the therapy simulating room during exposure; and

ii. The exposure of individuals shall be controlled by the use of shielding and protective clothing as necessary to insure that they are not exposed to radiation doses in excess of those permitted by N.J.A.C. 7:28-6, "Permissible Dose Rates, Radiation Levels and Concentrations." They shall use personnel monitoring equipment as required by N.J.A.C. 7:28-7.4, "Use of personnel monitoring equipment."

(b) Medical fluoroscopic units used solely for the purpose of identifying the area to be treated with therapeutic doses of radiation shall meet the following requirements:

1. The tube housing shall be of a diagnostic type;
2. The distance from the target to the panel or to the table top shall not be less than 12 inches;

3. A cone shall extend from the tube housing to a point as near as is practical to the panel or table top. The cone's walls shall provide the same degree of protection as is required of the housing;

4. An adjustable diaphragm system shall be provided on all fluoroscopes, except those with image intensifiers, to restrict the size of the useful beam so that the fluoroscopic screen has an unilluminated border when the diaphragm system is open to the fullest extent and the screen is 15 inches from the table top or panel;

5. The tube mounting and the fluoroscopic screen shall be linked together so that during use the fluoroscopic screen always fully intercepts the useful beam;

6. Adjustable diaphragms or shutters to restrict the size of the useful beam shall provide a minimum of 1.5 millimeters lead equivalent protection;

7. The total filtration permanently in the useful beam shall be equal to at least 2.5 millimeters aluminum equivalent, or the half-value layer shall be not less than 2.5 millimeters aluminum equivalent;

8. The fluoroscopic screen shall be covered with a transparent protective material such that under normal operating conditions the dose rate measured five centimeters from the viewer's side of the screen shall not be more than 20 milliroentgens per hour without a patient and with the screen eight inches from the table top or panel;

9. With apparatus using an image intensifier, a protective shield shall be provided so that the useful beam does not produce a radiation hazard to the operator or other personnel in a fluoroscopic room;

10. A manually reset, cumulative timing device shall be used which will automatically indicate elapsed exposure time and either turn off the apparatus automatically or give an audible signal when the total exposure exceeds a predetermined limit given in one or a series of exposures. The device shall have a maximum range of five minutes;

11. For routine fluoroscopy, the exposure rate measured at the panel or table top shall not exceed five rems per minute;

12. For routine fluoroscopy, the exposure rate measured at the panel or table top shall not exceed 10 rems per minute for fluoroscopic units provided with automatic mode and no optional high level control;

13. A bucky slot cover and shielding between patient and fluoroscopist shall be used and shall provide protection equivalent to at least 0.5 millimeters of lead. Such accessory shielding shall not substitute for the wearing of a protective apron as required by 14iii below; and

14. Operating procedures for therapy simulator installations using fluoroscopic equipment are as follows:

i. Fluoroscopic equipment shall be operated only by authorized instructed individuals;

ii. Protective gloves and an apron of at least 0.25 millimeters lead equivalent shall be worn by the fluoroscopist during every examination; and

iii. Only individuals required for the therapy simulating fluoroscopic procedure shall be in the therapy simulating room during exposure. The exposure of such individuals shall be controlled by the use of shielding and protective clothing as necessary to insure that they are not exposed to radiation doses in excess of those permitted by N.J.A.C. 7:28-6, "Permissible dose rates, radiation levels and concentrations". They shall use personnel monitoring equipment as required by N.J.A.C. 7:28-7.4 "Use of personnel monitoring equipment".

(c) Permanent structural shielding and/or protective barriers shall be used as necessary to insure that no person other than the patient receives a dose in excess of the limits specified in N.J.A.C. 7:28-6 "Permissible dose rates, radiation levels and concentrations".]*

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Scholars Eligibility Requirements

Adopted Amendment: N.J.A.C. 9:7-4.1

Proposed: April 6, 1987 at 19 N.J.R. 498(a).

Adopted: June 11, 1987 by the Student Assistance Board,
Joseph Streit, Chairman.

Filed: June 12, 1987 as R.1987 d.278, **without change**.

Authority: N.J.S.A. 18A:71-26.12.

Effective Date: July 6, 1987.

Expiration Date: April 13, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:7-4.1 Eligibility requirements

(a) (No change.)

(b) Distinguished Scholarship recipients must meet the academic requirements as defined by the Student Assistance Board. The academic requirements shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores. Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used. Each year the Student Assistance Board shall determine and publicize the actual academic requirements prior to the distribution of awards. Such scholarships may be awarded on the basis of indicators of academic merit defined by the Board, without consideration of financial need, and must satisfy the requirements as stipulated in N.J.A.C. 9:7-2.9. Distinguished Scholarship recipients must attend an eligible New Jersey institution and may be eligible to receive a Garden State Scholarship or an Educational Opportunity Fund Grant. Distinguished Scholarship recipients will be selected without regard to their course of study and awards will not be limited by institutions. Distinguished Scholarships are renewable for up to four or five years, depending upon the course of study and providing the student continues to achieve satisfactory academic progress. Eligible scholars may receive assistance under the Tuition Aid Grant Program.

(c) (No change.)

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Food Stamp Program

Employment and Training Requirements

Readopted New Rules: N.J.A.C. 10:87-3.13 and 3.14

Readopted Amendments: N.J.A.C. 10:87-2.3, 2.6, 2.19, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, and 3.21

Proposed: April 20, 1987 at 19 N.J.R. 649(a).

Adopted: June 2, 1987 by Drew Altman, Ph.D., Commissioner,
Department of Human Services.

Filed: June 3, 1987 as R.1987 d.261, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4B-2, the Food Security Act of 1985 (P.L. 99-198), 51 FR 47378 and 52 FR 11021.

Effective Date: July 6, 1987.

Expiration Date: March 1, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes Subsequent to Proposal:

10:87-2.6(b)1 Language was added to clarify that while the regulation specifies work and training violations, it is equally applicable to work registration and voluntary quit violations.

2.19(a)2i Language was added to specify that the food stamp worker must also explain the food stamp work registration and employment and training requirements to the applicant at the time of the household interview.

3.18(b)8-10 In accordance with Federal technical amendments published in the Federal Register of April 7, 1987 at 52 FR 11021, language was added to conform amendments to the mandated food stamp sanctions for failure to comply with comparable Title IV or unemployment compensation requirements. Specifically, the sanction applies to the violating individual only, unless that individual is the head of household. Further, language was added to specify that household members who fail to comply with a **noncomparable** Title IV or unemployment compensation requirement lose their food stamp work registration exemption and must register for work in the Food Stamp Program, if otherwise required to do so.

3.18(c)3 and 3.20(b) Because violations now apply to individuals rather than the entire household, except in cases where the violator is the head of household, language was revised so that it may apply to either an individual or a household.

3.19(c)6 Language was added to clarify that participant reimbursements will be provided in the form of an allowance.

3.19(d)9 Language concerning continuation of suitable employment was deleted as the requirement is covered under voluntary quit provisions.

3.19(h)-(i) Regulations were added to reflect requirements of the State Plan for Food Stamp Employment and Training concerning participation requirements in the job search training component. In addition, rules concerning the vocational training component have also been added. Work registrants who have complied with other job search and/or job search training requirements may be referred on a voluntary basis for vocational training through the Job Training Partnership Act (JTPA) Program.

3.20(b)1i-iii Language was deleted since the general fair hearing information as it pertains to employment and training requirements is addressed at N.J.A.C. 10:87-3.20(c)6.

3.20(c)6 Additional language was added concerning general fair hearing rights.

3.21(b)5 Included in the Food Security Act was a provision that any period of ineligibility shall end when the household member who committed the violation complies with the requirement that has been violated. In accordance with the Food Security Act and the Federal final rule published in the Federal Register of April 7, 1987 at 52 FR 11021, the regulation was amended to reflect this provision.

In addition to the above changes, various technical and editorial changes including corrections of publication errors, recodification and alignment of cross references have also been made upon adoption.

10:87-2.3 Nonhousehold members, boarders and excluded household members

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

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1.-4. (No change.)

5. Disqualification for noncompliance with work requirements: Individuals disqualified for noncompliance with the work registration, work and training requirements or voluntary quit provisions (see N.J.A.C. 10:87-3.15 through 3.21 regarding work requirements).

10:87-2.6 Head of household

(a) The household shall designate an adult member to be head of household, except that for purposes of failure to comply with work registration, work and training requirements and voluntary quit provisions, the head of household shall be determined in accordance with (b) below.

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the ***work registration,* work or training requirement *or voluntary quit*** violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i. No person of any age living with a parent, or person fulfilling the role of parent (substitute parent), shall be considered head of household if such parent or substitute parent is registered for work or exempt from work registration requirements because such parent or substitute parent is subject to and participating in any work requirements under Title IV of the Social Security Act; or is in receipt of unemployment compensation (or has registered for work as part of the unemployment compensation application process); or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

ii. If there is no principal source of earned income in the household, the CWA shall determine who is the designated head of household as specified in (a) above.

10:87-2.19 Interview process

(a) All interviews for food stamp benefits shall meet the requirements below.

1. (No change.)

2. Responsibilities of interviewer: The interviewer shall not simply review the information which appears on the application but shall explore and resolve with the household, any unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including an explanation of the processing standards and the household's responsibility to report changes.

i. The interviewer shall explain to the applicant the ***work registration and employment and training requirements and the*** consequences of the household's principal wage earner quitting his or her job without good cause (see N.J.A.C. 10:87-3.19(d)).

3.-7. (No change.)

10:87-3.13 State Plan for Food Stamp Employment and Training Programs

(a) The Department of Human Services, Division of Public Welfare is responsible for designing and operating food stamp employment and training (E&T) programs effective April 1, 1987, which may consist of one or more or a combination of employment, training, education, and/or job search components.

1. Employment and training component defined: Employment and training component is defined as a work experience, work training or job search program designed to help food stamp recipients move promptly into unsubsidized employment.

2. The State shall receive an employment and training program grant for each fiscal year or portion of the fiscal year in which the State operates an approved employment and training program. The grant is 100 percent

federally funded. The E&T grant shall require no State or county matching.

i. E&T program grants shall be used to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with the approved State Plan. E&T grants shall not be used for the process of determining whether or not a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operation of an E&T component has reported non-compliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an E&T component for assessment or participation.

ii. E&T grants shall not be used to subsidize the wages of participants, or to reimburse participants under the provisions of N.J.A.C. 10:87-3.19(c)6.

iii. E&T funds shall not supplant State or local funds devoted to basic education programs. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

3. If the State fails, without good cause, to comply with Federal work requirements, including an approved State plan and specific performance standards established for the State by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), USDA/FNS may withhold funding for the employment and training programs. Non-receipt of an E&T grant does not release the State from performance requirements or sanctions for insufficient performance.

(b) The State Plan for Food Stamp Employment and Training Programs must be approved by USDA/FNS. The State Plan shall detail the following:

1. The nature of the employment and training components ***[of]*** the State plans to offer and reasons for such components, including cost information and an estimated operating budget;

2. The categories and types of mandatory work registrants exempt ***ed*** from E&T participation;

3. The characteristics of the work registrant population that the State intends to place;

4. The geographic areas covered by the plan and why, and the type and location of services to be offered;

5. The method the State will use to count all work registrants the first month of each Federal fiscal year;

6. The organizational relationship between the units responsible for certification and the units operating E&T components and between the State agency and other agencies it plans to coordinate with for the provision of services.

(c) The State Plan for Food Stamp Employment and Training Programs shall be available for public inspection after April 1, 1987, at the Division of Public Welfare, 6 Quakerbridge Plaza, Trenton, New Jersey.

(d) Quarterly reporting requirements: The Division of Public Welfare shall submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures ***s*** for the number of:

1. Participants newly work registered;

2. Work registrants exempted by the State Plan from participation in an E&T program, separated by the reason for exemption;

3. Participants who volunteer for and commence participation in an approved E&T component;

4. E&T mandatory participants, including Food Stamp Program applicants, who commence an approved E&T component;

5. Work registrants sent a notice of adverse action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component;

6. The number of persons disqualified from the Food Stamp Program for failure to comply with an E&T requirement; and

7. The number of E&T participants who became employed.

(e) Annual reporting requirements: The Division of Public Welfare (DPW) shall submit annually, on their first quarterly report, the number of work registered persons in the State as in October of the new Federal fiscal year. DPW shall submit annually, on their final quarterly report the following information:

1. The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

2. The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State Plan.

10:87-3.14 Employment and training program performance standards

(a) Performance standards: USDA/FNS establishes annual performance standards for the minimum number of eligible persons that must be placed in E&T programs. Mandatory performance standards will begin with Federal fiscal year 1989.

1. Definition of placed: A person may be considered placed in a E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance. Notices of adverse action sent for noncompliance with work registration or voluntary quit provisions shall not count as placements. Persons assigned to a component who have good cause for noncompliance shall not be counted as placed.

2. Performance formula: To determine the level of performance at the end of each fiscal year, FNS will divide the number of E&T mandatory participants plus volunteers the State has "placed" in an E&T component over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the "base of eligibles."

3. Counting placements in an E&T program: DPW shall count a person as placed in an E&T program, for purposes of performance standards, in accordance with the following:

i. If the person commences an employment and training component, or fails to comply with an E&T requirement*s* and is denied certification or is sent a notice of adverse action for the noncompliance, that person may be counted as placed.

(1) If an E&T mandatory participant does not comply with E&T requirements, and a notice of adverse action is sent, the person is counted as placed in the month the notice of adverse action is mailed.

(2) Notices of adverse action sent for noncompliance with work registration or voluntary quit shall not count as placements.

(3) Persons assigned to a component who have good cause for noncompliance shall not be counted as placed. If good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

ii. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only.

iii. Each time a participant is placed in a different component after having completed a prior component, that individual may be counted as placed.

iv. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed more than once in the same component.

4. Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all work registrants in the month of October plus newly work registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DPW) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year.

5. Accounting for short-term participants: A number of work registrants considered E&T mandatory participants who are counted in the base of eligibles (denominator) but who remain on the Food Stamp Program for such a short period of time that it is not possible to place them in an E&T component. These short term recipients inflate the base of eligibles. To counteract the effects of short-term participants, DPW shall decrease the base of eligibles in accordance with the approved State Plan procedures.

6. Performance data collection: To determine the annual total in the base of eligibles (denominator) DPW shall count the actual number of work registered individuals in the first month of the Federal fiscal year. Each subsequent month the DPW shall add to that figure the number of E&T mandatory participants, and volunteers who were placed in an E&T component that month. The method of measuring the number of persons "placed" (the numerator) shall be the same.

i. Separate counts shall be maintained for the mandatory participants, including applicants, and volunteers.

ii. A count of persons placed each month of the fiscal year shall be added cumulatively.

iii. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter.

7. Percentage of persons to be placed: USDA/FNS shall establish an annual performance standard for the minimum number of eligible persons that must be placed in E&T programs.

8. Variations in performance standards: USDA/FNS may adjust the performance standard for an individual state, if the state can show prospectively that the components it plans to offer, or the type of participant it plans to serve, will require a significantly higher level of effort *[required]*.

i. In determining whether an adjustment of the performance standard is warranted, and the level of the adjustment, FNS will consider the number of persons who will be placed, the intensity and effectiveness of the components and the cost.

ii. Only in extraordinary circumstances will USDA/FNS approve a performance standard which is lower than 40 percent of the nationwide standard.

10:87-3.15 Work registration

(a) Each household member who is not exempt in accordance with the provisions of N.J.A.C. 10:87-3.18 shall be registered for employment by the CWA at time of application, and at least once every 12 months after initial registration, as a condition of eligibility for participation in the Food Stamp Program.

(b) Registrants who move out of *[an]* *the* area shall reregister at their new location.

(c) The registration form need not be completed by the member required to register.

(d) The CWA shall provide work registration forms to the applicant or the household's authorized representative for each household member required to register for employment and permit the applicant or authorized representative to complete the form. Household members are considered to have registered when a completed work registration form is submitted to the CWA.

(e) The employment and training components to which participants will be referred may be limited by the availability of administrative funds provided by USDA.

10:87-3.16 Appropriate Food Stamp Employment and Training Program (FSETP) defined

For the purposes of Food Stamp Program work registration and work and training requirements, the "appropriate" Food Stamp Employment and Training Program Office (FSETP) shall be defined as that FSETP or its designee having jurisdiction in the area in which a registrant resides.

10:87-3.17 Registration procedure

(a) The CWA shall register for work each household member not exempted by the provisions of N.J.A.C. 10:87-3.18, regardless of whether or not the geographic area where the member resides will be covered by an employment and/or training component. In addition, exempt food stamp participants who voluntarily elect to participate in E&T programs shall be work registered as a volunteer.

(b) Upon reaching a determination that an applicant or a household member of the applicant's household is required to register, the CWA shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply.

1. The CWA shall also provide, either by mail or in person, to each work registrant in the household, a written statement of the pertinent work requirements, rights and responsibilities of work registered household members, and consequences of failure to comply. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at time of recertification.

(c) The CWA shall permit *[an]* *the* applicant or the household's authorized representative to complete a work registration form for each household member required to register for employment in accordance with (a) above.

(d) Household members are considered to have registered when an identifiable work registration form is submitted to the CWA.

(e) Registration shall be accomplished through the execution of a work registration form. The certification worker shall review the registration form for completeness, retain a copy in the case record, and forward the original to the appropriate FSETP office in accordance with DPW instructions. If the certification worker is aware that any registrant is exempt from the E&T requirements, including migrant or seasonal farm workers away from their usual place of residence, and following the work stream, it shall be reflected on the work registration form. The CWA

shall forward work registration forms to the FSETP office not later than five days after the date of certification.

(f) Frequency of registration: Each nonexempt person shall be required to register at the time of application and at least once every 12 months thereafter. Reregistration shall be accomplished by the return of a completed work registration form to the CWA which shall retain a copy in the case record and forward the original to the FSETP in accordance with (e) above.

(g) Changes to be reported to FSETP: The CWA shall be responsible for notifying the appropriate FSETP office via an information report form of those work registrants who become exempt from the work registration requirements subsequent to registration, are no longer certified for participation in the program, or move from the area. Such notification shall be provided to the appropriate FSETP office within a reasonable time period but not to exceed 30 days from the date the change becomes known to the CWA.

(h) Determination of work registration in case of FSETP/*[CEA]* *CWA* disagreement: In the event that FSETP disagrees with the CWA determination that the individual is required to register for work, FSETP may request a reconsideration of the individual's nonexempt status. The CWA must respond to the reconsideration request within 30 days and FSETP must accept the response as final. If, however, the CWA fails to respond within 30 days, FSETP shall deregister the household member.

10:87-3.18 Exemptions from the work registration requirement

(a) (No change.)

(b) The following persons shall be exempt from the work registration requirement:

1. Persons under 16 and over 60: Program participants or applicants who are under 16 years of age or aged 60 years or over shall be exempt. If a child has its 16th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption. A person age 16 or 17 who is not the head of household or who is attending school, or enrolled in an employment training program on at least a half-time basis, is exempt.

2.-4. (No change.)

5. Employed persons: Persons who are employed or self-employed at least 30 hours per week or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be exempt. This shall include migrant and seasonal farm workers who are under contract or similar written agreement with an employer or crew chief to begin employment within 30 days, although this shall not prevent individuals from seeking additional services from FSETP.

i. (No change.)

6.-7. (No change.)

8. Recipients of unemployment compensation: Persons in receipt of unemployment compensation and persons who have applied for, but have not yet begun receiving unemployment compensation shall be exempt.

i. Failure to comply: Persons failing to comply with an unemployment compensation requirement comparable to a food stamp work registration or [job search] employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement. ***If the CWA determines that the unemployment compensation requirement is comparable, the individual, or household (if the individual who committed the violation is head of household) shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-3.20(c). The CWA shall provide a notice of adverse action within 10 days after learning of the noncompliance with the unemployment compensation requirement.***

***ii. An individual or household shall not be disqualified if the noncomplying member meets one of the exemption criteria at N.J.A.C. 10:87-3.18 other than the exemptions at 3.18(b)8 (exemption due to receipt of UIB) or 3.18(b)10 (exemption due to compliance with a Title IV (AFDC) work or training requirement).**

iii. Household members who fail to comply with a noncomparable unemployment compensation requirement shall lose their exemption under this section and must register for work if otherwise required to register in accordance with (a) above.*

9. (No change.)

10. Title IV (AFDC) work registrant: A household member subject to and complying with any work or training requirement under Title IV (AFDC) of the Social Security Act, including WIN registration and participation, shall be exempt.

i. Failure to comply: Persons failing to comply with a Title IV requirement comparable to a food stamp work registration or employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement. ***If the CWA determines**

that the Title IV requirement is comparable, the individual, or household (if the individual who committed the violation is head of household) shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-3.20(c). The CWA shall provide a notice of adverse action within 10 days after learning of the noncompliance with the Title IV requirement.

ii. An individual or household shall not be disqualified if the noncomplying member meets one of the exemption criteria at N.J.A.C. 10:87-3.18 other than the exemptions at 3.18(b)8 (exemption due to receipt of UIB) or 3.18(b)10 (exemption due to compliance with a Title IV (AFDC) work or training requirement).

iii. Household members who fail to comply with a noncomparable Title IV requirement shall lose their exemption under this section and must register for work if otherwise required to register in accordance with (a) above.*

(c) Persons losing exempt status: Persons losing exempt status due to any change in circumstance that is subject to the reporting requirements of N.J.A.C. 10:87-9.7(a)1i (such as loss of employment that also results in a loss of income of more than \$25.00 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported according to the following procedures:

1. The CWA shall be responsible for providing the participant with the work registration form when the change is reported.

2. Participants shall be responsible for returning the work registration form to the CWA within 10 calendar days from the date the work registration form was handed to the household member reporting the change in person, or the date the CWA mailed the work registration form.

3. If the household fails to return the work registration form, the CWA shall issue a notice of adverse action stating that the ***participant or if the individual is head of household, the*** household is being terminated and why, but that the ***[household can avoid]*** termination ***can be avoided*** by returning the work registration form.

10:87-3.19 Work registrant requirements

(a) Work registrant requirements: For the purposes of retaining eligibility for the Food Stamp Program, a work registrant shall be required to comply with the provisions of this subchapter and the requirements of the State Plan for Employment and Training Programs.

1. If a person is not exempt from employment and training requirements, the FSETP worker shall be responsible for screening (assessing) that person and, if appropriate, referring him or her to an employment and training component within 10 days of the initial assessment. Upon entry into each component, the registrant participant or volunteer shall be told, ***[with]* *either*** orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The CWA food stamp office shall take appropriate sanction action within 10 working days after learning of noncompliance.

i. Assessment defined: Assessment is defined as an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an employment and training component.

(b) Work registrants shall:

1. Report, at the direction of the Food Stamp Employment and Training Program Office (FSETP), to an assessment interview and/or to an employment and training program component under the approved State Plan for Food Stamp Employment and Training Programs;

2. Participate in an employment and training program, if assigned;

3. Respond to a request from the FSETP or its designee for supplemental information regarding employment status or availability for work;

4. Report to an employer to whom referred by the FSETP or designee if the potential employment meets the suitability requirements described in ***[(d)]***(e)*** below.

5. Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage.

(c) Employment and training programs are as follows:

1. Persons required to register for work and not exempted by the State Plan for Employment and Training Programs from placement in a job component shall be subject to the employment and training requirements imposed by the State Plan for that individual. Such individuals are referred to as E&T mandatory participants.

2. Employment and training programs may include, but are not limited to, approved:

i. Job search activity (see ***[(f)]***(g) and (h)*** below);

ii. Training activity ***see (i) below***;

iii. Employment activity;

iv. On-the-job training;

v. On-site work experience; or
vi. Other activity that will lead to gainful employment.

3. Requirements may vary among participants.

4. Failure to comply without good cause with the employment and training requirements shall result in disqualification of the individual, or in the case of noncompliance of the head of household, the entire household shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-3.20.

5. Time spent in an employment and training program: The number of months a participant spends in an employment and training component shall be determined by the FSETP. The FSETP shall also determine the number of successive components in which a participant may be placed.

i. The minimum level of effort of any work or training component shall provide that compliance by the work registrant shall entail an average of 12 hours of activity per month per participant for two months (or less in a work experience component if the household's benefit divided by the minimum wage is less than this amount).

ii. The time spent by the members of a household collectively each month in an employment and training program work experience component shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage.

iii. The total hours of participation in an E&T non-work component for any household member individually in any month, together with any hours worked for compensation, shall not exceed 120.

6. Participant reimbursement: Participants in an employment and training program, including volunteers, shall be reimbursed by the CWA for the actual costs of transportation, or other actual costs that are reasonably necessary and directly related to participation in the employment and training programs up to \$25.00 per month for any participant. ***Such reimbursement shall be provided in the form of a participant allowance.***

i. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.

7. Voluntary participation: Individuals may elect to voluntarily participate in available work and training programs.

i. The FSETP office shall permit, to the extent practicable, persons exempt from work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program offered.

ii. Voluntary participants in an employment and training component shall not be disqualified for failure to comply with work and training requirements.

iii. The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants as specified in (c)5 above.

(d) Voluntary quit: No household whose head of household voluntarily quits his or her most recent job without good cause shall be eligible for participation in the Food Stamp Program except as provided in 3 below. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer shall not be considered as a voluntary quit. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause (see *(e))* *(f)* below concerning strikers).

1. Determining whether a voluntary quit occurred: When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed (that is, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work has voluntarily quit his or her most recent job (that is, employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause. For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program.

i. Head of household: If a determination of voluntary quit is established, the CWA shall then determine if the member who quit is the head of household in accordance with N.J.A.C. 10:87-2.6.

2. CWA Action: The CWA shall take the appropriate action, as outlined in i through iv below, upon a determination that the head of household voluntarily quit employment.

i. Denial of application: Upon a determination that the head of household voluntarily quit employment, the CWA shall determine if the voluntary quit was with good cause as defined below. If the voluntary quit was not for good cause, the household's application for participation shall be denied for a period of 90 days beginning with the date of quit. The household shall be advised of the reason for the denial and of its rights to reapply at the end of the 90 days period, the circumstances under which a voluntary quit disqualification may be ended, and of its right to request a fair hearing.

ii. Disqualification of participating households: If the CWA determines that the head of household of a participating household voluntarily quit his or her job while participating in the Food Stamp Program, the CWA shall provide the household with a notice of adverse action within 10 days of the date the determination of voluntary quit was made. The notice shall specify the period of the disqualification, the circumstances under which a voluntary quit disqualification may be ended, the household's right to a fair hearing and that the household may reapply at the end of the disqualification period. The household shall be disqualified for three months beginning with the first month after normal adverse action procedures have been taken. If the household leaves the program before the sanction can be levied, the sanction shall not be imposed until the household returns to the program. If a household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of next month after the hearing decision is rendered.

(1) Fair hearings: Each household has a right to a fair hearing to appeal a reduction, termination, or denial of benefits due to a determination that the household's head of household voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

iii. (No change in text.)

3. Exemptions from voluntary quit provisions: Persons exempt from the work registration provisions as stated in N.J.A.C. 10:87-3.18 are exempt from the voluntary quit provisions.

4. Good cause: Good cause for leaving employment includes the good cause provisions found in N.J.A.C. 10:87-3.20*(d) and*(e) and resigning from a job that does not meet the suitability criteria specified in *[(d)8]* below. ***Good cause for leaving employment shall also include:***

(1) through (9) recodified as i. through ix. (No change in text.)

5. Verification: To the extent that the information given by the household is questionable as defined in N.J.A.C. 10:87-2.21(a)8i, the CWA shall request verification of the household's statements.

(1) through (5) recodified as i. through v. (No change in text.)

6. Rules on ending a voluntary quit disqualification are as follows:

i. Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

ii. Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit.

iii. Eligibility may also be reestablished if the violator becomes exempt from work registration requirements in accordance with N.J.A.C. 10:87-3.18(b), other than the exemptions at N.J.A.C. 10:87-3.18(b)8 (exemption due to receipt of UIB), and 3.18(b)10 (exemption due to Title IV (AFDC) work or training participation requirements).

7. Persons who have been disqualified for quitting a job as head of household of one household shall carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it in accordance with (d)6 above.

[8. Accepting suitable employment: The registrant shall be required to accept any bona fide offer of suitable employment to which he or she has been referred by the appropriate FSETP office.]

[e] Unsuitable employment: Employment shall be considered unsuitable if:

Recodify i.-ii. as 1.-2. with no change in text from proposal.

*[9. Continuance of suitable employment: The registrant shall be required to continue suitable employment to which he or she was referred,

unless termination from such employment is due to circumstances beyond his or her control, the employment is no longer considered suitable in accordance with 8 above, or the registrant becomes exempt from the work registration requirement (see N.J.A.C. 10:87-3.18).]*

*(e)**(f)* (No change in text.)

i. through v. recodified as 1. through 5. (No change in text.)

(1) through (3) recodified as i. through iii. (No change in text.)

*(f)**(g)* Job search activity: Persons required to register for work shall also be subject to an independent job search or other appropriate employment and training (E&T) activity.

1. Job search assignment: During the initial *[assignment]* *assessment* interview, the FSETP worker shall determine the job search requirements of each work registrant and shall provide each registrant with written notification regarding his or her job search requirements, procedures to be followed and the consequences of failure to comply. Based on the capabilities and characteristics of the registrant, the FSETP worker shall determine the extent of appropriate E&T activity for each work registrant.

i. Job Ready:

(1) Those registrants that have no apparent substantial barriers to employment shall be considered job ready.

ii. Non-Job Ready:

(1) Persons on temporary layoff or expecting to return to work within 60 days, shall be considered non-job ready for 60 days from the date of initial registration. At the end of the 60 day period, such persons shall be contacted to redetermine appropriateness for participation in job search.

iii. Exempt:

(1) The FSETP determination of exempt status shall be made at the time the work registration form is received from the CWA to preclude the need of such registrants to travel to the FSETP office for an interview, unless it is impossible for the FSETP office to determine exempt status from the information on the work registration form.

(2) Those work registrants for whom a job search is determined to be impractical, specifically including registrants residing an unreasonable distance from the E&T location or considered to be unsuitable for participation in any efforts toward employment due to a permanent condition of unemployability shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

(A) (No change.)

(3) Migrant and seasonal farmworkers away from their usual place of residence and following the work stream shall also be considered exempt.

(4) Those registrants with substantial barriers to employment such as, but not limited to, medical or social problems documented in writing, language or other serious problems, that alone or in conjunction with adverse labor market conditions would make them difficult to place shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

2. Job search requirements: Persons determined to be job ready or persons losing exempt status or reentering the Food Stamp Program after a period of absence shall be subject to and must comply with a job search for a minimum of eight weeks each 12 months. The FSETP office may require that the eight week period be one continuous period, or that it be divided into two separate job search periods which total eight weeks.

i. Job contact: Registrants shall contact, as required by FSETP, up to a minimum of 24 prospective employers during the eight week period. If the job search period is shortened, the number of required job contacts shall be reduced on a pro rata basis, to the maximum extent practicable.

(1) A referral to an employer shall be considered a job contact provided the registrant presents himself or herself to the employer as available for employment.

(2) To be considered a job contact initiated by the registrant, the registrant must present himself or herself to the employer as available for work and the employer must ordinarily employ persons in areas of work that the registrant is reasonably qualified for by means of experience, training or ability and is not considered unsuitable employment in accordance with N.J.A.C. 10:87-3.19(d)8.

(3) Depending upon the position being sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the FSETP office to be generally accepted practice.

(4) (No change.)

ii. Reporting job contacts to the FSETP office.

(1) Twice during the eight week job search period the work registrant shall report at a prescheduled time to the FSETP worker, the result of all job search contacts. If the eight week job search activity is divided

into two separate periods, the FSETP worker may require the registrant to report once during each period of job search activity.

(2) Job contacts shall be reported in writing in a manner prescribed by FSETP. At the time of the initial interview with the FSETP worker, the work registrant shall be informed about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the registrant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the FSETP worker at the work registrant's follow-up interview. The registrant shall be responsible for providing FSETP, upon reasonable request, any additional information regarding job contacts.

3. FSETP review of job contacts: The FSETP worker shall determine if the work registrant has completed the assigned number of job contacts.

i. (No change.)

ii. If the registrant was assigned a single continuous eight week job search period, no additional time shall be allowed unless the FSETP worker fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make up the disallowed contact(s).

iii. (No change.)

iv. If a registrant believes that a FSETP determination is improper, review of the determination may be obtained from a designated FSETP official not involved in the original determination. For example, if the registrant believes he or she has been improperly assigned to a job search category or assigned an improper number of job search contacts, or that an action which should have been counted as a contact was not, a review may be obtained. This also applies to an FSETP determination that noncompliance was not for good cause.

4. FSETP case records: A complete file on each work registrant shall be maintained by the FSETP office.

*(h) Job search training: Job search training consists of two segments, classroom group job search training techniques and motivation, followed by a period of supervised job club or job search.

1. The duration of the classroom training segment may vary dependent upon the approved program component available in a particular county.

i. The curriculum in the group training segment will include confidence-building, self-evaluation, goal assessment and training in job search skills. Participants will be taught to locate potential employers and to develop an individual job search profile.

ii. Participants will be expected to attend all classroom sessions. Failure to adhere to attendance and participation requirements without good cause may result in disqualification from the Food Stamp Program for failure to comply.

2. Following the job search training, participants will be required to undertake a supervised job search similar to independent job search, or participate in a supervised job club.

i. Job club participants may be required to report daily to a specific location (site) to make telephone contacts to obtain job interviews.

ii. Participants will be expected to attend all assigned site sessions. Failure to adhere to attendance and participation requirements without good cause may result in disqualification from the Food Stamp Program for failure to comply.*

*(i) Vocational training: After initial screening and assessment by the FSETP worker, an individualized plan will be developed with the participant. Work registrants who have complied with other job search and/or job search training requirements may be referred on a voluntary basis for educational development, skill training or vocational training through the Job Training Partnership Act (JTPA) Program in any of the 21 counties.

i. Vocational training may be offered through classroom training arranged by JTPA, and designed to train workers in occupations for which demand exceeds supply.*

10:87-3.20 Failure to comply

(a) If the registrant fails to comply with any of the work registration or work and training requirement provisions in this subchapter, without good cause, the appropriate FSETP office shall notify the county welfare agency in writing within five working days of the date such information becomes known to the FSETP, citing specific facts and circumstances, by means of an information report form.

(b) CWA responsibilities: Within 10 days after the FSETP provides notification of failure to comply, the CWA shall provide *the individual, or the individual is head of household,* the household with notice of adverse action and begin the disqualification period in accordance with the provisions of (c) below.

1. Fair hearing: Each *individual or* household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to

a determination of nonexempt status or a CWA/FSETP determination of failure to comply with the work registration and/or work and training requirements of this subchapter *(see (c)6 below)*.

*i. The household can appeal FSETP actions such as the job search category assigned, the number of job search contacts required, FSETP refusal to accept an action as a job search contact, or FSETP refusal to make a finding of good cause.

ii. A fair hearing shall be scheduled in accordance with N.J.A.C. 10:87-8.6(a)4 and the FSETP office shall be provided with sufficient advance notice to either permit the attendance of an FSETP representative or insure that an FSETP representative will be available for questioning over the phone during the hearing.

(1) FSETP representative attendance at hearing: If the Administrative Law Judge determines that the FSETP representative should be present at the hearing because of the nature and importance of the evidence to be given, the hearing shall be adjourned and rescheduled for a time at which the representative is able to attend. In such an event, the time frames prescribed by N.J.A.C. 10:87-8.19 for rendering a fair hearing decision shall be extended for as many days as elapse between the original fair hearing and the rescheduled fair hearing.]*

(c) Penalty for noncompliance: If the CWA determines that an individual other than the head of household as defined in N.J.A.C. 10:87-2.6(b) has refused or failed to comply with the requirements imposed by this subchapter and the State Plan for Employment and Training, that individual shall be ineligible to participate in the Food Stamp Program for two months and is treated as an ineligible household member in accordance with N.J.A.C. 10:87-7.14. If the head of household fails to comply, the entire household is ineligible to participate. The CWA shall take appropriate action as follows:

1. The period of ineligibility shall continue in both cases either until the member who caused the violation complies with the requirement as specified in N.J.A.C. 10:87-3.21, leaves the household, becomes exempt from work registration through the provisions of N.J.A.C. 10:87-3.18 other than the exemptions at 3.18(b)8 (exemption due to receipt of UIB) or *[3.18(a)10]* *3.18(b)10* (exemption due to compliance with a Title IV (AFDC) work or training requirement), or for two months, whichever occurs earlier.

2. Change in household composition: Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he or she is not head of household, the individual shall be considered an ineligible household member in accordance with N.J.A.C. 10:87-7.14.

3. The CWA shall determine whether good cause for noncompliance exists in accordance with (d) below.

4. The CWA shall provide the individual or household with a notice of adverse action within 10 days of determining that the noncompliance was without good cause. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included with the notice on the action which can be taken to end or avoid the sanction and procedures and requirements for reestablishment of eligibility.

5. The disqualification period shall begin with the first month following the expiration of the adverse action notice period, unless a fair hearing is requested.

6. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a determination of failure to comply with the work registration or work and training requirements of this subchapter. ***A fair hearing shall be scheduled in accordance with N.J.A.C. 10:87-8.6(a)4.***

i. Individuals or households may appeal CWA or FSETP actions such as exemption status, a type of requirement imposed, or CWA or FSETP refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decision on these matters.

*ii. The CWA/FSETP agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means.

iii. A household shall be allowed to examine its employment and training component case file at a reasonable time before the hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing.*

(d) Good cause for noncompliance: The CWA shall be responsible for determining good cause in those instances where the work registrant fails to comply with the work registration, work and training requirements or voluntary quit requirements of this subchapter. The county welfare agency shall take into consideration all of the facts and circumstances which existed at the time of the registrant's alleged failure to comply including information submitted by the employer and the household member involved. Good cause shall include circumstances beyond the control of the registrant.

i. If the good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable.

ii. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

(e) Good cause circumstances: Good cause for noncompliance shall include circumstances such as, but not *[be]* limited to, the illness of the registrant, or another household member, unavailability of transportation, an unanticipated emergency, and/or the lack of adequate care for children who have reached age six but are under age 12. Problems caused by inability of the registrant to speak or write English may constitute good cause. For example, a registrant who cannot read English would have good cause for not appearing for an FSETP interview if the appointment notice was written only in English.

i. (No change.)

10:87-3.21 Ending disqualification

(a) Following the end of the two month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible.

1. New two month period: If the two month period should elapse and, upon reapplication, the household member again refuses to comply with the work registration and/or work and training requirements, the member is subject to disqualification pursuant to provisions of this subchapter.

(b) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household, or the member complies as follows:

1. Refusal to register: Registration by the household member who refused to register;

2. Refusal to respond to request for additional information: Compliance with the request from the CWA, or the FSETP office or its designee, to provide supplemental information regarding employment status or availability for work;

3. Refusal to report to an employer: Reporting to that employer to whom referred by the FSETP office or its designee if work is still available or to another employer to whom referred.

4. Refusal to accept suitable employment: Acceptance of a bona fide offer of suitable employment to which referred by the FSETP office or its designee, if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

5. Refusal to comply with a CWA/FSETP (or its designee) employment and training component assignment or requirement: Compliance with the CWA/FSETP (or its designee) employment and training component assignment or requirement or an alternate CWA/FSETP (or its designee) assignment or requirement.

CORRECTIONS

THE COMMISSIONER

(a)

Administration, Organization and Management Functions of Agency; Rule Petition Procedure; Public Information

Adopted New Rules: N.J.A.C. 10A:1

Proposed: April 20, 1987 at 19 N.J.R. 620(a).

Adopted: June 12, 1987 by Richard A. Seidl, Acting

Commissioner, Department of Corrections.

Filed: June 15, 1987 as R.1987 d.282, **without change**.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 52:14B-3 and 4.

Effective Date: July 6, 1987.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER I

ADMINISTRATION, ORGANIZATION AND MANAGEMENT

SUBCHAPTER 1. OPERATION AND PROCEDURES OF THE DEPARTMENT OF CORRECTIONS

10A:1-1.1 Functions of the agency

(a) The Department of Corrections (D.O.C.) created by statute in 1976, is a principal Department in the Executive Branch of New Jersey State Government. The functions of the D.O.C. are to:

1. Protect the public and provide for the custody, care, discipline, training and treatment of persons committed to State correctional institutions or released on parole;

2. Supervise and assist in the treatment and training of persons in local correctional and detention facilities, so that such persons may be prepared for release and reintegration into the community;

3. Cooperate with other law enforcement agencies of the State to encourage a more unified system of criminal justice;

4. Provide maximum security confinement for offenders whose demonstrated propensity to acts of violence requires that these offenders be separated from the community;

5. Develop alternatives to conventional incarceration for offenders who can be dealt with more effectively in less restrictive community based facilities and programs;

6. Separate juvenile offenders from the adult offender population and develop programs and services for juvenile offenders which recognize the juvenile offenders' special needs;

7. Provide an environment for incarcerated persons which encourages rehabilitation and reintegration into the community; and

8. Protect the incarcerated offender from victimization within the correctional facilities of the D.O.C.

10A:1-1.2 Procedure to petition for a rule

(a) An interested person may apply to petition for the promulgation, amendment or repeal of any rule of the Department of Corrections. A petition shall:

1. Be in writing;

2. Be legible and intelligible; and

3. Be signed by the petitioner.

(b) Each petition shall contain the following information:

1. The full name and address of the petitioner;

2. Citation of the rule for which the proposal is made, using N.J.A.C. references, where applicable;

3. A clear and concise statement summarizing the substance of the rule sought or change to be suggested;

4. A specific statement explaining why the suggestion is being offered and summary of reasons therefor; and

5. A citation of statutory authority under which the Department of Corrections is authorized to act.

(c) The petition shall be sent to the Commissioner, Department of Corrections, and to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, at CN 863, Trenton, New Jersey 08625.

(d) When the Commissioner and/or the Special Assistant for Legal Affairs accept the petition which satisfies the requirements of (a) and (b) above, the Department of Corrections shall forthwith file the document for publication as a notice of petition for a rule in the New Jersey Register pursuant to N.J.A.C. 1:30-3.6(a).

(e) No later than 30 days after acceptance of a petition, the Department of Corrections, Standard Development Unit shall mail to the petitioner and file for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by (b) above. The notice of action shall include either:

1. A statement denying the petition;

2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the New Jersey Register; or

3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a certain date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted for publication in the New Jersey Register.

10A:1-1.3 Public information requests

(a) Members of the public, other than inmates, may obtain general information from the Department of Corrections by writing to or telephoning the Public Information Officer, Department of Corrections, CN 863, Trenton, New Jersey 08625, (609) 292-9340.

(b) Inmates requesting information or services are directed to contact the Department of Corrections, Office of the Ombudsman, CN 863, Trenton, New Jersey 08625, (609) 292-8020, either by mail or by collect telephone call. The Ombudsman is the only office authorized to accept collect calls from inmates.

(c) The cost for copies of documents to a member(s) of the public is:

1. First page to 10th page: \$0.50 per page;

2. Eleventh page to 20th page: \$0.25 per page; and

3. All pages over 20: \$0.10 per page.

(d) Government agencies are exempt from cost for copies of documents.

(b)

Mail, Visits and Telephone

Adopted New Rules: N.J.A.C. 10A:18

Proposed: January 5, 1987 at 19 N.J.R. 33(b).

Adopted: June 5, 1987 by Richard A. Seidl, Deputy

Commissioner, Department of Corrections.

Filed: June 5, 1987 as R.1987 d.263, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: July 6, 1987.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received nine comments. Comments which concern institutional performance or compliance with rules, rather than content of rules, are not addressed.

COMMENT: A commenter suggested that the definition of legal correspondence as set forth in N.J.A.C. 10A:18-1.3 be expanded to include Federal and State Parole Boards and Federal and State government agencies.

RESPONSE: The Department of Corrections does not agree that the suggested governmental agencies should be added to the list of persons and agencies included in the definition of legal correspondence. The suggested agencies lack responsibility or jurisdiction to make decisions which affect the status of State prisoners.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-1.3 include textbooks, soft-cover books, typewriters and correspondence from the State Parole Board and Department of Corrections in the definition of legal materials.

RESPONSE: The Department of Corrections rejects this suggestion because these items are not required to be "filed with the court" as spelled out in the definition of legal materials.

COMMENT: A commenter requested that N.J.A.C. 10A:18-2.7(b) include the President, all Governors, all members of Federal and State agencies, members of all Federal and State Parole Boards and all Commissioners.

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RESPONSE: This request is rejected as being overly broad and without justification. N.J.A.C. 10A:18-2.7(b) is meant to be applicable to New Jersey State prisoners on matters concerning New Jersey sentences.

COMMENT: A commenter objected to the limitation on the number of postage stamps permitted.

RESPONSE: The Department of Corrections believes that the limitation of 40 stamps that an inmate may have in his or her possession is both realistic and necessary, to discourage abuse which is likely when no limitation exists.

COMMENT: A commenter requested that all incoming mail be stamped with date of receipt.

RESPONSE: This request is rejected as being an unnecessary and burdensome task which would lead to delays in processing mail.

COMMENT: A commenter requested that when property is confiscated, a receipt shall be given to the inmate immediately.

RESPONSE: N.J.A.C. 10A:3-6.2 outlines the procedure for providing the inmate with a receipt (Form 171-II) when his or her property is confiscated.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-2.19 include utilization of a post office change of address form.

RESPONSE: There is no prohibition against the use of a change of address form. It is, however, the inmate's responsibility to notify the post office if he or she wishes to do so.

COMMENT: A commenter recommended that N.J.A.C. 10A:18-6.3(b) include a provision which would prevent the visitation of persons having recent criminal records with inmates until a specific amount of time without involvement in criminal activity has transpired following the person's parole or release, so that all persons with criminal records are not indiscriminately restricted from visiting with inmates.

RESPONSE: This recommendation is not practical because an automatic restriction based on time from a person's parole or release date is arbitrary. The present rule allows the exercise of discretion to permit visits from persons with criminal records where some legitimate benefit can be demonstrated.

COMMENT: A commenter requested that visitors who must travel long distances be permitted at least one contact visit per month.

RESPONSE: N.J.A.C. 10A:18-6.5 provides for special visits for persons who have come long distances. The determination of whether there is a contact or non-contact visit is dependent upon an inmate's custody status, housing assignment and institutional adjustment.

COMMENT: Pursuant to N.J.A.C. 10A:18-5.2, a commenter requested that State Prison, Trenton, allow the same weight food package which is permitted by State Prison, Leesburg.

RESPONSE: It is not appropriate that all institutions have the same limitations on packages. Limitations on packages vary among the institutions depending upon the size of the inmate population and the security needs of the institution.

COMMENT: A commenter suggested that on each piece of outgoing mail, the inmate include his or her institution's name in the return address in order to inform the recipient of the origin of the mail, and to deter the use of mail to solicit funds or otherwise engage in fraudulent or illegal activities.

RESPONSE: Inmates may voluntarily choose to include the name of the institution in the return address, but it is not mandatory. Excluding the name of the institution from the return address enables some persons in the outside community to avoid embarrassment. Should there exist cause to believe that an inmate is using the mail to solicit funds or otherwise engage in fraudulent or illegal activities, appropriate disciplinary action shall be taken.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-7.5 include a statement that if the family cannot pay costs of the bedside or funeral visit, the Business Manager shall remove any amounts in excess of \$15.00 from the inmates' account monthly until the institution has been reimbursed.

RESPONSE: This method of reimbursement is authorized by N.J.A.C. 10A:18-7.5 if the Superintendent determines that the inmate has or will have available funds. However, where both inmate and family are indigent, the Superintendent may waive payment of expenses.

COMMENT: A commenter objected to the procedures for destroying inmate correspondence as set forth in N.J.A.C. 10A:18-2.7(a) as being excessive and unwarranted.

RESPONSE: The Department of Corrections agrees that correspondence should not be destroyed if it is reasonably possible to identify the sender. The commenter, however, misunderstood the application of N.J.A.C. 10A:18-2.7(a). Employees of the institution mail room do make

reasonable efforts to identify the sender, and to return the mail when necessary. Mail is not destroyed whenever it is possible to identify the sender.

COMMENT: A commenter objected to the practice of reading incoming inmate mail under conditions set forth in N.J.A.C. 10A:18-2.6(e) and 2.7(c) as being too vague.

RESPONSE: The Department of Corrections must reject this comment as unrealistic. The proposed language is appropriate and provides sufficient specificity in view of the requirement that prior approval to read particular mail must be obtained from the Superintendent.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-2.15 and 2.16 should be combined or that N.J.A.C. 10A:18-2.15 be deleted as unnecessary. It was also suggested that only the objectionable part of correspondence be separated and that the sender be given a choice of whether to exercise the offending portion or forfeit the entire piece of correspondence.

RESPONSE: The first suggestion is rejected because it is simply a stylistic change sought rather than substantive. The second suggestion is outlined in N.J.A.C. 10A:18-2.18(e) and gives the sender or the inmate the choice of whether to excise the offending portion or forfeit the entire piece of correspondence.

COMMENT: A commenter objected to the Department of Corrections' rules governing costs of mailing inmates' correspondence in N.J.A.C. 10A:18-2.24 "Cost of mailing correspondence" and N.J.A.C. 10A:18-3.7 "Cost of mailing legal correspondence." The commenter suggested that the Department assume cost of mailing 12 letters per month whenever an inmate has less than \$15.00 in his or her account.

RESPONSE: This suggestion reflects a basic disagreement in philosophy with that of the Department of Corrections. An inmate who has \$15.00 available after payment of fines, etc., must choose among various options for spending, such as toiletries, snacks, postage stamps, etc. This policy does not prevent the inmate from maintaining community ties, but the policy encourages a responsible approach to spending which persons in the outside community also face. The inmate who is indigent is provided for by N.J.A.C. 10A:18-3.8. The Department's policy is in accord with applicable judicial decisions.

COMMENT: A commenter suggested that the definition of legal correspondence be expanded to include representatives of the media and public officials.

RESPONSE: The Department of Corrections does not agree that media and public officials should be included in the definition of legal correspondence. Inmates are not restricted from writing to these persons, nor are their incoming or outgoing letters read, unless there is reason to believe that mail to and from these persons contains disapproved material.

COMMENT: A commenter requested that inmates be provided with free access to notary services.

RESPONSE: The Department has always maintained a policy of providing free notary services. The rule requiring the provision of access to notary service is found in Department of Corrections' Standard 210.9 to be promulgated in N.J.A.C. 10A:6 in the near future.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-4.6 and 4.7 be modified as excessive because these rules permit destruction of publications when the sender cannot be identified.

RESPONSE: The Department's policy with respect to publications is similar to that of correspondence. Reasonable efforts are made to identify the sender of publications. Publications which are not objectionable are processed. Decisions must be made on a case by case basis to insure security and fairness.

COMMENT: A commenter asked that N.J.A.C. 10A:18-4.7(d) be expanded to include the persons and agencies contained under definition of legal correspondence.

RESPONSE: This suggestion is unnecessary since the rule states that outgoing publications are not routinely opened or censored. The Department of Corrections must retain adequate controls in those cases where there is reason to believe that the publication contains disapproved content.

COMMENT: A commenter suggested that packages, as with correspondence and publications, should not be destroyed when the sender cannot be identified.

RESPONSE: As with mail and publications, all reasonable efforts are made to identify the sender. The Department of Corrections believes that safety and security require destruction of materials when the sender cannot be identified. Because inmates are aware of this policy, it acts as a deterrent.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-6.6(b) include the same categories of family members as are included in N.J.A.C. 10A:18-6.3(a)1. This would result in adding brothers and sisters.

RESPONSE: The Department agrees that this suggestion has merit and has added brothers and sisters in N.J.A.C. 10A:18-6.6(b).

COMMENT: A commenter objected to the language of N.J.A.C. 10A:18-7.3(a)2, 4 and 5 as being too vague to provide reasonable notice as to why a visit may be denied.

RESPONSE: The Department of Corrections disagrees. The categories are designed to provide a framework upon which the institutional Superintendent can exercise discretion to permit or deny visitation as circumstances warrant.

COMMENT: A commenter suggested broadening the scope of legal telephone calls, N.J.A.C. 10A:18-8.6(b), to include calls to attorneys generally.

RESPONSE: The commenter misunderstood N.J.A.C. 10A:18-8.6. Use of the telephone is permitted where time constraints make correspondence impossible. Inmates are permitted to telephone their attorneys under this section. An inmate who is contemplating filing a civil action may contact any number of attorneys by mail.

COMMENT: A commenter suggested that N.J.A.C. 10A:18-8.7(a) include phone calls between siblings.

RESPONSE: This suggestion is accepted and N.J.A.C. 10A:18-8.7(a) has been modified accordingly.

COMMENT: A commenter suggested that the Office of Administrative Law (O.A.L.) be included among the persons or agencies with whom an inmate may exchange legal correspondence.

RESPONSE: This suggestion is accepted and N.J.A.C. 10A:18-1.3 has been modified accordingly.

In addition to the specific modifications above there are a number of minor, non-substantive changes in language or grammar.

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

CHAPTER 18 MAIL, VISITS AND TELEPHONE

SUBCHAPTER 1. INTRODUCTION

10A:18-1.1 Purpose

(a) The purpose of this chapter is to establish guidelines for:

1. Permitting inmates to correspond with persons or entities outside the correctional facility;
2. Processing legal correspondence in correctional facilities;
3. Inmates sending and receiving publications;
4. Inmates sending and receiving packages;
5. Contact and non-contact visits with inmates;
6. Bedside and funeral visits by an inmate to a dying or deceased relative; and
7. Inmate access to and use of the telephone.

10A:18-1.2 Scope

This chapter shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services, within the Department of Corrections, unless the context clearly indicates otherwise.

10A:18-1.3 Definitions

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

"Correspondence" means communication by the exchange of letters.

"Inmate Liaison Committee" means a group of inmate ***[s]*** representatives that meet with an official(s) of ***a*** correctional ***[facilities]* *facility*** to discuss matters of concern to the staff and inmates.

"Inter-office correspondence" means the exchange of correspondence between offices within the Department of Corrections.

"Legal correspondence" means the exchange of letters between an inmate and ***:***

1. An attorney of this State or any other state when properly identified as such on the outside of the envelope;
2. A State Public Defender;
3. Office of the Public Advocate;
4. Attorney General's office;
5. Federal and State courts;
6. Federal and State court judges;
7. Offices of Legal Services;

8. Legal assistance clinics run by accredited law schools of this or any other state;

9. Administrative Office of the Courts;

10. Prosecutors' offices;

11. Federal Public Defender;

12. Department of Corrections' Internal Affairs Unit; ***[and]***

13. Department of Corrections' Ombudsmen ***[.]**;** and *****

14. Office of Administrative Law.

"Legal material" means papers or documents that are required to be filed with the court and served upon opposing parties. These materials include:

1. An order required by its term to be served;
2. A pleading subsequent to the original complaint;
3. A paper relating to discovery which is required to be served;
4. A written notice;
5. A written motion;
6. A demand;
7. An offer of judgment;
8. A designation of record on appeal;
9. Briefs;
10. Petitions;
11. Summons; and
12. Complaints.

"Pat-frisk" means a search that is conducted while a person is fully clothed and includes both touching of the person's body through clothing and a thorough examination into his or her pockets, cuffs, seams, hair, dentures and personal property.

"Relative" means:

1. Father;
2. Mother;
3. Husband;
4. Wife;
5. Child;
6. Brother; or
7. Sister.

"Strip search" means a search conducted while a person is unclothed and includes a thorough and systematic examination of the person's body, orifices, clothing and personal possessions.

"Truck mail" means inter-office mail that is exchanged between correctional facilities and the Department of Corrections' Central Office. Truck mail does not include mail sent by the United States post office.

SUBCHAPTER 2. CORRESPONDENCE

10A:18-2.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of correspondence by ***[the]*** posting ***[of]*** appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding correspondence shall be given to each Inmate Liaison Committee. This Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding correspondence.

(d) New or revised rules and procedures regarding correspondence shall be incorporated into the next revision of the ***[inmate handbook]* *Inmate Handbook***.

10A:18-2.2 Limitation on number of correspondents

The number of approved correspondents and the amount of correspondence an inmate may receive or send shall be unlimited.

10A:18-2.3 Limitation on number of postage stamps

(a) Inmates may purchase or possess a maximum of 40 postage stamps at any one time.

(b) Each correctional facility shall establish a limit of stamps (40 or less) that inmates may possess that is consistent with the maintenance of security and the orderly operation of the correctional facility.

10A:18-2.4 Correspondence in language other than English

All State correctional facilities shall permit incoming and outgoing correspondence of the inmates or residents to be in a language other than English.

10A:18-2.5 Correspondence to or from other inmates

All correspondence to or from inmates housed in other correctional facilities within this State may be read to ensure that the correspondence does not contain any content prohibited by N.J.A.C. 10A:18-2.14.

10A:18-2.6 Inspection and identification of incoming correspondence

(a) Each piece of incoming correspondence shall be opened and inspected.

(b) The sender's name and address and the inmate's name and number shall appear legibly on the outside of all incoming correspondence.

(c) If the inmate's name and number do not appear on the outside of the incoming correspondence, it shall be returned to the sender.

(d) If it is necessary to return correspondence to a sender and the return address is incomplete, the correspondence shall be opened and examined to identify the sender so that the correspondence can be returned to the sender. If the sender cannot be identified, the correspondence shall be destroyed.

(e) Incoming correspondence shall be opened and inspected for contraband, but it shall not be read unless there is reason to believe that it contains disapproved content and then only upon the prior authorization of the Superintendent or his or her designee.

(f) A confidential list of the incoming correspondence which is read shall be established and maintained in the correctional facility's investigative unit or mail room, or wherever the confidentiality of the list can be maintained.

10A:18-2.7 Inspection of outgoing correspondence

(a) Outgoing correspondence shall be reviewed to determine the sender. If the sender of the correspondence cannot be identified, the correspondence shall be destroyed.

(b) Outgoing mail shall not be opened, read or censored if it is considered legal correspondence or if it is addressed to:

1. The Governor;
2. Members of the State Legislature;
3. Members of the Parole Board; or
4. The Commissioner.

(c) Any outgoing correspondence addressed to someone other than those cited in (b) above, shall not be opened, read or censored unless there is reason to believe that the correspondence contains disapproved content (see N.J.A.C. 10A:18-2.14) and then only with the prior approval of the Superintendent or his or her designee.

(d) Outgoing correspondence which is opened pursuant to this subchapter shall, once reviewed and approved, be resealed and mailed promptly.

(e) A confidential list of all correspondence which is read pursuant to this subchapter shall be maintained in the correctional facility's investigative unit or mail room, or wherever the confidentiality of the list can be maintained.

10A:18-2.8 Legal correspondence

Legal correspondence shall be processed in accordance with N.J.A.C. 10A:18-3 LEGAL CORRESPONDENCE.

10A:18-2.9 Identification of sender of outgoing correspondence

(a) The inmate's name and number shall appear legibly on the outside of all outgoing correspondence.

(b) If an inmate's name and number do not appear on the outside of the correspondence, it shall be opened and examined to identify the sender so that the correspondence can be returned to the inmate.

(c) If the inmate cannot be identified, the correspondence shall be destroyed.

10A:18-2.10 Telegrams and mailgrams

(a) An inmate shall be permitted to send telegrams and mailgrams in an emergency. An emergency may include:

1. Death;
2. Critical illness;
3. Accident; or
4. When the inmate is paroled and no one has picked up the inmate as arranged.

10A:18-2.11 Registered, certified or special delivery mail

(a) All registered, certified or special delivery correspondence of a non-legal nature shall be processed as regular mail provided the mail room signs to acknowledge receipt of the correspondence. The inmate shall be required to sign an acknowledgment that he or she received the correspondence.

(b) In instances where the mail room does not sign for registered, certified or special delivery correspondence of a non-legal nature, the inmate shall be required to sign for the correspondence to acknowledge receipt.

10A:18-2.12 Correspondence processing

(a) Properly identified incoming correspondence (see N.J.A.C. 10A:18-2.6) shall be distributed to inmates, and outgoing properly identified

correspondence (see N.J.A.C. 10A:18-2.9) shall be sent to the post office within one day of receipt in the mail room, excluding weekends and holidays.

(b) Inmates shall not be involved in the processing of either incoming or outgoing correspondence.

10A:18-2.13 Receipt of funds

(a) Money orders and checks, other than personal checks and cash, shall be the only approved form of money received through the mail which can be accepted by the correctional facility for deposit in an inmate's account.

(b) When an inmate receives money orders and checks, other than personal checks, by mail, the inmate shall be given a receipt and the funds shall be deposited into the inmate's account.

(c) All cash and personal checks sent through the mail to an inmate shall be deemed contraband and processed in accordance with N.J.A.C. 10A:3-6.7.

10A:18-2.14 Disapproved correspondence

(a) Any incoming correspondence for an inmate may be withheld in the mail room or taken from an inmate's possession if it falls within one of the following categories:

1. The correspondence contains material which is detrimental to the security and/or order of the correctional facility because it incites violence based upon race, religion, creed or nationality and a reasonable inference can be drawn, based upon the experience and professional expertise of correctional administrators, that it may result in the outbreak of violence within the facility;

2. The correspondence contains information regarding the manufacture of:

- i. Explosives;
- ii. Weapons;
- iii. Controlled dangerous substances;
- iv. Escape plans;
- v. Lockpicking; or
- vi. Anything of a similar nature.

3. The correspondence contains information which appears to be written in code;

4. The correspondence contains information concerning activities within or outside the correctional facility which would be subject to criminal prosecution under the law of New Jersey or the United States;

5. The correspondence incites violence or destructive or disruptive behavior toward:

- i. Law enforcement officers;
- ii. Department of Corrections personnel; or
- iii. Correctional facility programs or procedures*[, or,]**.*

6. The correspondence contains material which, based upon the experience and professional expertise of correctional administrators and judged in the context of a correctional facility and its paramount interest in security, order and rehabilitation;

- i. Taken as a whole, appeals to a prurient interest in sex;
- ii. Lacks, as a whole, serious literary, artistic, political or scientific value; and
- iii. Depicts, in a patently offensive way, sexual conduct including patently offensive representations or descriptions of ultimate sexual acts, masturbation, excretory functions, lewd exhibition of the genitals, sadism or masochism.

10A:18-2.15 Control of correspondence

(a) Incoming correspondence which is withheld from an inmate shall be returned to the sender, together with a notice that the material has been found to violate the Department of Corrections' rules governing correspondence.

(b) If the correspondence is withheld pursuant to N.J.A.C. 10A:18-2.14(a)4 for containing information which would be subject to criminal prosecution under the laws of New Jersey or the United States, the correspondence shall be turned over to the Internal Affairs or Control Unit of the correctional facility for further action.

(c) Possession of correspondence which is in violation of N.J.A.C. 10A:18-2.14(a)6 shall not form the basis for disciplinary action.

(d) Possession of correspondence found in violation of N.J.A.C. 10A:18-2.14(a)1 through 5 shall form the basis for disciplinary action.

10A:18-2.16 Procedures for handling withheld correspondence

(a) When correspondence violates one of the categories cited in N.J.A.C. 10A:18-2.14 and is withheld in the mail room, the following action shall be taken.

1. The correction officer who withholds the correspondence must submit a written report, no later than the end of the shift to the shift supervisor identifying:

- i. The correspondence withheld;
 - ii. The inmate's name and number to whom it was addressed;
 - iii. The time and date of withholding; and
 - iv. The category which the correspondence violates.
2. The decision of the correction officer shall be reviewed by the shift supervisor.
3. The correspondence shall be given to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.
4. The written report shall be initialed and returned to the correction officer if the shift supervisor agrees with the determination.
5. The correction officer shall provide the sender, within 72 hours of the withholding, with a written notice which identifies:
- i. The correspondence withheld;
 - ii. The reason for withholding the correspondence; and
 - iii. The right of the sender to appeal this decision within 10 days of the date of the notice.
6. The correction officer shall provide the inmate, within 72 hours of the withholding, with a written notice that correspondence has been withheld. The notice must contain:
- i. Name of the sender;
 - ii. Date of the correspondence;
 - iii. Date of the withholding; and
 - iv. A statement that the sender has been notified of the withholding and of the right to appeal.

10A:18-2.17 Procedure for handling correspondence removed from the inmate's possession

(a) When correspondence violates one of the categories cited in N.J.A.C. 10A:18-2.14 and is removed from the inmate's possession, the following action shall be taken.

1. The correction officer who removes the correspondence from the inmate must submit a written report no later than the end of the shift to the shift supervisor identifying:
 - i. The ***[item]* *correspondence*** removed;
 - ii. The inmate's name and number from whom it was removed;
 - iii. The time and date of removal; and
 - iv. The category which the correspondence violates.
2. The decision of the correction officer shall be reviewed by the shift supervisor.
3. The correspondence shall be returned to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.
4. The written report shall be initialed and returned to the correction officer if the shift supervisor agrees with the determination.
5. The correction officer shall provide the inmate, within 72 hours of the removal, with a written notice which identifies:
 - i. The correspondence removed;
 - ii. The reason for removing it; and
 - iii. The inmate's right to appeal the removal.

10A:18-2.18 Appeal and final disposition

(a) When correspondence has been withheld in the mail room or when correspondence has been removed from the inmate's possession, the sender or inmate may appeal the action of the shift supervisor to the Superintendent within 10 days of the date of the notice.

(b) The sender or inmate shall be permitted to argue in writing to the Superintendent that the challenged correspondence does not violate the category indicated in the correction officer's report.

(c) The Superintendent or his or her designee, whose title shall not be lower than Assistant Superintendent or Director of Custody Operations, shall consider the appeal.

(d) The Superintendent or his or her designee shall issue a written decision on the appeal and shall respond to the sender or inmate, as appropriate, within 72 hours of receipt of the written appeal. If the decision is to withhold the correspondence from the inmate, the decision shall contain a specific finding that the correspondence violates the category indicated in the correction officer's report.

(e) If a correspondence is found to be objectionable only in part and such part is easily separable from the rest of the correspondence, the sender or inmate, as appropriate, shall be given the choice of whether to allow the correctional facility to excise the offending portions or to forfeit the inmate's right to the correspondence.

10A:18-2.19 Forwarding correspondence to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying his or her correspondents of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all regular incoming correspondence ***to the correctional*** facility to which the inmate has been transferred.

(c) Any correspondence received after the three month period shall be returned to the sender.

10A:18-2.20 Forwarding correspondence to an inmate released on parole or at expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether correspondence received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the correspondence to him or her.

(d) The correctional facility shall not forward certified or registered mail, but shall return it to the sender.

(e) Correspondence shall be forwarded for a maximum of three months from the date of the inmate's release. Correspondence received thereafter shall be returned to the sender.

10A:18-2.21 Forwarding correspondence to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, correspondence received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding an inmate's correspondence when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes correspondence forwarded.

10A:18-2.22 Forwarding correspondence of an inmate who has escaped

(a) All incoming ***[correspondence]* *correspondence*** addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer ***[is]* *in*** custody.

(b) If the incoming mail does not have a return address, it shall be opened to determine the sender.

(c) If the sender cannot be identified, the correspondence shall be destroyed.

10A:18-2.23 Correspondence by illiterate inmates

(a) If an inmate is unable to read or write, the social worker assigned to the inmate's housing unit shall, upon request, assist the inmate in maintaining community ties by:

1. Writing a letter as dictated by the inmate; and
2. Reading incoming correspondence to the inmate.

10A:18-2.24 Cost of mailing correspondence

(a) If an inmate has funds in his or her account, the inmate shall be charged for the cost of mailing correspondence.

(b) If the inmate has temporarily overdrawn the account or has a balance in the account, but the balance is not sufficient to pay the total cost of mailing the correspondence, the correctional facility shall:

1. Remove from the inmate's account the amount available;
2. Advance from the correctional facility's account the difference between the amount available and the total cost of mailing via regular mail;
3. Debit the inmate's account the amount owed the correctional facility; and
4. Advise the inmate in writing of the amount owed and the reason therefor.

(c) The ***[b]**B*usiness *[m]**M*anager** or his or her designee shall:

1. With the posting each month of an inmate's wages or funds from other sources, remove from the inmate's account any amount of funds in excess of a \$15.00 balance until the correctional facility has been reimbursed in full;
2. Note on the inmate's record each removal of funds from an inmate's account;

- *[3. Note on the inmate's record each removal of funds from an inmate's account;]*
3. Inform the inmate in writing of each removal of funds from the inmate's account; and

4. Place a copy of the written notification in the inmate's classification folder.

(d) In the event an inmate is transferred to another correctional facility within the Department of Corrections, the ***[b]**B*usiness *[m]**M*anager**

ager or his or her designee shall notify the receiving correctional facility in writing of the remaining amount due. The notification shall also request that funds continue to be removed from the inmate's account until reimbursement has been made in full.

(e) Whenever an inmate's correctional facility business account is debited in excess of \$25.00, the debit shall be reported to the appropriate *assistant commissioner* *Assistant Commissioner*.

(f) If an inmate is released prior to making full reimbursement, the correctional facility shall regard the debt as uncollectable and shall not deduct the debt from any financial aid given to the inmate by the Bureau of Parole.

10A:18-2.25 Cost of mailing correspondence by indigent inmates

(a) If an inmate has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and *[is]* *it* has been verified that the inmate has no outside source, from which to obtain funds, the correctional facility shall provide letter writing materials and shall assume the cost of mailing not more than 12 letters per month so that the inmate can maintain community ties with family and personal friends.

(b) The correctional facility shall only assume the cost of first class postage and shall not assume the cost of postage on:

1. Registered mail;
2. Certified mail; or
3. Insured mail.

10A:18-2.26 Inmate use of inter-office correspondence

(a) Inmates shall not be permitted to use either the pink or the blue and white inter-office envelopes which are purchased for use by State employees.

(b) Inmates using or *[possession]* *possessing* State inter-office envelopes shall be charged with Prohibited Act .210—Possession of anything not authorized for retention or receipt by an inmate or not issued to *[the inmate]* *him or her* through regular correctional facility channels. (See N.J.A.C. 10A:4-4.1.)

(c) In instances where a correctional facility provides envelopes to inmate groups, plain white envelopes shall be provided.

(d) Inmates corresponding with Department Central Office staff, or with staff at other correctional facilities, or with the Parole Board, shall be permitted to use the facility's "truck mail" delivery service, but the inmates must use their own envelopes and mark the envelopes "INTER-OFFICE" or "TRUCK MAIL."

(e) Inmates shall not be permitted to use the "truck mail" delivery services to correspond with persons in other State Departments or Agencies or with inmates in other correctional facilities. Inmates attempting to do so shall be charged with Prohibited Act .709—Failure to comply with a written rule or regulation of the correctional facility. (See N.J.A.C. 10A:4-4.1.)

(f) Except as described in (d) above, all outgoing correspondence shall be sent through the regular mail and at the inmate's expense.

SUBCHAPTER 3. LEGAL CORRESPONDENCE

10A:18-3.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of legal correspondence by *[the]* *posting [of]* appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding legal correspondence shall also be given to each *[inmate liaison committee]* *Inmate Liaison Committee*. The *[c]**C*ommittee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding legal correspondence.

(d) New or revised rules and procedures regarding legal correspondence shall be incorporated into the next revision of the *[i]**I*nmate *[h]**H*andbook.

10A:18-3.2 Identification of outgoing legal correspondence

(a) All outgoing legal correspondence shall be clearly marked with the inmate's name and number on the envelope.

(b) An inmate who is sending legal correspondence out of the correctional facility shall be responsible for clearly marking "legal mail" on the front and back of the envelope.

(c) The absence of the "legal mail" designation shall not mean that the correspondence may be treated as non-legal correspondence if the address on the envelope clearly indicates that it is being sent to a legal correspondent as enumerated in N.J.A.C. 10A:18-1.3.

10A:18-3.3 Identification of incoming legal correspondence

(a) The return address on the outside of an envelope should clearly indicate that the correspondence is being sent from a legal correspondent as enumerated in N.J.A.C. 10A:18-1.3.

(b) Mail sent from a legal correspondent shall be considered legal correspondence and shall be handled in accordance with this subchapter.

(c) The absence of a particular name of an attorney or judge shall not preclude the correspondence from being treated as legal correspondence if the return address indicates an office or court as enumerated in N.J.A.C. 10A:18-1.3.

10A:18-3.4 Inspection of incoming legal correspondence

(a) Incoming legal correspondence shall be opened and inspected for contraband only.

(b) Incoming legal correspondence shall be opened and inspected only in the presence of the inmate to whom it is addressed.

(c) Incoming legal correspondence shall not be read or copied. The content of the envelope may be removed and shaken loose to ensure that no contraband is included. After the envelope has been inspected the correspondence shall be given to the inmate.

(d) The correctional facility may require that the inmate sign a slip acknowledging receipt of the incoming legal correspondence.

(e) Where there is substantial reason to believe that the incoming correspondence is not legal in nature or that it contains disapproved content pursuant to N.J.A.C. 10A:18-2.14, the *[s]**S*uperintendent shall immediately notify the appropriate *[a]**A*ssistant *[c]**C*ommissioner who shall immediately contact the Special Assistant for Legal Affairs, Office of the Deputy Commissioner. The incoming legal correspondence shall not be inspected in a manner other than as outlined in this subchapter without first obtaining instructions from the Special Assistant for Legal Affairs.

10A:18-3.5 Certified or registered mail

(a) Legal correspondence need not be sent by certified or registered mail.

(b) If an inmate has sufficient funds in his or her account to cover the costs of mailing and the inmate prefers to use certified or registered mail, the inmate shall be permitted to do so.

(c) The correctional facility shall not send the legal correspondence of indigent inmates via certified or registered mail.

10A:18-3.6 Proof of service

Inmates who have insufficient funds to send legal correspondence as certified or registered mail and who are concerned that they have no proof of service where regular mail is employed, shall be advised that under the rules of court, an affidavit of service filed with the clerk of the court shall be sufficient proof of service.

10A:18-3.7 Cost of mailing legal correspondence

(a) If an inmate has funds in his or her account, the inmate shall be charged for the total cost of mailing legal correspondence.

(b) If the inmate has temporarily overdrawn his or her account or has a balance in the account, but the balance is not sufficient to pay the total cost of mailing the correspondence, the correctional facility shall:

1. Remove from the inmate's account the amount available;
2. Advance from the correctional facility's account the difference between the amount available and the total cost of mailing via regular mail;
3. Debit in the inmate's account the amount owed the correctional facility; and
4. Advise the inmate in writing of the amount owed and the reason therefor.

(c) The *[b]**B*usiness *[m]**M*anager or his or her designee shall:

1. With the posting each month of an inmate's wages or funds from other sources, remove from the inmate's account any amount of funds in excess of a \$15.00 balance until the correctional facility has been reimbursed in full;
2. Note on the inmate's record each removal of funds from an inmate's account;
3. Inform the inmate in writing of each removal of funds from the inmate's account; and
4. Place a copy of the written notification in the inmate's classification folder.

(d) In the event an inmate is transferred to another correctional facility within the Department of Corrections, the *[b]**B*usiness *[m]**M*anager or his or her designee shall notify the receiving correctional facility in writing of the remaining amount due the correctional facility. The notification shall also request that funds continue to be removed from the inmate's account until reimbursement has been made in full.

(e) Whenever an inmate's correctional facility business account is debited in excess of \$25.00, the debit shall be reported to the appropriate *a**Assistant *c**Commissioner.

(f) If an inmate is released prior to making full reimbursement, the correctional facility shall regard the debt as uncollectable and shall not deduct the debt from any financial aid given to the inmate by the Bureau of Parole.

10A:18-3.8 Cost of mailing legal correspondence by indigent inmates

(a) If an inmate has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and *is* *it* has been verified that the inmate has no outside source from which to obtain funds, the correctional facility shall provide letter writing materials and shall assume the cost of mailing his or her legal correspondence.

(b) The cost of mailing legal correspondence shall extend only to first class postage and shall not include:

1. Registered mail;
2. Certified mail; or
3. Insured mail.

(c) An inmate shall not be considered as indigent if he or she has rejected a job that has been offered by the correctional facility. The rejection of a job offer shall be documented in the inmate's classification folder.

10A:18-3.9 Forwarding legal correspondence to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying his or her correspondents of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all regular incoming legal correspondence to the correctional facility to which the inmate has been transferred.

(c) Any legal correspondence received after the three month period shall be returned to the sender.

10A:18-3.10 Forwarding legal correspondence to an inmate released on parole or released after expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether legal correspondence received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the legal correspondence to him or her.

(d) The correctional facility shall not forward certified or registered mail, but shall return it to the sender.

(e) Legal correspondence shall be forwarded for a maximum of three months from the date of the inmate's release. Legal correspondence received thereafter shall be returned to the sender.

10A:18-3.11 Forwarding legal correspondence to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, legal correspondence received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding an inmate's legal correspondence when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes the legal correspondence forwarded.

10A:18-3.12 Forwarding legal correspondence of an inmate who has escaped

(a) All incoming legal correspondence addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the incoming legal correspondence does not have a return address, it shall be opened to determine the sender.

(c) If the sender cannot be identified, the correspondence shall be destroyed.

10A:18-3.13 Inmate use of inter-office correspondence

(a) Inmates shall not be permitted to use either the pink or the blue and white inter-office envelopes which are purchased for use by State employees.

(b) Inmates using or possessing State inter-office envelopes shall be charged with Prohibited Act .210—Possession of anything not authorized for retention or receipt by an inmate or not issued to *the inmate* *him or her* through regular correctional facility channels. (See N.J.A.C. 10A:4-4.1.)

(c) In instances where a correctional facility provides envelopes to inmate groups, plain white envelopes shall be provided.

(d) Inmates corresponding with Department Central Office staff, or with staff at other correctional facilities, or with the Parole Board, shall be permitted to use the facility's "truck mail" delivery service, but the inmates must use their own envelopes and mark the envelopes "INTER-OFFICE" or "TRUCK MAIL."

(e) Inmates shall not be permitted to use the "truck mail" delivery services to correspond with persons in other State Departments or Agencies or with inmates in other correctional facilities. Inmates attempting to do so shall be charged with Prohibited Act .709—Failure to comply with a written rule or regulation of the correctional facility. (See N.J.A.C. 10A:4-4.1.)

(f) Except as described in (d) above, all outgoing correspondence shall be sent through the regular mail and at the inmate's expense.

SUBCHAPTER 4. PUBLICATIONS

10A:18-4.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of publications by *the* posting *of* appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding publications shall be given to each *inmate liaison committee* *Inmate Liaison Committee*. The *c**Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding publications.

(d) New or revised rules and procedures regarding publications shall be incorporated into the next revision of the *i**Inmate *h* *H*andbook.

10A:18-4.2 Limitation on source of publications

(a) Inmates shall be permitted to receive hardcover books only if the books are mailed directly from the publisher or a bookstore.

(b) Inmates shall be permitted to receive paperback books, magazines and other soft-cover publications from any source.

(c) Inmates shall be permitted to receive newspapers only by subscription mailed directly from the publisher.

(d) There shall be no restriction on the number of publications an inmate may receive.

(e) All books, magazines, publications and newspapers must be prepaid by the inmate.

10A:18-4.3 Publications in a language other than English

All State correctional facilities shall permit incoming publications in a language other than English.

10A:18-4.4 Publications to or from other inmates

All publications to or from inmates housed in other correctional facilities within the State may be read to ensure that the publications do not contain any contents prohibited by N.J.A.C. 10A:18-4.9.

10A:18-4.5 Inspection of incoming publications

(a) Each incoming publication shall be opened and inspected for contraband, but shall not be read unless there is reason to believe that the publication *contains* disapproved content (see N.J.A.C. 10A:18-4.9) and then only upon the prior authorization of the Superintendent or his or her designee.

(b) A confidential list of the incoming publications that are read shall be maintained in the investigative unit or mailroom of the correctional facility, or wherever the confidentiality of the list can be maintained.

10A:18-4.6 Identification of sender of incoming publications

(a) The sender's name and address and the inmate's name and number shall appear legibly on the outside of all incoming publications.

(b) If the name and address do not appear on the outside of the publication, the publication shall be opened and examined to determine the identity of the sender.

(c) If the sender cannot be identified, the publication shall be destroyed.

10A:18-4.7 Inspection and identification of outgoing publications

(a) Outgoing publications shall be reviewed to determine the sender. If the sender cannot be identified, the outgoing publication shall be destroyed.

(b) The inmate's name and number or the name of the inmate group shall appear legibly on the outside of the publication.

(c) If the name and number of the sender do not appear on the outside of the outgoing publication, it shall be opened and examined to determine the sender so that it can be returned to the inmate or group.

(d) Outgoing publications shall not be opened, read or censored if addressed to:

1. The Governor;
2. Members of the State Legislature;
3. Members of the Parole Board;
4. Members of the Ombudsman Office; or
5. The Commissioner.

(e) Any outgoing publication addressed to someone other than those cited in (d) above shall not be opened, read or censored unless there is reason to believe that the publication contains disapproved content (see N.J.A.C. 10A:18-4.9) and then only with the prior approval of the Superintendent or his or her designee.

(f) Outgoing publications which are opened pursuant to this subchapter shall, once reviewed and approved, be resealed and mailed promptly.

(g) A confidential list of the outgoing publications that are read pursuant to this subchapter shall be maintained in the investigative unit or mail room of the correctional facility, or wherever the confidentiality of the list can be maintained.

10A:18-4.8 Processing of publications

(a) All properly identified and inspected incoming publications (see N.J.A.C. 10A:18-4.5 and N.J.A.C. 10A:18-4.6) shall be distributed to inmates within one day of their receipt in the mail room, excluding weekends and holidays.

(b) All properly identified outgoing publications (see N.J.A.C. 10A:18-4.7) shall be sent to the post office within one day of their receipt in the mail room, excluding weekends and holidays.

(c) Inmates shall not participate in the processing of either incoming or outgoing publications.

10A:18-4.9 Disapproved content in publications

(a) Any incoming publication may be withheld in the mailroom or taken from an *[inmates]* *inmate's* possession if it falls within one of the following categories:

1. The publication contains material that is detrimental to security and/or order of the correctional facility because it incites violence based upon race, religion, creed or nationality and a reasonable inference can be drawn, based upon the experience and professional expertise of correctional administrators, that it may result in the outbreak of violence within the facility;

2. The publication contains information regarding:

- i. Explosives;
- ii. Weapons;
- iii. Controlled dangerous substances;
- iv. Escape plans;
- v. Lockpicking; or
- vi. Anything of a similar nature.

3. The publication contains information which appears to be written in code;

4. The publication contains information concerning activities, within or outside the correctional facility, which would be subject to criminal prosecution under the *[law]* *laws* of New Jersey or the United States;

5. The publication incites violence, or destructive or disruptive behavior toward:

- i. Law enforcement officers;
- ii. Department of Corrections personnel; or
- iii. Correctional facility programs or procedures.

6. The publication contains material which, based upon the experience and professional expertise of correctional administrators and judged in the context of a correctional facility and its paramount interest in security, order and rehabilitation:

- i. Taken*,* as a whole, appeals to a prurient interest in sex;
- ii. Lacks, as a whole, serious literary, artistic, political or scientific value; and
- iii. Depicts, in a patently offensive way, sexual conduct including patently offensive representations or descriptions of ultimate sex acts, masturbation, excretory functions, lewd exhibition of the genitals, sadism or masochism.

10A:18-4.10 Control of publications

(a) Publications which are withheld from an inmate shall be disposed of in a manner determined by the inmate and at his or her expense.

(b) If the publication is withheld pursuant to N.J.A.C. 10A:18-4.9(a)4, it shall be turned over to the Internal Affairs or Control Unit for further action.

(c) Possession of publications which are in violation of N.J.A.C. 10A:18-4.9(a)6 shall not form the basis for disciplinary action.

(d) Possession of publications found in violation of N.J.A.C. 10A:18-4.9(a)1 through 5 shall form the basis for disciplinary action.

10A:18-4.11 Procedure for handling withheld publications

(a) When a publication violates one of the categories cited in N.J.A.C. 10A:18-4.10 and is withheld in the mail room, the following action shall be taken:

1. The correction officer who withholds the publication must submit a written report, no later than the end of the shift to the shift supervisor identifying:

- i. The publication withheld;
- ii. The inmate's name and number to whom it was addressed;
- iii. The time and date of withholding; and
- iv. The category which the publication violates.

2. The decision of the correction officer shall be reviewed by the shift supervisor.

3. The publication shall be given to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.

4. The written report shall be initialed and returned to the correction officer if the shift supervisor agrees with the correction officer's determination.

5. The correction officer shall provide the sender, within 72 hours of the withholding, with a written notice which identifies:

- i. The publication withheld;
- ii. The reason for withholding the publication; and
- iii. The right of the sender to appeal this decision within 10 days of the date of the notice.

6. The correction officer shall provide the inmate, within 72 hours of the withholding, with a written notice that the publication has been withheld. The notice must contain:

- i. Name of the publication;
- ii. Date of the publication;
- iii. Date of the withholding; and*[,]*
- iv. A statement that the sender has been notified of the withholding and of the right to appeal.

10A:18-4.12 Procedure for handling publications removed from inmate's possession

(a) When a publication violates one of the categories cited in N.J.A.C. 10A:18-4.10 and is removed from the inmate's possession, the following action shall be taken:

1. The correction officer who removes the publication from the inmate must submit a written report*,* no later than the end of the shift to the shift supervisor identifying:

- i. The publication removed;
- ii. The inmate's name and number from whom it was removed;
- iii. The time and date of the removal; and*[,]*
- iv. The category which the publication violates.

2. The decision of the correction officer shall be reviewed by the shift supervisor.

3. The publication shall be returned to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.

4. The written report shall be initialed and returned to the correction officer if the shift supervisor *[dis]*agrees with the correction officer's determination.

5. The correction officer shall provide the inmate, within 72 hours of the removal, with a written notice which identifies:

- i. The publication removed;
- ii. The reason for removing the publication; and
- iii. The inmate's right to appeal the removal.

10A:18-4.13 Appeal and final disposition

(a) When a publication has been withheld in the mailroom or when a publication has been removed from the inmate's possession, the sender or inmate may appeal the action of the shift supervisor to the Superintendent within 10 days of the date of the notice.

(b) The sender or inmate shall be permitted to argue*,* in writing to the Superintendent*,* that the challenged publication does not violate the category indicated in the correction officer's report.

(c) The Superintendent or his or her designee, whose title shall not be lower than Assistant Superintendent or Director of Custody Operations, shall consider the appeal.

(d) The Superintendent or his or her designee shall issue a written decision on the appeal and respond to the sender or inmate, as appropriate, within 72 hours of receipt of the written appeal. If the decision is to withhold the publication from the inmate, the decision shall contain a specific finding that the publication violates the category indicated in the correction officer's report and a notification that the publication is being returned to the sender.

(e) If a publication is found to be objectionable only in part and such part is easily separable from the rest of the publication (such as a magazine article, etc.) the inmate shall be given the choice of whether to allow the correctional facility to excise the offending portion(s) or to forfeit his or her right to the publication.

10A:18-4.14 Forwarding publications to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying the publishers of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all publications to the correctional facility to which the inmate has been transferred.

(c) Any publications received after the three month period may be destroyed or placed in the library of the correctional facility from which the inmate was transferred.

10A:18-4.15 Forwarding publications to an inmate released on parole or at expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether publications received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the publications to him or her.

(d) Publications shall be forwarded for a maximum of three months from the date of the inmate's release. Publications received thereafter may be destroyed or placed in the library of the correctional facility.

10A:18-4.16 Forwarding publications to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, publications received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding an inmate's publications when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes publications forwarded.

10A:18-4.17 Return of publications addressed to an inmate who has escaped

(a) All publications addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the publication does not have a return address, it shall be opened to determine the sender.

(c) If the sender cannot be identified, the publication may be destroyed or placed in the library of the correctional facility.

SUBCHAPTER 5. PACKAGES

10A:18-5.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of packages by the posting of appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding packages shall be given to each *[inmate liaison committee]* ***Inmate Liaison Committee***. The Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding packages.

(d) New or revised rules and procedures regarding packages shall be incorporated into the next revision of the *[inmate handbook]* ***Inmate Handbook***.

10A:18-5.2 Limitation on packages

(a) Each correctional facility shall promulgate:

1. A written list of items which may be received in a package; and,
2. A limit on the number and weight of packages which may be received by an inmate each month.

(b) Each inmate shall be given written notice of package limitations as established by (a) above.

(c) All packages received from a retail store must be prepaid.

(d) Inmates shall be permitted to send and receive packages from other inmates who are members of his or her immediate family and who are incarcerated in a correctional facility within the jurisdiction of the New Jersey Department of Corrections. Such packages shall be subject to the provisions of this subchapter.

10A:18-5.3 Inspection of incoming packages

(a) Every incoming package shall be opened and searched for contraband.

(b) Any item of contraband which is found during a search shall be processed in accordance with N.J.A.C. 10A:3-6.

10A:18-5.4 Inspection and identification of outgoing packages

(a) Every outgoing package shall be opened and inspected.

(b) Every outgoing package shall be clearly marked with the inmate's name and number on the outside of the package.

(c) If the inmate's name and number do not appear on the outside of the outgoing package, when opened for inspection, it shall be examined to identify the sender so that it can be returned to the inmate for proper mailing.

(d) If the sender of an outgoing package cannot be identified, the content of the package shall be destroyed.

(e) The content of outgoing packages shall be limited to inmate personal property.

(f) Manuscripts and inventions of inmates shall be processed in accordance with N.J.A.C. *[10A:12-3]* ***10A:13***.

(g) Any item of contraband which is found during an inspection of outgoing packages shall be processed in accordance with N.J.A.C. 10A:3-6.

10A:18-5.5 Identification of incoming mailed packages

(a) Every incoming package shall be clearly marked with the sender's name and address and the inmate's name and number.

(b) If the inmate's name and number do not appear on the outside of incoming mailed package, it shall be returned to the sender.

(c) If the sender's name and address do not appear on the outside of the incoming mailed package, it shall be examined to identify the sender when it is opened. (See N.J.A.C. 10A:18-5.3.)

(d) If the sender of an incoming mailed package cannot be identified, the contents of the package shall be destroyed.

10A:18-5.6 Package processing

(a) All properly identified incoming packages (see N.J.A.C. 10A:*[15]****18*-5.5**) shall be distributed to inmates as soon as possible to avoid spoilage of perishable items.

(b) All properly identified outgoing packages (see N.J.A.C. 10A:18-5.4) shall be sent to the post office within one day of their receipt in the mailroom excluding weekends and holidays.

(c) Inmates shall not be involved in the processing of either incoming or outgoing packages.

10A:18-5.7 Forwarding packages to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying his or her correspondents of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all packages to the correctional facility to which the inmate has been transferred.

(c) Any packages received after the three month period shall be returned to the sender, if possible, or destroyed.

10A:18-5.8 Forwarding packages to an inmate released on parole or at expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether packages received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the packages to him or her.

(d) Packages shall be forwarded for a maximum of three months from the date of the inmate's release. Packages received thereafter shall be returned to the sender, if possible, or destroyed.

10A:18-5.9 Forwarding packages to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, packages received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding packages to an inmate when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes packages forwarded.

10A:18-5.10 Forwarding packages of an inmate who has escaped

(a) All incoming packages addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the package does not have a return address, the package shall be opened to determine the sender.

(c) If the sender cannot be identified, the package shall be destroyed.

SUBCHAPTER 6. VISITS

10A:18-6.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding visits by ***[the]*** posting ***[of]*** appropriate notices in each housing area and other appropriate areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding visits shall be given to each ***[inmate liaison committee]*** ***Inmate Liaison Committee***. The ***[committee]*** ***Committee*** shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding visits.

(d) New or revised rules and procedures regarding visits shall be incorporated into the next revision of the ***[i]**I*nmate*[h]**H*andbook***.

10A:18-6.2 List of visitors

Upon admission, an inmate shall submit to a person as designated by the Superintendent a list of names and addresses of potential visitors.

10A:18-6.3 Approval of potential visitors

(a) The correctional facility may approve the following persons to visit an inmate:

1. Relatives (see N.J.A.C. 10A:18-1.3);
2. Close friends;
3. Clergy; and
4. Persons who may have a constructive influence on the inmate.

(b) Persons with criminal records shall not be automatically excluded from visiting an inmate. The nature and extent of an individual's criminal record, plus his or her history of recent criminal activity, shall be weighed against the benefits of visitation in determining visitation eligibility.

(c) Persons determined, by substantial evidence, to have a harmful influence upon the inmate or to constitute a threat to the security of the correctional facility shall not be granted visitation privileges.

(d) At the Superintendent's discretion, former employees of the Department of Corrections may be permitted to visit an inmate. The Superintendent's decision shall be made on a case-by-case basis after due consideration of the security interests involved, and after the Superintendent is satisfied that the visit will not pose a threat to the orderly operation of the correctional facility.

(e) Employees of the Department of Corrections who have relatives incarcerated in facilities under the jurisdiction of the New Jersey Department of Corrections shall be permitted to visit an inmate in accordance with N.J.A.C. 10A:18-6.4.

(f) Approval of special visits shall be in accordance with N.J.A.C. 10A:18-6.5.

(g) Approval of visits between incarcerated family members shall be in accordance with N.J.A.C. 10A:18-6.6.

(h) Approval of visits by attorneys and court related person shall be in accordance with N.J.A.C. 10A:18-6.7.

(i) Approval of visits by children shall be in accordance with N.J.A.C. 10A:18-6.8.

10A:18-6.4 Employee visits with incarcerated relatives

(a) Employees of the Department of Corrections who have relatives incarcerated in facilities under the jurisdiction of the New Jersey Depart-

ment of Corrections shall be permitted to visit an ***[inmate]*** ***incarcerated relative*** provided the Superintendent is satisfied that there is no threat to the orderly operation of the correctional facility.

(b) For the purpose of this subchapter, "relative" (see N.J.A.C. 10A:18-1.3) shall also include:

1. Grandparents;
2. Cousins;
3. Uncles; and
4. Aunts.

(c) The Assistant Commissioner of the Division that is responsible for the administration of the correctional facility at which an incarcerated relative is assigned shall be notified by the employee^{*}, ^{*}in writing^{*}, ^{*}that the employee wishes to visit the incarcerated relative.

(d) Before visits are authorized, the employee shall advise the Superintendent of the appropriate correctional facility that the employee wishes to visit the incarcerated relative. The Superintendent may schedule the visit during regular visiting hours or at special times, according to the orderly administration and staffing of the correctional facility.

(e) The Assistant Commissioner of the Division shall maintain a central file of employees of the Department who ***are known to*** have incarcerated relatives.

10A:18-6.5 Special visits

(a) Special visits must be authorized by the correctional facility Superintendent or his or her designee. Special visits include:

1. Visits from persons who have come long distances;
2. Visits to hospitalized inmates;
3. Visits to inmates in disciplinary status; and^{*,[,]*}
4. Visits between inmates and:
 - i. Members of the clergy;
 - ii. Social service agency representatives;
 - iii. Prospective employers;
 - iv. Sponsors; and^{*,[,]*}
 - v. Parole advisors.

(b) The Superintendent or his or her designee may approve a visitor who accompanies a person on the approved list.

(c) Close ***[custody]*** ***Custody*** visits shall be governed by N.J.A.C. 10A:5 CLOSE CUSTODY UNITS and N.J.A.C. 10A:4-10 DETENTION PROGRAM.

10A:18-6.6 Visits between incarcerated family members

(a) Visits shall be permitted between incarcerated family members that are incarcerated in facilities under the jurisdiction of the New Jersey Department of Corrections.

(b) Incarcerated family members mean:

1. Husband and wife;
2. Mother and child; and,
3. Father and child^{*,[,]**;} **and***
4. Brother and sister.

(c) The following requirements must be met before visits between incarcerated family members shall be permitted:

1. Family relationships must be substantiated by documentation found in the classification folder or from other appropriate resources;
2. Visits must be approved by the Classification Committee(s); and
3. The cost of the visit shall be borne by the inmates involved.

(d) The ***[business office]*** ***Business Office*** of the correctional facility shall predetermine the expenses involved in arranging a visit between family members, and a detailed statement of expenses shall be prepared using the following to determine the amount due:

1. Number of correction officers required which depends on the inmate's custody classification. (See N.J.A.C. 10A:3-9 TRANSPORTATION OF INMATES.)

2. The fee per correction officer which is the maximum salary of a senior correction officer at time and a half.

3. State vehicle mileage cost which is established by the Director, Division of Budget and Accounting. The overall State vehicle cost shall be based on the mileage rate times double the number of miles to the destination.

4. Cost of meals;

i. The projected number of meals for inmates and escorts shall be established.

ii. The fee charged for each meal shall be based on the rate in the current State of New Jersey Travel Regulations.

iii. The cost of meals shall be the projected number of meals times the per meal fee established by the State of New Jersey Travel Regulations.

5. All tolls and parking expenses shall be charged to the inmate.

*(c)**(e)* The frequency, duration and time of the visits must be coordinated between the correctional facilities involved and shall be subject to the other section*s* of *[this]* *the* subchapter.

10A:18-6.7 Attorneys and court related personal visits

(a) Attorneys and representatives of attorneys shall be permitted contact visits during *regular* business hours when sufficient space and staff are available.

(b) Representatives of attorneys shall include, but not be limited to the following:

1. Investigators;
2. Investigative aides;
3. Paralegals; and
4. Law students.

(c) A written notice or telephone request from an attorney shall be required 24 hours in advance of an intended visit. The purpose of the advance notice is to insure the availability of:

1. Space;
2. Staff; and
3. The inmate.

(d) Advance notice shall include the following information:

1. Name of the attorney or his or her representative;
2. Name of the inmate to be interviewed;
3. Name of the attorney for whom the representative is acting; and
4. Date and time the interview is sought.

(e) Appropriate identification is required of attorneys and attorney representatives who visit the inmate at a correctional facility.

(f) Contact visits with attorneys or their representatives may be restricted or prohibited when, in the judgment of the correctional facility Superintendent *or his or her designee*, the inmate is acting up or is especially dangerous. Contact visits may also be denied where the attorney or his or her representative poses a threat to security or orderly operation of the correctional facility. In those cases in which contact visits have been denied, every effort shall be made to provide a non-contact visit consistent with the orderly operation of the correctional facility.

(g) The Superintendent or his or her designee may authorize a visit without prior written notice, under exceptional circumstances.

10A:18-6.8 Visits from children

(a) Children under the age of 18 shall not be permitted to visit unless accompanied by a family member defined as a "relative." (See N.J.A.C. 10A:18-1.3.)

(b) In unusual circumstances, exceptions to (a) above shall be made by special approval of the Superintendent or his or her designee.

10A:18-6.9 Notification of prospective visitors

(a) The correctional facility shall establish a letter of information, written in English and in Spanish, which spells out the pertinent regulations with which prospective visitors should be familiar regarding visiting inmates. This letter shall include, but *[it]* *is* not limited to:

1. Visiting times;
2. Number of visitors;
3. Visits by children;
4. Identification required;
5. Directions to the correctional facility; and
6. The provisions of N.J.S.A. 2C:29-6 which prescribe specific penalties for introducing contraband into a correctional facility.

(b) Copies of the letter of information shall be posted in the visiting areas of the correctional facility.

(c) An inmate may choose one household which shall be notified by the correctional facility as to the occupant's approval as visitors. The approved visitors shall receive a copy of the correctional facility's letter of information. Such notification shall be transmitted within five working days from the day the inmate is received at the correctional facility.

(d) When an individual is not approved as a visitor, notice of and reasons for the exclusion shall be given to the inmate who submitted the individual's name. The inmate may appeal the decision to the Superintendent who shall respond, in writing, within ten working days of receipt of the appeal.

(e) Procedures on how the inmate can change his or her list of approved visitors shall be incorporated into the Inmate Handbook.

10A:18-6.10 Visitor identification

(a) All visitors must have identification when visiting an inmate.

(b) Visitors may identify themselves through:

1. Automobile driver's license;
2. Welfare/medicaid card;
3. Employment photo I.D. card;
4. Passport;

5. A card bearing a signature of the visitor; or

6. Joint Connection photo I.D. card. No other form of identification is needed with this card.

*[(d)**(c)* Social Security cards shall not be used as a means of identification.

*[(e)**(d)* Inability to establish identity should be reported to the Superintendent or his or her designee.

10A:18-6.11 Visiting schedule

(a) The Superintendent shall establish a visiting schedule which emphasizes visiting on Saturdays, Sundays and holidays.

(b) When the restriction of visiting on Saturdays, Sundays and holidays is a hardship to a visitor, arrangements for suitable hours on other days shall be made, if at all possible.

(c) Evening visit schedules shall be established where the number of staff permit.

(d) Limitation on the length or frequency of visits shall be imposed only to avoid overcrowded conditions in the visiting area(s).

10A:18-6.12 Number of visitors

(a) The Superintendent shall establish written regulations as to the maximum number of persons who may visit an inmate at one time.

(b) These regulations should be interpreted flexibly because their purpose is to prevent overcrowding in the visiting room or unusual difficulty in supervising a visit.

10A:18-6.13 Treatment of visitors

All correctional staff members shall treat visitors in a professional, dignified, courteous and respectful manner.

10A:18-6.14 Search of visitors

(a) Signs written in English and Spanish shall be posted in both the visiting area and visiting entrances stating that, as a condition of visitation, all visitors and their belongings are subject to search while on the premises of the correctional facility.

(b) All visitors may be required to submit to a search by a scanning device or by pat frisks.

(c) If a visitor refuses to submit to a search, and there is no reasonable suspicion that the visitor is in possession of contraband, the visitor shall be directed to leave the correctional facility grounds immediately. No visit shall be allowed.

(d) Male or female correctional officers may be assigned to conduct metal detector searches of visitors regardless of the sex of the visitors as long as no physical contact is required.

(e) In the event that a correction officer with the rank of *[Sergeat]* *Sergeant* or above receives information sufficient to form reasonable suspicion that a visitor is carrying contraband, the visitor shall be pat-frisked in accordance with (g) below. If contraband is discovered during the pat-frisk of the visitor, the visitor shall be detained and the Internal Affairs Officer of the correctional facility shall be contacted.

(f) In the event a correctional facility staff member receives information which leads him or her to believe that a visitor will be concealing contraband *on his or her person*, the Superintendent or his or her designee shall be contacted immediately. The Superintendent or his or her designee may ask the local magistrate to issue a search warrant so that the visitor may be strip searched in accordance with (g) below. The information given to the magistrate must establish probable cause to search. The Internal Affairs Officer of the correctional facility shall be contacted and shall be present at the correctional facility before the strip search is conducted.

(g) A pat-frisk or an approved strip search shall be *[concduted]* *conducted* in privacy by a correction officer of the same sex as the visitor. No member of the opposite sex of the visitor shall be present in the room during the pat-frisk or approved strip search.

(h) All contraband discovered during the search of a visitor shall be confiscated by the correction officer performing the search, and a written report shall be submitted to the Superintendent.

(i) The written report shall specify:

1. The name of the correction officer who performed the search;
2. The name of the inmate who was to receive the visit;
3. The name and address of the visitor who was searched;
4. The time of the search;
5. The description of the items confiscated; and*[,]*
6. The specific reason for confiscating the items.

(j) All contraband and evidence seized shall be turned over to the Internal Affairs Investigator.

(k) The Superintendent shall decide whether the visitor shall continue to have visitation privileges.

(l) All searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the visitor's person.

10A:18-6.15 Search of inmates

All inmates shall be subject to a pat-frisk before a visit and pat-frisk or a strip search after the visit in accordance with procedures established by N.J.A.C. 10A:3-5. SEARCH OF INMATES AND FACILITIES.

10A:18-6.16 Supervision of visits

(a) Visits shall be supervised to prevent the passage of contraband and to insure the security and welfare of the correctional facility.

(b) The staff member in charge of the visiting room shall be responsible *to assure* *for ensuring* that all visits are conducted in a quiet, orderly and dignified manner.

(c) The staff member(s) supervising visits should be cognizant of any articles passed between the inmate and the visitor. If there is a substantial basis to conclude that articles are being passed which constitute contraband or are otherwise in violation of the law or regulations, the articles shall be confiscated and examined.

(d) Handshaking, embracing and kissing shall be permitted, within the bounds of good taste, at the beginning and end of the visit in order to minimize the opportunity to introduce contraband into the correctional facility.

- i. An inmate and visitor may hold hands during the visit.
- ii. Contact restrictions shall not apply to small children.

10A:18-6.17 Play areas for children

If a correctional facility provides play areas for children of visitors, signs shall be posted in both English and Spanish stating that children who use the area must be supervised by the parents or a relative and that the area and equipment are used at their own risk.

10A:18-6.18 Cash gifts from visitors

(a) A visitor(s) may bring cash to the correctional facility for deposit in an inmate's account.

(b) When a visitor(s) brings cash for deposit in the inmate's account, the correctional facility shall:

1. Accept the funds;
2. Establish and/or maintain an appropriate record of cash received;
3. Issue a signed receipt to the visitor(s); and*[,]*
4. Retain a copy of the receipt.

(c) Each correctional facility may place a limit on the amount of cash which an inmate is permitted to receive, per day, from one visitor or a combination of visitors.

10A:18-6.19 Denial *[or]**,* termination *or suspension* of a visit

(a) An inmate's visiting privileges shall not be denied because of violation of correctional facility regulations, other than those regulations specifically related to or concerned with visiting privileges.

(b) A visit may be denied *[or]**,* terminated *or suspension* and a visiting privilege suspended under the following circumstances:

1. Visitor(s) is under the influence of drugs or alcohol;
2. Space is unavailable;
3. Visitor(s) refuses to submit to search procedures;
4. Visitor(s) refuses or fails to produce sufficient identification or falsifies identifying information;
5. Visiting rules of facility are violated by visitor, provided that such rules are posted;
6. Children are disturbing other persons in the visiting area;
7. Physical contact between the visitor and inmate which is in excess of N.J.A.C. 10A:18-6.16(d); or
8. Denial or termination of visiting privileges is necessary to preserve the security of the correctional facility and maintain order in the visiting room.

(c) Prior to the denial or termination of visiting privileges for any of the reasons in (b) above, less restrictive action should be instituted. Such action may include:

1. Warning the inmate and/or visitor of improper conduct; and/or*[,]*
2. Transferring the visit to a non-contact visiting area.

10A:18-6.20 Suspension of visiting program under emergency conditions

(a) The Superintendent of a correctional facility shall notify the Commissioner of the Department of Corrections whenever the safety, security and orderly operation of the correctional facility is seriously threatened.

(b) The Commissioner shall determine if an emergency exists at the correctional facility and shall make a public declaration to this effect through the Department's Office of Public Information.

(c) In order to return the correctional facility to *a* safe, secure and orderly operation, the Superintendent may suspend *[any program]* *certain programs* for the duration of the emergency. The Superintendent shall consult with the Commissioner regarding the suspension of *[any]* program*s*.

(d) The visiting program, including visits to inmates by attorneys and attorney representatives, may be suspended for the duration of an emergency. Information concerning such suspension shall be made part of the public announcement of *[the emergencies]* *an emergency*.

(e) A public declaration shall be made through the Department's Office of Public Information when the state of emergency has passed*[. The]* *, and the* scheduling of visits by attorneys and attorney representatives shall be reinstated beginning no later than 24 hours from *[the]* *this* public declaration. A statement to this effect shall be made in the public declaration.

*[(e)]***(f)* The public declaration that the state of emergency has passed shall also contain a statement as to whether the visiting program shall be reinstated. If the visiting program is not to be reinstated *[at the end of the state of emergency]*, a second public declaration shall be made announcing the date that the visiting program shall be reinstated.

*[(f)]***(g)* The scheduling of visiting, in terms of the number of visitors, times of visitation and frequency of visits, shall be subject to special conditions as determined by the Superintendent in consultation with the Commissioner. Efforts shall be made to supply all such pertinent information in the public declaration announcing reinstatement of the visiting program.

SUBCHAPTER 7. BEDSIDE AND FUNERAL VISITS

10A:18-7.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding bedside and funeral visits by *[the]* posting *[of]* appropriate notices in each housing area and other appropriate areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding bedside and funeral visits shall be given to each Inmate Liaison Committee. The Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding bedside and funeral visits.

(d) New or revised rules and procedures regarding bedside and funeral visits shall be incorporated *[to]* *in* the next revision of the *[i]* *I*nmate *[h]**H*andbook.

10A:18-7.2 Authority

(a) Pursuant to N.J.S.A. 30:4-8.1, the correctional facility Superintendent may, at his or her discretion, authorize and permit the attendance of an inmate at the bedside and/or funeral of a dying or deceased relative.

(b) A relative shall be as defined in N.J.A.C. 10A:18-1.3.

(c) During the bedside and/or funeral visit, the inmate shall at all times be in the custody of one or more correction officers or employees of the correctional facility wherein the inmate is confined.

(d) The inmate shall not be permitted *[to go outside the State of New Jersey]* *to go on a bedside or funeral visit *that is outside the State of New Jersey*.*

10A:18-7.3 Eligibility

(a) The correctional facility *Superintendent* shall determine whether an inmate is eligible to go on a bedside or funeral visit. The correctional facility Superintendent is not required to permit bedside or funeral visits if:

1. The visit will interfere with the security or orderly operation of the correctional facility;
2. The inmate is an incorrigible criminal;
3. The inmate is a known escape risk;
4. The inmate has unusual disciplinary problems;
5. The inmate is recognized as untrustworthy; or*[,]*
6. The inmate is a highly publicized person whose reappearance in the community under any conditions other than strict compliance with the laws governing parole and release would cause *[a disturbance]* *unfavorable comment* in the community.

(b) If the Superintendent is in doubt as to the propriety of permitting a particular inmate to leave the correctional facility under the circumstances enumerated in this subchapter, the Superintendent shall consult with the Assistant Commissioner of his or her Division.

(c) The burden is on the inmate to prove that the ill or deceased person is his or her relative as defined in N.J.A.C. 10A:18-1.3.

(d) The fact of illness or death shall be verified by the Superintendent or his or her designee.

10A:18-7.4 Court ordered funeral visits

(a) A correctional facility is not authorized to accept a court order for:
1. A temporary release of an inmate for a bedside or funeral visit of a person not included in the definition of "relative" in N.J.A.C. 10A:18-1.3; or*[,]*

2. A bedside or funeral visit destination other than within the State of New Jersey.

(b) All court orders for bedside or funeral visits shall be referred immediately to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for visit authorization.

10A:18-7.5 Payment of visit expenses

(a) The inmate or the inmate's family shall reimburse the correctional facility for all travel and other necessary expenses.

(b) The Business Office of the correctional facility shall predetermine the expenses claimed for reimbursement upon the approval by the Superintendent.

(c) A detailed written statement of expenses shall be prepared using the following criteria to determine the amount of reimbursement due:

1. Number of correction officers required which depends on the inmate's custody classification. (See 10A:3-9 TRANSPORTATION OF INMATES.)

2. The fee per correction officer which is the maximum salary of a Senior Correction Officer at time and a half*[,]**;*

3. State vehicles mileage cost which is established by the Director, Division of Budget and Accounting. The overall State vehicle cost shall be based on the mileage rate times double the number of miles to the destination;

4. Cost of meals;

i. The projected number of meals for inmates and escorts shall be established.

ii. The fee charged for each meal shall be based on the rate in the current State of New Jersey Travel Regulation.

iii. The cost of meals shall be the projected number of meals times the per meal fee established by the State of New Jersey Travel Regulation.

5. All tolls and parking expenses shall be charged to the inmate.

(d) The Superintendent may grant exceptions to payment of visit expenses if all other conditions of this subchapter are met and the Superintendent is satisfied that the family cannot meet the expenses of the visit.

10A:18-7.6 Notification of Central Office

All bedside and funeral visits shall be noted in the Superintendent's monthly report.

SUBCHAPTER 8. TELEPHONE

10A:18-8.1 Written procedures

(a) Each correctional facility shall develop and implement written procedures which provide inmates with reasonable and equitable access to public telephones. These procedures shall specify:

1. Hours of telephone availability;
2. Maximum length of telephone calls; and
3. Any limitation on telephone calls.

10A:18-8.2 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding telephone calls by *[the]* posting *[of]* appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding telephone calls shall be given to each Inmate Liaison Committee. The Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding telephone calls.

(d) New or revised rules and procedures regarding telephone calls shall be incorporated into the next revision of the *[i]**I*nmate *[h]* *H*andbook.

10A:18-8.3 Monitoring of telephone calls

(a) Non-legal telephone calls shall not be monitored except in the following instances:

1. Where it is suspected that the inmate is using the telephone to harass or threaten someone;
2. Where it is suspected or determined that the inmate's conduct while placing a telephone call presents a danger to the safe, secure *[and]* *or* orderly operation of the correctional facility;
3. When the call is in connection with investigations of violations of laws or Department rules; or
4. When the call must be monitored in those instances as set forth in this subchapter.

(b) All non-legal telephone calls by inmates in the Capital Sentence Unit (C.S.U.) shall be monitored.

(c) Legal telephone calls shall not be monitored, except to determine the identity of the party called.

10A:18-8.4 Cost of telephone calls

(a) Outgoing telephone calls made by inmates shall be collect calls, with the following exceptions:

1. The cost of outgoing telephone calls made by inmates at the Training School for Boys, Skillman*,* shall be borne by that correctional facility; and

2. Telephone calls between incarcerated family members shall be handled in accordance with N.J.A.C. 10A:18-8.7.

10A:18-8.5 Emergency telephone calls

(a) An inmate shall be permitted to make monitored telephone calls of reasonable length, as determined by the monitor, in emergencies such as:

1. Serious family illness;
2. Death; or
3. Impending disaster related to the inmate's property which cannot be deferred until regular mail delivery.

(b) Whenever an emergency telephone call for an inmate is received by the correctional facility:

1. The telephone number and name of the calling party shall be taken;
2. The particulars of the telephone call shall be noted;
3. The Social Service Department shall check, to the extent possible, the validity of the telephone call;
4. *[Once the]* *The* Social Service Department *[has validated the emergency]* *shall inform the inmate of the validated* telephone call*[, the inmate shall be advised]* within 24 hours from the time the call was received; and
5. The inmate shall be permitted to return the emergency telephone call.

(c) In the event emergency telephone calls are received ***after regular institutional working hours or on weekends or holidays*** and a social worker is not available to perform the duties in (b) above within 24 hours, a custody supervisor shall check the validity of the emergency telephone call and follow the procedures outlined in (b) above.

10A:18-8.6 Legal telephone calls

(a) The Superintendent of the correctional facility shall establish written rules and regulations by which legal telephone calls may be made by:

1. Inmates;
2. Inmate paralegals; and
3. Professional staff.

(b) Legal telephone calls may be made to the following individuals or agencies for assistance in legal research and/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. Ombudsmen; and
7. The Legal Services Coordinator, Office of the Deputy Commissioner, Department of Corrections.

10A:18-8.7 Telephone calls between incarcerated family members

(a) Telephone calls shall be permitted between incarcerated family members. Family members are defined as:

1. Husband and wife;
2. Mother and child; *[or]*
3. Father and child*[,]**; and*
- *4. Brother and sister.*

(b) *[These telephone]* *Telephone* calls ***between incarcerated family members*** shall be permitted if:

1. The family relationship has been substantiated through documentation found in the classification folder or other appropriate resources;
2. The telephone calls have been approved by the Institutional Classification Committee (I.C.C.);
3. The full costs of the telephone calls are borne by the inmates involved; and
4. The frequency, duration and time of the calls are coordinated between the correctional facilities involved, subject to other provisions of this subchapter.

10A:18-8.8 Telephone use by authorized inmate groups

(a) Correctional facilities are not obligated to provide direct telephone lines to inmate groups or organizations.

(b) Authorized inmate groups and organizations may be permitted to make telephone calls to achieve approved objectives of that group in accordance with written rules and regulations established by the Superintendent.

(c) Authorized groups and organizations shall assume the cost of telephone calls that are made in furtherance of their approved objectives.

(d) *[Calls]* *Telephone calls* may be monitored at the Superintendent's discretion.

10A:18-8.9 Telephone use in Close Custody Units

Inmate access to telephones in Close Custody Units shall be governed by N.J.A.C. 10A:5 CLOSE CUSTODY UNITS.

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

(a)

Board of Accountancy Applications for Reexamination

Adopted Repeal and New Rule: N.J.A.C. 13:29-1.7

Proposed: January 5, 1987 at 19 N.J.R. 48(b).

Adopted: May 27, 1987 by the State Board of Accountancy,
Jerry C. Tobin, CPA, President.

Filed: June 4, 1987 as R.1987 d.262, **without change**.

Authority: N.J.S.A. 45:2B-10.

Effective Date: July 6, 1987.

Expiration Date: June 3, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:29-1.7 Applications for reexamination

(a) Applications for reexamination shall be allowed as follows in (b) below, and all fees must be paid by check or money order.

(b) Rules on conditional credit are as follows:

1. A candidate will be required to attain a grade of not less than 75 in each subject before he or she will be declared to have passed the examination.

2. A candidate who fails to pass all subjects, but who receives a passing grade in two or more subjects, or in accounting practice alone, shall receive conditional credit for such subjects provided the candidate attains an average grade of 50 for the subjects failed. This minimum grade requirement is waived if three subjects are passed at a single sitting.

3. To add to conditional status, the candidate must attain a grade of 75 or more in the subjects passed and an average grade of 50 in all subjects not passed. While an average grade of less than 50 prevents the candidate from adding to this conditional status, it alone does not remove or cancel conditional status previously attained.

4. In the event that a candidate fails to qualify in all examined subjects in accordance with (b)2 and 3 above during the six examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant at the next succeeding examination for which he or she sits, and shall be required to write the entire examination therefor.

5. The Board may, in the exercise of its discretion and under extenuating circumstances, extend the period within which conditional credits shall continue to be valid.

6. At every sitting, the candidate must sit for all subjects for which he or she has not yet received a passing grade. The failure of a candidate to submit a paper for any subject of an examination not yet passed will disqualify all papers submitted by that candidate at that examination unless the Board, in its discretion, finds good cause not to disqualify the papers submitted.

7. The conditional credit provided for in this rule shall be deemed to have commenced with the examination administered in November 1983.

8. Conditional credits granted by other jurisdictions may, upon proper application to the Board, be considered for transfer. Credits determined under the laws and regulations of the issuing jurisdiction may be recognized by the Board provided the issuing jurisdiction's requirements

are substantially equivalent to the requirements set forth in this rule. In all cases, the duration of recognized conditional credit shall not be continued beyond the period determined by the rules of the Board.

(b)

Board of Examiners of Master Plumbers Requirement of Identification Card Defined Adopted New Rule: N.J.A.C. 13:32-1.9

Proposed: February 17, 1987 at 19 N.J.R. 352(b).

Adopted: May 21, 1987 by Board of Examiners of Master Plumbers, Joseph F. Kavanaugh, Jr., Chairman.

Filed: May 29, 1987 as R.1987 d.257, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14C-7.

Effective Date: July 6, 1987.

Expiration Date: November 1, 1987.

Summary of Public Comments and Agency Responses:

The Board received one written comment on the proposal. The Chief of Construction Code Enforcement of the Department of Community Affairs suggested that the proposal should be amended to provide that licensees should be required to present their identification card to Construction Code Officials upon request but that presenting the card should not be a requirement for obtaining a permit unless so requested. The Board voted to accept the comment and to amend the proposal accordingly, since the purpose of the proposal was simply to provide licensees with proof of their licensed status. In the situation where a sub-code enforcement official does not ask for or require such proof, the Board agrees that presentation of the card should not be a rigid requirement and that the purpose of the regulation is served without this requirement.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*).

13:32-1.9 Requirement of identification card defined

(a) At the time of the biennial renewal of the license, the State Board of Examiners of Master Plumbers shall furnish a wallet size identification card to every licensee. The card shall be used exclusively by the licensee master plumber in the conduct of his practice. A licensee who willfully or negligently allows an unlicensed or an unauthorized person to use his identification card shall be deemed to have engaged in occupational misconduct and shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:14C-1 and N.J.S.A. 45:1-14 et seq. A state-licensed master plumber is required to present said identification card ***upon request*** to the appropriate duly licensed inspection agency upon all applications for plumbing permits.

(b) Use of an identification card by any person other than a licensee to whom it is issued or his duly authorized agent acting on the licensee's behalf shall be deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense. Such conduct shall be unlawful and may be grounds for the suspension or revocation of the license of the unauthorized user if he is already licensed by the Board. With respect to an unlicensed user, such conduct shall be grounds for the refusal to issue a State license at any point in the future.

(c)

State Board of Physical Therapy Authorized Practice

Adopted New Rule: N.J.A.C. 13:39A-2.2

Reproposed: June 2, 1986 at 18 N.J.R. 1177(b).

Adopted: October 14, 1986 by Royce Buczek, P.T., Chairman,
New Jersey State Board of Physical Therapy.

Filed: May 29, 1987 as R.1987 d.256, **with portions** of the proposal **not adopted**.

Authority: N.J.S.A. 45:9-37.18(f) and 45:1-21.

Effective Date: July 6, 1987.

Expiration Date: July 7, 1991.

Summary of Public Comments and Agency Responses:

Several letters were received by the Board expressing concerns relating to repropoed N.J.A.C. 13:39A-2.2. Many of those commentators renewed the same objections as had been raised relating to N.J.A.C. 13:39A-2.2 as it was first proposed. While several writers (including physical therapists and some physicians) noted their endorsement of the rule, comments were received from the Medical Society of New Jersey, the Union County Medical Society, the New Jersey Hospital Association, the New Jersey State Board of Medical Examiners, the State Board of Nursing and several orthopedic surgeons which were critical of the rule proposal. Some writers misunderstood the proposal, believing that it authorized the physical therapist to initiate treatment without a physician becoming involved. Clearly the rule does not authorize that scheme. The rule does not imbue therapists with authority to diagnose medical conditions. That responsibility remains with the physician who retains the authority to direct the initiation of treatment.

Other commentators suggested that, in their view, the Legislature had not intended to allow physical therapists to conduct evaluation without physician direction. The Board has considered these comments, but is persuaded that the Legislature intended to require physician direction as a necessary prerequisite only to the initiation of treatment. At N.J.S.A. 45:9-37.14, the Legislature defined the practice of physical therapy to include "examination, treatment and instruction." Yet at N.J.S.A. 45:9-37.13, it recognized physician direction as a necessary prerequisite to treatment in that it expressly required that "[a] physical therapist shall provide physical therapy treatment to an individual upon the direction of a licensed physician, dentist or other health care practitioner authorized to prescribe treatment."

Many writers expressed a concern that the public may be at risk even under the reproposal, which provides that physician direction must be obtained before a therapist conducts electromyographic studies. Because of this concern, the Board conducted a public hearing on the inclusion of electromyographic testing in the tests and measures available to physical therapists. Accordingly, the Board has decided not to adopt N.J.A.C. 13:39-2.2(a), since that provision authorizes the conduct of electromyographic testing by physical therapists upon physician direction. After consideration of the hearing officer's recommendations, a reproposal may follow.

Additional comments addressed the provision which authorizes the therapist to modify a treatment plan when that modification is consistent with the initial direction of the prescribing physician. A group of orthopedic surgeons were representative of these commentators who noted that it is an advisable practice for physicians to specify the modalities, the frequency of treatment and the duration of treatment. Although it may be an advisable practice, the Board does not have jurisdiction to require physicians to define the treatment plan with such specificity. The new rule does require the physical therapist to hold a consultation with the prescribing physician if he or she proposes alterations to the treatment plan which are not consistent with all the specific treatment requirements defined by the prescribing physician.

Full text of adoption follows (additions to the proposal indicated in boldface with asterisks *thus*, deletions from proposal indicated in brackets with asterisks *[thus]*).

13:39A-2.2 Authorized practice by a licensed physical therapist

(a) *[A licensed physical therapist may initiate physical therapy treatment and conduct electromyographic testing (to the extent that his or her training and experience has prepared him or her to perform such testing) but only after having received physician direction.]*
(Reserved)

(b) A licensed physical therapist may engage in the following activities and practices without physician direction:

1. Physical therapy examination, excluding electromyographic testing;
2. Physical therapy instruction;
3. Modification of physical therapy treatment previously initiated upon physician direction provided that the modification is consistent with that physician direction (for example, the physical therapist, in the exercise of his or her discretion, may determine to utilize a variety of modalities to effectuate the direction given by the physician.) If the physical therapist wishes to alter a therapeutic plan in a manner not consistent with the initial physician direction, contact must be made with the patient's physician for the purpose of obtaining additional direction.

(a)

**State Board of Physical Therapy
Unlawful Practices by Licensees
Scope of Physical Therapy**

Adopted New Rule: N.J.A.C. 13:39A-3.3

Repropoed: June 2, 1986 at 18 N.J.R. 1178(a).

Adopted: October 14, 1986 by Royce Buczek, P.T., Chairman,
New Jersey State Board of Physical Therapy.

Filed: May 29, 1987 as R.1987 d.255, with portions of the proposal not adopted.

Authority: N.J.S.A. 45:9-37.18(f) and 45:1-21.

Effective Date: July 6, 1987.

Expiration Date: July 7, 1991.

Summary of Public Comments and Agency Responses:

Several writers objected to the format of N.J.A.C. 13:39A-3.3, which by its terms seeks to delineate specific acts and practices which will be deemed to be outside the scope of practice. Both the Medical Society of New Jersey and the New Jersey State Board of Nursing noted that the specific inclusion of certain activities, raised uncertainty as the lawfulness of other activities not expressly recognized. The Board, through this rule, does not intend to offer an exhaustive list of forbidden activities, but rather it seeks to give general guidance to the profession as to questions which it contemplates may arise. The statute prohibits physical therapists from engaging in the practice of medicine; the rule only supplements and clarifies the parameters of that prohibition.

The Board has decided not to adopt N.J.A.C. 13:39A-3.3(a)1. This provision, if adopted, would implicitly recognize a physical therapist's right to conduct electromyographic testing with physician direction, since it explicitly prohibits the testing without physician direction. The Board has conducted a public hearing relating to the issue of allowing physical therapists to conduct electromyographic testing, and upon its consideration of the recommendations of the hearing officer, a reproposal of this provision may follow.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks *thus*, deletions from proposal indicated in brackets with asterisks *[thus]*).

13:39A-3.3 Scope of physical therapy

(a) The following acts and practices shall be deemed to be outside the scope of physical therapy and upon proof that a licensee is engaging in such conduct he or she may be subject to disciplinary action:

1. *[The initiation of physical therapy treatment and the conduct of electromyographic testing without the direction of a physician as defined at N.J.A.C. 13:39A-2.1;]* *(Reserved)*
2. The conduct of a breast or pelvic internal examination;
3. The taking of radiological studies;
4. The representation of physical therapy treatment to be a cure or remedy for disease or organic condition unrelated to physical disability for which physical therapy services have been sought.

TRANSPORTATION**LOCAL AID****(a)****1984 New Jersey Transportation Trust Fund
Authority Act
Federal Aid Urban System Substitution Program:
County and Municipal Aid
Audits****Adopted Amendments: N.J.A.C. 16:20A-2.4, 4.1 and
4.2****Adopted New Rule: N.J.A.C. 16:20A-5.1**

Proposed: April 20, 1987 at 19 N.J.R. 622(a).

Adopted: May 21, 1987 by Jack Freidenrich, Assistant

Commissioner for Engineering and Operations (State Highway
Engineer).Filed: June 8, 1987 as R.1987 d.265 **without change**.Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1B-1 et seq., 27:7-13,
7-47 and 7-13.1 et seq.

Effective Date: July 6, 1987.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:**No comments received.****Full text of the adoption follows.****16:20A-2.4 Standards**

(a) The proposed road and bridge improvements shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below. Any exceptions to these design criteria must be justified by the local engineer to be in the public interest.

1. (No change.)
 2. A policy on Geometric Design of Highways and Streets, 1984;
 3. Standard Specifications for Highways Bridges;
 4. Guide for the Development of New Bicycle Facilities 1981.
- (b)-(c) (No change.)

SUBCHAPTER 4. CONTRACTS**16:20A-4.1 Award of contract**

(a) (No change.)

(b) Prior to and no later than the advertisement for construction bids, the local government shall submit the following to the Local Aid District Office:

1. Two copies of the contract plans and specifications; and
2. Two copies of the Engineer's Estimate of costs.

(c) Within 10 days, or such longer period as the Local Aid District Office will approve, following the receipt of construction bids, the local government shall submit the following to the Local Aid District Office:

1. Two copies of the summary of construction bids; and
2. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

(d) (No change in text.)

16:20A-4.2 Contract completion and payment

(a) (No change.)

(b) When all the work has been completed satisfactorily, the local government will prepare and submit to the Local Aid District Office the following:

1. (No change.)
2. A certification by the county/municipal chief financial officer that all expenditures are supported by valid documentation and conform with the terms of the State's agreement; and
3. (No change.)

(c) After a final inspection of the completed work by the State, action shall be taken to reimburse the county/municipality.

(d) (No change.)

SUBCHAPTER 5. AUDIT**16:20A-5.1 General provisions**

(a) The county/municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

(b) A Single Audit of the county/municipal shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with the State Audit Policy.

(c) Department of Transportation agreements governed by N.J.A.C. 16:20A shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual."

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreements with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the county/municipality to comply with the subchapter shall not be reimbursable.

(b)**1984 New Jersey Transportation Trust Fund
Authority Act: Municipal Aid
Audits****Adopted Amendments: N.J.A.C. 16:20B-1.2, 3.1 and
3.2****Adopted New Rule: N.J.A.C. 16:20B-5.1**

Proposed: April 20, 1987 at 19 N.J.R. 623(a).

Adopted: May 21, 1987 by Jack Freidenrich, Assistant

Commissioner for Engineering and Operations, (State
Highway Engineer).Filed: June 8, 1987 as R.1987 d.266 **without change**.Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1B-1 et seq., 27:7-13,
27:7-47 and 27:7-13 et seq.

Effective Date: July 6, 1987.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:**No comments received.****Full text of the adoption follows.****16:20B-1.2 Standards**

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation officials publications listed below:

1. (No change.)
 2. A Policy on Geometric Design of Highways and Streets, 1984;
 3. Standard Specifications for Highway Bridges.
- (b)-(c) (No change.)

SUBCHAPTER 3. CONTRACTS**16:20B-3.1 Awards of contract**

(a) (No change.)

(b) Prior to and no later than the advertisement for construction bids, the municipality shall submit the following to the Local Aid District Office:

1. Two copies of the contract plans and specifications; and
2. Two copies of the engineer's estimate of costs.

(c) Within 10 days, or such longer time as the Local Aid District Office will approve, following the receipt of construction bids, the municipality shall submit the following to the Local Aid District Office:

1. Two copies of the summary of construction bids; and
2. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

(d) (No change in text.)

16:20B-3.2 Contract completion and payment

- (a) (No change.)
- (b) When all work has been completed satisfactorily, the municipality will prepare and submit to the Local Aid District Office the following:
 1. (No change.)
 2. A certification by the municipal chief financial officer that all expenditures are supported by valid documentation and conform with the terms of the State's agreements; and
 3. (No change.)
- (c) After a final inspection of the completed work by the State, action shall be taken to reimburse the municipality.
- (d) (No change.)

SUBCHAPTER 5. AUDIT

16:20B-5.1 General provisions

- (a) The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).
- (b) A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State Audit Policy.
- (c) Department of Transportation agreements governed by N.J.A.C. 16:20B shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".
- (d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.
- (e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

(a)

State Aid to Counties and Municipalities Audits

Adopted Amendment: N.J.A.C. 16:21-3.2
Adopted New Rule: N.J.A.C. 16:21-5.1

Proposed: April 20, 1987 at 19 N.J.R. 624(a).
Adopted: May 21, 1987 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations (State Highway Engineer).
Filed: June 8, 1987 as R.1987 d.267 **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:8-1 to 9.
Effective Date: July 6, 1987.
Expiration Date: September 3, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:21-3.2 Contract completion and payment

- (a) When all work has been completed satisfactorily, the local government will prepare and submit to the Local Aid District Office the following:
 1. A statement of the work performed, certified by the municipal/county engineer, for acceptance and approval of the completed work;
 2. A certification by the county/municipal chief financial officer that all expenditures are supported by valid documentation and conform with the terms of the State's agreement; and
 3. (No change.)
- (b) After a final inspection of the completed work by the State, action shall be taken to reimburse the county/municipality.

SUBCHAPTER 5. AUDIT

16:21-5.1 General provisions

- (a) The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management

and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

- (b) A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State Audit Policy.

- (c) Department of Transportation agreements governed by N.J.A.C. 16:21 shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

- (d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

- (e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

(b)

New Jersey Bridge Rehabilitation and Improvement Fund: State Aid to Counties and Municipalities Audits

Adopted Amendment: N.J.A.C. 16:21A-3.2
Adopted New Rule: N.J.A.C. 16:21A-5.1

Proposed: April 20, 1987 at 19 N.J.R. 624(b).
Adopted: May 21, 1987 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations (State Highway Engineer).
Filed: June 8, 1987 as R.1987 d.268 **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-47, 27:13-1 et seq. and the New Jersey Bridge Rehabilitation and Improvement Bond Act of 1978, P.L. 1983, c.363.

Effective Date: July 6, 1987.
Expiration Date: August 20, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:21A-3.2 Contract compliance and payment

- (a) When all work has been completed satisfactorily, the local government will prepare and submit to the Local Aid District Office, the following:
 1. A statement of the work performed, certified by the municipal/county engineer, for acceptance and approval of the completed work;
 2. A certification by the county/municipal chief financial officer that all expenditures are supported by valid documentation and conform with the terms of the State's agreement; and
 3. (No change.)
- (b) After a final inspection of the completed work by the State, action shall be taken to reimburse the county/municipality.
- (c) (No change.)

SUBCHAPTER 5. AUDIT

16:21A-5.1 General provisions

- (a) The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

- (b) A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

- (c) Department of Transportation agreements governed by N.J.A.C. 16:21A shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

(a)

**Urban Revitalization, Special Demonstration and
Emergency Project Rules
Audits**

Adopted Amendment: N.J.A.C. 16:22-3.2

Adopted New Rule: N.J.A.C. 16:22-5.1

Proposed: April 20, 1987 at 19 N.J.R. 625(a).

Adopted: May 21, 1987 by Jack Freidenrich, Assistant
Commissioner for Engineering and Operations (State Highway
Engineer).

Filed: June 8, 1987 as R.1987 d.269 **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 to 9.

Effective Date: July 6, 1987.

Expiration Date: February 3, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:22-3.2 Contract completion and payment

(a) When all work has been completed satisfactorily, the local government will prepare and submit to the Local Aid District Office the following:

1. (No change.)

2. A certification by the county/municipal chief financial officer that all expenditures are supported by valid documentation and conform with the terms of the State's agreement; and

3. (No change.)

(b) After a final inspection of the completed work by the State, action shall be taken to reimburse the county/municipality.

(c) (No change.)

SUBCHAPTER 5. AUDIT

16:22-5.1 General provisions

(a) The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

(b) A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

(c) Department of Transportation agreements governed by N.J.A.C. 16:22 shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

TRANSPORTATION OPERATIONS

(b)

Restricted Parking and Stopping

**Routes 4 in Bergen County; U.S. 9 in Middlesex
County; 21 in Essex County; U.S. 30 in Camden
County; U.S. 40 in Salem and Atlantic Counties;
U.S. 46 in Bergen County; 47 in Cumberland
County; 88 in Ocean County; U.S. 130 in Burlington
County; 124 in Essex County; 168 in Camden
County; 161 in Passaic County; and U.S. 40/322 in
Atlantic County**

**Adopted Amendments: N.J.A.C. 16:28A-1.4, 1.7,
1.11, 1.21, 1.28, 1.32, 1.33, 1.44, 1.46, 1.51, 1.69,
1.85 and 1.104**

Proposed: May 4, 1987 at 19 N.J.R. 710(a).

Adopted: June 4, 1987 by John F. Dunn, Jr., Assistant Chief
Engineer, Traffic and Local Road Design.

Filed: June 10, 1987 as R.1987 d.270, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,
39:4-199.

Effective Date: July 6, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.4 Route 4

(a) The certain parts of State highway Route 4 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-3. (No change.)

4. No stopping or standing in the Borough of Elmwood Park, Bergen County, along the southerly (eastbound) side from River Drive to East 53rd Street and from East 54th Street to East 55th Street.

(b) (No change.)

(c) The certain parts of State highway Route 4 described in this subsection shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following Time Limit Parking zones:

1. One hour time limit parking on Broadway (south side) from East 53rd Street to East 54th Street in Elmwood Park, Bergen County on Monday through Saturday from 7:00 A.M. to 7:00 P.M., except Sundays and holidays.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-35. (No change.)

36. Along the southbound (westerly) side in Old Bridge Township, Middlesex County:

i. (No change.)

ii. Mid-block bus stop:

(1) Between Perrine Road and Runyon Cheesequake Road—Beginning 195 feet south of the southerly curb line of Perrine Road and extending 135 feet southerly therefrom.

37. (No change.)

38. Along the northbound (easterly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1)-(4) (No change.)

(5) Aldrich Road—Beginning at the southerly curb line of the jughandle to Aldrich Road east and extending 135 feet southerly therefrom.

- ii. Mid-block bus stops:
 - (1) (No change.)
 - (2) Salem Hill Road—Beginning at a point 204 feet south of the southerly curb line of Salem Hill Road and extending 135 feet southerly therefrom.
- iii. Far side bus stops:
 - (1)-(3) (No change.)
 - (4) Aldrich Road—Beginning at the northerly curb line of the jughandle from Aldrich Road and extending 135 feet northerly therefrom.
 - (5) Alexander Avenue—Beginning at the northerly curb line of Alexander Avenue and extending 135 feet northerly therefrom.

16:28A-1.11 Route 21 including Old Route 21 (Passaic Place)
(a) The certain parts of State highway Route 21 described in this section shall be designated and established as “no parking” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

- 1.-3. (No change.)
- 4. No stopping or standing in the City of Clifton, Passaic County, along both sides, for the entire length within the corporate limits of the City of Clifton, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.
- 5. No stopping or standing in Nutley Township, Essex County, along both sides for the entire length within the corporate limits of the Township of Nutley, including all ramps, service roads, and connections under the jurisdiction of the Commissioner of Transportation.

16:28A-1.21 Route U.S. 30
(a) (No change.)
(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.A.C. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-19. (No change.)
- 20. Along the northbound (easterly) side in Audubon Borough, Camden County:
 - i. Far side bus stops:
 - (1) East Kings Highway—Beginning at the northerly curb line of East Kings Highway and extending 117 feet northerly therefrom.
 - (2) West Merchant Street—Beginning at the northerly curb line of West Merchant Street and extending 128 feet northerly therefrom.

16:28A-1.28 Route U.S. 40
(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as “no parking” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

- 1.-7. (No change.)
- 8. No stopping or standing in the Borough of Elmer, Salem County:
 - i. Along the southerly (eastbound) side beginning at the easterly curb line of County Road 648 (North Main Street) to a point 68 feet easterly therefrom.
 - (b) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
 - 1. Along the southerly (eastbound) side in Buena Vista Township, Atlantic County:
 - i. At the far side bus stop beginning at the easterly curb line of County Road 557 (Buena-Tuckahoe Road) and extending 100 feet easterly therefrom.

16:28A-1.32 Route 46
(a) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as “no parking” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

- 1. No stopping or standing in the Borough of Elmwood Park, Bergen County:
 - i. Along both sides within the corporate limits of the Borough of Elmwood Park, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
 - ii. Along the northerly (westbound) side from River Drive to the Elmwood Park-Garfield boundary line.
 - iii. Along the southerly (eastbound) side from River Drive to the Elmwood Park-Garfield boundary line.

- 2.-16. (No change.)
- (b) (No change.)
- 16:28A-1.33 Route 47
 - (a) (No change.)
 - (b) The certain parts of State highway Route 47 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-6. (No change.)
7. Along the southbound (westerly) side in Vineland City, Cumberland County:

- i. At the mid-block bus stop between College Drive and Route 55, beginning 1,580 feet south to the southerly curb line of College Drive and extending 135 feet southerly therefrom.

16:28A-1.44 Route 88
(a) The certain parts of State highway Route 88 described in this subsection shall be designated and established as “no parking” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

- 1.-5. (No change.)
- 6. No stopping or standing in Brick Township, Ocean County:
 - i. Along both sides for the entire length within the corporate limits of Brick Township including all ramps, service roads, and connections under the jurisdiction of the Commissioner of Transportation.

(b) (No change.)
16:28A-1.46 Route U.S. 130
(a) (No change.)
(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be designated and designated as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-4. (No change.)
- 5. Along the southbound (westerly) side in Delran Township, Burlington County:
 - i. At the near side bus stop beginning at the prolongation of the northerly curb line of Tenby Chase Drive and extending 105 feet northerly therefrom.

(c) (No change.)
16:28A-1.51 Route 168
(a) (No change.)
(b) The certain parts of State highway Route 168 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-6. (No change.)
- 7. Along the northbound (easterly) side in Audubon Borough, Camden County:
 - i. Mid-block bus stop between North Merchant Street and Main Street, beginning 205 feet south of the prolongation of the southerly curb line of Main Street and extending 135 feet southerly therefrom.

16:28A-1.69 Route 124
(a) The certain parts of State highway Route 124 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1. (No change.)
- 2. Along Springfield Avenue on the westbound (northerly) side in Maplewood Township, Essex County:
 - i. At the mid-block bus stop beginning 240 feet east of the easterly prolongation curb line of Chancellor Avenue and extending 145 feet easterly therefrom.

(b) (No change.)
16:28A-1.85 Route 161
(a) (No change.)
(b) The certain parts of State highway Route 161 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

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1. Along Clifton Avenue on the northbound (easterly) side in the City of Clifton, Passaic County:
 - i. At the near side bus stop beginning at the southerly curb line of St. James Place and extending 105 feet southerly therefrom.
 2. Along Clifton Avenue on the southbound (westerly) side in the City of Clifton, Passaic County:
 - i. At the near side bus stop beginning at the northerly curb line of Godwin Place and extending 105 feet northerly therefrom.
- 16:28A-1.104 Route U.S. 40-322
- (a) (No change.)
 - (b) The certain parts of State highway Route U.S. 40-322 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
 1. (No change.)
 2. Along the eastbound (southerly) side in Egg Harbor Township, Atlantic County:
 - i. At the mid-block bus stop between Delancy Avenue and Fire Road, beginning 713 feet west of the westerly curb line of Delancy Avenue and extending 135 feet westerly therefrom.
 - ii. At the near side bus stop beginning at the westerly curb line of Palermo Avenue and extending 105 feet westerly therefrom.
 - iii. At the far side bus stop beginning at the easterly curb line of Victory Drive and extending 100 feet easterly therefrom.
 3. Along the westbound (southerly) side in Egg Harbor Township, Atlantic County:
 - i. At the far side bus stop beginning at the westerly curb line of County Lane and extending 100 feet westerly therefrom.
 - ii. At the near side bus stop beginning at the easterly curb line of Fire Road and extending 105 feet easterly therefrom.

NEW JERSEY TRANSIT CORPORATION

(a)

Bus Allocation Guidelines and Procedures

Adopted Amendment: N.J.A.C. 16:75

Proposed: April 6, 1987 at 19 N.J.R. 506(a).

Adopted: June 1, 1987 by Jerome C. Premo, Executive Director,
New Jersey Transit Corporation.

Filed: June 3, 1987 as R.1987 d.260, **without change**.

Authority: N.J.S.A. 27:25-5(e), (h) and (k).

Effective Date: July 6, 1987.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 1. GENERAL PROVISIONS

16:75-1.1 Purpose

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT fulfills this responsibility is through the leasing of buses purchased with funds provided by the State, the Federal government or the Port Authority of New York and New Jersey. This chapter is designed to provide guidelines and procedures pursuant to which NJ TRANSIT will allocate these buses.

16:75-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

"Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where by reason of the relationship of such entity with the carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or

any other direct or indirect means) there is a reason to believe that the affairs of the carriers may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.

"Board" means the Board of Directors of NJ TRANSIT.

"Carrier" means any individual, co-partnership, association, corporation, joint stock company, affiliate or affiliates, trustee or receiver operating or controlling regular route peak bus service on established routes within the State or between points in this State and points in adjacent states.

"Executive Director" means the Executive Director of NJ TRANSIT or his designee.

"Fleet" means the specific buses designated by the carriers and approved by NJ TRANSIT that are needed to meet the peak period service needs (including up to 15 percent spares) for all eligible services and carriers.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"Regular route peak services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states generally during the times of 6:00 A.M. to 9:30 A.M. and 4:00 P.M. to 7:00 P.M. but also including such other times as NJ TRANSIT may deem appropriate.

SUBCHAPTER 2. GUIDELINES

16:75-2.1 Replacement of buses

(a) Carriers have no right to the receipt of buses pursuant to the bus leasing programs and the receipt of buses shall always be at the discretion of NJ TRANSIT.

(b) A carrier must be authorized to provide regular route peak service by NJ TRANSIT, the New Jersey Department of Transportation, the Interstate Commerce Commission (ICC), a municipality or any other duly authorized regulatory body. The fact that a carrier is authorized to provide regular route peak service by any such regulatory body does not in and of itself make a carrier eligible for the leasing of buses. To be eligible, the service must be provided on a regular and continuing basis and may not be exclusionary or personal in nature. Service to special purpose areas or that which is exclusionary in nature such as to casinos or special events, is not eligible. Carriers will be asked to indicate the procurement programs in which they would like to participate. A decision not to participate in one program will not qualify a carrier for greater participation in another program. In addition, after NJ TRANSIT has determined bus allocation eligibility and if an operator chooses not to accept all buses which are allocated, NJ TRANSIT will view the status of that operator's fleet as if it had accepted all buses allocated. For new buses, a 12 year useful life is assumed for determining fleet composition, for rehabilitated buses, a five year useful life period is presumed, and for refurbished buses a 10 year useful life period is presumed. The determination of whether a bus is to be rehabilitated or refurbished will be based on the scope and manner of work required but generally a refurbished bus is one that can be restored to the original equipment manufacturer's condition because of low mileage or use.

(c) Except as provided in (k) below, the allocation of buses will be based on the need to replace buses which have or will reach their useful life as defined in (b) above and which are needed to meet a carrier's peak period requirement on its motor bus regular route services.

(d) The Fleet will be reviewed as of July 1 of each year. Existing services considered eligible as of July 1, 1985 would be grandfathered and considered eligible for replacement unless such services are materially changed or expanded. Those services initiated between July 1, 1985 and the date of adoption of these rules would be considered eligible for replacement buses with the approval of the Executive Director or his designee. In the event a carrier is denied eligibility for such services, the decision is reviewable in accordance with the procedures established for new services in (i) below.

(e) The Fleet will include all publicly owned buses leased to a carrier plus those private carrier owned or leased buses permanently designated to meet a carrier's eligible peak hour bus requirement plus 15 percent spares. The Fleet will be based on data submitted by eligible carriers as verified by NJ TRANSIT and updated each year. All participating carriers would be required to submit documentation as to their peak needs. Based upon such verified documentation each participating carrier would be required to identify specific buses to be included in the Fleet which would cover these peak needs plus the approved percentage of spares. Buses identified are to be the newest buses from the carrier's fleet (exclud-

ing affiliates whose buses are not regularly used in the carrier's eligible service) and are to be of the type used for the services provided. Titles to such vehicles would remain with the operating carrier who would be obligated to inform NJ TRANSIT whenever a bus is sold or permanently removed from the Fleet and to identify a replacement bus or buses. In no event would a privately owned vehicle be eligible for replacement in the Fleet with a bus of greater age.

(f) Allocations will generally not be made for spare vehicles until the peak period requirements of all eligible carriers are met. Until such time as bus purchases are sufficient to replace all qualified overage buses in the State, individual allocations will generally be made on a percentage basis. This will be according to the relative need each qualified carrier has to replace its overage buses as compared to the total need of all qualified carriers to replace all overage buses. This percentage will be calculated for each bus procurement program.

(g) Buses will be allocated for different types of services according to service based characteristics. Generally, transit-type buses will be used for local urban services and commuter-type buses will be used for long haul intrastate or interstate services. Generally, cruiser-type buses (that is, deck and a half) will be allocated for commuter services which meet the following criteria:

1. The trips originate a minimum of 12 miles from the major point of destination, and express service is offered for at least the last four miles to the point of destination; or
2. The route to major point of destination requires substantial under-floor baggage capacity; and
3. The major point of destination for the trips (and routes) must be a major trip generator such as a bus or rail terminal.

(h) It will be expected that carriers will make every effort to ensure that allocated buses are used in all day services first before they are used for other types of services, such as AM/PM trippers, split assignments, extras, etc. This should be done to the extent that it makes practical operating sense and should not interfere with the scheduling of maintenance for the bus.

(i) Buses for new services or major modification of existing services will be eligible for inclusion in the Fleet only after a determination by the Executive Director or his designee that such services are an integral part of the State transportation system based on the public need, coordination, competition and other relevant factors. Such a determination of eligibility shall take place prior to the initiation of any new or major modification of service. Nothing in this determination will relate to the carrier's right to operate such service but only to its right to obtain buses for such service. Carriers who initiate new or major modifications of services and apply for buses for that service will be required to submit information regarding such service prior to any subsequent allocation of buses. In the event a carrier, public or private, is denied eligibility pursuant to this subsection by the Executive Director or his designee, such decision may be reviewed by the Board of Directors upon request of the carrier in accordance with N.J.A.C. 16:75-3.1 et seq.

(j) Information provided by a carrier to NJ TRANSIT with regard to a request for a determination of eligibility pursuant to (i) above shall be confidential. NJ TRANSIT shall utilize such information solely to render a determination of eligibility and shall not initiate plans for substantially similar competitive services. In the event NJ TRANSIT approves the request for eligibility and a carrier initiates the approved service, NJ TRANSIT, its subsidiaries or other carriers contracting with NJ TRANSIT pursuant to Section 6 of the New Jersey Public Transportation Act of 1979 to the extent that such operation by contract carriers is within the control of NJ TRANSIT, shall not initiate and operate substantially similar, competitive service so long as the carrier continues to provide the service and is not in default under any agreements with NJ TRANSIT.

(k) Exceptions: The bus industry in New Jersey is diverse and includes local transit and commuter services, long haul commuter services, intercity services and services to special areas such as airports and sports centers. The carriers who provide these services are also diverse and include small closely held corporations operating one bus to large multi-corporate holding companies operating large fleets of buses from numerous operating locations. In order to deal with the diverse nature of the industry there may be extenuating circumstances where it is appropriate to lease buses to a carrier or carriers who may not otherwise qualify on age based criteria. No buses shall be leased under this provision unless the buses replaced have been included by NJ TRANSIT in the Fleet and unless the proposed lease has been approved by the Board and such approval shall be at the Board's discretion.

16:75-2.2 Buses in a rehabilitation pool

(a) If a carrier wishes to participate in a bus rehabilitation program and it has buses which are in the age category of the program, then its privately owned bus will first be considered for use in the pool of buses to be included in the rehabilitation program. The inclusion of a privately owned vehicle in the rehabilitation pool will be based on an inspection of the condition of the bus by NJ TRANSIT to determine the cost-effectiveness of rehabilitating the bus. Title may be retained for the vehicle, but there will be an agreement for lease of the improvement of the bus due to rehabilitation (rehabilitated bus must be kept in regular route peak services at least five years, which is expected extension of the useful life of the bus). After rehabilitation, the bus will be counted as a seven-year old bus.

(b) If a carrier wishes to participate in a bus rehabilitation program and it has buses which are older than 12 years of age, then it will qualify to lease a rehabilitated bus owned by NJ TRANSIT.

16:75-2.3 Disposal of buses

(a) For each NJ TRANSIT owned bus that an operator receives under these programs, it must agree to take one of its overage buses out of service. It may not use that bus to expand its regular route peak or charter or special services. Except for previously approved Federal grants that may contain special terms to the contrary, when a Federally funded bus is disposed of, funds must be remitted to the Urban Mass Transportation Administration in an amount equal to the Federal share of the fair market value of the property or of the net sales proceeds. The local share of proceeds from the sale of assets that were funded with Federal assistance will be retained by NJ TRANSIT.

(b) Proceeds from the sale of assets not funded with Federal assistance will be retained by the operator. However, proceeds from the sale of operator or locally financed assets that are replaced under a Federal grant must be retained for mass transit purposes.

(c) With NJ TRANSIT'S approval, an operator may elect to use a bus which is taken out of service for parts requirements for its regular route services. In such cases, the operator should officially notify the Office of Regulatory Affairs of the New Jersey Department of Transportation that the buses which will be used for spare parts are being scrapped and request that the Certificate of Operation for the vehicle be revoked. However, it must use the proceeds for mass transit purposes on its regular route peak services. An operator may not transfer the vehicle to any affiliate unless the vehicle was originally purchased with private funds (that is, no Federal or State funds were involved) and unless the fair market value of the vehicle is credited to the line service company and proceeds used for eligible mass transit purposes. An operator may request that the vehicle be set aside in an active reserve fleet for emergency purposes, in which event the vehicle may only be used for such purposes.

(d) In all instances, an operator must submit a plan for any such disposition to NJ TRANSIT for its approval. If a bus to be replaced is leased, then the lessor must agree that the vehicle will be taken out of regular route peak services in the State of New Jersey. In such cases, the lessor may keep the proceeds of a disposed vehicle for its use.

(e) Buses disposed of by any public or private carrier pursuant to this section will not be replaced again under any circumstances. Excess buses from the NJ TRANSIT Fleet and publicly owned buses replaced from private fleets would be placed into a contingency pool, to the extent needed, to maintain the Fleet at a sufficient level to provide for emergencies and increases in ridership of either public and private participating carriers during the period from the previous annual survey and the actual delivery of buses.

(f) Private carriers would have the option of utilizing buses from the contingency pool, from their spare vehicles, or from other buses owned or leased to provide for increases in ridership on eligible services during the intervening period between one survey and the next. Decisions by NJ TRANSIT to lease or not lease carriers buses from the contingency pool shall be at the discretion of NJ TRANSIT.

(g) In the event the subsequent annual survey concludes that the peak needs of a participating carrier had increased, the carrier would become eligible for the additional buses needed to meet these demands without having to replace overaged buses, provided, however, that overaged buses will be replaced first. In the event the subsequent survey concludes that the peak needs of a participating carrier had decreased, NJ TRANSIT may at its option transfer the appropriate number of publicly owned buses to the contingency fleet or another carrier. Nothing would preclude a private carrier from operating buses it owns in other services or from operating buses not part of the Fleet, in approved service, provided that

the use of such buses not part of the Fleet, older than those of the Fleet, shall not result in an adjustment of the average age of the buses operated in eligible service unless such buses are used to meet increased peak needs.

16:75-2.4 Other requirements

(a) A carrier must agree to abide by all requirements, in force at the time the lease is executed, of NJ TRANSIT, and the Port Authority of New York and New Jersey to the extent that Port Authority funds are used for each purchase. In addition, a carrier must agree to abide by all requirements of the Urban Mass Transportation Administration (UMTA), in force at the time the lease is executed or implemented at any time during the life of the lease. Of particular note are maintenance and insurance requirements and toll, platform, and departure fees, as applicable. A draft lease stating the required terms and conditions will be provided to eligible participants.

(b) Port Authority funds are generally used for the purchase of the new commuter buses which are used for services entirely within the Port Authority "regional bus area". This "regional bus area" is defined as a 75 mile radius of the Port Authority Bus Terminal in midtown Manhattan.

16:75-2.5 Eligibility

(a) A carrier or any of its affiliates which is not current in any and all accounts it has with NJ TRANSIT and/or its predecessors, as well as with the State of New Jersey and all of its agencies, will be included in appropriate allocations but will not be able to receive any buses until such time as any outstanding sums are paid.

(b) Consideration will be given to the adequacy of performance by the carrier or any of its affiliates under prior vehicle leasing or other contractual arrangements with NJ TRANSIT and/or its predecessors. A carrier or any of its affiliates which have demonstrated a negative performance in the past may not be considered eligible under these programs.

(c) Consideration will also be given to a carrier's ability to maintain and operate advance design, articulated and other technologically complex types of buses that require sophisticated and expensive maintenance systems. Carriers may not be considered eligible for the receipt of such buses based on their apparent inability to maintain and operate such equipment.

(d) A carrier may not be eligible under any of these programs if NJ TRANSIT determines that the lease of buses or the continued lease of buses to the carrier is inconsistent with its statutory obligation to provide efficient, effective, coordinated and coherent State transportation systems.

SUBCHAPTER 3. PROCEDURE

16:75-3.1 Notification

(a) When NJ TRANSIT contemplates finding that a carrier is not eligible under any of its bus procurement programs pursuant to N.J.A.C. 16:75-2.5, a designee of the Executive Director shall notify the carrier of the preliminary decision, the reasons therefore and allow the carrier the opportunity to respond.

(b) The Executive Director shall consider the carrier's response and all other relevant material including the applicable provisions of N.J.S.A. 27:25-1 et seq., and any other applicable law and shall render a decision. A carrier may seek a review of such decision by an Administrative Law Judge, pursuant to N.J.A.C. 16:74-2.3 and 16:74-2.5(b) and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq., or the Board directly by filing a notice of such intention within 10 days after receipt of the Executive Director's decision. However, a review of denial of eligibility of new and modified services pursuant to N.J.A.C. 16:75-2.1(i) shall be conducted only by the Board.

(c) No final action shall be taken by NJ TRANSIT regarding a carrier's eligibility to receive buses until the carrier has had the opportunity to exhaust his right to respond to NJ TRANSIT'S preliminary decision or seek review of the Executive Director's decision pursuant to N.J.A.C. 16:74-2.3 or by an appeal directly to the Board of Directors. Any decision by NJ TRANSIT to lease buses, which a carrier would otherwise be entitled to receive if deemed eligible, prior to the exhaustion of such carrier's administrative remedies, must be made by the Board of Directors upon notice to the carrier.

16:75-3.2 Factors to be considered

(a) The factors to be considered by the Executive Director in determining whether a carrier is eligible to lease buses shall include, but not be limited to:

1. Whether a carrier or its affiliates are current in its accounts with NJ TRANSIT or its predecessor as well as with the State of New Jersey and all of its agencies and the Port Authority of New York and New Jersey;
2. The adequacy of performance by a carrier under prior leasing or other contractual arrangements with NJ TRANSIT or its predecessor;
3. Whether a carrier has the ability to maintain and operate advance design, articulated or other technologically complex types of buses;
4. The public need for all or a portion of the service operated by the carrier;
5. The impact of the service operated by the carrier on other carriers, the riding public and the taxpayers of the State;
6. The extent to which the carrier operates a complete array of service, or only operates on the more profitable routes and at the more profitable times, leaving other service to be operated by NJ TRANSIT or other carriers;
7. The extent to which the carrier has other equipment available for its use and not otherwise eligible for replacement under the NJ TRANSIT Bus Purchase Programs; and
8. Whether based on past actions of the carrier the lease should be conditioned on a carrier agreeing that it shall not provide additional regular route services without NJ TRANSIT'S approval.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Alternate Benefit Program Contributions; Late Payment

Adopted New Rule: N.J.A.C. 17:1-2.37

Proposed: June 16, 1986 at 18 N.J.R. 1256(a).

Adopted: June 5, 1987 by Douglas R. Forrester, Director,
Division of Pensions.

Filed: June 11, 1987 as R.1987 d.276, 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:66-192.

Effective Date: July 6, 1987.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

The only comments received were from New Jersey Education Association President Dennis N. Giordano, who raised five points concerning the rule.

COMMENT: In his first point, he questioned the potential 45-day due date before interest would be payable because of late payment under the rule. He stated that the 45-day period is different from the procedures followed by TIAA/CREF which permit a 30-day grace period for crediting contributions, and could result in participants losing at least one month's interest in TIAA or one month's participation in CREF.

RESPONSE: While it is possible for a participant to lose a month of interest or participation under the rule, the Division of Pensions believes that the proposal represents a reasonable balance between the interest of participants in having the contributions credited as promptly as possible and the reasonable administrative realities confronting the state and participating institutions in administering the program. The primary purpose of the proposed regulation is to avoid loss of earning potential on participant contributions to the program through excessive delays in transmittal of contributions to TIAA/CREF. The proposed rule generally achieves this goal by establishing a basic 30-day time limit for transmitting contributions. There is an exception to this basic requirement for the situation where the carrier has not provided participating institutions with the statement on amount owed in sufficient time to meet the deadline. In this situation, the institutions would have 15 days from the receipt of the statement, but in no event more than 45 days to transmit the contributions.

COMMENT: In his second point, he requested that the phrasing of the rule be changed to make it clear that the contributions had to be received by the carrier within the time limit set by the rule to avoid payment of interest.

RESPONSE: The Division agreed with this suggestion and has incorporated the change in the adopted rule.

COMMENT: In his third point, he requested that the proposed rule be clarified to indicate that if the statement of amount owed from the carrier is received on or before the fifteenth of the month, the 30-day time limit would apply.

RESPONSE: The Division believes that this is what the proposed rule provides and that there is no need for further clarification.

COMMENT: In his fourth point, he requested that employer contributions be included in the rule and be subject to interest charges if they are not transmitted within the same time limits.

RESPONSE: The Division disagrees with his statement that there "is no legal or practical reason why the regulation should not embrace both the employee and employer contributions." We feel that there is a substantial legal difference between employee and employer contributions. The employee contributions are the employees' money which is withheld from their paychecks. The employees do not receive the money and as long as it is in the hands of the employers and not in their accounts with the carrier, they are denied any benefit from their money. The employer contributions are the statutory contributions which the employers are required to make to their employees' pension accounts. They are not the employees' money and in some situations, for example, repurchase of annuity contract, the state is entitled to a return of the employer contributions. Payment of the employer contributions into employee accounts within one or two or even three months seems like a very reasonable funding and vesting standard for these benefits.

Even though the Division believes that there are substantial differences between employee and employer contributions, the practical effect on employees from later transmittal of both contributions is the same. There may be some small loss of earning potential. While the Division does not feel that there will be any significant loss of earnings for participants in the program as a result of delayed transmittals, the Division has decided that both types of contributions should be treated the same. The final rule will make the interest charge applicable to both contributions.

COMMENT: In his fifth point, he requested that the proposed rule be clarified to insure that interest would be paid on the entire amount of a delayed contribution, regardless whether all or a portion of it was allocated to a CREF account which does not earn interest.

RESPONSE: The Division believes that this is what the proposed rule currently provides. The reference in the proposed rule to "accounts which receive interest" is used merely to identify the source for the interest rate. The interest would be payable on the entire amount of the delayed contribution.

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

17:1-2.37 Contributions; late payment

(a) Participating institutions, which shall include the State for locations on state centralized payroll, shall pay ***employer and*** employee contributions (deductions and reductions) to the carrier underwriting annuity contracts within 30 days after the month in which the ***employee*** contributions are withheld, or within 15 days of receipt from the carrier of the statement of amount owed by the institution, whichever is later, but in no event later than 45 days after the month in which the ***employee*** contributions are withheld.

(b) If the contributions are not ***[paid]*** ***received by the carrier*** within the time limits of (a) above, the participating institution shall pay interest on the contributions, at the rate used by the carrier for crediting interest to participant accounts which receive interest for the month after the month in which the ***employee*** contributions are withheld, for each day after the time limit the contributions remain unpaid.

(c) The daily rate for interest on the contributions shall be the annual rate divided by 365, rounded to the nearest one-hundredth percent. The interest payable for each participant shall be indicated on the report to the carrier when the interest is paid.

OTHER AGENCIES

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

(a)

District Zoning Regulations District Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: March 16, 1987 at 19 N.J.R. 448(a).

Adopted: June 4, 1987 by Hackensack Meadowlands

Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: June 10, 1987 as R.1987 d.272, **without change**.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: July 6, 1987.

Expiration Date: November 7, 1988.

The adopted amendment to the Hackensack Meadowlands District Zoning Map consists of a change in zoning designation of Block 185, Lot 3 (new Block 185.01, Lot 2) in Secaucus, New Jersey from Highway Commercial to Service Highway Commercial.

Summary of Public Comments and Agency Responses:

The Hackensack Meadowlands Development Commission (HMDC) received letters from the Honorable Paul Amico, Mayor of Secaucus and Margaret Schak, Executive Director of the Hackensack Meadowlands Municipal Committee, stating that they do not object to this proposed zoning change.

COMMENT: Hartz Mountain Industries objected to this property being rezoned based on the fact that it could cause a traffic problem with roadway entering and exiting their adjacent development.

RESPONSE: The HMDC feels that this is a design matter that can be dealt with at the time of a plan review for a specific project.

Full text of the adoption follows.

19:4-6.28 Official Zoning Map

The zoning designation of Block 185, Lot 3 (New Block 185.01, Lot 2), in Secaucus, New Jersey, is changed from Highway Commercial to Service Highway Commercial.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the adopted change in zoning designation was submitted as part of the Commission's notice of adopted rule.

(b)

District Zoning Regulations District Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: April 6, 1987 at 19 N.J.R. 512(a).

Adopted: June 9, 1987 by Hackensack Meadowlands

Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: June 10, 1987 as R.1987 d.273, **without change**.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: July 6, 1987.

Expiration Date: November 7, 1988.

The adopted amendment to the Hackensack Meadowlands District Official Zoning Map consists of a change in zoning designation of Block 106, Lot 12B in Little Ferry from Park and Recreation to Low Density Residential.

Summary of Public Comments and Agency Responses:

COMMENT: The Hackensack Meadowlands Development Commission (HMDC) received numerous letters and reports from the neighboring community objecting to the proposed rezoning based on en-

vironmental concerns (that is, loss of open space, flood retention, wetlands, wildlife habitat).

RESPONSE: The Town of Little Ferry and HMDC were originally part of a suit brought on by the property owners for a taking of their land based on its zoning for a public use. As part of the settlement agreement, the HMDC held the public hearing for this rezoning. Since the HMDC was not inclined to condemn this property, it agreed to rezone the site. The property owners must meet all environmental regulations of the local, State and Federal agencies in order to be able to construct anything upon the subject site.

Full text of the adoption follows.

19:4-6.28 Official Zoning Map

The zoning designation of Block 106, Lot 12 in Little Ferry, New Jersey is changed from Park and Recreation to Low Density Residential.

OAL NOTE: A map showing the adopted change in zoning designation was submitted as part of the Commission's notice of adoption.

CASINO CONTROL COMMISSION

(a)

Accounting and Internal Controls Slot Count Procedures

Adopted Amendments: N.J.A.C. 19:45-1.32 and 1.43

Proposed: September 22, 1986 at 18 N.J.R. 1929(a).

Adopted: June 11, 1987 by the Casino Control Commission,

Walter N. Read, Chairman.

Filed: June 11, 1987 as R.1987 d.277, **without change.**

Authority: N.J.S.A. 5:12-63(c) and 5:12-69.

Effective Date: July 6, 1987.

Operative Date: September 1, 1987.

Expiration Date: April 7, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: The Vice President for Regulatory Administration and General Counsel for GNOC, CORP., favors the adoption with one modification; that the metal detector be monitored by the hard count manager or a security department representative.

RESPONSE: This suggestion has been rejected. In order to maintain adequate security over possible thefts or infractions, a security department employee must be present to check all persons with a metal detector upon their exiting the count room.

COMMENT: Associate General Counsel for Marina Associates requests that security department employees not be required to be present at each exit from the count room in order to avoid additional burdens

on the security department and reduce time-consuming delays since the fixed-door metal detector would be wired to the security podium alerting them of any possible thefts.

RESPONSE: This suggestion has been rejected. The reason for rejection is same as mentioned above.

COMMENT: In addition, the Associate General Counsel for Marina Associates believes that the proposed rule should address the issue of Commission inspectors' apparel since, when exiting the metal detector, the inspector may cause the alarm to sound off.

RESPONSE: This suggestion has been rejected. Procedures for Commission inspectors will be based on policy decisions and not referenced in the rule.

COMMENT: The Division of Gaming Enforcement fully supports the amendments.

RESPONSE: The Commission acknowledges acceptance of the amendments.

NOTE: The Casino Control Commission is delaying the operative date until September 1, 1987 to allow the casinos sufficient time to purchase and install the metal detectors as well as to revise the applicable sections of their Internal Control Submissions.

Full text of the adoption follows.

19:45-1.32 Count rooms; characteristics

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

(d) The count room designated for counting contents of slot machine drop buckets, if a different room than that used for counting contents of drop boxes, shall meet all requirements herein except for the audio capabilities. In addition, the room shall contain either a fixed-door type or hand-held metal detector to inspect all persons exiting the count room.

19:45-1.43 Slot count: procedure for counting and recording contents of drop buckets

(a)-(f) (No change.)

(g) Immediately prior to the commencement of the count, one count team member shall notify the person assigned to the closed circuit television monitoring station in the establishment that the count is about to begin, after which such person shall make a video recording, with the time and date inserted thereon, of the entire counting process, including the metal detector check by security, which shall be retained by the surveillance department for at least five days from the date of recordation unless otherwise directed by the commission or the division.

(h)-(i) (No change.)

(j) Procedures and requirements at the conclusion of the count shall be the following:

1. (No change.)

2. A security department employee shall check all persons with a metal detector upon their exiting the count room.

Re-number existing 2.-4. as 3.-5. (No change in text.)

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(a)

Amendment to the Tri-County Water Quality Management (WQM) Plan

Public Notice

Take notice that on May 11, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment is to include a revised and updated version of Map 4-3, the Tri-County sewer service area map. The revised map will not supersede any municipal or regional sewer service area map where the existing map is more accurate or more specific. The revised map will also prohibit development requiring sewer or septic service in freshwater wetlands. This exclusion will apply to all infrastructure associated with any proposed development including sewers, roads, stormwater and other structural facilities, except those facilities determined by the DEP to be unavoidable.

The following is a summary of comments submitted to the Department during the 30-day public comment period ending on March 29, 1987. Not all comments required a response. Where more than one comment addressed the same issue, the Department's response is to that general issue.

Summary of Comments and Agency Responses:

COMMENT 1: Supports the plan amendment as it would expand the sewer service area of Delran Township to include the site of a proposed development. This action will make it possible for Delran Township and the Delran Sewerage Authority to fulfill their obligations under the *Mount Laurel* litigation.

RESPONSE: No response necessary.

COMMENT 2: Objects to the language of the amendment which would prohibit infrastructure associated with any proposed development in freshwater wetlands. The amendment would prohibit development of residential property containing wetlands, even if the encroachment was minor and was needed to serve the uplands portion of the property. Requests a public hearing or the opportunity to present documentation justifying the need for a minor wetlands encroachment for a particular development.

COMMENT 3: Objects to the language of the amendment which would prohibit development in wetlands as the New Jersey Department of Environmental Protection (NJDEP) does not have the statutory authority to prohibit all activities in wetlands, and because there is no formally accepted criteria or standards to define wetlands or to review development proposals.

COMMENT 4: Requests a clarification of the language of the amendment which would prohibit development in wetlands. Requests that alternative language be substituted which does not conflict with the U.S. Army Corps of Engineers (USACOE) wetlands permit program and NJDEP stream encroachment policies and actions.

RESPONSE: The proposed plan amendment would not prohibit all encroachments in wetlands. It would, however, prohibit those encroachments determined by the Department to be avoidable. The language of the plan amendment regarding wetlands encroachment is intended to reinforce the position of the Department, which is to discourage development in wetlands. Projects would be reviewed on a case-by-case basis to ensure that encroachments in wetlands are unavoidable. The Department accepts the criteria used by the USACOE for defining freshwater wetlands. Where wetlands encroachments are unavoidable and necessary to serve upland development, such activities may be approved without the need for a Water Quality Management Plan amendment. This requirement should not be construed as prohibiting or preventing residential development of property and is consistent with existing environmental laws and regulations. The Department has both the authority and the responsibility under various State and Federal statutes to protect wetlands resources and to regulate activities which may adversely impact this resource.

The Department has determined that there is no need to hold a public hearing since the plan amendment has already undergone significant public review through the Delaware Valley Regional Planning Commission and the State Water Quality Management Plan amendment process. The alternative language recommended as a substitute would be inappropriate for this amendment. However, the recommendation will be taken into consideration for future plan amendments, where appropriate.

COMMENT 5: The revised sewer service area map excludes a portion of a proposed development in Lumberton Township. As most of the project is located within the revised sewer service area, the map should be revised to include the entire site.

RESPONSE: The sewer service area map will be revised as requested.

(b)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on May 11, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Water Quality Management Planning and Implementation Process Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer Tri-County Water Quality Management Plan was adopted by the Department. This amendment is to allow the filling of less than one acre of wetlands for two road crossings for the proposed Sturbridge Woods subdivision located in Voorhees Township, Camden County.

(c)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the expansion of the sewer service area for the Mount Laurel Township Municipal Utilities Authority to include the proposed Holiday Village East development. The project will not encroach on wetlands. The wetlands will be identified as a conservation easement on the project plans.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

Amendment to the Mercer County Water Quality Management Plan**Public Notice**

Take notice that on April 28, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Water Quality Management Planning and Implementation Process Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment is to adopt "An Amendment Concerning the Application of Wetlands Policy (Section 4.5.1., Point Source Control: Functional Programs and Agencies)" which would provide for the filling of 4.01 acres of wetlands and a mitigation program at the site of Princeton South at Lawrenceville (Lots 5, 11, 24, 25 of Block S-52 and Lots 11, 11.01, 11.02 of Block S-45), Lawrence Township, Mercer County.

(b)

Amendment to the Mercer County Water Quality Management Plan**Public Notice**

Take notice that on May 11, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Water Quality Management Planning and Implementation Process Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment is to adopt "An Amendment Concerning the Application of Wetlands Policy for Horizon Center, Hamilton Township (Water Quality Management Plan Section 4.5.1.)" which would provide for the filling of wetlands of Edges Brook for the construction of a roadway within the proposed development.

(c)

Amendment to the Upper Delaware Water Quality Management Plan**Public Notice**

Take notice that on May 7, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment will allow the new treatment plants to serve the Lakeland Parks Shopping Center, the Metropolitan Developers retail stores, Canway Corporation, and Brass Castle stores as well as a new Musconetcong Basin treatment plant and new Pohatcong Creek treatment plant.

In addition, as part of this amendment, a Wastewater Management Plan is adopted to provide a plan for addressing the wastewater management needs of Washington Township. A municipal sewerage authority will be created and serve as the Wastewater Management Agency and co-permittee for all of Washington Township.

(d)

DIVISION OF ENVIRONMENTAL QUALITY**New Jersey Radiological Emergency Response Plan****Public Notice**

Take notice that pursuant to the "Radiation Accident Response Act of 1981", N.J.S.A. 26:2D-43 et seq., the Department of Environmental Protection in cooperation with the Division of State Police will hold a public hearing on:

Thursday, July 30, 1987
7:00 P.M.-9:30 P.M.
Salem County Fire Training Center
Cemetery Road
Woodstown, New Jersey

The purpose of the hearing will be to receive public comment on the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan (RERP).

Invited speakers include the Director of the Office of Emergency Management, Division of State Police, and the Bureau Chief from the Department of Environmental Protection, Bureau of Nuclear Engineering.

Copies of the Plan are available at the Office of Emergency Management, State Police Headquarters, West Trenton, New Jersey and Salem County Fire Training Center, Cemetery Road, Woodstown, New Jersey.

For additional information contact:

New Jersey Department of Environmental Protection
Jennifer Moon, Radiation Physicist
Bureau of Nuclear Engineering
CN 411
Trenton, New Jersey 08625
Telephone: (609) 530-4022

HUMAN SERVICES

(e)

DIVISION OF PUBLIC WELFARE**Assistance Standards Handbook****Emergency Assistance****Proposed Amendments: N.J.A.C. 10:82-5.10****Public Hearings**

Take notice that the Department of Human Services will conduct public hearings concerning proposed amendments to Emergency Assistance (EA) provisions.

On January 13, 1987 the Governor, in his State of the State message, announced his plans to address the unique needs of homeless families in New Jersey by modifying the Emergency Assistance program. The Governor's primary goal was to reduce the hardship of temporary homelessness on children and to prevent the break-up of families that had occurred under current policy and procedures.

His message recognized the plight of families with the lowest incomes in New Jersey, many of whom have faced a personal disaster, a job loss, a serious illness or legal problems that had drained so much from their monthly incomes that there was little or no money left to pay the rent. Without the economic means to support a family, and faced with the high cost of available housing, the choice between paying the rent or providing food and clothing for the children became a critical issue. In choosing the latter, the family often found itself homeless as a result of eviction or mortgage foreclosure. Faced with no affordable permanent living arrangements that could accommodate the entire family, the result was very often placement of one or more of the children in foster care by the Division of Youth and Family Services. To remedy this situation, the Governor asked the Commissioner, Department of Human Services, to develop a program to prevent the involuntary break-up of families due to homelessness.

On February 3, 1987 the Superior Court, Appellate Division, issued a decision in *Maticka et al. v. Atlantic City et al.*, Docket No. A-91-856T, concerning the provision of EA. That decision was consistent in many respects with the Department's position. It expanded the definition of "control or opportunity to plan in advance" to encompass not only the applicants' obligation but also their capacity to avert the emergency situation. The decision went further, however, by suspending the time limit on the provision of EA for emergency temporary shelter at N.J.A.C. 10:82-5.10(c)1. The court also ordered the Department of Human Services to conduct a rule-making hearing on those two issues.

On March 19, 1987 the Department conducted public fact-finding hearings in the north, central and southern regions of the State to determine the magnitude of the problems surrounding EA and to assess which sections of N.J.A.C. 10:82-5.10 should be changed to respond to those problems.

Pursuant to the review and analysis of testimony presented at those hearings, proposed amendments to N.J.A.C. 10:82-5.10 appear in this Register which expand the provision of EA in the Aid to Families with Dependent Children program. Three public hearings concerning the proposed amendments to N.J.A.C. 10:82-5.10 will be held concurrently in northern, central, and southern New Jersey on Thursday, July 23, 1987 at the following locations and times:

Northern Region
 Passaic County Board of Social Services
 Board Room, 12:00 noon-8:00 p.m.
 80 Hamilton Street
 Paterson, New Jersey 07505-2057

Central Region
 Rutgers University
 Voorhees Hall Auditorium (Room 105), 12:00 noon-8:00 p.m.
 Hamilton Street
 New Brunswick, New Jersey 08903

Southern Region
 Rutgers University
 Camden Campus Center
 Multi-Purpose Room, 12:00 noon-8:00 p.m.
 Penn Street
 Camden, New Jersey 08102

In addition, information will be solicited from the public to determine the magnitude of the problems surrounding EA in the General Assistance program and to assess which sections of N.J.A.C. 10:85-4.6 should be considered for amendment. Testimony concerning EA in the General Assistance program may include, but is not limited to, the following specific issues:

- (1) The time limitation between the occurrence of the emergency and the application for EA at N.J.A.C. 10:85-4.6(a);
- (2) Lack of control or realistic capacity of clients to plan for the emergency as a condition of eligibility at N.J.A.C. 10:85-4.6(a)2;
- (3) The maximum three month limit on the provision of EA for temporary shelter of N.J.A.C. 10:85-4.6(b)1.

Individuals interested in testifying at the hearings must advise the Division of Public Welfare, Mercerville, New Jersey by telephone at (609) 588-2296 no later than July 22, 1987, and provide their name(s), organization represented, telephone number, and location at which the individual will be testifying. Interested speakers will be limited to ten minutes of oral testimony. Interested parties may submit written testimony at the hearings.

TRANSPORTATION
(a)

THE COMMISSIONER
Licensing of Aeronautical Facilities
Heliports/Helistops

Notice of Correction: N.J.A.C. 16:54-1.6

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 16:54-1.6 concerning Standards for heliports/helistops. N.J.A.C. 16:54-1.6 should read as follows:

16:54-1.6 Heliports/helistops

- (a) Standards for heliports/helistops:
- 1. There shall be two categories of licenses:
 - i. (No change in text.)
 - ii. Private: A heliport/helistop not available for public use, and may be further classified as:

(1) Official use: Facilities established by and for the use of Federal, State and/or local government agencies.

(2) Restricted use: All other facilities which are subject to limitations such as frequency of use, maximum size and type of helicopter, using individuals, or any other consideration deemed appropriate by the Commissioner in the interest of public health and safety.

NOTE: A separate license is **not required** under this subchapter when helicopter facilities are an integral part of an airport, landing strip, or seaplane base.

2.-9. (No change in text.)

TREASURY-GENERAL
(b)

DIVISION OF BUILDING AND CONSTRUCTION
Architect-Engineer Selection
Notice of Assignments—Month of May

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, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated May 4, 1987.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M729	HVAC & Dayroom Renovations Cottage C-19 Woodbine Developmental Center Woodbine, NJ	Ambruster/Grana Associates	\$185,000
P539	Feasibility Study Expansion of Pinelands Commission Administrative Facility New Lisbon, NJ	Lammey & Giorgio, PA	\$2,500 Services
A537	Parking Area Improvements Area #24 & PSE&G Lot Trenton, NJ	Maitra Associates, Inc.	\$7,400 Services
C335	Rahway Rotunda Study Rahway State Prison Rahway, NJ	Maitra Associates, Inc.	\$2,000 Services
H889	New Roof Stone Hall Dormitory Montclair State College Upper Montclair, NJ	Brown & Hale Architects	\$100,000
M530	Cost Estimate Valentine Hall Renovations Johnstone Developmental Center Bordentown, NJ	Arthur F. Sisca	\$520 Services
H891	Window Replacement Building K100 Kean College of NJ Union, NJ	Thomas E. Torricelli, AIA	\$40,000
M512	Geotechnical Study N.J. War Veterans Cemetery Arnetown, NJ	Geotech, Inc.	\$22,500 Services

COMPETITIVE PROPOSALS

	Geotech, Inc.	\$22,500 Lump Sum	
	Site Engineers, Inc.	\$25,500 Lump Sum	
	Paulus, Sokolowski, Sartor	No Proposal Received	
M561	CPM Scheduling Services Air Conditioning/Asbestos Removal/ Life Safety Renovations Ancora Psychiatric Hospital Hammonton, NJ	Gaudet Associates, Inc.	\$56,215 Services

COMPETITIVE PROPOSALS

	Gaudet Associates, Inc.	\$56,215 Lump Sum	
	The Arkhon Corp.	\$88,440 Lump Sum	
	O'Brien Kreitzberg & Assoc., Inc.	\$341,900 Lump Sum	
C325	Replacement Laundry & Food Service Facilities Trenton State Prison Trenton, NJ	Vaughn Organization PC	\$6,500,000

COMPETITIVE PROPOSALS

	Vaughn Organization PC	7.925%	
	Grad Partnership	8.90%	
	Tarquini Organization, PA	9.30%	
C316-01	Perimeter Fence, Guard Stations & Game Courts Rahway State Prison Rahway, NJ	Basco Associates	\$608,000

COMPETITIVE PROPOSALS

	Basco Associates	4.74%
	Vaughn Organization PC	5.275%
	BBM Architects	6.60%

C311-01 Asbestos Removal
Laundry Building
Rahway State Prison
Rahway, NJ

AACE Associates

\$60,000

COMPETITIVE PROPOSALS

AACE Associates \$9,978 Lump Sum
Environmental Health Inspection, Inc. \$32,497 Lump Sum
EM & CA Associates No Proposal Received

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF SOLID WASTE MANAGEMENT DIVISION OF WATER RESOURCES DIVISION OF ENVIRONMENTAL QUALITY

Master Performance Permits for Transfer Station Facilities

Adopted Emergency Rule and Concurrent New Proposed Rule: N.J.A.C. 7:26-1.10

Emergency New Rule Adopted: June 23, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 23, 1987.

Emergency Rule Filed: June 23, 1987 as R.1987 d.301.

Authority: N.J.S.A. 13:1B-3, 13:1D-9(k), 13:1E-4, 13:1E-6, 13:1E-26, 13:1E-126 et seq., 26:2C-1 et seq., 58:10A-4, 58:10A-6 and 58:16A-55.

Emergency New Rule Effective Date: June 23, 1987.

Emergency New Rule Expiration Date: August 22, 1987.

Concurrent Proposal Number: PRN 1987-275.

DEP Docket Number: 029-87-06.

A **public hearing** concerning this concurrent proposal will be held on:
August 5, 1987 at 10:00 A.M.
Brower Student Center
Trenton State College
Pennington Road
Trenton, New Jersey

Submit written comments by August 5, 1987 to:
Michael S. Caro, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 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. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

This new rule at N.J.A.C. 7:26-1.10 will invoke the Commissioner's various permitting and exemption powers under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and 13:1E-126 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., in order to facilitate the issuance of master performance permits to transfer stations satisfying the criteria contained herein. These master performance permits implement the Department's entire permitting authority to authorize the immediate development of transfer station facilities where immediate development of those facilities is necessary to avert a major disruption in the provision of solid waste disposal services in a solid waste management district. The master performance permit may only be issued to those proposed facilities meeting the criteria itemized in this emergency rule. These criteria are contained in N.J.A.C. 7:26-1.10(b) and include consistency with the approved district solid waste management plan of the solid waste management district in which the facility is to be located; determination by the Commissioner that development of the transfer station facility must commence immediately in order to avert a major disruption in the provision of solid waste disposal services; determination by the Commissioner that the proposed

owner or operator has sufficient reliability, expertise and competence to operate the facility; and the finding that the facility can be designed, constructed and operated in a manner consistent with the public health, safety and the environment under the circumstances.

Upon the Commissioner's finding that a transfer station facility satisfies these criteria, a master performance permit may be issued with a broad range of conditions to ensure that the facility will operate in a fashion consistent with the public health, safety, the environment and applicable law.

This emergency rule and concurrent proposal differs in three respects from the Transfer Station Temporary Certificate of Authority to Operate (TCAO) rule amendment adopted and concurrently proposed at 19 N.J.R. 886(a) (May 18, 1987). First, the master performance permit will authorize the immediate construction and operation of transfer station facilities pursuant to the Department's entire permitting and exemption powers under the several statutes listed above (and not merely the Solid Waste Management Act). Accordingly, a TCAO would not satisfy the existing legal prerequisite of obtaining various other permits prior to the initiation of facility development. Second, these permits will, in certain circumstances, and with limited exceptions, be of long term rather than temporary duration. Finally the master performance permit will authorize development of these facilities where their need is so urgent and immediate that a TCAO could not possibly be of use.

Social Impact

The overall impact of this new rule will be positive. By authorizing the issuance of master performance permits for emergency transfer stations, the Department will be able to ensure the immediate development of transfer stations and avoid the adverse effects caused by the cessation of solid waste disposal services due to the closure of local disposal facilities. In the typical scenario, such disposal facility closure would require that waste be hauled long distances for disposal. Under the circumstances, these transfer stations will quickly provide a district the ability to access far away disposal facilities while developing its own long-term disposal facilities. While providing the Department with the authority to permit the immediate development of emergency transfer stations, the master performance permit will require safe operation of such facilities through a series of conditions containing performance standards.

Economic Impact

The economic impacts of this new rule will be positive. Transfer stations are commonly used to consolidate solid waste prior to hauling it long distances to available disposal facilities. Disposal facilities located out of state tend to have higher tipping fees than do most New Jersey facilities. This higher tipping fee expense, coupled with increased transportation costs, will likely result in increased waste disposal costs for the public. However, by extending the master performance permit to emergency transfer stations which meet the specific criteria provided, the Department seeks to avoid major disruptions in disposal facility access and the far higher costs associated with such disruptions.

If, prior to the permitting of these transfer stations, collector/haulers are able to use their collection vehicles for direct haul to distant disposal facilities, they will incur huge expenses due to the transportation costs and their inability to use the collection vehicles for collection during the time necessary for hauling the waste. These vehicles are ill-suited for the necessary long-distance journeys and could be subject to the further costs of frequent breakdown. Transfer stations will reduce these costs by transferring the waste into either larger trailer vehicles or railroad box cars thereby providing an economy of scale and freeing up the collection vehicles for their intended purpose. These facilities will therefore offset such incidental expenses.

Environmental Impact

The environmental impact of this amendment will be positive. The adoption of this rule will enable the Department to authorize the immediate development of transfer station facilities in a manner consistent with the public health and safety and the environment. In certain circumstances, absent immediate efforts toward transfer station development, communities within the State will be unable to continue solid waste collection. In order to avoid the potential effect of such a disruption, the Department will be able to issue master performance permits authorizing immediate development of these facilities and requiring conditions for

the safe performance of the transfer stations. The use of this new rule to authorize the immediate development of transfer stations will have a positive environmental impact by quickly ceasing the reliance on over-used or over-capacity landfills in favor of more distant alternatives where necessary to provide short-term disposal services pending the construction of in-county facilities. This exemption will also help expedite the construction of transfer stations where the unanticipated closure of a disposal facility relied upon by the district leaves it with no other alternatives.

Through the master performance permit, the Department will be able to manage effectively the environmental impacts of the transfer station facilities. Any environmental impacts may not exceed the performance standards specified in this rule and as conditions in any Master Performance permit subsequently issued hereunder. Moreover, conditions in the Master performance permit can be utilized to require careful monitoring of any sensitive environmental concerns at a particular site and require mitigation measures addressing any unacceptable environmental impacts.

Regulatory Flexibility Statement

This new rule would apply to all proposed transfer station facility owners or operators meeting the criteria contained in N.J.A.C. 7:26-1.10(c) herein. It is estimated that of the total number of such owners or operators impacted by this proposal, 75 percent would be small businesses as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with this proposal, the small businesses will have to qualify under the criteria specified in N.J.A.C. 7:26-1.10(c) and comply with all conditions and performance standards specified in their master performance permit. In so doing, it is likely that the small businesses will need the services of a professional engineer.

It is expected that the initial capital costs for each small business will be minimal. The annual costs of compliance with this proposal should not exceed, and will likely be less than, those costs associated with compliance with existing transfer station facility permits. In developing this proposal, the Department has balanced the need to protect the environment against the economic impact of the rule and has determined that to exempt small businesses from the impact of the rule would unnecessarily endanger the public health, safety and the environment and, therefore, no exemption from coverage is provided.

Full text of the Emergency New Rule Adoption and concurrent New Rule Proposal follows.

7:26-1.10 Transfer station facility master performance permits

(a) This section shall govern transfer station facilities meeting the criteria in (b) below and shall implement the permitting and exemption authority vested in the Department under all of its enabling statutes.

(b) The Commissioner may issue a master performance permit to those transfer station facilities satisfying the following criteria:

1. The transfer station facility is consistent with the approved district solid waste management plan of the solid waste management district in which the facility is to be located;

2. The Commissioner has determined that development of the transfer station facility must commence forthwith in order to avert a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or which would imperil public health, safety or the environment;

3. The proposed owners or operators of the facility are determined by the Commissioner, pursuant to N.J.S.A. 13:1E-135, after a preliminary review of such information as the Commissioner may require, to demonstrate sufficient reliability, expertise and competence to operate a transfer station facility in compliance with the statutes administered by the Department and with the conditions of the master performance permit; and

4. The facility will be designed, constructed and operated in a manner consistent with the protection of the public health, safety and the environ-

ment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the master performance permit.

(c) The master performance permit authorizes the immediate development of a transfer station facility. The master performance permit shall include, at a minimum, the following:

1. The identity of the owners and/or operators and a procedure for providing the names of key employees of the transfer station facility;

2. The location of the facility;

3. Those waste types that may be accepted for transfer at the facility and those waste types that are prohibited for transfer at the facility;

4. Those activities and/or studies that shall be completed by the owners and/or operators of the facility and approved by the Department prior to the initiation of construction activities at the facility;

5. Those activities and/or studies that shall be completed by the owners and/or operators of the facility and approved by the Department prior to commencement of operation of the facility;

6. Operating standards for the facility that must be complied with by the owners and/or operators, including, but not limited to, performance standards for facility staffing and training, facility housekeeping, on-site traffic control, schedules for waste delivery vehicle flow, wastewater collection, stormwater collection, emergency preparedness, vector control, odor control, noise control and notice and enforcement of traffic flow plans for waste delivery vehicles;

7. A requirement of a facility development schedule detailing milestones for timely facility development. Upon a failure to comply with the development schedule or any other provision of the permit, the master performance permit may be revoked at the discretion of the Department;

8. Conditions ensuring that the development of any land in a designated flood hazard area is consistent with the public safety, health and general welfare and the protection of the environment;

9. A condition for the registration and/or permitting of any underground storage tank in place or to be installed at the facility site consistent with P.L. 1986 c.102 (N.J.S.A. 58:10A-21 et seq.) and any applicable Federal requirements prior to actual facility operation;

10. A condition requiring the submission by the owner and/or operator and approval by the Department prior to actual facility operation of a report under the signature and seal of a licensed professional engineer that the discharge into a publicly owned sewage treatment works, if any, will be consistent with local pretreatment standards;

11. A timetable for the submission of an application for any air pollution control equipment or apparatus necessary for the facility. Upon receipt and review of the permit application, the Commissioner may issue a temporary operating certificate pursuant to N.J.S.A. 26:2C-1 et seq.;

12. A schedule, if appropriate, for replacement of the master performance permit or any part thereof with those approvals defined elsewhere in Title 7 of the New Jersey Administrative Code;

13. A provision prescribing the duration of the master performance permit and providing for automatic expiration by its terms on the specified expiration date; and

14. Any other terms or conditions deemed necessary by the Commissioner.

(d) Except as specifically provided in a master performance permit as described in (c) above, the facility shall be exempt from:

1. Obtaining a New Jersey Pollutant Discharge Elimination System permit, if the discharge from the facility falls within any of the categories enumerated in N.J.S.A. 58:10A-6(d);

2. Any approval required by N.J.S.A. 58:16A-50 et seq.; and

3. The requirement for a registration statement, engineering design approval and other regulatory requirements incidental thereto as contained in N.J.S.A. 13:1E-1 et seq.

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	8/12/87

N.J.A.C.	Expiration Date
(Except for 3:6-8 which expired 4/9/85)	
3:7	9/16/90
3:11	3/19/89
(Except for 3:11-2 which expired 6/3/85)	
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
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	9/7/87
3:41	10/16/90

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
(Except for 2:2-9 which expired 6/11/84)	
2:3	6/18/89
(Except for 2:3-4 which expired 1/8/86)	
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

CIVIL SERVICE—TITLE 4

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

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
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	8/16/87
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

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91

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	12/1/87
6:53	9/1/87
6:64	5/1/88
6:68	4/12/90
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
(Except for 7:14-5 which expired 6/23/85)	
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

N.J.A.C.	Expiration Date
(Except for 7:25-1 which expired 9/17/85)	
7:25A	5/6/90
7:26	11/4/90
(Except for 7:26-5 which expired 10/7/85)	
7:27	Exempt
7:27A	Expired 10/7/85
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	8/2/87
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
(Except for 8:21-1 which expired 5/15/85;	
8:21-4 which expired 7/21/83;	
8:21-6 which expired 9/18/85)	
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
(Except for 8:31B-1 which expired 7/19/84)	
8:32	Expired 3/12/85
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	2/4/90
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	3/18/90
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

N.J.A.C.	Expiration Date
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
8:58	Expired 5/1/84
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

N.J.A.C.	Expiration Date
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
10:80	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
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
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

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

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:9	1/20/92
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
11:10	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
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
12:10-1	8/15/89
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
13:44A	Expired 5/17/84

N.J.A.C.	Expiration Date
13:44B	5/3/87
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	9/7/87
(Except for 13:47A-25 which expired 8/14/83)	
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
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
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
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

N.J.A.C.	Expiration Date
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	11/15/87
16:41A	2/19/90
16:41B	3/4/90
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
(Except for 17:19-10 which expired 3/3/85)	
17:19A	Expired 2/1/84
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88

N.J.A.C.	Expiration Date
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

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 June 1, 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: MAY 18, 1987.

NEXT UPDATE WILL BE DATED JUNE 15, 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. 1327 and 1432	July 7, 1986	19 N.J.R. 165 and 260	January 20, 1987
18 N.J.R. 1433 and 1504	July 21, 1986	19 N.J.R. 261 and 324	February 2, 1987
18 N.J.R. 1505 and 1640	August 4, 1986	19 N.J.R. 325 and 392	February 17, 1987
18 N.J.R. 1641 and 1726	August 18, 1986	19 N.J.R. 393 and 430	March 2, 1987
18 N.J.R. 1727 and 1862	September 8, 1986	19 N.J.R. 431 and 476	March 16, 1987
18 N.J.R. 1863 and 1978	September 22, 1986	19 N.J.R. 477 and 586	April 6, 1987
18 N.J.R. 1979 and 2078	October 6, 1986	19 N.J.R. 587 and 672	April 20, 1987
18 N.J.R. 2069 and 2148	October 20, 1986	19 N.J.R. 673 and 794	May 4, 1987
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		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1:1-18.4	19 N.J.R. 1123(a)		
1:30-1.2, 2.8	19 N.J.R. 675(a)		
1:30-3.1	19 N.J.R. 675(b)		
1:30-4.1, 4.5	19 N.J.R. 676(a)		
1:31-1.2-2.1	19 N.J.R. 677(a)		

(TRANSMITTAL 1987-1, dated May 18, 1987)

AGRICULTURE—TITLE 2

2:22	19 N.J.R. 479(a)	R.1987 d.274	19 N.J.R. 1184(a)
2:32	19 N.J.R. 480(a)	R.1987 d.236	19 N.J.R. 924(a)
2:50	19 N.J.R. 433(a)	R.1987 d.232	19 N.J.R. 927(a)
2:69-1.11	19 N.J.R. 484(a)	R.1987 d.275	19 N.J.R. 1184(b)
2:71-2.28	19 N.J.R. 901(a)		
2:76-5.3, 5.8	19 N.J.R. 1123(b)		
2:76-7	19 N.J.R. 1009(a)		

(TRANSMITTAL 1987-3, dated May 18, 1987)

BANKING—TITLE 3

3:6-16	19 N.J.R. 677(b)	R.1987 d.271	19 N.J.R. 1184(c)
3:11-7.10	19 N.J.R. 1124(a)		
3:11-11.13	18 N.J.R. 1224(a)	Expired	
3:23	19 N.J.R. 485(a)	R.1987 d.254	19 N.J.R. 1185(a)
3:25-1	19 N.J.R. 901(b)		
3:41	18 N.J.R. 1642(a)		

(TRANSMITTAL 1987-2, dated April 20, 1987)

PERSONNEL (CIVIL SERVICE)—TITLE 4

4:1-1, 2, 3, 4	19 N.J.R. 1011(A)		
4:1-5, 13.6, 13.7, 16.7-16.12, 16.14, 23	19 N.J.R. 1013(a)		
4:1-10.3	19 N.J.R. 1018(a)		
4:1-21.2, 21.6	19 N.J.R. 1020(a)		
4:1-27.1	19 N.J.R. 327(b)	R.1987 d.259	19 N.J.R. 1185(b)
4:2-16.4, 16.5, 23	19 N.J.R. 1013(a)		
4:2-21.1-21.6	19 N.J.R. 1020(a)		
4:2-27	19 N.J.R. 327(b)	R.1987 d.259	19 N.J.R. 1185(b)
4:3-16.3, 16.4	19 N.J.R. 1013(a)		
4:3-21.1, 21.2	19 N.J.R. 1020(a)		
4:6	19 N.J.R. 327(b)	R.1987 d.259	19 N.J.R. 1185(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:1	General rules and department organization	19 N.J.R. 1011(a)		
4A:2	Appeals, discipline and separations	19 N.J.R. 1013(a)		
4A:5	Veterans and disabled veterans preference	19 N.J.R. 1018(a)		
4A:7	Equal employment opportunity and affirmative action	19 N.J.R. 1020(a)		
4A:9-1	Political subdivisions	19 N.J.R. 1022(a)		

(TRANSMITTAL 1987-1, dated January 20, 1987)

COMMUNITY AFFAIRS—TITLE 5

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)		
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.12, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1078(a)
5:18-4	Fire Safety Code: correction	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1190(a)
5:18-4.7, 4.9	Fire safety in boarding homes, day nurseries, hotels and motels	19 N.J.R. 1023(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1078(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(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)		
5:23-3.18. 6.1-6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)		
5:23-4.5	UCC enforcement: conflict of interest—withdrawal of proposal	19 N.J.R. 1033(a)		
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)		
5:24-1.12	Condominium and cooperative conversion	19 N.J.R. 797(a)		
5:26-8.2	Duties of community associations in planned real estate developments	19 N.J.R. 797(b)		
5:70	Congregate Housing Services Program	19 N.J.R. 678(a)		
5:80-3	Housing and Mortgage Finance: return on equity for housing sponsors	19 N.J.R. 1125(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)		
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-7.1	Council on Affordable Housing: drastic alteration of development	19 N.J.R. 806(a)		

(TRANSMITTAL 1987-3, dated March 16, 1987)

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)		
6:20-2.14	Appropriation of free balance by local district	19 N.J.R. 437(a)	R.1987 d.239	19 N.J.R. 928(a)
6:28-3.6, 4.4	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)		
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)		
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:53	Vocational education safety standards	19 N.J.R. 485(b)		
6:68-1.4	State library aid to municipalities	19 N.J.R. 1128(a)		

(TRANSMITTAL 1987-5, dated May 18, 1987)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:1A	Water Supply Bond Loan Program	19 N.J.R. 437(b)	R.1987 d.264	19 N.J.R. 1190(b)
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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(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)		
7:9-2.60	Percolation tests: correction to Administrative Code			19 N.J.R. 1109(e)
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	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)		
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: repropoed	19 N.J.R. 167(b)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(a)	R.1987 d.279	19 N.J.R. 1190(c)
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(g)	Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonicus Brook	19 N.J.R. 169(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-1.8	NJPDES fee schedule	19 N.J.R. 706(a)	R.1987 d.281	19 N.J.R. 1191(a)
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:25-2.18, 2.22	Use of land and water areas	19 N.J.R. 398(a)	R.1987 d.250	19 N.J.R. 1090(a)
7:25-4.13, 4.17	Endangered and nongame species lists	19 N.J.R. 491(a)		
7:25-5	1987-1988 Game Code	19 N.J.R. 808(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)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:26-1.4, 7.5, 7.7, 8.2, 8.13	Waste oil	18 N.J.R. 878(a)	R.1987 d.234	19 N.J.R. 1091(a)
7:26-1.10	Master performance permits for transfer station facilities	Emergency (expires 8-22-87)	R.1987 d.301	19 N.J.R. 1242(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-7.2, 9.1, 9.3, 10.8, 11.4	Hazardous waste management: containers, landfills, existing facilities	19 N.J.R. 441(a)		
7:26-8.2	Waste oil exclusions: correction	18 N.J.R. 878(a)	R.1987 d.234	19 N.J.R. 1196(a)
7:26-8.14	Hazardous waste listing: ethylene dibromide wastes	19 N.J.R. 443(a)	R.1987 d.280	19 N.J.R. 1196(b)
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)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(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	Therapeutic radiation installations	18 N.J.R. 1157(a)	R.1987 d.258	19 N.J.R. 1196(c)
7:30-2.3	Restricted-use pesticides	19 N.J.R. 492(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
8:13	Processing and handling of shellfish; depuration of soft shell clams	19 N.J.R. 1143(a)		
8:20-1.2	Reportable birth defects	19 N.J.R. 909(b)		
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:26-5.7	Lifeguard training at ocean and tidal bathing beaches	19 N.J.R. 494(a)		
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)		
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)		
8:31B-3.38, 4.62	Hospital reimbursement: outpatient dialysis	19 N.J.R. 840(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)		
8:31B-7	Uncompensated Care Trust Fund	19 N.J.R. 495(a)		
8:33E-1	Cardiac diagnostic facilities and services	19 N.J.R. 606(a)		
8:33E-2	Cardiac surgical centers	19 N.J.R. 610(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)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:65-10.1, 10.2	Controlled substances: reschedule Alfentanil from Schedule I to Schedule II	19 N.J.R. 841(a)		
8:65-10.2	Controlled substances: addition of Nabilone to Schedule II	19 N.J.R. 1050(a)		
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)		
8:65-10.3, 10.4	Reassignment of CDS Codes in Schedules III and IV	19 N.J.R. 911(a)		
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b), 216(c), 640(a), 880(b))	18 N.J.R. 1167(a)		
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a), 640(b), 881(a))	18 N.J.R. 1775(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 215(a))	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 216(a))	18 N.J.R. 2101(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a))	19 N.J.R. 13(a)		
8:71	Interchangeable drug products	19 N.J.R. 615(a)		

(TRANSMITTAL 1987-5, dated May 18, 1987)

HIGHER EDUCATION—TITLE 9				
9:2-3	Early retirement program for tenured faculty: rehiring as adjunct faculty	19 N.J.R. 912(a)		
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)		
9:2-9	Organization of Board and Department of Higher Education	Exempt	R.1987 d.240	19 N.J.R. 986(a)
9:7-2.10, 2.11	Tuition Aid Grant benefits	19 N.J.R. 1153(a)		
9:7-4.1	Distinguished Scholars Program: academic criteria	19 N.J.R. 498(a)	R.1987 d.278	19 N.J.R. 1207(a)
9:7-9.9, 9.11, 9.12, 9.15	Congressional Teacher Scholarship Program	19 N.J.R. 1154(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 15(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)		

(TRANSMITTAL 1987-4, dated May 18, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HUMAN SERVICES—TITLE 10				
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.12	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)		
10:50-2 through 10:68-2	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)	Expired	
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)	Expired	
10:81-2.6, 3.13	AFDC eligibility and full-time students	19 N.J.R. 618(a)		
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
10:81-3.38	AFDC qualification and child support orders	19 N.J.R. 618(b)		
10:81-4.9, 5.2, 7.1	PAM: administration of AFDC program	19 N.J.R. 341(a)		
10:81-11.3	AFDC: newborn child and application for Social Security number	19 N.J.R. 619(a)		
10:81-11.4	PAM: recovery of child support overpayments	19 N.J.R. 1171(a)		
10:81-11.7, 11.9	PAM: annual notice of child support collections	19 N.J.R. 343(a)	R.1987 d.253	19 N.J.R. 1093(a)
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.2, 2.13, 5.11	AFDC payment levels	19 N.J.R. 500(a)	R.1987 d.252	19 N.J.R. 1094(a)
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-1.7, 1.8, 3.2	AFDC benefits and educational financial aid	19 N.J.R. 709(a)		
10:82-3.2, 4.13, 4.14, 4.15	ASH: resources and income in AFDC	19 N.J.R. 344(a)		
10:82-5.10	Emergency Assistance in AFDC program	19 N.J.R. 1171(b)		
10:82-5.12	ASH: disregarded child support payments	19 N.J.R. 501(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-4.1, 9.4	General Assistance payment levels	19 N.J.R. 502(a)	R.1987 d.251	19 N.J.R. 1095(a)
10:85-5.3	Personal needs allowance for GA recipients in nursing homes and intermediate care facilities	19 N.J.R. 619(b)		
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-2.3, 2.6, 2.19, 3.13-3.21	Food Stamp Program: employment and training requirements	19 N.J.R. 649(a)	R.1987 d.261	19 N.J.R. 1207(b)
10:100-3.6	Submission of cemetery petition by funeral directors	19 N.J.R. 345(a)		
(TRANSMITTAL 1987-4, dated April 20, 1987)				
CORRECTIONS—TITLE 10A				
10A:1-1	Department operation and procedures	19 N.J.R. 620(a)	R.1987 d.282	19 N.J.R. 1214(a)
10A:3-5.8, 5.11	Random searches of correctional facilities by canine teams	19 N.J.R. 1175(a)		
10A:4-9.12	Representation of inmate in disciplinary case	19 N.J.R. 913(b)		
10A:5-5.2	Involuntary placement into protective custody	19 N.J.R. 842(a)		
10A:6	Inmate access to courts	19 N.J.R. 914(a)		
10A:9-5.6	Earning work credits in county facilities	19 N.J.R. 843(a)		
10A:10-6	International transfer of inmates	19 N.J.R. 916(a)		
10A:16-6	Pregnant inmates	19 N.J.R. 503(a)		
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)	R.1987 d.263	19 N.J.R. 1214(b)
(TRANSMITTAL 1987-2, dated April 20, 1987)				
INSURANCE—TITLE 11				
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:1-2.5	Official department mailing list: address information	19 N.J.R. 1050(b)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)	R.1987 d.249	19 N.J.R. 1096(a)
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)	R.1987 d.249	19 N.J.R. 1096(a)
11:4-21	Limited death benefit policy forms	19 N.J.R. 843(b)		
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)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
(TRANSMITTAL 1987-4, dated April 20, 1987)				
LABOR—TITLE 12				
12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-4.2	Protection of firefighters	19 N.J.R. 48(a)	R.1987 d.241	19 N.J.R. 1098(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:100-4.2, 5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
(TRANSMITTAL 1987-1, dated February 17, 1987)				
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:11-1	Certification of women and minority-owned business	19 N.J.R. 1176(a)		
(TRANSMITTAL 1987-1, dated March 16, 1987)				
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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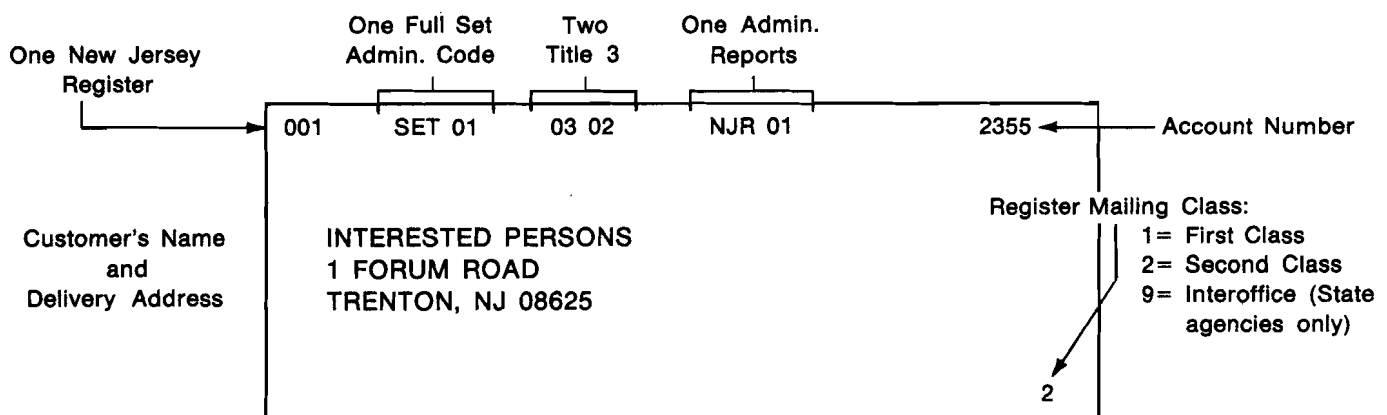
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